Federal Court  Cour fédérale

Date: 20120618

Docket: IMM-6994-11

Citation: 2012 FC 770

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, June 18, 2012

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

SUKHWINDER SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review filed in accordance with subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (Act), of a decision dated September 16, 2011, in which the Refugee Protection Division of the Immigration and Refugee Board (panel) found that the applicant was not a refugee or a person in need of protection under sections 96 and 97 of the Act.

I. Background

A. Factual background

[2] Sukhwinder Singh (applicant) is an Indian citizen who is thirty-one (31) years of age. The applicant was living in the village of Kili Chahlan in the Punjab region. He alleges that he fears the authorities in his country, who suspected him of having militant ties.

[3] The applicant alleges that his cousin, Sukhdev Singh, a university student, and his friends were arrested by the police in December 2002. The applicant maintains that his cousin was detained and tortured by the police as he was accused of helping militants.

[4] The applicant states that his cousin was detained a second time in August 2003 for a period of three (3) days and that he was tortured by the police.

[5] The applicant alleges that, on November 20, 2003, the police entered his family home looking for his cousin. The applicant contends that he was detained for two (2) days, beaten and questioned on the activities of his cousin and militants.

[6] The applicant also alleges that the police harassed members of his family. Consequently, the applicant's father decided to send the applicant to another country. With the help of an agent, the applicant left India and relocated to Kuwait in February 2004, where he worked for construction contractors.

[7] In March 2005, the applicant returned to India to visit his family for a period of two (2) months. After he left, the applicant states that the police entered his family home a second time.

[8] After his contract in Kuwait ended in March 2007, the applicant returned to India a second time. He states that he was arrested by the police on March 14, 2007, because they wanted to obtain more information on his cousin and militants. The applicant alleges that he was tortured, beaten, photographed and fingerprinted.

[9] After his release, the applicant moved to Rajasthan, where he lived for 11 months with his family. The applicant left India on March 10, 2008, and came to Canada with a work visa valid from March 3, 2008, to March 31, 2009. The applicant was laid off by his employer in Canada in June 2009. He filed his refugee protection claim on August 8, 2009.

[10] The applicant argues that the police in India are still looking for him. He also alleges that the police arrested and tortured his father in November 2010 to obtain information with respect to him. The applicant's father died due to injuries sustained as a result of the torture inflicted by the police. What is more, the applicant's wife and children moved to another village.

[11] The panel heard the applicant's refugee claim on August 17, 2011.

B. Impugned decision

[12] The panel rejected the applicant's refugee claim based on the existence of an internal flight alternative (IFA) and because he lacked credibility.

[13] Although the panel found the applicant's explanations concerning his two return trips to India and his delay with respect to his refugee claim in Canada to be credible, the panel drew a negative inference from the fact that the applicant had no information about his cousin. The panel noted that the applicant did not know why the police were looking for him. Furthermore, the panel noted that the applicant's brothers and sisters, as well as his wife and children, who lived in India, have not had any problems with the police. Consequently, the panel found that there was no evidence demonstrating that the police were looking for the applicant.

[14] In addition, the panel stated that there was an IFA because the applicant testified that the police did not travel to visit his family members and that the police did not communicate with other police offices. The panel stated that those findings were corroborated by the documentary evidence (primarily document 2.5 from the National Documentation Package, entitled "United Kingdom (UK). 17 April 2008. Home Office. *Operational Guidance Note: India*") and other Federal Court decisions (*Singh v Canada (Minister of Citizenship and Immigration)*, 2010 FC 601, [2010] FCJ No 720). In addition, the panel noted that the applicant entered India twice and was able to leave his country three times. Moreover, in 2005, the applicant stayed in India for a three-month period without incident.

[15] The panel listed the cities of Bangalore, Mumbai or Rajasthan as IFAs. The panel noted that there were job opportunities in those cities and that the applicant had not established that those IFAs were unreasonable. The panel found that the applicant did not prove that he has the profile of a person who would be sought by the authorities throughout the country or that he could be perceived as a militant by the police. As a result, the panel stated that the applicant was not the subject of persecution.

II. Issue

[16] The Court is of the opinion that the determinative issue in this case is as follows: *Did the panel err in fact and in law in its assessment of the existence of an IFA?*

III. Relevant statutory provisions

[17] Sections 96 and 97 of the *Immigration and Refugee Protection Act* read as follows:

REFUGEE PROTECTION, CONVENTION REFUGEES AND PERSONS IN NEED OF PROTECTION	NOTIONS D'ASILE, DE RÉFUGIÉ ET DE PERSONNE À PROTÉGER
Convention refugee	Définition de « réfugié »
96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	**96.** A qualité de réfugié au sens de la Convention – le réfugié – la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail	*a*) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de

themself of the protection of each of those countries; or
(*b*) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

la protection de chacun de ces pays;
b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally
(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or
(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and
(iv) the risk is not caused by

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii) la menace ou le risque ne résulte pas de sanctions légitimes – sauf celles infligées au mépris des normes internationales – et inhérents à celles-ci ou occasionnés par elles,
(iv) la menace ou le risque ne

the inability of that country to provide adequate health or medical care.	résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.
Person in need of protection	Personne à protéger
(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.	(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

IV. Applicable standard of review

[18] It is settled law that findings concerning the determination of an IFA are reviewable on the standard of reasonableness (*Valencia v Canada (Minister of Citizenship and Immigration)*, 2011 FC 203 at paragraph 20, [2011] FCJ No 252). As a result, the Court will focus on "the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 47, [2008] FCJ No 9).

V. Analysis

[19] At the centre of this matter is the panel's decision regarding the IFA. The applicant alleges that the panel omitted documentary evidence and that it had the duty to comment on evidence that are relevant to the matter and that corroborate his account (*Gill v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 656, [2003] FCJ No 847; *Singh v Canada (Minister of Citizenship and*

Immigration), 2009 FC 485, [2009] FCJ No 616; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 157 FTR 35, [1998] FCJ No 1425).

[20] The Court is of the opinion that, in this case, the panel's decision is reasonable and that the intervention of the Court is unwarranted.

[21] In fact, the evidence in the record does not contradict the panel's finding and it was reasonable for the panel to find that the applicant's problems were limited to his own village and that he was not a person sought nationwide. Notably, when his wife and children moved 120 km from Killy Chahlan, they stopped having problems. His sisters and brothers were not harassed by the police. The sisters of his militant cousin did not have problems with the police. Furthermore, the applicant left India three (3) times and returned there two (2) times. His passport contains stamps to that effect. In 2005, the applicant returned there for close to three (3) months. In 2007, the applicant lived in Rajasthan for eleven (11) months. Under these circumstances, it is difficult to imagine how the applicant has the profile of someone who would be actively sought by his country's central authorities. On this point, the Court reiterates the observations of Justice Shore in *Singh*, above, at paragraph 10:

> [10] The RPD reasonably concluded that the fact that Mr. Balwant Singh used his own passport to leave India demonstrated that he did not fear the central authorities. (*Choque v. Canada (Minister of Citizenship and Immigration)* (1997), 73 A.C.W.S. (3d) 308, [1997] F.C.J. No. 1017 (QL); *Ccanto v. Canada (Minister of Employment and Immigration)* 1994, 73 F.T.R. 144, 46 A.C.W.S. (3d) 309; *Singh v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 958, [2009] F.C.J. No. 1169 (QL)).

[22] Furthermore, the Court cannot accept the applicant's argument that the panel disregarded some of the evidence in the record. For example, the issue of the father's death was not discussed

during the hearing before the panel and it is clear that the submissions do not mention it. That element is not determinative. In fact, the applicant is seeking, quite creatively, to have the evidence reweighed. On this point, the Court reiterates that the panel is presumed to have considered all of the evidence (*Florea v Canada (Minister of Employment and Immigration)* (FCA), [1993] FCJ No 598) and that it is not required to comment on every piece of evidence in the record (*Hassan v Canada (Minister of Employment and Immigration)* (FCA), [1992] FCJ No 946, 147 NR 317; *Hinzman v Canada (Minister of Citizenship and Immigration)*, 2006 FC 420, [2007] 1 FCR 561; *Singh v Canada (Minister of Citizenship and Immigration)*, 2008 FC 408, [2008] FCJ No 547). The Court finds the applicant's argument to be without merit.

[23] In this context, it is important to point out that it is up to the refugee claimant to establish the inexistence of an IFA according to the two-part test: applicants must establish that they are at risk throughout their country and that the IFA would be objectively unreasonable given the circumstances (*Rasaratnam v Canada (Minister of Employment and Immigration)* (CA), [1991] FCJ No 1256, [1992] 1 FC 706; *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 2118, [2001] 2 FC 164; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)* (CA), [1993] FCJ No 1172, [1994] 1 FC 589).

[24] The finding regarding the existence of an IFA is determinative and sufficient to dispose of the claim (*Baldomino v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1270, [2007] FCJ No 1638; *Shimokawa v Canada (Minister of Citizenship and Immigration)*, 2006 FC 445, [2006] FCJ No 555; *Canada (Attorney General) v Parent*, 2006 FC 353, [2006] FCJ No 457).

[25] Given all of the evidence in the record, the Court finds that the applicant did not establish that he could not seek refuge in the locations suggested by the panel. Consequently, the Court finds the panel's decision to be reasonable.

[26] For these reasons, the application for judicial review will be dismissed. Neither party proposed any question for certification and this matter does not contain any.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that

1. The application is dismissed;

2. There is no question for certification.

"Richard Boivin"
Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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