

Federal Court



Cour fédérale

**Date: 20140724**

**Docket: IMM-6832-13**

**Citation: 2014 FC 740**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Ottawa, Ontario, July 24, 2014**

**Present: The Honourable Madam Justice Bédard**

**BETWEEN:**

**PIARA SINGH GILL and  
GURDIAL KAUR GILL**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicants seek the judicial review of a decision made on September 30, 2013, by the Refugee Protection Division of the Immigration and Refugee Board of Canada (the RPD) in which it rejected their refugee claim. For the reasons that follow, the application is dismissed.

**I. Background**

[2] The applicants, who are citizens of India, allege that they were targeted by the police because of problems that their son had allegedly had with the police owing to the relationship that he had with his brother-in-law, a member of a Sikh group.

[3] The applicants' claim is based on the following main elements. In 2008, the applicants' son was arrested by the police. He was released the next day with the obligation to present himself at the police station every month. The applicants' son fulfilled this requirement until November 1, 2009, when he disappeared while going to the police station. The police officers stated that the applicants' son never reached the station, but the applicants did not believe this theory and suspected the police officers of being responsible for his disappearance.

[4] The applicants allege that on November 2, 2009, they consulted a lawyer to help them find their son. They argued that the lawyer advised them to file a complaint against the police. The next morning—and before taking any action with respect to a possible complaint against the police—three police officers came to their house and asked the principal applicant if he had consulted a lawyer the night before to file a complaint against the police. The applicants submitted that they were arrested, driven to the police station, detained and beaten by the police officers. The principal applicant stated that he was interrogated then tortured before being released the next day. He argued that he received medical treatment for the injuries that the police officers inflicted on him.

[5] The applicants then made the decision to come to Canada since their daughter lives here. However, when they were waiting for their Canadian visas, the police officers again came to their residence on December 15, 2009. The applicants argued that the police officers demanded that they find and point out their son and his brother-in-law before February 15, 2010, failing which they would be killed.

[6] The applicants received their Canadian visas on January 6, 2010, and they left their country on February 4, 2010. They filed their refugee claim on February 8, 2010.

## **II. The RPD decision**

[7] The RPD found that the applicants' story was not credible. Its conclusion is based primarily on the following elements:

- The RPD found that the applicants' testimony was hesitant and sometimes inconsistent. Indicating that it considered the age of the applicants, who are 71 and 73 years old, the RPD found that the age of the applicants did not explain the problems of credibility and implausibility that arose during their testimony.
- The RPD gave no probative value to the medical certificate attesting to the injuries sustained by the principal applicant on November 3, 2009, because it found that there were contradictions between the certificate and the principal applicant's testimony: the certificate described external and internal injuries, while the principal applicant stated that he only suffered numerous bruises.

- The RPD did not believe that the son disappeared. First, it did not give any probative value to the letter from the lawyer that the applicants allegedly consulted to try to find their son. The RPD pointed out that the content of the letter was inconsistent with the reasons for which the applicants stated that they consulted the lawyer. In the letter, the lawyer indicated that it would be difficult to obtain reparation before the Court since no evidence existed. The lawyer continued by stating that the applicants should collect some statements written by villagers to attest to the innocence of their son. The RPD found that the guilt or innocence of the applicants' son was not relevant to the purpose of finding him and that the lawyer's advice was not logical with respect to why they consulted him. The RPD also considered the fact that the applicants had not taken any steps to find their son since their arrival in Canada and found that these elements raised doubts regarding his disappearance. The RPD was also not satisfied with the applicants' explanation that they had not taken any steps because they had too much [TRANSLATION] "tension", or that their daughter, who still lives in India, could have helped them.
- The RPD reserved the same treatment for the affidavit of the Sarpanch from the applicants' village because the statements contained in the affidavit were not consistent with applicants' testimony. In his affidavit, the Sarpanch repeated the applicants' allegations, but he also indicated that since the applicants left, the police officers were investigating them from various sources. Furthermore, in his testimony, the principal applicant stated that he was informed that the police officers made rounds in front of their home, but that they were not questioning

anyone since the house is inhabited. The RPD was not satisfied with the explanation that the principal applicant gave when he was confronted with the contradiction; he stated that he did not know whether the police officers were still investigating. The RPD also considered it implausible that the police officers, if they were still looking for the applicants, were not able to find the applicants' daughter who lives close to their village and does not live in hiding.

[8] Therefore, the RPD found that the applicants did not demonstrate that the police officers could have interest in them.

### **III. Issue**

[9] The only issue raised in this request is to determine whether the RPD erred in its assessment of the applicants' credibility.

### **IV. Standard of review**

[10] It is well-established that the standard of review that applies to the assessment of the applicants' credibility is that of reasonableness (*Aguebor v Canada (Minister of Citizenship and Immigration)*, [1993] FCJ No 732 (FCA) at para 4, 160 NR 315; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 (*Dunsmuir*); *Vargas v Canada (Minister of Citizenship and Immigration)*, 2014 FC 484 at para 9).

**V. Analysis**

[11] The applicants alleged that the RPD assessed the evidence submitted in an unreasonable manner and that they neglected to consider their particular circumstances.

[12] First, the applicants alleged that the RPD did not consider their age and their medical condition, circumstances that could explain the hesitation and inconsistency during their testimony. With respect, nothing in the evidence allows one to conclude that although they are 71 and 73 years old, the applicants have memory problems or are unable to testify consistently.

[13] Second, the applicants alleged that the RPD did not mention or weigh the medical certificate prepared by the attending physician who has been following them for three years. I acknowledge that the RPD did not address this certificate in its decision. Furthermore, I consider that this omission is not of such a nature as to invalidate the decision since the medical certificate, which is extremely terse, does not contain any element that would help conclude that the applicants suffered from a medical condition that could influence their memory, their ability to testify, or again, their ability to take steps to find their son. The certificate states only that the doctor has been following the applicants for three years and that they suffered from anxiety, depression and high blood pressure because of family stress. The doctor added that he had been treating the applicants for three years with psychotherapy and medication. The doctor did not make any statement on the impact that the medical condition of applicants could have on their ability to function, remember events or testify before a court.

[14] Third, the applicants alleged that the RPD did not give any probative value to the medical certificate attesting to the injuries suffered by the principal applicant in November 2009. The applicants argued that the RPD conclusion is based on speculation and its own concept of what may constitute internal injuries. In this regard, I share the applicants' opinion. I do not necessarily see any contradiction between the applicant, who has no medical knowledge, saying that he had bruises all over his body, and a doctor attesting that the applicant had internal and external injuries. I consider that the RPD's conclusion was speculative and that it was based, not on the evidence, but rather on his own perception of what constitutes an internal injury. Therefore, I consider that the RPD drew an unreasonable conclusion as to the probative value to give to the medical certificate. However, this conclusion is not sufficient to invalidate the other conclusions of the RPD since the medical certificate only corroborates the fact that the principal applicant was treated for injuries on November 4, 2009. It sheds no light on the circumstances in which the applicant had suffered his injuries.

[15] Fourth, the applicants allege that the RPD did not give probative value to the lawyer's letter. They argued that the letter corroborates the fact that they consulted this lawyer regarding the disappearance of their son and that the RPD could not blame them for how the lawyer wrote his letter. With respect, the applicants chose to submit the lawyer's letter in support of their allegations and, in light of the confusion resulting from the content of this letter, it was not unreasonable for the RPD to not give it any probative value. If the lawyer's letter contains erroneous information with respect to the discussions they had with him, it was up to the applicants to correct these errors before submitting the letter in support of their refugee claim. In this case, it was not unreasonable for the RPD to consider that the recommendation made by the

lawyer to help the applicants prove the innocence of their son was absurd when one considers that they claim that they consulted with the lawyer so that they could help to find their son who disappeared.

[16] It was no more unreasonable for the RPD to retain the fact that the applicants did not take any steps since their arrival in Canada to try to find their son and to reject the explanation given by the applicants to justify their lack of action, that they were experiencing stress. This explanation, in the absence of any medical evidence, is insufficient to explain their lack of action for three years, although they could not ask help from their daughter, who is still living in India, or from the lawyer that they consulted before they left.

[17] Finally, the applicants also alleged that the RPD disregarded the Sarpanch's affidavit and called into question their son's disappearance. I do not share this opinion. I consider that it was not unreasonable for the RPD to conclude there was a contradiction between the Sarpanch's statement and the principal applicant's testimony. The Sarpanch stated that the police officers continued to investigate the applicants from various sources. The principal applicant stated that he was informed that the police officers made the rounds in front of their home, but without questioning anyone, then stated that, finally, he did not know whether the police officers continued to show interest in them. The Sarpanch's version and that of the applicant are significantly different. I also consider that it was reasonable for the RPD to conclude that it was implausible that the police officers, if they were actively searching for the applicants, had not found the applicants' daughter, who lives a few kilometres from their home.



[18] Therefore, I consider that, on the whole, the RPD analyzed the evidence in a reasonable manner and that its decision falls within “a range of possible, acceptable outcomes which are defensible in respect of the facts and the law” (*Dunsmuir* at para 47).

**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES that** the application for judicial review is dismissed and no question is certified.

"Marie-Josée Bédard"

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Judge

Certified true translation

Catherine Jones, Translator

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-6832-13

**STYLE OF CAUSE:** PIARA SINGH GILL and GURDIAL KAUR GILL v  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** JULY 9, 2014

**JUDGMENT AND REASONS:** BÉDARD J.

**DATED:** JULY 24, 2014

**APPEARANCES:**

Claudette Menghile FOR THE APPLICANTS

Soury Phommachakr FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Claudette Menghile FOR THE APPLICANTS  
Counsel  
Montréal, Quebec

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Montréal, Quebec