Federal Court  Cour fédérale

Date: 20190717

Docket: IMM-4679-18

Citation: 2019 FC 946

Ottawa, Ontario, July 17, 2019

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

VIR SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Vir Singh seeks judicial review of a decision of a Migration Officer [Officer] to refuse his application for permanent residence. The Officer found Mr. Singh to be inadmissible to Canada due to serious criminality pursuant to s 36(1)(c) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] Mr. Singh is 72 years old and a citizen of India. He served as a member of the Punjab Police in Badeshe, India for 38 years, from April 1967 until May 2005. During an interview with an immigration official, he admitted to detaining criminal suspects and threatening to beat them or hang them upside down if they did not answer questions to his satisfaction. He subsequently denied that he had ever beaten prisoners or hung them upside down. The Officer nevertheless found that Mr. Singh had committed acts that amounted to aiding and abetting torture.

[3] The Officer reasonably concluded that Mr. Singh had admitted the elements of the offence, that this was an offence in both India and in Canada, and that the offence in Canada is punishable by a maximum term of imprisonment of at least 10 years. It was not necessary for Mr. Singh to be convicted of an offence in India. Nor was it necessary for him to have personally administered beatings or hung people upside down for him to be a party to the offence. There was sufficient evidence before the Officer to support the conclusion that prisoners were subjected to these forms of abuse by the Punjab Police, and that Mr. Singh aided and abetted this practice.

[4] The procedural fairness letter sent to Mr. Singh provided him with sufficient notice of the concerns he should address, and he was given an adequate opportunity to respond. There was no breach of procedural fairness. The application for judicial review is dismissed.

II. Background

[5] Mr. Singh submitted an application for permanent residence in Canada as a member of the Family Class on December 17, 2011. Mr. Singh was sponsored by his daughter and son-in-

law. There were initial concerns regarding the sponsors' eligibility, because the son-in-law had been convicted in India of people-smuggling and providing false travel documents. However, Mr. Singh's sponsors were ultimately found to be eligible.

[6] Mr. Singh began his employment with the Punjab Police as a constable. He was promoted to sub-inspector in January 2001, and served in that role for the remainder of his career.

[7] Mr. Singh attended two interviews with immigration officials at the High Commission in New Delhi, India. The first interview took place on January 5, 2016. Mr. Singh was asked about his duties as a constable, head constable and assistant sub-inspector. He said that he did not interrogate anyone while holding these offices. He explained that if individuals were not forthcoming with information, then the police would ask multiple times for an answer or ask forcefully, but not use force.

[8] Mr. Singh was interviewed a second time on July 4, 2018. He was asked about his powers to arrest and interrogate individuals, how interrogations were conducted and whether force or the threat of force were used as interrogation techniques. Mr. Singh said that he would question individuals and participate in follow-up investigations with witnesses approximately once or twice a week. He explained that if people did not confess, he would try to get them to confess. Specifically, he said that "in the case of a heinous crime, if the person is refusing to talk then we have to resort to use of force ... we would threaten the person with hanging upside down, beating … this could be authorized by the [Station Head Officer], people like [Deputy Superintendent of Police]."

[9] Mr. Singh was sent a procedural fairness letter on July 4, 2018, informing him of the concern that he may have committed an act which would make him inadmissible to Canada pursuant to s 36(1)(c) of the IRPA, and inviting him to respond in writing. Mr. Singh responded on July 25, 2018, and included a legal opinion prepared by an Indian lawyer, Jasbir Rattan.

[10] The Officer refused Mr. Singh's application for permanent residence on July 30, 2018, apparently without the benefit of the response to the procedural fairness letter. The response was subsequently brought to the Officer's attention. He reconsidered the application in light of the response, and maintained the negative decision on August 2, 2018.

III. Decision under Review

[11] The Officer found that Mr. Singh had contravened ss 107 and 330 of the Indian Penal Code, and if the offences had been committed in Canada, then they would constitute aiding and abetting torture contrary to ss 21(1) and 269.1 of the *Criminal Code*, RSC, c C-46. The Officer's notes of his reconsideration of the application following receipt of Mr. Singh's response to the procedural fairness letter read as follows:

> Application reviewed this day. A [Procedural Fairness Letter (PFL)] response dated July 25, 2018 has been brought to my attention that due to an administrative error was not brought to my attention when I made a decision in relation to this file on July 30. 2018. The current date is August 2, 2018. I am reconsidering the decision in light of the PFL response dated July 25, 2018.
>
> The PFL response includes statements from the applicant's Canadian consultant, statements from the applicant and an opinion received from an Indian lawyer. It is noted that the interview was conducted with assistance from a Punjabi interpreter, and that translation leaves room for misinterpretation. However, I note that the applicant confirmed that

they understood the interpreter and was asked to inform the interviewer if the applicant did not understand or felt that the interviewer was not understanding the interpretation. At no point during the interview did the applicant indicate any concern about interpretation.

It is argued that the applicant did not state at interview that the applicant personally committed the acts in question. However, I note that the procedural fairness letter (PFL) is clear that concerns are based on aiding/abetting of an act rather than personal commission. Moreover, I note that applicant stated "we would threaten the person with hanging upside down, beatings" and in some situations "we have to resort to use of force" — he did not say "they" or "other people" would use force. By using the word "we", the applicant gives reasonable grounds to believe that he also used force.

It is noted by the Indian lawyer that the PFL incorrectly cited "abetment of a thing" as section 106 of the Indian Penal Code. The Indian lawyer correctly notes that "abetment of a thing" is in section 107 of the Indian Penal Code. However, I am satisfied that procedural fairness has been satisfied through the PFL because the PFL also stated the text of section 107 of the Indian Penal Code (abetment of a thing) verbatim and the Indian lawyer also cites section 107 in his response.

It is granted by the applicant that "Use of Force is not permitted in any circumstances by the law," but that the applicant merely threatened applicants as a tactic to extract the truth. However, given that the applicant stated that "in the case of a heinous crime, if the person is refusing to talk then we have to resort to use of force ... we would threaten the person with hanging upside down, beating … this could be authorized by the [Station Head Officer], people like [Deputy Superintendent of Police]." The references to "hav[ing] to resort to use of force" and "hanging upside down, beatings that are "authorized" gives reasonable grounds to believe that this went beyond mere threats, and that beatings and hanging upside down actually occurred.

I note further that if beatings did not occur, then in response to the question "who was doing the beatings," the applicant should have responded "there were no beatings" instead of responding that beating could be authorized by superior officers. It is stated by the applicant that he never used the term "use of force" but instead used the term "strictness," and that "strictness" means threats to hang upside down or beatings.

The applicant states that he did not say at interview that force was used, and that he did not recall a question about who would authorize the beatings. […] I find the applicant's original statements at interview to be more believable than a substantively different account of what

> happened that was given by the applicant only after he became aware of the potential consequences of his original statements. I have considered the applicant‘s PFL response in detail. I have arrived at the same conclusion as the decision made several days ago before I was aware of the PFL. Application refused.

[12] In his refusal letter, the Officer cited ss 21(1) and 269.1 of the *Criminal Code*, and ss 106 (more accurately 107) and 330 of the Indian Penal Code. Subsection 21(1) of the *Criminal Code* and s 107 of the Indian Penal Code relate to “party to an offence” and “abetment” respectively. Sections 269.1 of the *Criminal Code* and 330 of the Indian Penal Code relate to extorting a confession. The Officer concluded that the Canadian and Indian criminal offences were substantially similar, and Mr. Singh’s admissions during the interview on July 4, 2018 rendered him inadmissible to Canada due to serious criminality.

IV. Issues

[13] This application for judicial review raises the following issues:

A. Was the Officer’s decision reasonable?

B. Was the Officer’s decision procedurally fair?

V. Standard of Review

[14] The Officer’s determination that Mr. Singh is inadmissible to Canada for committing an offence in India which is equivalent to an offence in Canada is subject to review by this Court

against the standard of reasonableness (*Abid v Canada (Citizenship and Immigration)*, 2011 FC 164 at para 11). Reasonableness is a deferential standard, and is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. The Court will intervene only if the decision falls outside a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[15] Procedural fairness is a matter for the Court to determine. The standard for determining whether the decision-maker complied with the duty of procedural fairness is correctness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 34, citing *Mission Institution v. Khela*, 2014 SCC 24 at para 79). The ultimate question is whether the applicant knew the case to meet, and had a full and fair chance to respond.

VI. Analysis

A. *Was the Officer's decision reasonable?*

[16] A finding of inadmissibility under s 36(1)(c) of the IRPA requires that the act committed outside Canada constitute an offence in the place it was committed, and that the act, if committed in Canada, constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years. The inquiry involves a determination of the equivalency of the two offences. The essential elements of the offences must be compared in order to determine if they correspond. The names given to the offences or the words used to define them are

immaterial, given that the wording of statutory offences may be expected to vary in different countries (*Pardhan v Canada (Citizenship and Immigration)*, 2007 FC 756 at paras 9-10 [*Pardhan*]).

[17] Criminal equivalency may be determined in three ways (*Pardhan* at para 11):

> (1) by comparing the precise wording in each statute both through documents and, if available, through the evidence of experts in the foreign law in order to determine the essential elements of the respective offences;
>
> (2) by examining the evidence, both oral and documentary, to ascertain whether that evidence is sufficient to establish that the essential elements of the offence in Canada had been proven in the foreign proceedings, whether precisely described in the initiating documents or in the statutory provision in the same words or not;
>
> (3) a combination of the two.

[18] The Officer's finding of inadmissibility was premised on Mr. Singh's responses to the following questions asked during the interview that took place on July 4, 2018:

(a) When asked about whether it is necessary to hit a prisoner during questioning: "We question and when we have the evidence and witnesses, we try to get them to confess."

(b) When asked what would happen if they did not confess: "In the case of a heinous crime, if the person is refusing to talk, then we have to resort to use of force."

(c) When asked what kind of force was used: "We would threaten the person with hanging upside down, beatings."

(d) When asked who did the beatings: "This could be authorized by Station Head Officer, people like Deputy Superintendent of Police."

[19] The relevant provisions of the Indian Penal Code read as follows:

> **107. Abetment of a thing**
>
> A person abets the doing of a thing, who –
>
> First – Instigates any person to do that thing; or
>
> Secondly – Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
>
> Thirdly – Intentionally aids, by any act or illegal omission, the doing of that thing.
>
> […]
>
> **Illustration**
>
> […]
>
> Explanation 2 – Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.
>
> **330. Voluntarily causing hurt to extort confession, or to compel restoration of property**
>
> Whoever voluntarily causes hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, […] shall be punished with imprisonment of

> either description for a term which may extend to seven years, and shall also be liable to fine.
>
> **Illustrations**
>
> (a) A, a police-officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.
> […]

[20] Subsection 21(1) of the *Criminal Code* defines a "party to an offence" as someone who (a) actually commits it; (b) does or omits to do anything for the purpose of aiding any person to commit it; or abets any person in committing it. The *Criminal Code* defines torture in s 269.1(2)(a)(iii) as "any act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for the purpose of intimidating or coercing the person."

[21] I am satisfied the Officer reasonably compared ss 21(1) and 269.1(2)(a)(iii) of the *Criminal Code* to ss 107 and 330 of the Indian Penal Code and, applying the first test recognized by this Court in *Pardhan*, concluded that the offences are equivalent. Mr. Singh does not seriously dispute this. Rather, he takes the position that there was no evidence before the Officer that anyone was ever beaten or hung upside-down, and he cannot have aided or abetted a crime that never occurred. Mr. Singh notes that he was never convicted of an offence in India, as confirmed by the police clearance certificate he submitted in support of his application.

[22] The facts underlying admissibility findings include facts "for which there are reasonable grounds to believe that they have occurred" (IRPA, s 33). This evidentiary standard requires "something more than mere suspicion, but less than the standard applicable in civil matters of

proof on the balance of probabilities". Reasonable grounds will exist "where there is an objective basis for the belief which is based on compelling and credible information" (*Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para 114).

[23] I am satisfied the Officer reasonably concluded that Mr. Singh admitted the elements of the offence of aiding or abetting torture. It was not necessary for Mr. Singh to be convicted of an offence in India (*Magtibay v Canada (Minister of Citizenship and Immigration)*, 2005 FC 397 at para 10; *Bankole v Canada (Citizenship and Immigration)*, 2011 FC 373 at para 44). Nor was it necessary for him to have personally administered beatings or hung people upside down in order for him to be a party to the offence. There was sufficient evidence before the Officer, applying the relatively modest threshold of reasonable grounds to believe, to support the conclusion that prisoners were subjected to these forms of abuse by the Punjab Police, and that Mr. Singh aided and abetted this practice.

[24] As the Officer wrote in his notes, if beatings did not occur then Mr. Singh's response to the question "who was doing the beatings" should have been "there were no beatings", not that beatings could be authorized by superior officers. When asked to comment on Mr. Singh's statement that beatings "could be authorized by the SHO [Station Head Officer] or DSP [Deputy Superintendent of Police]", Mr. Rattan wrote: "No legal opinion can be given on this point though administratively, any protocol of service would require a subordinate to comply with the order of their superior".

B. *Was the Officer's decision procedurally fair?*

[25] Mr. Singh advanced a number of arguments in support of his contention that the Officer's decision was procedurally unfair. None of these were pursued with vigour, and none are persuasive.

[26] The Officer's refusal letter mistakenly cited s 106 of the Indian Penal Code, rather than s 107. However, the correct section was cited in the Officer's notes of his decision following reconsideration of the application in light of Mr. Singh's response to the procedural fairness letter. Mr. Rattan understood the Officer to be referring to s 107, and addressed this provision in his response to the procedural fairness letter. It is clear from Mr. Rattan's letter that Mr. Singh understood the nature of the Officer's concerns, and was given an opportunity respond. Furthermore, typographical errors are not sufficient to undermine a decision so long as the decision was clearly based on proper considerations (*Martinez Gonzales v Canada (Citizenship and Immigration)*, 2011 FC 1504 at para 20).

[27] Mr. Singh raised the possibility of interpretation errors, and suggested that the Officer may have misunderstood "strict" questioning as the use of force. But Mr. Singh admitted that he would threaten to hang prisoners upside down and beat them, and that these actions were sometimes carried out with the approval of superior officers. The interview was conducted with the assistance of a Punjabi interpreter, and Mr. Singh did not express any concern to the Officer about the quality of interpretation.

[28] Mr. Singh speculated that the Officer's reconsideration of the application following receipt of his response to the procedural fairness letter might have been tainted by bias or unreasonable delay. He offered no evidence to support this allegation, and the Officer's thorough reasons speak for themselves. Mr. Singh was unable to specify an appropriate remedy for the admittedly lengthy delay in processing his application, and ultimately decided not to press the point.

[29] I am therefore satisfied that the procedural fairness letter sent to Mr. Singh provided him with sufficient notice of the concerns he should address, and he was given an adequate opportunity to respond. There was no breach of procedural fairness.

VII. Conclusion

[30] The application for judicial review is dismissed. Neither party proposed that a question be certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Simon Fothergill"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Napinderpal Singh Masaun Jagdeep Lally	FOR THE APPLICANT
Maria Burgos	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mehar Lawyers LLP Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT