Date: 19990929

Docket: IMM-6323-98

Ottawa, Ontario, the 29th day of September 1999

Present: The Honourable Mr. Justice Pinard

Between:

Harjit SINGH

Applicant

- and -

MINISTER OF CITIZENSHIP
AND IMMIGRATION OF CANADA

Respondent

ORDER

The application for judicial review of the Convention Refugee Determination Division decision that the applicant is not a Convention refugee, dated November 4, 1998, is dismissed.

YVON PINARD
JUDGE

Certified true translation

Peter Douglas

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- and -

MINISTER OF CITIZENSHIP
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Respondent

REASONS FOR ORDER

PINARD J.:

[1] This is an application for judicial review of a Convention Refugee Determination Division decision that the applicant is not a Convention refugee, dated November 4, 1998.

[2] It is necessary to set out the following passage from the panel's decision:

> To summarize, the claimant, under suspicion of having links with a known terrorist was allegedly arrested and detained twice but released both times upon payment of a bribe. On the other hand, his brother who has no links with terrorists would be in

> police custody since April 1995. We do not believe this part of the claimant's story who told us that (a) the police never admitted to having arrested his brother and (b) the police declared that his brother would be released if he, the claimant, was turned in. It has to be one or the other.
>
> Secondly, his declarations at port of entry are not compatible with his PIF and testimony. Even translated over the telephone, his answers are unexplainable. How hard can it be to translate "Have you ever been in prison?", and the answer, "No". Again, let us point out that his other answers were correct and in keeping with his story.
>
> As exhibit R-15, counsel produced a letter from a Dr. Kornacki who concludes that physical examination of the claimant and his allegations of torture are not incompatible. . . . In our view, R-15 is simply a narrative: a story was told to the doctor who concludes that scars on the claimant could be the result of torture. Nothing more affirmative is to be found in R-15.

[3] It would appear the decision of the Refugee Division is based purely on the applicant's lack of credibility. However, in such a case, it must be recalled, it is not for this Court to take the place of the Refugee Division where, as here, the applicant has failed to establish that the panel based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it (paragraph 18.1(4)(*d*) of the *Federal Court Act*). The Federal Court of Appeal clearly articulated the standard of deference applicable to credibility findings by such a specialized tribunal in *Aguebor v. Canada (M.E.I.)* (1993), 160 N.R. 315, at page 316:

> There is no longer any doubt that the Refugee Division, which is a specialized tribunal, has complete jurisdiction to determine the plausibility of testimony: who better than the Refugee Division is in a position to gauge the credibility of an account and to draw the necessary inferences? As long as the inferences drawn by the Refugee Division are not so unreasonable as to warrant our intervention, its findings are not open to judicial review. In *Giron*, the Court merely observed that in the area of plausibility, the unreasonableness of a decision may be more palpable, and so more easily identifiable, since the account appears on the face of the record. In our opinion, *Giron* in no way reduces the burden that rests on an appellant, of showing that the inferences drawn by the Refugee Division could not reasonably have been drawn. In this case, the appellant has not discharged this burden.

[4] With respect to the way the panel dealt with the medical report the applicant filed, I see nothing to warrant this Court's intervention, as the conclusion of the report is tied to the truthfulness of the applicant's account. On this point, I fully agree with my colleague Madam Justice Reed in *Danailov v. M.E.I.* (October 6, 1993), T-273-93, where she said:

> . . . With respect to the assessment of the doctor's evidence, to find that that opinion evidence is only as valid as the truth of the facts on which it is based, is always a valid way of evaluating opinion evidence. If the panel does not believe the underlying facts it is entirely open to it to assess the opinion evidence as it did.

[5] With respect to the applicant's contention that the panel should have commented on the situation in India at the relevant time, in my view this was unnecessary because the panel's perception that the applicant is not credible effectively amounts to a finding that there is no credible evidence to justify his refugee claim (see *Sheikh v. Canada (M.E.I.)* (1990), 11 Imm. L.R. (2d) 81 (F.C.A.)).

[6] Last, I find no merit to the applicant's argument that his rights under the *Canadian Charter of Rights and Freedoms* (the Charter) were violated through an unreasonable delay in determining his claim, since no serious prejudice stemming from the delay was established. On this point, suffice it to refer to my colleague Mr. Justice MacKay's decision in *Kowalski v. M.E.I.* (1994), 85 F.T.R. 88, in which he expressed the view, based on the Federal Court of Appeal's decision in *Akthar v. M.E.I.*,

that there must be evidence of such prejudice for there to be violation of a right guaranteed by the Charter:

> In writing the applicant raised anew the *Charter* arguments first raised at the panel hearing, in particular that his rights to determination of his claim to refugee status without unreasonable delay was a right secured by the *Charter*, and here violated contrary to the *Charter*, and contrary to principles of fairness and to principles set out by the Supreme Court in *R. v. Askov, Hussey, Melo and Gugliotta*, [1990] 2 S.C.R. 1199; 113 N.R. 241; 42 O.A.C. 81. In my view, these submissions are met and fully dealt with by the decision of the Court of Appeal in *Akthar v. Minister of Employment and Immigration* (1991), 129 N.R. 71; 14 Imm. L.R. (2d) 39, which held that delay in dealing with the credible basis of a refugee claim is not in itself a violation of *Charter* rights. There must be some evidence of prejudice to the applicant, other than the delay, which gives rise to a claim to breach of *Charter* rights.

[7] For all these reasons, the application for judicial review must be dismissed.

YVON PINARD
JUDGE

OTTAWA, ONTARIO
September 29, 1999

Certified true translation

Peter Douglas

FEDERAL COURT OF CANADA
TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT NO.:	IMM-6323-98
STYLE OF CAUSE:	HARJIT SINGH v. MCI
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APPEARANCES:

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