Date: 20080408

Docket: IMM-4108-07

Citation: 2008 FC 453

Toronto, Ontario, the 8th day of April 2008

Present: the Honourable Madam Justice Tremblay-Lamer

BETWEEN:

HARBHAJAN SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application for judicial review of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the panel), made pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act). In its decision of September 12, 2007 (the decision), the panel concluded that in view of the lack of credibility of his account the applicant did not have the status of a Convention refugee or a person in need of protection.

II. Facts

[2] The applicant Harbhajan Singh was born in India on November 10, 1958 and holds the nationality of that country. He is married and has two children who all live in India and he works as a trucker. He alleged the following facts in support of his claim.

[3] The applicant is a member of the Shromani Akali Dal Amritsar Party (Mann), an organization advocating the creation of a separate country for Sikhs.

[4] In March 2000 he and several other militants went to visit a site where 35 Sikhs were killed in Jammu and Kashmir. On that visit he met Jinder Singh. The latter sought and obtained employment with the applicant, who is a trucker, in March 2004.

[5] On August 13, 2004, Jinder Singh was arrested while travelling between Jammu, Kashmir and Moga. The police found weapons in the truck he was driving. The following day, the applicant was arrested and charged with supporting militants operating in Jammu and Kashmir. He was detained and tortured for several days. He was only released on payment of a bribe.

[6] In December 2004 the police searched the applicant's residence. Jinder Singh was able to flee from the authorities and the police suspected he was hiding with the applicant. The latter was detained and tortured again and once again released on payment of a bribe.

[7] In June 2005 the applicant was driving a group of people to Amritsar in his truck. When he approached a police checkpoint some of the passengers fled. These individuals and the applicant were detained and tortured. The applicant was released on June 10, 2005.

[8] Following this occurrence, the applicant contacted an agent to make the necessary arrangements to leave the country. He arrived in Montréal on August 16, 2006 and filed an application for refugee status the same day, but this was denied on September 12, 2007.

[9] The panel noted that the applicant was unable to produce his Indian passport to confirm the itinerary of his trip to Canada and explain why he did not have his passport in his possession or why he only had photocopies of certain pages. His testimony in this connection was confused and not very credible.

[10] The panel noted several contradictions in the applicant's account. At his interview at the point of entry he indicated he belonged to the Badal group of the Shromani Akali Dal Amritsar Party. He later said he belonged to the Mann group of the Shromani Akali Dal Amritsar Party. He further claimed to be a religious person, not a militant. The applicant said he was detained for several hours in 1984 because he was preaching in the streets and shouting slogans. The panel observed that these statements contradicted those contained in his Personal Information Form (PIF), where he said he had been detained and tortured on at least three occasions, and undermined the applicant's credibility.

III. Standard of review

[11] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, the Supreme Court of Canada held that there are now only two standards in judicial review, that of correctness and that of reasonableness. At paragraph 51, the Court explained:

> **[51]** Having dealt with the nature of the standards of review, we now turn our attention to the method for selecting the appropriate standard in individual cases. As we will now demonstrate, questions of fact, discretion and policy as well as questions where the legal issues cannot be easily separated from the factual issues generally attract a standard of reasonableness while many legal issues attract a standard of correctness. Some legal issues, however, attract the more deferential standard of reasonableness. [Emphasis added.]

[12] Further on, at paragraph 63, the Court pointed out that the process of judicial review involves two steps:

> First, courts ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question. Second, where the first inquiry proves unfruitful, courts must proceed to an analysis of the factors making it possible to identify the proper standard of review. (At paragraph 62.)

[13] The courts have held that the standard of review that should be applied to a question of credibility is that of patent unreasonableness. In view of the ruling in *Dunsmuir*, the applicable standard of review is now that of reasonableness.

IV. Analysis

[14] The applicant alleged that the panel made an error on the question of credibility. First, he maintained that the question of the passport had to do only with the itinerary and had very little relevance. As to the contradiction between the Badal and Mann groups of the Shiromani Akali Dal Party, he admitted that these groups are separate. However, he explained this contradiction between the point of entry notes and his PIF as being an error made by the immigration officer. When he learned of the error, the applicant tried to correct it and submitted documentary evidence establishing his membership in the Mann group. Finally, he contended that the panel had ignored part of the documentary evidence that was favourable to him.

[15] First, as to the passport and itinerary, the courts have held that a lack of evidence corroborating important aspects of the claim may undermine an applicant's credibility (*Toora v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 828, [2006] F.C.J. No. 1057 (QL), at para. 45). The passport is an important document since it provides useful information on an applicant's itinerary in coming to Canada.

[16] In the case at bar, the applicant was not able to provide the panel with explanations about his passport. When the panel asked him for the reasons why he only had copies of two pages of his passport in his possession and why the other pages were not reproduced, he could not explain it. Additionally, he provided very confused explanations about the obtaining of his passport. The applicant explained that he [made] his passport application in 2001 so he could go and attend his niece's wedding in Malaysia. He then testified that he was unable to attend the wedding because he

was in Canada at the time of the ceremony. When the fact that four years had elapsed between the obtaining of the passport and his arrival in Canada was put to him, the applicant altered his testimony to say that in 2001 only the marriage negotiations were in question.

[17] Second, as to the contradiction between the point of entry notes and the PIF, it is established that the panel has complete jurisdiction to determine the evidentiary weight to be given to the point of entry notes and may draw negative conclusions from contradictions and inconsistencies in the evidence, including differences between the statements made at the point of entry and any subsequent testimony (*Eustache v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1553, [2005] F.C.J. No. 1929 (QL), at paras. 6 to 12; *He v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 1107 (QL), at para. 2; *Rajaratnam, supra*; *Ramirez v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 803 (QL), at para. 5; *Zaloshnja v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 272 (QL), at para. 6).

[18] When questioned about these inconsistencies, the applicant first explained that it was the fault of the officer accompanying him who gave him a pill to relax and then changed his testimony to indicate that it was an interpreter's error. The following passage from the testimony at the hearing is relevant:

> Q. Now I raised one issue with you, which was your associations, you didn't make any mention of the Punjab Youth Federation and you said you were part of the Badal group, not the Mann group. But you were also asked "Have you ever been arrested or detained by the police?" And you are alleged to have said that you were detained for a few hours for preaching in the streets. It doesn't appear that there are any relevance to your story or to your allegations.

A. I said that my life was in danger, I'm in danger from the police. (Inaudible) because I did not have money. Last year also the police harassed me, and this year also, I've mentioned it.

Q. Sir, that's not … I mean, that's not what appears in the documents. You were also asked to provide other information, detailed information, and you are alleged to have said :

> "In danger because of the Congress government, because he was shouting slogans against the government, received threats, one or twice since three months ago, threats of death, same thing last year."

. . . . .

Q. That's not what here, sir. I didn't read to you about detentions and beatings, I read to you somebody who was shouting slogans against the government and received threats. That's not the same thing that you are saying in your story.

. . . . .

A. When I came, I was so scared, and he had given me pills, and I did not know what I should say. The interpreter said, "Tell as briefly as possible whatever you have to say." At that time, I didn't tell everything. Whatever I could, I told the (inaudible). I was saving my life. I didn't come here to tell lies.

. . . . .

Q. So now you are saying that the interpreter didn't get it right, it wasn't so much…

A. That's what can happen. I don't know what I was saying, but what she made them write down was all wrong. [Emphasis added.]

[19] Nevertheless, the other information in the point of entry notes was correct. It is hard to accept the applicant's contention that the immigration officer, and then the interpreter, understood a completely different version of the facts from what he alleged in his PIF. It was thus not unreasonable for the panel to draw negative conclusions regarding the applicant's credibility based on the contradictions between his statements at the point of entry and his PIF (*Eustache v. Canada*, 2005 FC 1553).

[20] The applicant further maintained that the panel erred by not considering the most recent portfolio on the situation in India in its decision. I note that the general 2006 documentary evidence describes the general situation in that country. I cannot conclude from this that the applicant suffered any detriment since he had to link this general documentary evidence to his personal situation. This documentation cannot offset the applicant's lack of credibility resulting from the discrepancies affecting central points of his claim.

[21] In sum, the applicant was unable to explain why he submitted two completely different versions of the facts as the basis for his claim. The documents favourable to the applicant were not sufficient to outweigh these deficiencies in the evidence, which resulted from the applicant's own statements.

[22] As to the allegation of danger as a baptized Sikh, the applicant never maintained that he was a victim of an incident of any kind as the result of being a baptized Sikh. The panel cannot be blamed for not ruling on a ground which he did not allege and which did not significantly emerge from the evidence as a whole: *Guajardo-Espinoza v. Canada (Minister of Employment and Immigration)* (F.C.A.), [1993] F.C.J. No. 797 (QL). This situation is different from *Singh v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 732, [2007] F.C.J. No. 977 (QL), where the question concerned a conclusion as to a minimum basis for the applicant's claim and where the risk as a baptized Sikh had been specifically raised at the first hearing.

[23] Consequently, there is no reason that would justify intervention by the Court and the application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS that the application for judicial review be dismissed.

"Danièle Tremblay-Lamer"
Judge

Certified true translation

Brian McCordick, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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