Date: 20080418

Docket: IMM-4362-07

Citation: 2008 FC 498

Ottawa, Ontario, the 18th day of April 2008

Present: The Honourable Mr. Justice Lemieux

BETWEEN:

SURINDER SINGH GHOTRA

Applicant

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

<u>REASONS FOR JUDGMENT AND JUDGMENT</u>

[1] The applicant is a citizen of India and lived and worked in New Delhi. He came to Canada on October 21, 2005, to claim refugee protection. He is challenging the decision of the Refugee Protection Division (the panel) dated September 27, 2007, refusing to recognize him as a "person in need of protection" under section 97 of the *Immigration and Refugee Protection Act* (the Act). The panel also rejected his claim under section 96 of the Act. However, the applicant is not challenging that determination before the Court. Therefore, the issue is limited to the application of section 97 of the Act.

[2] The applicant fears three lenders who are threatening to kill him because he is unable to repay a very large loan. The panel based its decision on the applicant's lack of credibility. It concluded by writing: "After reading all of the documents filed by the claimant and having assessed all of the evidence, including the testimony given during the hearing, the panel finds that the claimant is not credible".

[3] That finding is based on the following contradictions and omissions:

- The contradiction between the applicant's Personal Information Form (PIF) and his testimony concerning the reason why he was unable to repay the loan: a government policy or an accident involving one of his taxis and the theft of another;

- Omissions in his PIF, contradictions between his PIF and his testimony and inconsistencies within his testimony, namely, whether he had stayed in hiding since July 2004 fearing his lenders, how he had travelled to Punjab and why, why he did not seek refuge there with his family in August 2004, and whether he had continued to work as an automotive electrician;

- Lack of corroboration that his lenders had caused the death of his father in February 2006.

[4] In my opinion, the panel was very preoccupied with the fact that the applicant's testimony often varied or changed depending on the questions asked.

[5] As for the standard of review, Madam Justice L'Heureux-Dubé, on behalf of the Supreme Court of Canada, wrote in *Canadian Union of Public Employees, Local 301 v. Montréal (City)*, [1997] 1 S.C.R. 793:

> **85** We must remember that the standard of review on the factual findings of an administrative tribunal is an extremely deferent one: Ross v. New Brunswick School District No. 15, [1996] 1 S.C.R. 825, per La Forest J., at pp. 849 and 852. Courts must not revisit the facts or weigh the evidence. Only where the evidence viewed reasonably is incapable of supporting the tribunal's findings will a fact finding be patently unreasonable. An example is the allegation in this case, viz. that there is no evidence at all for a significant element of the tribunal's decision: see Toronto Board of Education, supra, at para. 48, per Cory J.; Lester, supra, at p. 669, per McLachlin J. Such a determination may well be made without an in-depth examination of the record: National Corn Growers Assn. v. Canada (Import Tribunal), [1990] 2 S.C.R. 1324, per Gonthier J., at p. 1370.

[6] The applicant's counsel acknowledges the weight of this onus and the fact that the High Court's recent decision in *Dunsmuir v. Her Majesty the Queen in Right of the Province of New Brunswick, as represented by the Board of Management*, 2008 SCC 9 does not lighten it, because a "decision . . . on an erroneous finding of fact . . . made in a perverse or capricious manner or without regard for the material before [a tribunal]" under paragraph 18.1(4)(*d*) of the *Federal Courts Act* will always be unreasonable.

[7] Counsel for the applicant submits that this Court's intervention is warranted for the following reasons:

- What the panel characterized as contradictions and omissions were either not contradictions or omissions or were minor ones;

- The panel ignored evidence such as Exhibit R-7, a letter from the applicant's lawyer in New Delhi dated June 16, 2006, which indicated that Mr. Ghotra had consulted him on September 5, 2005, "to get my advise to pay his debts which he took from different people. I advised him to file court case to pay their debts on instalments basis";

- The panel did not properly assess the evidence respecting the date of his father's death;

- The panel did not properly assess the evidence from Dr. de Margerie, dated July 7, 2006 (Exhibit R-12), stating that the applicant [TRANSLATION] "has been monitored at the Clinique Santé Accueil since November 2005 . . .. In February 2006, the patient's condition deteriorated after he found out that his father had been beaten by the same individuals who had allegedly threatened him. His father apparently died from his injuries", as well as Exhibit R-16, another letter from Dr. de Margerie dated August 9, 2006, indicating that the applicant [TRANSLATION] "was seen as an emergency on August 4, because his psychological state had deteriorated . . . he had found out that his wife and child had become victims of physical violence at the hands of the same individuals who had threatened him in India".

[8] After analyzing the panel's decision and reviewing for a second time the transcript of the panel's hearing held on June 19, 2007, I cannot subscribe to the claims of the applicant's counsel.

[9] The hearing transcript clearly demonstrates that the contradictions and omissions the panel pointed out were supported by the evidence and that the applicant had been confronted at the hearing. These contradictions and omissions are central to the applicant's narrative – his flight from India caused by his lenders' threats.

[10] It is true that the panel was mistaken about the date of the applicant's father's death, but that mistake does not affect the merits, because the death certificate does not indicate the cause of death. The applicant acknowledged that fact at the hearing.

[11] It is also true that the panel did not specifically mention Exhibit R-7, the lawyer's letter. However, I cannot consider it as important as Mr. Le Brun suggests. The letter was not discussed at the hearing – neither during the examination nor during submissions. Repaying the debt in full – and not in instalments – cannot have caused the threats that the applicant received, since, according to him, the threats had started well before September 5, 2005, when he met with his lawyer.

[12] Finally, Mr. Le Brun submits that the panel erred in its analysis of Dr. de Margerie's letters. He claims that the doctor's reports corroborate the applicant's narrative with regard to the cause of his father's death and the violence his family had suffered at the hands of his lenders. He is relying on *Ahemed v. Minister of Citizenship and Immigration*, 2006 FC 1517.

[13] I cannot accept this argument. The panel was very aware of the applicant's mental state. At the beginning of its reasons, the panel wrote:

> Aware of the claimant's psychological fragility, the panel worked with the Tribunal Officer and the claimant's attorney to create a relaxed climate during the hearing where the claimant could present his testimony as calmly as possible.

[14] The panel's note 2 refers to exhibits R-12 and R-16 from Dr. de Margerie. The transcript indicates that everything went well and no intervention was required, except for once and not as a result of Mr. Ghotra's state.

[15] *Ahemed*, *supra*, does not support the applicant's claims. Mr. Ahemed was found to be credible, and the objective of the psychological reports in that matter was not to corroborate his testimony, but to act as evidence that an internal flight alternative would be unreasonable. In the circumstances of this case, Dr. de Margerie's letters could not be used, based on what this Court has held consistently, to establish that the death of the applicant's father and the violence that his family had suffered could be attributed to the actions of his lenders. The relevance of the evidence did not obligate the panel to comment on exhibits R-14 and R-16, as was the case in *Gill v. The Minister of Citizenship and Immigration*, 2003 FCT 656.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review be dismissed. No question of general importance was proposed.

"François Lemieux"

Judge

Certified true translation
Susan Deichert, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Michel Le Brun	FOR THE APPLICANT
Alain Langlois, Articling Student Simone Truong	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Michel Le Brun LaSalle (Montréal, Quebec)	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT