Date: 20081126

Docket: IMM-1005-08

Citation: 2008 FC 1320

Ottawa, Ontario, November 26, 2008

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

BALVINDER KAUR, MANINDER KAUR and SARABJIT SINGH

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of the negative decision of a Pre-Removal Risk Assessment (PRRA) Officer (Officer) dated January 23, 2008 and communicated to the Applicants on February 20, 2008 (Decision).

BACKGROUND

[2] Balvinder Kaur (Principal Applicant) was born in Punjab, India to a Sikh family. She was married on March 1, 1970 and has five daughters and one son.

[3] After the murder of Prime Minister Indira Gandhi in 1984 by her Sikh body guards, the Sikh community in India was aggressively targeted by Hindus. The Principal Applicant alleges that her house in New Delhi was attacked several times by Hindu militants in the 1990s.

[4] At the first attack, the Principal Applicant alleges she was beaten by fists and sticks, that her house was destroyed and her valuables taken. She was also threatened that, if she informed police, it would happen again. However, the Principal Applicant says she did attend a police station in New Delhi, but the police officer refused to write a report.

[5] During the second alleged attack on the home of the Principal Applicant, she says that she and her children were beaten very badly. This provoked a move to a different area of New Delhi.

[6] Two years later, the Principal Applicant says that four Sikh terrorists entered her home illegally, with guns, and asked to be served dinner. They left in the early morning but they appeared several days later and demanded 20,000 rupees, saying they would kidnap the Principal Applicant's children if they were not paid the next time they came.

[7] The Principal Applicant says that she and her husband were asked to attend the police station to answer questions about the Sikh terrorists. She says they were detained, beaten and questioned about whether they had any connections with the terrorists. Relatives of the Principal Applicant bribed officials to let her and her husband go. She says they were advised by their families to leave the country for good.

[8] From late 1995 until October 1996, the Principal Applicant, her husband and all of their unmarried children sold their property and applied for the necessary visas to move to the USA. The Principal Applicant arrived on October 1, 1996 in the USA with her oldest daughter and her son. Her husband arrived with their two younger daughters on October 3, 1996. The Applicants applied for asylum in the USA in 1997 and were rejected in 2000. They appealed the decision, but in October 2003, the appeal was rejected and the Applicants were required to leave the USA.

[9] The Applicants arrived in Canada and sought status as Convention refugees or persons in need of protection. Refugee protection was denied and leave to appeal to the Federal Court was denied on June 16, 2006.

DECISION UNDER REVIEW

[10] The Officer received a PRRA application dated August 14, 2006 with submissions dated August 29, 2006. No oral hearing was held.

[11] The Officer noted that the Applicants had made a previous claim for Convention refugee status in Canada and had been denied by the Immigration and Refugee Board (Board) on March 6, 2006. The Board cited the following reasons for its decision:

1. The violence perpetrated by Hindu extremists between 1984 and 1993 are acts of random violence. I find that, as a result, with the changed conditions respecting Sikhs in India, the claimant's fear to return to India on this basis is not well founded;

2. The home invasion by Sikh militants, narrated by the Principal claimant, on a balance of probabilities did not occur. I make this finding because this type of activity was isolated to the Punjab and by 1993 did not occur very often, if at all, in the capital, Delhi, some 200 kilometres from Punjab state. Even though I find, on balance, that the invasion did not occur, I find that there is no reasonable chance that the same militants would be interested in kidnapping or killing the claimants in 2006, ten years after the claimants left Delhi for America;
3. There is always a possibility in India that the claimants would be kidnapped, killed or their home invaded. However, I find that this possibility is no greater for these claimants than anyone else in India, which is not a personal danger;
4. I find it more likely than not that the police have no interest in the claimants. The police would be much more interested in finding and prosecuting militant[s] than innocent storekeepers or homemakers. Certainly there is no reasonable chance that the police are interested in the claimants today.

[12] The Officer relied upon section 113(a) of the Act and section 161(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (Regulations), stating at page 3 of the Notes to File as follows:

> The applicants are restating materially the same circumstances which they articulated before the Immigration and Refugee Board. They have not rebutted the significant findings of the Board. They have provided documentation in support of the present applications. This consists of the U.S. Department of State report on India for 2005, partial internet news articles on police brutality, an article (undated) concerning atrocities perpetrated against the Sikhs and the medical report of Dr. Meier of Mount Sinai Hospital in Toronto. Some of the

> documents presented predate the Board's decision and were available or were considered by the Board. The remaining material is generalized in nature and does not address the particular circumstances of the applicants or rebut the findings of the Board. I do not find that any of this material is evidence of new risk developments which are personal to the applicants and which have arisen since the date of the Board's decision. The undated article mentioned above appears to refer to historical incidents, not recent events. Its contents are not borne out of the most recent research on county conditions. I have, however, considered all of this material in the context of my assessment of country conditions.

[13] The Officer goes on to rely upon the decision of Justice Kelen in *Kaybaki v. Canada (Solicitor General of Canada)* 2004 FC 32, which states at para. 11 that "The PRRA application cannot be allowed to become a second refugee hearing. The PRRA process is to assess new risk developments between the hearing and the removal date."

[14] The Officer concludes that the Applicants have not presented sufficient objective evidence of any change of conditions in India since the Board's decision or of any new risk developments.

ISSUE

[15] The Applicants have raised the following issue for review:

1. The Respondent erred in law in failing to provide reasons in compliance with *Baker*.

STATUTORY PROVISIONS

[16] The following provisions of the Act are applicable in these proceedings:

Application for protection	**Demande de protection**
112. (1) A person in Canada, other than a person referred to in subsection 115(1), may, in accordance with the regulations, apply to the Minister for protection if they are subject to a removal order that is in force or are named in a certificate described in subsection 77(1).	**112.** (1) La personne se trouvant au Canada et qui n'est pas visée au paragraphe 115(1) peut, conformément aux règlements, demander la protection au ministre si elle est visée par une mesure de renvoi ayant pris effet ou nommée au certificat visé au paragraphe 77(1).
Consideration of application	**Examen de la demande**
113. Consideration of an application for protection shall be as follows:	113. Il est disposé de la demande comme il suit :
(*a*) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;	*a*) le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;
(*b*) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;	*b*) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;
(*c*) in the case of an applicant	*c*) s'agissant du demandeur

not described in subsection 112(3), consideration shall be on the basis of sections 96 to 98;	non visé au paragraphe 112(3), sur la base des articles 96 à 98;
(*d*) in the case of an applicant described in subsection 112(3), consideration shall be on the basis of the factors set out in section 97 and	*d*) s'agissant du demandeur visé au paragraphe 112(3), sur la base des éléments mentionnés à l'article 97 et, d'autre part :
(i) in the case of an applicant for protection who is inadmissible on grounds of serious criminality, whether they are a danger to the public in Canada, or	(i) soit du fait que le demandeur interdit de territoire pour grande criminalité constitue un danger pour le public au Canada,
(ii) in the case of any other applicant, whether the application should be refused because of the nature and severity of acts committed by the applicant or because of the danger that the applicant constitutes to the security of Canada.	(ii) soit, dans le cas de tout autre demandeur, du fait que la demande devrait être rejetée en raison de la nature et de la gravité de ses actes passés ou du danger qu'il constitue pour la sécurité du Canada.

[17] The following provisions of the Regulations are also applicable in these proceedings:

New evidence	**Nouveaux éléments de preuve**
(2) A person who makes written submissions must identify the evidence presented that meets the requirements of paragraph 113(*a*) of the Act and indicate how that evidence relates to them.	(2) Il désigne, dans ses observations écrites, les éléments de preuve qui satisfont aux exigences prévues à l'alinéa 113*a*) de la Loi et indique dans quelle mesure ils s'appliquent dans son cas.

STANDARD OF REVIEW

[18] In *Cupid v. Canada (Minister of Citizenship and Immigration)* 2007 FC 176, this Court held as follows:

> 6. The first argument of the Applicant is that the PRRA Officer erred by failing to provide adequate reasons for her decision. Since this is an allegation that the PRRA Officer failed to comply with the rules of procedural fairness, the question for judicial review is not the subject of a standard of review. Either the PRRA Officer provided adequate reasons or she did not.

ARGUMENTS

The Applicants

[19] The Applicants rely on *Perez v. Canada (Minister of Citizenship and Immigration)* 2006 FC 1380, for what that case says about the purpose of a PRRA:

> 12. It is well-established that a PRRA is not intended to be an appeal of a decision of the RPD (*Kaybaki v. Canada (Solicitor General of Canada)*, 2004 F.C. 32 at para.11; *Yousef v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 1101 at para. 21 (F.C.); *Klais v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 949 at para. 14 (F.C.)). The decision of the RPD is to be considered as final with respect to the issue of protection under s.96 or s. 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (*IRPA*), subject only to the possibility that new evidence demonstrates that the applicant would be exposed to a new, different or additional risk that could not have been contemplated at the time of the RPD decision. Thus, the PRRA Officer is under no obligation to assess the alleged risks now identified by the Applicant. I will not turn to the facts of this PRRA application.

[20] The Applicants acknowledge that *Perez* narrowly defines the scope of examination for PRRA officers. However, the Applicants say that the Decision, particularly in relation to the Officer's review of current county conditions, is devoid of analysis. The Applicants point to the fact that there were just under 100 pages of information on country conditions, yet nothing specific was outlined by the Officer about that information.

[21] The Applicants go on to submit that a final examination of risk should be reviewed prior to removing an applicant: *Say v. Canada (Solicitor General),* 46 Imm. L.R. (3d) 255 (F.C.). The Applicants propose that the only way to ensure a risk assessment is carried out, as contemplated by Parliament, is through meaningful reasons that clearly demonstrate that all of the evidence before the tribunal was considered: *Baker v. Canada (Minister of Citizenship and Immigration),* [1999] 2 S.C.R. 817 (*Baker*). The Applicants rely upon *Raudales v. Canada (Minister of Citizenship and Immigration)* 2003 FCT 385, which cites *Canada (Director of Investigation and Research, Competition Act) v. Southam Inc.,* [1997] 1 S.C.R. 748, for the proposition that an unreasonable decision is one that is not supported by any reasons that can stand up to a "somewhat probing examination."

[22] The Applicants submit that there is a need for meaningful reasons on PRRA decisions: *Dervishi v. Canada (Minister of Citizenship and Immigration)* 2006 FC 354.

[23] The Applicants conclude that the reasons in the present case do not disclose a meaningful examination of the evidence that was before the Officer. They say they are not much more than a

boilerplate which could be used for hundreds of similar cases. They consist principally of a series of conclusions.

[24] The Applicants suggest that the Respondent's assertion that "it was not for the Officer to 'meaningfully examine' the evidence (that had already been done by the RPD)" and that it was up to the Applicants to demonstrate that the RPD's decision should no longer apply, is an admission that the Officer did not "meaningfully examine" the evidence. The Applicants submit that the Respondent's contention that an examination is not necessary because of the evidentiary burden on the Applicants does not alleviate the necessity for the decision-maker to examine the evidence adduced, and to render reasons which reflect such an examination.

The Respondent

[25] The Respondent relies upon section 113(a) of the Act and 161(2) of the Regulations. Section 113(a) says that, at a PRRA hearing, applicants may only present new evidence that arose after the rejection of their refugee claim, or evidence which was not reasonably available or that an applicant "could not reasonably have been expected to have presented" to the Board.

[26] The Respondent says that the PRRA process is not an appeal of the Board's determination. It is only an opportunity for a deportable individual to adduce that they are now at risk due to new, updated evidence for an assessment of new risk developments since the date of the refugee hearing: *Raza v. Canada (Minister of Citizenship and Immigration)* 2007 FCA 385; *Hausleitner v. Canada (Minister of Citizenship and Immigration)* 2005 FC 641; *H.K. v. Canada (Minister of Citizenship*

and Immigration) 2004 FC 1612 and *Kaybaki v. Canada (Minister of Citizenship and Immigration)* 2004 FC 32.

[27] The Respondent notes that, as was pointed out in *Raza*, s. 113(a) of the Act was enacted to prevent "abusive re-litigation." The process assumes that a negative Board decision must be respected by a protection officer, unless there is new evidence of facts that might have affected the outcome. Only "material" evidence needs to be considered by a protection officer and that evidence is only "material" if the refugee claim "probably" would have succeeded if the evidence had been before the Board. Any alleged new evidence must be rejected if it does not prove that the relevant facts on the date of the protection decision are materially different from the facts found by the Board.

[28] The Respondent concludes that the Officer's findings are reasonable and that the Applicants have failed to demonstrate any errors. The Applicants simply disagree with the outcome, which is not a proper basis for an application to this Court. The onus was on the Applicants to demonstrate that the RPD decision no longer applied. The Applicants' s. 96 claim was rejected by the RPD and there was no basis for disturbing that in the Respondent's mind, particularly in light of the Applicants' delay in claiming, and the plausibility of their account. In relation to the s. 97 claim, the Applicants failed to demonstrate they were more likely than not to suffer any risk.

ANALYSIS

[29] The Applicants' assertion that the Decision is devoid of analysis "in particular in relation to the review of current country conditions" is not born out by a reading of the Decision.

[30] The Officer refers to the documentation submitted by the Applicants and explains that "some of the documents presented predate the Board's decision and were available or were considered by the Board. The remaining material is generalized and does not consider the particular circumstances of the applicants or rebut the findings of the Board."

[31] The Officer goes on to explain as follows:

> I do not find that any of this material is evidence of new risk developments which are personal to the applicants and which have arisen since the date of the Board's decision. The undated article mentioned above appears to refer to historical incidents, not recent events. Its contents are not borne out in the most recent research on country conditions. I have, however, considered all of this material in the context of my assessment of country conditions.

[32] The Applicants' complaint is that there is no analysis of the stated risks against the current country conditions. In other words, even if the stated risk remains the same, a change in country conditions might warrant a finding of danger to the Applicants if returned. The Applicants say that the Officer does not adequately address this issue.

[33] The Officer's analysis, and the extent of the reasons have to be viewed against the background of the Board's findings, including the findings that the Applicants faced no greater risk

than anyone else in India, that the invasion by the Sikh militants did not occur, and that the police had no interest in the Applicants.

[34] The Officer's conclusion that there was no evidence of new risk developments personally affecting the Applicants was entirely reasonable on the basis of the submissions and the evidence before him. The fact that he may have used language that appears in other cases does not mean there was no meaningful analysis. PRRA officers hear many cases and there is a limit to the number of linguistic variations they can employ to describe their findings.

[35] The Officer also clearly says that he reviewed all of the evidence as well as the current country conditions. In the context of this case, I do not think it was necessary for the Officer to explain anything further. It must be clear to the Applicants that, looking at India today, the Officer has found that any risks they raise are still no greater than those faced by anyone else in India.

[36] The Applicants have made no submission that suggests that the Officer was unreasonable in his findings and conclusions on the evidence presented by the Applicants and in light of current country conditions. In my view, the reasons in this case were also adequate and in compliance with *Baker*. There is no reason to interfere with this Decision.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. This Application is dismissed.
2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1005-08
STYLE OF CAUSE:	*BALVINDER KAUR, MANINDER KAUR and SARABJIT SINGH v. MCI*
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	September 18, 2008
REASONS FOR JUDGMENT AND JUDGMENT:	JUSTICE RUSSELL
DATED:	November 26, 2008

APPEARANCES:

Ms. Wennie Lee	FOR THE APPLICANT
Mr. Neal Samson	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lee & Company Immigration Advocacy, Counsel & Litigation TORONTO, ONTARIO	FOR THE APPLICANT
JOHN H.SIMS, Q.C. DEPUTY ATTORNEY GENERAL OF CANADA TORONTO, ONTARIO	FOR THE RESPONDENT