

Federal Court



Cour fédérale

Date: 20090910

Docket: IMM-1182-09

Citation: 2009 FC 890

Ottawa, Ontario, September 10, 2009

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**SHIWINDER SINGH**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

I. Preliminary

[1] What are the limits of the Federal Court's opinions with respect to a credibility assessment by a tribunal of first instance? As reiterated by Mr. Justice Yves de Montigny in *A.M. v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 579, 139 A.C.W.S. (3d) 153:

[17] The Board found a number of implausibilities and contradictions in the evidence given by the Applicant, and drew its adverse credibility conclusion on

that basis. Counsel for the Applicant attempted to reargue the same arguments that were previously presented to the Board, and basically asked this Court to reweigh the evidence in order to come to a different conclusion. But it is well established that paragraph 18.1(4)(d) of the *Federal Court Act* does not authorize the Court to substitute its view of the facts for those of the Board, which sees and hears the witnesses and which also has expertise in assessing the evidence relating to the facts that are within its area of specialized knowledge (*Cepeda-Gutierrez v. Canada (M.C.I.)*, [1998] F.C.J. No. 1425 (F.C.)). As my colleague Snider J. said in *Sinan v. Canada (M.C.I.)*, [2004] F.C.J. No. 188:

The Applicants have put forward alternative explanations for many of the Board's findings. When the standard of review is, as here, one of patent unreasonableness, it is not sufficient to present an alternative line of reasoning - even where that may present a reasonable explanation. What the Applicants must do is to point to a conclusion of the Board that is not supportable in any way on the evidence. The Applicants have failed to persuade me that any of the most significant findings were patently unreasonable. I cannot conclude that the decision as a whole is patently unreasonable.

## II. Nature of legal proceeding

[2] This is an application for judicial review of a decision by the Refugee Protection Division of the Immigration and Refugee Board (Board), issued February 16, 2009, which determined that the applicant is not a Convention refugee or a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA).

## III. Facts

[3] The applicant, Mr. Shiwinder Singh, plays Kabbadi, which is a popular sport in India. The documents filed indicate that he is a very good player since he has played for a team in India for the last four years. His skill was recognized, and he was sent to the United Kingdom twice to participate in tournaments. In 2006, he was selected to come to Canada to take part in tournaments. Like the other players, he was granted a visa, and he arrived in Canada on May 12, 2006. In Canada,

Mr. Shiwinder Singh played some Kabbadi matches, but his performance was inadequate. When the tour organizers warned him that he would be sent back to India, Mr. Shiwinder Singh travelled from Toronto to Montréal where he claimed refugee protection.

[4] His refugee claim is based on allegations that his family was harassed and that he was imprisoned in India. On the contrary, it is his brother's story that is the source of the alleged problems. Mr. Shiwinder Singh claims that his brother was arrested by the police in September 2005 on suspicion of having ties to militants. According to Mr. Shiwinder Singh, he met with a lawyer on March 6, 2006, to arrange for the release of his brother, who was still detained because the Court refused to grant him bail. On March 9, 2006, the police arrested Mr. Shiwinder Singh. He was accused of having ties to militants and of filing false complaints against the police. He was detained for two days during which Mr. Shiwinder Singh claims that he was beaten and tortured.

#### IV. Impugned decision

[5] The Board's decision is based on Mr. Shiwinder Singh's lack of credibility. To make this finding, the Board relied on contradictions and implausibilities in the testimonial and documentary evidence that it analyzed. The Board's conclusions that are relevant to this application are as follows:

- a. The applicant alleges that his brother was imprisoned on suspicion of having ties to militants, but Exhibit R-5, filed by Mr. Shiwinder Singh, is a copy of a trial that shows that his brother was arrested for possession of a firearm and armed robbery.

Mr. Shiwinder Singh's allegation that his family drove his brother to the police station is contradicted by Exhibit R-5, which shows that it was the police who arrested him. The Board did not believe that, after his arrest, Mr. Shiwinder Singh was stripped, beaten and tortured by the police because he failed to mention this at his refugee hearing.

- b. Last, the Board found that Mr. Shiwinder Singh was unable to provide the Board with his arrest date; he said it was in February 2005, in March, in February 2006 and finally in March 2006.

#### V. Issue

[6] Did the Board err by finding that the applicant was not credible?

#### VI. Standard of review

[7] Credibility is a question of fact that calls for deference dictated by the reasonableness standard (*Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315, 42 A.C.W.S. (3d) 886 (F.C.A.) at paragraph 4; *A.M.*, above, at paragraph 14).

#### VII. Analysis

##### Contradiction between applicant's documents and testimony

[8] Exhibit R-4 is a decision of an Indian court. It refers to an armed robbery committed by certain individuals and states that Mr. Shiwinder Singh's brother was one of the robbers. According to the decision, the armed robbery occurred on September 1, 2005. Mr. Shiwinder Singh's brother

was identified as one of the robbers although he escaped before being arrested with the other robbers (Certified Record at pages 255 to 256).

[9] Exhibit R-5 is another decision of an Indian court. This decision states that the police arrested Mr. Shiwinder Singh's brother on September 5, 2005, a few days after the armed robbery, for possession of a pistol and cartridges contrary to the *Arms Act* (Certified Record at page 265).

[10] Mr. Shiwinder Singh accuses the Board of not understanding that the charges contained in Exhibits R-4 and R-5 are false. In his affidavit and testimony, he contends that the police laid false charges against his brother because his brother was a social worker who criticized the police, the authorities and also because his brother was associated with militants.

[11] The Board did not believe that the police laid false charges because there were witnesses who knew his brother and recognized him as one of the perpetrators. Mr. Shiwinder Singh did not provide any evidence that his brother's charges and convictions were false. The Board could properly consider the lack of corroboration of key elements of the claim as well as the applicant's failure to provide a satisfactory explanation for not providing those documents (*A.M.*, above, at paragraphs 19 to 20; *Amarapala v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 12, 128 A.C.W.S. (3d) 358 at paragraph 10.)

[12] Since the Board was entitled to assess Mr. Shiwinder Singh's credibility by relying on criteria such as rationality and common sense (*Shahamati v. Canada (Minister of Employment and*

*Immigration*), [1994] F.C.J. No. 415 (QL) (F.C.A.)), it was reasonable to make a non-credibility finding since the documents filed by Mr. Shiwinder Singh contradicted his testimony. In this case, for example, Mr. Shiwinder Singh's allegation that it was his family who drove his brother to the police station is contradicted by Exhibit R-5, which shows that it was the police who arrested him. Assessing the authenticity and probative value of documents filed by a refugee applicant is an integral part of the discretion to weigh evidence that Parliament conferred on the Board as a specialized tribunal (*Mahendran v. Canada (Minister of Employment and Immigration)* (1991), 134 N.R. 316, 14 Imm. L.R. (2d) 30 (F.C.A.)). In light of the documentary evidence, which consisted of decisions by the court in India, it was open to the Board to weigh the probative value of those documents and to assign more weight to them than to Mr. Shiwinder Singh's contradictory testimony.

[13] It is true that the Board mistakenly interchanged Exhibits R-4 and R-5 in its decision, at paragraph 7, where it was stated that Exhibit R-5 showed that Mr. Shiwinder Singh's brother was arrested for taking part in an armed robbery. It was Exhibit R-4, not Exhibit R-5, that showed that Mr. Shiwinder Singh's brother was arrested for possession of a firearm; although he was arrested for possession of a firearm, he was also convicted of armed robbery. Read in its entirety and context, it is clear that the Board knew the difference between the two documents and that this error had no impact on the findings of credibility or fact. The two documents, individually or together, contradict Mr. Shiwinder Singh's allegations about his brother's story.

[14] Since the findings about Mr. Shiwinder Singh's credibility with regards to his brother's story may also extend to all the evidence emanating from his testimony (*Sheikh v. Canada (Minister of Employment and Immigration)*), [1990] 3 F.C. 238, 21 A.C.W.S. (3d) 1350 (F.C.A.), the Board was entitled to question the reasons given to justify Mr. Shiwinder Singh's detention by the police.

Failure to mention that he was tortured

[15] The notes from the interview with an immigration officer on June 27, 2008, show that Mr. Shiwinder Singh did not mention having been stripped and tortured. However, Mr. Shiwinder Singh stated that he had been tortured in his Personal Information Form (PIF) (Certified Record at page 21), which was completed prior to the interview with the immigration officer. At the hearing before the Board, Mr. Shiwinder Singh was confronted with this omission. The Board assessed Mr. Shiwinder Singh's explanations that he had been instructed to answer only the questions asked and that the immigration officer did not give him enough time to tell his entire story.

[16] In *Bains v. Canada (Minister of Citizenship and Immigration)* (1998), 82 A.C.W.S. (3d) 142, [1998] F.C.J. No. 1144 (QL) (T.D.), the Court recognized that an applicant can omit minor events from his or her PIF, but significant incidents that are at the crux of the claim are to be recounted (also, *Munwar v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1351, 134 A.C.W.S. (3d) 301 at paragraphs 17 to 19). From the Court's review of the evidence, it is clear that the immigration officer explicitly asked Mr. Shiwinder Singh if he had been a victim of violence in India, to which he replied in the negative (Certified Record at pages 208 and 209). Simply stating in

a PIF that one was beaten and tortured by the police is not sufficient, in itself, to establish that it happened without specific information in this regard. In this case, Mr. Shiwinder Singh did not provide any evidence regarding his hospitalization after the alleged torture, and he told the immigration officer that he had not been a victim of violence in India. It is the role of the Board, as a specialized tribunal, to weigh the refugee claimant's testimony and to assess the credibility of his or her statements in the context of the totality of the evidence (*Aguebor*, above); it was therefore open to the Board to make a non-credibility finding regarding Mr. Shiwinder Singh's failure to mention the allegations of torture in his interview with the immigration officer.

## VII. Conclusion

[17] The Board reasonably interpreted the documents filed by Mr. Shiwinder Singh; the Board's credibility findings were therefore reasonable in fact and in law.

[18] For all the foregoing reasons, the application for judicial review is dismissed.



**JUDGMENT**

**THE COURT ORDERS that**

1. The application for judicial review is dismissed;
2. No serious question of general importance is certified.

“Michel M.J. Shore”

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Judge

Certified true translation

Mary Jo Egan, LLB

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1182-09

**STYLE OF CAUSE:** SHIWINDER SINGH  
v. MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** August 26, 2009

**REASONS FOR JUDGMENT  
AND JUDGMENT BY:** MR. JUSTICE SHORE

**DATED:** September 10, 2009

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