

Federal Court



Cour fédérale

**Date: 20091209**

**Docket: IMM-340-09**

**Citation: 2009 FC 1259**

**Ottawa, Ontario, December 9, 2009**

**PRESENT: The Honourable Mr. Justice de Montigny**

**BETWEEN:**

**NIJJER, Yadhwindar Singh**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

I. Facts

[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 a decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board. In a decision dated December 16, 2008, the RPD found that Yadhwindar Singh Nijjer (the applicant) was neither a Convention refugee nor a

person in need of protection pursuant to section 97 of the Act and therefore rejected his refugee protection claim.

[2] The applicant is an Indian citizen of the Sikh religion, originally from the Rampur district in the State of Uttaranchal.

[3] According to the applicant, Sikh extremists came to the family farm in August 2004 and forced his family at gunpoint to give them lodging and food. They allegedly left the next day, ordering the family not to say anything.

[4] On August 13, 2004, police officers apparently descended on the family farm. The applicant allegedly fled, but the police officers, believing that he had sided with the extremists, demanded that he be brought to the police station, which he was.

[5] According to the applicant, he was detained for four days, the police officers accusing him of supporting the extremists. Since he refused to admit this, the police officers allegedly beat and tortured him. Apparently, they finally released him after receiving a bribe of 40,000 rupees, and he was treated by a physician.

[6] However, the police officers purportedly continued to harass the applicant and his family. On May 25, 2005, a few days after terrorist attacks attributed to the Sikh extremists, the police apparently arrested the applicant again. Once again, since he refused to admit that he knew the

persons responsible for the attacks, he allegedly was tortured. He was apparently released six days later, after the payment of another bribe of 60,000 rupees.

[7] The applicant apparently then went to live and work at the home of an uncle in the State of Punjab. The police allegedly continued to harass his family and arrested and beat his brother. His uncle was concerned and apparently asked him to leave.

[8] The applicant then purportedly went to New Delhi. His family allegedly contacted an agent who prepared a student visa application for the applicant. Once he obtained his visa, the applicant went to Canada. He arrived here on December 20, 2005, and filed his refugee protection claim on November 29, 2006.

a. The RPD decision

[9] From the outset, the RPD identified the question of the applicant's credibility as the issue determinative of his refugee protection claim. It did not find the applicant credible and rejected his refugee protection claim. The RPD took the following factors, among others, into account:

- a. The contradictions between the information provided by the applicant in support of the student visa application that he signed and the information that he provided in support of his refugee protection claim, particularly with regard to his arrests in India;
- b. The absence of medical documents confirming that the applicant was the victim of torture, whether they be documents from the physician who allegedly treated the

applicant in India or documents from a Canadian physician or psychologist. The RPD noted that the applicant had stated at the hearing that he did not suffer from any after-effects, whether physical or psychological, from the torture he claims to have undergone. The RPD, while stating that it is aware of the difficulty a victim may have in talking about the torture he or she has been subjected to, found such a complete absence of after-effects to be implausible;

- c. The fact that the applicant never – even when he was living in Delhi – reported the mistreatment he allegedly received to the authorities or to non-governmental organizations. According to the RPD, this diminishes the applicant’s credibility with regard to the issue of his fear of persecution;
- d. The fact that the applicant did not submit his refugee protection claim until eleven months after his arrival in Canada. According to the RPD, this delay also affects the applicant’s credibility with regard to the issue of his subjective fear of persecution.

[10] Finally, the RPD did not attach any probative value to the affidavit of Sarpanch Baljinder Singh, a member of the applicant’s native village council, even though it corroborated the applicant’s statements. According to the RPD, this affidavit was merely a repetition of a version of the facts that it did not find credible in the first place.

i. Issue

[11] The only issue in this judicial review is whether the RPD erred in finding that the applicant was not credible.

III. Standard of review

[12] Since the issue is the RPD's assessment of the applicant's credibility, the applicable standard of review is reasonableness: see, for example, *Sukhu v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 427, [2008] F.C.J. No. 515. Consequently, what this Court needs to determine is not so much whether it would have arrived at the same conclusion as the RPD, but whether the decision falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] S.C.J. No. 9, at paragraph 47.

IV. Analysis

[13] The applicant raised several arguments against the RPD's decision. Although some of these arguments are more persuasive than others, the fact remains that an applicant who is seeking to have a decision about his or her credibility set aside bears a heavy burden. As Justice Mackay pointed out in *Akinlolu v. Canada (Minister of Citizenship and Immigration)* (1997), 70 A.C.W.S.(3d) 136, [1997] F.C.J. No. 296, at paragraph 13,

Questions of credibility and weight of evidence are for the CRDD panel in considering refugee claims. Thus, the panel may reject uncontradicted evidence if it is not consistent with the probabilities affecting the case as a whole, or where inconsistencies are found in the evidence or it is found to be implausible. Particularly where there has been an oral hearing and the panel's assessment appears clearly dependent, as in this case, at least in part, upon seeing and hearing the witness, this Court will not intervene unless it is satisfied that the panel's conclusion is based on irrelevant considerations or that it ignored evidence of significance. In short, its decision must be found to be patently unreasonable on the basis of the evidence before the panel.

[14] In this case, the RPD considered the applicant's testimony and found that it was not credible for several reasons. The RPD's findings do not appear to me to be based on irrelevant considerations and do not ignore evidence of significance.

[15] First, the applicant contended that the contradictions between his student visa application and the information he provided when he submitted his refugee protection claim do not undermine his credibility. In fact, he argued that these contradictions are entirely normal, since the agents who prepare visa applications in India generally use such schemes in order to obtain a visa for their clients. The applicant merely signed the visa application prepared by the agent.

[16] The visa application may have been completed by a third party, and the person who completed it may have chosen not to mention the applicant's arrests so as not to harm his chances of obtaining the visa. But as the RPD pointed out, the applicant nevertheless signed the visa application and certified that all the information provided was complete and true. In these circumstances, the RPD was entitled to find that the contradictions between his visa application and the version he provided in his Personal Information Form (PIF) undermined his credibility. Given the applicant's level of education, the RPD was entitled to doubt his contention at the hearing that he had not read the visa application form submitted to the Canadian consular authorities.

[17] Moreover, the applicant asserted that he had not provided a medical report confirming that he had been the victim of torture because the physician who treated him in India categorically refused to give him a written report. He put in evidence, in support of his claims, a report from

Amnesty International describing the pressures placed on Indian physicians who are called upon to treat victims of torture. As for the absence of any report from a Canadian physician or psychologist, the applicant stated that he had not thought of consulting a health professional since his arrival in Canada since he no longer felt any after-effects from the torture to which he was subjected.

[18] It is true that Rule 7 of the *Refugee Protection Division Rules* (SOR/2002-228) provides that a claimant who does not provide acceptable documents establishing identity and other elements of the claim “must explain why they were not provided and what steps were taken to obtain them”. The RPD rejected the applicant’s explanation on the ground that his refugee protection claim was confidential, implying that the Indian physician who treated him had no reason to fear reprisals from the authorities in his country. This finding appears unreasonable to me, since Indian physicians are not necessarily familiar with the procedure for refugee protection claims in Canada, and may reasonably fear that a written report would be turned against them despite all assurances that the applicant could give.

[19] However, the explanation given for not providing a report from a Canadian professional seems much less plausible. The applicant relied, among others, on *Attakora v. Canada (Minister of Employment and Immigration)* (1989), 99 N.R. 168 (F.C.A.), [1989] F.C.J. No. 444 to argue that he did not have to submit such evidence. However, in that case, there was uncontradicted evidence that the claimant had indeed sustained an injury such as the one he had described, and that he had had to undergo two operations in Canada to treat it. He only needed confirmation of the very specific

nature of his injury. In this context, the Court of Appeal ruled that this deficiency was not sufficient to undermine the applicant's credibility. That is not the case here.

[20] The applicant's claim that the RPD acted outside of its expertise in finding that it was not plausible that the applicant did not experience any after-effects from the torture he allegedly underwent cannot be accepted. The RPD is a specialized tribunal, whose members assess the cases of many people who have been subjected to mistreatment or torture. Based upon that experience, the RPD panel was entitled to doubt the fact that the applicant, unlike most people in his situation, did not have any physical or psychological after-effects from the torture he claims to have undergone.

[21] The applicant also argued that his failure to seek protection from the Delhi police can be explained by his generalized fear of police after his arrests. He claimed that the RPD erred in rejecting this explanation and asserting that the police officers in Delhi were obviously not the same as those who arrested him in his native region.

[22] It is obvious to me in reading the RPD's reasons that the panel properly understood the applicant's argument that all Indian police officers are cut from the same cloth and are not trustworthy. It would, to say the least, be demeaning and wrong to consider that the RPD confined itself to observing that New Delhi police officers are not the same as the police officers in the State of Uttaranchal. Obviously, the RPD considered that the applicant had not proved that he had tried to seek state protection before coming to Canada to claim refugee protection, since it is not sufficient



to claim that all the security forces in a country are corrupt without even asking for their assistance. This is all the more true in a vast country such as India, where the police officers in the capital city have no relationship with those who presumably tortured the applicant and have no interest in protecting them. In any case, the question of the possibility of obtaining state protection in India is not really relevant since the very existence of the applicant's persecution and subjective fear has not been established, given the applicant's lack of credibility.

[23] Finally, the applicant argued that the RPD erred in holding against him the delay in claiming refugee protection. Since he did not have to worry about being deported because he had a visa that was valid for one year, it was normal for him to explore other more promising possibilities for staying in Canada (including marriage), especially given that the chances of obtaining refugee status were very slim.

[24] It is trite law that a delay in submitting a refugee protection claim, while not decisive, remains a relevant element that the tribunal may take into account in assessing both the statements and the actions and deeds of a claimant: *Huerta v. Canada (Minister of Employment and Immigration)* (1993), 157 N.R. 225 (F.C.A.), [1993] F.C.J. No. 271. The claimant knew upon his arrival in Canada that he was only authorized to stay in Canada for a specific and limited period of time. Under these circumstances, it was reasonable to expect that he would regularize his status as soon as possible if he truly feared for his life and physical integrity in India.

[25] Finally, the applicant is claiming that the RPD did not consider all of the evidence in refusing to attach any probative value to the sarpanch's affidavit. Relying on *Romiluyi v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1194, [2006] F.C.J. No. 1500, he argued that all of the evidence must be taken into account before a tribunal can arrive at a negative finding with regard to the credibility of a witness.

[26] Despite the RPD's duty to consider all of the evidence, the finding that a claimant has no credibility may extend to all of the evidence he or she submits. This is what the Court of Appeal recognized in *Sheikh v. Canada (Minister of Employment and Immigration)*, [1990] 3 F.C. 238, and *Rahaman v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89, [2002] F.C.J. No. 302. In dismissing evidence that merely repeated a version of the facts considered to be not very credible and improbable, the RPD did not err or breach the general rule that all evidence must be considered before ruling on the credibility of an applicant's account. In this case, the RPD was entitled to consider that the sarpanch's documentary evidence was not sufficient to make an account that otherwise appeared in many respects to be implausible credible.

[27] For all these reasons, the RPD's finding as to the applicant's lack of credibility does not appear to me to be unreasonable. Certainly, the applicant took every possible step to enter into and stay in Canada by filing a false visa application, by foreseeing the possibility of a marriage, and by claiming refugee protection as a last resort. The panel was no less entitled to find that the applicant did not establish that his wish to stay in Canada was based on a real fear of escaping persecution in India.

[28] Counsel did not propose any question for certification, and none will be certified.

**JUDGMENT**

FOR THESE REASONS, the application for judicial review is dismissed. No question is certified.

“Yves de Montigny”

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Judge

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

**DOCKET:** IMM-340-09

**STYLE OF CAUSE:** Yadhinder Singh Nijjer v. MCI

**PLACE OF HEARING:** Montréal, Quebec

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AND JUDGMENT:** Justice de Montigny

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