

Federal Court



Cour fédérale

Date: 20130228

Docket: IMM-7020-12

Citation: 2013 FC 202

Montreal, Quebec, February 28, 2013

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

INDERJEET SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] The Applicant seeks judicial review of a decision by the Refugee Protection Division [RPD] of the Immigration and Refugee Board, wherein it was determined that he is not a refugee or person in need of protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The Applicant argues that (i) the RPD's credibility analysis is unreasonable given the medical and affidavit evidence he submitted; (ii) no major omissions,

contradictions, or implausibilities arose from the record; and (iii) the country condition evidence demonstrated that he was at risk.

II. Judicial Procedure

[2] This is an application under subsection 72(1) of the *IRPA* for judicial review of and RPD decision, dated June 18, 2012.

III. Background

[3] The Applicant, a citizen of India, was born in 1983. In India, he was a Sikh preacher living in Karnal, Haryana province.

[4] In 2007, the Applicant claims he publicly refuted claims of the Dera Sucha Suda's [DSS] leader and that he participated in peaceful demonstrations against the DSS.

[5] On June 5, 2007, the Applicant was allegedly arrested, detained, and tortured on accusations of associating with Sikh terrorists and provoking violence.

[6] On June 8, 2007, the Applicant was released because village officials intervened and his father paid a bribe.

[7] On January 20, 2008, the Applicant was allegedly arrested, detained, and tortured on accusations of working with terrorists conspiring to attack DSS. He claims he was beaten, his legs were stretched, and a heavy roller was rolled over his thighs. He was released after officials

intervened, his father paid a bribe, he signed a few blank pages, and he promised not to preach against DSS and to report to police monthly.

[8] The Applicant states that these accusations were made by authorities but were not official and that criminal charges were never made.

[9] On February 18, 2008, the Applicant left India on a Canadian visa he obtained in November 2007. On July 7, 2008, he applied for refugee protection.

[10] In March, July, and September 2008, the police allegedly visited the Applicant's home in India, harassed his family, and stated that he was training as a terrorist in Canada.

[11] On July 19, 2008, an immigration officer spoke with the Applicant [intake interview].

[12] In March 2012, the Applicant amended his Personal Information Form [PIF] to indicate that he left India with the assistance of an agent.

IV. Decision under Review

[13] The RPD did not find credible that the Applicant was arrested, detained, and tortured on accusations of terrorism. The RPD questioned the Applicant's intake interview statements that authorities were not seeking him, he was only accused of provoking an anti-government uprising at his first arrest, and police threatened him with death. The RPD determined that the first two allegations were inconsistent with his testimony that authorities continued to seek him in India and

that he was accused of associating with Sikh terrorists at both arrests. The RPD found that failing to discuss the police death threats in his PIF impugned his credibility since he stated at his intake interview that these threats compelled him to seek protection.

[14] The RPD rejected the Applicant's explanation that he did not mention ongoing police searches for him out of confusion, reasoning that he was specifically questioned on this at the intake interview and that police persecution was the core of his claim. It was also implausible that he would not mention accusations of terrorist involvement, even if not specifically questioned on this at the intake interview. The RPD also rejected the Applicant's attempt to attribute the omission of police death threats in his PIF to his lawyer because he also failed to spontaneously mention these threats at the hearing.

[15] The RPD made a negative general credibility finding because the Applicant: (i) amended his PIF to include information known to him when he first signed it in July 2008; (ii) failed to mention in his PIF on July 2008 that he left India with the assistance of an agent; (iii) did not attempt to change his address after his first release on June 8, 2007 even though he was allegedly tortured; (iv) did not mention in his PIF or testify spontaneously at his RPD hearing that he hid in Delhi after his second release on January 22, 2008; (v) claimed he preached in Karnal until fleeing India even though he was allegedly hiding in Delhi after his second release and suspected of conspiring to kill the Dera Sucha Suda leader or of having ties to terrorists; (vi) celebrated an elaborate marriage shortly after allegedly suffering physically-rigorous torture notwithstanding the Applicant's explanation that his culture demands that planned weddings occur regardless of other circumstances; (vii) would not likely have been released if suspected of links to terrorists;

(viii) testified that authorities did not question him on his trips abroad to visit other Sikhs though he was accused of links to terrorists and recruiting youth terrorism; (ix) attempted to come to Canada on a worker's visa in May 2007 and again in January 2008.

[16] The RPD determined that the Applicant lacked subjective fear since he delayed applying for refugee protection for five months. The RPD rejected his attribution of this delay to his penniless state and reliance on the advice of others. The RPD did not find credible his explanation that he did not contact a lawyer, Canadian authorities, community associations, or an immigration consultant because he had relied on the people he was living with for advice. The RPD reasoned that, had he actually been tortured, he would have researched refugee protection and applied at the first opportunity.

[17] After reviewing the country condition evidence, the RPD noted implausibilities in the Applicant's allegations. First, the Applicant entered Canada with a passport, while evidence suggests that there are control mechanisms preventing persons who are threats to national security from leaving India. While his passport was issued before he was allegedly suspected of associating with terrorists, the RPD did not consider it credible that the passport had not been confiscated or that he would have been able to pass security checkpoints upon leaving India. Second, it was implausible that he was released at the intervention of village officials if suspected of associating with terrorists. The RPD referred to documentation showing that the Indian government responds promptly to threats to national security. Third, if police had forced him to sign blank sheets of paper, they could have used these to produce fraudulent confessions. Given evidence on police impunity in India, this would permit them to detain and convict him.

[18] In light of its credibility concerns, the RPD did not give any weight to (i) a letter from the president of the gurdwara in India where the Applicant was working [Letter]; (ii) affidavits written by a city commissioner who allegedly assisted in securing his release from detention in June 2007 and January 2008 [Kaur Affidavits]; (iii) a psychological report describing his anxiety, depression and suicidal tendencies as a result of torture; and (iv) a letter from the Australian courts in relation to a Mr. Singh, which the Applicant alleges shows that his brother left India due to problems with police.

[19] The RPD also gave little weight to a medical report from a family doctor on the Applicant's psychological and physical condition. The RPD reasoned that it granted his request to present a medical assessment establishing torture with a heavy roller on the condition that only evidence from a specialist able to diagnose the specific tissue damage arising from this method of torture would be sufficient. The RPD supported its conclusion by noting that this medical report was based mostly on the Applicant's account of his experience in India, did not consist of a rigorous or scientific examination, was not based on x-rays, and did not identify the origin of scars on his body. The RPD drew particular attention to the following statement in the medical report: "According to [the Applicant,] the majority of soft tissue swelling and bruises of the body that were present in the past have absorbed and disappeared over time and that is why they are not visible today" (Decision at para 114; Certified Tribunal Record [CTR] at p 727). The RPD further reasoned that, although the medical report determined that the Applicant's overall condition was within normal limits, the documentary evidence demonstrates that persons subjected to torture by heavy rolling endure permanent damage to joints and muscles.

V. Issues

[20] (1) Was the RPD's credibility analysis reasonable?

(2) Was the RPD's analysis of the country condition evidence reasonable?

VI. Relevant Legislative Provisions

[21] The following legislative provisions of the *IRPA* are relevant:

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de

former habitual residence,
would subject them personally

nationalité, dans lequel elle
avait sa résidence habituelle,
exposée :

(a) to a danger, believed on
substantial grounds to exist,
of torture within the
meaning of Article 1 of the
Convention Against
Torture; or

a) soit au risque, s'il y a des
motifs sérieux de le croire,
d'être soumise à la torture
au sens de l'article premier
de la Convention contre la
torture;

(b) to a risk to their life or to
a risk of cruel and unusual
treatment or punishment if

b) soit à une menace à sa vie
ou au risque de traitements
ou peines cruels et inusités
dans le cas suivant :

(i) the person is unable or,
because of that risk,
unwilling to avail
themselves of the protection
of that country,

(i) elle ne peut ou, de ce
fait, ne veut se réclamer
de la protection de ce
pays,

(ii) the risk would be
faced by the person in
every part of that country
and is not faced generally
by other individuals in or
from that country,

(ii) elle y est exposée en
tout lieu de ce pays alors
que d'autres personnes
originaires de ce pays ou
qui s'y trouvent ne le
sont généralement pas,

(iii) the risk is not inherent
or incidental to lawful
sanctions, unless imposed
in disregard of accepted
international standards,
and

(iii) la menace ou le
risque ne résulte pas de
sanctions légitimes —
sauf celles infligées au
mépris des normes
internationales — et
inhérents à celles-ci ou
occasionnés par elles,

(iv) the risk is not caused
by the inability of that
country to provide
adequate health or
medical care.

(iv) la menace ou le
risque ne résulte pas de
l'incapacité du pays de
fournir des soins
médicaux ou de santé
adéquats.

Person in need of protection

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

Personne à protéger

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

VII. Position of the Parties

[22] The Applicant submits that the RPD found that the Sikh are not persecuted in India. Relying on country condition evidence and jurisprudence, he asserts that the Sikh are subject to widespread persecution and police impunity in India.

[23] The Applicant challenges the RPD's credibility finding and claims that it ignored evidence that he was subject to police impunity, terror, and torture in India. His account was plausible, given country condition evidence on police impunity and torture, uncontested evidence that he is a Sikh preacher, protests and violence in the Haryana province related to the DSS, and anti-Sikh violence in Punjab and India.

[24] In the Applicant's submission, the RPD's analysis of any inconsistencies and implausibilities in his testimony, PIF, and intake interview was unreasonable. The Applicant asserts that his intake interview statements do not contradict his testimony or PIF and that it was unreasonable to conclude that he would not be released from detention if accused of terrorism or, if tortured, he would have changed his address.

[25] The Applicant also takes the position that the affidavits and the medical reports that he submitted support his allegations that he was tortured by police. The Applicant contends it is unreasonable to give little weight to psychological and medical reports because they were premised on his own account of torture. The probative value of his medical evidence outweighed the minor omissions and inconsistencies in the record.

[26] The Respondent counters that the RPD's credibility findings were reasonable on the basis of the omissions, contradictions, and implausibilities in the record. According to the Respondent, the credibility assessment identified inconsistent and implausible elements in the evidence while relying on the panel member's common sense, rationality, and understanding of human behaviour. The RPD could reasonably rely on intake interview statements, omissions and amendments to the PIF.

[27] The Respondent further contends that the RPD could reasonably consider the delay in applying for refugee protection and subjective fear when assessing his credibility.

[28] The Respondent also argues that the Applicant's evidence does not corroborate his account. Medical certificates describing a person's hospitalization or physical injuries do not establish the cause of those injuries. Having found that the Applicant was not credible, the Respondent argues, the RPD was entitled to give the other documentary evidence no probative value. In the Respondent's opinion, a global analysis of the Applicant's general credibility is sufficient to refuse to give probative value to the affidavits and medical documentation that the Applicant submitted.

[29] In response to the Applicant's arguments on the general country condition in India, the Respondent asserts that country condition evidence alone does not establish a well-founded fear of persecution or that a person is in need of protection. An applicant must establish a link between his personal circumstances and the general situation of his country of origin; this, the Applicant has failed to do.

VIII. Analysis

Standard of Review

[30] The standard of reasonableness applies to the RPD's credibility findings and assessment of country condition evidence (*Csonka v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1056).

[31] When the standard of reasonableness applies, the Court may only intervene if the RPD's reasons are not "justified, transparent or intelligible". To meet this standard, decisions must fall in the "range of possible, acceptable outcomes ... defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

(1) Was the RPD's credibility assessment reasonable?

[32] The RPD's credibility assessment was reasonable. It was in "clear and unmistakable terms" and justified with "specific and clear reference" to evidence (*Hilo v Canada (Minister of Employment and Immigration)*, [1991] FCJ No 228 (QL/Lexis) (FCA) at para 6; *Leung v Canada (Minister of Employment and Immigration)*, (1994), 81 FTR 303 at para 14).

[33] The RPD may rely on inconsistencies in the record to find an applicant not credible (*Kambanda v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1267).

[34] The Applicant stated at his intake interview that he was not currently wanted by police in India and that police threatened to kill him but later testified that police continued to search for him after he left India and did not mention their death threats in his PIF or RPD testimony (CTR at pp 606 and 607; 737 and 812). Moreover, the Applicant specifically stated at his intake interview that he was accused of provoking an anti-government uprising at his first arrest and of links to terrorists at his second arrest; this was inconsistent with his assertion in his PIF and testimony that he was accused of links to terrorists at both his first and second arrests (CTR at pp 606; 480 and 806).

[35] The RPD could rely on these inconsistencies. They were rationally related to the Applicant's credibility and sufficiently important to bring it into question since police impunity was focal in his claim. Such inconsistencies do not arise from a "microscopic examination of peripheral issues" (*Kambanda*, above, at para 42).

[36] The RPD may also rely on amendments to an applicant's PIF that are not reasonably explained and omissions in a PIF in assessing credibility (*Lugo v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1297 at para 72; *Chavez v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1385 at para 10). The Applicant amended his PIF to state that he came to Canada with the assistance of an agent (CTR at p 728). The Applicant also omitted references to his temporary removal to Delhi after his second arrest; this omission was pivotal because the Applicant testified that he fled to Delhi to avoid further harassment by police in Karnal (CTR at p 766).

[37] In drawing adverse credibility inferences, the RPD may also rely on implausibilities in an applicant's account in light of the evidence and the panel member's own understanding of human behaviour (*Mpema v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 840 at para 12). The RPD could reasonably consider implausible: (i) that the Applicant would be released on the intervention of village officials when suspected of terrorist links in light of country condition evidence that Indian police pursue Sikh militants and the Applicant's allegation that he signed blank sheets of paper that would empower the police to obtain a false conviction; (ii) that Indian police did not question the Applicant on his trips abroad although he was suspected of recruiting Sikh youth for terrorist purposes; and (iii) that the Applicant would be able to leave India with his passport if suspected of terrorist links given the security screening procedures for international departures at Indian airports (CTR at pp 142; 481; 413).

[38] Since the Applicant's credibility has been generally impugned, the RPD was entitled to infer a lack of subjective fear from his delay in claiming refugee protection (*Khazaei v Canada (Minister of Citizenship and Immigration)*, 2013 FC 13 at para 51). It would be reasonable to find that, were the Applicant actually at risk, he would have made some effort to acquire state protection upon arrival in Canada.

[39] The RPD could reasonably give little probative value to the Indian medical certificate describing the Applicant's "pain, swelling, bruises, contusions" in June 2007 and "bruises and abrasions on his legs, thighs, shoulders and back" in January 2008 (CTR at p 636). The certificate does not identify the cause of these injuries and does not necessarily corroborate his "otherwise disbelieved" claim of torture (*Sanaj v Canada (Minister of Citizenship and Immigration)*, 2012 FC

744 at para 12). The letter from the Australian authorities also does not necessarily lead to the conclusion that the Applicant and his family are at risk of persecution because it does not discuss any allegations of torture (CTR at p 691).

[40] Since the RPD did not believe the Applicant's allegations that he was arrested, detained, and tortured, it had discretion to give little probative value to the psychologist report on his post-traumatic stress disorder and major depression as well as the Letter, and Kaur Affidavits (*Hernandez v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1097 at para 38).

[41] Finally, the RPD could reasonably give little weight to the medical report, dated May 19, 2012, because this report does not establish that the Applicant suffered the long-term joint and muscle effects that result from torture by the heavy roller or *ghotna* method (CTR at p 527 and 725). Since the report does not actually corroborate the Applicant's allegations that he was tortured by this method, the RPD could reasonably give it little probative value.

(2) Was the RPD's analysis of the country condition evidence reasonable?

[42] Given the RPD's reasonable credibility findings, the Applicant failed to establish the necessary link between his personal situation and that of Sikh militants and activists in India (*Singh v Canada (Minister of Citizenship and Immigration)*, 2008 FC 453 at para 20). Consequently, it is not necessary to consider the RPD's analysis of the country condition evidence.

IX. Conclusion

[43] For all of the above reasons, the Applicant's application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS that the Applicant's application for judicial review be dismissed.

No question of general importance for certification.

"Michel M.J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-7020-12

STYLE OF CAUSE: INDERJEET SINGH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: February 27, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT:** SHORE J.

DATED: February 28, 2013

APPEARANCES:

Stewart Istvanffy FOR THE APPLICANT

Lyne Prince FOR THE RESPONDENT

SOLICITORS OF RECORD:

Étude légale Stewart Istvanffy FOR THE APPLICANT
Montreal, Quebec

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada
Montreal, Quebec