Federal Court  Cour fédérale

Date: 20140624

Docket: IMM-6445-13

Citation: 2014 FC 610

Ottawa, Ontario, June 24, 2014

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

JASVIR SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision of the Immigration and Refugee Board's Refugee Protection Division (RPD) dated September 11, 2013.

[2] The RPD rejected the applicant's claim pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act* SC 2001, c 27. This is an application for judicial review under section 72 of the Act.

[3] After having considered the arguments of the parties and having examined the record, the Court found that the application for judicial review must be dismissed for the following reasons.

I. Facts

[4] The applicant is an Indian national who lived in Jammu and Kashmir (J&K). He is a Sikh religious musician. He is also a "baptized" Sikh, in that he wears obvious religious symbols that identify him as such. In January 2006, he was involved in the creation of an organization named Nishkam Kirtan Sewa Council, a group that had religious and social purposes. A work colleague, Gurmeet Singh, had a friend named Surinder Singh. Surinder Singh allegedly was convicted for having ties with terrorists. He was then harassed by the police. At the hearing, the applicant explained that the police accusations were false and apparently originated with a cousin of Surinder Singh who apparently had problems with the police. Regardless, in his account the applicant stated that following Surinder Singh's conviction, he and Gurmeet Singh refused to associate with Surinder Singh.

[5] On June 5, 2008, the applicant was arrested with Gurmeet Singh and another temple colleague, Gurcharan Singh. We do not know why or under what circumstances he was arrested other than what the applicant indicated in his personal information form (PIF) that it was during a program "which pays tribute to the Sikh martyrs of June 1984". Tortured and questioned about

his ties with terrorists, the applicant denied everything. On June 8, 2008, he was released following after prominent people from his village intervened and paid a bribe, of an unknown amount, with the order to report to the police any information about Surinder Singh or the terrorists.

[6] On March 18, 2009, the applicant allegedly was arrested again with Gurmeet Singh and Gurcharan Singh while they were in Punjab. The Punjab police apparently questioned the applicant, who was then transferred to the J&K police. The J&K police allegedly tortured him again and questioned him about Surinder Singh. He was forced to [TRANSLATION] "sign blank papers". He was released on March 22, 2009.

[7] The applicant apparently consulted a lawyer to stop the police harassment but the lawyer [TRANSLATION] "asked for documents and witnesses before he could act". After learning this, the police apparently went to his home to arrest him a third time. He escaped and decided to leave the region. With Gurmeet Singh and Gurcharan Singh, he took refuge in Delhi with Gurmeet Singh's family. He then left India with a work visa and arrived in Canada on July 25, 2009, on a Delhi-London-Edmonton flight. Then he headed east, stopping in Toronto where he spent two months, and settled in Montréal in September 2009. On September 22, 2009, he made a claim for refugee protection. Clearly, no claim was made in Edmonton, his initial destination for unknown reasons, or Toronto where he had stayed for two months.

[8] At the hearing on August 20, 2013, the member asked why the Indian authorities had not confiscated his passport issued in 2007; the applicant was unable to explain. When she asked

whether the authorities were still looking for him, he stated that in 2011 his father had been arrested, tortured and questioned about him. His father was released but after he returned home he died on May 8, 2011. The member questioned him about this and he stated that the police had visited his family every two to three months since 2009, and they always told them that he was in Canada. He had not mentioned this in his original PIF but had added it in an amendment dated May 14, 2013, four years after the original version.

[9] The applicant explained his delay in claiming refugee protection by stating that he thought that if he waited a few months, the situation would improve and he could return, but after some time he received advice that he should make a claim for refugee protection.

II. Decision

[10] The RPD did not believe the applicant's account. He was unable to provide a coherent explanation for the Indian police's interest in him, since he stated that he did not associate with Surinder Singh and his organization was completely legal. The reason for the Indian authorities' ongoing interest in him remains a mystery. He claimed that he did not know why he was under suspicion. He was unable to explain why he was released twice without charges, except by suggesting that perhaps the authorities intended to follow him and establish his hypothetical terrorist links. He was unable to explain why the police continued to be interested in him, four years later. The RPD member noted that at the hearing, he described an arrest and mistreatment of his father and had stated that the police visited his family every two to three months, facts that cannot be found in his PIF despite their importance to his claim.

[11] The documentary evidence filed demonstrated to the RPD that the amount of repression by authorities had greatly declined since 2000, but that at times the government has intervened to fight terrorism, using special measures, among other things. Indeed, references to documentation dating to 2007 are no longer contemporaneous enough to be given weight. If the applicant had truly been under suspicion, he would have not been released twice nor allowed to leave the country easily. The documentary evidence suggests rather that closer surveillance with limited movement would be implemented when there are serious suspicions. Moreover, he could have produced official documents to support his account according to the member. The delay in filing a claim for refugee protection undermined his testimony that he had endured two traumatizing detentions and felt threatened by a third one.

[12] The member examined an affidavit from the Sarpanch of the applicant's village, a letter from the chairman of the temple where he worked, a medical certificate attesting that he received care in June 2008 and March 2009, and a letter from the lawyer the applicant had consulted, and gave no weight to these documents since the applicant's account completely lacked credibility.

III. Analysis

[13] I agree with the respondent that a panel is not obliged to accept documentary evidence that is intended to support facts that are deemed not credible (*Tofan v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1011; *Ahmad v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 471).

[14] Counsel for the applicant argued at the hearing before this Court that the RPD had severed his analysis in order to reject the documentary evidence submitted in support of the applicant. If that were the case, intervention under this judicial review would probably be justified. A decision-maker cannot disregard the evidence.

[15] However, that is not the case here. Counsel focused on paragraphs 101 to 106 of the impugned decision. In my opinion, these paragraphs do not indicate that the evidence presented by the applicant was disregarded. The RPD did not reject the evidence without considering it. Rather, having found that the applicant's account was not credible, the RPD could not assign any weight to evidence that was intended to be corroborative but, in fact, only repeated the story. Corroborative evidence is independent evidence that supports the evidence in chief, not a repetition by hearsay of the account given. Paragraph 101 seems to summarize the reasoning of the RPD:

> [101] One last point: as the panel does not believe the claimant's story, it does not grant any weight to the affidavit written by Raj Kumar, the alleged sarpanch of the village of Kalyana in the Jammu district.[1] This document refers to the problems that the claimant allegedly experienced with the police and that the panel did not believe.

[16] In other words, the documentary evidence, which is nothing other than the version that was not believed told by people who do not have knowledge of the facts, could not save the direct evidence that was not believed. Hearsay evidence is only admissible and useful if it is reliable. It is not that the evidence was disregarded but that it was deemed to have little weight

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1 Exhibit R-5: Affidavit.

given the problems with the direct and primary evidence. As a result, the focus should be on the applicant's account.

[17] The issue is whether the RPD's finding was reasonable.

[18] I am of the opinion that the RPD's credibility finding was completely reasonable. The contradictions and implausiblities undermined the testimony, and the applicant, who had the burden of proof, had no acceptable explanation. The role of the reviewing judge is not to reassess the facts, but rather to ensure that the decision made was reasonable in light of the evidence in the record. Thus, this decision must have the distinction of being within the realm of reasonableness pursuant to *Dunsmuir v Nouveau-Brunswick*, 2008 SCC 9, [2008] 1 SCR 190:

> [47] … In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[19] In my opinion, the RPD's findings on the applicant's credibility and his account fully justify their conclusion. His testimony that he had been released twice was implausible. The omissions in the PIF regarding key points raised at the hearing were not explained satisfactorily. The circumstances of the applicant departure from India in no way indicated that he was sought by the authorities. His two-month delay before making a claim for refugee status after a journey from east to west from London to Edmonton, to then return east, to Montréal after passing through Toronto, undermined his claim of subjective fear and was not explained satisfactorily.

[20] Moreover, the applicant never explained why the authorities would have been interested in him as he claimed. It seems implausible that the authorities of a country with 1.2 billion inhabitants would have such an interest five years later if the applicant's account is considered in its entirety. Various elements contain contradictions and omissions, and the entire account is implausible without a credible reason for the interest in him.

[21] The applicant's assertion that he was involved in a solely philanthropic organization cannot explain police interest that would include visiting his family four times per year for five years. Either the applicant is not who he says he is or else the claims of frequent visits to his family in India aim to justify a prospective fear without providing a basis. If the applicant does not provide a complete and true account, he must live with the consequences. If the regular visits were intended to reveal the risk he faced, the decision-maker still had to know why the authorities would have such an interest in someone who portrays himself as an ordinary guy.

[22] Counsel for the applicant tried to argue that the mere fact that the applicant is a "baptized" Sikh would be enough to find that he should benefit from sections 96 and 97 of the Act. With all due respect, the Court cannot share this opinion. There would have to be extremely specific circumstances, which would have to be proven, to accept such an argument. Indeed, that claim would mean that no baptized Sikh could return to India. Even if some may believe that there is almost systematic harassment, and it has not been proven in this case, this would still be far from being persecution.

[23] The panel was not obliged to mention every document to enable the Court to assess the entire record. The applicant contended that the RPD's reasons were lacking. Adequacy of is not a stand-alone basis for quashing a decision (*Newfoundland and Labrador Nurses' Union v* Newfoundland and Labrador (Treasury Board), 2011 SCC 62, [2011] 3 SCR 708) [*Newfoundland Nurses*]. Reviewing judges should review the entire record in assessing the reasonableness of the result. The test is described at the end of paragraph 16 of *Newfoundland Nurses*:

> In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

[24] The RPD's decision was very detailed and does not leave any doubt about the findings made and the reasons for such findings. It cannot be successfully attacked on this basis.

[25] Consequently, the application for judicial review is dismissed. The parties did not submit a serious question of general importance and no question for certification arises.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed. There is no question for certification.

"Yvan Roy"

Judge

Certified true translation
Monica F. Chamberlain, Translator

FEDERAL COURT

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