

Federal Court



Cour fédérale

Date: 20160711

Docket: IMM-5624-15

Citation: 2016 FC 787

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 11, 2016

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

SANDEEP SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review made under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [IRPA] of a decision made by the Refugee Protection Division (RPD) on November 19, 2015, dismissing the applicant's claim for refugee

protection. The applicant wishes to have the RPD's decision set aside and referred for reconsideration before a different panel.

[2] For the reasons that follow, the application is dismissed.

II. The facts

[3] The applicant is a citizen of India. In January 2010, he began working for the Shiromani Akali Dal (Amritsar) political party. Members of the National Indian Congress party (the Congress members) objected to his participating in Amritsar activities and threatened him with serious consequences if he refused to join their party.

[4] On December 8, 2010, the applicant was beaten by four Congress members, who threatened to kill him if he did not join their party. The police refused to intervene and warned the applicant that he would be charged with having filed false accusations if he did not leave the police station.

[5] On February 27, 2011, the applicant was again abused by Congress members who were trying to recruit him.

[6] On March 16, 2011, the applicant left India with the help of an officer. He passed through several countries, including the United States, and eventually came to Canada one year later, on February 13, 2012.

[7] The applicant claims that he was also informed after he arrived in Canada that his family was harassed by Congress members and by the police following a complaint filed against the applicant by Congress members.

[8] In June 2013, Congress members allegedly detained and tortured the applicant's brother to uncover his whereabouts and to obtain information on other militants. Congress members also accused his brother of having ties to militants.

[9] Following those events, the applicant's brother apparently immigrated to the United States, whereas their family allegedly fled their home to hide in different locations.

III. Impugned decision

[10] The RPD concluded that the applicant's claims regarding the incidents that occurred before he arrived in Canada were credible. However, the RPD did not believe the applicant's story about the threats and harassment of his family, which he allegedly learned about after he arrived in Canada. The RPD noted several omissions and contradictions between the applicant's story and his testimony during the hearing, which undermined his credibility.

[11] The RPD then evaluated the internal flight alternative (IFA) to New Delhi. First, the RPD found that the applicant had not demonstrated that Congress members allegedly had the intent or capacity to locate him in New Delhi, nor that the police officers were apparently in collusion with Congress members in his village. Second, the RPD noted that the applicant had not raised any argument about the impossibility of seeking refuge in New Delhi.

[12] The RPD therefore concluded that the applicant is not a Convention refugee or a person in need of protection within the meaning of sections 96 and 97 of the IRPA.

IV. Issues

[13] The applicant raised the following issues:

1. Did the RPD evaluate the applicant's credibility reasonably?
2. Did the RPD assess the IFA reasonably?

V. Analysis

[14] In this case, the standard of review is the standard of reasonableness for both the issue of credibility and the IFA findings: *Lopez Martinez v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 550, at paragraph 14; *Dunsmuir v. New Brunswick*, 2008 SCC 9.

[15] The applicant claims that the RPD failed to assess his testimony in its entirety and focused on the fine details to the extent that they overlooked the vital points of his story. However, it instead appears to me that the RPD's decision is very carefully balanced and it reasonably details the applicant's various allegations and the reasons as to why his credibility was called into question with respect to the events that occurred after he left India.

[16] It is well established that the determination of a refugee claimant's credibility is the heartland of the RPD's jurisdiction (*Tosha v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1741, at paragraph 21; *Eze v. Canada (Minister of Citizenship and Immigration)*, 2016 FC 601, at paragraph 12; *Abdullahi v. Canada (Minister of Citizenship and Immigration)*, 2016 FC 260, at paragraph 22).

[17] The RPD noted several inconsistencies, omissions and contradictions in the applicant's story, which I restate here:

- The applicant waited two years before he amended his Personal Information Form (amended PIF) that he filed the day of the hearing, to include the allegations of harassment against his family. The RPD did not accept his excuse whereby he was dependent on an over-busy, paid translator, given that he had been represented by counsel since 2012, and that he learned of these incidents in 2013;
- In addition, the applicant delayed in filing the affidavit from the local sarpanch, which was filed 7 days before the hearing, violating the rules which require a 10-day minimum time frame, even though he was in regular contact with his parents and other members of his family in India;
- The PIF amended at the start of the hearing was inconsistent with the applicant's testimony, since there was no mention of his family being beaten twice, nor of his father being arrested and tortured. Moreover, the affidavit from the local sarpanch also does not mention these important facts. Consequently, the RPD concluded that the claim that his father had been arrested and tortured was not true;
- The applicant testified that his brother had been arrested the first time that the police had harassed his family, whereas his documents instead state that the police officers began harassing the family, then the situation worsened in June 2013 when his brother was arrested;

- At the hearing, the applicant stated that his family had been beaten, whereas in his story, he said that they were harassed;
- There is also a contradiction in the number of times the brother was allegedly tortured. In his testimony, the applicant said that his brother had been tortured twice, yet he only noted one incident in his story;
- According to the applicant's story, he said that his parents had fled the home right after his brother's release in June 2013, but he testified that the police had resumed harassing them after his brother left for the United States in 2013, which would have been difficult in light of the fact that his parents were supposedly in flight;
- It does not seem reasonable that the applicant's parents had not tried to prove to the police that their son had indeed been in Canada to avoid being persecuted; moreover, the applicant's behaviour of not trying to provide his parents with any evidence to this effect is inconsistent with the allegations that his parents were allegedly harassed;

[18] The applicant's claimed excuse for filing the documents late was that the guidelines only impose a time limit of 10 days before the date of the hearing in which to file them. However, the general understanding is that, apart from minor amendments, important modifications to the PIF should be done promptly after they are discovered. I also noted that the applicant's evidence was only filed seven days before the hearing date. In any event, the negative findings concerning credibility are based on the applicant's poor excuses regarding the time limit, and not on the time limit itself.

[19] In light of the significant number of inconsistencies, omissions and contradictions described above, I am of the opinion that the RPD's findings are based on the evidence stating that the applicant is not perceived as a Sikh separatist and is not the subject of a complaint by

Congress members, leaving the impression that he is wanted by the police. It should be noted that the applicant never filed a copy of the complaint in question.

[20] The RPD's findings regarding an internal flight alternative are therefore reasonable. I am also dismissing the applicant's claims whereby the RPD did not take into account application of section 144 of the *Indian Penal Code*, which requires landlord owners to register information on tenants with the local police stations in New Delhi.

[21] If he is not wanted by the police, it is unlikely that Congress members could find the applicant in New Delhi, even through a criminal records check. The RPD noted that if records check operations do exist in India, the documentary evidence shows, however, that their legal structure is inconsistent on one hand and, on the other hand, that implementation of this structure is incoherent and disordered.

[22] The RPD concluded that it was speculative for such information to be reported to the police in New Delhi. The RPD pointed out that the documentary evidence states that police officers limited checks to the list of wanted persons in their possession. In light of the overall working conditions and situation of the security forces, the RPD found that it would also be speculative to assume that the applicant's name would be brought to the attention of the local police in his village through this means. Moreover, the applicant's political activities were limited and local, and he has not been involved in political causes since he left India over four years ago.

[23] Consequently, it is reasonable to conclude that the applicant would benefit from an internal flight alternative to New Delhi.

VI. Conclusion

[24] The application for judicial review is dismissed; The RPD's conclusions regarding the applicant's level of credibility about the events that occurred after he left India and the internal flight alternative are reasonable.

JUDGMENT

THE COURT'S JUDGMENT is that the application for judicial review is dismissed and no question is certified.

“Peter Annis”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5624-15

STYLE OF CAUSE: SANDEEP SINGH v. MCI

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JUNE 29, 2016

JUDGEMENT AND REASONS: ANNIS J.

DATED: JULY 11, 2016

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