

Federal Court



Cour fédérale

Date: 20161019

Docket: IMM-5472-15

Citation: 2016 FC 1161

[ENGLISH TRANSLATION]

Toronto, Ontario, October 19, 2016

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

GHOTRA, BALKAR SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] Balkar Singh Ghotra (Mr. Ghotra) is making an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (the Act) with regard to the decision by the Refugee Protection Division (RPD) on November 13, 2015,

indicating that Mr. Ghotra is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the Act.

[2] For the following reasons, I am dismissing Mr. Ghotra's application.

II. Background

[3] Mr. Ghotra is originally from India and lived in Greece for five years before returning to India in 2003 to live there with his family. He claims to have been involved with the Akali Dal Amritsar (Mann) political party, a Sikh nationalist party. Mr. Ghotra claims to have had run-ins with the Indian police in 2008, after his friend, Vikramjit Singh, a member of the same political party, allegedly went into hiding. Mr. Ghotra states that he was arrested and detained on July 29, 2008, for helping to plan a demonstration in protest of Independence Day. He was detained for two days (until July 31, 2008), and was allegedly questioned and tortured. Mr. Ghotra claims to have been released because influential individuals bribed the authorities. He also claims to have been treated by a doctor for injuries suffered while he was detained, and maintains that his brother was arrested and released at the same time as him.

[4] According to Mr. Ghotra, the Indian police then allegedly harassed him regularly, and arrested him again on March 24, 2009. Mr. Ghotra maintains that he was detained and tortured until March 28, 2009, and that was allegedly released again because of bribes. He claims that following his release, the police required that he check in with them on a monthly basis, beginning on May 1, 2009; otherwise, he would be killed. Because of this threat, Mr. Ghotra claims to have travelled to New Delhi and hired an agent to help him leave India. In May 2010,

he allegedly travelled to Greece and tried to obtain a Canadian visa, but was unsuccessful. In July 2010, Mr. Ghotra's agent brought him back to New Delhi. Mr. Ghotra maintains that during this time, the Indian police continued to search for him, thinking that he had joined the militants.

[5] Mr. Ghotra arrived in Canada on November 9, 2011, using a fake passport, and filed for refugee protection at the airport. He claims that the Indian police continue to harass his family. He also claims that they detained and tortured his father, and that his father died after being tortured. Mr. Ghotra maintains that his children and his mother left the family home and now move around from place to place. Mr. Ghotra fears that if he were to return to India, he would be persecuted by Indian authorities because of his political opinions.

III. Impugned decision

[6] The RPD accepted Mr. Ghotra's identity, but determined that he is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the Act. The RPD held that Mr. Ghotra was not credible and that he had failed to discharge his burden of proof. It identified several contradictions and inconsistencies in Mr. Ghotra's testimony, deeming them sufficiently significant to make his testimony devoid of any credibility.

[7] First, the RPD noted inconsistencies with regard to Mr. Ghotra's participation in the activities of the Akali Dal Amritsar political party. After being questioned by the RPD member, Mr. Ghotra testified that he supported this political party by transporting people and materials to meetings and events, using his three-wheeled taxi. When questioned again, he added that he also helped to distribute meals, but nothing else. Nevertheless, on his Personal Information Form

(PIF), Mr. Ghotra indicates that he organized anti-police demonstrations and rallies, including a demonstration against Independence Day. When confronted about this discrepancy at the RPD hearing, Mr. Ghotra changed his testimony and stated that he had organized demonstrations. When asked what he did to organize these demonstrations, Mr. Ghotra testified that he had attended them. The RPD determined that Mr. Ghotra was trying to alter his testimony to correct the discrepancy noted, and that he was not able to provide consistent details regarding his involvement with the Akali Dal Amritsar political party.

[8] Second, Mr. Ghotra testified that the full name of his friend, the one who allegedly went into hiding and who was allegedly the cause of his troubles with the police, was Sadra Buta Singh. However, his Personal Information Form indicates that this friend was named Vikramjit Singh. When confronted about this contradiction, Mr. Ghotra explained that he had been confused when he wrote his account, and that he may have forgotten his friend's name. Noting that Mr. Ghotra made changes to his Personal Information Form (including his account) on two occasions, the RPD rejected his explanation.

[9] Third, the RPD drew a negative inference from the fact that Mr. Ghotra went to Greece in May 2010 without filing for refugee protection. Mr. Ghotra testified that it was not possible for him to find a job or to live in this country due to the economic crisis raging there, and that it was therefore impossible for him to file for refugee protection in Greece. The RPD rejected this last explanation, as Mr. Ghotra had admitted to having done no research into the possibility of claiming refugee protection in Greece. In fact, he admitted to having taken the word of people he referred to as "passersby." According to the RPD, the fact that Mr. Ghotra made no attempt to

file for refugee protection in Greece undermined his credibility. The RPD also held that the fact that he returned to India in July 2010, while claiming that he feared for his life, was not consistent with the behaviour that one might reasonably expect from an individual in such circumstances.

[10] Fourth, the RPD noted discrepancies in his testimony regarding his activities in India prior to his departure for Canada in November 2011. Mr. Ghotra testified that he had lived in hiding in New Delhi for 15 months before leaving for Canada. When asked whether he had returned to his village during this 15-month period, Mr. Ghotra stated that he had never returned there, whereas he had previously admitted to working the land with his father before leaving for Canada. When confronted about this discrepancy, Mr. Ghotra then changed his testimony, admitting to having returned to his village at least once during this period. Faced with this new discrepancy, Mr. Ghotra once again changed his testimony and stated that he had never returned to his village during the period when he was living in New Delhi. The RPD held that Mr. Ghotra was adjusting his answers to the questions and was unable to provide satisfactory justification to explain the contradictions.

[11] In light of these discrepancies, which it deemed significant, the RPD held that [TRANSLATION] "the applicant's testimony is devoid of all credibility." The RPD then focused on the documents submitted into evidence. The RPD found that due to the credibility issues raised, it could not grant them any probative value, as they were [TRANSLATION] "not sufficient to make a testimony credible that, in essence, is not." The RPD noted that an affidavit and some photos produced made reference to Buta Singh, Mr. Ghotra's friend, even though Mr. Ghotra had

indicated on his personal information form that his friend's name was Vikramjit Singh. The RPD also briefly examined the medical certificate, which stated, among other things: "Patient was suffering from multiple internal and external injuries like swelling, bruises, rash marks, pain and stress because of the police torture [...]." Despite this statement from the attending physician, the RPD held that the medical certificate did not show that Mr. Ghotra's injuries from 2008 and 2009 were due to police torture. The author of the document would not have had the skills to draw a conclusion as to how the injuries were incurred. Lastly, in its analysis of the probative value of the documents submitted into evidence, the RPD noted that fraudulent documents are quite prevalent and easy to procure in India.

IV. Issues

[12] Mr. Ghotra maintains that the RPD's conclusions regarding his lack of credibility are unreasonable. More specifically, he argues that the RPD did not properly assess his testimony and erred in its interpretation of the alleged facts. Mr. Ghotra also argues that the discrepancies raised by the RPD are not sufficient to undermine his credibility.

V. Standard of review

[13] The standard of review applicable to the RPD's conclusions regarding credibility and weighing of evidence is the standard of reasonableness (*Aguebor v. Canada (Minister of Employment and Immigration)* (C.A.F.)(1993), 160 N.R. 315, 42 ACWS (3d) 886; *Nzohabonayo v. Canada (Citizenship and Immigration)*, 2012 FC 71, [2012] FCJ no 685 (QL) at paragraph 26.) The Court may intervene only if it perceives an error that is eligible for judicial

review, and it must show a high degree of judicial deference with regard to the RPD's credibility findings (*Kumar v. Canada (Citizenship and Immigration)*, 2009 FC 643, [2009] FCJ No 811 (QL) at paragraph 3). The standard of reasonableness requires that the decision subject to judicial review be justifiable, intelligible and transparent, and that it fall "within the range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at paragraph 47 [*Dunsmuir*]).

VI. Relevant provisions

[14] The relevant provisions of the Act are reproduced in Appendix A.

VII. Analysis

[15] Essentially, Mr. Ghotra disagrees with the RPD's assessment of his credibility and of the evidence. He argues that the RPD erred in citing his participating in organizing an anti-Independence-Day demonstration, given that he had written in his PIF that "we were preparing to protest against the Independence Day," the term "we" referring to the political party he supported, and not to his own participation. Mr. Ghotra also maintains that certain discrepancies raised by the RPD between his written statements (in his PIF) and his oral testimony are not sufficient to undermine his credibility to the point of arriving at a negative conclusion regarding his refugee protection claim. Lastly, Mr. Ghotra is of the opinion that his failure to apply for refugee protection in another country (Greece, in this case) is not a deciding factor in determining whether to grant his refugee claim in Canada.

[16] Criticism of the RPD's interpretation of testimony and of statements made by an applicant is not sufficient grounds to justify the Court's intervention. It is up to the RPD—and not this Court—to determine the probative value of the statements made by an applicant and to draw appropriate conclusions regarding credibility (*Eker v. Canada (Citizenship and Immigration)*, 2015 FC 1226 [2015] FCJ No 1341 (QL) at paragraph 9). This Court must show judicial deference to such conclusions, as long as they are reasonable based on the criteria set out in *Dunsmuir*.

[17] According to *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708, the reasons in support of a decision must 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. In light of the reasons given by the RPD, I am of the opinion that the credibility determinations are justifiable, intelligible and transparent, and that they fall "within the range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at paragraph 47).

[18] I am also of the opinion that it was reasonable for the RPD to draw a negative inference in response to Mr. Ghotra's failure to claim refugee protection in Greece when he was there in 2010. In rendering its decision, the RPD took into consideration the explanations given by Mr. Ghotra to justify his failure to apply for refugee protection in Greece. The RPD nevertheless determined that his explanations were insufficient, noting that it is reasonable to expect that someone who fears for his life would become more adequately informed about the possibility of

claiming refugee protection in the first country he arrives in, rather than returning to the country in which he fears persecution. Failure to claim refugee protection at the earliest opportunity is an indicator of the absence of subjective fear of persecution, even though an adverse credibility finding with respect to an applicant cannot be made solely on this basis (*Islam v. Canada (Citizenship and Immigration)*, 2015 FC 1246, [2015] FCJ No 1292 (QL) at paragraph 22; *Gavryushenko v. Canada (Minister of Citizenship and Immigration)*, 194 FTR 161, [2000] FCJ No 1209 (QL)). Nevertheless, based on the RPD's reasons, it seems that the failure to claim refugee protection in Greece was just one of several factors. I am of the opinion that these factors were analyzed as a whole by the RPD and that they led to a reasonable conclusion in this case.

VIII. Conclusion

[19] The credibility findings outlined by the RPD in its decision are reasonable in the circumstances and do not warrant this Court's intervention. The application for judicial review is therefore dismissed.

JUDGMENT

THE COURT'S JUDGMENT is that the application for judicial review is dismissed without costs. There is no question to be certified.

"B. Richard Bell"

Judge

APPENDIX A

***Immigration and Refugee
Protection Act, SC 2001, c 27***

***Loi sur l'immigration et la
protection des réfugiés, LC
2001, ch 27***

No credible basis

107 (2) If the Refugee Protection Division is of the opinion, in rejecting a claim, that there was no credible or trustworthy evidence on which it could have made a favourable decision, it shall state in its reasons for the decision that there is no credible basis for the claim.

Preuve

107 (2) Si elle estime, en cas de rejet, qu'il n'a été présenté aucun élément de preuve crédible ou digne de foi sur lequel elle aurait pu fonder une décision favorable, la section doit faire état dans sa décision de l'absence de minimum de fondement de la demande.

Manifestly unfounded

107.1 If the Refugee Protection Division rejects a claim for refugee protection, it must state in its reasons for the decision that the claim is manifestly unfounded if it is of the opinion that the claim is clearly fraudulent.

**Demande manifestement
infondée**

107.1 La Section de la protection des réfugiés fait état dans sa décision du fait que la demande est manifestement infondée si elle estime que celle-ci est clairement frauduleuse.

Appeal

110 (1) Subject to subsections (1.1) and (2), a person or the Minister may appeal, in accordance with the rules of the Board, on a question of law, of fact or of mixed law and fact, to the Refugee Appeal Division against a decision of the Refugee Protection Division to allow or reject the person's claim for refugee protection.

Appel

110 (1) Sous réserve des paragraphes (1.1) et (2), la personne en cause et le ministre peuvent, conformément aux règles de la Commission, porter en appel — relativement à une question de droit, de fait ou mixte — auprès de la Section d'appel des réfugiés la décision de la Section de la protection des réfugiés accordant ou rejetant la demande d'asile.

Restriction on appeals

110 (2) No appeal may be made in respect of any of the following:

(a) a decision of the Refugee Protection Division allowing or rejecting the claim for refugee protection of a designated foreign national;

(b) a determination that a refugee protection claim has been withdrawn or abandoned;

(c) a decision of the Refugee Protection Division rejecting a claim for refugee protection that states that the claim has no credible basis or is manifestly unfounded;

(d) subject to the regulations, a decision of the Refugee Protection Division in respect of a claim for refugee protection if

(i) the foreign national who makes the claim came directly or indirectly to Canada from a country that is, on the day on which their claim is made, designated by regulations made under subsection 102(1) and that is a party to an agreement referred to in paragraph 102(2)(d), and

(ii) the claim — by virtue of regulations made under paragraph 102(1)(c) — is not ineligible under paragraph 101(1)(e) to be referred to the

Restriction

110 (2) Ne sont pas susceptibles d'appel :

a) la décision de la Section de la protection des réfugiés accordant ou rejetant la demande d'asile d'un étranger désigné;

b) le prononcé de désistement ou de retrait de la demande d'asile;

c) la décision de la Section de la protection des réfugiés rejetant la demande d'asile en faisant état de l'absence de minimum de fondement de la demande d'asile ou du fait que celle-ci est manifestement infondée;

d) sous réserve des règlements, la décision de la Section de la protection des réfugiés ayant trait à la demande d'asile qui, à la fois :

(i) est faite par un étranger arrivé, directement ou indirectement, d'un pays qui est — au moment de la demande — désigné par règlement pris en vertu du paragraphe 102(1) et partie à un accord visé à l'alinéa 102(2)d),

(ii) n'est pas irrecevable au titre de l'alinéa 101(1)e) par application des règlements pris au titre de l'alinéa 102(1)c);

Refugee Protection Division;

(d.1) a decision of the Refugee Protection Division allowing or rejecting a claim for refugee protection made by a foreign national who is a national of a country that was, on the day on which the decision was made, a country designated under subsection 109.1(1);

(e) a decision of the Refugee Protection Division allowing or rejecting an application by the Minister for a determination that refugee protection has ceased;

(f) a decision of the Refugee Protection Division allowing or rejecting an application by the Minister to vacate a decision to allow a claim for refugee protection.

d.1) la décision de la Section de la protection des réfugiés accordant ou rejetant la demande d’asile du ressortissant d’un pays qui faisait l’objet de la désignation visée au paragraphe 109.1(1) à la date de la décision;

e) la décision de la Section de la protection des réfugiés accordant ou rejetant la demande du ministre visant la perte de l’asile;

f) la décision de la Section de la protection des réfugiés accordant ou rejetant la demande du ministre visant l’annulation d’une décision ayant accueilli la demande d’asile.

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

Stéphanie Valois

FOR THE APPLICANT

Lyne Prince

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Marie-José Blain
Counsel
Montréal, Quebec

FOR THE APPLICANT

William F. Pentney
Deputy Attorney General of Canada
Montréal, Quebec

FOR THE RESPONDENT