

Date: 20060210

Docket: IMM-2781-05

Citation: 2006 FC 181

Ottawa, Ontario, February 10, 2006

PRESENT: THE HONOURABLE MR. JUSTICE BEAUDRY

BETWEEN:

SWARAJ SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (the Act) of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated April 14, 2005, where Denis Arvanitakis found that the applicant was not a Convention refugee or a person in need of protection.

ISSUE

[2] Did the Board commit a reviewable error in dismissing the applicant's claim?

[3] For the following reasons, the answer to this question is negative and the present application shall be dismissed.

BACKGROUND

[4] The applicant is a Citizen of India. He was born on June 30, 1978 in Ropar.

[5] On April 11, 1996, the applicant joined the sports section of the Punjab Armed Police (PAP). The applicant claims that though he held the rank of “head constable”, he was never actually trained as a police officer, nor did he ever perform any police duties. His role was simply to play competitive basketball.

[6] The applicant was issued an identity card which allowed him to access the “Sports line”, a compound where PAP athletes trained. Though he is pictured wearing a uniform on this identity card, the applicant states that this was the only time he ever wore a uniform.

[7] On January 5, 2004, the applicant and other team members went to a restaurant after practice, where he noticed two of his team mates, Snehpal Singh (Snehpal) and Jasjot Singh (Jasjot), sitting apart from the group in the company of two unidentified Sikh men.

[8] PAP athletes were under strict instructions not to mix with the general public or invite visitors into the Sports line compound. The applicant reported his team mates’ behaviour to his Coach and the PAP’s Sports secretary, who advised him to be very cautious from then on.

[9] Snepal Singh and Jasjot Singh consistently avoided the topic of their meeting at the restaurant during their conversations with the applicant.

[10] In March 2004, the applicant was questioned by senior members of the PAP, who wanted to know about his relationship with Snepal and Jasjot. During the course of the interrogation, the applicant learned that the two men his team mates had met with were members of the terrorist Khalistan Liberation Force. The applicant denied any involvement in his team mates' alleged activities, and stated that the first time he had seen the two suspected terrorists was on January 5, 2004. The applicant later learned also that Snepal, Jasjot and one of the two suspected terrorists had been arrested by the PAP and were under investigation.

[11] The applicant was then ordered to remain on Sports line grounds for a week and told that he might be ordered to report for further questioning.

[12] On March 30, 2004, as the applicant was riding his motorbike on his way to a training camp, he was stopped by two Sikh men, one of whom he had seen with Snepal and Jasjot on January 5, 2004 in the restaurant. The men punched the applicant and put a gun to his head, threatening to kill him and his family if anything happened to their friend who had been arrested by the PAP. When they left, they threatened to kill the applicant's family if he told the authorities about their encounter.

[13] The applicant told his coach and the PAP Sports Secretary, and asked for protection. They simply said to him to be careful and not to move alone.

[14] The applicant was later re-interrogated by the PAP about his knowledge of Snepal and Jasjot's contacts abroad. The applicant learned that they had travelled to Uzbekistan, Kyrgyzstan, and Malaysia.

[15] On July 18, 2004, while the applicant was in his home town during his summer vacation, the two men who had assaulted him on March 30, 2004, approached him and threatened to kill him in front of his parents, stating that they held him responsible for the arrest of their friend in January 2004. They eventually left, and the applicant unsuccessfully sought protection from the local police, who told him not to worry.

[16] On July 19, 2004, the applicant was summoned back to the PAP headquarters. On July 20, 2004, he was questioned by a Deputy Superintendent of the PAP and other officers about whom he had met with during his vacation. The applicant told them about the incident with the two Sikh men and asked for protection, but they did not believe him. He learned that Snehpal and Jasjot had escaped from custody 15 days earlier, and that the authorities suspected the applicant of being involved.

[17] The applicant was then living in fear of both the authorities and the terrorists. He was in possession of a valid passport as well as a Canadian visa because of a planned sports trip to Canada which had been cancelled.

[18] The applicant arrived in Canada on August 1, 2004, and filed an asylum claim on or around September 1, 2004.

DECISION UNDER REVIEW

[19] In its reasons, the Board assessed the possibility that the applicant might be excluded from refugee protection under article 1F(a) of the Convention because of the PAP's reported involvement in human rights abuses. Though it stated that it did not find the applicant's claim that he never served as a policeman credible, it nonetheless came to the conclusion that there was insufficient evidence to warrant exclusion.

[20] The Board did not find the applicant credible, and found his testimony "sketchy, hesitant, implausible, and inconsistent".

[21] The Board found that the applicant had not fully explained why he felt compelled to report his two team mates to his superiors after having seen them in the company of two strangers on January 5, 2004. The Board stated that the applicant's "hesitant, vague and inconsistent" testimony on this subject led it to draw negative inferences that the event actually occurred.

[22] The Board concluded that it was implausible that the PAP would have been able to arrest one of the suspected terrorists. The Board found that the applicant had not satisfactorily explained the omission in his PIF of the fact that he had given his superiors a description of the two strangers, or how the PAP could know that the man they arrested was one of the men the applicant saw in the restaurant on January 5, 2004. According to the Board, this affected the appellant's credibility.

[23] The Board also doubted the plausibility of the applicant's claim that the PAP only interrogated him about Snehpal and Jasjot's activities.

[24] Considering the seriousness of the accusations the applicant claims that the PAP made against him, the Board found it inconsistent that the applicant would be released from confinement of the Sports line compound within a week and that he would have been authorised to travel around alone on his motorcycle on March 30, 2004, the day he was first assaulted by the two Sikh men who threatened his and his family's lives.

[25] The Board also concluded that the fact that the applicant would have been authorised to travel to Canada to play Basketball despite the accusations made against him was improbable

[26] The Board reviewed documentary evidence submitted by the applicant, including letters from a municipal councillor and a physician but gave them little value in light of the applicant's overall lack of credibility.

[27] The Board also drew a negative credibility inference from the amount of time the claimant allowed to elapse before he decided to leave India.

[28] The Board concluded its reasons by stating that the applicant had not met the onus of proof to establish that he had a well-founded fear of persecution if he were to return to India.

ANALYSIS

[29] Sections 96 and 97 of the Act read as follows:

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.

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 former habitual residence, would subject them personally

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

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

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

(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,

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.

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

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

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

(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.

(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.

(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.

Standard of review

[30] The Board is a specialized tribunal and its findings relating to issues of credibility are questions of fact. This Court should only intervene in the presence of a patently unreasonable error (*Aguebor v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 732) (F.C.A.) (QL)).

[31] The applicant argues that the Board erred in misinterpreting or ignoring the evidence before it. Specifically, the applicant's arguments focus on the following points:

- Inconsistencies as to the reason why the applicant reported his team mates to his superiors: the applicant submits that during his testimony, he simply provided the Board with an additional reason for his action (the men seemed strange), and that there was no contradiction or inconsistency with the initial reason he gave (his team mates were ignoring him in the restaurant).
- The Board provides no specific reasons or examples as to why it found the applicant's testimony hesitant or vague in page 4 of its reasons.

- There was no omission regarding the applicant having given a description of the two men in the restaurant to his superiors. The applicant's PIF states that he had told his superiors "everything", and this includes their description.
- The applicant did not testify that the PAP had not interrogated any of his other team mates about Snehpal and Jasjot. He stated that he did not know if they had interrogated anyone else.
- The fact that the police accused the applicant of having knowledge of Snehpal and Jasjot's activities does not imply that they accused him of being their accomplice.
- The applicant was never formally arrested, so the Board's finding that it was implausible that he would have been allowed to resume his activities is erroneous.
- The Board's negative inference from the applicant's delay in leaving India is erroneous. Delay does not necessarily equate with the absence of subjective fear of persecution.
- The Board's statement that the human rights and security situation had improved in Punjab is unsupported by the evidence.
- The Board did not mention an affidavit submitted by the applicant that supported his claim, and thus ignored important evidence in coming to its conclusions.

[32] With respect to the applicant's counsel's capable arguments to the contrary, and after having carefully reviewed the Board's reasons and the transcript of the hearing, I do not think that the Board's decision was patently unreasonable.

[33] On the matter of the applicant's delay in leaving India, it is true that a delay does not necessarily equate with the absence of subjective fear of persecution (*Hue v. Canada (Minister of Employment and Immigration)*, [1988] F.C.J. No 283 (C.A.) (QL)). However, an applicant's poor explanations for the delay can legitimately lead the Board to draw adverse credibility inferences. (*Ghasemian v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1266, *Espinosa v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No 1680 (T.D.) (QL)).

[34] In the present case, the applicant's explanations for the delay are incomprehensible. During his testimony before the Board, he stated that he did not leave right away because he was given holidays and went back to his home town. He also stated that he did not leave right away because he was a famous sportsman in India.

[35] In this context, I do not think that it was unreasonable for the Board to draw adverse credibility inferences from the applicant's explanations.

[36] Furthermore, the Board was in the best position to assess the explanations submitted by the applicant for any perceived inconsistencies and implausibilities between his PIF and his testimony. The role of this Court is not to substitute its judgment for the Board's on findings of fact relating to the applicant's credibility (*Mavi v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 1 (T,D.) (QL)). I do not think that this Court's intervention is justified in the present case.

[37] The parties declined to submit questions for certification. None arise in this case.

ORDER

THIS COURT ORDERS that the application for judicial review be dismissed. No question is certified.

“Michel Beaudry”

JUDGE

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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and
THE MINISTER OF CITIZENSHIP AND
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