

Date: 20080115

Docket: IMM-7574-05

Citation: 2008 FC 47

Ottawa, Ontario, January 15, 2008

PRESENT: The Honourable Mr. Justice Kelen

BETWEEN:

**BALJINDER KAUR VIRK
JOBANDEEP KAUR VIRK**

Applicants

and

**THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated November 22, 2005 concluding that the applicants are neither Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[2] In this case, counsel for the applicants at the hearing abandoned the “reverse order of questioning” argument upon which I suspect leave was probably granted. Instead counsel sought to overturn the Board’s decision on the credibility findings notwithstanding that the evidence

demonstrated clear lies either in the material produced by the applicants or in the *viva voce* testimony of the principal applicant at the hearing. At the conclusion of the hearing I advised the parties that I would be dismissing the application and would issue reasons, which follow.

FACTS

[3] The principal applicant, Baljinder Kaur Virk, and her daughter, Jobandeep Kaur Virk, arrived in Canada in March 2005. Both applicants are citizens of India and seek refugee protection because they fear persecution and risk to their lives in India at the hands of the Indian police.

[4] The principal applicant claims to have been married in an arranged marriage on April 13, 2000. She states in her Personal Information Form (PIF) that shortly after her marriage she became aware that her husband, Rattandeep Singh Virk, was a wanted terrorist involved in the Khalistani movement, and had been charged with crimes. After becoming pregnant, the principal applicant states that the Indian police raided the farm house of her husband's family in an attempt to apprehend him. The principal applicant states that she last saw her husband shortly thereafter, and that she was in hiding ever since.

[5] While in hiding, the principal applicant lived in constant fear that the police would find her and beat, torture, or kill her in an attempt to uncover the whereabouts of her husband. She claims her daughter was born in February 2002 while she was in hiding. The principal applicant states that while she did not know her husband's whereabouts or involvement in the Khalistani movement, she believed it was too dangerous to tell this to the Indian police.

[6] The applicants left India with the help of an agent. Upon arriving in Canada, the principal applicant told immigration officials that it was her brother-in-law, and not her husband, who the police were seeking. She claims to have done this because of a fear that, if truthful, she would have been sent back to India.

Decision under review

[7] On November 22, 2005, the Board held that the applicants were not Convention refugees or persons in need of protection. The Board's central finding was that the principal applicant failed to advance sufficient credible and trustworthy evidence.

[8] The Board found "key inconsistencies" between the evidence provided to immigration officials at the port of entry by the applicant, and that provided in her PIF narrative and her oral testimony before the Board. The Board did not accept as plausible the principal applicant's explanation for the inconsistencies, and made other findings, including:

1. that it was implausible that the authorities would have any interest in the principal applicant given her evidence that she was unaware of her husband's activities or the group with which he was associated because the sharing of such information between spouses is not something that occurs in her culture;
2. that the principal applicant submitted a news article in support of her claim that actually contradicted her own testimony;

3. that the witness who testified on the applicants' behalf conceded that he never saw the principal applicant's face in India because the one time they met, she was wearing a veil;
4. that the ration card submitted as proof of marriage was not trustworthy evidence as to her identity as Rattandeep Singh Virk's wife;
5. that the letter from the Khalra Mission submitted in support of the applicants' claim contained "clearly false" information, which demonstrates a general lack of credibility as to the entire claim; and
6. that it is not plausible that the principal applicant would have a "relatively large two-day wedding" if her husband was an escaped fugitive at the time.

ISSUES

[9] The applicants raised two issues in their written memorandum:

1. whether the Board breached the rules of natural justice and procedural fairness by denying the applicants' motion regarding the "reverse order of questioning"; and
2. whether the Board erred by ignoring and/or misinterpreting the evidence when it determined that the applicants and their identity lacked credibility?

STANDARD OF REVIEW

[10] The first issue concerns whether the Board failed to observe the principles of procedural fairness and natural justice. In that regard, a reviewing court must “examine the specific circumstances of the case and determine whether the [decision maker] in question adhered to the rules of natural justice and procedural fairness”: *Thamotharem v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 16, [2006] 3 F.C.R. 168 at paragraph 15. The standard of review in relation to such a decision is correctness. In the event that a breach of natural justice or procedural fairness is found, no deference is due, and the decision will be set aside: *Sketchley v. Canada (Attorney General)*, 2005 FCA 404, [2006] 3 F.C.R. 392.

[11] The second issue concerns the Board’s factual findings and credibility determinations, matters within the Board’s special expertise. Such findings will only be set aside if patently unreasonable: *Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315 (F.C.A.). In *Law Society of New Brunswick v. Ryan*, 2003 SCC 20, [2003] 1 S.C.R. 247, the Supreme Court of Canada held that a patently unreasonable finding is one that is “clearly irrational” or “evidently not in accordance with reason.”

ANALYSIS

Issue No. 1: Did the Board breach the rules of natural justice and procedural fairness by denying the applicants’ motion regarding the “reverse order of questioning”?

[12] At the hearing, the applicants abandoned the argument about the “reverse the order of questioning” pursuant to the Board’s Guideline 7, which sets out a uniform procedure where the

Board questions first, but permits questioning first by the applicant's counsel in "exceptional circumstances" where fairness suggests it is required.

[13] The Court was surprised the applicants' counsel abandoned this issue because it probably precipitated the leave granted by Madam Justice Carolyn Layden-Stevenson. Based on the written material before the Court I did not think that "exceptional circumstances" existed that would justify reversing the order of questioning in the case at bar. Further, the questioning by the Board did not result in a breach of procedural fairness or natural justice. Accordingly, I was expecting that applicants' counsel would have difficulty making their case on this issue.

Issue No. 2: Did the Board err by ignoring and/or misinterpreting the evidence when it determined that the applicants and their identity lacked credibility?

[14] The Board's central finding was that the principal applicant failed to establish her identity as the wife of Rattandeep Singh Virk. The applicants argue that the Board erred in misinterpreting and ignoring the evidence and explanations offered by the principal applicant and, as a result, made "unfounded inferences" that were patently unreasonable.

[15] The standard of patent unreasonableness is significant and places a heavy burden on the applicants to rebut the Board's finding that the principal applicant was not credible. As Mr. Justice Joyal stated in *Culinescu v. Canada (Minister of Citizenship and Immigration)* (1997), 136 F.T.R. 241 at paragraph 13:

¶ 13 It is well established that credibility is a question of fact that is entirely within the jurisdiction of the Board as the trier of

fact. The panel is free to find that an applicant is untrustworthy on the basis of implausibilities in his or her testimony, provided that its findings are not unreasonable and that its reasons are set out in “clear and unmistakable terms”. ... Furthermore, the burden on the applicants to rebut the Board’s finding that they lack credibility appears to be very heavy.

[Footnotes omitted.]

[16] In reaching its decision, the Board relied on inconsistencies in the applicants’ information provided at the port of entry, in the principal applicant’s PIF, and in her oral testimony before the Board. The Board also did not accept the principal applicant’s explanation for such inconsistencies; namely, that she was uneducated, illiterate and merely relying on the advice of her agent.

[17] The applicants argue that the Board’s implausibility finding that the principal applicant was of no interest to the police was unrelated to the evidence and was, accordingly, in error. They further submit that given the principal applicant’s background as uneducated, there was no other plausible explanation open to the Board except that the information provided at the port of entry was made according to the advice of the applicants’ agent.

[18] However, it is clear from the record that the Board’s decision was based on a number of considerations in addition to the inconsistent evidence of the principal applicant, and that many of these considerations went unchallenged. Among these was the letter from the Khalra Mission Committee, which was filed by Mr. Waldman, the applicants’ counsel in support of the applicants’ claim. This letter was reproduced by the Board in its decision. The letter states that Baljinder Kaur is the wife of Rattandeep Singh and should be granted political asylum in Canada because Mr. Singh’s

wife has been harassed by police over information concerning her husband. This is false information and a blatant lie. It warrants exposure in detail to ensure a letter from this group is known in the future to possibly lack credibility. I will review the details below.

First, the letter from the applicants' counsel (Mr. Lorne Waldman)

[19] On July 25, 2005 Mr. Waldman wrote the Board enclosing the letter from Khalra Mission Committee, which Mr. Waldman said would be used at the hearing with other documents. In the letter Mr. Waldman requested an adjournment of the refugee hearing because he had a time conflict, and said that "her case involves some sensitive issues and I feel it is important for me to represent her". Mr. Waldman did represent the applicants at the hearing before the Board. At the hearing before the Court, Mr. Waldman's associate appeared as counsel for the applicants.

Second, the letter from the Khalra Mission Committee

[20] This letter from the General Secretary of the Khalra Mission Committee in Punjab, India dated July 17, 2005 is addressed "To Whom It May Concern". The General Secretary of the Committee writes that he declares that the principal applicant was harassed by the Punjab police who were looking for her husband. The letter states:

I Balwinder Singh Cabhal General Secretary Khalra Mission committee is hear by declare that S. Malik Singh R/o Tulchri, P.S. Ismallabad Distt. Kuruksheter is permanent resident of the above said Village. Her Daughter Baljinder Daur is married to Ratandip Singh S/o Jagir Singh of vill.Rohd P.S. Safido mado Mandi, Distt. Jeend (HR). Police of Punjab and Haryana used to torture & harass Ratandip Singh. In fear of death he left the village. His Where about is unknown then police used to harase Baljinder Kaur and ask about her husband. At last in fear of police harassment she left India and went to Canada. (Emphasis added)

So I request Canadian Govt. that her life is in danger if she return to India please grant her political asylum and oblige.

Balwinder Singh Chabhal
General Secretary
Kharla Mission Committee
General Secretary
Kharla Mission Committee

[Typed as per original photocopy with errors and/or omissions]

Third, the evidence at the Board hearing

[21] In the evidence before the Board the presiding member asks the principal applicant whether she knows anything about this letter. The principal applicant replies at page 53 of the transcript (page 430 of the Certified Tribunal Record):

CLAIMANT: I don't know about it (the letter).

The Claimant then states:

CLAIMANT: I can't remember this letter, where did this come from.

The Presiding Member states:

PRESIDING MEMBER: And what this letter says here, that you don't know about, is that the police would harass you and ask you about your husband. But meanwhile you told me you had no direct contact with the police at all.

CLAIMANT: Yes.

PRESIDING MEMBER: So, do you have an explanation about why you have this letter saying this, but meanwhile you've told me today you never spoke to the police on the phone, you never had any direct contact to them?

CLAIMANT: The police never talked to me. I was hiding myself from the police all the time.

Accordingly, the *viva voce* evidence unequivocally states that the principal applicant:

1. never saw this letter or knew of it; and
2. the letter is a lie with respect to the police harassing the principal applicant.

Fourth, the Board decision dated November 22, 2005

[22] The Presiding Board Member, Diane Smith, held at page 5, of the decision:

The adult claimant testified that she never had any contact with anyone in the Khalistani movement and that the movement had to do with the state of Punjab and that she was from the state of Haryana. She stated that she had never had any direct contact with the police. She was unaware of the existence of the letter from the Khalra Mission Committee filed in support of her claim and of the details in this letter.

The Board then sets out the full content of this letter.

[23] Then at page 9 of the decision the Presiding Member held:

The panel finds the production of a photocopied letter from the Khalra Mission Committee of Punjab State of July 14, 2005, which contains clearly false information such as “police used to harass Baljinder Kaur and ask about her husband,” to demonstrate a lack of credibility as to the entire claim and as to the identity document produced on behalf of the adult claimant.

The letter is from the Khalra Mission Committee, in Punjab state, not the Khalistan Commando Force, the organization Rattandeep was associated with, with its headquarters in Pakistan. Nor is this letter from an organization in the adult claimant’s home state (Haryana). No evidence was offered at the hearing as to any connection between the Khalra Mission Committee (the source of the letter) and the Khalistan Commando Force (the organization Rattandeep was a member of).

Fifth, the Court's comment with respect to this letter

[24] This letter, submitted by the applicants' counsel to the Board, is a blatant lie. The Court is surprised that counsel would submit such a letter never shown to, or known of, by the principal applicant, and which the principal applicant says is a lie. Obviously, counsel for the principal applicant was taking instructions from someone other than the principal applicant in presenting this letter and refugee claim.

[25] This letter is one of several serious inconsistencies in the evidence. The Court had no hesitation in dismissing the application from the bench. This was particularly so since the issue of natural justice ("reverse order of questioning"), upon which I presume leave was granted, was abandoned by counsel at the hearing when I questioned counsel.

A newspaper article

[26] Other uncontradicted evidence relied on by the Board included newspaper articles provided by the applicants' counsel that contradict the principal applicant's evidence about the date of her alleged marriage and her knowledge and involvement in her husband's terrorist activities. Either the newspaper article is a lie or the applicant's evidence is a lie.

The ration card

[27] The applicants submitted that in assessing the principal applicant's identity document, the ration card, the Board erred in failing to provide reasons for rejecting the document as insufficient,

and if the Board had concerns over the document's authenticity, then the Board should have sought verification from immigration officials.

[28] To discredit a document's authenticity, the Board can make a common sense inferences regarding whether the document constitutes sufficient evidence of identity. As Mr. Justice Marcel Joyal stated in *Culinescu*, above, at paragraphs 14-15:

¶ 14 ... [The applicants] submit that it was the Board's duty to have the documents they filed in evidence studied by experts, especially if it doubted their authenticity.

¶ 15 The Board had no such duty. It is enough that there be sufficient evidence before it to cast doubt on the authenticity of the order to stand trial to find that the applicants' testimony was implausible. ...

[Footnote omitted.]

The Court has examined the translation of the ration card and the ration card itself. This evidence is questionable for many reasons which I presented to the applicants' counsel. In my view, the Board's conclusion that the ration card was not sufficient evidence to establish identity was not patently unreasonable.

[29] Further, the Board's reference to the ration card was not central to its finding that the principal applicant was not credible. It served as additional evidence regarding the principal applicant's lack of credibility.

[30] For all of these reasons this application will be dismissed. Both parties stated that this application did not raise any question which should be certified. I agree.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

This application for judicial review is dismissed.

“Michael A. Kelen”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7574-05

STYLE OF CAUSE: BALJINDER KAUR VIRK ET AL. v. THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 8, 2008

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

DATED: January 15, 2008

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