

Date: 20080922

Docket: IMM-1385-08

Citation: 2008 FC 1053

OTTAWA, Ontario, September 22, 2008

PRESENT: The Honourable Max M. Teitelbaum

BETWEEN:

BHUPINDER SINGH LUTHRA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Luthra is a Sikh citizen of the Punjab region of India. He claims to have been arrested and abused by Indian police on two occasions because they wrongly believed him to have links to Sikh militants. His claim for refugee protection was denied on February 18, 2008.

[2] The applicant claims that the police learned that a well-known narcotics and weapons smuggler was visiting his cousin. They arrested the cousin in July 2003 and tortured him, but he was released after the payment of a bribe. The cousin left for another region of India and, when the police asked the applicant where his cousin was, the applicant told them he was in Dubai.

[3] In September 2004, the police arrested the smuggler. During interrogation, he told the police that he had left some of the smuggled weapons with Mr. Luthra's cousin. The police returned to the applicant's residence and, when they did not find his cousin there, arrested him. Mr. Luthra claims that he was beaten and questioned at the police station. As a result of the abuse, he told them where his cousin was and they arrested him. The applicant was released on payment of a bribe, but his cousin was not. Several months later, his cousin died. The police claimed it was suicide.

[4] Mr. Luthra decided to consult a lawyer about the treatment he had received from the police. After doing so, he was arrested on March 7, 2005 and was again questioned and beaten. Again he was released after a bribe was paid. After this, the applicant arranged with an agent to flee to Canada on a visitor's visa obtained under false pretences.

[5] The Refugee Protection Division (RPD) of the Immigration and Refugee Board found the applicant and his allegations not to be credible and dismissed his claim. The Board found it not credible that:

- a. The applicant would have been able to leave India on his own passport if he were being sought by the police for failing to report on a monthly basis over a six month period, as an emigration check was done, proven by a ministry stamp and signature;
- b. The applicant's wife and children would remain close to where they originally lived if they were at risk;

- c. The applicant would lie to officials about whether his brother lived in Canada when asked, which false information caused the RPD to find him not to be trustworthy;
- d. The medical reports had suspicious dates and no security features such as telephone numbers or addresses and were thus found to be false;
- e. Mr. Luthra had not obtained a letter from the lawyer to whom he was taking his complaint, especially as he was advised by counsel who would have known that the document was significant;

The RPD also found that the applicant had not provided clear and convincing evidence to rebut the presumption that Indian authorities would be willing and able to protect him.

[6] The applicant alleges that the RPD erred in its credibility findings and in its analysis of the state protection available to him.

[7] The respondent counters that the RPD provided clear and cogent reasons for not believing Mr. Luthra's story and that its conclusions were reasonably open to it. Furthermore, counsel submits that there was no error in the finding that the presumption of state protection had not been rebutted.

[8] Credibility findings have long been recognized by the Court as being findings of fact and therefore well within the expertise of the RPD. As such, deference is owed to the tribunal for its decision which will be overturned only if unreasonable as set out in paragraph 18.1(4)(d) of the

Federal Courts Act. The applicant's contention that the Panel member misunderstood the requirements for a finding on state protection raises an issue of law and is thus reviewable on a correctness standard.

[9] The applicant submits that the RPD erred in making adverse findings based on the continued presence of his wife and children in India, as he had not claimed that they were at risk. He further argues that his failure to disclose his brother's location at the port of entry is irrelevant to his claim and thus cannot be the basis of a credibility finding. He also contends that the Panel member's findings regarding the medical letters were absurd and based on a misunderstanding of the evidence. Finally, he argues that there was nothing in the evidence to suggest that his explanation of his meeting with the lawyer was not credible and the adverse inference drawn by the RPD on the basis of his failure to provide a letter from the lawyer was unreasonable.

[10] Counsel for the respondent notes that the first three reasons given by the RPD for finding Mr. Luthra not to be credible were not contested by him. She submits that he did state at the hearing that his wife and children could be at risk, but concedes that this is not the strongest of the credibility findings made by the Panel. The respondent argues that Mr. Luthra did not simply fail to disclose his brother's presence in Canada but directly lied at the intake interview. His failure to provide trustworthy evidence and obvious willingness to misstate the truth were the basis of the finding of incredibility. Counsel contends that the Panel member's findings about the medical letters were reasonably open to her and that she did not misunderstand the evidence. Finally, she

submits that Mr. Luthra's failure to produce corroborative evidence when it could reasonably be expected is a valid reason to find him not to be credible.

[11] Having reviewed the evidence and the transcript of the hearing, I agree with the applicant that he did not claim that his wife and children were at risk. In the passage to which the respondent refers, Mr. Luthra merely agreed that the police could harass his wife and children about where he was. This is not equivalent to claiming that they were at risk, such that the failure to remove them from danger would reasonably ground a finding that the applicant's claim of risk was not credible. That said, the other credibility findings were reasonably open to the Panel member on the basis of the evidence before her and I cannot see that her decision as a whole should be vacated.

[12] Likewise, the applicant's assertion that the RPD misunderstood the legal test for state protection is not well founded. Mr. Luthra submits that the Panel member failed to appreciate that there is no requirement to seek state protection when the agents of persecution are the police, themselves agents of the state. For this proposition, he cites *Zhuravlev v. Canada (Minister of Citizenship and Immigration)*, [2000] 4 F.C. 3, quoting from paragraph 19 as follows: "Where the state is shown to be the agent of persecution, one need not inquire into the extent or effectiveness of state protection; it is, by definition, absent."

[13] Two problems arise from this contention. First, it is clear that the RPD did not find that the state was shown to be the agent of persecution as a result of its credibility findings, as discussed above. Second, however, it is not automatic that persecution by one particular agent of the state will

result in the absence of state protection. As noted by Justice Simon Noël at paragraph 10 of *Martinez v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 343, a tribunal should not jump to the conclusion that the entire state is the persecutor on the basis of the actions of a few. Where the alleged persecutors are confined to a specific location or are rogue elements acting outside their jurisdiction, the tribunal must still assess whether it was objectively reasonable for the claimant to have sought the protection of the state.

[14] In the instant case, the Panel member considered that there were remedies available to the applicant against his alleged persecutors in India. She therefore found on the basis of his failure to seek the protection of his own country that he had not rebutted the presumption of state protection. This is not a reviewable error.

[15] I am satisfied that the panel member had sufficient evidence before him to determine that the applicant lacked credibility.

[16] The present application for judicial review is dismissed. No question of general importance was submitted for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application is dismissed.

"Max M. Teitelbaum"

Deputy Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1385-08

STYLE OF CAUSE: BHUPINDER SINGH LUTHRA v. M.C.I.

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 3, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** TEITELBAUM D.J.

DATED: September 22, 2008

APPEARANCES:

Lorne Waldman FOR THE APPLICANT

Bridget A. O'Leary FOR THE RESPONDENT

SOLICITORS OF RECORD:

Waldman & Associates FOR THE APPLICANT
Toronto, Ontario

John H. Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada