

Federal Court



Cour fédérale

Date: 20120221

Docket: IMM-4719-11

Citation: 2012 FC 230

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, February 21, 2012

PRESENT: The Honourable Madam Justice Bédard

BETWEEN:

TAJINDER SINGH MATHON

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) rendered on June 20, 2011, wherein the Board determined that the applicant was not a Convention refugee or a person in need of protection. The Board's decision is based on the applicant's lack of credibility.

[2] For the following reasons, the application for judicial review is dismissed.

I. Background

[3] The applicant is a citizen of India and is of Sikh origin. He states that he fears the police forces that suspected him of having links with terrorist militants.

[4] His claim is based on the following allegations. The applicant submitted that, in November 2005, militants came to the home (family farm) where he lived with his parents. The militants claimed to be members of the Baba Gurmeet Singh Group. They forced the family to provide them with food and stayed at the family farm for a period of approximately three hours. The applicant and his father told the village council and the police of this visit.

[5] The militants were allegedly informed that the applicant and his father told the police of their visit and they again came to the applicant's home and threatened them. They then came back once or twice.

[6] In December 2007, the police arrested the applicant to interrogate him following a bombing at a cinema in Ludhiana. The police told the applicant that the terrorist militants suspected of being involved in the bombing were hiding in the area and that the home of the applicant and his family was on a list of sympathizers who provided shelter to militants. The police detained and beat the applicant, who was released in the beginning of January 2008 after a bribe was paid.

[7] The applicant submits that following this incident, the police continued to harass him. The police went to his home three times between January 2008 and March 2009 and searched the house. In April 2009, the applicant consulted a lawyer to find out what he could do to stop the police from harassing him. The lawyer advised him not to file a complaint against the police. The police were informed that the applicant had consulted a lawyer and returned to the applicant's home. The applicant was not there, but the police ordered his mother to turn him over. The applicant was afraid and decided to leave the country. He left the family farm in April 2009 and spent two and a half months in Tandwali. Then, in July 2009, he left the country with the help of a smuggler. The applicant arrived in Canada on August 8, 2009, and made a refugee claim upon his arrival.

II. Impugned decision

[8] The Board did not believe the applicant's story that the applicant had been visited by militants or that the police had arrested him and beat him.

[9] The Board initially found that the applicant's story contained a fundamental implausibility that discredited his entire story of militants visiting the family farm: the Board determined that the applicant's allegation that militants from the group led by Baba Gurmeet Singh, the Dera Sacha Sauda group, came to his home was implausible. The Board found that, based on the documentary evidence, the Dera Sacha Sauda group was not a group of militants, but a religious group.

[10] The Board stated in its decision that the applicant's lawyer pointed out that he had not said that the militants were members of the Dera Sacha Sauda group, but that they had presented themselves as being members of this group. The Board also noted that the applicant's lawyer argued that the police had never said that the militants were from the Dera Sacha Sauda group. However, it rejected these arguments. The Board found that it was plausible that militants could falsely claim to be members of the Dera Sacha Sauda group, believing that a person like the applicant would "buy" their story. However, it found it implausible that the village council and the police could have believed that militants from the Dera Sacha Sauda group had actually come to the applicant's home. It also found it implausible that the police had not pointed out to the applicant that the visitors could not have been members of the Dera Sacha Sauda group. The Board added that the applicant had stated in his testimony that the police had labelled him as a militant because they believed that he was associated with the group led by Baba Gurmeet Singh.

[11] The Board also found that the delay between the applicant's arrest in December 2007 and the time when he decided to leave the residence in April 2009 was inconsistent with subjective fear.

III. Issues

[12] The issue in this application for judicial review is the reasonableness of the Board's decision.

[13] The applicant also raised two other issues that there was no need to examine.

[14] First, the applicant raised an issue regarding the fairness of the process, stating that the tribunal record sent by the Board was incomplete because it was missing the documentation on Punjab submitted by Jean-François Bertrand, who was representing the applicant during the hearing before the Board.

[15] On this point, I understand from the reading of the transcripts of the hearing that Mr. Bertrand regularly uses in his cases involving citizens of India a package of documents that he collected. There also appears to be a misunderstanding between him and the Board as to the requirement of submitting this package of documents as an exhibit in each of the cases he is acting in. However, from the transcripts of the hearing, it appears that the Board acknowledged that the documents in question were admitted as evidence in the record (P-9). Since these documents were not included in the tribunal record established in accordance with section 17 of the *Federal Courts Immigration and Refugee Protection Rules*, SOR/93-22, the applicant has reason to claim that the tribunal record is incomplete. I also find that no harm resulted from this situation since it is not necessary to read these documents to assess the reasonableness of the decision of the Board that dismissed the applicant's claim based on lack of credibility.

[16] Second, the applicant claimed that the Board did not address all the arguments made by Mr. Bertrand in its decision. I find that the Board did not have to address each argument made by Mr. Bertrand separately and that, further, its finding on the applicant's credibility was determinative as to the outcome of the applicant's claim. Therefore, it was not necessary for the Board to continue analyzing other arguments made by the applicant.

IV. Standard of review

[17] It is well established that the Board's findings of fact are reviewable on a standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, at para 53, (2008) 1 SCR 190).

[18] In *Aguebor v Canada (Minister of Employment and Immigration)* (1993) 42 ACWS (3d) 886 at para 4, 160 NR 315 (FCA), Mr. Justice Décary, writing on behalf of the Court, addressed the deference to be given to the tribunal's determination of the plausibility of testimony, as follows:

There is no longer any doubt that the Refugee Division, which is a specialized tribunal, has complete jurisdiction to determine the plausibility of testimony: who is in a better position than the Refugee Division to gauge the credibility of an account and to draw the necessary inferences? As long as the inferences drawn by the tribunal are not so unreasonable as to warrant our intervention, its findings are not open to judicial review. . . .

V. Analysis

[19] The applicant submits that the Board conducted an unreasonable analysis of the evidence and that it based its decision on implausibilities that were not implausibilities, which distorted its entire reasoning.

[20] First, the applicant insists that the Board's finding that the group that went to the applicant's home could not have been the Dera Sacha Sauda group is not disputed or determinative; the applicant is not arguing that the individuals were members of this group, but that they introduced themselves to him and his family as being members of this group.

[21] The applicant also criticizes the Board for having made inferences of implausibility based on the fact that the police did not tell the applicant that it was implausible that members of the Dera Sacha Sauda group came to his home. The applicant argues in this respect that he is not responsible for what the police did or did not tell him. He also argues that the Board's view—that the police should have raised concerns about the individuals' identity—is pure conjecture that has no basis in the evidence.

[22] The applicant also criticizes the Board for having erroneously attributed the following statement to him: "The claimant testified that the police had branded him as a militant because they believe that he is associated with the group Baba Gurmeet Singh." According to the applicant, this statement is central to the Board's reasoning and is inconsistent with the evidence.

[23] The applicant also criticizes the Board for not having made a distinction between the events of 2005 and those that led to his detention in 2007 and emphasizes that the events that led to his arrest are related to the bombing in 2007.

[24] Finally, the applicant submits that the Board's finding on the delay in leaving is unreasonable because it conducted a partial and incomplete analysis of the evidence. Several events took place after the applicant was arrested and tortured by the police and that the Board did not consider that: (1) when he was released, he was suffering from serious wounds; (2) he received other visits from police between his detention in 2007 and March 2009; (3) in April 2009, he consulted a lawyer; (4) the police were informed that he had consulted a lawyer and they again came to the family farm, ordering his mother to turn him over to police. These are the last events

that finally led the applicant to leave the country. The applicant argues that his explanations were reasonable and the Board erred in not considering them.

VI. Discussion

[25] I find that the Board's reasoning and findings are part of the possible outcomes based on the evidence.

[26] First, it clearly appears from the applicant's Personal Information Form (PIF) and his testimony before the Board that the events of 2005 cannot be isolated from the events that led to his arrest in 2007. The applicant stated that he feared the police forces that assaulted him because they suspected him of having links to the militants. In his PIF, the applicant alleged: "Police said that militants involved in bomb blast in cinema in Ludhiana were hiding in our area and our house was already on police list for providing shelter to militants."

[27] Further, the applicant was on the police list because of the events that occurred in 2005 and in 2006 (visits from militants to his home); thus, these events are the very basis of the suspicions that led the police to arrest and interrogate him at the time of the 2007 bombing and are a central element of his story. Because he was on a list of militant sympathizers, the applicant was of interest for the police. For the police to have placed the applicant's name on a list of sympathizers, it is logical to think that they believed that the applicant had links with militants. If not, why arrest and assault him to draw information from him about where the militants suspected of being perpetrators of the bombing were located? Accordingly, there are two possible assumptions: either the police believed that the applicant's visitors in 2005-2006 were members of the Dera Sacha Sauda group, or

they believed that they were members of another group that was a militant group. In either case, the identity of the group was a relevant and significant element.

[28] The applicant submitted that he never stated that the police had linked him to the Dera Sacha Sauda group and that he had only stated that the militants had introduced themselves in that manner. He further submitted that he never said that the police had labelled him as having links with Baba Gurmeet Singh's group.

[29] Moreover, a reading of the transcript of the hearing shows that the applicant's testimony on this topic was not very clear and that the following passage from his testimony supports the Commission's assertions. When questioned at the beginning of the hearing about the reasons that led him to claim refugee status in Canada, the applicant answered that his life was in danger because of the police. In answering the following question on the reasons for which his life was in danger, the applicant stated:

Because the police was accusing and saying that you have links with terrorists. There were saying that incidents of terrorism and robberies that were taking place in this area that you were supporting them and that you are giving them shelter as well. At first because of the police brutality my father died and after that they began to harass me. Any bomb explosion or any incident which took place in the area they would arrest me and take me and they would question me.
(Page 347 of the Tribunal Record)

[30] The applicant was then questioned regarding the identity of the group that he was suspected of being affiliated with:

Q: Which terrorist group were you suspected to be affiliated with?

A: They were saying Gurmeet Ram Rim (ph).

...

Q: Understand my question was does the police believe that you are linked with this Gurmeet Ram Rahim group?

A: This is the accusation which the police put against us that you have links to them.

(Pages 347-348 of the Tribunal Record.)

[31] It is not unreasonable to infer from these answers that the applicant was of the opinion that the police suspected that he maintained links with the Dera Sacha Sauda group.

[32] Later, during his testimony, the applicant stated that the police had not said which group they suspected he maintained links with. However, it is important to note that this question was asked relating to the events of December 2007 and the people suspected of being the perpetrators of the bombing:

Q: At the times, all the times when you were arrested by the police I think it was twice, am I correct?

A: No, once.

Q: It was just once, okay, from the 29th of December to the 5th of January.

A: Yes

Q: Okay. Did the police ever say what militants they thought you were involved with?

A: They did not tell us.

Q: So they just said militants in general?

A: They said that the terrorists that set off the bomb blasts in Ludhiana on the 14th of October 2007 in the Cinema, that those terrorists are hiding in this area and that they received news that

those terrorists had come in this area. And your house is already in the police list for having given shelter to terrorists before.
(Page 375 of the Tribunal Record)

[33] In my view, one thing is clear: the identity of the suspected group of militants that visited the applicant in 2005-2006 is an entirely relevant element in trying to understand why he was of sufficient interest for the police to arrest him in 2007, when his name had been put on a list of persons suspected of having links with terrorist militants. In such a context, and in light of the evidence, the Board's findings—that it was implausible for the police to believe that the visitors were members of the Dera Sacha Sauda group—appear to me to be reasonable. It is equally reasonable that the Board found it implausible that the police had not told the applicant that the visitors could not have been members of the Dera Sacha Sauda group. It is illogical to believe that the police did not believe that the applicant's visitors were members of the Dera Sacha Sauda group, but that it still believed that the applicant's visitors were members of some group of militants without raising the question of his visitors' identity with him. The burden of proof was on the applicant. The Board found that the silence of the police was implausible and this finding appears to me to be reasonable.

[34] The Board's finding regarding the delay before leaving is also reasonable. The applicant submits that the Board failed to consider the events that occurred after January 2008 and specifically those of March 2009 to explain the delay and the circumstances of his departure. I agree that the Board did not address all the elements raised by the applicant, but the elements used by the Board were sufficient to justify its decision and make it reasonable. The applicant continued to live at the family farm after he was assaulted by the police although the police continued to harass him. This

alone could reasonably support the finding that the applicant's conduct was inconsistent with subjective fear.

[35] For all of these reasons, I find that the Board's assessment of the evidence and the implausibilities that it raised and the conclusions that it drew as to the applicant's credibility fall within the range of possible outcomes in respect of the applicant's allegations and the evidence submitted. The Court's intervention is not warranted.

[36] The parties did not propose a question that warrants certification and no question arises in this file.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed. No question is certified.

“Marie-Josée Bédard”

Judge

Certified true translation
Catherine Jones, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-4719-11

STYLE OF CAUSE: TAJINDER SINGH MATHON v THE MINISTER OF
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PLACE OF HEARING: Montréal, Quebec

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**REASONS FOR JUDGMENT
AND JUDGMENT:** BÉDARD, J.

DATED: February 21, 2012

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