

Federal Court



Cour fédérale

Date: 20171012

Docket: IMM-1839-17

Citation: 2017 FC 902

Ottawa, Ontario, October 12, 2017

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

JASKARANBEER SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant, Jaskaranbeer Singh (the “Applicant”), seeks judicial review of an Immigration Officer’s (the “Officer”) decision to reject his application for a pre-removal risk assessment (“PRRA”) under section 112 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

II. Background

[2] The Applicant is a 23-year old male from Dhandowal, India, in the state of Punjab. He arrived in Canada in 2013.

[3] The Applicant claims that he is in danger if returned to India, because he is a target of Kulwant Singh, his father's cousin, who is a politically-connected, powerful citizen of the Punjab region. Kulwant Singh is said to be largely responsible for the Applicant's arrest and torture by police, the detention of the Applicant's brother, and the murder of the Applicant's father and step-brother. Kulwant Singh is apparently motivated by serious political disagreements with the Applicant's father; he is affiliated with the ruling Akali Dal Badal party, whereas the Applicant's father was a member of the minority Congress Party. He is also said to be motivated by his desire to acquire property owned by the Applicant's family.

[4] The Applicant himself has no political affiliations, and is not politically active. However, on October 16, 2012, police came to his home looking to arrest his father. Upon learning that his father was not home, the police arrested the Applicant instead, accusing him of "working with militants." The Applicant was detained for two days, and claims he was tortured by the police while in custody. The Applicant believes that the police's actions were motivated by Kulwant Singh.

[5] In November 2012, the Applicant fled to New Delhi with his father. They lived there without incident until April 2013, when the Applicant left for the United States ("US") and

eventually arrived in Canada to claim refugee protection. The Applicant claimed that if he returned to India he would be arrested because the police were unable to arrest his father, who they accused of assisting militants. He also claimed that he was at risk at the hands of Kulwant Singh.

[6] The Refugee Protection Division (“RPD”) rejected the Applicant’s claim, holding that there was insufficient evidence that the Applicant’s father was persecuted for his political beliefs. The RPD also noted that the Applicant travelled to the US before arriving in Canada, and then waited for 2-months before claiming protection – which indicated a lack of fear. Finally, the RPD held that there was an internal flight alternative (“IFA”) to New Delhi, because the Applicant did not prove that he had a profile that would warrant pursuit by police throughout India.

[7] The Refugee Appeal Division (“RAD”) allowed the Applicant’s appeal, but the Applicant was again unsuccessful at a re-examination before the RPD. This time, the RPD focused on the Applicant’s failure to explain why Kulwant Singh, or the police, would go to such an extreme as to kill him, just because they could not find his father, as well as contradictions in the Applicant’s timeline. The RPD again found an IFA in New Delhi. The RPD did not believe that Punjab police would search for the Applicant in New Delhi, given that he had no political affiliations, and given that Kulwant Singh’s political party is local to the state of Punjab, and has no national influence. The RAD affirmed this decision. The Applicant challenged this decision to the Federal Court, but leave was denied.

[8] On November 11, 2016, the Applicant's brother was detained by police. The Applicant believes that this was done at the request of Kulwant Singh.

[9] On December 3, 2016, the Applicant's father and step-brother were killed in a road-side incident in Punjab. The Applicant believes that his father was lured to Punjab to retrieve his brother from police custody, and that he was then intentionally struck by a moving vehicle while walking along the road, along with the Applicant's step-brother. The Applicant further believes that the police are actively covering up the details of this murder, and have written off the deaths as a motor-vehicle accident. The Applicant believes that Kulwant Singh is ultimately responsible.

[10] The Applicant provided details of his situation and submitted a number of documents to be considered by the Officer, including:

- A translated First Information Report ("FIR") from Indian police, documenting that the Applicant's brother had an altercation with police in November 2016.
- Death certificates and post-mortem reports for the Applicant's father and step-brother
- An affidavit from the Indian police, obtained by the Canadian Border Services Agency ("CBSA") which states that the deaths of the Applicant's father and step-brother resulted from the Applicant's father accidentally driving his car into a tree, and that this is corroborated by the Applicant's brother, who was a witness. The Applicant claims that this is evidence of a cover-up, because his brother was in police custody at the time.
- A report authored by Dr. Michael Shkrum, a Canadian forensic pathologist. Dr. Shkrum reviewed the post-mortem reports of the Applicant's father and step-brother. Dr. Shkrum's report questions the accuracy of the police narrative, and raises the possibility that they were pedestrians struck by a car or truck.
- Documentary evidence about conditions in India, including with respect to police corruption.
- An affidavit from an Indian lawyer specializing in human rights, Navkiran Singh detailing police behavior towards returnees who the police wish to locate, detain and torture

[11] The Applicant also submitted a number of documents which had already been submitted and examined by the RPD, and therefore were explicitly *not* considered by the Officer. These included a note from a doctor in India, dated October 4, 2013, which details the Applicant's injuries while in police custody.

[12] The Officer originally rendered a decision in this matter on March 2, 2017. This decision did not make reference to additional documents which the Applicant had filed in late February, and therefore an addendum to the decision was issued on May 10, 2017. The Applicant was not aware of the addendum at the time of writing their first memorandum for leave and judicial review. Upon learning of it, Applicant's counsel brought a motion to file a further memorandum, on consent, which was granted by Prothonotary Milczynski on August 22, 2017.

[13] The Applicant's claims before the Officer were essentially the same as they were before the RPD: he would be targeted by the police, as well as Kulwant Singh, were he to return to India. He claimed that his father and brother were murdered, and that if he were to go back, it would be "his turn."

[14] The Officer found that the evidence did not substantiate the Applicant's claims that his father and step-brother were murdered. While the Officer accepted that the two individuals were deceased, it was noted that the death certificates did not indicate did the cause of death. The Officer acknowledged the report from Dr. Shkrum and its conclusions, but also took note of its internal limitations – the report itself acknowledges that it was based *only* on post-mortem reports from India, some parts of which were indecipherable, and which contained no pictures.

Moreover, the Officer considered that even if the Applicant's father and step-brother were struck by a vehicle while walking, this would not demonstrate that they were murdered. The Officer also noted that the affidavit from the Indian police, obtained by the CBSA, which listed the cause of death as an accident, and which indicated that the Applicant's brother was a witness.

[15] The Officer similarly found that the Applicant did not establish that his brother had been detained at the time of his father and step-brothers' deaths, and hence could not have been a witness. First, the Applicant only provided a translated copy of the FIR, not the original. The Applicant did not explain how he obtained it. Second, the FIR is dated November 14, 2016, and documents an altercation between the Applicant's brother and police. It does not indicate the length of the Applicant's detention, or state that he would continue to be detained until the time of the incident, on December 3, 2016.

[16] Finally, the Officer reviewed the documentation about India and found that the Applicant had not successfully refuted the conclusion of the RPD, who had found that the Applicant did not have the profile of a person considered of interest for Indian authorities, or that a background check in New Delhi would indicate that he was wanted by local Punjab police. Therefore, the Applicant had an IFA in New Delhi. While recognizing evidence of human rights abuses by Indian police, the Officer found that the Applicant had not demonstrated that he was personally at risk.

[17] The Officer rejected the Applicant's application, concluding that the Applicant did not establish the existence of a personal and objectively identifiable risk, or that an IFA did not exist.

The Applicant was found not to have demonstrated more than a mere possibility of being subjected to persecution with respect to section 96 of the *IRPA*, nor had he established a danger of torture, a threat to life, and a risk of cruel and unusual treatment under section 97, were he to return to India.

III. Issues

[18] The issues are:

- A. Was the Officer's treatment of the evidence unreasonable?
- B. Did the Officer engage in a selective analysis of the documentation and ignore contradictory evidence to find that state protection and an IFA exist for the Applicant?

IV. Standard of Review

[19] The standard of review is reasonableness.

V. Analysis

A. *Was the Officer's treatment of the evidence unreasonable?*

[20] The Applicant argues that the Officer ignored certain evidence, and paid insufficient attention to other evidence, thus rendering the decision unreasonable.

(1) Dr. Shkrum's Report

[21] The Applicant argues that, despite acknowledging its existence, the Officer ignored the actual contents of Dr. Shkrum's report, and that it is trite law that simply "listing evidence" does

not mean it has been considered. Instead of properly considering the contents of the report, the Applicant argues that Officer simply parroted the limitations Dr. Shkrum himself sets out (that there were no photos, and that certain parts of the post-mortem reports were illegible). The Applicant argues that if the report had been properly considered, the Officer would have understood that the account offered by the police – that the deceased were killed when their own vehicle struck a tree – was “physically impossible”, given the injuries sustained. According to the Applicant, Dr. Shkrum’s report confirms that they were struck by a vehicle while on foot.

[22] I find that the Officer’s treatment of the report was reasonable. Contrary to the Applicant’s submission, the Officer did much more than simply “list” the evidence. The Officer considered the report’s contents, including the author’s admitted limitations, as well as the other evidence, and was not persuaded that the Applicant’s father and step-brother were murdered by a vehicle.

[23] When the substance of the report is reviewed in context, it is apparent that the Officer treated it reasonably. The Applicant’s argument amounts to a request that the Court re-weigh this evidence, which is not the role of the Court.

(2) The Indian Police Affidavit and the Applicant’s Brother’s Detention

[24] The Applicant also argues that it was unreasonable for the Officer to ignore the unreliability of the affidavit provided by Indian police, which states that the Applicant’s brother was a witness to the death of his father and step-brother. The Applicant submits that his brother was in police detention at the time, and therefore the police affidavit is clear evidence of a police

cover-up. According to the Applicant, the fact that the police would go to such lengths to cover-up his father's murder underscores the risk he faces were he to return to India.

[25] The Officer considered the Applicant's argument, as well as the November 14, 2016 FIR documenting a police encounter with his brother in November, but held that the Applicant had not demonstrated that the Applicant's brother was detained at the time of his father's death, on December 3, 2016. The Applicant argues that this was unreasonable, because he was in immigration detention at the time the PRRA was filed, and thus should not be expected to obtain extensive evidence regarding his brother's detention. The Applicant further argues that it is plausible that his brother was detained on December 3, 2016, given that he was in detention in November, 2016.

[26] It was not unreasonable for the Officer to consider the Indian police affidavit, or to disregard the Applicant's argument that it is evidence of a police cover-up – which is at best speculative. Further, it was not unreasonable for the Officer to note that the Applicant could not demonstrate that his brother was in detention at the time of his father's death. The November 14 2016 FIR says nothing about the length of possible detention.

[27] The onus is on the Applicant to prove his case and provide sufficient evidence to support his application (*Shire v Canada (Minister of Citizenship and Immigration)*, 2014 FC 795 at para 47).

(3) The October 4, 2013 Doctor's Note

[28] The Applicant further argues that it was an error for the Officer to ignore the torture he faced while in police custody, as corroborated by a doctor's note dated October 4, 2012. While acknowledging that the Officer ignored the report *because* it formed part of the material before the RPD, the Applicant argues that this was an error, because it goes to the pattern of "nefarious activities by the police" against him, along with the evidence of the "cover-up." The Applicant takes the position that the Court should look at these issues as part of a continuum, which should have been assessed along with the new evidence (*Aladenika v Canada (Minister of Citizenship and Immigration)*, 2017 FC 565 at para 18).

[29] Section 113(a) of the *IRPA* states that "an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection..." (emphasis added). The evidence of the Applicant's torture by police was not new, nor did it arise after the RPD's rejection. Moreover, I fail to see how there is a nexus between the prior events and the Applicant's alleged risk sufficient to establish such a continuum.

[30] The RPD had credibility concerns with the Applicant generally and, while it does not appear to have specifically dealt with the doctor's note, it found that the Applicant was exaggerating the extent of his involvement with the police. Moreover, the Officer did not accept the Applicant's speculative assertion that the police "covered up" his father and step-brothers' murders – that was a reasonable finding and as such, there was no continuum of persecution for the Officer to consider.

B. *Did the Officer engage in a selective analysis of the documentation and ignore contradictory evidence to find that state protection and an IFA exist for the Applicant?*

[31] The Applicant argues that the PRRA made contradictory findings about the availability of an IFA: on the one hand finding that the Applicant did not meet the profile of someone who would be of interest to Indian authorities generally, while also holding that “regular verification would inevitably lead the authorities in Punjab to trace the Applicant.”

[32] The Applicant also argues that the Officer’s conclusion regarding the IFA was generally unreasonable. He argues that the affidavit of Navkiran Singh, an Indian human rights lawyer, as well as country condition reports make clear that the Applicant will likely be detected, detained, and tortured by authorities, regardless of his location in India.

[33] The Respondent argues that the affidavit of Navkiran Singh, which was prepared as part of a different claim from a different individual, is focused on the police’s treatment of high-profile activists. Therefore, the affidavit does not assist the Applicant, who has no history of political involvement or activism. The Respondent also reiterates the conclusions of the RPD: Kulwant Singh’s political party is local to Punjab and has no significant national influence, the Applicant has no outstanding warrants or charges against him, and the Applicant had no problem leaving India even though his fingerprints were checked at the airport prior to departure. Finally, the Respondent points out that one piece of documentary evidence – an IRB response to information request pertaining to the prevalence of background checks in India – predates the Applicant’s failed refugee claim and appeal, and therefore is not relevant to the PRRA assessment.

[34] The Officer found that the Applicant had not submitted sufficient proof to refute the conclusion of the RPD, which held that the Applicant did not have the profile of a person considered of interest for the Indian authorities, or that a background check would reveal him as being wanted by the Punjab police. In my view, this was reasonable.

[35] The objective evidence led by the Applicant, taken in its best light, suggests that the Applicant could be detected by authorities while undergoing a background check to obtain housing or employment, *if he were* “of interest” or “wanted.” However, the Applicant lived in New Delhi without incident from November 2012 until April 2013, has no history of political or human rights activism, has no outstanding arrest warrants, and Kulwant Singh’s political party has no national influence. He was also able to leave New Delhi without incident, despite undergoing a finger-print scan.

[36] Moreover, the Applicant’s argument that he is in danger in New Delhi is conditional on the premise that the police in Punjab are actually looking for him, or that they would seek him out were he to be detected in New Delhi. The only new evidence the Applicant has led to establish this condition was his claim about the cover-up of the murder of his father and step-brother – a claim which the Officer reasonably rejected. The Officer’s conclusion that the Applicant did not successfully rebut the RPD’s conclusion on this point was reasonable.

[37] The Applicant also argues that the Officer’s conclusion on the availability of state protection was unreasonable, because it involved selectively reading the documentary evidence

which emphasized the “good news” about India while ignoring the evidence about police violence and lawlessness, including evidence about “covering up” murders.

[38] The Officer did not selectively ignore the negative evidence about India contained in the US DOS Report. The Decision quotes from the Executive Summary of the US DOS report, including the following:

“The most significant human rights problems involved police and security force abuses, including extrajudicial killings, torture and rape; corruption remained widespread and contributed to ineffective responses to crimes...

Other human rights problems included disappearances hazardous prison conditions, arbitrary arrest and detention...”

[39] The Officer went on to accept that India suffers from “human rights infringements reported with regards to excessive use of force by security forces, deficiencies in due process and the suppression of civil liberties.”

[40] The Officer reasonably held that the Applicant did not submit sufficient “personal documents to demonstrate that he is personally at risk,” even accounting for the general problems with police misconduct in India. The “personal evidence” submitted by the Applicant to show that he was at risk consisted of a human rights lawyer’s affidavit, which did not address the Applicant’s personal situation, and the collective evidence regarding the police cover-up, which was not accepted. In my view, the Officer’s decision on this issue was also reasonable.

JUDGMENT in IMM-1839-17

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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