

Federal Court



Cour fédérale

**Date: 20180530**

**Docket: IMM-5104-17**

**Citation: 2018 FC 561**

**Montreal, Quebec, May 30, 2018**

**PRESENT: Mr. Justice Grammond**

**BETWEEN:**

**SWARAN SINGH**

**partie demanderesse**

**et**

**LE MINISTRE DE LA CITOYENNETÉ ET DE  
L'IMMIGRATION**

**partie défenderesse**

**JUDGMENT AND REASONS**

[1] Mr. Singh, a citizen of India and an adherent of the Sikh faith, asserts that he is a Convention refugee or a protected person under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. He says that he was arrested and beaten on two occasions by the police of the state of Jammu and Kashmir, who believe he is related to Muslim terrorist groups. The Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB] rejected his claim,

because it found that Mr. Singh had an “internal flight alternative” [IFA] or, in other words, that he could escape persecution by moving to other places in India, in particular Delhi or Mumbai.

[2] Mr. Singh now seeks judicial review of this decision. He argues that the RPD incorrectly applied a previous decision of the Refugee Appeal Division [RAD] which was designated as a jurisprudential guide, because that decision referred to persons suspected of being Sikh activists in the state of Punjab, rather than persons suspected of helping Muslim terrorists in the state of Jammu and Kashmir. I am dismissing his application, because the RPD reasonably applied the jurisprudential guide and made sure that the material facts of the present case and those of the jurisprudential guide were sufficiently similar before doing so.

[3] To demonstrate why this is so, I first examine the sources and justifications of the concept of jurisprudential guide. I then describe the decision that was designated as a jurisprudential guide in this case. Lastly, I assess Mr. Singh’s arguments to the effect that the RPD should not have followed that guide.

[4] IRPA creates a system for the adjudication of a large number of asylum claims. Under such a system, consistency in the treatment of similar claims is an important objective. Indeed, the rule of law requires that the law be evenly applied to everyone. Attention to this issue is particularly important given the deference this Court must show towards decisions of the IRB. Conflict among decisions of the IRB is not, as such, a ground for judicial review: *Domtar Inc. v Quebec (Commission d’appel en matière de lésions professionnelles)*, [1993] 2 SCR 756; *Wilson v Atomic Energy of Canada Ltd.*, 2016 SCC 29, [2016] 1 SCR 770. To ensure consistency in

decision-making, section 159(1)(h) of IRPA enables the chairperson of the IRB to “issue guidelines in writing to members of the Board and identify decisions of the Board as jurisprudential guides.”

[5] The IRB has issued a policy (Policy no. 2003-07) on the use of jurisprudential guidelines. It mentions that guidelines may address questions of law or questions of mixed fact and law, including questions related to the conditions in certain countries. As to the effect of guidelines, the policy states this:

Although not binding, members are **expected to follow guidelines**, unless compelling or exceptional reasons exist to depart from them.

A member must **explain in his or her reasoning** why he or she is not following a set of guidelines when, based on the facts or circumstances of the case, they would otherwise be expected to follow them.

(emphasis in original)

[6] Hence, in the application of jurisprudential guidelines, IRB members are expected to follow a methodology similar to the process through which common law courts apply precedent. They must identify the material facts of the decision that has been designated as a jurisprudential guide and assess whether similar facts are present in the case before them, which would justify the same outcome, or, conversely, if the facts are materially different, which would justify not following the guide.

[7] I will simply add that in doing so, IRB members are not required to address every minute factual difference in their reasons. Their reasons remain subject to the standard of review

outlined in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708.

[8] According to the policy outlined above, the chairperson of the IRB designated Decision MB6-01059/60 of the RAD as a jurisprudential guide. That decision deals with a Sikh couple from the state of Punjab, in India, who were arrested and beaten by police, apparently because they were suspected of helping persons who were trying to hide weapons and ammunition. The main issue was whether the couple had an IFA in Delhi or Mumbai. The couple argued that it did not, because the Punjab police could find them anywhere in India. The RAD disagreed and held that Delhi and Mumbai constituted appropriate IFAs. In reaching that conclusion, the RAD reviewed several responses to information requests issues by the IRB's research directorate. Those responses dealt with the channels of communication between India's police forces, the likelihood that a person wanted in one state would be found in another state, the impact of new technologies on the ability of police forces to communicate among themselves, the fact that landlords are required to register their tenants with the local police and the general situation of Sikh communities in large Indian cities.

[9] In this case, the RPD applied the jurisprudential guide, as it came to the conclusion that the facts were quite similar. The RPD noted that the guide dealt with persons who came from Punjab, rather than Jammu and Kashmir. Nevertheless, the RPD noted that both situations were similar, as they both involved allegations of unfounded arrests and police attempts to obtain information about the applicant's friends or acquaintances (RPD decision at para 11).

[10] Mr. Singh argues that it was unreasonable for the RPD to apply the jurisprudential guide, because the guide applies to persons coming from Punjab, whereas he is from Jammu and Kashmir. He says that the persons involved in the case that gave rise to the jurisprudential guide were suspected of helping Sikh activists, whereas he is suspected of helping Muslim terrorists, which would be taken much more seriously by the police and security forces. I am unable to agree with this argument. It is within the RPD's role to assess the degree of similarity between the facts of the jurisprudential guide and those of the case before it. The RPD's decision in this regard is reasonable. In fact, the main considerations behind the jurisprudential guide related to the degree of communication between police forces across India and the conditions in major cities such as Delhi or Mumbai. The state of origin of the persons concerned does not appear to be a material fact. Moreover, to the extent that Mr. Singh claims that the police thought that he had links to Muslim terrorism, the RPD noted that this appears to be inconsistent with the fact that he was released shortly after his arrest (RPD decision at para 13).

[11] Mr. Singh also took issue with the validity of the reasoning behind the jurisprudential guide. Before the RPD, his counsel submitted written arguments seeking to establish that the jurisprudential guide offered a one-sided view of the country documentation. She also submitted additional information concerning tenant checks in large cities. The RPD reviewed those documents, but came to the conclusion that it was legitimate for the jurisprudential guide to reach a particular conclusion despite the contradictions in the evidence. In any event, the RPD emphasized that it was of the view that Mr. Singh had an IFA in Delhi or Mumbai.

[12] In my view, it was reasonable for the RPD to proceed in this manner. As mentioned above, RPD members should normally follow the jurisprudential guides. The system contemplated by section 159(1)(h) of IRPA would not function efficiently if the merits of the jurisprudential guides were systematically questioned. Of course, it remains open to an applicant to try to prove a change in country conditions that renders a jurisprudential guide obsolete. In the present case, however, the most recent information submitted on behalf of Mr. Singh is a response to an information request dated May 2016, which was considered by the RAD when it made the decision that was designated as a jurisprudential guide.

[13] Therefore, the RPD's decision was reasonable. The application for judicial review will be dismissed.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is dismissed;
2. No question is certified.

"Sébastien Grammond"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-5104-17

**STYLE OF CAUSE:** SWARAN SINGH v MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

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

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