

Federal Court



Cour fédérale

Date: 20190227

Docket: IMM-282-18

Citation: 2019 FC 241

Ottawa, Ontario, February 27, 2019

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

AMRITPAL SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Amritpal Singh, is a citizen of India. He arrived in Canada on July 8, 2011 and made a refugee claim on the basis of his fear of being arrested and killed if he is returned to his country of origin. At the Applicant's refugee hearing on November 7, 2017, minimal evidence was submitted to prove his identity. The Applicant, who was represented by counsel, said he did not think about bringing other evidence such as his birth certificate, his

driver's licence from India, or to ask his family friends residing in Canada to testify at the hearing. The Refugee Protection Division ("RPD") of the Immigration and Refugee Board rejected his refugee claim on the basis that he failed to establish his identity.

[2] On January 18, 2018 the Applicant applied to this Court for judicial review of the RPD's decision. I am dismissing this application for the following reasons.

II. **Facts**

A. *The Applicant*

[3] The Applicant is a 27 year old citizen of India. According to his Basis of Claim ("BOC"), he attended an anti-Sikh Ashutosh gathering on June 15, 2011 with his family and friends in order to prevent those gathered from preaching against Sikh religion. The police told the Applicant and those with him to leave, "otherwise they would be beaten and locked." But instead of leaving, they began to argue with the police and so the police Lathi charged the group. The Applicant says he was able to run away and hide from the police, but that he had to stay in hiding because he is Sikh. He believes that if he was arrested he will never be released or will be beaten to death. Eventually, the Applicant hired a travel agent to help him travel to Canada. He arrived in Toronto on July 8, 2011.

[4] The original date scheduled for the Applicant's refugee hearing was May 8, 2015. Numerous adjournments were allowed by the RPD for various reasons. At two of the rescheduled hearings (July 14, 2017 and September 20, 2017), the RPD advised the Applicant that he would need to submit documents, especially identity documents. At the July adjournment, the RPD member told the Applicant that any identity document would do, it "just needs to be something that shows you are actually in fact Amritpal Singh, because I don't even

have a passport on file.” At the September adjournment, a different RPD member also explained that his Canadian licence would be insufficient on its own to establish identity.

[5] The Applicant’s full refugee hearing did not occur until November 7, 2017. Several documents were submitted the day of the hearing despite a prior warning by the RPD that documents needed to be submitted at least 10 days prior to Applicant’s refugee hearing. Evidence submitted in the Applicant’s file included: a document from the Office of the District Transport Officer, the Applicant’s Canadian driver’s licence, an affidavit signed by four friends who reside in India who have known the Applicant for fifteen years, a partially translated police information report, a card from an income tax department in India, a package from Citizenship and Immigration Canada, the Applicant’s original BOC, an amended BOC, and the National Documentation Package for India dated September 14, 2017.

[6] Upon the RPD’s review of this evidence, it explained it could not accept the police report because it was untranslated. The RPD also noted that the Income Tax Card did not have a picture, and it spelled his name as two words instead of one word. At first the Applicant said that was a mistake, but then clarified that his name is written as one word in Canada and as two words in India. However, the RPD pointed out that the joint affidavit was from India but it spelled his name as one word.

[7] The Applicant said he did not think to bring other identity documents, such as a birth certificate, or to ask family friends who reside in Canada to testify at his hearing. He also told the RPD he lost his Indian driver’s licence and forgot to request a new one.

[8] The RPD rejected the Applicant's explanation about why different documents spell his name differently, and found the Applicant's reasons for failing to submit sufficient evidence was not reasonable. In reaching this conclusion, RPD pointed out that the Applicant was represented by counsel since at least May 2015, and he had been specifically instructed to submit more identity documents because a Canadian driver's licence would be insufficient to establish his identity.

[9] As a result, the RPD found that the Applicant failed to establish his identity on a balance of probabilities. The Applicant obtained new counsel and filed an application for judicial review on January 18, 2018.

III. Issue and Standard of Review

[10] The standard of review of the RPD's identity findings is reasonableness (*Zheng v Canada (Citizenship and Immigration)*, 2008 FC 877 at para 13; *Bagire v Canada (Citizenship and Immigration)*, 2013 FC 816 at para 18). Therefore, the issue in this case is whether the RPD's identity finding is reasonable.

IV. Analysis

A. *Is the RPD's identity finding reasonable?*

[11] At the judicial review hearing, the Applicant argued that the RPD erred by dismissing the joint affidavit without considering the identification evidence that it contains, but also conceded that the joint affidavit is not primary identity evidence. The Applicant submits this affidavit corroborates information such as where he lived in India as well as the name of his father.

Therefore, according to the Applicant, the RPD was required to go through that affidavit and draw some conclusions about the information it contains.

[12] The Respondent agrees that the reference to the Applicant's father's name in the affidavit (Gurdarshan Singh) matches the name of the father in the Applicant's BOC. But the Respondent also argues that, on its own, the affidavit could not establish the Applicant's identity on the requisite evidentiary standard (a balance of probabilities).

[13] As this Court recognized in *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at paragraph 48 [*Rahal*], identity is a core function of the RPD:

[48] The issue of identity is at the very core of the RPD's expertise, and here, of all places, the Court should be cautious about second-guessing the Board. In my view, provided that there is some evidence to support the Board's identity-related conclusions, provided the RPD offers some reasons for its conclusions (that are not clearly specious) and provided there is no glaring inconsistency between the Board's decision and the weight of the evidence in the record, the RPD's determination on identity warrants deference and will fall within the purview of a reasonable decision. In other words, if these factors pertain, the determination cannot be said to have been made in a perverse or capricious manner or without regard to the evidence.

[14] As explained in *Rahal*, there must be some reason for this Court to second-guess the RPD's identity finding. The Respondent argues that the decision satisfied the *Rahal* requirements because the record indicates that the RPD considered all the evidence, including the joint affidavit. In addition, the Respondent pointed the Court to the transcript where the parties discussed the joint affidavit at the refugee hearing.

[15] I must agree with the Respondent. On judicial review, the Court considers whether the RPD reasonably underwent an assessment of the evidence that was before it. Of course, I have

no doubt that further evidence of the Applicant's identity exists. For example, the Applicant said he has family friends who reside in Canada who could have testified at his hearing, and he could have submitted his Indian driver's licence or birth certificate to the RPD. Yet despite the availability of this evidence, these documents were not submitted as identity documents before the RPD. In this case, the RPD was only provided with the Applicant's Ontario driver's licence, a copy of the card from India's Income Tax Department, and the joint affidavit. And as pointed out by the Respondent, the transcript shows that the affidavit was discussed by the RPD at the refugee hearing. The reasonableness of the RPD's decision is determined by reviewing the decision in light of the evidence that was before the decision maker, not the evidence that could or would have been submitted had proper care and attention been paid to this Applicant's identity documents.

[16] Overall, the RPD's decision demonstrates reasons that are consistent with the record before it, as well as with the weight of the evidence submitted. From the transcript it is also clear that the RPD repeatedly reminded the Applicant—who was represented by different counsel at the refugee hearing than on this judicial review—to bring sufficient identity documentation. The RPD's decision meets the requirements of *Dunsmuir v New Brunswick*, 2008 SCC 9, and I will dismiss this application for judicial review.

V. **Certified Question**

[17] Counsel for both parties were asked if there were questions requiring certification. They each stated that there were no questions arising for certification and I concur.

VI. **Conclusion**

[18] The decision is reasonable and does not warrant this Court's intervention. This application for judicial review is dismissed.

JUDGMENT in IMM-282-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. There is no question to certify.

"Shirzad A."

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-282-18

STYLE OF CAUSE: AMRITPAL SINGH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 17, 2018

JUDGMENT AND REASONS: AHMED J.

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