Date: 20060531

Docket: IMM-6684-05

Citation: 2006 FC 669

Vancouver, British Columbia, May 31, 2006

Present: The Honourable Mr. Justice Martineau

BETWEEN:

KIRPAL SINGH

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The applicant is contesting the lawfulness of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated October 5, 2005, that he is not a "Convention refugee" or a "person in need of protection" within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

REFUGEE CLAIM

[2] The applicant is a citizen of India. In his Personal Information Form (PIF), he says that he has been a member of the All India Sikh Student Federation (AISSF) since April 2001. He was allegedly involved in various demonstrations and also spoke out against the police, which brought him to the police's attention. Having said that, the incidents that prompted him to leave India took place in the summer of 2003. The applicant alleges that during that period he received a visit from his cousin's wife, one Rasal Singh. Rasal Singh had visited the applicant seven or eight times in the preceding ten years. Apparently, Rasal, who had been in hiding since 2002, was suspected by the local police of being associated with militants. During his last visit, Rasal was accompanied by two friends; the three individuals were armed. Rasal then asked that they be given shelter. The applicant refused but he changed his mind after being threatened by one of the three individuals.

[3] That said, the applicant's neighbour, a police officer by the name of Bakshish Singh, allegedly saw the three individuals arrive at the applicant's farm. He then hastened to alert the local police. A raid followed, but the three individuals were able to escape. The applicant claims to have been interrogated and tortured by the police for several days. On April 13, 2004, he was once again arrested and tortured. His neighbour, the police officer, then told him that militants had been arrested and that they said that they had hidden weapons in the applicant's fields, after they had bought his silence. During the same interrogation, he was persuaded to quit the AISSF. He was released several days later after paying a bribe.

[4] In July 2004, the applicant's police officer neighbour died in a car accident. The police then suspected that the applicant had been involved in this fatal accident. He was tortured once again. Afterwards, the applicant consulted counsel in order to stop this conduct. The police nevertheless intercepted him a few days later. They accused him once again of orchestrating his neighbour's death. He was tortured before being released a few days later, again after paying a bribe.

[5] The applicant also alleges that his family was physically abused by the police in January 2005. They went to the applicant's farm when he was absent. The applicant's wife and father were also beaten. It was then that the applicant decided to flee India using false papers.

IMPUGNED DECISION

[6] In the impugned decision, the Board determined that the applicant lacked credibility. It was of the opinion that the applicant often contradicted himself, that his story was sometimes extraordinary and that overall it was not plausible. In particular, the Board did not find it plausible that Rasal Singh, an individual suspected to be associated with militants, would have chosen to ask the applicant for shelter in the specific circumstances of the matter. The Board based this determination on certain inconsistent passages from the applicant's testimony on Rasal Singh's knowledge of the identity of the applicant's police officer neighbour. The Board was also of the opinion that the applicant made up the story about the accidental death of his neighbour. The applicant's inability to provide details regarding the circumstances surrounding the death of his neighbour, an individual that he claims to have feared and whose death he was accused to have orchestrated, affects his credibility. Finally, the Board did not believe that the applicant could have

been of interest to the police based only on his involvement in demonstrations organized for the AISSF. Indeed, the Board did not believe that the applicant had spoken out publicly against the police. In that respect, the Board noted that there was no mention of such statements in the notes at port of entry.

GROUNDS FOR JUDICIAL REVIEW

[7] The principal ground for review in this matter is that at the hearing the applicant was unable to question the immigration officer and the interpreter who, on March 31, 2005, took the applicant's declarations when he arrived in Canada. The fact that the Board relied on the contents of the notes at the port of entry, when at the hearing the applicant was unable to question the individuals who were present there, amounts to a serious injustice. In the alternative, the applicant states that the Board did not take into account the many documents supporting his story, in particular the medical documents and the newspaper article about the accidental death of his neighbour, police officer Bakshish Singh.

ANALYSIS

[8] In my opinion, the applicant's allegations regarding the impugned decision are unfounded.

[9] In principle, the Board cannot base its decision on determinative facts where the applicant is prevented from explaining or contesting them at the hearing. This would be contrary to procedural fairness and natural justice. However, I would point out that this is not the case in this matter. The

reference to the notes at the port of entry was a non-determinative factor. Indeed, the applicant was able to provide an explanation at the hearing regarding the fact that the port of entry notes do not mention that the applicant publicly denounced acts of brutality by the police (tribunal record, pages 355-57). In this case, the patent unreasonableness of referring to the port of entry notes was not established to the satisfaction of this Court.

[10] The Board alone must decide whether or not any probative value should be assigned to the various declarations made by the applicant. In this case, the Board could in the impugned decision refer to declarations that the applicant made to an immigration officer upon his arrival in Canada. In fact, when assessing a refugee claimant's credibility, the case law recognizes that the Board can take into account contradictions between the applicant's testimony, the documents at the port of entry and his PIF: see *Mongu v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 1526 (F.C.T.D.) (QL); *Sidhu v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 1355 (F.C.T.D.) (QL).

[11] Second, as an independent tribunal and master of its own procedure, the Board can always issue a summons to have a witness come to the hearing to be questioned. In exercising this discretionary power, the Board takes into consideration all relevant factors. Indeed, subsection 39(2) of the *Refugee Protection Division Rules*, SOR/2002-228 (the Rules) provides:

(2) In deciding whether to issue a summons, the Division must consider any relevant factors, including	(2) Pour décider si elle délivre une citation à comparaître, la Section prend en considération tout élément pertinent. Elle examine notamment:
(*a*) the necessity of the testimony to a full and proper hearing;	*a*) la nécessité du témoignage pour l'instruction approfondie de l'affaire;

(*b*) the ability of the person to give that testimony; and	*b*) la capacité de la personne de présenter ce témoignage;
(*c*) whether the person has agreed to be summoned as a witness.	*c*) si la personne a accepté d'être citée à comparaître.

[12] One month before the hearing, the applicant's former counsel filed a request with the Board pursuant to section 38 of the Rules, asking it to summon the immigration officer and the interpreter who took the applicant's declarations when he arrived in Canada, unless the Minister or the Board agreed not to rely on the port of entry notes. In this case, on July 21, 2005, a coordinating member of the Board refused to grant this request because the applicant had not successfully established that the testimony of the two persons contemplated was necessary. In fact, the coordinator found that the applicant had not provided any tangible explanation in support of his request for a summons. It was then determined that the questions the applicant wanted to ask the immigration officer were too vague and not based on the record. Therefore, the applicant was unable to show that their presence at the hearing was necessary.

[13] In my opinion, this matter must be distinguished from *Kusi v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 523 (F.C.T.D.) (QL). In *Kusi*, the applicant claimed that the answers recorded in the notes of the immigration officer at the port of entry were inaccurate. In this matter, the applicant did not raise any argument regarding the inaccurate content of the examination at the port of entry. Indeed, the applicant does not mention any specific factor stemming from his own record that would support his claims. The sole fact that the request was denied by the coordinator before the hearing is not in itself sufficient grounds to determine that there was a breach of natural justice or procedural fairness.

[14] I find that the failure to observe the rules of natural justice or procedural fairness cannot be presumed. The parties had been advised before the hearing was held that immigration documents were part of the documentation that could be examined by the Board. This certainly included the port of entry notes. At the hearing, the applicant's counsel did not object to the Board using the content of the port of entry notes. Bear in mind, the coordinator's refusal to issue a summons to appear was not a final decision. There was nothing to prevent the applicant's counsel from reiterating the same request at the hearing. In any event, it was not established in this matter that the presence of the immigration officer and the interpreter was required at the hearing under the circumstances.

[15] I find that the applicant's alternative argument is also unfounded. The credibility and probative value assigned to the evidence are within the exclusive purview of the Board. In that regard, the Board is presumed to have taken into account all of the evidence in the record without being obliged to comment on each piece of evidence therein: see *Florea v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598 (F.C.A.) (QL). In any case, the applicant did not establish that the Board's findings were patently unreasonable.

[16] This application for judicial review must therefore fail.

ORDER

THE COURT ORDERS that the application for judicial review be dismissed. No question of general importance was raised and no question will be certified.

"Luc Martineau"
Judge

Certified true translation

Kelley A. Harvey, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6684-05
STYLE OF CAUSE:	Kirpal Singh v. Minister of Citizenship and Immigration
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	May 24, 2006
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