



IMM-4684-96

BETWEEN:

JASWANT SINGH SALL

Applicant

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

ROULEAU, J.

This is an application pursuant to section 82.1 of the *Immigration Act*, R.S.C. 1985, c. I-2 (the "*Act*") for judicial review of a decision rendered by the Convention Refugee Determination Division of the Immigration and Refugee Board of Canada, dated October 28, 1996 in which it was determined that the Applicant was not a Convention Refugee pursuant s. 2(1) of the *Act*.

The Applicant, a citizen of the Punjab, professes the Sikh religion. The Applicant's father, Pargan Singh, became a member of the Akali Dal Party in 1984; in 1986 and 1987, he was arrested, detained and interrogated on several occasions and accused of harbouring and aiding militants.

In August 1987, the Applicant's father and a friend were shot by unknown assailants. The friend died instantly and the father died later in hospital.

The Applicant's brother, Baljinder Singh, approached the police on several occasions to see whether an investigation had revealed anything about the identity of the responsible assailants; however, nothing was ever discovered.

After the father's death, the police continued to visit the Applicant's home to inquire about alleged support for the militants by other members of the family. In March 1988, approximately 30 police officers arrived at his home. They broke down the front door and demanded to know the whereabouts of the claimant's elder brother, Baljinder; when informed he was not home, they arrested the Applicant and his uncle in order to force Baljinder to turn himself in. The Applicant and his uncle were interrogated, kept overnight, then released the following day when the brother came forward.

Baljinder was kept in various jails over the next 8 months. During this time, he was interrogated and allegedly tortured. Released on bail in 1988, in November of 1989 he managed to leave India to come to Canada where he is now a permanent resident.

During 1989 and early 1990, the Applicant lived in a student hostel at D.A.V. College in Jalandar where he could not be harassed by police since they could not enter the campus without permission from the principal. Fearful, he nevertheless decided to leave India.

In March 1990, the Applicant, in possession of an authentic passport, went to Germany where he remained there until June 1991. He then entered the UK where he stayed for the next 3 years before coming to Canada in May 1994. On June 27, 1994, the Applicant made a refugee claim.

The refugee hearing was held on May 17, 1995, January 17, 1996, January 26, 1996, and February 8, 1996. The Applicant claimed a well-founded fear of persecution in India on the grounds of political opinion. On October 26, 1996, the Board found the Applicant not to be a Convention Refugee according s. 2(1) of the *Immigration Act*. It based this finding on the fact that the Applicant did not have a well founded fear of prosecution in the Punjab; also, that the Applicant had an internal flight alternative ("IFA") available to him.

The Applicant submits that the credible evidence of the harassment and death of the Applicant's father, the torture of his brother, and the Applicant's own arrest meets the test of low threshold as set out in *Adjei*¹; that the Board applied a higher standard when it determined that he did not have a well-founded fear of persecution; that the Board erred in concluding that there had been a change of circumstances such that the Applicant does not have a well-founded fear of persecution. In conclusion, the Applicant argues that the Board erred in determining that since "millions of Sikhs live outside Punjab" and an IFA was available to the Applicant.

The Respondent submits that the Board did not hold the Applicant to a higher standard than set out in *Adjei*. While the Board accepted that the Applicant was detained and interrogated by police, it expressly stated that such treatment constituted harassment only. The onus is on the Applicant to provide clear and convincing proof of his fear; he failed to discharge the burden that there is an objective basis for his fear of persecution in the Punjab today.

It was open to the Board to find that there was a significant change in circumstances in the Punjab since the Applicant's departure in 1990. Finally,

¹ *Joseph Adjei v. MEI*, [1989] 7 Imm. L.R. (2d) 169 (FCA).

the Board clearly and correctly applied the proper legal test to determine whether an IFA exists, and committed no reviewable error in law.

In *Adjei*, MacGuigan J.A. held that a well founded fear of persecution means that there is more than a mere minimal risk of persecution. I am satisfied that the Board properly applied the test to the case at bar. The Board characterized his only arrest as harassment. The Board was not satisfied that there were "good grounds", a "reasonable chance" or a "serious possibility" of persecution if he returned to the Punjab.

True, the Board found the Applicant's testimony to be credible but it was also of the opinion that the Applicant was unreliable in relation to inferences he drew from episodes relating to his father and brother because of his very young age at the time that these events² occurred.

The Board was satisfied that the Applicant did not demonstrate an objective fear of persecution should he return based on grounds of political opinion; the Board found that he himself was never the specific focus of police interest; his only arrest and detention occurred in March 1988 when he was interrogated and held overnight for the sole purpose of getting the brother to surrender. Never again was he detained; he was not harassed by police when he resided at the student hostel nor when he left India, having his own passport.

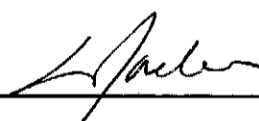
After arriving at its decision, the Board then examined the country circumstances when the Applicant left in 1990, that in relation to current conditions; this was only an alternative finding.

² The Applicant was 14 years old when his father died and 15 years old when his brother was incarcerated following the Applicant's own brief detention.

As a further alternative, the Board turned to Internal Flight Alternative. In both *Thirunavukkarasu*³ and *Rasaratnam*⁴, the Federal Court of Appeal determined that in order to find that a refugee claimant has an IFA, the Refugee Board must be satisfied, on the balance of probabilities, that there is no serious possibility of the claimant to be persecuted in part of the country in which it finds an IFA exists; that conditions are such that it would not be unreasonable for the claimant to seek refuge there. The onus rests with the Applicant to establish that there is a serious possibility of persecution in the area alleged to constitute an IFA.

Essentially the Board found that the police had no interest in the Applicant. Since June of 1989, the Applicant was residing in a student hostel at D.A.V College in Jalladar, within the Punjab region, he had lived safely there before he decided to leave the country.

For these reasons, the application is dismissed.



JUDGE

OCTOBER 6, 1997
VANCOUVER, BRITISH COLUMBIA

³ *Thirunavukkarasu v. Canada (Min. of Employment and Immigration)*, (1994) 1 F.C. 589 (F.C.A.)

⁴ *Rasaratnam v. Canada (Minister of Employment and Immigration)*, (1992) 1 F.C. 706 (F.C.A.)

NAMES OF COUNSEL AND SOLICITORS OF RECORD

STYLE OF CAUSE: JASWANT SINGH SALL

- and -

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

COURT NO.: IMM-4684-96

PLACE OF HEARING: Vancouver, BC

DATE OF HEARING: October 1, 1997

**REASONS FOR ORDER OF ROULEAU, J.
dated October 6, 1997**

APPEARANCES:

Mr. Mishal Abrahams for Applicant

Ms. Wendy Petersmeyer for Respondent

SOLICITORS OF RECORD:

**Kang & Company
North Delta, BC for Applicant**

**George Thomson for Respondent
Deputy Attorney General
of Canada**