Date: 20060629

Docket: IMM-7008-05

Citation: 2006 FC 829

Ottawa, Ontario, June 29, 2006

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

HARDISH SINGH NIJJAR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] A decision of a first-instance decision-maker must not be dissected piece by piece, but should rather be examined in its entirety. If, as a whole, it is coherent, that decision must stand.

NATURE OF THE JUDICIAL PROCEEDING

[2] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) of the decision of the Refugee Protection Division of the Immigration and Refugee Board (Board), dated October 27, 2005, holding that the applicant is not a Convention refugee or a person in need of protection.

FACTS

[3] The applicant, Mr. Hardish Singh Nijjar, is a citizen of India who is seeking Canada's protection on the basis of the mistreatment he allegedly suffered for participating in a number of demonstrations.

[4] Mr. Nijjar and his two brothers were members of the political party Shiromani Akali Dal. In September 2000, after a number of arrests and incidents in the course of which he was tortured, his older brother left India. Mr. Nijjar and his family have had no contact with his older brother since that time.

[5] On April 15, 2003, Mr. Nijjar participated in a demonstration demanding an increase in the price of wheat and a reduction in the price of manure. On August 20, 2004, Mr. Nijjar participated in a demonstration demanding an increase in pensions for widows and elderly persons. During these two demonstrations, a number of individuals, including Mr. Nijjar, were arrested, detained and tortured. Thanks to the assistance of certain influential persons, Mr. Nijjar was released after two or three days. He required medical treatment as a result of his injuries.

[6] The police continued to harass Mr. Nijjar's family concerning the whereabouts of his older brother. Mr. Nijjar participated in some demonstrations to prevent the construction of a canal that would decrease the water supply for the farmers' crops.

[7] Later, a friend of Mr. Nijjar disappeared after having been arrested by the police. In August 2004, Mr. Nijjar, fearing for his life, moved to his aunt's home in the village of Diwali. The police raided his aunt's home on September 25, 2004, but Mr. Nijjar escaped because he was in the fields. He then went to an uncle's home at Pandheran, where he was refused permanent shelter. He then decided to leave India.

[8] With the help of an agent, he left India on October 16, 2004, and arrived in Toronto the next day, where he immediately claimed refugee status. He was detained until November 2004 by reason of issues of identity.

[9] After his arrival in Canada, he learned, as he spoke with his family, that his father and younger brother had been arrested and tortured by the police because his father had sought to sue the police.

IMPUGNED DECISION

[10] The Board ruled that Mr. Nijjar was neither a Convention refugee nor a person in need of protection since his return to India would not subject him to a serious possibility of persecution

or a risk to his life or cruel and unusual punishment. The Board based this ruling on the fact that it was satisfied that an internal flight alternative (IFA) was available.

[11] The Board did not cast doubt on the fact that Mr. Nijjar had been arrested, detained and mistreated by the police. However, it was not persuaded that Mr. Nijjar was especially targeted by the police or that the police would still have some special interest in his family.

POINTS AT ISSUE

[12] Did the Board commit a reviewable error in rejecting Mr. Nijjar's refugee claim?

ANALYSIS

Statutory framework

[13] Under section 96 of the Act, a person is a refugee if that person fears being persecuted because of his or her race, religion, nationality, membership in a particular social group or political opinion:

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	**96.** A qualité de réfugié au sens de la Convention – le réfugié – la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(*a*) is outside each of their countries of nationality and	*a*) soit se trouve hors de tout pays dont elle a la

is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	nationalité and ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(*b*) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	*b*) soit, si elle n'a pas de nationalité and se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

[14] Subsection 97(1) of the Act reads as follows:

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally	**97.** (1) A qualité de personne à protéger la personne qui se trouve au Canada and serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	*a*) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	*b*) soit à une menace à sa vie ou au risque de traitements ou peines cruels and inusités dans le cas suivant :
(i) the person is unable or, because of that	(i) elle ne peut ou, de ce fait, ne veut se

	risk, unwilling to avail themself of the protection of that country,		réclamer de la protection de ce pays,
(ii)	the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,	(ii)	elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii)	the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	(iii)	la menace ou le risque ne résulte pas de sanctions légitimes – sauf celles infligées au mépris des normes internationales – and inhérents à celles-ci ou occasionnés par elles,
(iv)	the risk is not caused by the inability of that country to provide adequate health or medical care.	(iv)	la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Standard of review

[15] When credibility is an issue, the applicable standard of review is that of patent unreasonableness. This Court can intervene only if the decision is patently unreasonable, even if it does not agree with the findings or the inferences drawn by the tribunal below. (*Aguebor v.*

Canada (Minister of Employment and Immigration) (1993), 160 N.R. 315 (F.C.A.), [1993] F.C.J. No. 732, at paragraph 4; *Thamotharem v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 16, [2006] F.C.J. No. 8 (QL), at paragraph 16; *Umba v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 25, [2004] F.C.J. No. 17 (QL), at paragraph 31; *Kathirgamu v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 300, [2005] F.C.J. No. 370 (QL), at paragraph 41; *Trujillo v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 414, [2006] F.C.J. No. 595 (QL), at paragraph 12; *Chowdhury v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 139, [2006] F.C.J. No. 187 (QL), at paragraph 12; *N'Sungani v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1759, [2004] F.C.J. No. 2142 (QL), at paragraphs 6 and 12; *Bankole v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1581, [2005] F.C.J. No. 1942 (QL), at paragraph 6.)

[16] As to the question of the internal flight alternative (IFA), this is a question of fact and the appropriate standard of review is also that of patent unreasonableness (*Chorny v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 999, [2003] F.C.J. No. 1263 (QL), at paragraph 5).

Did the Board make a reviewable error in rejecting Mr. Nijjar's refugee claim?

[17] The Board linked Mr. Nijjar with the Shiromani Akali Dal party (Reasons for decision, at pages 1 and 2). While it later used the expression "Akali Dal", this is probably a careless error. In his Personal Information Form (PIF), Mr. Nijjar clearly identified the political party to which he said he belonged, the Shiromani Akali Dal. However, later, he referred to the party by other

names, especially “Mann party”. In the articles that are included in the panel record, the appellations given to the two political parties vary.

[18] More important than the precise appellation given to the party by the Board is the issue of whether Mr. Nijjar was a member of a dissident political party in India and whether that membership jeopardized his possible return to India. The Board examined this question closely and seems to have found that Mr. Nijjar was a member of a dissident political party. However, in its opinion, he was not a highly placed member and his membership as a rank-and-file member and his participation in certain demonstrations did not make him a wanted person who would be at risk of persecution, torture or cruel and unusual treatment.

[19] The Board’s error about the name of the party does not affect the final ruling. It does not make the decision patently unreasonable. As Mr. Justice François Lemieux stated, in *Anandasivam v. Canada (Minister of Citizenship and Immigration)*, 2001 FCTD 1106, [2001] F.C.J. No. 1519 (QL), at paragraph 25, there is no need to over-scrutinize the Board’s reasons for decision; the Board’s reasons will be adequate if they reveal a proper review of the points at issue and of the evidence:

> It is also well to recall Justice Laskin’s, as he then was, admonition in *Boulis v. The Minister of Manpower and Immigration*, [1974] S.C.R. 875 at 885 that “the Board’s reasons are not to be read microscopically; it is enough if they show a grasp of the issues that are raised ... and of the evidence addressed to them, without detailed reference. The record is available as a check on the Board’s conclusions”.

[20] Similarly, in *Jarada v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 409, [2005] F.C.J. No. 506 (QL), at paragraph 22, Mr. Justice Yves de Montigny stated:

> … It is well-settled case law that the reasons of an administrative tribunal must be taken as a whole in determining whether its decision was reasonable, and analysis does not involve determining whether each point in its reasoning meets the reasonableness test (see in particular *Stelco Inc. v. British Steel Canada Inc.*, 2000 CanLII 17097 (F.C.A.), [2000] 3 F.C. 282 (F.C.A.); *Yassine v. M.E.I.*, [1994] F.C.J. No. 949 (F.C.A.)). …

[21] The findings of fact made by the tribunal respond to all the other concerns of Mr. Nijjar. He was not the subject of an arrest warrant (Reasons for decision, at page 5). An affidavit did mention that Mr Nijjar was being sought shortly after the disappearance of his brother in September 2000 and that his brother and his father had been arrested more recently. However, the Board was of the view that Mr. Nijjar should have amended his PIF to include the visit the police had made to his parents in regard to him (Reasons for decision, at page 4). This visit, which Mr. Nijjar mentioned in his testimony at the hearing, would have indicated that the authorities were still looking for him and was thus important. Mr. Nijjar's failure to amend his PIF to include this visit was significant, in the Board's view.

[22] It should be mentioned that Mr. Nijjar knew almost nothing about the political party he alleges he belonged to, and that he admitted being only a rank-and-file member. His membership, in itself, cannot have caused him the problems he alleged (Reasons for decision, at pages 4-5). If Mr. Nijjar did participate in two demonstrations demanding greater social justice, he was arrested in the same capacity as all the other participants in the demonstrations (Reasons for decision, at page 4). The connection between all these factors is the crux of the Board's

decision, which found that “There I[sic], however, no reason to believe that the claimant was particularly targeted by the police” and that “He has failed to credibly establish that he was singled out by the police — rather he was arrested along with many others and, while treated badly, not targeted.” (Reasons for decision, at pages 4-5).

[23] Applying sections 96 and 97 of the Act, the Board found that Mr. Nijjar had not established the existence of a risk if he were to return to India (Reasons for decision, at page 5). In addition to the factors we have just discussed, the Board did take into account the existence of an IFA.

[24] In *Ahmad v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 808, [2004] F.C.J. No. 995 (QL), at paragraphs 21-22, Mr. Justice Paul Rouleau made the following comments about the test under section 97 of the Act, according to which it can be determined whether the claimant will personally be exposed to a risk:

> First of all, I wish to point out that the relevant test under section 96 is in fact quite distinct from the test under section 97. A claim based on section 97 requires the Board to apply a different criterion pertaining to the issue of whether the applicant’s removal may or may not expose him personally to the risks and dangers referred to in paragraphs 97(1)(a) and (b) of the Act. However, this criterion must be assessed in light of the personal characteristics of the applicant.…
>
> Thus the assessment of the applicant’s fear must be made *in concreto*, and not from an abstract and general perspective. The fact that the documentary evidence illustrates unequivocally the systematic and generalized violation of human rights in Pakistan is simply not sufficient to establish the specific and individualized fear of persecution of the applicant in particular. Absent the least proof that might link the general documentary evidence to the applicant’s specific circumstances, I conclude that the Board did not err in the way it analyzed the applicant’s claim under section 97.

[25] Contrary to what Mr. Nijjar argues, the Board did take into account the factors that are traditionally applicable, that is, the serious possibility of a risk in other parts of the country and the reasonableness of the IFA finding (Reasons for decision, at page 5). Although it observed that the second test was not required by subparagraph 97(1)(*b*)(ii) of the Act, it held that the IFA finding was, in Mr. Nijjar's case, completely reasonable (Reasons for decision, at pages 7-8).

[26] In its review of the relevant documentary evidence, the Board was not selective. It did not need to mention the part of the evidence according to which Indians suspected of insurrection or incitement to insurrection against the State would be persecuted, since it had already found that Mr. Nijjar was not sought by the Indian authorities. The Board had no reason either to examine the situation of rejected asylum seekers who are sought, who return to India, since that is not Mr. Nijjar's case. For the same reasons, it is irrelevant that Indian police stations have been connected by an electronic network or that the Indian police engage in "tracking" Sikhs. In view of both the general documentary evidence and the particular situation of Mr. Nijjar, the Board found that there was an IFA. This conclusion was not patently unreasonable.

[27] The Board may determine that an applicant is not credible on the basis of contradictions or inconsistencies in his testimony. In *Anandasivam*, *supra*, at paragraph 24, Mr. Justice Lemieux stated:

> The tribunal's finding that the applicant was not wanted for questioning was based, as noted, on what the tribunal found to be an inconsistency and two implausibilities. *Aguebor v. Minister of Employment and Immigration* (1994), 160 N.R. 315 is authority for the proposition the tribunal, a specialized one, has complete jurisdiction to determine the plausibility of testimony provided that plausibility findings are reasonably drawn on the evidence. Also, there can be no

> doubt the tribunal may base its findings on internal contradictions or inconsistencies which are at the heartland of the discretion of triers of fact.

[28] The Court may intervene only if Mr. Nijjar demonstrates that the Board erred in law or in fact in its decision. The Court cannot intervene simply because it (or the applicant) disagrees with the Board's decision. In *Nxumalo v. Canada (Minister of Citizenship and Immigration)*, 2003 FCTD 413, [2003] F.C.J. No. 573 (QL), at paragraph 7, Mr. Justice Simon Noël said:

> With regard to the applicant's credibility, I believe that the applicant is trying to get the Court to substitute its opinion to the one of the Board. As Justice Blanchard held in *Hosseini v. Canada (M.C.I.)*, [2002] F.C.J. No. 509 (F.C.T.D.):
>
> > The assessment of the value of the applicant's explanations, like that of the other facts, is entirely within the jurisdiction of the Refugee Division, which also has recognized expertise in weighing the merits of testimony on the situation in various countries. This being so, I agree with the respondent's arguments, namely that the applicant could not simply repeat on judicial review an explanation already given to the specialized tribunal and dismissed by it. In *Muthuthevar v. M.C.I.*, [1996] F.C.J. No. 207, on line: QL, Cullen J. was entirely of this opinion at para. 7 of his reasons:
> >
> > > While the applicant seeks to "explain away" testimony that the Board found implausible, it must not be forgotten that these same explanations were before the Board and were not accepted as credible. The applicant has not directed to this Court evidence that was ignored or misconstrued, and in the absence of such a finding, the Board's conclusions on credibility must stand.

CONCLUSION

[29] Mr. Nijjar was not an active member of any political party in India. His participation at demonstrations did not make him a person of interest to the Indian authorities. He was not wanted and he had an IFA if he were to return to India, notwithstanding the events he had experienced and that the Board took as proved.

[30] Past events may be relevant in the assessment of the risk (*Oyarzo v. Minister of Citizenship and Immigration)*, [1982] 2 F.C. 779 (C.A.), at paragraph 5; *Canada (Minister of Citizenship and Immigration) v. Satiacum* (1989), 99 N.R. 171 (F.C.A.), [1989] F.C.J. No. 505 (QL)) but they are not decisive since the fear is assessed prospectively on the day of the hearing (*Longia v. Canada (Minister of Citizenship and Immigration)*, [1990] 3 F.C. 288 (C.A.), [1990] F.C.J. No. 425 (QL), at paragraph 3).

[31] The Board ruled that the facts of this case did not warrant granting Canada's protection and the Board did not make any patently unreasonable error in this regard. This Court will not intervene, therefore, and the Board's decision will stand. This application for judicial review must be dismissed.

JUDGMENT

1. The application for judicial review is dismissed;

2. No serious question of general importance is certified.

"Michel M.J. Shore"
Judge

Certified true translation
Francois Brunet, LL.B., B.C.L.

FEDERAL COURT

SOLICITORS OF RECORD

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