Date: 20060629

Docket: IMM-7076-05

Citation: 2006 FC 828

Ottawa, Ontario, June 29, 2006

PRESENT: THE HONOURABLE MR. JUSTICE SHORE

BETWEEN:

NARESH TOORA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] Credibility can be compared with a ship with several compartments, some more important than others. Once flooded, compartment by compartment, the ship is no longer navigable.

NATURE OF JUDICIAL PROCEEDING

[2] This is an application for judicial review pursuant to 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 18, 2005, that the applicant is not a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

FACTS

[3] The applicant, Mr. Naresh Toora, is a citizen of India.

[4] On February 25, 1997, Mr. Toora alleges, he was arrested in a police raid in the motor repair shop where he was working for his cousin. He was released after having been detained for one night and was suspected of having collaborated with some militants.

[5] After his release, Mr. Toora alleges, he was harassed by some police officers who came to the door of his house and shouted [TRANSLATION] “Come out, lower-caste person”. He did not describe any other incidents that jeopardized his welfare in India.

[6] In August 1997, Mr. Toora left India for the United States, supplied with a U.S. visa. He has not alleged having any problems to leave his country and has confirmed he was not being sought there by the police.

[7] Mr. Toora claims that he joined his uncle who was working as a taxi driver in New York City and remained there until the time he crossed the border in the Lacolle area, with the help of an immigration agent, to enter Canada on December 2, 2004, without going through any border crossing. He says he paid US $4,000 and gave his passport to the immigration agent who had got him into Canada.

[8] Mr. Toora married nine days after his arrival in Canada in December 2004. And on February 28, 2005, he filed his refugee claim in Canada.

IMPUGNED DECISION

[9] The Board concluded that Mr. Toora lacked credibility and a credible basis for his refugee claim.

[10] Since Mr. Toora married nine days after his arrival in Canada, the Board was of the view, notwithstanding Mr. Toora's statements, that his real purpose in coming to Canada was to get married and not to claim protection.

POINTS AT ISSUE

[11] This application raises the following issues:

1. Did the Board act in breach of procedural fairness by displaying bias toward Mr. Toora?

2. Did the Board act in breach of procedural fairness by providing reasons for its decision in English and a translated French version of the reasons that has some differences with the English version?
3. Did the Board err in its assessment of Mr. Toora's credibility?
4. Did the Board err in determining that there was no credible basis for his refugee claim?

ANALYSIS

Statutory framework

[12] Under section 96 of the Act, a person is a refugee if that person fears being persecuted for reasons of 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 is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	*a*) soit se trouve hors de tout pays dont elle a la 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	*b*) soit, si elle n'a pas de nationalité and se trouve

country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

[13] 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 risk, unwilling to avail themself of the protection of that country,	(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
(ii) the risk would be faced by the person in every part of that	(ii) elle y est exposée en tout lieu de ce pays alors que

country and is not faced generally by other individuals in or from that country,	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.

[14] Subsection 107(2) of the Act provides that the Board shall state in the decision that there is no credible basis if it finds that no credible evidence favouring the claimant was presented to it:

107. (1) The Refugee Protection Division shall accept a claim for refugee protection if it determines that the claimant is a Convention refugee or person in need of protection, and shall otherwise reject the claim.	**107.** (1) La Section de la protection des réfugiés accepte ou rejette la demande d’asile selon que le demandeur a ou non la qualité de réfugié ou de personne à protéger.
(2) If the Refugee Protection Division is of the	(2) Si elle estime, en cas de rejet, qu’il n’a été

opinion, in rejecting a claim, that there was no credible or trustworthy evidence on which it could have made a favourable decision, it shall state in its reasons for the decision that there is no credible basis for the claim.	présenté aucun élément de preuve crédible ou digne de foi sur lequel elle aurait pu fonder une décision favorable, la section doit faire état dans sa décision de l'absence de minimum de fondement de la demande.

Standard of review

[15] Where an alleged breach of procedural fairness or natural justice is at issue, this Court must review the particular circumstances of the case to determine whether the tribunal observed procedural fairness and natural justice. Should it decide there was such a breach, the Court shall refer the decision back to the tribunal in question (*Thamotharem v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 16, [2006] F.C.J. No. 8 (QL), at paragraph 15; *Demirovic v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1284, [2005] F.C.J. No. 1560 (QL), at paragraph 5; *Trujillo v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 414, [2006] F.C.J. No. 595 (QL), at paragraph 11; *Bankole v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1581, [2005] F.C.J. No. 1942 (QL), at paragraph 7).

[16] As to issues of credibility, the applicable standard of review is that of patent unreasonableness. (*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, supra*, 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, supra*, 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, supra*, at paragraph 6.)

Bias

[17] Mr. Toora contends he has reasons to think that the Board was biased and had resolved to reject his claim for asylum at the commencement of the hearing before hearing it.

[18] In the first place, an applicant has a duty to raise any allegation of bias at the first opportunity, that is, at the hearing before the Board. Mr. Toora's failure to do so implies a waiver on his part and he is foreclosed from raising this allegation in this Court, as Mr. Justice Beaudry held in *Wijekoon v. Canada (Minister of Citizenship and Immigration)*, 2002 FCTD 758, [2002] F.C.J. No. 1022 (QL), at paragraphs 29-31:

> In *Re Human Rights Tribunal and Atomic Energy of Canada Limited*, [1986] 1 F.C. 103 (F.C.A.), MacGuigan J. held at page 113:
>
> > However, even apart from this express waiver, AECL's whole course of conduct before the Tribunal constituted an implied waiver of any assertion of a reasonable apprehension of bias on the part of the Tribunal. The only reasonable course of conduct for a party reasonably apprehensive of bias would be to allege a violation of natural justice at the earliest practicable opportunity. Here, AECL called witnesses, cross-examined the witnesses called by the Commission, made many submissions to the Tribunal, and took proceedings before both the Trial Division and this Court, all without challenge to the independence of the Commission. In short, it participated fully in the hearing, and must therefore be taken impliedly to have waived its right to object.
>
> It is trite law that alleged violations of natural justice must be raised at the earliest possible opportunity. If the applicants were in fact concerned that their

> rights may have been violated, they should have raised their objection at the outset.
>
> This was confirmed again in the case of *Kostyshyn v. West Region Tribal Council* [1992] F.C.J. No. 731 (QL) (F.C.T.D.) where Muldoon J. held that the aggrieved party must "allege promptly" and in the case of *Hernandez v. Canada (Minister of Citizenship and Immigration)* [1999] F.C.J. No. 607 (QL) (F.C.T.D.), where Pinard J. made reference to the case of *Del Moral v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 782 (QL) (F.C.T.D.). In *Del Moral*, *supra*, Dubé J. concluded that:
>
> > The only reasonable course of conduct for a party reasonably apprehensive of bias would be to allege a violation of natural justice at the earliest practicable opportunity.

(See also: *Yassine v. Canada (Minister of Employment and Immigration)* (1994), 172 N.R. 308, [1994] F.C.J. No. 949 (F.C.A.) (QL), at paragraph 7; *Canada (Human Rights Commission) v. Taylor*, [1990] 3 R.C.S. 892, [1990] S.C.J. No. 129 (QL), at paragraphs 89-91; *Jackson v. Canada (Minister of Citizenship and Immigration)*, 2002 FCTD 89, [2002] F.C.J. No. 1289 (QL), at paragraphs 35-40; *Kavunzu v. Canada Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1560, at paragraph 5.)

[19] Furthermore, the transcript of the recording of the commencement of the hearing does not support Mr. Toora's allegations that the Board said it had resolved to reject his claim for asylum before hearing it (Tribunal record, at pages 188-93).

[20] The Board's reasons for decision clearly indicate that Mr. Toora, who was represented by his lawyer, was heard on his claim and was confronted with the contradictions and improbabilities of his account.

[21] There was therefore no breach of procedural fairness in this case, since there was no appearance of bias on the part of the Board.

The two versions of the decision

[22] As for the reasons for decision of the Board, the English version is the one that was signed by the Board and that constitutes the final version of the reasons for this decision (Affidavit of Estelle Bergeron, deputy registrar of the Board, attached to the Respondent's Memorandum, at paragraph 3).

[23] In addition, as it was held in *Miranda v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 437 (F.C.A.) (QL), certain discrepancies between the English original and the translated copy cannot affect the validity of the Board's decision and the Board's duty to give reasons for its decision:

> For purposes of judicial review, however, it is my view that a Refugee Board decision must be interpreted as a whole. One might approach it with a pathologist's scalpel, subject it to a microscopic examination or perform a kind of semantic autopsy on particular statements found in the decision. But mostly, in my view, the decision must be analyzed in the context of the evidence itself. I believe it is an effective way to decide if the conclusions reached were reasonable or patently unreasonable.

[24] 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 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] 3 F.C. 282 (F.C.A.); *Yassine v. M.E.I.*, [1994] F.C.J. No. 949 (F.C.A.)).
> …

[25] For these reasons, this Court is of the opinion that, in this particular case, in view of an overall set of factors described quite specifically, the English version of the reasons does nevertheless stand; this is based upon the meaning of the French version thereof that discloses precisely the context and circumstances of the decision: it is well reasoned and thus its importance is nevertheless clear.

Credibility

[26] Mr. Toora's failure to request the protection of the U.S. authorities during his seven-year stay in the United States is certainly a fundamental factor to consider in assessing the credibility of his subjective fear, as Mr. Justice Martineau held in *Ayub v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1411, [2004] F.C.J. No. 1707 (QL), at paragraphs 14-15:

> In the case at bar, the tribunal was well founded to take into account the fact that the applicant's refugee claim was made after an unusually long delay of nearly five years after she first came to Canada. In connection with this, the tribunal found that the applicant failed to provide satisfactory explanations for the delay. This Court has already established that such a delay and lack of satisfactory explanation can be fatal to an applicant's claim. Mr. Justice Rouleau held in *Espinosa v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 1680 (F.C.T.D.) (QL) that:
>
> > The Board states correctly that while the delay is generally not a determinative factor in a refugee claim, there are circumstances where the delay can be such that it assumes a decisive role; what is fatal to the applicant's claim is his inability to provide any satisfactory explanation for the delay.
>
> Furthermore, the tribunal also took into account the fact that the applicant did not make a refugee claim while she was in the United States. However, she did stay in the United States for almost five years. This is yet another element that the tribunal considered in its assessment of the applicant's credibility in her allegation of subjective fear. According to Mr. Justice Pinard in *Canada (Minister of Citizenship and Immigration) v. Bueno*, [2004] F.C.J. No. 629 (F.C.T.D.) (QL) held that:
>
> > In fact, the failure to claim refugee status when the claimant is in a country of protection, is an element which goes to the root

> of the claim and which should be considered in the assessment of the credibility of the claimant's subjective fear.

(See also: *Tofan v. Canada (Minister of Citizenship and Immigration)*, 2001 FCTD 1011, [2001] F.C.J. No. 1379 (QL).)

[27] Failure to claim the protection of a foreign state at the first opportunity may affect a claimant's credibility, even in respect of incidents having occurred in his country of origin. In *Assadi v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 331(QL), at paragraphs 13-14, Mr. Justice Teitelbaum held:

> The Board gave its negative findings with respect to the applicant's credibility in clear and unequivocal terms, citing numerous examples or illustrations for why it had not accepted the applicant's testimony: *Brar v. Canada (Minister of Employment & Immigration)* (May 29, 1986), A-987-84 (F.C.A.), [1986] F.C.J. No. 346 (Q.L.).
>
> Take, as an example, the Board's interpretation of the applicant's Spanish interlude. The Board cited *Ilie v. Canada (Minister of Citizenship & Immigration)* (1994), 88 F.T.R. 220, a case directly on point about the expectation that a claimant would seek refuge in a country that is a signatory to the International Convention. Failure to immediately seek protection can impugn the claimant's credibility, including his or her testimony about events in his country of origin….

[28] In response to Mr. Toora's allegations at paragraphs 28 to 40 of his memorandum (Applicant's Record, at pages 118-20), it is up to the Board to assess the probative value of the explanations given by Mr. Toora in relation to his conduct, like any other evidence:

> It certainly cannot be argued, in my view, that the Board was not entitled to consider, as a relevant factor, the applicants' failure to claim refugee status either in Costa Rica or the United States. The applicants' explanation for their failure to claim was that they were not aware that they could claim refugee status elsewhere and that, in any event, their intention had always been to come to Canada.
>
> Whether that explanation was a reasonable one or not was for the Board to decide. I am satisfied that the Board did not make a reviewable error when it concluded that the applicants' failure to claim either in Costa Rica or in the

> United States was a relevant factor in the assessment of the applicants' subjective fear.
>
> (*Tofan*, *supra*, at paragraphs 10-11)

(See also: *Nxumalo v. Canada (Minister of Citizenship and Immigration)*, 2003 FCTD 413, [2003] F.C.J. No. 573 (QL), at paragraph 7; *Muthuthevar v. Canada (Minister of Citizenship and Immigration)*, [1996] F.C.J. No. 207 (QL), at paragraph 6; *Hosseini v. Canada (Minister of Citizenship and Immigration)*, 2002 FCTD 402, [2002] F.C.J. No. 509 (QL), at paragraph 26.)

[29] Moreover, this Court notes that Mr. Toora, in the interview of March 14, 2005, did not mention that he had consulted a lawyer in the United States who had told him that a one and a half year delay was not accepted by the U.S. authorities. Indeed, it appears from the interview notes (Immigration Officer Interview Notes, Applicant's Record, at pages 102-03) that Mr. Toora instead justified his failure to seek the protection of the American authorities in the following manner:

> . . .
>
> **What's the reason of your trip to Canada?** I had problems with the police and to save my life I came to Canada.
>
> **Police from which country?** India
>
> **Did you ever claim refugee status in the United States?** no
>
> **Why?** I didn't know that. I was very afraid from the police that why I never asked or [sic] the refugee status.
>
> . . .

[30] This contradiction between the interview notes and Mr. Toora's testimony could validly cast doubt on the credibility of the explanations provided by Mr. Toora. (*Zaloshnja v. Canada (Minister of Citizenship and Immigration)*, 2003 FCTD 206, [2003] F.C.J. No. 272 (QL), at paragraphs 6 and 9; *Neame v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 378 (QL), at paragraphs 19-20; *Karikari v. Canada (Minister of Employment and Immigration)* (1994), 169 N.R. 131 (F.C.A.), [1994] F.C.J. No. 586 (QL), at paragraph 9; *Jumriany v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 683 (QL), at paragraph 9.)

[31] Furthermore, contrary to Mr. Toora's contentions, no inference concerning his alleged fear could be drawn from the payment of a $10,000 bond in the United States in November 2003 (Applicant's affidavit, at paragraphs 25-28; Applicant's Memorandum, at paragraphs 32-33).

[32] The Board did not believe that Mr. Toora was arrested in India in February 1997 or that he was wanted by the police since he had no problems with the police between February 25, 1997 and his departure in August 1997, other than an incident of harassment where the police had allegedly questioned him as a person of lower caste and demanded that he come out of his house. He obtained an American visa in New Delhi on March 3, 1997, remained in India until August 1997 and was able to leave his country without any problem. He also confirmed that he was not wanted by the police (Reasons for decision, at page 3).

[33] As to the harassment incident alleged by Mr. Toora, the Board thought it was improbable that the police would have confined themselves to shouting in front of a closed door if they had wanted to speak to Mr. Toora or arrest him (Reasons for decision, at page 3).

[34] Likewise, the Board considered the submissions of Mr. Toora's counsel concerning his membership in the Dalit caste, which is one of the reasons for the alleged persecution, and did not adopt them (Reasons for decision, at page 3).

[35] In *Choque v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 1017 (QL), at paragraph 5, this Court held that when the assessment of the refugee claimant's credibility is at issue, the Board could take into account the circumstances of the claimant's departure from his country and the fact that he has encountered no difficulty in obtaining travel documents:

> Here, if the death or homicide of the applicant's brother did in fact cause Mr. Choque to have a subjective fear, the question naturally arises as to why he waited so long after the event before leaving Peru. Furthermore, during that period of time he continued to appear publicly on television and at concerts singing songs which were critical of the government. Once he decided to leave he had no difficulty obtaining a passport, going through the airport or getting a visa. Upon his arrival in Canada he waited almost five months before making a claim for Convention refugee status. The objective evidence, therefore, is that the applicant was not in any hurry to leave Peru, that he had no fear about letting the authorities know he was leaving nor did he encounter any difficulty upon his departure. It was entirely open to the Board to conclude that this evidence is inconsistent with a person who has a genuine subjective fear of persecution.

[36] Similarly, in *Singh v. Canada (Minister of Citizenship and Immigration)*, 2002 FCTD 1272, [2002] F.C.J. No. 1724 (QL), at paragraph 25, Mr. Justice Martineau stated :

> Furthermore, I also find that the Board was entitled to determine that the applicant was not wanted by the authorities, as he cited at the port of entry and in his PIF, considering that he was able to obtain a genuine passport and to leave India with said passport. In light of this it was reasonably open to the Board to

> conclude that this evidence was inconsistent with a person who has a genuine subjective fear of persecution (see *Choque v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 1017 (F.C.T.D.) at para. 5; *Murga v. Canada (Minister of Citizenship and Immigration)* (1995), 110 F.T.R. 231).

[37] The Board could validly base its decision as well on the contradiction about the incident of February 25, 1997. In his Personal Information Form (PIF), Mr. Toora wrote: "After my release, I was treated", although at the hearing he stated he had suffered no injuries and had not required any medical treatment (Reasons for decision, at page 3).

[38] The Board was entitled to take into account contradictions between Mr. Toora's PIF and his testimony about the medical care he had allegedly received after his detention in February 1997 (*Sanchez v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 536 (QL), at paragraphs 5 and 9; *Basseghi v. Canada (Minister of Citizenship and Immigration)*, [1994] F.C.J. No. 1867 (QL), at paragraphs 32-33; *Oduro v. Canada (Minister of Employment and Immigration)*, (1993) 73 F.T.R. 191, [1993] F.C.J. No. 1421 (QL), at paragraph 14; *Uppal v. Canada (Solicitor General)* (1995), 27 Imm. L.R. (2d) 232, [1995] F.C.J. No. 112 (QL), at paragraph 2; *Lobo v. Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 597 (QL), at paragraph 14; *Mejia v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 819 (QL), at paragraph 7; *Grinevich v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 444 (QL), at paragraph 4; *Munoz v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 615, at paragraphs 14-17).

[39] The fact that Mr. Toora exposes his disagreement and tries to interpret anew the evidence is not a sufficient demonstration that the Board's conclusion was not based on the evidence in the record.

[40] As to Mr. Toora's submissions about his passport, the Board did not believe Mr. Toora had paid US$4,000 to an immigration agent to bring him from New York to Lacolle in order to enter Canada illegally.

[41] Mr. Toora provided two different versions about the persons who had helped him pay this amount. At the hearing, he stated that the US$4,000 had been paid by his uncle in New York (Reasons for decision, at page 2), while at the interview on March 14, 2005 (Immigration Officer Interview Notes, Applicant's Record, at page 102), he answered as follows:

> **How did you pay that amount of money?** some from outside some from inside.
> **Can you be more specific?** you know when you are living in a place you are making some friends and these friends gave me money.

[42] Likewise, the Board did not believe Mr. Toora had surrendered his passport, which he had not used for his trip, to the person who is presumed to have got him into Canada.

[43] It is trite law that the Board, in assessing a claimant's credibility, may reject testimony if it does not tally with the balance of probabilities that characterize the case as a whole, and may refer to rationality and common sense, as was held in *Antonippillai v. Canada (Minister of Employment and Immigration)*, [1999] F.C.J. No. 382 (QL), at paragraph 9:

> There is no question that the Board has all the necessary discretion to assess the credibility of the testimony of people who claim refugee status, and may have regard to a multitude of factors in so doing. The Board may base its findings on internal contradictions, inconsistencies and evasive statements, which are the "heartland of the discretion of triers of fact", and other extrinsic factors such as rationality, common sense and judicial notice, but those findings must not be made in a perverse or capricious manner or without regard for the material before the Board: *Sbitty v. Canada (M.C.I.)*, (IMM-4668-96, December 12, 1997), *Shahamati v. M.E.I.*, (F.C.A.) (A-388-92, March 24, 1994).

[44] Similarly, in *Muthiyansa v. Canada (Minister of Citizenship and Immigration)*, 2001 FCTD 17, [2001] F.C.J. No. 162 (QL), at paragraphs 24-25, Madam Justice Dolores Hansen said :

> I am also of the view that the panel identified the elements of the applicant's story, which in the end, led to its negative credibility finding. Suffice it to say, that in weighing and assessing the applicant's evidence, the panel has concluded that the truth of her story is not in "harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions." (*Farnya v. Chorny*, [1952] 2 D.L.R. 354 at 357 (B.C.C.A.).
>
> In the final analysis, it is open to the CRDD to reject uncontradicted evidence if that evidence does not accord with the probabilities affecting the case as a whole. In my opinion, this is what it has done here (*Alizadeh v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 11 (F.C.A.)).

(See also: *Aguebor*, *supra*, at paragraph 4; *Cota v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 872 (QL), at paragraphs 17-18; *Neame*, *supra*, at paragraph 20; *Anandasivam v. Canada (Minister of Citizenship and Immigration)*, 2001 FCTD 1106, [2001] F.C.J. No. 1519 (QL), at paragraph 24.)

[45] Moreover, it is trite law that an applicant's failure to produce his passport and establish credibly the route he took to come to Canada is a factor that can affect his credibility. (*Farah v. Canada (Minister of Employment and Immigration)* (1993), 64 F.T.R. 237, [1993] F.C.J. No. 520

(QL); *Akhtar v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1319, [2004] F.C.J. No. 1618 (QL), at paragraph 5; *Elazi v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 212 (QL), at paragraph 17; *Museghe v. Canada (Minister of Citizenship and Immigration)*, 2001 FCTD 1117, [2001] F.C.J. No. 1539 (QL), at paragraphs 21-22; *Matanga v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1410, [2003] F.C.J. No. 1812 (QL), at paragraph 4; *Kandot v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1275, [2003] F.C.J. No. 1600 (QL), at paragraph 26; *Tsongo v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1263, [2004] F.C.J. No. 1542 (QL), at paragraph 14.)

Absence of credible basis

[46] Mr. Toora argues that the Board failed to consider the documentary evidence about the risks incurred by Indian citizens who have not obtained refugee status in other countries and return to India with travel documents other than their passports.

[47] He attached to his record an extract from the document *India Country Report, April 2005* (Applicant's Record, at page 79), paragraphs 6.423 and 6.424 of which (Applicant's Record, at pages 92-93) indicate that Indian citizens who have not obtained refugee status in other countries have no difficulty upon their return if they have the required documents. Those who return with a temporary travel document will have no problems. However, those who return to India after the expiration of their passport might be held briefly for interrogation.

[48] Paragraph 6.425 of this document states, for example, that “it would not be seen as an offence to have sought asylum in another country unless the person in question had connections with a terrorist group or a separatist movement and could be connected with activities which might damage India’s sovereignty, integrity or security, or activities which might have a harmful effect on India’s relations with other countries” (Applicant’s Record, at page 93).

[49] The assessment of risks upon return must be made on a case-by-case basis. Mr. Toora, considered not credible by the Board, has not related his personal situation to the general documentary evidence about the situation in the country:

> However, as MacGuigan J.A. acknowledged in *Sheikh, supra*, in fact the claimant’s oral testimony will often be the only evidence linking the claimant to the alleged persecution and, in such cases, if the claimant is not found to be credible, there will be no credible or trustworthy evidence to support the claim. Because they are not claimant-specific, country reports alone are normally not a sufficient basis on which the Board can uphold a claim.
>
> (*Rahaman v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89 (F.C.A.), [2002] 3 F.C. 537, [2002] F.C.J. No. 302 (QL), at paragraph 29; application for leave to appeal to the Supreme Court denied, November 21, 2002, [2002] S.C.C.A. No. 183.)

[50] Similarly, in *Ahmad v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 808, [2004] F.C.J. No. 995 (QL), at paragraph 22, Mr. Justice Paul Rouleau noted:

> 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.

(See also: *Jarada*, *supra*, at paragraph 28.)

[51] Furthermore, in *Singh v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1203, [2005] F.C.J. No. 1473 (QL), at paragraph 23, this Court has already held that an applicant cannot create a ground of persecution by failing to comply with the laws of his country :

> Finally, the Applicant submits that the Board's conclusion that he will not suffer persecution upon his return, based upon documentary evidence stating that asylum seekers who both leave and return with proper travel documentation, ignored the fact that the Applicant actually left with improper documents and therefore is in violation of India's exit laws. This, however, cannot be used as evidence that he will be persecuted by Indian authorities upon his return. The Board acknowledged the fact that Mr. Singh left on false documents. By pointing out that those who left with proper documents should have no problem upon their return, the Board is, rather, underlining the fact that Mr. Singh perhaps fears prosecution instead of persecution. In *Zaidi v. Canada (Minister of Citizenship and Immigration)* (2004), 35 Imm. L.R. (3d) 273 (F.C.), Kelen J. cites the Federal Court of Appeal's decision in *Valentin v. Canada (Minister of Employment and Immigration)*, [1991] 3 F.C. 390, which he paraphrased in the following way:
>
> > ...a defector cannot gain legal status in Canada under IRPA by creating a "need for protection" under section 97 of IRPA by freely, of their own accord and with no reason, making themselves liable to punishment by violating a law of general application in their home country about complying with exit visas, i.e. returning. As worthy as the applicant may be for Canadian immigrant status, the Refugee Board, and this Court, do not have the legal jurisdiction to grant defectors legal status.

CONCLUSION

[52] The Board has not made any error of fact or of law nor has it made any breach of procedural fairness. This Court will not intervene, therefore, to set aside the Board's decision. This application for judicial review will 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
François Brunet, LLB, BCL

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7076-05
STYLE OF CAUSE:	NARESH TOORA v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	June 20, 2006
REASONS FOR ORDER:	The Honourable Mr. Justice Shore
DATED:	June 29, 2006

APPEARANCES:

Michel Le Brun	FOR THE APPLICANT
Michel Pépin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

MICHEL LE BRUN Montréal, Quebec	FOR THE APPLICANT
JOHN H. SIMS, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT