

Federal Court



Cour fédérale

Date: 20241023

Docket: IMM-9440-22

Citation: 2024 FC 1670

Ottawa, Ontario, October 23, 2024

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

JAGJIT SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Following oral submissions on this matter, I indicated that the application would be granted with brief reasons to follow.

[2] The Applicant is a Sikh man from Punjab. He sought refuge in Canada based on his fear of the Punjab police because they wrongly suspected him of militancy. The Applicant indicated in his Basis of Claim form [BOC] that he was taken by the police to an unknown location on

March 26, 2017, where he was questioned, detained and tortured for three days. The Applicant claims that after he was released following the payment of a bribe, he was taken to a private hospital for treatment. The Applicant decided that he should leave Punjab and remained in hiding while an agent made arrangements for a Canadian visa and a flight to Canada.

[3] At the hearing before the Refugee Protection Division [RPD], the Applicant provided various documents to corroborate his claim, including a medical certificate that states he was admitted for medical treatment on March 29, 2017 for four days because of: “Pain in groins and urine retained, pain in extremities, legs and soles tender and swollen, blunt injuries all over body and lacerations on back.”

[4] The RPD dismissed the Applicant’s claim due to “significant inconsistencies” in his testimony and lack of credible evidence. In doing so, the RPD found that the medical certificate was insufficient to establish that the Applicant’s allegations were credible. The RPD discounted the medical certificate because it was written in English, it was obtained by the Applicant’s wife (who was found to have provided unreliable affidavits), and it did not provide evidence “of how the claimant came to require such treatment.”

[5] On August 31, 2022, the Refugee Appeal Division [RAD] dismissed the Applicant’s appeal of the RPD’s decision. The RAD agreed that there were inconsistencies in the Applicant’s evidence and omissions from his BOC which had not been reasonably explained. It also agreed that the documentation submitted by the Appellant in support of his claim was insufficient to overcome the negative credibility findings.

[6] The Applicant submits that the RAD committed reviewable errors as it made a negative credibility determination without addressing the medical certificate, the most crucial piece of documentary evidence that pointed in the opposite direction, and because it engaged in a microscopic analysis of the subjective documentary evidence that it did address.

[7] In my view, the RAD did not err in engaging in a selective assessment or by conducting a microscopic analysis of the evidence. However, the fact that the medical certificate is not mentioned at all in the decision brings into question whether the RAD discharged itself of its duties to meaningfully address all of the evidence before it.

[8] It is trite law that the RAD is not required to refer to every piece of evidence or to explain how they dealt with it. Moreover, the failure to mention a particular piece of evidence in a decision does not mean that it was ignored and does not constitute an error: *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC), [1998] FCJ No 1425 (QL) at paras 16–17. However, the more important the evidence that is not specifically mentioned and analyzed in the tribunal’s reasons, the more willing a court may be to infer from the silence that the tribunal made an erroneous finding of fact without regard to the evidence: *Bains v. Canada (Minister of Employment and Immigration)* (1993), 63 FTR 312, [1993] FCJ No 497.

[9] This Court has cautioned against “putting the conclusion before the evidence”: *Tofa v Canada (Citizenship and Immigration)*, 2023 FC 315 at paras 20, 24. The RAD was required to consider the Applicant’s documentary record as a whole before conducting a credibility

assessment. To proceed otherwise “risks reasoning in a way that begs the very question at issue: the corroborative evidence is not believed simply because the claimant is not believed”: *Li v Canada (Citizenship and Immigration)*, 2019 FC 307 at para 18.

[10] While the RAD provided detailed and compelling reasons to doubt the Applicant’s claim, I consider its failure to grapple with the medical certificate to be a fatal flaw.

[11] Accordingly, the application will be allowed, and the matter remitted for redetermination by another RAD panel.

[12] No question was proposed for certification and none will be granted.

JUDGMENT IN IMM-9440-22

THIS COURT'S JUDGMENT is that:

1. The application is allowed.
2. The RAD's decision is set aside and the matter remitted for redetermination by another RAD panel.
3. No question is certified.

“Roger R. Lafrenière”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9440-22

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

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: AUGUST 20, 2024

JUDGMENT AND REASONS: LAFRENIÈRE J.

DATED: OCTOBER 23, 2024

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