

Date: 20070327

Docket: IMM-5120-06

Citation: 2007 FC 328

Ottawa, Ontario, March 27, 2007

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

**PARAMJIT SINGH
PARMINDER KAUR**

Applicants

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), of the decision of Michael Hamelin, of the Refugee Protection Division (the panel), dated August 16, 2006. The panel determined that the applicants were not “Convention refugees” or “persons in need of protection”. The panel’s decision was drafted in English, the evidence is in English, but the parties’ written and oral submissions were in French, which is why this decision was originally drafted in French.

ISSUE

[2] Is the panel's decision patently unreasonable?

[3] For the following reasons, the answer to this question is negative. As a result, this application for judicial review will be dismissed.

FACTUAL BACKGROUND

[4] Citizens of India, the applicants are the parents of two daughters, born in 1992 and 1994. The girls stayed with family members in Ibrahim Tani, India.

[5] The couple arrived in Toronto on July 31, 2005, with visitor's visas obtained from an agent whom they had paid eight lakh rupees. At the airport, the applicants stated to the Canadian authorities that they were visiting the female applicant's sister in Toronto.

[6] There is a detailed file concerning the applicants' visa application, including CAIPS (Computer Assisted Immigration Processing System) notes based on documents submitted to the Canadian Mission in Chandigarh, India. The notes contain information that contradicts the principal elements of their claim. The notes include the following information:

[TRANSLATION]

Date: 19-07-2005

- Couple's visa application received
- Printed visa(s)

[ENGLISH]

Date: 21-07-2007 (sic)

FILE REVIEW

- . . .
- Intended duration of visit: 2 weeks

- Destined for tourism to visit spouse's sis

Date: 19-JUL-2005

- reviewed avbove (sic) info, considered PA and spouse appear to be reasonably well established in country, have substantial assets, can afford this trip to Canada. Invitor's assets also look quite sufficient. Meet requirements, app approved, issuing.

[7] The visa file contains a letter and a list of documents:

The Canadian Consulate General,
(Visa Section)
SCO 54, 55, 56
Sector 17A,
CHANDIGARH -160017

SUB: **APPLICATION FOR GRANT OF TEMPORARY
RESIDENT VISA FOR 21 DAYS I.E. FROM 24-7-2005
TO 14-08-2005 ON THE INVITATION OF MY
SISTER-IN-LAW (WIFE'S SISTER) AT ATTEND THE
BIRTH CELEBRATION OF HER SON AND TO
SPEND FEW DAYS WITH THEM AND THEIR
FAMILY ALONG WITH MY WIFE PARMINDER
KAUR**

Dear Sir,

Respectfully, I may submit that I and my wife Parminder Kaur intend to visit Canada for 3 weeks, on the invitation of my sister-in-law Jasvir Kaur Garha, permanent resident of Aprt. No. 1208-20 Redgrave Drive, Toronto, Ontario Canada to attend the Birth celebration of her son Tejvir Multani on 23rd July, 2005. She has sent Sponsor Declaration, Invitation Card of Birthday Celebration, Copies of passport of herself, her husband and her son, employment evidences of both, Savings of both husband and wife in TD Canada Trust, Accommodation Proof, Immigration Status etc.

I am running business of Bricks under the name and style of M/S Guru Nanak Brick Industries, Village Nanda Chaur, Distt. Hoshiarpur, along with Agriculture farming and from both I am earning Rs. 5,18,940-00 Per Annum. My wife is a Beautician and running her own beauty shop under the name of Lovely Beauty Centre and earning approx. Rs. 2.55 Lacs per annum. We have sufficient savings in Oriental Bank of Commerce, ITL Branch Hoshiarpur vide Saving Account No. 1690 with a balance for Rs.

6,20,170-00 and The Hoshiarpur Central Co-operative Bank Ltd., Ghorewaha for Rs. 4, 65,000/- I have two sons, Lovedeep Singh and Amandeep Singh both are studying.

My sister-in-law compelled us so many times to visit Canada but due to busy in business and other activities we could not plan. Now rainy season started and due to rain production of bricks suffer and in the rainy season we have some spare time also. So she compelled us to visit Canada on her son's birthday and said in this way she and her family will get a chance to spend few days with her sister.

Keeping in view the facts referred above our visa for 3 weeks may please be sanctioned for which I shall be highly obliged.

Thanking you.

Yours faithfully,

Dated: 18-07-2005

(PARAMJIT SINGH)
VILL & p.o. Bhatnura Lubana,
P.S. Bhogpur, Distt. Jalandhar

page -2-

LIST OF DOCUMENTS ENCLOSED:

1. Original Passports (2)
2. Visa Fee Receipts
3. Sponsor Declaration
4. Invitation Card
5. Passport copy of sister-in-law
6. Passport copy of brother-in-law
7. Passport copy of Nephew
8. Employment evidence of sister-in-law and brother-in-law
9. Saving Certificate of Sister-in-law
10. Saving Certificate of Brother-in-law
11. Accommodation evidences
12. Immigration Status of the Sponsor
13. Brick Industry Licence
14. Income Tax Returns for 3 years of myself and my wife with Advance Tax deposited in Bank receipts
15. Balance Sheets, Trading & Profit & Loss Account of myself and wife
16. PAN Card of Income Tax of both
17. Agriculture Land Record
18. Sale vouchers of crop sold in the market

19. Bank Statement of Oriental Bank of Commerce and Certificate of Savings
20. Bank Certificate of The Hoshiarpur Central Coop. Bank Ltd. and pass book
21. 3 photographs of myself and my wife duly signed on reverse.

[Emphasis in original]

[8] The applicants submit that all the documents are fake. The agent forged them to obtain the tourist visas so they could then claim refugee status in Canada. However, they waited for three and a half months, until November 10, 2005, to file their claims.

[9] The male applicant said at his interview with the immigration officer on December 2, 2005, that police in the state of Punjab were looking for him. He alleged he was suspected of having terrorist ties because he was a truck driver and had transported militants in the states of Jammu and Kashmir on February 2, 2004. He added that, on June 15, 2005, during a police raid at his home, he was accused of having helped another militant from Punjab, Jagtar Singh Hawara, who had escaped from Burial Jail. The applicant was allegedly arrested and tortured for five days.

[10] The dates of his arrests, detention and torture are as follows:

- February 2, 2004 (one day)
- October 10, 2004 (four days)
- June 15, 2005 (five days)

[11] The female applicant stated that she had been arrested, detained and raped by the police on June 15, 2005.

[12] The applicant sought medical attention after he was released on June 20, 2005. He then went to his village Sarpanch, who advised him to live elsewhere in India. Believing he was being sought because he was a baptized Sikh, in July he decided to leave India permanently.

[13] As evidence for their fear of persecution and torture by the police, the applicants submitted the following documents:

1. Letter from Bhogpur Sirwal Truck Union dated June 10, 2006, indicating the applicant is a truck driver for one of the members of the Union. The applicant allegedly had problems with the police.
2. Medical report from Dr. Surjit Singh dated May 31, 2005, indicating that the applicant had been treated at his clinic on:
[TRANSLATION]
 - i. February 3, 2004
 - ii. October 14, 2004
 - iii. June 20, 2005

He suffered from multiple internal and external injuries, swelling, bruises, etc.

...

On June 16, 2005, the female applicant was allegedly admitted to his clinic (i.e., Dr. Singh's clinic) following a rape committed by the police.

3. Affidavit from the Sarpanch dated June 10, 2006, indicating that the principal applicant is a truck driver and that he had problems with the police after having helped two strangers. The principal applicant was allegedly arrested and beaten three times, and his wife was allegedly arrested and raped by the police.
4. Letter dated May 17, 2006, from Dr. Gilles de Margerie, of Clinique Santé Accueil, a medical clinic in Montréal. The doctor states that the female applicant has been a patient of the clinic since March 2006, and the principal applicant has been a patient since December 2005.

Dr. de Margerie made the following diagnosis:

[TRANSLATION]

- Mr. Singh: chronic post-traumatic pain, painkillers recommended
- Ms. Kaur: major depression or post-traumatic depression syndrome, psychotherapy follow-up assured

5. Ration card dated April 15, 2005, and translation dated June 21, 2006, (Exhibit R-2) indicates:

[TRANSLATION]

- Paramjit Singh 42 years old
- Parminder Kaur 37 years old
- Lovedeep Singh 14 years old
- Amandeep Singh 11 years old

IMPUGNED DECISION

[14] After considering all the elements of the file and the applicants' testimonies, the panel determined as follows:

The panel determines that as the claimants have not provided credible or trustworthy evidence they are not "Convention refugees" nor are they "persons in need of protection" for a risk to life and a risk of cruel and unusual treatment or punishment or danger of torture.

[15] The panel was concerned about the contradictions and inconsistencies between the visa application and the claim for refugee protection. The panel stated as follows:

The claimant's principal fear is of the Indian authorities who would seek him (them) out and detain them as a result of the principal claimant's initial run-in with the police in Jammu and Kashmir on February 2, 2004. Yet the panel does not believe that the claimants have provided credible or plausible evidence to support these allegations.

Chief amongst them is the issue concerning the claimant's motivation in coming to Canada. Both claimants left India for Canada on their passports on July 31, 2005. Prior to that time, there

was a Canadian visitor's visa application made by the claimant which is quite extensive. In essence the documentation and allegations there contradict the central elements of the principal claim. According to the application the claimants are coming to Canada to participate in a "Birth ceremony" of claimant Parminder Kaur's sister's child in Canada. The principal claimant Paramjit Singh is described as both an agriculturalist and businessman –no reference to being a truck driver. According to the documentation provided the claimant ran his own business. There are bank statements to confirm this as well as a list of transactions. When confronted on all of this, the principal claimant feigned ignorance and indicated that he had hired an agent (whom he paid eight lakhs) in order to get him out of India. Yet the panel has serious doubts. The initial invitation letters in the visa file predates the actual decision the claimants made in early July 2005 to leave India. Further the visa file contains the personal income tax statements of Jasvir Garha the individual described as a member of the female claimant's family. The panel does not believe it credible that an agent in such a short period of time would have been able to obtain (predated) documents to justify a false visa application. Despite their fear of the authorities the claimants would have left India on their own passports with their visas. They would have come to Canada and not immediately claimed refugee protection status. Rather they would have waited over three and a half months. When confronted on this the principal claimant stated that his wife was reluctant to claim refugee protection status because she was worried for the children. Yet the panel does not believe that this makes much sense. If the clear intention in paying an agent eight lakhs would be to come to Canada in order to seek protection why not do so? The panel again does not believe that these claimants are credible. Further the panel determines that their behaviour throughout is not consistent with someone either fleeing persecution or serious harm.

[16] Lastly, the panel attached no credibility to the documents submitted by the applicant, namely Exhibit R-4 (Union letter) and the medical reports.

ANALYSIS

Is the panel's decision patently unreasonable?

Standard of review

[17] In *Dr. Q v. College of Physicians and Surgeons of British Columbia*, [2003] 1 S.C.R. 226, paragraph 38, the Supreme Court of Canada established that “[a]ssessments of credibility are quintessentially questions of fact”. In an immigration context, the Federal Court of Appeal stated in *Aguebor v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 732 (F.C.A.) (QL), that the Refugee Protection Division is in the best position to assess the credibility of an allegation and make the required determination. Décaré J.A. stated as follows at paragraph 4:

There is no longer any doubt that the Refugee Division, which is a specialized tribunal, has complete jurisdiction to determine the plausibility of testimony: who is in a better position than the Refugee Division to gauge the credibility of an account and to draw the necessary inferences? As long as the inferences drawn by the tribunal are not so unreasonable as to warrant our intervention, its findings are not open to judicial review. In *Giron*, the Court merely observed that in the area of plausibility, the unreasonableness of a decision may be more palpable, and so more easily identifiable, since the account appears on the face of the record. In our opinion, *Giron* in no way reduces the burden that rests on an appellant, of showing that the inferences drawn by the Refugee Division could not reasonably have been drawn. In this case, the appellant has not discharged this burden.

[18] Therefore, the standard of review applicable to questions of credibility is patent unreasonableness. This standard also applies when the documentary evidence is deemed not to be credible (see *Aslam v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 189, [2006] F.C.J. No. 264 (F.C.) (QL), at paragraph 18, and *Grewal v. Canada (Minister of Employment and Immigration)*, [1983] F.C.J. No. 129 (F.C.A.) (QL)).

[19] The applicants submit that the Court should allow their applications because the impugned decision does include errors that are patently unreasonable.

[20] First, the applicants argue that the panel relied solely on the visa file in determining that the applicants' story and documentary evidence were not credible. They also argue that the panel was mistaken with respect to the applicant's actual employer. They note that the panel disregarded Exhibit R-4 without justification.

[21] Furthermore, the applicants claim that the panel should have granted them refugee protection because they are baptized Sikhs and considered to be persons at risk. They also take issue with the fact that the panel did not consider that the terrorist, Hawara, mentioned that the applicant had helped him when he escaped from prison. It was this incident that led them to leave India for good. The panel allegedly committed a reviewable error, since it ignored the evidence that the female applicant had been raped by the police.

[22] The respondent maintains that the panel's decision is reasonable, noting that the applicant does not challenge the following facts that support the decision:

- (a) The applicants allegedly travelled with their own passports, whereas they claim they are being targeted by the Indian authorities.
- (b) They allegedly waited over three months after their arrival in Canada before applying for refugee protection.
- (c) The applicant allegedly was evasive when he answered questions about his arrest on February 2, 2004.

(d) He was not charged with anything following his arrest in February 2004.

[23] The respondent argues that the panel could disregard the evidence submitted in support of the claims, since the applicants were deemed not to be credible.

[24] The Court agrees with the respondent's arguments. While it is true that the time taken to claim refugee protection is not always determinative, this factor is one of many that the panel may consider. In this case, the panel was not patently unreasonable in considering and mentioning it in light of the extensive evidence in the visa file.

[25] So why would they have waited three and a half months to apply for protection if they feared for their lives? In addition, some of the documents in the visa file were dated before the applicants decided to leave India. The panel simply did not believe the applicants' story to the effect that it was their agent who purportedly fabricated these documents in order to obtain fake visas to enable them to enter Canada and subsequently claim refugee protection.

[26] The intervention of this Court is therefore unnecessary.

[27] I agree with the parties that there is no question to be certified in this case.

JUDGMENT

THE COURT ORDERS that

1. The application for judicial review be dismissed. No question is certified.

“Michel Beaudry”

Judge

Certified true translation
Jason Oettel

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5120-06

STYLE OF CAUSE: PARAMJIT SINGH,
PARMINDER KAUR and
MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: March 22, 2007

REASONS FOR JUDGMENT BY: Beaudry, J.

DATED: March 27, 2007

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