Date: 20071120

Docket: IMM-1209-07

Citation: 2007 FC 1214

Ottawa, Ontario, November 20, 2007

PRESENT: The Honourable Mr. Justice Blanchard

BETWEEN:

HARPREET SINGH CHAHIL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

I. Introduction

[1] This is an application for judicial review of the February 26, 2007 decision by the Refugee Protection Division of the Immigration and Refugee Board (the Board) vacating an earlier decision granting refugee status to the Applicant, Mr. Harpreet Singh Chahil also known as Pritam Singh. The Board's decision to vacate was made pursuant to Section 109 of the

Immigration and Refugee Protection Act, S.C. 2001, c. 27 (the Act) and Rule 57 of the *Refugee Protection Division Rules* (the Rules).

II. Facts

[2] The Applicant alleged the following facts upon which he based his refugee claim at the first hearing:

(1) He was born on April 1, 1981 in Mukandpur, Province of Punjab, India.

(2) He completed his schooling (10th grade) in 1999, and then worked on his father's farm until October 1999 when he began his own transport business until December 2001 at which time he became unemployed.

(3) On December 30, 2001, the Applicant was stopped (while in his truck) by young men and subsequently fired at by the police, questioned and tortured. He was released from the police station on January 5, 2002 after a bribe was paid. On the urging of his mother to leave Punjab to save his life, he subsequently fled to his uncle's home in Jagadi Mod on January 20, 2002.

(4) On March 7, 2002, his mother warned him that the police were looking for him and with the help of his uncle's friend, an agent was found to prepare his travel documents. He left India on June 27, 2002.

(5) The Applicant travelled to Canada, via England on June 27, 2002. The Applicant entered Canada without a visa but with a false passport under the name of Jatin Kumar. He claimed protection on July 4, 2002. He produced as identity documents a birth certificate, a driver's licence and a "matric certificate" (school certificate).

(6) The Applicant claimed refugee protection alleging that he had been persecuted in India. His fear of persecution was based on the following allegations:

(a) Police atrocities;

(b) The arrest, torture and killings of relatives;

(c) The arrest of his father and payment of bribes for his release; and

(d) His arrest, interrogation and torture by the police on August 12, 2000, his subsequent release and medical treatment.

[3] The Applicant's claim was accepted by the Immigration and Refugee Board (IRB) on July 31, 2003.

[4] On March 31, 2004, a letter of denunciation was received which alleged that the Applicant's claim was fraudulent, that his real name is Pritam Singh, that he was born on December 5, 1981, that he has no record of police harassment or torture in India and that his father's name is Hajinder Singh and not Sukhwinder Singh as stated in his PIF. As a result, the Minister sought information from the Canadian Mission to India to ascertain the veracity of these allegations.

[5] The Minister's inquiry revealed that the Applicant had obtained a student visa on December 31, 2001. He entered Canada on January 4, 2002, under the identity of Pritam Singh indicating his intention to study at the University of Windsor. At the time of his arrival in Toronto, he was in possession of an Indian passport under the identity of Pritam Singh

No. A8754942, which had been issued to him on March 29, 2000 (expiry date of March 28, 2010) with his photograph included therein.

[6] On April 20, 2005, the Minister applied, pursuant to Section 109(1) and (3) of the Act and Rule 57 of the RPD Rules, for and Order to vacate an earlier decision which allowed the applicant’s claim for refugee protection.

[7] On the application, the Minister alleged that, based on information obtained, the claimant made several false declarations in his personal information form (PIF) which included:

(a) His name and names he used;

(b) His date of birth;

(c) His mother’s name and name of his siblings;

(d) His employment history and educational skills;

(e) His place of residence for the past 10 years and his travel route to Canada;

(f) Information concerning the travel documents he used to travel to Canada and how they were obtained; and

(g) False allegations in his PIF narrative.

[8] The Minister submits that had the tribunal known of these facts at the time of the hearing, the determination that the claimant was a Convention refugee would have been different.

[9] The Application to vacate was heard on September 14, 2006.

III. Decision under Review

[10] The Board reviewed the evidence that was before the first tribunal in rendering its decision to accept the claim. It also considered the Minister's evidence obtained as a result of the inquiry made into the allegations contained in the letter of denunciation. Finally, the Board considered the Applicant's evidence in response to these allegations. In its analysis, the Board focused on the Applicant's identity and on whether there was other sufficient evidence before the first tribunal to justify granting the Applicant refugee protection.

[11] The Board noted several inconsistencies, contradictions and omissions between the applicant's testimony and the information contained in his PIF which led the Board to conclude that the Applicant was not credible. Indeed the Board noted that the Applicant's lack of credibility caused it "…to bring into serious doubt his credibility on all important issues." Specifically, with respect to the Applicant's identity, the Board found, on the preponderance of the evidence, that the Applicant's real name is Pritam Singh and that he attended the Canadian Mission in India in person to apply for a student visa to attend the University of Windsor. The Board also found that the Applicant had no difficulties in India and that he was not persecuted, detained or tortured as alleged in his PIF narrative. The Board further determined that the Applicant had no intention to attend the University of Windsor and that his delay of six months in making his claim for refugee status indicates "a complete lack of genuine subjective fear."

[12] Consequently, on the evidence before it, the Board found that the Applicant had obtained his refugee status as a result of directly misrepresenting or withholding material facts relating to

many relevant matters including identification. The Board concluded that the Applicant was indeed Pritam Singh.

IV. Issues

[13] The following issues are raised in this application:

A. Did the Board err in finding that the Applicant had directly misrepresented or withheld material facts relating to relevant matters in respect to the Applicant's refugee claim?

B. Did the Board err in its determination that other evidence considered at the time of the first determination was insufficient to justify refugee protection for the Applicant?

C. Did the Board breach the principles of natural justice, when it refused to admit evidence that existed, but was not adduced at the time of the first determination?

V. Standard of Review

[14] In *Sethi v. Canada (Minister of Citizenship and Immigration),* 2005 FC 1178, [2005] F.C.J. No. 1434 (QL) at paragraphs 17 to 20, Justice Danielle Tremblay-Lamer conducted a pragmatic and functional analysis in order to determine the standard of review applicable to decisions made pursuant to subsections 109(1) and (2) of the Act.

[15] With respect to a decision under subsection 109(1) of the Act, as to whether a misrepresentation was made, she found that such questions of fact which involve the weighing of evidence produced by the parties are subject to a standard of patent unreasonableness. She also found that decisions under subsection 109(2) of the Act, which involve determining whether remaining untainted evidence in the first determination, is sufficient to nevertheless justify

refugee protection, are reviewable on the reasonableness *simpliciter* standard. In her view, such decisions warrant less deference since the Board is not required to assess the refugee claimant's testimony and credibility at the time of the application to vacate. The Board is not, relative to the Court, in a privileged position to determine whether other sufficient evidence in support of the initial grant of refugee status remains. I am in agreement with my colleague's determinations in respect of the assessment of the applicable standards of review on such questions and her reasons for so finding.

[16] The issue of whether the Board erred in failing to admit new evidence at the vacation hearing conducted pursuant to section 109 of the Act is a question of law reviewable on the correctness standard.

VI. Analysis

A. *Did the Board err in finding that the Applicant had directly misrepresented or withheld material facts relating to relevant matters in respect to the Applicant's refugee claim?*

[17] I reproduce below section 109 of the Act:

Vacation of refugee protection	Demande d'annulation
109. (1) The Refugee Protection Division may, on application by the Minister, vacate a decision to allow a claim for refugee protection, if it finds that the decision was obtained as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter.	109. (1) La Section de la protection des réfugiés peut, sur demande du ministre, annuler la décision ayant accueilli la demande d'asile résultant, directement ou indirectement, de présentations erronées sur un fait important quant à un objet pertinent, ou de réticence sur ce fait.
	Rejet de la demande

Rejection of application	
(2) The Refugee Protection Division may reject the application if it is satisfied that other sufficient evidence was considered at the time of the first determination to justify refugee protection.	(2) Elle peut rejeter la demande si elle estime qu’il reste suffisamment d’éléments de preuve, parmi ceux pris en compte lors de la décision initiale, pour justifier l’asile.
Allowance of application	Effet de la décision
(3) If the application is allowed, the claim of the person is deemed to be rejected and the decision that led to the conferral of refugee protection is nullified.	(3) La décision portant annulation est assimilée au rejet de la demande d’asile, la décision initiale étant dès lors nulle.

[18] At the outset, the Applicant contends that the Board acted beyond its jurisdiction. He argues that section 109 of the Act requires the Board assess the elements actually considered by the first panel in rendering its decision and the weight given to each of the elements. The Applicant argues that the absence of fulsome reasons by the first panel does not provide the Board with this information. It is the Applicant’s position that by not having before it the first panel’s reasons for decision, the Board essentially conducted its own assessment of the facts and substituted the first panel’s appreciation of the evidence with its own. This is so, particularly in respect to determinations affecting the Applicant’s identity. In so doing, the Applicant contends that the Board committed a reviewable error.

[19] I reject the Applicant’s argument. The Board had before it the tribunal record of the first hearing which included the evidence which was adduced before the first panel. The Board was in a position to assess the evidence adduced before the first panel against the evidence produced at the vacation hearing, and determined whether the decision rendered by the first panel was

obtained as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter. In my view, the Board did not exceed its jurisdiction in proceeding as it did.

[20] In the instant case, the withholding and misrepresentation of material facts by the Applicant at the first hearing are clearly established in the evidence. This evidence is summarized above at paragraph 7 of these reasons and is not disputed. The Applicant's main argument is that the impugned omissions and withheld facts are peripheral to his claim and do not justify the decision to vacate his claim for refugee protection. Further, the Applicant claims that his attempts to explain to the Board why he was not forthcoming when he first came to Canada were frustrated by the Board's refusal to admit his further evidence at the vacation hearing as to why he withheld and misrepresented certain facts.

[21] Identity is fundamental in a refugee claim. The Applicant was unable to explain to the Board's satisfaction why he misrepresented his identity. The Board did not err in rejecting his explanations and particularly his account as to how he obtained his student visa. The Board's decision was also based on other factors, the late amendment to his account of events, the changing of the dates of key incidents of his alleged persecution in India. These changes were only brought about after the Applicant was made aware of his vacation hearing, and were required to make his story consistent with his new arrival date in Canada, January, 2004. Further, unexplained contradictions between his PIF narrative and his testimony, and certain admissions relating to misrepresentations made to the first panel were also noted by the Board as a basis for its findings and for ultimately determining that the Applicant is not credible.

[22] In my view, it was reasonably open to the Board on the evidence, to conclude that the decision to grant the Applicant refugee protection was obtained as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter. The evidence before the Board establishes that the Applicant had misrepresented material facts upon which refugee protection was granted.

B. *Did the Board err in its determination that other evidence considered at the time of the first determination was insufficient to justify refugee protection for the Applicant?*

[23] While not expressly provided for in the Board's reasons, reading the decision as a whole, it is implicit that the Board was satisfied that there was no other evidence considered at the time of the first determination to justify refugee protection. The Board, at the outset of its reasons, noted that it had to answer this very question. In my view, it was reasonably open to the Board to answer the question in the negative. In finding that the Applicant's misrepresentations and omissions at the first hearing were such as "…to bring into serious doubt his credibility <u>on all important issues</u>" (my emphasis), the Board was essentially determining that there could be no other evidence left to justify refugee protection. The Board did not believe the Applicant's account of events relating to his persecution in India. This determination is central to the Applicant's refugee claim and the evidence in support of this conclusion is compelling. Therefore, having determined that the central elements of the Applicant's refugee claim were not credible, there could be no other evidence considered at the first hearing that would justify refugee protection. In my view, on the evidence, the Board committed no reviewable error in its

treatment of this issue and in respect of its finding and ultimate conclusion that the claim be vacated.

C. *Did the Board breach the principles of natural justice, when it refused to admit evidence that existed, but was not adduced at the time of the first determination?*

[24] The Applicant had attempted to file as exhibits a number of documents including (a) income tax notices of assessment; (b) a work permit; (c) ration cards; (d) photographs showing bodily injuries; etc. As I understand the Applicant's submissions, this evidence would have served to explain why he acted as he did in respect to the misrepresentations and omissions at the first hearing.

[25] The Court of Appeal has established that a Board may only consider at a vacation hearing material that was before the original panel which allowed the refugee claim. It is also clear that the Minister may adduce evidence at the vacation hearing to establish that a claimant made misrepresentations at the determination hearing. Similarly, a claimant may adduce new evidence at the vacation hearing in an attempt to persuade the Board that the misrepresentations were not made. (*Coomaraswamy v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 153, [2002] F.C.J. No.603 (QL) at paragraphs 16 and 17).

[26] Here, there is no issue that the misrepresentations were made by the Applicant and that the evidence at issue was not before the original panel. Consequently, the Board did not err in not admitting this new evidence.

VI. Conclusion

[27] For the reasons above, the application will be dismissed. The Board committed no reviewable error in deciding and concluding as it did.

[28] The parties have had the opportunity to raise a serious question of general importance as contemplated by paragraph 74(*d*) of the Act, and have not done so. I am satisfied that no serious question of general importance arises on this record. I do not propose to certify a question.

ORDER

THIS COURT ORDERS that:

1. The application for judicial review of the February 26, 2007 decision by the Refugee Protection Division of the Immigration and Refugee Board is dismissed.

2. No question is certified.

"Edmond P. Blanchard"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1209-07
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