

**Date: 20080416**

**Docket: IMM-4082-07**

**Citation: 2008 FC 494**

**Montréal, Quebec, April 16, 2008**

**PRESENT: The Honourable Maurice E. Lagacé**

**BETWEEN:**

**GURDIAL SINGH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The applicant seeks judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated August 13, 2007, which found him not to be a “Convention Refugee” or a “person in need of protection” by reason of his religion under sections 96 and 97 of the Act.

## **Facts**

[2] The applicant is a Sikh from the town of Saiflabad in the Punjab district of India. He alleges fear of persecution by the police on the basis that they mistakenly believe him to be a militant.

[3] Saiflabad is the location of an historic Sikh temple (Gurdwara). This town also hosts a celebration of the birthday of the 6<sup>th</sup> Guru every month and is visited by pilgrims and other devotees. The applicant alleges that he was arrested with three youths at the Gurdwara temple in July, 2003 while he was explaining the history of the temple to visitors. He claims that he suffered torture while in detention and required treatment by a private doctor. He also claims that his release came only after payment of a bribe.

[4] The next interaction with police claimed by Mr. Singh took place as a result of his ferrying visitors to and from the temple with his tractor during the festivities in March, 2004. He alleges that two Sikh youths jumped from the trailer and ran when he slowed down near a police post. As a result, he claims, he was interrogated and accused of working with militants, a claim he denies. He states that again he suffered torture and required medical treatment on was released after the payment of a bribe. He was required to report to the police on a monthly basis.

[5] The applicant claims he was then advised by a village leader to see a lawyer to institute proceedings against the police, but the police discovered his intent and arrested him in April 2005

and tortured him again. Again he asserts that he was freed only after payment of a bribe and that he required medical treatment on release.

[6] The applicant then asserts that he fled the Punjab to stay with an uncle in Uttar Pradesh. He asserts that police raided his house in the Punjab on June 1, 2005 and told his mother and his wife that militants had confessed that he was hiding their weapons in the temple. His oldest son was then arrested and revealed his whereabouts under duress. The police then raided the house of the uncle with whom the applicant was staying, while he was fortuitously out of the house at the time.

[7] The applicant's uncle then refused to let him stay any longer and took him to Delhi to arrange a meeting with a travel agent. Travel documents could not be arranged for his wife and children. While waiting for his travel arrangements to be finalized, Mr. Singh learned that police had again raided his uncle's house and threatened him with arrest and torture if he failed to inform them of any strangers arriving at his house.

[8] The applicant arrived in Canada on July 21, 2005 and asserts that family members in India have told him that the police continue to look for him and to harass his family.

### **The Board's decision**

[9] The Board found that the applicant was neither a "Convention refugee" nor a "person in need of protection". This conclusion results from important weaknesses retained by the Board against important elements of the applicant's story and that undermined as such his credibility.

## **Issues**

[10] This case raises two issues:

- a. Did the Board err in its assessment of the evidence?
- b. Did the Board err in finding that a viable IFA existed for the applicant?

## **Standard of review**

[11] The standard of review for a decision of the Board is reasonableness, except for errors of law, which are to be assessed against a correctness standard (*Dunsmuir v. New Brunswick*, 2008 SCC 9).

## **Analysis**

[12] The Board's decision is based on a factual assessment of the applicant's credibility. In its specialized jurisdiction the Board had full competence to appreciate the proof and the truthfulness of the applicant's allegations.

[13] "A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the

facts and law.” (*Dunsmuir*, above, at para. 47). “Deference in the context of the reasonableness standard therefore implies that courts will give due consideration to the determinations of decision makers.” (*Dunsmuir*, above, at para. 49).

[14] The applicant invites the Court to substitute its own opinion to the Board’s opinion as to the weight and credibility to be given to his proof. The Court will resist this invitation and limit its role to verify only if the Board’s decision is reasonable within the concept indicated in *Dunsmuir*, above.

[15] The Board’s conclusion that the applicant was neither a “Convention refugee” nor a “person in need of protection” results from negative fact findings that undermined in its view the applicant’s credibility as follows:

- a. Questioned as to the time of his three arrests, torture and release by the police in Saiflabad, the applicant referred to question 31 of his Personal Information Form (PIF) to answer “from 1984 to today”, while his PIF indicates that the incidents with the police occurred in July 2003, March 2004 and April 2005;
- b. His allegation of being under threat for perceived association with Sikh militants is contradicted by objective documentary evidence mentioning the disappearance of Sikh militancy in the Punjab;

- c. The applicant's assertion that he intended to file a complaint against the police on the advice of a village leader is found to be implausible and thereby discrediting in view of the alleged circumstances and time off his various arrests and releases;
- d. Finally, the Panel found on the basis of objective documentary evidence that a viable internal flight alternative (IFA) existed for Mr. Singh elsewhere in India, contrary to his assertion.

[16] It was within the Board's jurisdiction to appreciate the applicant's credibility and to make findings on the contradictions of his testimony when compared with objective documentary evidence as to the actual situation in India. The Board is entitled to rely on documentary evidence in preference to that of the applicant. There is no general obligation on the Board to point out specifically any and all items of documentary evidence on which it relied (*Zhou v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 1087 (F.C.A.) (QL)).

[17] The applicant submitted its own evidence but the Board is not bound by it and was justified to rely to its own source of evidence judged more reliable and stating that Sikh militancy has disappeared in the Punjab. True the document referred in the extract cited in the decision was not included in the Tribunal Record excerpt, but it was listed in the latest index filed of the documentation which constitutes sufficient indication of the source of the information relied upon by the Board on this issue, as decided by this Court in *Victorov v. Canada (Minister of Citizenship and Immigration)*, [1995] F.C.J. No. 900 (F.C.T.D.) (QL), at para. 4.

[18] There is also no proof here that the Board did not consider and ignored the documentary evidence led by the applicant, which consists largely of recent newspaper reports showing that the police have arrested or attempted to arrest persons accused of militancy in the Punjab. It is not because the Board makes no mention in its decision of the applicant's documentary evidence that it was not considered. But the Board here simply preferred its own objective and more reliable documentation, to the applicant's evidence consisting mainly of newspaper's reports on sporadic incidents that do not necessarily describe the general situation in the Punjab concerning the disappearance of Sikh militancy.

[19] The Board being a specialized tribunal is due a great deal of deference on findings of credibility and facts such as those involved in the present affair. Once the Board does not believe an applicant, as is obviously the case here, it does not necessarily have to, as the applicant suggests here, address contradictory evidence which runs directly contrary to the core elements of such findings. The fact that the Board does not address here the contradictory evidence does not mean it was not considered by the Board. It only means that it preferred more reliable evidence.

[20] For these reasons the Court finds that the Board did not err in failing to duly address more explicitly the reasons for finding the applicant's evidence as well as his testimony to be either not relevant or trustworthy. The reasons are implicit once the Board finds as it did here: it clearly gave no credibility to the applicant's evidence.

[21] The applicant also contends that the Board erred in finding that a viable IFA exists for him in India. Once the applicant was found not credible on his allegations that he was a “Convention Refugee” the Board had no obligation to push forward its analysis concerning the existence of a viable IFA. This finding however resulted probably from the applicant’s testimony when he asserted that he would have difficulties throughout India, given that his identity cards carried the name of his village and that he spoke Punjabi. From these details, he claimed, the police would find him and continue his persecution notwithstanding the fact that admittedly no warrant has yet been issued for his arrest.

[22] The Board dealt with this claim and stated that the documentary evidence cited to the applicant showed that his concerns on this issue were ill-founded. The Board addressed the issue and had no obligation to accept the applicant’s assertion on this issue. The Board, having heard the applicant and weighed his credibility and the truthfulness of his allegation, also stated that he did not have the profile of a militant.

[23] The applicant claims that the Board erred in failing to assess his profile through the eyes of his alleged persecutors, the police, rather than on his own perception. He also submits that the Board failed to address evidence he provided which directly addresses the lack of an IFA for him in India. But once the Board concluded that the applicant was not a “Convention refugee”, it had no obligation to pursue and make a finding on an IFA. The fact that it did make a finding on the IFA does not help the applicant.



[24] The respondent counters that the burden of establishing the existence of an IFA rests on the applicant and that it was open to the Board to find that he had not met that onus. Likewise, it is well-established that the Board is presumed to have taken all evidence before it into account, absent significant indications to the contrary.

[25] The Court is unable to find any error here in view of the extract of the documentary evidence cited in the decision and which “addresses all applicant’s concerns”. The applicant failed with his burden to convince the Board of the inexistence of a viable IFA for him in India, while on the other hand the Court finds that there was sufficient evidence for the Board to conclude as it did on this issue. Therefore the Court owing respect to the decision of a specialized tribunal will not intervene on this issue.

[26] Having reviewed the evidence and the arguments of both parties on all issues the Court finds that the decision “falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” and has not been proved to be unreasonable. For all these reasons, the Court will dismiss the application.

[27] The Court agrees with the parties that there is no question of general interest to certify.

**JUDGMENT**

**FOR THE FOREGOING REASONS THE COURT DISMISSES** the application.

“Maurice E. Lagacé”

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Deputy Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4082-07

**STYLE OF CAUSE:** GURDIAL SINGH v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** March 28, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT:** LAGACÉ D.J.

**DATED:** April 16, 2008

**APPEARANCES:**

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