

Federal Court



Cour fédérale

Date: 20090320

Docket: IMM-2944-08

Citation: 2009 FC 296

Ottawa, Ontario, March 20, 2009

PRESENT: THE CHIEF JUSTICE

BETWEEN:

KULDEEP SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the second decision by the same member of the Refugee Protection Division (the member) regarding the refugee claim of the applicant.

[2] The first decision, according to which the applicant was neither a Convention refugee nor a person in need of protection, was set aside by a judge of the Federal Court. The judge ordered that the matter be redetermined by the same member. The applicant did not object to this order. The grounds raised by the applicant in this judicial review are substantially different from those that he raised in his previous proceeding.

[3] At the first refugee hearing on May 8, 2006, the person who was the applicant's counsel at the time informed the member that the applicant had been released from an immigration detention centre in view of a valid birth certificate. On the basis of this submission, the member determined that the identity of the applicant should not be in issue before her.

[4] Before the second refugee hearing on January 7, 2008, the member had available a departmental document stating that: [TRANSLATION] "this report is based on the following information . . . that subject Kuldeep Singh was released on January 6, 2006, without the CBSA being satisfied as to his identity" [emphasis added]. This information contradicts what was said on behalf of the applicant during the first hearing. The record suggests that this document was sent to the applicant, through his counsel on December 13, 2007 (applicant's record, at page 146).

[5] Accordingly, the member clearly established, very early in the second hearing, that the identity of the applicant was a live issue in the redetermination process.

[6] The member also asked the applicant to file the original of his birth certificate and asked departmental officials to file the Immigration Division's decision releasing the applicant from detention.

[7] The two documents were to be submitted following the second hearing. The transcript reveals that the member noted that the hearing could reconvene [TRANSLATION] “if necessary” after she had reviewed the documents (tribunal record filed January 8, 2009, at page 21).

[8] The applicant’s counsel submitted the original of the birth certificate to the member on February 5, 2008. The Immigration Division’s decision was forwarded to the Minister and the applicant on February 28, 2008. The second decision of the member was handed down on June 3, 2008, without the hearing having been reconvened.

[9] The principal argument of the applicant, in this proceeding, is based on procedural fairness and natural justice. According to the applicant, he had every expectation that the hearing would be reconvened after the member had reviewed the two documents.

[10] In my view, this submission must fail for at least three reasons.

[11] First, the member’s statements suggesting the possibility of reconvening the hearing were equivocal and must be interpreted in the context of the transcript in its entirety. The concession made by the respondent regarding one of the member’s statements is not, in my respectful opinion, conclusive (tribunal record filed January 8, 2009, at page 149). The applicant did not request the

continuation of the hearing when he forwarded the original of his birth certificate on February 5, 2008. I am satisfied that there was no undertaking to reconvene the hearing, even if the identity issue was in play.

[12] Second, neither of the documents filed after the hearing disclosed any new information that is necessarily relevant in this case. The member had before her a copy of the birth certificate of which the original was provided post-hearing. The member had previously expressed her doubts regarding the purported identity documents from India (tribunal record filed January 8, 2009, at page 21). The Immigration Division's decision of January 6, 2006, disclosed no new relevant information.

[13] Third, even if procedural fairness had been breached, on the grounds that there was an objective expectation that the hearing would be reconvened, I would choose not to intervene. The member's thorough analysis of the lack of credibility of the applicant, without regard to his identity, is dispositive of the refugee claim. Furthermore, it has not been shown how a third refugee hearing would add any useful evidence whatsoever with respect to the identity of the applicant, approximately four years after his arrival in Canada.

[14] For the reasons given above, this application for judicial review must be dismissed. There is no serious question for certification in this proceeding.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed.

“Allan Lutfy”
Chief Justice

Certified true translation
Janine Anderson, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2944-08

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

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: February 26, 2009

**REASONS FOR
JUDGMENT:** THE CHIEF JUSTICE

DATED: March 20, 2009

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