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Citation: 2009 FC 644

Ottawa, Ontario, June 18, 2009

PRESENT: The Honourable Mr. Justice Shore

BANDWEEN:

CHINDER SINGH

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] When a claim has no core, or rather, when the core of a claim, in and of itself, dissolves bit by bit, there is no longer a basis on which the first level decision maker could grant refugee status:

> [1] Just as a specialized tribunal must not examine facts out of context, simply eager to point out contradictions with "microscopic zeal"; a party at a judicial review hearing must not dissect each sentence in the reasons of a decision of a specialized tribunal. Both are exercises in futility.

(*Borate v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 679, 139 A.C.W.S. (3d) 734).

[2] [1] A decision of a first-instance decision-maker must not be dissected piece by piece, but should rather be examined in its entirandy. If, as a whole, it is coherent, that decision must stand.

(*Nijjar v. Canada (Minister of Citizenship and Immigration)*, 2006 FCJ 1058, 165 A.C.W.S. (3d) 147).

II. Legal proceeding

[3] This an application for judicial review of a decision by the Refugee Protection Division (RPD) of the Immigration and Refugee Board (Board) dated October 23, 2008, determining that the applicant is neither a Convention refugee nor a person in need of protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (IRPA).

III. Preliminary remark

[4] The applicant did not file a supplementary memorandum and thus had to limit himself to the arguments in the memorandum dated January 8, 2009, and his reply memorandum dated February 16, 2009.

IV. Facts

[5] The applicant, Mr. Chinder Singh, who is 63 years old, is a Sikh from the Punjab and a citizen of India.

[6] Mr Chinder Singh bases his refugee claim on the fact that the police arrested him in December 2004, accusing him of financing the activities of militant terrorists by sending money from Great Britian where he lived from August 1991 to May 2004.

[7] On August 24, 1991, Mr. Chinder Singh, who was travelling with a passport issued in his name by the authoritites in his country in Jalandhar on April 2, 1991, arrived in Great Britain as a visitor.

[8] After he arrived in Great Britain, Mr. Chinder Singh applied for refugee status, availed himself of a number of remedies, worked as a cook and lived there until May 19, 2004, when he was sent back to India.

[9] During his stay in Great Britain, Mr. Chinder Singh, who is not a citizen of Great Britain or of any European country, obtained a voter registration card for the European Parliament and voted.

[10] For his return to India, on May 19, 2004, Mr. Chinder Singh travelled with a travel document issued by Indian authorities in Great Britain, which was seized by the Indian authorities upon his arrival in New Delhi, on May 20, 2004, because the passport had expired.

[11] Despite the fact that Mr. Chinder Singh alleged that the police looked for him during his stay in Great Britain, the authorities did not bother him when he arrived in India because his family had paid a bribe.

[12] Despite the fact that nothing happened bandween his return to India in May 2004 and his arrest in December 2004, the local police, who had accused him of sending money to terrorists

when he lived in Great Britain, arrested him, detained him and beat him. Mr. Chinder Singh has no proof that he was detained. He was released on payment of a bribe and with the assistance of an influential person, who turned out to be a municipal councillor.

[13] Mr. Chinder Singh was not brought before a court and no charges were laid against him (Transcript (T) of September 19, 2006, Applicant's Record (AR) at p. 636).

[14] In his Personal Information Form (PIF), Mr. Chinder Singh states that after his release, i.e. from January 8, 2005, to January 24, 2005, he was treated for injuries that the police inflicted on him. The Indian medical certificate states the following:

> . . . Patient was suffering from complaints like multiple injuries, bruises, swelling, and pain in all over his body. The patient was thoroughly examined and given treatment of I/V Fluids, Antibiotics, Anti-inflammatory and local dressing.

(PIF, question 31: Tribunal Record (TR) at p. 33 and AR at p. 27; List of exhibits, TR at p. 1 and AR at p. 52; Exhibit P-3: TR at p. 1 and AR at p. 56).

[15] On his arrival in Canada, Mr. Chinder Singh answered in the negative about questions concerning his health and the fact that he consulted a doctor, justifying his response by the fact that he did not have any problems at that time (T of September 19, 2006: TR at p. 643).

[16] However, the medical certificate obtained in 2005 in Canada, from Dr. Ouimand, described [TRANSLATION] "diabetes, chest pain, (still under investigation for probable angina), arterial hypertension and and high cholesterol" as well as mild to severe arthritis of the knees. At the

hearing, Mr. Chinder Singh added that he had tuberculosis (List of Exhibits, TR at p. 1 and AR, at p. 52; Exhibit P-4: TR at p. 1 and AR at p. 7).

[17] The latter diagnosis was confirmed by a physical examination and an X-ray, and the doctor suggested that he should see a specialist to confirm Mr. Chinder Singh's assertion that the knee problem was caused by the violence he suffered in India (Exhibit P-4: TR at p. 1 and AR at p. 7).

[18] Following Dr. Ouimand's recommendation, there is no specialist's report on file to confirm that Mr. Chinder Singh's knee pain was caused by torture. Moreover, Dr. Pellandier's report dated April 4, 2006, mentions osteoarthritis of the knees (T of September19, 2006: TR at p. 656; Reasons for Decision of the RPD from 2007 at p. 5: TR at p. 108 and AR at p. 44).

[19] Mr. Chinder Singh arrived in Canada, in Vancouver, on April 8, 2005, and claimed refugee status in Montréal on April 13, 2005.

[20] On April 29, 2005, at his interview with an immigration officer, Mr. Chinder Singh astated that he had already seen a doctor ("Immigration Officer Interview Notes" at p. 1: TR at p. 77 and Exhibit B to the Affidavit of Brigitte Révah).

[21] In his declaration of April 29, 2005, in his PIF and during his testimony, Mr. Chinder Singh confirmed that he had never been charged with any crime.

[22] During the same interview, Mr. Chinder Singh also stated that he had never been convicted of any crime and that there was no outstanding arrest warrant against him ("Immigration Officer Interview Notes", questions 34 and 36: TR at p. 79 and Exhibit B to the Affidavit of Brigitte Révah).

[23] At the hearing in 2006, and particularly at the one in 2008, Mr. Chinder Singh was confronted about the availability of an internal flight alternative (T of September 19, 2006: TR at pp. 632, 660 to 663; T of January 15, 2008: TR at pp. 708-724).

[24] On February 1, 2007,the RPD denied Mr. Chinder Singh's refugee claim on the ground that he was not credible.

[25] On October 5, 2007, Mr. Justice Sean Harrington granted the application for judicial review and referred the case back to the RPD with the following instructions:

> [18] Although I am granting the application for judicial review, I strongly urge Mr. Singh to come up with copy of the United Kingdom decision rejecting his claim.

(*Singh v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1034, 161 A.C.W.S. (3d) 134; Reasons for Decision of the Federal Court at para. 18; TR at p. 21 and AR at p. 50).

[26] At the end of the hearing on January 15, 2008, the Board provided Mr. Chinder Singh with another opportunity to obtain documents regarding his stay in Great Britain and gave him until February 15, 2008, to do so (T of January 15, 2008: TR at pp. 725-729).

[27] Although the RPD record contains letters addressed to Great Britain asking for a copy of the decision, the decision is not in the tribunal record (Letter dated January 16, 2008: TR at pp. 49 and 50 and Exhibit F to the Affidavit of Brigitte Révah; Letter dated February 1, 2008, and attached exhibit: TR at pp. 47 and 48 and Exhibit G to the Affidavit of Brigitte Révah; Letter dated April 8, 2008: TR at p. 45 and Exhibit H to the Affidavit of Brigitte Révah; Reasons for Decision of the RPD from 2008 at paras. 10 and 11: TR at p. 5 and AR at p. 9).

[28] On October 23, 2008, based on documentary evidence stating that Sikhs are able to relocate within India , the RPD refused the refugee application mainly on the ground that Mr. Chinder Singh did not fit the profile of a dangerous militant and, therefore, an internal flight alternative was available to him.

V. Issue

[29] Is the inherent logic of the Board's decision tenable (that is, the reasonableness of the Board's decision)?

VI. Analysis

[30] Mr. Chinder Singh alleges that the Board had no evidence that there was no outstanding warrant against him and that, in any event, the police can arrest without a warrant.

[31] Second, Mr. Chinder Singh submits that the Board erred by finding that he did not fit the profile of a dangerous militant and by disregarding the documentary evidence indicating that he had fled abroad.

[32] Mr. Chinder Singh also argues that the Board disregarded the most relevant evidence about the availability of an internal flight alternative for Sikhs.

[33] As a supplementary argument, Mr. Chinder Singh submits that the Board did not give adequate reasons for its decision.

[34] Last, Mr. Chinder Singh contends that the respondent is attempting to [TRANSLATION] "improve" the decision by replacing in context excerpts from the evidence that the respondent cited both before the RPD and in his principal memorandum.

Arrest warrant

[35] Mr. Chinder Singh stated that he had not been charged with any crime, had not been associated with a terrorist group, had not been convicted of any crime and that no arrest warrant had been issued against him ("Immigration Officer Interview Notes", questions 34 and 36: TR at p. 79 and Exhibit B to the affidavit of Brigitte Révah).

[36] The documentary evidence shows that the police can arrest a person without a warrant:

Police Treatment of Relocated Sikhs

Article 48 of the Indian Code of Criminal Procedure reads as follows: "A police officer may, for the purpose of arresting without warrant any person whom

> he is authorized to arrest, pursue such person into any place in India" (India 25 Jan. 1974). The Central Reserve Police Force, a paramilitary force of India (AHRC 25 Jan. 2005), may be summoned to any state of India to help "maintain law and order and contain insurgency," as well as "various police duties," such as crowd control and protection of officials (India n.d.b). No information could be found on cooperation bandween Indian state police forces to apprehend wanted individuals among the sources consulted by the Research Directorate.
>
> This power of police officers notwithstanding, a professor of Asian studies commented that in pursuing a wanted individual, it is unlikely that the central Indian authorities will attempt to locate the person in another state, and that this is the case with Sikhs (14 Nov. 2005). This professor added that such pursuits have more to do with the profile of the individual than with the faith the individual subscribes to (*ibid*.). The human rights activist referred to above informed the Research Directorate that he was not aware of any police sweeps or searches of Sikhs in India on the basis of their religion (24 May 2005).
>
> This human rights activist also noted that "persons without sufficient financial means and social clout would mainly be the victims [of suspicions]" (Human Rights Activist 24 May 2005). Similarly, geographer Craig Jeffrey concluded in his study on nandworks of the citizenry and the police in India that those persons with relatives in the police force are able to "perpanduat[e] their economic and social advantage" (Jeffrey 2000, 1013). (Emphasis added.)

(IND100771.EFX (French version): TR at pp. 15 and 16 (excerpts) and 68 (Indiax) and AR at p. 80; IND100771.EX (English version): TR at pp. 15 and 16 (excerpts) and 68 (Indiax) and AR at pp. 87 and 98).

[37] Based, *inter alia*, on the fact that there was no outstanding arrest warrant against Mr. Chinder Singh, the Board determined that he was not a dangerous militant (RPD's 2008 reasons for decision at para. 15).

[38] Mr. Chinder Singh alleges that the Board had no evidence that there was no outstanding arrest warrant against him and that, in any event, the police may arrest without a warrant.

[39] Contrary to what Mr. Chinder Singh argues, it is clear that there was evidence that there were no outstanding warrants or criminal charges against him because that is what he had stated three times in addition to stating that he had not been associated with a terrorist group ("Immigration Officer Interview Notes", questions 34 and 36: TR at p. 79 and Exhibit B to the Affidavit of Brigitte Révah; Schedule 1 – Background Information, questions 4A. and 4H.: TR at p. 88 and Exhibit A to the Affidavit of Brigitte Révah).

[40] Since Mr. Chinder Singh stated that there was no outstanding warrant against him, the Response to the Request for Information IND100771 makes it inconceivable that the police would attempt to find him outside of the Punjab especially since there was no evidence that he would be considered a dangerous militant (IND100771.EFX (French version): 14.4 of the Package dated May 30, 2007: TR at pp. 15 and 16 (excerpts) and 68 (Indiax) and AR at p. 80; IND100771.EX (English version): 2.4 of the Package dated May 30, 2007: TR at pp. 15 and 16 (excerpts) and 68 (Indiax) and AR at pp. 87 and 98).

[41] Therefore, this first argument does not warrant the intervention of this Court.

Applicant's profile

[42] Mr. Chinder Singh's second argument is that the Board erred by finding that he did not fit the profile of a dangerous militant and by disregarding the documentary evidence that he had fled abroad.

[43] There is no evidence in the record that Mr. Chinder Singh was a militant, let alone a dangerous militant. Mr. Chinder Singh submits that he was suspected of giving money to a militant group while living in Great Britain and adds that he had not been associated with militant groups and that there was no outstanding charge or warrant against him.

[44] It must also be noted that Mr. Chinder Singh, whose passport had expired, returned to India on May 20, 2004, by travelling with a travel document issued by the Indian authorities in Great Britain on May 7, 2004, which was seized on his arrival in India, and that nothing happened to him although the documentary evidence shows that militants who were returned to India at roughly the same time as Mr. Chinder Singh had encountered difficulties at the port of entry (PIF, questions 13 and 31: TR at pp. 27 and 32 and AR at pp. 21 and 26; Notice of Seizure: TR at p. 39 and AR at p. 32; IND100662.E: TR at p. 68 (Indiax) and AR at pp. 70-77).

[45] In fact, the documentary evidence reveals the following:

> **Deportees**
>
> Amnesty International reported in January 2003 that
>
> > Some refugees from Punjab - deported to India from western countries in recent years on the ground that after the end of the militancy period they would no more be at risk in Punjab - have been detained and charged under the lapsed [Terrorism and Disruptive Activities] Act on their return (AI 20 Jan. 2003).
>
> . . .
>
> **An official at the Canada Border Services Agency (CBSA) wrote in 13 December 2005 correspondence to the Research Directorate that**

> [a]t no point during the removal process are foreign authorities informed that an individual has made a refugee claim in Canada. To support a request for a Travel Document from a foreign embassy or consulate, a removal order is provided as it confirms the CBSA's legislative requirement to seek the cooperation of a foreign government in issuing a Travel Document. A removal order contains no information regarding an application for protection.

A review of information on removals on the Websites of the United Kingdom Immigration and Nationality Directorate and the Office of Detention and Removal of the United States Immigration and Customs Enforcement also did not indicate whether the authorities of these countries inform Indian authorities about the details of deportees to India (UK Nov. 2005; US n.d.a), although, the United States' Website on Operation Predator, an operation "to target those who exploit children," states that "[Immigration and Customs Enforcement] is partnering with foreign governments" in the removal of "sexual predators" from the United States (ibid. n.d.b.).

. . .

However, a specialist in Indian affairs is of the opinion that if a returnee to India had a "high profile," and the practice was to detain such people, then there would be a "normal likelihood" that the police would detain the returnee, and the state police rather than the federal police would conduct this detention (13 Oct. 2005). A senior director of an Indian affiliate of an international human rights organization agreed and explained that "when deported to India, these Indian citizens are generally detained by the immigration authorities and handed over to the local police who arrest them for violation of travel laws of India despite having valid passports" (VFA 23 Oct. 2005). These sources were unaware of any cases particularly involving refugee claimants.

. . .

Suspected of Applying for Refugee Status Abroad

According to a UNHCR legal officer,

> Indian nationals who returned after having their asylum applications rejected abroad did not have problems if they returned with valid travel documents, and, if their departure had taken place with valid travel documents. Those who had not complied with Indian laws on departure and return to India
>
> might be prosecuted. Refused Indian asylum-seekers who returned to India with temporary travel documents could enter without any problems as such,

> but if they arrived after their passport had expired then they would be questioned about the reasons for this. These arrivals were questioned briefly and then were able to leave the airport freely (3 Nov. 2005).
>
> Similarly, an associate professor of social and cultural anthropology specializing in Indian affairs (3 Nov. 2005) and an India-based senior director of an international human rights organization (VFA 23 Oct. 2005)agreed that those suspected of having requested refugee status abroad are often treated with suspicion and likely to be "harassed.". In contrast, the general secretary of an India-based human rights organization commented that "[g]iven the Constitutional provisions of the country there appears to be no possibility of any harassment against such persons" (PUCL 30 Oct. 2005). Due to a lack of resources, the South Asian Human Rights Documentation Centre was unable to comment on the subject of this Response. (Emphasis added.)

(INF100662.E: TR at p. 68 (Indiax) and AR at pp. 70-77).

[46] The RPD did not reach an unreasonable conclusion by ruling that Mr. Chinder Singh did not fit the profile of a dangerous militant.

Documentary evidence

[47] Mr. Chinder Singh also argues that the Board disregarded the most relevant evidence about internal flight alternatives for Sikhs.

[48] Comparing the reasons for decision with all the documentary evidence that the Board relied on to find that Mr. Chinder Singh had an internal flight alternative, that is, the Response to the Request for Information IND100771.EX and the report of the "Home Office, Country of Origin Information Report INDIA , 11 May 2007", evidence cited by counsel for the applicant at the RPD hearing (IND100771.EX: 14.4 of the Package dated May 30, 2007, TR at pp. 15 and 16 (excerpts) and 68 (Indiax) and AR at pp. 77-86 and 95-104; "Home Office, Country of Origin Information Report, May 11, 2007": 2.4 of the Package dated May 30, 2007 (updated): TR at p. 16 (excerpts)

and p. 68 and (Indiax): Exhibit I to the Affidavit of Brigitte Révah; T January 15, 2008: TR at pp. 719 and 720; *Ghotra v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 498, [2008] F.C.J. No. 638 (QL), Justice François Lemieux).

[49] By replacing the excerpt cited by Mr. Chinder Singh in its context, this is what can be found in the document IND100771.EX:

> **Feasibility of Safe Relocation within India**
>
> The Indian Constitution allows for freedom of movement of citizens, which, according to *Country Reports 2004*, was generally respected in practice in 2004 (*Country Reports 2004* 25 Feb. 2003, Sec. 2d). According to the human rights activist referred to above, "[t]heoretically, Sikhs can, like others, move and relocate themselves in any part of India that does not come under excluded or restricted zones like some parts in the northeast of India". (Human Rights Activist 24 May 2005). This information was corroborated by the UK Immigration and Nationality Directorate, which stated in September 2005 that "there exists the option for those who encounter difficulties to seek national protection or to relocate internally …" (Art. 3.8.8). However, the same report also concluded that "for single women who do not relocate as part of a family unit relocation may be difficult and unduly harsh" (UK Sept. 2005, Art. 3.8.6). In addition, "[for Sikhs] fearing ill-treatment/persecution by the state authorities relocation to a different area of the country to escape this threat is not feasible" (ibid., Art. 3.7.8). Similarly, ENSAAF, a California-based non-profit organization that "fights impunity for human rights abuses in India", stated in a letter entitled "No Safe Haven: The Myth of the Internal Flight Alternative in India for Returned Sikh Asylum Seekers," written on 24 January 2005, that
>
>> Sikh survivors of human rights abuse cannot live safely or securely in any part of India … [due to] … government protection for perpetrators of human rights abuses in Punjab and India; the perception of a revival of militancy in Punjab; the continuation of abuses perpetrated by security forces in India; and the ability and willingness of security and intelligence agencies to track down Sikhs who have relocated to other parts of India, outside of Punjab (1).
>
> This letter can be accessed at <http://www.ensaaf.org/ifa-letter-2005-01.pdf>, although it should be noted that most of the information contained in the letter is based on incidents that occurred in the 1990s (ENSAAF 24 Jan. 2005).

> In contrast, the UK Immigration and Nationality Directorate stated in September 2005 that "… where the fear is of local police and the individual is not of interest to the central [Indian] authorities internal relocation is feasible and not unduly harsh" (UK Sept. 2005, Art. 3.7.8). (Emphasis added.)

(IND100771.EX: 14.4 of the Package dated May 30, 2007: TR at pp. 15 and 16 (excerpts) and 68 (Indiax) and AR at pp. 79 and 80 and 97).

[50] The "Home Office" report is to the same effect::

> 19.116 The Danish Immigration Service consulted various individuals, authorities and organisations regarding the security situation during their fact-finding mission to Punjab in March and April 2000. According to the UNHCR in Delhi, the security situation in Punjab is now under control, but as the UNHCR does not have a presence in Punjab they could not comment on the situation in dandail. Three foreign diplomatic missions in India agreed that the situation in Punjab had considerably improved and that the conflict bandween various groups had calmed down. Acts of violence in Punjab were becoming less common, and were now at a low level. Two of the missions reported that incidents do occasionally occur, such as explosions caused by bombs on buses and trains, but that such incidents occur in the rest of India, and not exclusively to Punjab. Officials of the Committee for Co-ordination on Disappearances in Punjab (CCDP) considered that Punjab was now peaceful and that there were no problems with militant groups and no political problems either. A Foreign Embassy consultant, reported that several people who had previously been militants and who had served their sentences for terrorist activities now lived a normal life in Punjab. **[37] (p19)**
>
> . . .
>
> 19.124 There were no checks on a newcomer to any part of India arriving from another part of India, even if the person is a Punjabi Sikh. Local police forces have neither the resources nor the language abilities to perform background checks on people arriving from other parts of India. There is no system of registration of citizens, and often people have no identity cards, which in any event can be easily forged. "Sikhs relocating from Punjab state to other parts of India do not have to register with the police in their area of relocation, unless they are on parole…" (Immigration and Refugee Board of Canada, 18 January 2006) **[4c]**
>
> 19.125 The Danish Immigration Service fact-finding mission to Punjab, dated March to April 2000, noted "The Director of the South Asia Human

Rights Documentation Centre believed that a high-profile person would not be able to move elsewhere in India without being traced, but that this would be possible for low-profile people." Sources from foreign diplomatic missions in India considered that there was no reason to believe that someone who has or has had problems in Punjab would not be able to reside elsewhere in India. Reference was made to the fact that the authorities in Delhi are not informed about those wanted in Punjab. **[37] (p53)**

19.126 The US Citizenship and Immigration Services, in a response to a query (updated on 22 September 2003), noted that:

"Observers generally agree that Punjab police will try to catch a wanted suspect no matter where he has relocated in India. Several say, however, that the list of wanted militants has been winnowed [whittled] down to 'high-profile' individuals. By contrast, other Punjab experts have said in recent years that any Sikh who has been implicated in political militancy would be at risk anywhere in India. Beyond this dispute over who is actually at risk, there is little doubt that Punjab police will pursue a wanted suspect. 'Punjab police and other police and intelligence agencies in India do pursue those militants, wherever they are located, who figure in their lists of those who were engaged in separatist political activities and belonged to armed opposition groups in the past,' a prominent Indian human rights lawyer said in an e-mail message to the Resource Information Center (RIC) (Indian human rights lawyer 4 May 2003)." **[86] (p1)**

19.127 The Immigraton(sic) and Refugee Board (IRB) of Canada indicated in a response paper dated 18 January 2006 that "A professor of Asian studies, commented that in pursuing a wanted individual, it is unlikely that the central Indian authorities will attempt to locate the person in another state, and this is the case with Sikhs…such pursuits have more to do with the profile of the individual than with the faith the individual subscribes to." A human rights activist consulted said he was not aware of any police sweeps or searches of Sikhs in India on the basis of their religion. **[4c]** (La Cour souligne).

("Home Office, Country of Origin Information Report INDIA, 11 May 2007": TR at pp. 16 (excerpts) and 68 (Indiax) and Exhibit I to the Affidavit of Brigitte Révah).

[51] Considering that Mr. Chinder Singh stated that there was no outstanding charge or arrest warrant against him and that he had never been associated with terrorist groups and that the Board

found he did not fit the profile of a dangerous militant, this argument does not require the intervention of this Court.

Reasons for decision

[52] In his reply memorandum, relying on a passage from a recent decision, *Canada (Minister of Citizenship and Immigration) v. Garcia*, 2009 FC 91, [2009] F.C.J. No. 118 (QL), Mr. Chinder Singh submits that the Board's reasons for its decision were inadequate.

[53] The passage from the *Garcia* decision, above, cited by Mr. Chinder Singh, must be read in conjunction with the rest of the decisions, in particular, the following paragraphs:

> [13] In the case at bar, the applicant asserts that even without subjecting the RPD's reasons to a probing examination, they do not make it possible to understand the basis of its decision, or to follow the reasoning leading to its determinations, and for that reason alone, this Court's intervention is warranted. I agree.
>
> [14] It is impossible to determine whether the decision is reasonable if the underlying reasons are not sufficiently clear and detailed. It is not enough to quote the law; reference must be made to the relevant evidence. In *Via Rail Canada Inc. v. National Transportation Agency*, [2001] 2 F.C. 25, the Court of Appeal pointed out the following:
>
>> [17]The duty to provide reasons is a salutary one. Reasons serve a number of beneficial purposes including that of focussing the decision maker on the relevant factors and evidence. In the words of the Supreme Court of Canada:
>> Reasons, it has been argued, foster better decision making by ensuring that issues and reasoning are well articulated and, therefore, more carefully thought out. The process of writing reasons for decision by itself may be a guarantee of a better decision [*Baker v.*

Canada (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817, at p. 845].

[18]Reasons also provide the parties with the assurance that their representations have been considered.

[19]In addition, reasons allow the parties to effectuate any right of appeal or judicial review that they might have. They provide a basis for an assessment of possible grounds for appeal or review. They allow the appellate or reviewing body to determine whether the decision maker erred and thereby render him or her accountable to that body. This is particularly important when the decision is subject to a deferential standard of review.

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. . .

[21] The duty to give reasons is only fulfilled if the reasons provided are adequate. What constitutes adequate reasons is a matter to be determined in light of the particular circumstances of each case. However, as a general rule, adequate reasons are those that serve the functions for which the duty to provide them was imposed. In the words of my learned colleague Evans J.A., "[a]ny attempt to formulate a standard of adequacy that must be met before a tribunal can be said to have discharged its duty to give reasons must ultimately reflect the purposes served by a duty to give reasons" [*Administrative Law: Cases, Text and Materials* (4th ed.), (Toronto: Emond Montgomery, 1995), at p. 507].

[22] The obligation to provide adequate reasons is not satisfied by merely reciting the submissions and evidence of the parties and stating a conclusion…Rather, the decision maker must set out its findings of fact and the principal evidence upon which those findings were based….The reasons must address the major points in issue.

> The reasoning process followed by the decision maker must be set out and must reflect consideration of the main relevant factors…
>
> [15] Moreover, the Supreme Court of Canada clearly stated in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, that the reviewing court, in inquiring into the qualities that make a decision reasonable, must be concerned with the existence of justification, transparency and intelligibility within the decision-making process. If the reasons are not adequate, the Court cannot assess the decision. Thus, there must be adequate reasons for the Court to be able to analyze the reasonableness of the decision.
>
> [16] As Mr. Justice Luc Martineau wrote at paragraph 5 of *Minister of Citizenship and Immigration v. Koriagin*, 2003 FC 1210, [2003] F.C.J. No. 1534 (QL):
>
> > To fulfil the obligation under paragraph 69.1(11)(*b*) of the Act, the reasons must be sufficiently clear, precise and intelligible to allow the Minister or the person making the claim to understand the grounds on which the decision is based and, where applicable should the decision be appealed, to allow the Court to satisfy itself that the Refugee Division exercised its jurisdiction in accordance with the Act.
>
> [17] In this case, the RPD, in making its determinations, did not refer to any element of the voluminous documentary evidence. Despite the fact that it identified the parties' arguments and the correct principles of law, the Court is unable to follow its reasoning. It is obvious that the RPD decided that the Minister of Public Safety and Emergency Preparedness had not discharged his burden of establishing that there are serious reasons for considering that the respondent committed or was an accomplice in the commission of crimes against peace, war crimes, crimes against humanity or acts contrary to the principles and purposes of the United Nations. However, it did not explain, with regard to the evidence, how it arrived at this determination. This is an error of law.

[54] The Board's decision in this case meets the criteria set out in the above decision since the reasons are sufficiently clear, precise and intelligiblefor the parties to understand the underlying reasons for the decision.

<u>Quotes from the documentary evidence</u>

[55] Last, as his final argument, Mr. Chinder Singh added in his reply memorandum that the respondent was attempting to support the decision by citing passages from the documentary evidence.

[56] The excerpts from the documentary evidence that the respondent cited are taken from the documentary evidence cited by counsel for Mr. Chinder Singh at the RPD hearing on which the Board relied to deny the refugee claim and the documentary evidence cited Mr. Chinder Singh in his principal memorandum.

VII. Conclusion

[57] For all the foregoing reasons, the application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS that

1. The application for judicial review is dismissed.

2. No serious question of general importance is certified.

"Michel M.J. Shore"
Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5140-08
STYLE OF CAUSE:	CHINDER SINGH v. MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	June 11, 2009
REASONS FOR JUDGMENT AND JUDGMENT BY:	MR. JUSTICE SHORE
DATED:	June 18, 2009

APPEARANCES:

Jean-François Bertrand	FOR THE APPLICANT
Michèle Joubert	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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