Federal Court  Cour fédérale

Date: 20091223

Docket: IMM-3263-09

Citation: 2009 FC 1304

Ottawa, Ontario, December 23, 2009

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

SATNAM SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C., 2001, c. 27 (the Act) for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the panel) dated June 3, 2009, determining that the applicant is not a Convention refugee or a person in need of protection.

Issue

[2] The only issue in this case is whether the panel's decision that the applicant has an internal flight alternative (IFA) in Mumbai, India, is reasonable, having regard to the law and the facts.

[3] For the following reasons, the application for judicial review will be dismissed.

Factual Background

[4] The applicant is a citizen of India of Sikh origin, born on May 21, 1979. The applicant alleges that he fears the Indian authorities and that he cannot return to his country because he has problems with the authorities because of a co-worker, Jaswinder Singh, a priest allegedly associated with militants.

[5] On January 5, 2006, the applicant was sent with Jaswinder to perform religious duties. When they returned, they were arrested at a police blockade and taken to the station. Jaswinder was on a list and had already been questioned on several occasions. The applicant and Jaswinder were separated and were accused of being part of a conspiracy. The applicant was mistreated and the police tried to get him to admit that he had ties to militants. He was released after three days when his brother and members of the community paid a bribe. However, Jaswinder was held in detention. When the applicant was released he went to see a doctor to obtain medical care.

[6] On August 10, 2006, the police went to the applicant's home to take him forcibly to the station because militants who stated they were associated with the applicant had been arrested. The applicant recognized Jaswinder among them, but the others were people he did not know. The police asked the applicant to write a confession but he refused. The police subjected him to mistreatment and he was released after a week on payment of a sum of money. The applicant again consulted a doctor.

[7] On September 12, 2006, the applicant met with a lawyer who talked to him about what to do and what help he would have to obtain from third parties in order to take action.

[8] On September 13, 2006, the police went to the applicant's home and threatened him. There seems to have been an agreement that the applicant would not be taken to the station, but he was not to file a complaint against the police. As well, the applicant had to appear before the authorities every month to provide information about militants. The applicant reported monthly to the police after that, but he was mistreated each time, in addition to having to do work that no one wanted to do. Shortly afterward, the applicant decided to leave India.

Impugned Decision

[9] The panel concluded that the applicant had an internal flight alternative in Mumbai, India. He was therefore not a Convention refugee or a person in need of protection.

Standard of Review

[10] Before the decision of the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2009 SCC 9, [2008] 1 S.C.R. 190, the standard of review that applied to the issue of IFA was patent unreasonableness (*Khan v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 44, 136 A.C.W.S. (3d) 912; *Chorny v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 999, 238 F.T.R. 289).

[11] Since *Dunsmuir*, a decision regarding IFA has been subject to the new standard of review, which is reasonableness. Accordingly, the Court will intervene only if the decision does not fall within "the range of acceptable outcomes that are defensible in respect of the facts and the law" (*Dunsmuir* at para. 47).

Analysis

[12] After considering the written and oral submissions by the parties, I am of the opinion that the panel's conclusion is reasonable in the circumstances. The applicant has presented no evidence that shows that the IFA referred to was inadequate.

[13] The role of the Court in this instance, that is, in an application for judicial review, is to determine whether the panel's decision is reasonable, and not to reassess the evidence presented in support of the claim for refugee status and substitute its opinion for the opinion of the panel.

[14] In *Thirunavukkarasu v. Canada (Minister of Citizenship and Immigration)*, [1994] 1 F.C. 589, 163 N.R. 232 (F.C.A.), the Court observed that there are two steps in establishing an IFA:

> 1. the panel must be satisfied, on a balance of probabilities, that the applicants do not face a serious risk of persecution in the proposed area; and
>
> 2. the conditions in the proposed area are not such that it would be unreasonable for them to seek refuge there.

[15] As my colleague Justice de Montigny recently held in *Octavio Campos Navarro et al. v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 358 at paragraph 20:

> The very definition of a Convention refugee or a person in need of protection necessarily implies that it is impossible for an applicant to claim the protection of his or her country anywhere in his or her country. The internal flight alternative is inherent in the very notion of refugee and person in need of protection. As has been noted by the Federal Court of Appeal, the threshold should be set very high in determining what would be unreasonable: "It requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions." (*Ranganathan v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 164, paragraph 15). And it is up to claimants to show that they do not have an internal flight alternative within their country (*Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589.

[16] It is settled law that the panel is presumed to have considered all of the evidence (*Florea v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598 (F.C.A.) (QL) at para. 1; *Lai v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 125, 332 N.R. 344 at para. 90) and is not obliged to mention all the evidence (*Woolaston v. Canada (Minister of Manpower and*

Immigration), [1973] S.C.R. 102, 28 D.L.R. (3d) 489 at p. 108; *Hassan v. Canada (Minister of Employment and Immigration),* (1992), 147 N.R. 317, 36 A.C.W.S. (3d) 635 (F.C.A.); *Hinzman v. Canada (Minister of Citizenship and Immigration),* 2006 FC 420, [2007] 1 F.C.R. 561).

[17] The applicant put forward several arguments to the effect that he is wanted and accordingly there is no internal flight alternative. In particular, the applicant pointed out that his brother was summoned to the police station upon his arrival in India after leaving Canada in 2007. The Court notes that the applicant's brother in fact returned to his village, while the panel concluded that the applicant's internal flight alternative was in Mumbai. Unlike his brother, therefore, by not returning to his village, the applicant would avoid difficulties with the local police.

[18] The applicant also stated that before leaving India he was "on parole" and he had given an undertaking to attend at the police station monthly. Having left India, the applicant's situation is therefore allegedly one involving illegality and he might be wanted by the authorities. In addition, the applicant alleges that when his brother was summoned to the police station, after returning to India, the police told him that the applicant might be extradited in Canada under the Extradition Treaty between the two countries. The evidence in the record in fact shows that when the applicant was arrested by the authorities, he was released, he did not give fingerprints, he did not appear before a judge, there was no warrant for his arrest and he did not fail to comply with any conditions imposed on him by the authorities. Accordingly, as the respondent correctly stated, it is difficult in the circumstances to apply the portion of the evidence that refers to individuals who are "on parole" – translated into French as "*libération conditionnelle*" – to the applicant. It is also difficult for the

Court to conclude that, absent a warrant for the applicant's arrest, he is in danger of extradition. The panel thus concluded judiciously that notwithstanding the problems the applicant's brother allegedly had when he returned to the village, the applicant did not prove that there was a serious possibility of persecution or a danger of torture, risk to his life or risk of cruel and unusual treatment if he were to move to Mumbai.

[19] The applicant stated that if he settled elsewhere in India he would be reported and he might thus fall into the hands of the police, who could return him to Punjab. In my opinion, the panel also correctly rejected that explanation, since the documentary evidence indicates that many Sikhs live peacefully in India and that this could be the case for the applicant.

[20] The applicant replied that he would have problems everywhere in India because newcomers are registered. However, all of the grounds argued by the applicant to show that IFA is not a reasonable solution for him, in particular that newcomers are registered in a city and the problems his brother had, do not satisfy this Court that the applicant's life or safety would be in danger. It is clear, on reading the record, that the obligation to register with local authorities does not exist in all the cities of India, a country with a population of over a billion. The obligation is primarily designed to combat crime, and it varies from city to city, where it exists. The evidence also shows that the applicant is not wanted and there is nothing in the record from which it could be concluded that the city of Mumbai requires this kind of registration.

[21] The Court is of the opinion that the panel assessed all of the objective documentary evidence and did not need to quote it in full (*Singh v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 408, [2008] F.C.J. No. 547 (QL) at paras. 17-19 (*Singh* (2008)); *Ayala v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1258, [2008] F.C.J. No. 1572 (QL) at paras. 10-12).

[22] The panel's decision is based on the applicant's testimony and the documentary evidence in the record. The panel had regard to the applicant's personal situation and the reasonable alternative available to him for relocating elsewhere in India. In the circumstances, the decision is reasonable and intervention by the Court is not warranted.

[23] The parties did not submit any question for certification and this case does not raise any question.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review be dismissed. No question will be certified.

"Richard Boivin"
Judge

Certified true translation
Brian McCordick, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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