

Federal Court



Cour fédérale

Date: 20100122

Docket: IMM-3171-09

Citation: 2010 FC 59

Ottawa, Ontario, this 22nd day of January 2010

Before: The Honourable Mr. Justice Pinard

BETWEEN:

KAUR, Kuldeep

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of Me Guy Lebel, a member of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated June 3, 2009, finding that the applicant is neither a “Convention refugee” nor a “person in need of protection” pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[2] Madam Kuldeep Kaur, the applicant, is a citizen of India. She is twenty-eight years old. She came to Canada on June 22, 2007 on a work permit as a dress designer. Her permit was obtained through an agent and upon arriving in Canada she was sent to work at a bakery. She claimed refugee status almost a year after arriving in Canada.

[3] On June 26, 2008 she was interviewed by Immigration Officer Line Ouellette in Montréal with the assistance of an interpreter, Nami Haider, who translated between English and Punjabi.

[4] The applicant bases her refugee claim on a fear of persecution by the local police as a result of the activities of her brother, Jaswant Singh, and her fiancé, Swarnjit Singh, who were active members in the All India Sikh Student Federation.

[5] The Board's decision was based solely on its determination that the applicant was not credible. This conclusion is supported by certain contradictions and implausibilities in the applicant's evidence as identified by the Board.

[6] The first contradiction identified was in regard to the name of the organization that the applicant's brother and fiancé were members of. During her testimony the applicant stated that her fiancé was a member of the "All India Sikh Student Federation" but had provided the name of a different political group during her interview with an Immigration Officer at her port of entry, namely, the "All Sikh Student Foundation". A further contradiction concerned the fate of her brother. In her Personal Information Form ("PIF"), the applicant noted that her brother was living in hiding since January 2006, however, at her interview with the Immigration Officer she stated that

after he was taken by police in January 2006 he was never heard from again. Both contradictions were put to the applicant. In regard to her brother, the Board determined that she did not give an explanation for the contradiction but rather, she simply was content to state that her brother had disappeared after he was released from police custody. This statement did not satisfy the Board that the contradiction was immaterial.

[7] On her PIF, the applicant indicated that she was released from police custody the day after her father died. His death occurred on April 4, 2006 so this would put her release date as April 5, 2006. However, during her testimony she stated that she had been released on April 3, 2006. When confronted, she reiterated that she had not been detained for more than one day. The Board found that she changed the dates. The medical report indicates she was hospitalized from April 3 to April 5, 2006. In the Board member's opinion, the applicant had adjusted her testimony to fit her medical evidence.

[8] In addition to the contradictions in the evidence, the Board determined that it could not attach any weight to the medical report because it was unreliable. Specifically, the medical report was dated April 5, 2006 but mentioned that after April 5, 2006 the applicant was treated at her house and was advised to return to the medical clinic for follow-up tests but that she failed to do so. If she was to receive treatment after April 5 and the document was dated April 5, it was not possible for the medical clinic to have known whether she attended at the clinic to obtain medical treatment. This implausibility was put to the applicant and she was not able to provide an explanation to satisfy the Board that the medical report was reliable.

[9] In total, the contradictions between her PIF and the notes taken at the Immigration Examination undermined her credibility.

[10] Finally, the Board made a further negative finding against the credibility of the applicant for her delay in making her refugee claim after arriving in Canada. The Board noted that a delay may not be determinative of the applicant's credibility on its own. However, it is a fact that the Board may take into account in regard to the actions of the refugee claimant as a whole. In this case, the applicant waited close to a year before submitting her refugee claim. Her explanation for the delay was that she was working for an employer who had promised to obtain permanent residence documents for her but failed to produce them. She met someone during her first year in Canada who told her she could claim refugee status and this prompted her to ultimately file her claim. This explanation did not satisfy the Board.

[11] The Board found that the applicant was attempting to obtain status in Canada because she could not, or did not want to follow the normal immigration procedure. No separate section 97 analysis was conducted, but the Board determined that there was no serious possibility that the applicant would face cruel and unusual punishment in India because her story was fundamentally not credible.

[12] The applicant points out that the Board did not discuss the psychologist's report in its reasons. At paragraph 7 of the Board's reasons there is a reference to the notes of M. Woodbury, the psychologist who examined the applicant. The report is produced in the applicant's Record and is an

opinion of the symptoms of Post-Traumatic Stress Disorder which will manifest at the hearing for this particular applicant.

[13] The respondent first argues that the Board cannot be faulted for not referring to each and every document put before it. It is deemed to have considered all the evidence. I note that the Board did refer to this evidence so this argument is irrelevant.

[14] The respondent further argues that the report is an attempt to establish the applicant's credibility, that the Board was right to give it little weight, and that the Court should not intervene to re-assess the weight given to this evidence.

[15] However, I find Mr. Woodbury's report was provided to assist the Board in assessing the quality of the *viva voce* evidence. Mr. Woodbury's qualifications are not disputed by the Board. The latter has not commented with respect to the applicant's demeanour, frankness or other elements that could be used to subjectively evaluate this applicant's evidence. Rather, where the applicant provided direct answers to support her claim she appears to have been disbelieved but we are left wondering why. Mr. Woodbury clearly emphasized that the applicant may not show signs of appropriate emotionality on account of her symptoms of post-traumatic stress disorder. Counsel for the applicant suggests that the failure to discuss the psychologist's report was unreasonable in the circumstances where a decision to reject an applicant's claim for refugee status was based in large part on the applicant's failure to provide explanations for the perceived contradiction in her earlier testimony to the Immigration Officer and her PIF narrative. I agree.

[16] In my opinion, the Board has engaged in a microscopic analysis of the applicant's story. The Board has relentlessly focused on a weak contradiction in regard to the date of her release from prison. The April 5, 2006 date of release was initially contradicted by a medical report that was ultimately found to lack any probative value. Thus, it should not have been used to contradict the applicant in the first instance. The Board provides insufficient reasons to demonstrate that the applicant's delay is indicative of a lack of subjective fear, given the applicant's explanation for the delay. The remaining contradiction in regard to the name of the political organization that the applicant's brother and fiancé belonged to is immaterial to her claim that she was beaten and raped by members of her local police force and fears persecution by them should she return. In my view, the contradictions identified are not clearly so, and at the very least should not have been determinative of the claim.

[17] For all the above reasons, I find the impugned decision to be unreasonable (see *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, at paragraph 47). Consequently, the application for judicial review is allowed and the matter is sent back for redetermination by a differently constituted panel of the Board.

JUDGMENT

The application for judicial review is allowed. The decision of Me Guy Lebel, a member of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated June 3, 2009, is annulled and the matter is sent back for redetermination by a differently constituted panel of the Board.

“Yvon Pinard”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-3171-09

STYLE OF CAUSE: KAUR, Kuldeep v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: January 13, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** Pinard J.

DATED: January 22, 2010

APPEARANCES:

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Me Émilie Tremblay FOR THE RESPONDENT

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