

Federal Court



Cour fédérale

**Date: 20100603**

**Docket: IMM-5608-09**

**Citation: 2010 FC 601**

**Montreal, Quebec, June 3, 2010**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**BALWANT SINGH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

I. Overview

[1] Unless otherwise demonstrated, an internal flight alternative is a reasonable conclusion for an applicant.

Unless an applicant can show on a balance of probabilities that a serious possibility of persecution exists to his or her person in every part of his or her country of origin, an applicant has an internal flight alternative.

[2] In the recent decision of *Jakhu v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 159, [2009] F.C.J. No. 203 (QL), Justice Yves de Montigny wrote:

[26] Counsel for the applicant also faulted the officer for having misunderstood the objective country documentation, and for having found that the situation for Sikhs in India has improved over the last 10 to 15 years. Relying mostly on outdated evidence, he claims that the situation in India is much grimmer than that painted by the officer. Once again, a careful reading of that documentation, and in particular of the U.S Department of State Country Reports on Human Rights Practices and of the Home Office (U.K.) Operational Guidance Note for the year 2007 has persuaded me that the officer's analysis of the situation is fair and balanced, and accurately reflects the current condition of Sikhs in India. To be sure, the officer was not blind to the shortcomings of the human rights record in India, and noted, for example, that Amnesty International found that torture and violence in police custody continued to be regularly reported. The officer also reported that some human rights groups claim the NHRC is hampered by numerous organizational and legal weaknesses. However on the whole, he found that Sikhs could find protection in India, that ordinary members (as opposed to high-profile militants) of Akali Dal party do not generally face risk because of their political affiliations, and that Sikhs can relocate anywhere in India. While counsel for the applicant may disagree with that finding, it is well supported by the evidence that was before the officer, which he no doubt consulted as is made clear by his numerous references to it. (Emphasis added).

## II. Judicial Procedure

[3] This is an application for judicial review of a decision rendered by the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated September 30, 2009, which found the Applicant not to be a Convention refugee or a person in need of protection.

## III. Background

[4] As stated by the RPD, the Applicant, Mr. Balwant Singh, was 49 years old and had earned his living as a farmer and as a truck driver. Mr. Balwant Singh alleged that he was arrested in 2004, when a friend of his brother-in-law, who had links with the militants, visited his home. He was released two days later. Mr. Balwant Singh was also arrested in July 2006 when he consulted a

lawyer to obtain the release of his brother-in-law who had been arrested for a second time in June 2006. Mr. Balwant Singh was released a few days later on condition that he report to the police station every month; this was subsequent to his family's promise to take no legal action by which to have his brother-in-law released.

[5] The RPD found that Mr. Balwant Singh was neither a refugee nor a person in need of protection. It concluded that Mr. Balwant Singh has an internal flight alternative (IFA) in Delhi.

#### IV. Analysis

[6] Mr. Balwant Singh was not a member of a militant movement; neither was he politically active, nor was he ever suspected of being a militant. It was noted by the RPD that he was neither known to have been in favour nor opposed to the creation of Khalistan.

[7] Subsequent to his arrest, Mr. Balwant Singh was released without conditions in 2004. His arrest in 2006 was to pressure him to abandon legal action for the release of his brother-in-law.

[8] Mr. Balwant Singh abandoned his legal actions against the police and, thus, the RPD concluded that he was of no interest to police outside of the Punjab.

[9] Mr. Balwant Singh left India on his own passport without any apparent fear of the Central Indian Authorities. This was a surprise to the RPD as Mr. Balwant Singh's brother-in-law had been arrested at the airport and transferred to the Punjab authorities.

[10] The RPD reasonably concluded that the fact that Mr. Balwant Singh used his own passport to leave India demonstrated that he did not fear the central authorities. (*Choque v. Canada (Minister of Citizenship and Immigration)* (1997), 73 A.C.W.S. (3d) 308, [1997] F.C.J. No. 1017 (QL); *Ccanto v. Canada (Minister of Employment and Immigration)* 1994, 73 F.T.R. 144, 46 A.C.W.S. (3d) 309; *Singh v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 958, [2009] F.C.J. No. 1169 (QL)).

[11] The documentary evidence demonstrates that Sikhs who fear local police and who are of no interest to the central authorities can relocate to other parts of India.

[12] The RPD concluded that Mr. Balwant Singh could relocate to Delhi, as he had lived there for a period of ten months prior to coming to Canada.

[13] To qualify as a Convention refugee, Mr. Balwant Singh had to demonstrate that he had no IFA (*Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 1172 (QL), [1994] 1 F.C. 589 (F.C.A.)).

[14] To succeed, Mr. Balwant Singh would have to demonstrate a serious possibility of persecution throughout India.

[5] In *Rasaratnam, supra*, this Court also addressed and settled the question of who bears the burden of proof with respect to an IFA. In *Rasaratnam*, it was argued unsuccessfully before this Court that the onus is not on the claimant to disprove an IFA once the claimant has shown a well-founded fear of persecution in one part of a

country. Mahoney J.A. held that, since the question of whether or not there is an IFA is simply part and parcel of whether or not the claimant is a Convention refugee, the onus of proof rests on the claimant to show, on a balance of probabilities, that there is a serious possibility of persecution throughout the country, including the area which is alleged to afford an IFA.

(*Thirunavukkarasu*, above).

[15] An IFA is clearly within the expertise and purview of the RPD. This Court does not intervene unless an applicant demonstrates that the conclusion of the RPD was unreasonable (*Singh v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 158, [2009] F.C.J. No. 202 (QL); *Singh v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 494, 167 A.C.W.S. (3d) 372). Mr. Balwant Singh had to demonstrate that he would be at risk in every part of India, which he did not demonstrate, as he lived in Delhi for ten months prior to coming to Canada; and, it is recognized, that he also left India with his own passport from an airport under the control of the central authorities.

[16] The RPD reasonably found Mr. Balwant Singh to have an IFA in Delhi. The Federal Court has upheld decisions which found that Sikhs from the Punjab would not be at risk in India outside of the Punjab (*Singh*, 2009 FC 158, above; *Singh v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 644, [2009] F.C.J. No. 745 (QL).

[17] In the recent decision of *Singh v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1304, [2009] F.C.J. No. 1679 (QL), at paragraphs 19 to 22, Justice Richard Boivin reached a similar conclusion to that of Justice de Montigny in *Jakhu*, above.

V. Conclusion

[18] The Court finds that the RPD reached a reasonable conclusion in its decision. Recent decisions of the Federal Court have recognized, through objective evidence, the possibility of an IFA in India (*Singh v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 58, [2010] F.C.J. No. 115 (QL), of Justice Yvon Pinard; *Singh*, 2009 FC 158, above, of Justice Michel Beaudry).

[19] For all of the above reasons, the application for judicial review is dismissed.

**JUDGMENT**

**THIS COURT ORDERS** that

1. The application for judicial review be dismissed;
2. No serious question of general importance be certified.

“Michel M.J. Shore”

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Judge

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

**DOCKET:** IMM-5608-09

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

**PLACE OF HEARING:** Montréal, Quebec

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AND JUDGMENT:** SHORE J.

**DATED:** June 3, 2010

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