

Federal Court



Cour fédérale

**Date: 20101119**

**Docket: IMM-2300-10**

**Citation: 2010 FC 1161**

**Ottawa, Ontario, November 19, 2010**

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

**BETWEEN:**

**RESHAM SINGH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

I. Introduction and standard of review

[1] Resham Singh is a citizen of India born in the Punjab and a baptized Sikh. He raises two grounds in his challenge to the April 9, 2010 decision of the Refugee Protection Division (the tribunal) who determined he was neither a Convention Refugee nor a person in need of protection on account of his fear at the hands of the police in the Punjab who suspect him of supporting Sikh extremists and Kashmiri militants as a result of two March 2007 visits at his home by an

acquaintance, a member of the Khalistan Commando Force, accompanied by two other persons, members of the Laskare Tobia, whom he was forced to provide food.

[2] The two grounds of challenge are:

- a. The tribunal breached a principle of natural justice or procedural fairness when it refused to grant his counsel's motion for a *de novo* hearing made at the start of the tribunal's second session on October 13, 2009, arguing Mr. Singh did not understand the interpreter at the first session held on August 14, 2009 and there was a manifest conflict between his client and the interpreter. The standard of review in respect of this ground is correctness.
- b. The tribunal erred when it dismissed Mr. Singh's claim on the merits finding he had a viable Internal Flight Alternative (IFA) in New Delhi. The standard of review for this finding is reasonableness it being a mixed question of fact and law. Since his challenge here is to the tribunal's findings of fact regarding the availability of an IFA and police practices in India a high degree of deference is owed the decision-maker. See *Canada (MCI) v. Khosa*, 2009 SCC 12, [2009] S.C.J. No. 12 at paras. 3, 46 and 63. In short, section 18.1(4)(b) of the *Federal Courts Act* provides legislative guidance to the tribunal's fact finding. The tribunal's IFA finding must stand unless it is demonstrated by the applicant it was reached in a perverse or capricious manner or without regard to the evidence before it. Since the tribunal made no adverse credibility finding against Mr. Singh, his story must be accepted as true.

II. The Interpretation question

[3] Both counsel agree the question of the quality of the interpretation is governed by the Federal Court of Appeal's decision in *Mohammadian v. Canada (MCI)*, 2001 FCA 191, [2001] F.C.J. No. 916, applying the Supreme Court of Canada's decision in *R. v. Tran*, [1994] 2 S.C.R. 951. In my view, the principles enunciated in *Mohammadian* may be briefly summarized as follows:

- a. The interpretation must be precise, continuous, competent, impartial and contemporaneous.
- b. No proof of actual prejudice is required as a condition of obtaining relief.
- c. The right is to adequate translation not perfect translation. The fundamental value is linguistic understanding.
- d. Waiver of the right results if an objection to the quality of the translation is not raised by a claimant at the first opportunity in those cases where it is reasonable to expect that a complaint be made.
- e. It is a question of fact in each case whether it is reasonable to expect that a complaint be made about the inadequacy of interpretation.
- f. If the interpreter is having difficulty speaking an applicant's language and being understood by him is a matter which should be raised at the earliest opportunity.

[4] In its reasons, the tribunal found:

- a. The hearing on August 14, 2009 was adjourned because there was insufficient time to complete hearing the evidence, not because of any interpretation problem.

- b. When she adjourned the hearing the presiding member “indicated that I would request a different Punjabi interpreter for the second sitting due to an apparent personality conflict between the claimant and the interpreter, which surfaced at the conclusion of the first sitting”.
- c. At the beginning of the second sitting on October 13, 2009, counsel for the Applicant made his application for a *de novo* hearing on the basis Mr. Singh had not been able to understand the interpreter at the first hearing.
- d. Since his motion was not made until all the parties were already assembled for the second sitting, the tribunal proceeded hearing the balance of the evidence that day with the new interpreter.
- e. However, she deferred making a decision on the application “in order to secure an IRB audit of the interpretation quality of the first sitting, allowing, time for counsel to provide submissions on the audit results”.
- f. After reviewing the proceeding of the first sitting, the results of the interpretation audit, the Applicant’s comments, the Tribunal Officer’s comments, the submissions regarding interpretation made in the course of the hearing and the written submissions, the tribunal refused Mr. Singh’s application for a *de novo* hearing.

[5] The tribunal dismissed the *de novo* hearing application on two grounds:

- a. The member determined the application had not been made in a timely manner in that the Applicant did not express his concerns at the first available opportunity (the procedural ground);

- b. On the merits of the issue relating to the quality of the interpretation, the tribunal determined the Applicant “was served by interpretation that fulfilled the appropriate standards of quality” (the substantive ground).

[6] In support of the procedural ground, the tribunal took into account the following elements:

- a. During the first hour of the first sitting “the claimant occasionally answered questions in a confusing manner, and at one point he said-apparently to the interpreter-“you don’t understand Punjabi””.
- b. His counsel also told the tribunal he understood Punjabi. Counsel intervened at three points in the first hour of testimony to clarify specific Punjabi wording.
- c. Appreciating what transpired during the first hour, at the first break, the tribunal spoke to Counsel for the Applicant asking if he had any concerns about the interpretation. Counsel replied the interpreter “may have had a slightly different dialect, as the claimant was from a rural area of the Punjab”.
- d. Counsel agreed to speak to Mr. Singh during the break and ensure that the claimant would indicate to the presiding member if he had any trouble understanding the interpreter. Counsel did not request a new interpreter or express any concerns about its quality either during that mid-hearing conference or after he and the claimant returned from the break.
- e. She disagreed with Counsel’s statement in his written submissions that “it was pointed out many times during the hearing of this claim that the claimant did not understand the interpreter”. The tribunal said her review of the proceedings did not indicate this to be the case. The tribunal noted, however, in several instances his

Counsel “encouraged the claimant to ask for clarification if he did not understand a word”. She also noted the claimant made some comments directly to the interpreter, adding:

[...] The claimant seemed to be disparaging the interpreter, and on one occasion stated that she spoke Hindi and not Punjabi. However, neither he nor counsel stated any concerns directly to me. Having already invited counsel to indicate if there were interpretation concerns, and considering that counsel is experienced in refugee hearings, I do not find that comments that are not directed to the member constitute a contention about the inadequacy of interpretation.

[Emphasis added]

- f. Towards the end of the first sitting the interpreter expressed frustration when the claimant did not pause to enable her to interpret portions of his longer answers. The tribunal wrote:

[...] Both the claimant and the interpreter appeared to feel irritation with the interpretation relationship. The claimant had to be reminded not to speak directly to the interpreter as a party in the hearing, and the interpreter had to be reminded to use patience in dealing with the claimant’s outburst against her. When I proposed that I request a different interpreter for the second sitting, I indicated that the reason was not a reflection on the adequacy of the interpretation but only because of the apparent personality conflict between the claimant and the interpreter. Counsel agreed with the proposal to request a different interpreter and he did not make any comments about the quality of interpretation.

[Emphasis added]

[7] In support of her finding on the substantive ground, the tribunal said it had carefully reviewed the proceeding of the hearing. She acknowledged “there were occasions” in which the

claimant did not seem to reply to questions with a logical answer. She found there were only isolated instances Mr. Singh was unable to understand the interpreter in respect of certain words. She was of the view his inability to understand certain words was not because of the inadequacy of interpretation but because of Mr. Singh's limited vocabulary and his reluctance to say he could not understand. On this point, she concluded that the parties in the hearing were more than willing to explain terminology in simpler terms, if asked.

[8] On other occasions, the tribunal found Mr. Singh's confusing answers were likely due either to evasiveness or to a tendency to listen to the English question and provide an answer, rather than to listen to the interpreter and then answering. This tendency was demonstrated also in the second sitting where no interpretation concerns were expressed.

[9] The tribunal referred to an additional element –the audit review. That review, according to the decision-maker, indicates:

[...] that the interpretation was accurate and complete, that the fluency of delivery was good, without hesitation, the diction was clear, and the interpreter demonstrated impartiality. When the grammar was not completely correct or the interpreter used unusual vocabulary, the meaning was clear and not altered in any way.

[Emphasis added]

[10] As to the quality of the audit, the tribunal observed that Counsel for Mr. Singh expressed concerns about the certificate of interpretation analysis, a point which she dismissed, noting in addition, Counsel had not submitted or asked time to submit his own independent audit of the hearing although he was well aware that recordings of the hearings were available to him.

[11] The tribunal also dismissed Counsel's submission the audit was completely silent on whether the interpretation was precise, impartial, competent, continuous and contemporary. The tribunal found the certification notes certified the interpretation "was accurate and the meaning is clear and not altered in any way" demonstrated the interpretation was precise, competent and complete and specifically certified it was impartial. In the tribunal's mind, the continuous and contemporary standards were not questioned by Counsel.

[12] Finally, the tribunal commented on counsel's submission the interpreter was rude to Mr. Singh. She noted Mr. Singh during the second sitting had indicated to the tribunal that the interpreter at the first sitting had "looked at him in a frowning manner, was rude, and he did not like the way she asked questions".

[13] She found Mr. Singh's view was based on the fact he attributed to the interpreter comments or suggestions made by the tribunal, the Tribunal Officer and Counsel. The tribunal conceded there were occasions where the interpreter expressed her own surprise at an answer the claimant gave or let her annoyance show through when Mr. Singh made a comment directly at her. The tribunal said this behaviour was inappropriate and when it occurred the tribunal intervened and asked the interpreter to continue to provide her interpretation in a professional manner. In the tribunal's view "the isolated instances of rudeness or the fraying of nerves at the end of the first session" did not lead to any impediment to Mr. Singh being able to provide his evidence.

[14] She concluded the principles of national justice were upheld for Mr. Singh and that "the interpretation at the hearing achieved the high standard expected".



IV. The IFA question

[15] The tribunal noted the IFA test had two prongs, namely, that it must be satisfied on the balance of probabilities (1) there is no serious possibility of Mr. Singh being persecuted or, on the balance of probabilities, in danger of torture or subjected to a risk to life or cruel and unusual treatment or punishment in the IFA area and (2) conditions in New Delhi are such that it would not be unreasonable, in all of the circumstances, including those particular to the claimant, for him to seek refuge there.

[16] On the first prong, the tribunal was satisfied Mr. Singh could find safety in New Delhi since she had no reason to believe that either the police forces or the militants would seek or harm him in Delhi.

[17] Mr. Singh's fear sprung from his belief his name was on a list of people wanted by the police, a list which he believes is circulated throughout all of India. The tribunal found if he was on such a list, the documentary evidence shows he would have been caught at the airport when he left the country.

[18] Mr. Singh also stated he would be found in New Delhi because the names and locations of all residences are maintained by authorities. The tribunal found the documentary evidence contradicted Mr. Singh's concerns. There is no system of registration of citizens and local police forces have neither the resources nor the language abilities to perform background checks on people arriving from other parts of India.

[19] Finally on this point, the tribunal noted the documentary evidence showed that police beyond the local level may search for and arrest high profile militants, Mr. Singh did not have such a profile i.e. active involvement in militant activities. It relied on recent 2009 documentary evidence stating internal relocation is feasible in India where the Applicant's fear is of local police and the individual is not of interest to the central authorities. That was the Applicant's situation in the tribunal's view.

[20] As to his fear of the militants, the tribunal ruled it was not well founded objectively, again relying on recent documentary evidence to the effect there had been a significant decline in Sikh militancy in recent years and there is no evidence of persecution of Sikh's by non state agents. It noted Mr. Singh had provided no evidence the militants were trying to find him after the two occasions he supplied them with food.

[21] On the second prong of the IFA test, again consulting the documentary evidence, which showed New Delhi had ½ million of Sikh population with all of the opportunities this suggests in terms of practicing religion, securing affordable housing, speaking Punjabi and having access to employment and health care.

[22] The tribunal concluded a viable IFA was fatal to his section 97 claim.

## V. Conclusions

[23] For the reasons that follow this judicial review application must be dismissed.

*A. The Interpretation issue*

[24] I have carefully read the transcript of the proceedings and have considered submissions from both Counsel. Counsel for the Applicant criticized the interpreter's behaviour in a number of ways but could not, in my view, substantiate his assertion that faulty interpretation caused his client not to understand the questions put to him or inadequately conveyed his answers into English.

[25] A fair reading of the transcript supports the tribunal's conclusions both on the procedural ground and more important on the substantive ground.

[26] After a certain amount of time had elapsed during the first sitting, the tribunal specifically put to Counsel the fact that he (the Counsel) understood Punjabi and asked him if his client understood the questions and the answers and were they appropriately interpreted. Counsel stated the interpreter spoke "a very sophisticated Punjabi [... whose] dialect is a little bit different. Sometimes he has difficulty I think" (see transcript p. 285) and that is why he told his client if he had any problems to understand the interpreter he should not hesitate to alert the Presiding member. The transcript reveals that the Applicant very rarely asked for clarification.

[27] The transcript demonstrates there were other causes rather than interpretation with the manner the Applicant testified and which everyone made comments about during the hearing.

[28] The Applicant was a very difficult witness:

- a. He did not answer questions directly;
- b. He gave long answers;
- c. He did not listen to the questions put to him;
- d. On some occasions he did not understand the meaning of certain words;
- e. He would speak to the interpreter directly; and
- f. He would keep on talking when the interpreter was interpreting his answers.

[29] The tribunal, the Tribunal Officer and his own Counsel repeatedly cautioned him about his manner of testifying.

[30] All of these factors made life difficult for the interpreter, who on occasion, displayed frustration and was reminded to be patient and professional by the tribunal. As the tribunal put it, the clash between the interpreter and the claimant was one of personality which did not impair the claimant's linguistic understanding of the proceeding. I share that view from my reading of the transcript.

#### B. *The IFA*

[31] Counsel for the Applicant agreed that the tribunal had correctly expressed the two part test for a viable IFA. However, he argues the tribunal erred in its application of that test. He argued the documentary evidence did not substantiate the tribunal's conclusions on important findings such as the effectiveness of wanted people on the list being able to clear security at the airport in New Delhi by the use of a false passport or through the payment of a bribe. He further argued the tribunal

ignored the evidence or misinterpret it on the issue of whether the Applicant was a person with a high or low profile. He submitted his client was suspected of being a militant and such was objectively sufficient to ground his fear.

[32] I agree with Counsel for the Respondent the documentary evidence relied on by the Applicant is dated going back to 1998 or 2006 and the material relied upon by the tribunal was 2009 material particularly on the point of Sikhs being safe in Delhi. I also agree with Counsel for the Respondent there is no evidence on the record which contradicted the Tribunal's view the Applicant had a low profile as far as the police in India were concerned and would not be a person on interest to them.

[33] In conclusion, the Tribunal's finding on the IFA was reasonably supported on the most recent evidence.

**JUDGMENT**

**THIS COURT'S JUDGMENT IS that** this judicial review application is dismissed. No certified question was proposed.

“François Lemieux”

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Judge

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

**DOCKET:** IMM-2300-10

**STYLE OF CAUSE:** Resham Singh v. Minister of Citizenship and Immigration

**PLACE OF HEARING:** Vancouver, British Columbia

**DATE OF HEARING:** October 12, 2010

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**DATED:** November 19, 2010

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