

Federal Court



Cour fédérale

**Date: 20110211**

**Docket: IMM-2332-10**

**Citation: 2011 FC 169**

**Ottawa, Ontario, February 11, 2011**

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

**BETWEEN:**

**SUK BEOM HAN a.k.a. SUKBEOM HAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act (IRPA)* for judicial review of a decision, dated March 31, 2010, of the Refugee Protection Division (RPD) of the Immigration Refugee Board (IRB), rejecting the applicant's claim for refugee status and the finding that he is not a person in need of protection.

## **Facts**

[2] The applicant, Mr. Han, originated from the Republic of Korea. He arrived in Toronto on July 13, 2008. He filed a refugee claim on August 8, 2008 which was denied by the IRB on March 31, 2010. Mr. Han claimed to be fleeing illegal private money lenders (or “loan sharks”) from whom he had borrowed money in 2005. He had also borrowed money from legitimate lending institutions. He claimed that a dishonest employee embezzled money from his restaurant and construction businesses. As a result of the embezzlement, the viability of the businesses were compromised. While the IRB found that the testimony given by Mr. Han was unclear as to whether he borrowed the money before or after the embezzlement occurred (i.e. did his employee embezzle funds that comprised the business and which forced the applicant to procure these loans, or did the employee embezzle funds after Mr. Han had procured the loans to save the business), the IRB decided that the embezzlement was the impetus for Mr. Han to procure the loans.

[3] The IRB found that Mr. Han did not report the embezzlement to the police. Mr. Han allegedly sold the businesses and his home in order to repay the principal balances, but not the interest, on the debts incurred to the lending institution and the loan sharks. His failure to pay the interest to the loan sharks was apparently the source of subsequent threats against his family and the violence allegedly suffered.

[4] The applicant supplied at various instances, inconsistent accounts of the amount of money borrowed, of who actually embezzled from him, of how long he was hospitalized when he was allegedly beaten by the loan sharks, and who telephoned the police to report the alleged assault. The IRB found his testimony lacking in credibility.

[5] The IRB also drew a negative inference about the applicant's credibility from his responses to questions about his wife and child. The loan sharks had apparently threatened to sell Mr. Han's wife to a brothel and to bury his son alive. Mr. Han's wife and son arrived in Canada one month after he did and also made refugee claims; however, his wife had left the applicant by the time his IRB hearing took place and did not appear to corroborate his testimony. The IRB also drew a negative inference from the fact that the applicant was unable to provide proof of his marriage.

### **Issue**

[6] Under a *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 reasonableness standard of review, is the IRB's decision within the acceptable range of outcomes defensible on the facts and law?

### **Credibility**

[7] Counsel for the applicant argued that the IRB's credibility findings were not justified and that the IRB ignored relevant evidence in relation to the determination of state protection.

[8] With respect to credibility, counsel for the applicant notes that to warrant an adverse finding on credibility the inconsistencies must be sufficiently serious and must concern matters which are relevant to the core issues being adjudicated. The applicant maintains that the inconsistencies produced by the applicant are minor. In this case, however, they are not minor inconsistencies as they go to the very heart of the refugee claim, and on these issues the IRB decision indicates that Mr. Han's narrative simply could not be believed.

[9] In sum, the inconsistencies noted were rooted in the evidence, and related to core issues of the claim. Where the IRB rightly expected or looked for corroboration, none was forthcoming. The IRB was understandably sceptical of the claim given the complete absence of documents. Notwithstanding that the applicant testified as to the existence of loans totalling 300 million won, the sale of a business, the sale of his home, a beating resulting in hospitalization, a marriage, not a single document was produced until the supplementary affidavit which was filed in November of 2010, here, only a bank satisfaction statement.

[10] With respect to the discrepancy in the amount of the loan and related details, the applicant said in his affidavit in support of leave:

9. In an effort to keep the business afloat, I borrowed 200 million won from loan shark named Park Sang Sun and 100 million won from financial institutions.

12. In order to pay the interest, I borrowed money from another loan shark named Choi Suk Chul; 100 million won.

[11] During his intake interview, the applicant testified that he borrowed 2 million won in 2005.

The applicant's testimony before the IRB was:

**Member:**... How much did you burrow [sic] from the bank... what was the amount in your personal information form? Tell me in your South Korean funds... I will cut to the chase, was it 100 million won?...

**Claimant:** Twenty million won.

**Member:** Twenty million or one or... from the bank.

**Claimant:** Twenty million won from the bank.

**Member:** Because here in your personal form it says you borrowed 100 million won from financial institutions, is that correct?

**Claimant:** I burrowed [sic] 10 million won from the private money lender... it was 10 million from Mr. Park.

**Member:** How much did you burrow [sic] from Choy Sak Chu (ph)?

**Claimant:** I borrow 10 million won from that man.

[12] While some aspects of his evidence were unclear and perhaps ambiguous, the IRB found the core elements of the applicant's evidence to be seriously deficient.

[13] Central to the claim was the loan itself. Three different versions of the principal amount of the loan were offered; 20 million won; 100 million won, and finally a loan document, tendered after the decision under review was rendered, established a loan of 190 million won. The evidence was also inconsistent as to when the loan was taken out and by who. The document tendered in the subsequent affidavit indicates that the loan was taken out in 2007 by his wife, whereas in his Personal Identification Form (PIF) the applicant indicated that he took out the loan in 2005.

[14] A related flaw in the applicant's testimony as identified by the IRB arose from inconsistency in the nature of the embezzlement scheme itself. In his PIF, the scheme involved an employee and a manager who worked together; in his oral testimony, it was his employee alone. When confronted with this, he told the IRB that there were translation problems and he did not understand the question. On a matter as central to the scheme as this, the IRB rightfully expected clarity.

[15] Finally, the IRB found the applicant's claim not to be credible because the sequence of events leading to the claim for status was inconsistent. For the purposes of these reasons it is sufficient to note that the version of the events leading up to the claim differs from the applicant's affidavit and his oral testimony before the IRB. There were discrepancies as to the timing and the source of the loans, how they were paid off and the timing of the loans in relation to the embezzlement. In sum, the conclusion of the IRB that the applicant's story was not credible was rooted in the evidence and was reasonable.

### **State Protection**

[16] The IRB also rejected the applicant's claim on the basis that he did not rebut the presumption of state protection. Apart from his bare assertion in his PIF that there was collusion between the police and loan sharks, there was no support for this claim before the IRB. Indeed, while the country condition reports acknowledge that loan sharking is a problem in Korea, there is no evidence of corruption. As the IRB noted, Korea ranks highly on the transparency and corruption indices, and is also a country with strong democratic systems.

[17] The evidence before the IRB demonstrates that there is a problem with private loans and exorbitant rates of interest in the ROK. Counsel for the applicant correctly noted that the existence of proposed legislation to address this problem is irrelevant to the assessment of the need for protection; it is at the operational level that protection must be evaluated: *Toriz Gilvaja v Canada (Citizenship and Immigration)*, 2009 FC 598; *Garcia Bautista v Canada (Citizenship and Immigration)*, 2010 FC 126. The point of reference is not what the police or the legislature propose to do about a problem, but rather what is actually transpiring on a day to day basis. Evidence of

state protection must not be weighed against proposed remedial measures for which there is no operational consequence, but against evidence of actual protection.

[18] Complete effectiveness of the laws and protection of the safety of all citizens is a standard which few countries, including Canada, can achieve: *Cosgun v Canada (Citizenship and Immigration)*, 2010 FC 400, para. 51. The existence of criminality, even serious criminality, does not trigger a right to protection under s. 97 of the *IRPA*. There was, before the IRB, evidence of measures having been adopted, and their related enforcement, by Korea to address this issue. Simply put, there was ample admissible evidence before the IRB to support its conclusion on the existence of state protection.

[19] While there was much argument about whether the applicant called the police, did not call the police, or whether the hospital or a neighbour called as his proxy, the evidence falls far short of establishing clear and convincing evidence of a failure of state protection. There remained the question as to who contacted the police. On this central issue, the IRB was confronted with inconsistent evidence. In his affidavit in support of leave, the applicant said that he did not contact the police because he did not think they could provide protection. As noted, in the case of Korea, the presumption of state protection is high.

[20] There can be no challenge to the finding by the IRB that the applicant never reported the embezzlement to the police. His explanation was that "... he was too busy preparing to come to Canada." In his affidavit in support of leave he says he did not report the embezzlement to the police because he was pre-occupied with keeping his business viable.

9. At the time, I did not report any of these incidents to the police, regretfully; my mind was elsewhere as I was most concerned with keeping my business viable. (Affidavit of Suk Beom Han, sworn May 25, 2010, Applicant's Application Record, p. 16, para. 9)

[21] Faced with this evidence, together with the finding that the ROK was a robust democratic state, and given that there is no quarrel with the legal test as framed, the approach of the IRB to the issue of state protection, from the legal and factual perspective, is reasonable.



**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review be and is hereby dismissed. No question for certification has been proposed and none arises.

"Donald J. Rennie"

---

Judge

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

**DOCKET:** IMM-2332-10

**STYLE OF CAUSE:** SUK BEOM HAN a.k.a. SUKBEOM HAN v. THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto

**DATE OF HEARING:** January 18, 2011

**REASONS FOR JUDGMENT:** RENNIE J.

**DATED:** February 11, 2011

**APPEARANCES:**

Ms. Erin Roth FOR THE APPLICANT

Mr. Bradley Bechard FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Bellissimo Law Group FOR THE APPLICANT  
Toronto, Ontario

Myles J. Kirvan, FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Ottawa, Ontario