Federal Court  Cour fédérale

**Date: 20110321**

**Docket: IMM-2333-10**

**Citation: 2011 FC 346**

**Ottawa, Ontario, March 21, 2011**

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

**BETWEEN:**

**JAGDESH SOORUJBHAN SINGH**
**RAMIZA SINGH**
**HEMWANTIE SINGH**
**SATROHAN SINGH**

**Applicants**

**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 Pre-Removal Risk Assessment Officer N. Case (the Officer) dated March 4, 2010, wherein the Applicants' request for permanent residence from within Canada on humanitarian and compassionate grounds pursuant to section 25 of the *Immigration and Refugee Protection Act*, RS 2001, c 27 [IRPA] was denied.

[2] Based on the reasons below, this application is dismissed.

## I. Background

### A. *Factual Background*

[3] Jagdesh Soorujbhan Singh (the Principal Applicant), Ramiza Singh, Hemwantie Singh and Satrohan Singh (collectively, the Applicants) are citizens of Guyana. The Applicants left Guyana for Canada in September 2005. Prior to their departure, the Applicants had been victims of robberies and assaults in Guyana.

[4] Upon arriving in Canada, the Applicants claimed refugee status. They alleged risk of harm and persecution because of the Principal Applicant's membership in the Peoples Progressive Party (PPP), because of their Indo-Guyanese race, and because of the generally high crime rate in Guyana. The Refugee Protection Division of the Immigration and Refugee Board (the Board) held a hearing in February 2006 and denied the Applicants' refugee claim in March 2006.

[5] The Applicants submitted an application for permanent residence from within Canada on humanitarian and compassionate grounds in April 2006 (the H&C application). The H&C application alleged the same risks as their refugee claim, and was also based on their establishment in Canada. The Applicants applied for a Pre-Removal Risk Assessment, which was denied in March 2010. On March 4, 2010, the H&C application was refused.

B. *Impugned Decision*

[6] The Officer concluded that there was insufficient evidence to establish personalized risk to the Applicants such that their removal to Guyana would constitute an unusual and undeserved or disproportionate hardship. The Officer further concluded that the Applicants had failed to demonstrate significant establishment that would lead to unusual and undeserved or disproportionate hardship if they were removed to Guyana. The Applicants have not challenged the Officer's findings with respect to establishment.

## II. Issue

[7] The Applicants have raised three issues in their submissions, two of which are characterized as errors of fact and the third as an error of law. With respect for their position, all of the issues raised go to whether the Officer's conclusions can be supported by the evidence in the record, which is a question of fact. I suggest that the arguments raised by the Applicants are best considered as one issue, which is:

(a) Did the Officer base the decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material in the record?

## III. Standard of Review

[8] The issue before the Court requires a deferential standard of review because it deals with the Officer's findings of fact and weighing of the evidence.

[9] The Supreme Court held in *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 46, that questions of fact are reviewable on a standard of reasonableness. More generally, the standard of review on H&C applications is also reasonableness, *Kisana v Canada (Minister of Citizenship and Immigration)*, 2008 FC 307, 2008 CarswellNat 671, aff'd 2009 FCA 189. The parties have cited several other cases, all of which support a review on the standard of reasonableness.

[10] As set out in *Khosa* and in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, reasonableness requires consideration of the existence of justification, transparency, and intelligibility in the decision-making process. It is also concerned with whether the decision falls within a range of acceptable outcomes that are defensible in respect of fact and law.

## IV. Argument and Analysis

### A. *The Officer's Findings Are Not Perverse, Capricious or Without Regard for the Material in the Record*

[11] The Applicants argue that the Officer ignored evidence about crime and police protection, reached a perverse conclusion in finding that the Applicants had not demonstrated personalized risk, and failed to give due weight to medical reports. All of these arguments go to the question of whether the Officer's conclusions are supported by the factual record in the H&C application, and so will be dealt with as one issue. The Applicants essentially challenge the Officer's treatment of the

evidence about crime and policing in Guyana, and of the medical evidence submitted in their application.

[12] The Applicants provided considerable evidence about the high crime rate in Guyana, mostly in the form of news articles about specific incidents that did not involve the Applicants; they also submitted a Travel Report about Guyana from the Department of Foreign Affairs and International Trade and a 2007 report from the United States Department of State (the USDOS report). These government reports noted the high crime rate in Guyana.

[13] In addition to the generally high crime rate in Guyana, the Applicants claimed to be at risk because they are Indo-Guyanese. Certain news articles provided by the Applicants deal with racial tensions in Guyana.

[14] After considering the evidence submitted by the Applicants, the Officer found that they had not provided sufficient evidence that they would be targeted if they were returned to Guyana. The Officer went on to state that "While I accept that crime and corruption is [sic] rampant in Guyana and that the racial tension is existent [sic], the evidence presented does not satisfy me that the risks alleged by the applicants are personal" (Decision, Certified Tribunal Record at p 5). The Officer noted that Guyana has a functioning police force, and that the government is attempting to combat crime and corruption.

[15] The Applicants submit that the Officer ignored evidence about the efficacy of the Guyanese police force. The Applicants argue that the evidence they submitted, including the USDOS report,

shows that the Guyanese police face a shortage of resources and are ineffectual and corrupt. The section of the USDOS report highlighted by the Applicants does not state that the police force is unable to provide assistance when it is needed. The Officer considered the evidence submitted by the Applicants and concluded that the Applicants had not demonstrated a lack of police services that would constitute an unusual and undeserved or disproportionate hardship. The Officer noted that the Guyanese government has introduced policies attempting to reduce crime rates, and has introduced a new Community Policing Ministerial Unit. The Officer also noted the size and structure of the Guyanese police force, and concluded that police assistance would be available to the Applicants in Guyana if it was needed.

[16] The Applicants challenge the Officer's finding that police assistance was available when they were previously the victims of crime in Guyana. The Officer noted that several police officers attended the scene, created a police report, and began an investigation. The Applicants argue that the fact of a police investigation does not demonstrate effective police assistance, however they left Guyana a month after the crimes occurred and it is unclear whether any progress was made in the investigation after they left.

[17] The Respondent submits that this Court has concluded that the state protection available to an applicant is not to be assessed on the threshold of "effective state protection", a submission which the Applicants dispute in their Reply. However, the decisions cited by the parties all deal with refugee claimants, and so are of little use in this application. The availability of police services in Guyana was but one factor that the Officer considered along with the evidence of high crime rates before concluding that the Applicants had not shown that their return to Guyana would cause

unusual and undeserved or disproportionate hardship. The sufficiency of state protection was not at issue in the H&C application, and the Officer's decision is reasonable.

[18] The Officer considered the evidence that the Applicants had previously been the victims of crime in Guyana and concluded that a past incident which the police investigated was insufficient evidence that the Applicants will be targeted for further crime if they are returned to Guyana. The Applicants argue that this conclusion is perverse in light of the Officer's findings that there is racial tension in Guyana. The Respondent submits that the evidence in the H&C application suggests racial tensions from both the Indo-Guyanese and the Afro-Guyanese, and that there was no evidence to suggest that the past crimes against the Applicants were racially motivated.

[19] The Officer's conclusion that there was insufficient evidence that the Applicants would be targeted on their return was reasonable. Although there is evidence of racial tensions in Guyana, the tension does not appear to be one-sided such that it amounts to the targeting of Indo-Guyanese. The motivation for the earlier criminal incident against the Applicants is unclear and, by their own admission, may have been related to the Principal Applicant's involvement with the PPP rather than their race; it may also have resulted from the high crime rate in Guyana. Further, the Applicants submitted only general evidence of crime in Guyana, and there is no evidence that the Applicants will be targeted if they return to Guyana.

[20] The Applicants also challenge the Officer's treatment of the medical evidence. They provided evidence of sexual assaults suffered by Ramiza and Meleniee Singh, the latter of whom is

not a party to this application, and a physical assault suffered by the Principal Applicant, all of which occurred in Guyana.

[21] The Officer noted the medical reports, but declined to consider the report regarding Meleniee since she was not a party to the H&C application. The Applicants submit that the Officer's refusal to consider the report about Meleniee's injuries led to the Officer misapprehending the risk that the Applicants were claiming. The Applicants submit that the medical reports from Guyana indicate that both Ramiza and Meleniee were raped, and that the failure to consider Meleniee's medical report meant that the Officer could not truly appreciate that the risk was to the entire family. The Officer considered the medical reports regarding the Principal Applicant and Ramiza, and accepted them as evidence that the Applicants had been the victims of crime in Guyana. Since Meleniee was not included in the H&C application, it was reasonable for the Officer not to consider her medical report.

[22] Further, Meleniee's report did not add any additional information that was not already before the Officer; the USDOS report indicates that violence against women, including sexual assault, is common in Guyana, and the Officer considered Ramiza's medical report. The Officer's refusal to consider Meleniee's medical report does not render the decision unreasonable. The Officer considered the risk to all the Applicants and concluded that they had failed to demonstrate that they would be targeted if they were returned to Guyana.

[23] The Officer noted that medical reports were based on information relayed to the physician and that the physician did not witness the infliction of the injuries, but did not ultimately dispute that

the Principal Applicant and Ramiza were assaulted. The Applicants submit that the Officer unduly discounted the medical reports because of the statement that the reports were based on information relayed to the physician by the Applicants. However, the Officer did not dispute the Applicants' claim that they were assaulted in Guyana.

[24] The Applicants rely on *Gunes v Canada (Minister of Citizenship and Immigration),* 2008 FC 664, 168 ACWS (3d) 602 in which this Court set aside a decision on the basis that the Immigration and Refugee Board unduly discounted expert medical evidence of torture. *Gunes* can be distinguished from the present application because it involved reports from expert witnesses that were summarily discounted on the basis of a negative credibility finding. In the present application, the Officer did consider the medical reports. The Officer did not dispute the injuries suffered by the Applicants, but merely noted that the cause of those injuries was relayed to the reporting physician and was not witnessed directly. The Officer ultimately accepted that the Applicants had been assaulted in Guyana, and there is no reason to disturb these findings.

[25] The Applicants have challenged the Officer's weighing of their medical evidence and of the evidence of crime in Guyana, but they have failed to demonstrate grounds for the Court's intervention. Although the conditions in Canada are certainly favourable to those in Guyana, the Officer's conclusion that the Applicants would not face unusual and undeserved or disproportionate hardship if they were returned to Guyana is reasonable. The decision is supported by the material in the record, and the Applicants have not established a basis for setting it aside.

## V. Conclusion

[26] No question was proposed for certification and none arises.

[27] In consideration of the above conclusions, this application for judicial review is dismissed.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application for judicial review is dismissed.

" D. G. Near "

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | **IMM-2333-10** |
| **STYLE OF CAUSE:** | **SINGH ET AL. v. MCI** |
| **PLACE OF HEARING:** | **TORONTO** |
| **DATE OF HEARING:** | **FEBRUARY 1, 2011** |
| **REASONS FOR JUDGMENT AND JUDGMENT BY:** | **NEAR J.** |
| **DATED:** | **MARCH 21, 2011** |

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| Ladan Shahrooz | FOR THE RESPONDENT |

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