

Federal Court



Cour fédérale

Date: 20110321

Docket: IMM-3255-10

Citation: 2011 FC 342

Ottawa, Ontario, March 21, 2011

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

**GURKARAN SINGH
HARSIMRAN KAUR**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act), of a decision by the Immigration and Refugee Board of Canada (the Board) dated May 17, 2010, wherein the Board denied the refugee claim of the applicants. The Board determined that the applicants are not Convention refugees or persons in need of protection pursuant to sections 96 or 97 of the Act.

Factual Background

[2] The 27 year-old principal applicant, Gurkaran Singh and his 29 year-old sister, Harsimran Kaur, are citizens of India. They arrived in Canada seeking refugee status under the same factual background as their father, who arrived in Canada in 2005 and was accepted as a Convention refugee.

[3] In April 1995, the applicants' family was forced to shelter Sikh militants for two days. After the militants left, the police arrested the applicants' father and grandfather and interrogated them for information about the militants.

[4] The applicants' father was tortured for several days, and was eventually released after their family bribed the police. Out of concern for her safety, Ms. Kaur was sent to live with family in Majitha, Punjab; Mr. Singh, the principal applicant, was sent to join her in 2003 out of fears that the police would suspect him of being a Sikh militant.

[5] The applicants' father continued to be harassed by the police until he left India and came to Canada. Each time the police arrested the applicants' father, they tortured him and interrogated him about Sikh militants, and each time he was eventually released after the applicants' family paid a bribe.

[6] On November 11, 2006, the police came to Majitha and arrested Mr. Singh. He was tortured and interrogated about his father's whereabouts and his connections to Sikh militants. After several days, Mr. Singh was released when his uncle paid a bribe. On November 17, 2006, Ms. Kaur was

arrested and interrogated, and she was also tortured. After several days, the applicants' uncle bribed the police to release her.

[7] Following their release, the applicants left Majitha and went to live with a family friend in Motipur, Uttarnchal. On March 5, 2008, they were arrested in Motipur and were again interrogated and tortured. After several days, the applicants were released when their grandfather paid a bribe. On their release, they decided to flee India. They obtained forged passports, and left the country on May 20, 2008.

[8] The applicants arrived in Canada on May 24, 2008. On June 13, 2008, they claimed refugee status based on a well-founded fear of persecution on the basis of their political opinion and their religion.

The Impugned Decision

[9] The Board acknowledged that the applicants arrived without valid passports, but found that they had established their identity based on documentary evidence and Mr. Singh's testimony. The Board found him to be a credible witness, and accepted his testimony about what happened to him and his sister in India. However, the Board found that his testimony with respect to police persecution and reasonable internal flight alternative (IFA) was speculative.

[10] The Board determined that the applicants had failed to demonstrate a nexus between their fear and the Convention grounds enumerated in section 96 of the Act. The Board considered evidence about the persecution of Sikh activists, but concluded that the applicants did not have the

profile of Sikh militants, and would therefore not be of interest to the police based on imputed political opinion.

[11] The Board found on a balance of probabilities that the applicants had been the victims of a corrupt police force that was trying to extort money. The Board noted that this Court has held that victims of corruption have generally failed to establish a nexus between their fear of persecution and the Convention grounds in the definition of a Convention refugee.

[12] The Board also noted that the applicants were only 12 and 15 years when the Sikh militants forced their way into their homes. Thus, the applicants could not have been politically active individuals who were Sikh militants. Again, the Board concluded that on a balance of probabilities, the applicants were not targeted or persecuted by the police because of their political views or because of their faith or imputed political beliefs, but rather because they could be extorted. The Board also concluded that, although the applicants claimed to fear persecution because they are Sikhs, such a fear is un-founded because the evidence did not suggest that Sikhs in India are persecuted because they are prevented from practicing their faith.

[13] The Board then determined that the applicants had not availed themselves of an internal flight alternative (IFA) available to them. During his testimony, Mr. Singh was asked if he and his sister could have moved to Mumbai. He answered that he did not believe that they could escape by moving because they had already tried twice and had been found both times. The Board found that, although the applicants had previously moved twice, they had moved to small towns relatively close to their hometown, whereas Mumbai is a large city and it would be considerably more difficult to

find the applicants. The Board concluded that the applicants' profiles were not significant enough for the police to pursue them if they left the area, and that their fear of being found in Mumbai was speculative. The Board also added that it would not be difficult for the applicants to find work in Mumbai since they both have post-secondary education and speak two of the official languages of India.

[14] Finally, the Board determined that the applicants were not Convention refugees because they had not established a nexus between their past persecution and the Convention grounds, because their fear was not well-founded and because they had not shown why they could not avail themselves of the IFA. Based on the IFA finding, the Board determined that the applicants were not persons in need of protection pursuant to section 97(1) of the Act.

Legislative framework

[15] Subsections 96 and 97 of the *Immigration and Refugee Protection Act* reads as follows:

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

Personne à protéger

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et

inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection

Personne à protéger

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualifié de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

Issues

[16] In this application for judicial review, the only issue is whether the Board's decision was based on erroneous findings of fact made in a perverse or capricious manner or without regard to the material before the Board with regard to the spirit and intent of the Act.

Standard of Review

[17] The Board's determination that the applicants had not established a nexus is a factual one and therefore attracts deference (see *Mia v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 120, 94 ACWS (3d) 970, at para 16). Similarly, the determination of whether an IFA was available to a refugee claimant is a factual one and it also requires deference (see *Navarro v Canada (Minister of Citizenship and Immigration)*, 2008 FC 358, [2008] FCJ No 463 at paras 12-14).

[18] The Supreme Court of Canada held at paragraph 53 in *Dunsmuir v New Brunswick* (2008 SCC 9, [2008] 1 SCR 190, that questions of fact attract the reasonableness standard. Thus, the Court is not concerned with whether the Board's decision was correct, but rather "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at para 47).

Analysis

[19] The applicants challenge the Board's findings with respect to the lack of a nexus and the availability of the IFA. The applicants dispute the Board's finding that they failed to establish a nexus between their fear of persecution and Convention grounds. They argue that because the Board found Mr. Singh to be a credible witness, it therefore accepted his testimony i.e. - the reason for their repeated detention and torture was linked to the police suspecting them of having information about their father's whereabouts or about Sikh extremists.

[20] While it is true that the Board accepted Mr. Singh's testimony as credible, it stated at paragraph 9 of the decision that "[t]he principal claimant's assessment as to why they were detained by the police, to whether he and his sister were persecuted because of their faith or to his conclusion that an IFA does not exist in India, is speculation." The Board also explicitly rejected the reason for detention put forward by Mr. Singh. The Board found that corrupt police officers were trying to obtain money. The Board's ultimate finding is based on the fact that the evidence suggested is that the reason for the applicants' detention was to extort money. It was not based on the political or religious beliefs of the applicants.

[21] Upon reviewing the evidence, the Court finds that the Board reasonably concluded that the applicants have not demonstrated that the persecution resulted from political opinion. For instance, the principal claimant has never been a member of any organization nor did he support any organization that engaged in acts of subversion. The Court further notes that the applicants do not dispute the Board's conclusion that Sikhs in India are not persecuted because of their faith. The applicants therefore failed to establish that the reason for their persecution was religious.

[22] On the basis of the facts of this application, although the applicants provided evidence that the police arrested them because of past family links to a terrorist – who has long been killed by the police – there was also evidence allowing the Board to conclude that the corrupt police had an interest in the applicant for money extortion purposes. The Board concluded that the applicants were victims of crime. For instance, the fact that the applicant testified that the police was “just out for money” (Certified Tribunal's Record at p. 862) is telling. Based on the evidence, it was reasonable for the Board to find that the applicants have not established an objective basis to their-founded fear of persecution. It was thus open to the Board to conclude that the applicants had not established a nexus to a Convention reason.

[23] The Court now turns to the issue of the IFA. The applicants also dispute the Board's determination that they failed to explain why Mumbai was an unreasonable IFA. The applicants argue that they established that their profile was sufficient to draw police across provincial boundaries. They argue that this is contrary to the Board's conclusion that the police were unlikely to follow the applicants to Mumbai.

[24] As mentioned above, the Board explicitly rejected the assertion that the reason for the arrests was because the police believed that the applicants had information about Sikh militants, finding instead that the reason for the arrests was money extortion. When considered in this context, the Board's conclusion that the applicants did not have a high enough profile to draw the local police to Mumbai is reasonable.

[25] The Board considered documentary evidence regarding internal relocation in India, and found that citizens, including Sikhs, can move freely within the country. The test is forward looking and the Board noted that Mumbai is a large city with a population exceeding 16 million people. Although, the applicants were previously located in the small towns of Motipur and Majitha, the Court observes that when the applicants were arrested, they were staying with family in Majitha and with someone their father knew in Motipur, thus making it easier for a corrupt police to trace them for extortion. It was also open to the Board, given the history of the applicants, to find that the applicants' profiles are not of such significance as to attract the attention of central authorities in India. Given the facts of this case, it was also reasonable for the Board to find that although the applicants had previously been found in small towns did not necessarily mean that they would be found in the large city of Mumbai. In addition, the Board considered the fact that the applicants speak two of India's official languages (Hindi and English) and have post-secondary education. The Board determined that it would not be difficult for them to find work in Mumbai.

[26] Even if the evidence may bear a different interpretation, this Court will not intervene if the conclusions drawn by the Board are not unreasonable.

[27] In conclusion, the applicants have failed to demonstrate a reviewable error in the Board's decision. The Board's conclusion that the applicants have failed to explain why moving to Mumbai was not a viable IFA is reasonable. The conclusion that the applicants are not Convention refugees or persons in need of protection is also reasonable. The decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir*). The application for judicial review is therefore dismissed.

[28] No question was proposed for certification and none arises in this case.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

“Richard Boivin”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Krassina Kostadinov FOR THE APPLICANTS

Alexis Singer FOR THE RESPONDENT

SOLICITORS OF RECORD:

Waldman & Associates FOR THE APPLICANTS
Toronto, Ontario

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