

Federal Court



Cour fédérale

**Date: 20110412**

**Docket: IMM-4353-10**

**Citation: 2011 FC 447**

**Toronto, Ontario, April 12, 2011**

**PRESENT: The Honourable Justice Johanne Gauthier**

**BETWEEN:**

**AMRINDER SINGH GILL**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION CANADA**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] Mr. Gill seeks judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board (RPD) who denied his claim as a Convention refugee or person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, RSC 2001, c 27 because he was not found to be credible and because he had an internal flight alternative (IFA) in India.

[2] Mr. Gill, a citizen of India, was 17 and a half at the time of his hearing before the RPD on April 28, 2010. He came to Canada on August 8, 2008. He made his refugee claim on August 18, 2008 based on an alleged fear of persecution due to imputed political opinion. Mr. Gill claimed to be wanted by Punjab police, who had allegedly sought after his father because they believed his father knew the whereabouts of two men suspected to be affiliated with the militant group Babbar Khalsa International (BKI). The applicant testified that police had twice raided his home in the Punjab in search of his father. He says that his father disappeared one day after reporting to the police station, as he was required to do every month. After seeking legal advice, his mother tried to meet with the District Commissioner to inform him of the possible police involvement in her husband's disappearance. As a result, in April 2008, he and his mother were arrested. Among other things their photos and fingerprints were taken. While in custody, his mother was allegedly raped by police. Soon thereafter, he fled to Canada. Upon making his refugee claim, the applicant was assigned a designated representative, since he was under 18. At the beginning of the hearing, he amended his Personal Information Form (PIF) to say that while his mother lived with her brother until September 2009, she was in hiding since then. He indicated at the hearing that he could still communicate with her by calling his maternal uncle or by making arrangements through said uncle.<sup>1</sup>

[3] The RPD did not find the applicant to be credible, nor did it believe the applicant's story. The Board went on to state that even if the applicant was credible, he would have an IFA in Mumbai, Calcutta, Madras or Delhi for the police would have neither the motivation nor the means to seek out and find him. At the hearing, the RPD had questioned the applicant as to whether he had made attempts to obtain a medical report confirming his mother's rape by the police. The applicant eventually responded that he had asked his maternal uncle to obtain the said report, but the doctor

had refused. The RPD was not satisfied that the efforts made by the applicant to obtain the report were diligent.<sup>2</sup>

[4] Mr. Gill raises several issues with the RPD's decision, including its findings on credibility and the question of an IFA. At the hearing, he insisted particularly on the issue of procedural fairness, that is, the applicant's argument that an adverse credibility finding should not have been made against him with respect to the failure to obtain the medical report as it was the responsibility of the designated representative to help him in gathering evidence. The RPD should thus have questioned the said representative as to how he fulfilled that duty.

[5] It is well settled, and the parties are agreed, that in respect of the RPD's assessment of credibility and the availability of an IFA, the Court should apply the standard of reasonableness: *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraphs 47, 53; *Cekim v Canada (Minister of Citizenship and Immigration)*, 2011 FC 177 at paragraph 6; *Valencia v Canada (Minister of Citizenship and Immigration)*, 2011 FC 203 at paragraph 20; Questions of procedural fairness, on the other hand, are reviewed applying the correctness standard: *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 43; *Mahdoon v Canada (Minister of Citizenship and Immigration)*, 2011 FC 284 at paragraph 20.

[6] I shall deal first with the alleged breach of procedural fairness. As discussed at the hearing, procedural fairness does not occur in a vacuum, rather it is context dependent (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraphs 21-22; *Ha v Canada*

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<sup>1</sup> It is not clear if the applicant's belief that his mother was in hiding is based on the Sarpanch's affidavit.

<sup>2</sup> I take this to also refer to the efforts of the applicant's mother and maternal uncle.

(*Minister of Citizenship and Immigration*), 2004 FCA 49 at paragraph 40). Here, the RPD had before it an educated 17 and a half year old claimant, who confirmed that he understood his obligation to obtain the evidence required to support his claim for refugee status and that this was explained to him by an interpreter when he signed his PIF in 2008. Moreover, the applicant did not come to the hearing before the RPD alone, but had the assistance of a designated representative and a very experienced counsel. Although it was very apparent that the credibility of the applicant was a real concern for the RPD and that it appeared unsatisfied with the applicant's attempts to obtain medical evidence as well as other evidence supporting his claim, his counsel at the time did not raise this issue with the RPD.

[7] Despite counsel's laudable efforts and persistence to convince me otherwise, I cannot agree that the RPD's failure to specifically question the designated representative as to the efforts he made to assist the applicant in obtaining the necessary evidence amounts to a breach of procedural fairness in every instance. In the particular circumstances of this case, it seems the designated representative fulfilled his role. The applicant was in regular communication with two adults in India (his maternal uncle and his mother) who were well placed to make more diligent efforts to obtain the required documentation. There was no evidence that his mother had made any effort to obtain her medical file by at least signing a form for its release to her brother. What more could the designated representative have done? In such a circumstance, fault cannot lie solely on a designated representative, or even with the experienced counsel, when the applicant chose to wait until March 2010 when a date was set for his hearing to seek supporting documentation from his maternal uncle.<sup>3</sup> The RPD asked several questions to satisfy itself that the applicant understood what was required of him and that he had enough time to make the diligent efforts to obtain the type of

records expressly referred to in the documents sent to the applicant. The efforts taken were simply insufficient. This was especially important given that there was no evidence from the applicant's mother as to these events. The sole evidence produced was the Sarpanch's affidavit which referred to facts which were clearly not within his personal knowledge and, as noted by the applicant, appears to be based on what his maternal uncle told the Sarpanch. The RPD did not give probative value to this document.

[8] The applicant asserts that because of the several mistakes he raised, the RPD's assessment of his credibility was unreasonable, I am unable to agree. There is a heavy burden on an applicant who wishes to contest the Board's assessment of his credibility (*Jassi v Canada (Minister of Citizenship and Immigration)*, 2010 FC 356 at paragraph 19; *Nijjer v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1259 at paragraph 13). Even if I were to assume that this finding contains a reviewable error, it would not suffice to quash the decision since the RPD's finding in respect of the existence of an IFA would still support its ultimate conclusion to reject the applicant's claim.

[9] Regarding the IFA, the applicant argues that the RPD failed to take into account the totality of evidence which suggests that his name would be recorded in a police database (POLNET) and as such he would be sought by Punjab police throughout India. The RPD is presumed to have examined all of the evidence and on this issue, the RPD cited from several documents in the National Documentation Package for India. The Court cannot conclude that its weighing of the evidence was unreasonable. The RPD's reasoning is clear and it refers to documentary evidence supporting its finding. The applicant has not pointed to any critical piece of information from the

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<sup>3</sup> Even the affidavit of the Sarpanch, the only supporting evidence, was done at the end of March 2010.

documentary evidence that would call into question the RPD's finding that: "[t]he tribunal does not believe that the claimant has the kind of profile that would make him a target to be placed in POLNET and be sought out throughout the country."

[10] Finally, in respect of the alleged error that the RPD failed to address the applicant's arguments concerning his affiliation with the BKI and the risk of his return to India with irregular travel documents, the Court cannot agree that in the particular circumstances of this case these arguments had to be addressed in the RPD's reasons. The applicant could not point to convincing evidence either at the hearing before the RPD or before this Court as to his "affiliation" with the BKI. The link between him, his father and his father's two friends who were the ones presumed to have a relationship with the BKI is simply too tenuous. Nor could the applicant demonstrate that his travel documents would be "irregular" (he has a valid passport) such that he would arouse suspicion amongst the Indian authorities and be subject to an intensive interrogation upon his return. This risk was not raised in his PIF, nor when his PIF was amended at the hearing. It was not raised during his testimony. His counsel did not ask him any questions to link his circumstances to what is described in some of the documentary evidence. As noted by Justice Yves de Montigny in *Jakhu v Canada (Minister of Citizenship and Immigration)*, 2009 FC 159 at paragraph 27, it is not sufficient to simply refer to objective documentary evidence in respect of a country to establish a personalized risk. Here his counsel raised this issue only in argument and by referring the RPD to particular objective documentary evidence. The applicant has failed to establish a link between the facts of his case and this evidence. There was therefore no need for the RPD to deal with it.

[11] In conclusion, the decision taken as a whole is within the range of possible, acceptable outcomes based on the evidence before the RPD. The RPD did not breach its duty of procedural fairness towards Mr. Gill.

[12] The application is dismissed.

[13] The parties did not seek certification of any question and the Court finds that this case turns on its own facts.

**ORDER**

**THIS COURT ORDERS that:**

The application is dismissed.

“Johanne Gauthier”

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Judge



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

**DOCKET:** IMM-4353-10

**STYLE OF CAUSE:** AMRINDER SINGH GILL v.  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION CANADA

**PLACE OF HEARING:** Montreal, Quebec

**DATE OF HEARING:** April 7, 2011

**REASONS FOR ORDER  
AND ORDER:** GAUTHIER J.

**DATED:** April 12, 2011

**APPEARANCES:**

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