Federal Court  Cour fédérale

Date: 20110617

Docket: IMM-6685-10

Citation: 2011 FC 700

Ottawa, Ontario, June 17, 2011

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

AJAY KUMAR SHOOR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to s.72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) of the decision of the Immigration and Refugee Board (the Board) dated October 15, 2010 where it determined that the applicant is excluded pursuant to section 98 of the Act and Article 1F(*b*) of the 1951 Convention Relating to the Status of Refugees (189 UNTS 150) (Convention).

[2] For the reasons set out below, this application shall be dismissed.

[3] The applicant is a citizen of India (Punjab) who came to Canada on August 16, 2008 and filed a claim for refugee protection pursuant to sections 96 and 97 of the Act on October 8 of the same year.

[4] He fears that if returned to his country he will be killed by a political opponent named Sukhwinderpal Singh Purewal from the Congress Party and a woman named Anu Pandey who was an expelled member of the applicant's party the Bharatiya Janata Party (BJP).

[5] The Minister intervened before the Board in this matter, claiming that the applicant is excluded from protection under article 1(F)(*b*) of the Convention because there were serious reasons to believe that he has committed a serious, non-political crime. The Minister argued that the applicant has been convicted *in absentia* under several sections of the *Indian Penal Code*, the most serious of which is a conviction under section 342 for wrongful confinement This section is equivalent to section 279(2) of the *Canadian Criminal Code*, R.S.C., 1985, c. C-46 (C*CC)*, which relates to forcible confinement, an indictable offense which can lead to a term of imprisonment of not more than ten years.

[6] The Board found several inconsistencies and contradictions in the applicant’s testimony which undermined his credibility. For example, the applicant gave differing explanations as to why he did not return to India for his last Court date on September 10, 2008 to defend himself.

[7] The Board noted that the evidence showed that there were 'serious reasons for considering' that he had committed a crime in India which included**:** his statements admitting to the immigration officer in his eligibility interview that he was charged; statements in his Personal Information Form **(**PIF) indicating that he was charged, granted bail, and appeared in court; the First Information Report (FIR) outlining the allegations and penal code charges against him; bail documents; Court-related documents; and the Minister's evidence consisting of information from the Canadian High Commission in New Delhi, who advised the Canadian Border Services Agency that according to the police, the claimant has been charged under sections 323, 341, 342, and 292 of the *India Penal Code* and convicted *in absentia* of the crimes outlined.

[8] The Board considered *Moreno v Canada (Minister of Employment and Immigration),* [1994] 1 FC 298 (CA), 21 Imm LR (2d) 221 (FCA), which held that the existence of a valid warrant issued by a foreign country would, absent allegations that the charges are inflated, satisfy the 'serious reasons for considering' requirement. The Board noted that, in the case at bar, the evidence goes beyond this requirement as there is evidence of a conviction.

[9] The Board also considered the applicant's evidence that the charges against him were fabricated, but found that it did little to refute the veracity of the charges. The Board noted that he was already married at the time that he supposedly married Anu Pandey, but found that this does not disprove that he married her, and does not address the kidnapping charges. The Board further stated that evidence that the applicant's denial of the charges to the Human Rights Commission and the police do not constitute evidence of his innocence.

[10] The applicant also submitted a letter to attest that he was at a funeral when the alleged kidnapping occurred (February 2, 2008) from Gurinder Pal Singh, the son of the deceased. The Board did not give any weight to this letter because Mr. Singh had also written an affidavit (Tribunal Record, Volume 2, page 549) which contradicted the letter by claiming that, on February 2, 2008, the applicant was attacked and therefore had to flee the house; this affidavit made no mention of a funeral. The Board questioned the applicant about this inconsistency but was not satisfied with his explanation. The Board went on to state that, even if the panel were to ignore the affidavit, the letter only gives the applicant an alibi between 11am and 2pm. The Board further stated that all of the letters provided by the claimant from friends merely provide bald assertions that the charges are false.

[11] The panel also considered the applicant's argument that he was only convicted because he failed to appear in court and that the *in absentia* nature of the conviction is significant. However, the Board rejected this argument, relying on *Zrig v Canada (Minister of Citizenship and Immigration)*, 2003 FCA 178, [2003] 3 FC 761, in which the applicant was also convicted *in absentia* and the Federal Court of Appeal nonetheless dismissed the case.

[12] The Board also considered that the applicant had an opportunity to defend himself in Court, even if absent and stated that, despite the corruption amongst the police in India, the judiciary functions independently and is "relatively clean" (decision, para 22). Based on documentary evidence, it was satisfied that the applicant was not convicted without due process.

[13] Finally, the Board found that jurisprudence establishes that a serious crime is equivalent to one for which the maximum sentence under *Canada's Criminal Code* is at least ten years (*Chan v Canada (Minister of Citizenship and Immigration)*, [2000] 4 FC 390, 10 Imm. LR (3d) 167). The Board accepted the Minister's submission that the equivalent for the applicant's conviction is wrongful confinement pursuant to section 279(2) of the *Canadian Criminal Code*. Accordingly, the Board was satisfied that there were serious reasons for considering that the applicant had committed a serious non-political crime outside of Canada.

[14] Both parties agree that the central question at issue in this case is a finding of fact, and the standard of review should be the reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47. The Court agrees and as such, will only intervene if the Board's decision is found to be outside of the range of possible, acceptable outcomes that are defensible in respect of the facts and the law (*Dunsmuir, supra,* at para 47).

[15] After a careful review of the evidence in this file, the written and oral representations by the parties, the Court finds that the Board provided sufficiently detailed reasons for rejecting the applicant's position. The decision taken as a whole cannot be qualified as being unreasonable.

[16] Whether or not the applicant agrees with its conclusion, the Board was entitled to find that the inconsistencies and contradictions in his testimony and PIF were unreasonable. As stated in *Singh v Canada (Minister of Citizenship and Immigration)*, [2003] FCJ No. 1451 (TD), 2003 FC 1146 at para 5, "the Board is not obligated to accept every explanation offered to it by the applicant and is entitled to reject explanations that it finds to be not credible based on inconsistencies,

contradictions or implausibilities." In fact, the applicant is asking the Court to re-weigh the evidence**.** This is not the role of this Court on an application for judicial review unless there is a demonstration of a reviewable error, which is not the case here.

[17] Further, the Court does not agree with the applicant's argument that the Board misconstrued evidence. Rather, the Court finds that the Board listed and analyzed the applicant's evidence and provided cogent reasons why it came to the conclusion that there were serious reasons to consider that the applicant had committed a serious non-political crime outside of Canada.

[18] With regards to the Board's determination that the applicant would not have been convicted without due process, the Court accepts that this finding is supported by the documentary evidence. Although the applicant has put forward other documentary evidence that describes police corruption, the Court does not find that this evidence is sufficient to disturb the Board's finding.

[19] Finally, the Court agrees with the statement in *Akram v Canada (Minister of Citizenship and Immigration)*, 2004 FC 629, 2004 CarswellNat 1201 at paragraph 15, "the Board need not mention every piece of evidence in its reasons and it is assumed to have weighed and considered all the evidence before it, unless the contrary is shown." As such, the Court cannot come to the conclusion that the Board failed to examine any of the documentary evidence in coming to its conclusion. Therefore, the Court's intervention is not warranted.

[20] The parties did not submit questions for certification and none arise.

JUDGMENT

THIS COURT ORDERS that:

1. The application for judicial review be dismissed.

2. No question is certified.

"Michel Beaudry"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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