

Federal Court



Cour fédérale

Date: 20120208

Docket: IMM-4138-11

Citation: 2012 FC 184

Ottawa, Ontario, February 8, 2012

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

SURINDER KUMAR NAGPAL

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] Mr. Nagpal's claim for refugee status is that he is at risk in India from his first wife, his brother-in-law, and a corrupt local lawyer –whom he terms the infamous “Trio” – and the police who are in cahoots with them.

[2] It goes back to the early 1990s and continued until he left India in 2003, first for the United States and later for Canada. He had lent his brother-in-law money. It went bad. He was arrested, detained and tortured by the police for over three days in relation to a visit from his Muslim uncle,

who came from Pakistan. He was able to escape but heard from a policeman he knew that the trio had planted suspicions in relation to the nature of his uncle's visit. After years of marital conflict, he and his first wife divorced. He remarried. In January 2003, he was again arrested, detained and tortured for three days. Apparently, this was in order to prevent his participation in militant activities. After his release, he was ordered to report regularly. With aid, he later escaped to the United States.

[3] The Board member of the Refugee Protection Division of the Immigration and Refugee Board of Canada found him credible but, nevertheless, dismissed his claim on the basis that an internal flight alternative is available to him in India, namely the city of Mumbai. The purpose of this judicial review is to determine whether that decision was reasonable.

[4] The day before the hearing, the Court received a poison pen letter. The allegations, if true, are that Mr. Nagpal's story is pure fiction and that he is not admissible to Canada on the grounds of serious criminality. I directed that this letter be immediately sent to counsel for both parties.

[5] At the commencement of the hearing, counsel and the Court agreed that the judicial review should proceed. This is not a case such as *Makias v Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FC 1218, [2008] FCJ No 1534 (QL), a decision of Mr. Justice Blanchard, in which, at paragraph 30, this Court referred a matter back to the Refugee Protection Division because of new facts. Indeed, there are no new facts, simply unproven allegations. In any event, proceeding on the basis that Mr. Nagpal is indeed credible, in my opinion the decision under review was imminently reasonable, and should not be disturbed.

[6] In her decision, the member found that Yamuna Hagar was a small village. The only anecdotal evidence in the record is that it is a city of some 500,000 people with a police force of a 100. That was Mr. Nagpal's uncontradicted evidence.

[7] Mr. Nagpal's theory is that the crooked lawyer was a big fish in a bigger pond than the member had realized, and that, therefore, his nefarious influence, and that of the police in Yamuna Hagar, were broader than realized. It was submitted that they had the wherewithal to track Mr. Nagpal down in Mumbai. Although he was never convicted of any crime, much less charged with same, he could be found out, notwithstanding that Mumbai has a population of more than 20 million.

[8] As I read the decision, the emphasis was not on the size of Yamuna Hagar but rather on the size of Mumbai. While it is conceivable that he could be found out, and conceivable he could be hunted down, the member found that there was no serious possibility of that happening, much less than it would happen on the balance of probabilities.

[9] As stated in *Bokhari v Canada (Minister of Citizenship and Immigration)*, 2011 FC 354, 96 Imm LR (3d) 169, one must consider not only the possibility that a person could be tracked down in another part of the country, but whether the persecutors had the will to do so. There is nothing substantial in the record to back up that possibility.

[10] Although the oral argument was in French for the benefit of counsel, I was requested to first issue the reasons in English, the official language with which Mr. Nagpal is more familiar. Both parties agreed there was no question to certify and none shall

ORDER

FOR REASONS GIVEN;

THIS COURT ORDERS that:

1. The application for judicial review is dismissed.
2. There is no serious question of general importance to certify.

“Sean Harrington”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4138-11

STYLE OF CAUSE: NAGPAL v MCI

PLACE OF HEARING: MONTREAL, QUEBEC

DATE OF HEARING: FEBRUARY 1, 2012

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

DATED: FEBRUARY 8, 2012

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