

Federal Court



Cour fédérale

**Date: 20121023**

**Docket: IMM-8929-11**

**Citation: 2012 FC 1215**

Ottawa, Ontario, this 23<sup>rd</sup> day of October 2012

**Present: The Honourable Mr. Justice Pinard**

**BETWEEN:**

**KAUR, Parmjit,  
SINGH, Jashanpreet, and  
KAUR, Harmanpreet**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] On December 6, 2011, the applicants filed the present application for judicial review of the decision of Diane Sokolyk, member of the Refugee Protection Division of the Immigration and Refugee Board (the “Board”), pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”). The Board held the applicant and her two children were neither Convention refugees nor persons in need of protection under sections 96 and 97 of the Act.

[2] Parmjit Kaur (the “ applicant”) is a citizen of India. She came to Canada with her two children, Jashanpreet Singh and Harmanpreet Kaur.

[3] The applicant claims her husband Kartar Singh is in the United States and is waiting to cross the border into Canada with an agent.

[4] The applicant alleges that in 2007, the Indian police began to harass her husband because they wanted information about his cousin, who they alleged had dealings with militants.

[5] The applicant claims that in May 2008 her husband, tired of the police harassment, hired an agent to arrange a way for his family to leave India. The agent obtained U.S. visas, and the applicant, her husband, and their sons arrived in the United States in October 2008. The applicant claims her husband planned to return to India when the police would stop harassing him. The applicant claims she traveled to the United States for the purpose of helping her husband obtain a visa.

[6] The applicant returned to India on December 31, 2008. On January 4, 2009 she claims the police raided her home and arrested her because they wanted information about her husband’s whereabouts. At the police station, the applicant claims she was beaten and that the police burned her left leg. The applicant claims she lost consciousness. When she awoke, the applicant suspected she had been sexually abused because she felt soreness in her genital area. After her family paid a bribe for her release from police custody, the applicant alleges that she went to the hospital, and that her doctor identified rape as the cause of her genital soreness.

[7] The applicant claims she decided to leave India because she was scared of the police. With the help of an agent, she claims she left India with her two children on April 3, 2009. The applicant claims she arrived in San Francisco and was met by an agent in contact with her husband. She claims that on April 8, 2009 the agent drove the family to Canada. In Seattle, the agent allegedly divided the family up, with the applicant and her children in one car, and her husband in another. The applicant claims the passports and luggage of the applicant and her children were in her husband's car.

[8] The applicant claims she has not been in contact with her husband since the agent divided them into separate cars on April 8, 2009. The applicant believes her husband may have intentionally abandoned her in Canada because she had been raped.

[9] The agent allegedly dropped off the applicant in a field and she walked across the Canadian border with her children. The agent met the applicant on the other side with his vehicle. He drove her and her children to the Sikh Temple in Surrey, British Columbia. The applicant claims the Sikh community in Surrey helped her and her children travel to Montréal and find a lawyer. Her husband had heard in the Sikh community that his family should claim refugee protection in Montréal, Canada. The applicant claimed refugee protection in Montréal on April 16, 2009.

[10] The Board heard the applicant's claim on September 20, 2011 and issued its decision on November 4, 2011.

\* \* \* \* \*

[11] The Board found that the applicant was not credible “about any part of her story,” and therefore concluded that her and her children were neither Convention refugees nor persons in need of protection under sections 96 and 97 of the Act.

[12] The Board took issue with the applicant’s identity documents. The Board found that at the hearing the applicant contradicted herself with a previous statement she had made to the Canada Border Services Agency (“CBSA”) regarding the whereabouts of her passport and that the absence of her passport reduced the applicant’s credibility. The Board also attached a low probative value to the applicant’s identity documents because of the lack of credibility the Board found in all parts of the applicant’s story.

[13] The Board also found that the applicant’s husband’s decision to not claim refugee status in the United States in 2008 or 2009 reduced the credibility of the applicant’s alleged arrest in India because the applicant’s claim was related to her husband’s. Nor did the Board find the applicant credible regarding her husband’s whereabouts.

[14] The Board found the applicant made contradictory statements in her Personal Information Form (“PIF”) and to the CBSA regarding how she found an agent in India to arrange her 2009 departure for a second trip to the United States. The Board found the statement in her PIF was not credible given the applicant’s circumstances.

[15] The Board also considered a letter from the applicant’s physician which stated the applicant had been beaten and raped in police custody. The Board found it not credible that a doctor would

make unequivocal statements about the cause of the applicant's injuries rather than confining himself to medical issues. The Board also found the affidavit from the *sarpanch* of the applicant's village had little probative value because of its general content which did not corroborate the applicant's alleged rape.

[16] Finally, the Board found that the applicant's story of arriving in Surrey, British Columbia on April 8, 2009 without money, identity documents, or luggage, and arriving in Montréal on April 16, 2009, was not credible.

\* \* \* \* \*

[17] The fundamental issue the applicant raises in this judicial review is whether the Board's credibility determination was reasonable. The standard of review applicable to the Board's findings of credibility is reasonableness (*M.L. v. The Minister of Citizenship and Immigration*, 2012 FC 763 at para 25; *Wu v. The Minister of Citizenship and Immigration*, 2009 FC 929 at para 17; *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190 [*Dunsmuir*]; *Aguebor v. Minister of Employment and Immigration* (1993), 160 N.R. 315 (Fed. C.A.) at para 4).

[18] Upon hearing counsel for the parties and upon reviewing the relevant evidence, I find that the intervention of the Court is not warranted.

[19] All of the arguments presented by the applicant amount to a disagreement with the assessment of the evidence, which is within the discretion of the Board as the trier of fact.

[20] In the present case, the Board proceeded with a thorough analysis of the allegations upon which the applicant's claim is based and determined that, for numerous reasons, she was not credible. The Board's reasons for doing so are given in "clear and unmistakable terms" (see *Hilo v. Minister of Employment and Immigration* (1991), 130 N.R. 236).

[21] Upon reviewing the Board's decision on the reasonableness standard, I am of the opinion that the Board's findings fall within the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at para 47). Although there may be more than one possible outcome, as long as the Board's decision-making process was justified, transparent and intelligible, which I find is the case here, a reviewing court cannot substitute its own view of a preferable outcome (see the decision of the Supreme Court of Canada in *Khosa v. Canada (Minister of Citizenship and Immigration)*, [2009] 1 S.C.R. 339 at para 59).

\* \* \* \* \*

[22] For the above-mentioned reasons, the application for judicial review is dismissed.

[23] I agree with counsel for the parties that this is not a matter of certification.

**JUDGMENT**

The application for judicial review of the decision of a member of the Refugee Protection Division of the Immigration and Refugee Board determining that the applicant, Parmjit Kaur and her two children, Jashanpreet Singh and Harmanpreet Kaur, were not Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, is dismissed.

“Yvon Pinard”

---

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-8929-11

**STYLE OF CAUSE:** KAUR, Parmjit, SINGH, Jashanpreet, and KAUR,  
Harmanpreet v. THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** September 13, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT:** Pinard J.

**DATED:** October 23, 2012

**APPEARANCES:**

Me Jean-François Bertrand FOR THE APPLICANTS

Me Andrea Shahin FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Bertrand, Deslauriers FOR THE APPLICANTS  
Montréal, Quebec

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