

Federal Court



Cour fédérale

**Date: 20130723**

**Docket: IMM-12505-12**

**Citation: 2013 FC 807**

**Montréal, Quebec, July 23, 2013**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**PAWANBIR SINGH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

Overview

[1] A reviewing court must analyse evidence in its inherent essence as a whole, not only piece by piece, to determine if overall the decision reviewed is considered to be reasonable in its ultimate outcome. (It is noteworthy that the Supreme Court *Mobil Oil* decision recognizes, acknowledges and specifies its understanding that when an outcome of a decision in a matter (even if it is sent back for analysis anew by a different first instance decision-maker) will, in any case, not vary, then, no validity exists to have it analyzed anew as it is considered “hopeless” to expect a different

ultimate outcome as per *Mobil Oil.*) [*Mobil Oil Canada Ltd. v Canada-Newfoundland Offshore Petroleum Board*, [1994] SCJ No 14, [1994] 1 SCR 202]

[2] The Applicant's challenge to the adequacy of the Refugee Protection Division's [RPD] reasons cannot succeed. The Supreme Court of Canada has held that, if reasons are given, a challenge to the reasoning or result is addressed in the reasonableness analysis. According to *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, "reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes" (at para 14). A reviewing court may not "substitute [its] own reasons" but may "look to the record for the purpose of assessing the reasonableness of the outcome" (at para 15).

### Introduction

[3] The Applicant seeks judicial review of a decision of the RPD of the Immigration and Refugee Board, wherein it was determined that he is not a Convention refugee or person in need of protection pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. In particular, the Applicant challenges the RPD's finding that he lacked credibility.

### II. Judicial Procedure

[4] This is an application under subsection 72(1) of the *IRPA* for judicial review of the decision of the RPD, dated November 5, 2012.

### III. Background

[5] The Applicant, Mr. Pawanbir Singh, a citizen of India, was born in 1972.

[6] The Applicant alleges that, on March 3, 1993, his cousin was killed by the police for his membership in the Khalistan Commando Force [KCF]. This cousin, who visited the family home of the Applicant intermittently, was the subject of a police search in which his photograph was placed in a newspaper along with a reward for his capture.

[7] On April 10, 1993, the Applicant was allegedly arrested, detained, and tortured by the police seeking information on the KCF. After his father paid a bribe, the police released him and he fled to Kamal, where he lived in hiding for two years.

[8] On April 1, 1995, the Applicant fled to Delhi and, from there, to the United States [US], where he arrived on January 7, 1996 and made an unsuccessful asylum claim.

[9] On December 17, 1998, a California court convicted the Applicant of sexual battery.

[10] On March 23, 2007, the Applicant arrived in Canada and claimed refugee protection.

[11] On May 16, 2007, an officer prepared an inadmissibility report under section 44 of the *IRPA* and, on October 2, 2007, the Immigration Division issued a deportation order.

[12] At the RPD hearing, the Minister of Public Safety and Emergency Preparedness intervened and submitted documentary evidence of the Applicant's US criminal record.

[13] The Applicant alleges that the police in India have continued to harass and extort money from his family to reveal his whereabouts to the present.

#### IV. Decision under Review

[14] The RPD found that the Applicant was not a Convention refugee or person in need of protection because he lacked credibility.

[15] First, the RPD found that the Applicant's failure to disclose his US criminal history in his Personal Information Form [PIF] undermined his general credibility.

[16] Second, the RPD drew negative credibility inferences from the Applicant's failure to provide documents establishing that his cousin was a KCF militant; nor did he clearly respond to the panel member's questioning on whether newspapers discussed his cousin's alleged murder. The Applicant's explanation that he provided documents concerning his cousin's KCF membership to US immigration officials in the course of his asylum claim was unsatisfactory since it was "very surprising that [he] did not keep a copy of the documents submitted to support his asylum claim or that he did not ask his father to send them, especially since he claimed that the police published the photographs of his cousin in the newspapers before he was captured and killed" (Decision at para 12).

[17] Third, the RPD found it implausible that Indian police would arrest the Applicant and not his father, who owned the house in which he was arrested and which his cousin often visited. The RPD also doubted that he would be arrested for questioning regarding the KCF after his cousin's murder if they had enough information to capture and kill his cousin.

[18] Fourth, the RPD considered it implausible that the Applicant lived in Kamal for two years without being located by police. The Applicant's explanation that he did not work, rarely left his house, and was not friendly was unsatisfactory.

[19] Fifth, the RPD did not consider it credible that the Applicant left India with his passport if he was a suspected KCF militant.

[20] Sixth, the RPD did not believe that Indian police were looking for the Applicant because they suspected him of being a KCF militant as: (i) it was unlikely that they would release him; and (ii) they did not attempt, after his release, to seek him by compelling his father to reveal his whereabouts.

#### V. Issue

[21] Was the RPD's credibility finding reasonable?

#### VI. Relevant Legislative Provisions

[22] The following legislative provisions of the *IRPA* are relevant:

**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

(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.

**Person in need of protection**

**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

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

(b) to a risk to their life or to

**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) 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.

**Personne à protéger**

**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) 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) soit à une menace à sa vie

a risk of cruel and unusual treatment or punishment if

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**

(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.

### **Personne à protéger**

(2) A également qualité 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.

## VII. Position of the Parties

[23] The Applicant argues that the credibility finding is based on erroneous findings of fact made in a perverse or capricious manner or without regard for the material before it. First, the Applicant submits that he disclosed his US criminal record on his PIF, dated June 29, 2007, and in his interview with an immigration officer, as dated on May 10, 2007. Consequently, the finding that his failure to disclose his US criminal record impugned his credibility is not supported by the record. Second, the Applicant argues that the RPD was unreasonable to require him to submit documentation corroborating his account. Third, the Applicant claims that the reasoning that authorities would have also arrested his father in 1993 and would have compelled his father to disclose his whereabouts while he was living in Kamal fall outside the range of possible, acceptable outcomes.

[24] The Applicant submits that the reasons are inadequate. He cites *VIA Rail Canada Inc. v Canada (National Transportation Agency)*, [2001] 2 FC 25 (CA) and *Weekes v Canada (Minister of Citizenship and Immigration)*, 2008 FC 293, for the proposition that reasons are inadequate if they merely recite the submissions and evidence of the parties and state a conclusion. According to the Applicant, the reasons do not explain the RPD's reasoning process or provide a review of the principal relevant factors.

[25] The Respondent counters that the RPD could reasonably disbelieve the Applicant's allegation that he was wanted by Indian authorities. It was reasonable to consider implausible the Applicant's allegations that he lived two years in Kamal without being discovered and that the authorities did not compel his father to disclose his whereabouts during this period. It was also



reasonable to infer, from his departure from India with a passport, that the Applicant was not wanted by the authorities. The Respondent submits that the RPD reasonably required the Applicant to provide corroborating evidence of the search, capture, and investigation of his cousin. The Applicant's explanation that he submitted those documents to US immigration authorities without keeping a copy for himself or attempting to obtain copies from relatives in India was insufficient.

#### VIII. Analysis

[26] The RPD's credibility findings are reviewable on the reasonableness standard (*Wieseahan v Canada (Minister of Citizenship and Immigration)*, 2011 FC 656).

[27] If the reasonableness standard applies, courts may only intervene if reasons are not "justified, transparent or intelligible". To meet the standard, a decision must also fall in the "range of possible, acceptable outcomes ... defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

[28] Justice Edmond Blanchard has held that a negative credibility finding must be based on the evidence in the record (*Roozbahani v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1524). Credibility findings must be consistent with the country conditions of a claimant's country of origin. Justice Luc Martineau has held that reasonable plausibility findings do not result from a "microscopic" examination of issues irrelevant or peripheral to the applicant's claim" and must consider a "claimant's age, cultural background and previous social experiences" (*Sharma v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1240 at para 15).

[29] While the RPD did not always fully engage with the material before it or with the Applicant's personal circumstances, its credibility finding is not on the whole unreasonable. Notwithstanding problems in its analysis of aspects of the claim, the Court must focus on whether the credibility finding is reasonable overall; problematic aspects of the finding must be determinative to affect its overall reasonability (*Abid v Canada (Minister of Citizenship and Immigration)*, 2012 FC 483 at para 22).

[30] The negative inference that the RPD drew from the Applicant's alleged failure to disclose his US criminal record does not reflect: (i) his response to question 10 of his PIF, where he stated that he had committed, had been charged with, or had been convicted of a crime in a country (Certified Tribunal Record [CTR] at p 19); or (ii) his unequivocal statement to the immigration officer that he was convicted of sexual battery in the US (CTR at pp 126-127). While the Applicant did not amend his PIF to specifically indicate that he was convicted of sexual battery in the US until the RPD hearing (CTR at pp 174 and 176), a negative credibility inference from this omission becomes unreasonable when one considers that (i) he was forthright about his US criminal record in his interview with the immigration officer on May 10, 2007; and (ii) his interview took place before he completed his PIF on June 29, 2007.

[31] The RPD did not have regard to the material before it in finding it implausible that Indian authorities did not compel the Applicant's father to disclose his whereabouts when he was living in Kanal. This does not reflect his testimony that the authorities did harass his father to disclose where he was living (CTR at p 191).

[32] The RPD's negative credibility inference drawn from the fact that the authorities released him is unreasonable in that it does not engage with the Applicant's personal circumstances or cultural context. The Applicant alleged that the authorities released him on payment of a bribe and continued to extort money from his father after his release (CTR at pp 26 and 197), suggesting that the authorities were motivated by personal financial gain in releasing him. This evidence is consistent with country conditions evidence of police corruption in India in the National Documentation Package [NDP] before the RPD (Human Rights Watch, *Broken System: Dysfunction, Abuse, and Impunity in the Indian Police*, August 2009).

[33] Nevertheless, overall, when examining the totality of the evidence, in light of the Applicant's particular circumstances, it was reasonable on the matter as a whole without dissecting it piece by piece to find that his allegations lacked plausibility on the basis of the non-arrest of his father. In his PIF, the Applicant alleged that the Indian authorities arrested him because they believed that other KCF members visited his family home (CTR at p 25). Consequently, the Applicant alleged that the Indian authorities were not merely interrogating him on his own putative KCF activities. It falls within the range of possible, acceptable outcomes to find that, if the authorities were interested in who visited the family home, they would have arrested and interrogated the owner of that home.

[34] It was also reasonable to find that, if the Applicant was a suspected KCF militant, he would not be able to leave India with a passport. The Applicant testified that he was able to leave India with his own passport (CTR at p 188). Country conditions evidence in the NDP before the RPD states that persons exiting India through its airports undergo extensive screening procedures

(IND103120.E, *Airport security screening for passengers departing on international flights*, 14 April 2009).

[35] Finally, *Khazaei v Canada (Minister of Citizenship and Immigration)*, 2013 FC 13 states that “supporting documentation may not be required of a claimant for refugee protection from countries from which it may be difficult to do so, but, should a claimant's account be devoid of credibility or plausibility, it requires substantiating documentation” [Emphasis in original] (at para 47). Since the Applicant's account meets this description, the RPD could reasonably require corroborating documentation.

[36] In *Touraji v Canada (Minister of Citizenship and Immigration)*, 2011 FC 780, Justice John O'Keefe held that the RPD will be unreasonable to require corroborating evidence that could not have been obtained or was not reasonably available (at para 26). *Touraji* is distinguishable from this Application. Although the authorities allegedly published information regarding the KCF activities of the Applicant's cousin in a newspaper, the Applicant does not appear to have made any effort to obtain those newspaper clippings:

- Q. Would it be easy today to get a hold of that newspaper after 19 or 20 years?  
A. I don't think so.

(CTR at p 192).

[37] From this exchange, the RPD could reasonably infer that the Applicant made no effort to obtain a copy of this corroborating evidence from his relatives in India or from the publisher of that newspaper. In *Alonso v Canada (Minister of Citizenship and Immigration)*, 2008 FC 683, Justice Yves de Montigny held that “a lack of documentary corroboration can be taken into consideration

when assessing credibility, especially when an applicant makes no effort to obtain such corroborating evidence” (at para 10).

[38] In addition, given the Applicant’s credibility problems, the RPD could reasonably disbelieve the Applicant’s explanation that he did not retain copies of the corroborating evidence that he provided to US immigration authorities.

[39] The Applicant’s challenge to the adequacy of the RPD’s reasons cannot succeed. The Supreme Court of Canada has held that, if reasons are given, a challenge to the reasoning or result is addressed in the reasonableness analysis. According to *Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, “reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes” (at para 14). A reviewing court may not “substitute [its] own reasons” but may “look to the record for the purpose of assessing the reasonableness of the outcome” (at para 15).

## IX. Conclusion

[40] For all of the above reasons, the Applicant’s application for judicial review is dismissed.

**JUDGMENT**

**THIS COURT ORDERS that** the Applicant's application for judicial review be dismissed with no question of general importance for certification.

"Michel M.J. Shore"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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