Federal Court  Cour fédérale

Date: 20091029

Docket: IMM-826-09

Citation: 2009 FC 1088

Ottawa, Ontario, this 29th day of October 2009

Before: The Honourable Mr. Justice Pinard

BETWEEN:

BABOO LAL BHAGAT and
KAMLA DEVI BHAGAT

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review by the applicants pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, of the decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the "Board"), dated January 27, 2009, wherein the Board found that the applicants were not "Convention refugees" nor "persons in need of protection". The Board denied the claim for refugee status on the basis that the applicants did not have a well-founded fear of persecution and alternatively, that they did not rebut

the presumption of state protection. The Board found the male applicant's story as "simply not believable".

[2] Baboo Lal Bhagat and Kamla Devi Bhagat (the "applicants"), are citizens of Pakistan. They are Hindus and the dominant religion of Pakistan is Islam. The applicants speak Urdu, Gujrati and English, and an interpreter was present at the hearing.

[3] Mr. Baboo Bhagat worked for the National Bank of Pakistan as a banker until 1998. He left that position to work full-time as a Bhajan singer. The "Bhajans" are religious songs originating from two Hindu holy books. Mr. Bhagat taught Bhajans to the Hindu community in Karachi, Pakistan. Throughout the testimony, Mr. Bhagat indicated his singing is an inextricable part of his religion; often referring to it as "preaching". He is now a well-known and popular Bhajan singer in Pakistan. He was often called upon to perform Bhajans at Hindu religious festivals. He states that he began operating a music academy sometime after resigning from his position at the bank. The applicants have a son, Prabhat Kanual, who lives and works in Etobicoke, Ontario.

[4] Mr. Bhagat claimed that as a result of his religious singing, he has been persecuted by Muslim extremists. More particularly, he alleged that when he began singing Bhajans at religious festivals and temples full-time, he became the target of harassment by Muslim extremists. His description of the persecution included a claim that Muslim extremists targeted him by throwing stones and directing children to chant insults at him. The Muslim extremists, he said, were responsible for threatening phone calls to his home, the destruction of his music academy as well as an attempt on his life. Further, Mr. Bhagat stated that the police had refused to provide protection

with regard to two previous incidents. On one occasion, Mr. Bhagat testified that a police officer demanded a large bribe before being prepared to take any action in regard to his claim.

[5] After the alleged burning of his academy, Mr. Bhagat received a threat from Muslim extremists that he would be charged with blasphemy if he continued to sing and preach. He did not report this incident to police. Fearing for his life, Mr. Bhagat arranged for visitors' visas for both he and his wife to travel to Canada. The applicants claimed refugee status two months after arriving in Canada. It is not in dispute that the female applicant's, Kamla Devi Bhagat, claim is dependent on her husband's. Only Mr. Bhagat testified at the hearing.

[6] The Supreme Court of Canada in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, has established that in matters not pertaining to legal questions but to matters where discretion and weighing evidence are concerned, a standard of reasonableness is to be applied. Deference must be given to a tribunal whose expertise lies in the subject matter under review. This standard is applicable in this case. More recently, the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Khosa*, 2009 SCC 12, considered whether the provisions of paragraph 18.1(4)(*d*) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, governing judicial review of a federal tribunal, had an impact on the standard of review analysis. It does. Paragraph 18.1(4)(*d*) of the *Federal Courts Act* provides the Federal Court may grant relief if a federal tribunal "based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it". The applicants allege that the Board's findings were both unreasonable and made in a perverse or capricious manner or without regard for the material before it.

[7] In *Aguebor v. Canada (M.E.I.)* (1993), 160 N.R. 315, the Federal Court of Appeal found that with regard to plausibility of a claimant's testimony, the unreasonableness of a decision may be more palpable:

> [4] There is no longer any doubt that the Refugee Division, which is a specialized tribunal, has complete jurisdiction to determine the plausibility of testimony: who is in a better position than the Refugee Division to gauge the credibility of an account and to draw the necessary inferences? As long as the inferences drawn by the tribunal are not so unreasonable as to warrant our intervention, its findings are not open to judicial review. . . .

[8] Here, it appears that the Board, relying on the absence of corroborative evidence, inferred that Mr. Bhagat is not credible because the basis of the claim is implausible.

[9] Corroborating evidence is not always necessary to establish the applicant's subjective fear. The Board, however, determined that in the particular circumstances of this case, corroborating evidence of persecution was expected. An absence of corroborating evidence, then, permitted it to make a negative inference against credibility of the applicant. The respondent relies on *Sheik v. Canada (M.E.I.) (C.A.)*, [1990] 3 F.C. 238, at page 244, for its argument that the Board did not err in law when making that conclusion:

> The concept of "credible evidence" is not, of course, the same as that of the credibility of the applicant, but it is obvious that where the only evidence before a tribunal linking the applicant to his claim is that of the applicant himself (in addition, perhaps, to "country reports" from which nothing about the applicant's claim can be directly deduced), a tribunal's perception that he is not a credible witness effectively amounts to a finding that there is no credible evidence on which the second-level tribunal could allow his claim.

[10] The respondent argues that a finding of implausibility is sufficient reason for the Board to conclude that the basis of the claim is not credible. This is a correct statement of law. The jurisprudence is clear: a finding of implausibility can impugn the credibility of the claimant. This principle is affirmed by *Leung v. Canada (M.E.I.)* (1990), 74 D.L.R. (4th) 313 (F.C.A.).

[11] In *Adu v. Canada (M.E.I.)*, [1995] F.C.J. No. 114 (QL), the Federal Court of Appeal found that it is reasonable to expect documentary evidence of the existence of a law and stated:

> . . . The "presumption" that a claimant's sworn testimony is true is always rebuttable, and, in appropriate circumstances, may be rebutted by the failure of the documentary evidence to mention what one would normally expect it to mention.

[12] In *Owusu v. Canada (M.C.I)*, [1995] F.C.J. No. 681 (T.D.) (QL), at paragraph 4, Justice Wetston dismissed the application for judicial review on the basis that the Board did not err "by requiring that the applicant's testimony be corroborated by documentary evidence".

[13] In the case at bar, the Board found that given Mr. Bhagat's position as a well-known and lauded singer in the Hindu community, it was reasonable to expect corroborating reports for his story that Muslim extremists had become his enemies, were seeking to kill him, that he had an academy and that it burned. Because they were not from an independent source, the Board accorded little weight to the two letters from community members as documentary evidence for corroboration of Mr. Bhagat's problems with Muslim extremists in Pakistan. The fact that there was no evidence presented that Mr. Bhagat was charged with blasphemy appears to have been considered as another implausibility by the Board.

[14] Upon reviewing the evidence and upon hearing counsel for the parties, I am not satisfied that the inferences drawn by the Board are so unreasonable as to warrant the intervention of the Court. Moreover, the applicants have failed to show that the Board based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it (*Federal Courts Act*, paragraph 18.1(4)(*d*)).

[15] This is sufficient to dismiss the application for judicial review.

[16] Consequently, the application for judicial review is dismissed.

JUDGMENT

The application for judicial review is dismissed.

"Yvon Pinard"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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