

Federal Court



Cour fédérale

Date: 20121130

Docket: IMM-3832-12

Citation: 2012 FC 1405

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, November 30, 2012

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

**PARAMJEET KAUR
JARNAIL SINGH
GURKIRPAL SINGH**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants dispute the legality of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the panel) rejecting their refugee claim on the basis that the principal applicant, Jarnail Singh Manko, lacks credibility. The question is whether the panel's conclusion is an acceptable outcome defensible in respect of the facts and law.

[2] The applicants are citizens of India. They stated that they feared for their lives and safety particularly because the principal applicant had apparently refused in 2008 to turn a militant in to the police who had worked in his business and who had worked in his business and had managed to get away from the police after being arrested. In fact, the applicant was allegedly beaten and his wife, Paramjeet Kaur, was raped by the police. Following the advice of a “consultant”, the applicants left India on June 25, 2008, to go to the United States with a six-month visa. They arrived illegally in Canada on October 3, 2008, and filed their refugee claim a few days later.

[3] The applicants claim before the Court today that the panel ignored relevant evidence without sufficient justification. The evidence corroborates the rape that the female applicant claimed she had been subject to in prison (a medical certificate and a letter from a Canadian doctor) and an affidavit from her city counsellor in India reiterates the general allegations of the applicants. They also criticize the panel for not considering certain important details (e.g. the address of the principal applicant’s business on the letterhead; the limited duration of the visas in Thailand and Malaysia), or having otherwise arbitrarily disregarded the principal applicant’s reasonable explanations regarding the business in question and their conduct.

[4] Having read the application files of both parties and heard the oral submissions of their counsel, there is no reason to intervene. It appears to me that the applicants’ criticisms are unfounded. The panel’s negative credibility finding is well reasoned and is based on the evidence on the record. Even if the decision was not perfectly written, it is clear that the panel has considered the

evidence as a whole and the explanations of the principal applicant, which it could find insufficient or not credible in this case.

[5] The principal applicant was not found to be credible, first, because he was unable at the hearing to answer basic questions from the panel without giving confused answers or returning to the story submitted in his Personal Information Form (PIF). Second, the panel found that the principal applicant's behaviour was "inconsistent with that of a person who fears for his life". This determination of lack of subjective fear is also based on the evidence on the record. In fact, the applicants also stayed in the United States for several months without making a claim for asylum.

[6] The onus was on the applicants to provide reasonable explanations. According to the principal applicant, the applicants totally deferred to their "consultant", to the point of risking illegal entry into Canada and being returned, when they had a visa valid for six months in the United States. It was based on the consultant's advice—the United States adopted a strict attitude toward immigrants after September 11, 2001—that the applicants did not claim asylum there. Further, the same consultant allegedly had already advised the principal applicant to go to Thailand and Malaysia in 2007 to obtain a Canadian visa. It does not seem unreasonable in this case that these explanations were rejected.

[7] Finally, the trigger for the applicants' flight was related to the fact that the principal applicant had not turned a militant who had worked in his business over to the Indian police. The panel was at liberty to assess the quality of the evidence provided in this matter by the applicants. Establishing the existence of the business, the principal applicant's property and the hiring and

identity of the militant arrested were all relevant factors. The panel found that the evidence provided was insufficient. For example, the letterhead and the fiscal identity card submitted as evidence of the principal applicant's business are not factors that help to connect the principal applicant to the commercial activity he testified about. Again, the panel was at liberty to reject the principal applicant's explanations on this topic.

[8] While the panel could have made a mistake or disregarded certain details, these errors, if they are errors, even considered cumulatively, are not determinative in this case. The adjudicator's decision must be read as a whole. There are several failings concerning essential elements of the applicants' refugee claim. The principal applicant's manner of testifying, by repeating the content of the story in his PIF and providing confused answers at the hearing to the panel's basic questions also allowed the panel to doubt the credibility of his testimony. Moreover, it was not unreasonable to find that the applicants' conduct was inconsistent with that of persons fearing for their life or safety. To that may be added the weakness of the evidence submitted by the principal applicant to corroborate a central element of his refugee claim, his business.

[9] The panel's decision concerning credibility is reasonable and relies on the evidence, or lack of evidence, as the case may be, on the record. In this case, the panel had no obligation to mention all the documentary evidence, especially since the panel did not find that the principal applicant's story was "credible" such that the panel had not given any weight to the affidavit of the city councillor, who had never personally witnessed the facts alleged by the principal applicant. At the risk of repeating myself, I am not persuaded that the panel's finding that the principal applicant's testimony lacked credibility is unreasonable in this case.

[10] For these reasons, this judicial review will be dismissed. No question of general importance was proposed by counsel and none will be certified by the Court.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed and no question is certified.

“Luc Martineau”

Judge

Certified true translation

Catherine Jones, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3832-12

STYLE OF CAUSE: PARAMJEET KAUR
JARNAIL SINGH
GURKIRPAL SINGH v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: November 28, 2012

REASONS FOR JUDGMENT: MARTINEAU J.

DATED: November 30, 2012

APPEARANCES:

Michel Le Brun FOR THE APPLICANTS

Suzon Létourneau FOR THE RESPONDENT

SOLICITORS OF RECORD:

Counsel FOR THE APPLICANTS
Montréal, Quebec

William F. Pentney, FOR THE RESPONDENT
Deputy Attorney General of Canada
Montréal, Quebec