

Heard at **FIELD HOUSE**
On 24th July 2002
By Video-link from Glasgow

AS (Risk-Return-Sikh-Separatists) India
CG [2002] UKIAT 05994

IMMIGRATION APPEAL TRIBUNAL

Date determination notified

.....10 January 2003.....

Before:

Mr. D. J. Parkes (Chairman)

Mr. P. Rogers J.P.

BETWEEN:

MR. AJIT SINGH

Appellant

- and -

**THE SECRETARY OF STATE
FOR THE HOME DEPARTMENT**

Respondent

DETERMINATION AND REASONS

1. The Appellant is a citizen of India. He appeals against the determination of an Adjudicator, Mr. I. M.Scott, promulgated on 13th February 2002 dismissing his appeal against Directions of the Secretary of State on the 6th August 2001 for his removal from the United Kingdom as an illegal entrant.
2. The Appellant was represented before us by Mr. C. McGinley of Messrs. Gray & Co., and the Respondent by Senior Presenting Officer Mr. A. Mullen.
3. The Appellant, a native of the Punjab, supports the idea that there should be a Sikh homeland of Khalistan and he follows a religious institution which teaches Sikh orthodoxy and advocates an independent Sikh State and which is called Khalistan Dam Dami Taksal. The Appellant's brother is the deputy leader of that organization but was arrested by the Indian authorities in December

1988, March 1989 and finally in November 1990 and has been granted refugee status in the United States of America.

4. As for the Appellant he was in the service of the authorities as an Officer in the paramilitary border security force. Whilst on leave in the Punjab he was twice arrested. On each occasion he was detained for three days tortured and beaten. The first was in December 1994 and the second in June 1995. He was accused of being involved with the movement to establish Khalistan and on the second occasion he suffered a shoulder fracture and a back injury for which he required surgery. When he reported these matters to his superiors he says that he was harassed by them also, and so it was that he resigned his position in July 1995.
5. Rather than return home to the Punjab where he had been previously arrested the Appellant went to Delhi where he maintained a low profile and experienced no further troubles. He was able to apply for a passport and for a Visa to visit the United Kingdom and he left India without apparently experiencing any particular problems in that regard. He arrived here on 11th February 1999.
6. The Appellant's Visa expired on 18th June 1999 although we would have thought that he might have been given, upon arrival, leave to enter for six months. Nevertheless he must have been an overstayer when, if it happened as he claims, he was informed by relatives and friends in December 1999 that an arrest warrant had been issued against him requiring him to attend Court on 15th December.
7. The Adjudicator came to the conclusion that what the Appellant had said about his arrest in India had been consistent and was not implausible and he therefore decided that his evidence in that respect was credible. The Adjudicator did not believe that the warrant which was shown to him was genuine. Documents were typed on unheaded notepaper, there was no adequate explanation as to how the Appellant had obtained them and even to an inexperienced eye they seemed to the Adjudicator to have been typed on the same typewriter as three other documents produced by the Appellant, that is to say a certificate concerning his religious connections and affidavits from his father and the head man of his village respectively.
8. The Appellant claimed asylum on 17th March 2000.
9. The grounds of appeal in effect submitted that the Adjudicator had been inconsistent in finding the Appellant credible in regard to what he said had happened to him in India and yet in then not believing that the warrant was what it appeared to be and it was claimed that a finding of forgery ought not to be found unless he who alleged it, that is to say the Secretary of State in this case, proved it to be so.

10. The Vice President who granted leave to appeal to the Tribunal took the view that on the face of it the decision of the Adjudicator seemed to be sustainable upon the totality of the evidence before him but he was concerned that the question of the warrant should be considered in the light of the Tribunal determination in Tanveer Ahmed.
11. Mr. McGinley addressed us upon the effect of that case. He referred us to the Appellant's answer to question 21 at interview that he had tried to live in Delhi at four different places but because they had issued arrest warrants he could not go back to the Punjab. The Appellant had said that he could not remember exactly when his relatives told him that the police were looking for him but he only found out about the warrant when his Solicitor asked for the records. They had obtained the Court Order on 15th December 1998.
12. Mr. McGinley referred us to paragraphs 5.6.69 to 5.6.74 of the Assessment of the Country Information and Policy Unit for October 2001. That relates to the question of internal flight within India for Sikhs. The constitution guarantees citizens the right to move freely throughout the territory of India and to settle and reside in any part of the country. Punjabi Sikhs are able to relocate to another part of India and Sikhs outside Punjab are feeling more secure now than at any other time since the 1984 riots. There are Sikh communities all over India. Sources disagree whether the Punjab police would pursue an individual they wanted to another part of India. Some say it is unlikely, unless the individual had a very high profile or the Punjab police secured the involvement of the Central Bureau of Investigation or the Central Reserve Police Force. Other sources indicate that the Punjab police would be likely to pursue someone they wanted outside the State. People at risk would include militants or perceived militants and their families and close supporters.
13. Mr. Mullen suggested that the Adjudicator accepted what had happened to the Appellant in the past in the Punjab but that this had happened clearly not on the patch of the Delhi police. The incentive was not there for them to bother to trace the Appellant. As to the question of the genuineness of the warrant the Appellant had been able to leave on his own passport and it was to be expected that when that was issued a check would have been made with the Punjab police.
14. We have paid due regard to the determination in the case of Tanveer Ahmed. When considering whether to attach weight to a document it is appropriate to consider the totality of the evidence with which it may be consistent or inconsistent and we have done that.
15. The Appellant was a man who had been in the service of the authority. He told the Adjudicator that when he moved to Delhi he had no trouble there. He gave a date to the Adjudicator as to when he had learned about the claimed warrant which was some time after he had arrived in

this country and which might be thought the explanation, if it was true, as to why he did not seek asylum until very long after his arrival. On the other hand at interview he claims to have known about the police interest before he came to the United Kingdom in which case it would be his possible incentive for coming here that would afford him no explanation as to why, if he thought himself at risk, he simply came as a visitor and spent many months here before seeking international protection. If the authorities are really interested in the Appellant and if his account of why he seeks asylum has any truth in it then it is extraordinary, it might be argued that he took no step for so long and furthermore that he was able to obtain a passport and leave India in his own name without encountering any problems whatever.

16. It would not be appropriate for the Tribunal to interfere with the findings of the Adjudicator if those findings were open to him upon the totality of the evidence. The only reason thought arguable, and a slim one at that, when leave was granted was whether the Adjudicator had properly considered the weight to be given to the warrant. We have considered that in the light of Tanveer Ahmed and the totality of the evidence and in our view, bearing in mind what the Adjudicator himself observed about it and the other documents, he was entitled to accord it little weight in the totality of the evidence before him and was similarly entitled to come to the decision which he did.
17. In those circumstances this appeal is dismissed.

**D. J. Parkes
Acting Vice-President**