

JH
Heard at Field House
On 23 August 2002

APPEAL NO CC/77847/1997
HS (Return – Failed Asylum
Seeker) India CG [2002] UKIAT
04912

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

.....21/10/2002.....

Before:

**MISS K ESHUN (Chairman)
MRS E MORTON**

Between

Harwinder Singh

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

Representation:

For the appellant: Mr A Burrett, Counsel
Instructed by Chhokar & Co Solicitors
For the respondent: Mr S Walker, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of India, appeals with leave of the Tribunal against the determination of an Adjudicator (Mrs P A Simmons) promulgated on 3 September 1998 dismissing his appeal against the decision of the respondent made on 20 February 1997 to direct his removal as an illegal entrant following refusal of his asylum application.
2. There is a history to this appeal. The Tribunal on 1 October 1998 refused the appellant leave to appeal against Mrs Simmons' determination, but that refusal was quashed by the order of the High Court in September 1999. It would appear that the Adjudicator's refusal to adjourn the appeal further, taken in the context of the fact that the application had previously been adjourned so that the

Secretary of State could authenticate a number of documents upon which the appellant sought to rely, was considered a procedural unfairness on the appellant.

3. The appeal subsequently came before the Tribunal on 23 August 2002. At the hearing Counsel had not been provided with a copy of the Adjudicator's determination by his instructing solicitors, nor did he have translations of the documents upon which it had been said the appellant wished to rely on and upon which judicial review had been sought and granted. Counsel informed the Tribunal that he was instructed by his solicitors, Chhokar & Co seven days ago and that he had been in touch with the solicitors prior to the hearing but they claimed that they did not have a copy of the Adjudicator's determination. This was surprising given that they must have had the determination when they applied to the High Court for a judicial review of the Adjudicator's determination. The Tribunal were also informed by Counsel that Chhokar & Co were of the view that the appeal would be remitted by the Tribunal for a fresh hearing. It was not clear to us how the solicitors could have formed such a view. This would perhaps explains their unprofessional behaviour in not supplying Counsel with all the documentation that he needed in order to properly conduct the hearing before us. In the circumstances, due to lack of proper instructions, it was not surprising that Counsel was unable to assist in this case.
4. On behalf of the respondent Mr Walker submitted that the Adjudicator did not find the appellant credible. In fact she did not believe any of the appellant's story. Nevertheless the events go back almost ten years. It is therefore not credible that the appellant would have any problems if he returned to India today.
5. Mr Walker further submitted that the appellant left India on his own genuinely issued passport without any difficulty. According to paragraph 5.243 of the April 2002 CIPU report, the UNHCR have observed that returnees did not have problems if they returned with valid travel documents and if their departure had taken place with valid travel documents. In the circumstances the appellant's appeal cannot succeed.
6. We now look at the appellant's claim to asylum. He is married and his wife and son remain in India. He had obtained an Indian passport 10 days before he left India. He had had no problems getting the passport and no difficulty leaving India with it. He left India alone and flew to Italy where the agent's contact had met him. He stayed in Italy for about five days before arriving in the United Kingdom concealed in the back of a lorry on 28 October 1995.
7. The appellant said that his life was in danger in India because a terrorist called Bahgga was near his home and the police harassed him because they thought he was involved with Bahgga. They would arrest

and beat him and his father had to pay money to get him released. Due to this his brother was killed. He did not know if it was the police or the terrorists that killed his brother, but it had been five years previously. He did not remember the date of his brother's murder, except to say that it happened before he, the appellant, married in 1991.

8. He had been arrested six or seven times. The first had been in 1992, about June and the last was in May 1995. He had been arrested on these occasions because they thought that he was providing food and shelter to terrorists. He was released without charge on each occasion because his father paid a bribe. The appellant agreed that the police had a legitimate reason to arrest him if he had a terrorist living nearby but said that they had no right to beat him. He did not leave India sooner because he thought things would get better. Even though his brother had been murdered five years previously, because he had got married, he thought he would be left alone after that, as he had settled down. He put up with the harassment for three years and had not moved to another part of India because the police had put up photos and posters everywhere so there was nowhere for him to go. Despite this he was able to leave India on his own passport because he did not tell the police that he was leaving.
9. He did not belong to any party or organisation. He did not know the name of the terrorist organisation Bahgga belonged to, nor did he know what activities Bahgga got involved with. He just knew that the police had been looking for him for a long time. The appellant said that he had been arrested two years previously for causing a disturbance in Simbli and was taken to court and cleared. Before he left India his cousin had been engaged in a dispute over land with a neighbour and because the cousin lived with the appellant, the appellant himself became involved in the case. The case was still outstanding when he left India.
10. With a letter dated 3 September 1997 the appellant's representatives submitted what was alleged to be an order of the Additional Chief Magistrate of Hoshiarpur and a statement of Gurdev Singh Lambardar and Malkiat Singh Sarpanch. These were the documents that formed the subject matter of the judicial review application. At the hearing before the Adjudicator the appellant's representative said that he needed an adjournment to have the documents assessed by an expert he knew, to establish their authenticity. When the Adjudicator pointed out to him that he had had since September 1997 to do this and the burden of proof lay clearly on the appellant, the appellant's representative said that the investigation had been left to the Home Office because there was a very good investigation unit at the British High Commission in Delhi. The Adjudicator was not prepared to adjourn the case yet again for the appellant's representative to begin to undertake investigations he had had at least 10 or 11 months to pursue.

11. As already noted by the Tribunal, to date there have been no translation of these documents.
12. In dismissing the appeal the Adjudicator found herself in agreement with the Secretary of State and did not believe the appellant's claims. She found the appellant's knowledge of Bahgga to be extremely poor. The claims about his own persecution were too vague to be believed. The Adjudicator found it hard to believe that the appellant would not know, somewhat more precisely than he appeared to at his interview, when his brother was killed. He was vague about the number of times he claims to have been arrested and did not give precise dates for these. His responses to the query as to why he had delayed so long before leaving India, if his brother had been killed before his own marriage in 1991 and his own arrests had begun in 1992, simply made her doubt the whole claim to have been arrested at all. The appellant said he had delayed because he thought things would get better because he had married and settled down, but then said he married in 1991 and that his first arrest was in June 1992.
13. The Adjudicator did not also believe that the appellant was in trouble with the police and that they had put up posters and photos of him. He would not have been issued with a passport ten days before he left and he would not have been able to leave India using his own passport if the police were looking for him everywhere so there was nowhere in India he could go.
14. The Adjudicator did not accept that the two documents submitted in September 1997 in any way corroborated the appellant's claims. Furthermore she had heard no evidence on these documents at all. She did not know how and when they were obtained by the appellant. The so-called order of the Additional Chief Magistrate was virtually illegible. It appeared to be dated 20 September 1997 and to declare that the appellant was an offender. The statement of Gurdev Singh Lambardar and Malkiat Singh Sarpanch was undated. The two gentlemen certified that the appellant had been falsely implicated by the Punjab police in a case and had been proclaimed an offender. The appellant may be falsely implicated in more cases and therefore his life would be in danger in India. However the Adjudicator heard no evidence as to why the appellant should have been falsely implicated in any case nearly two years after he left India, whereas he claimed he was never charged while in India.
15. The Adjudicator concluded by saying that she accepted on the background documentary evidence that there were problems and abuses perpetrated by the Indian authorities in the Punjab and that all may not be totally well even now, but as she could not believe the claims being made by the appellant, she was totally unsatisfied that he feared persecution for any reason in India now or that he left India in fear of persecution for any reason.

16. As Counsel was unable to assist us in this appeal, we were left with the additional grounds of appeal submitted on behalf of the appellant by Chhokar & Co on 11 September 1998. We have already dealt with the issue of the documents which have not been translated to date and therefore have not been authenticated. However, in view of the Adjudicator's comments about the illegible copy of the order of the Additional Chief Magistrate, the undated statement of Gurdev Singh Lambardar and Malkiat Singh Sarpanch, and her finding that there is no evidence as to why the appellant should have been falsely implicated in any case nearly two years after he left India, when he claimed he was never charged while in India, we come to the conclusion that these documents are not genuine and therefore the Tribunal cannot place any reliance on them.
17. According to the appellant's additional grounds of appeal the Adjudicator placed too much emphasis on credibility and the appellant should have been given the benefit of the doubt. To that we say that on the evidence before the Adjudicator, she could not have come to any other conclusion other than the finding the appellant's evidence was totally lacking in credibility.
18. The objective evidence referred to in the additional grounds of appeal date back to June 1997. That is the Ottawa Report. Although that report is five years out of date, it would appear that as far back as June 1997, the situation in the Punjab had improved despite some human rights concerns. Given the total lack of credibility of his claim, we find, even on that evidence that the appellant does not have a well-founded fear of persecution in India today for a Convention Reason.
19. The appellant left India about 1995 on his own genuinely issued passport without any difficulty. This evidence, coupled with the total lack of credibility of his claim, indicates that the appellant did not have a well-founded fear of persecution when he left India.
20. On the issue of any likelihood of risk of persecution on return, we take account of the observation by the UNHCR in paragraph 5.243 of the April 2002 CIPU report, that nationals who returned after having their asylum applications abroad rejected, did not have problems if they returned with valid travel documents and if their departure had taken place with valid travel documents. Refused Indian asylum seekers who returned to India with temporary travel documents could enter without any problems as such, but if they arrived after their passport had expired then they would be questioned about the reasons for this. These arrivals were questioned briefly and could then leave the airport. It was part of the appellant's evidence that the agent kept his passport. However, in the light of the objective evidence before us, we find that there is no reasonable likelihood whatsoever that this appellant, on his return to India, will suffer any risk of persecution, least of all for a Convention reason.

21. His appeal is therefore dismissed.

**Miss K Eshun
Vice President**