

# **Khera v. Canada (Minister of Citizenship and Immigration)**

Between  
Daljinder Khera, applicant, and  
The Minister [of Citizenship and Immigration], respondent

[1999] F.C.J. No. 1120  
Court File No. IMM-4009-98

**Federal Court of Canada - Trial Division**  
**Montreal, Quebec**  
**Pinard J.**

Heard: June 3, 1999.  
Judgment: July 8, 1999.  
(6 pp.)

*Aliens and immigration — Admission, refugees — Disqualifications, crimes against humanity.*

This was an application by Khera for judicial review of the dismissal of his application for Convention refugee status. Khera was a citizen of India. He claimed that he had a well-founded fear of persecution in India by Sikh militants. Khera was a Sikh member of the Punjab police force. He claimed that he would be attacked by the militants because of abuses by the police force against Sikhs.

**HELD:** The application was dismissed. The Minister properly denied Khera's application because Khera was excluded from refugee entitlement. Khera was aware of the abuses against Sikhs. Khera acted voluntarily in facilitating the abuses and was responsible for his own predicament. Khera was complicit in crimes against humanity. The Minister's decision was supported by the evidence.

## **Counsel:**

Mark Gruszczynski, for the applicant.  
Christine Bernard, for the respondent.

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1 **PINARD J.** (Reasons for Order):— The applicant seeks judicial review of a decision of the Refugee Division of the Immigration and Refugee Board (the Board) rendered orally on June 2, 1998, with written reasons dated June 18, 1998, in which the Board determined the applicant was excluded from the definition of "Convention

refugee" under Article 1F(a) of the United Nations Convention Relating to the Status of Refugees (the "Convention").

2 The applicant is a 46-year-old citizen of India who alleges a well-founded fear of persecution in India at the hands of the police and at the hands of Sikh militants. The applicant is a Sikh and has been in the Punjab Police Force (the "PPF") since May 1973. He fled India following having received an order to testify in the trial of a senior police officer. The applicant alleges that if he stayed in India to testify, he would have been victimized.

3 Article 1F of the Schedule to the Convention reads as follows:

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

\* \* \*

F. Les dispositions de cette Convention ne seront pas applicables aux personnes dont on aura des raisons sérieuses de penser :

- a) Qu'elles ont commis un crime contre la paix, un crime de guerre ou un crime contre l'humanité, au sens des instruments internationaux élaborés pour prévoir des dispositions relatives à ces crimes;
- b) Qu'elles ont commis un crime grave de droit commun en dehors du pays d'accueil avant d'y être admises comme réfugiés;
- c) Qu'elles se sont rendues coupables d'agissements contraires aux buts et aux principes des Nations Unies.

4 The definition of "crime against humanity" set out in the UNHCR Handbook is as follows:<sup>1</sup>

. . . murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the tribunal, whether

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<sup>1</sup> UNHCR Handbook, Geneva, 1978 at 78, paragraph 6.

or not in violation of the domestic law of the country where perpetrated.

5 The applicable principles in order to determine if an applicant could be excluded under Article 1F(a) are set out in *Ramirez v. Canada (M.E.I.)*, [1992] 2 F.C. 306, *Moreno et al. v. Canada (M.E.I.)*, [1994] 1 F.C. 298 and *Sivakumar v. Canada (M.E.I.)*, [1994] 1 F.C. 433, three decisions made by the Federal Court of Appeal. These principles are ably summarized by my colleague Madame Justice Reed in *Penate v. M.E.I.* (November 26, 1993), 93-A-292:

The *Ramirez*, *Moereno* and *Sivakumar* cases all deal with the degree or type of participation which will constitute complicity. Those cases have established that mere participation in an organization which from time to time commits international offences is not normally sufficient to bring one into the category of an accomplice. At the same time, if the organization is principally directed to a limited, brutal purpose, such as a secret police activity, mere membership may indeed meet the requirements of a personal and knowing participation. The cases also establish that the mere presence at the scene of an offence, for example, as a bystander with no intrinsic connection with the persecuting group will not amount to personal involvement. Physical presence together with other factors may however qualify as a personal and knowing participation.

As I understand the jurisprudence, it is that a person who is a member of the persecuting group and who has knowledge that activities are being committed by the group and neither takes steps to prevent them from occurring (if he has the power to do so) nor disengages himself from the group at the earliest opportunity (consistent with safety for himself) but who lends his active support to the group will be considered to be an accomplice. A shared common purpose will be considered to exist. I note that the situation envisaged by this jurisprudence is not one in which isolated incidents of international offences have occurred but where the commission of such offences is a continuous and regular part of the operation.

(My emphasis.)

6 Here, the issue is whether the Board erred in the application of the above guiding principles, as regards complicity, in light of the evidence before it.

7 In the case at bar, the Board denied the applicant's claim on the basis that he is excluded under Article 1F(a) for his complicity in crimes against humanity for the following reasons:

- the applicant was aware of PPF abuses against Sikhs, which included illegal detentions, arrests, torture and murder, from the beginning of his career in the PPF as evidenced by his request to be assigned on duties which were not in the field area as he was aware of the treatment of Sikh youths by the police and did not want to be part of

- it;
- the applicant continued in his responsibilities of assigning vehicles to police stations when he knew that these vehicles were used to commit atrocities;
- the documentation is replete with references to crimes against humanity committed by the PPF;
- the applicant voluntarily entered the PPF and was responsible for his own predicament;
- although the applicant did not commit any crime in the physical sense, he aided perpetrators in the commission of crimes against humanity;
- the applicant had knowledge that his role in the transportation arrangements of the PPF led to the persecution of individuals;
- the applicant did not seek protection from his superiors in order to avail himself of the opportunity to testify against the abuses committed by the PPF.

8 I find that the above findings are all supported by the evidence, namely the applicant's recitation of facts set out in his Personal Information Form, his oral testimony and also the documentary evidence. All this evidence shows that although the PPF was a regular police force, as opposed to a death squad, an anti-terrorist group or a secret police, it was also an organization which committed international offences such as torture and murder as a continuous and regular part of its operations. The applicant was a member of that organization which he voluntarily joined in 1973 and stayed with for the next 24 years. He was a driver munchie who assigned drivers and allocated vehicles to police stations. The applicant knew that the vehicles were used for missions, especially since 1984, where Sikhs were victims of illegal arrest, torture and murder. He knew this information from the drivers themselves when they returned from their missions, from newspapers and from the fact that ten to twenty percent of the vehicles that he arranged for came back bloodied and bullet-ridden. The applicant only left the PPF when he was asked to testify against his superior, a senior police officer who was widely known as having been involved in significant abuses of Sikhs.

9 It appears to me, therefore, that the applicant knowingly contributed to the PPF commission of atrocities against Sikhs in a concrete way and that he made them possible by assigning drivers and allocating vehicles used for abuses against Sikhs in a ten-year period, at the minimum. I agree with the respondent that the applicant was far from being an innocent bystander.

10 Therefore, I am of the opinion that the Board was entitled, in light of the evidence before it and the above applicable principles of law, to conclude that there were serious reasons for considering the applicant was complicit in crimes against humanity committed by the PPF pursuant to Article 1F(a) of the Schedule to the Convention.

11 Consequently, the application for judicial review is dismissed.

PINARD J.

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ORDER

The application for judicial review of the decision of the Refugee Division of the Immigration and Refugee Board rendered orally on June 2, 1998, with written reasons dated June 18, 1998, in which it determined the applicant was excluded from the definition of "Convention refugee" under Article 1F(a) of the United Nations Convention Relating to the Status of Refugees, is dismissed.

PINARD J.