

**Federal Court Reports**

Sogi v. Canada (Minister of Citizenship and Immigration) (F.C.) [2005] 3 F.C. 530

**Date: 20050218**

**Docket: IMM-9571-03**

**Citation: 2005 FC 262**

**BETWEEN:**

**BACHAN SINGH SOGI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER**

**SIMPSON, J.**

[1] Following my Interim Reasons for Decision of June 11, 2004 (the "Interim Reasons"), the Minister's Delegate prepared an Addendum to his reasons. It is dated September 30, 2004 (the "Addendum"). These final reasons deal with the Applicant's application for judicial review of both the Deportation Decision made by the Minister's Delegate on December 3, 2003 and the Addendum.

[2] The Interim Reasons for Decision are attached hereto as Schedule "A". They should be read as the first part of these Final Reasons. The Interim Reasons include one amendment by way of update. It is shown in bold type in paragraph 2. Also by way of update, I should note that, although he is entitled to a detention review every thirty days, the Applicant has waived his reviews for some months pending this decision.

[3] At the final hearing on January 25, 2005, Counsel raised the following two preliminary matters:

(i) Counsel for the respondent advised, for information purposes only, that he had been told that, in this case, the Minister's Delegate, while offered the opportunity to do so, did not think it was necessary to look at the source documents referred to in the Secret Affidavit. Counsel felt that this fact should be on the record because it is being considered in other cases.

(ii) Counsel for the Applicant asked to make additional submissions about whether Canada could deport to torture in exceptional cases. However, since this issue

was decided in the Interim Reasons after full argument, I did not entertain further submissions.

[4] The issues at the hearing on January 25 were:

- (i) Whether the Minister's Delegate erred in law by not considering the current threat posed by the Babbar Khalsa or Babbar Khalsa International ("BKI")
- (ii) Whether the finding by the Minister's Delegate about the Applicant's use of aliases was patently unreasonable.
- (iii) Whether in relying on allegedly irrelevant factors such as Canada's response to terrorism, the Minister's Delegate erred in law in his assessment of the threat the Applicant posed to Canada.
- (iv) Whether the Minister's Delegate erred in law by not considering the specific alternatives to deportation proposed by the Applicant and by not considering whether they were adequate, given the alleged absence of evidence about a current threat posed by the BKI.
- (v) Whether the Minister's Delegate erred in law in his assessment of alternatives to deportation by concluding that he does not have the statutory authority to order or impose the alternatives to deportation sought by the Applicant.
- (vi) Whether the Minister's Delegate erred in concluding that the Applicant misled immigration authorities when he failed to mention his UK refugee claim in his application for a Pre-Removal Risk Assessment ("PRRA").

#### ISSUE I

[5] The Applicant alleges that there is nothing in the evidence to indicate that the BKI poses a current threat and that the conclusion of the Minister's Delegate, in that regard, is unfounded and unsupported by the evidence.

[6] The Minister's Delegate says in paragraphs 6, 7 and 8 of the Addendum that the BKI is currently listed as a terrorist organization in Canada, the United Kingdom and in the United States. The U. S. Department of State added the BKI to its Terrorist Exclusion List as recently as April 29, 2004.

[7] In my view, this evidence demonstrates that the Minister's Delegate did address the current nature of the threat posed by the BKI.

#### ISSUE II

[8] The Applicant says that the Minister's Delegate's conclusion that the Applicant is untrustworthy due to his admitted use of aliases in the past and his use of fraudulent travel documentation is patently unreasonable. However, this submission is not persuasive because it relies on an incomplete description of the facts.

[9] The Minister's Delegate found the Applicant to be untrustworthy due in part to the piecemeal way in which he admitted having used certain aliases and the fact that he did not disclose until well into the immigration process that he used the name Gurbachan Singh for his refugee claim in the United Kingdom. The Minister's Delegate also found the Applicant's denial of having used the aliases Gurnam Singh and Piare Singh to be inconsistent with the open and closed source documentary evidence.

### ISSUE III

[10] The Applicant says that Canada's response to terrorism is irrelevant and that the Minister's Delegate erred in considering it in his assessment of the threat posed by the Applicant. The Applicant says that the focus should have been on an individualized assessment of the risk he posed.

[11] While, in my view, the Minister's Delegate wrote at unnecessary length on Canada's Response to Terrorism, that does not constitute an error and does not detract from his individualized assessment of the Applicant. In that assessment, he said:

At paragraph 13 - . . . it is my view that the piecemeal admission of aliases used by the Applicant is a clear attempt to deceive Canadian Immigration authorities. . . . I view with particular seriousness the fact that the Applicant did not disclose until well into the Immigration process that he used the name Gurbachan Singh for his refugee claim in the United Kingdom. . . . It is also clear from his own admission that the Applicant has access to and is able to obtain fraudulent documentation in order to travel from India to the U. K. and later to Canada. I view this with a great deal of concern as this would enable him to immerse himself within the Sikh extremist community in order to commit illegal activities which may pose a danger to the public in Canada or to the security of Canada.

At paragraph 15 - Considering the Applicant's use of multiple aliases and his attempts to deceive Canadian Immigration officials, I conclude that the Applicant is not trustworthy and could not be relied upon to comply with any conditions relating to release from detention imposed. . . . I note that the CSIS document indicates that the [sic] he is trained in sophisticated weaponry and explosives. He has attempted to use these skill to assassinate several prominent political figures. . . . The BKI, to which he belongs, has been suspected of and has taken responsibility for the use of weapons and explosives in various terrorist activities. . . . I cannot rule out that the Applicant could use his training and expertise to assist the BKI in conducting further terrorist activities either in or from Canada.

At paragraph 19 - . . . Because of the risk posed by the Applicant, particularly the real and serious possibility that he may assist the BKI in conducting terrorist activity in Canada.

At paragraph 26 - . . . I find that detention is the only possible option that could address and perhaps reduce the threat posed by the Applicant.

At paragraph 32 - . . . I am of the view that there is a real, reasonable and serious possibility that he could re-establish contacts with the BKI or other terrorist groups in Canada to commit terrorist acts in Canada.

#### ISSUE IV

[12] In the Interim Reasons, I concluded that the Minister's Delegate erred in failing to address alternatives to deportation to torture. In my view, if an applicant makes proposals which could arguably reduce the risk he poses, they must be considered. However, I also concluded that the Applicant's proposals in this case had not been very precise. I therefore ordered counsel for the Applicant to send the Minister's Delegate a list of alternatives to deportation to which the Applicant would consent (the "Alternatives").

[13] The Alternatives are found in a letter from Mr. Waldman to Mr. Hicks of the Department of Justice (the "Letter"). They are listed in the Addendum at paragraph 2. As the Minister's Delegate notes at paragraph 3 of the Addendum, the list is expressed to be not exhaustive. However, for the purposes of this application for judicial review, I am treating it as exhaustive. The whole point of ordering preparation of the Letter was to obtain a clear understanding of the Alternatives proposed by the Applicant so that the Minister's Delegate could consider them in his assessment of risk.

[14] It is important to note that the Letter does not indicate that the Applicant is willing to consent to continued detention as one of the Alternatives. The possibility that he would choose detention over deportation to India had been mentioned in oral submissions but, when counsel was asked to put the Alternatives in writing, it did not appear. Accordingly, it will not be considered here.

[15] In paragraphs 24 and 25 of the Addendum, the Minister's Delegate concludes that, even if all the Alternatives were implemented they would not be sufficient to reduce the threat to Canada because the Applicant is untruthful. This means that he is unlikely to comply with any conditions attached to his release from detention. Given this conclusion, it is my view that the Minister's Delegate was not obliged to deal separately with each proposed Alternative.

#### ISSUE V

[16] Once the Minister's Delegate concluded that the Alternatives were not viable, the question of whether he had jurisdiction to implement them became hypothetical and need not be addressed here. However, I should add that, had the Alternatives been acceptable to the Minister's Delegate, I would have declined counsel's invitation to read numerous provisions into the IRPA. I would have taken this position because such a "reading in" would have created within the IRPA an awkward *ad hoc* regime for house arrest for an indefinite term in conjunction with monthly detention reviews. In my opinion, while the creation of a program to provide Canada with an alternative to deportation to torture is highly desirable, it should be the work of Parliament.

#### ISSUE VI

[17] The Applicant says that, because the earlier claim was disclosed in his Personal Information Form, it was patently unreasonable for the Minister's Delegate to conclude that the Applicant had attempted to mislead Immigration authorities when he failed to disclose on his PRRA form that he had made a refugee claim in the U.K.

[18] I can find no error in this regard. The Applicant clearly looked at the PRRA form and responded to the question about prior refugee claims by writing "NA" as the answer. In my view, it is entirely reasonable for the Minister's Delegate to have concluded that an incorrect answer had been supplied in the expectation that the PRRA officer would not read the Applicant's PIF.

#### CERTIFICATION

[19] The parties agreed that a question dealing with exceptional circumstances should be certified for the Federal Court of Appeal. I have reached the same conclusion because the Applicant is an accomplished explosives expert and an assassin for the BKI. It's objectives and violent methods potentially threaten the stability of the Punjab and surrounding areas. He is experienced in hiding his identity and concealing his travels and will be a danger for an indefinite period.

[20] The following question will be certified on consent:

Does this case involve exceptional circumstances in which the balancing required by section 113 of the IRPA could justify deportation to torture?

#### CONCLUSION

[21] For all these reasons the application for judicial review of the Deportation Decision and the Addendum will be dismissed.

\_\_\_\_\_  
"Sandra J. Simpson"

JUDGE

Ottawa, Ontario

February 18, 2005