

OS (Sufficiency of Protection-Sikh-Separatists) India CG [2002]  
UKIAT 00843  
HX58313-2000

IMMIGRATION APPEAL TRIBUNAL

Date of hearing: 20 February 2002  
Date Determination notified:

20.02.2002

Before:

Mr. P. R. Moulden (Chairman)  
Mr. A. G. Jeevanjee  
Mr C. A. N. Edinboro

Between

THE SECRETARY OF STATE FOR  
THE HOME DEPARTMENT

Appellant

and

ONKAR SINGH

Respondent

**DETERMINATION AND REASONS**

1. The Appellant is the Secretary of State. The Respondent is a citizen of India. The Appellant has been given leave to appeal the determination of an Adjudicator (Mr R. J. C. Ince) allowing the Respondent's appeal against the Appellant's decision to refuse to grant him leave to enter the United Kingdom and to refuse asylum.
2. Mr M. Pichamuthu, who is a Home Office Presenting Officer, represented the Appellant. Mr L. Jackson of Counsel, instructed by

Herwald Seddon, Solicitors, appeared for the Respondent.

3. The Respondent arrived in the United Kingdom on 1 July 1999 and claimed asylum. The notice containing the decision against which he appeals is dated 11 June 2000. The Adjudicator heard the appeal on 16 March 2001 and leave to appeal was granted on 10 December 2001.
4. The Respondent is a Sikh. The Adjudicator found him to be a credible witness. The Respondent and before him his father supported an independent state for Sikhs. His father was killed in 1985 after torture by the police. The family home was used as a refuge for those who were fighting for an independent state. The Respondent became an active member of the organisation, organising demonstrations from 1993. He was arrested by the police on a number of occasions, beaten and then released. In 1994 the frequency of arrests increased and by 1999 he was being detained about six times a year on an average of five days at a time. He was detained for more than one period of two months in early 1999. In June 1999 he was seriously beaten by the police and only released after his mother paid a bribe. On his release the police made it clear to him that if they ever found him in a police station in India he would not get out of prison alive. He was beaten again, to reinforce the message. An agent was found; he travelled to Delhi, and then left the country.
5. The Adjudicator made a careful review of the country information and concluded that the Respondent had a well-founded fear of persecution in the Punjab. Whilst we are by no means certain that we would have reached the same conclusion there is no appeal against this part of the determination, which, as a result, forms the starting point of our deliberations.
6. The Adjudicator went on to consider the question of internal flight. He asked himself whether, in the light of the country information, the Respondent was a "history sheeter" and/or a "habitual offender". He recorded that, on the country information, there appeared to be a discrepancy as to whether these two categories were effectively one. Paragraph 15 of the determination bears repetition;

"I consider that the Appellant falls within this category. His evidence is that he was detained on an increasing basis and suffered more and more physical abuse by the police. This suggests that they regard him as a recidivist. Having said this, it appears that, for instance, the authorities in Delhi are not informed about those wanted in the Punjab and on this basis there is a clear divergence of opinion as to whether "history sheeters" would be sought in, for example, Delhi. (Certainly, I do not think that it would be unduly harsh for the Appellant to relocate to Delhi. He has managed to relocate to the United Kingdom and obtain employment for himself, and his appearance indicates that he is willing to blend into his surroundings and would not necessarily be identified as a Sikh even if he returned to India and, more specifically, Delhi). This contradiction in the objective evidence is unfortunate and the answer, I believe, is to proceed with caution. I consider this to be a situation where, as there is a conflict in the objective evidence before me, the doubt should be resolved in favour of the Appellant and consequently I conclude that internal flight is not a realistic possibility as there is a reasonable likelihood or risk that he will be targeted as a "history sheeter".

7. In paragraph 16 the Adjudicator said,

"Accordingly, as I consider that the Appellant is credible, that he has a well founded fear of persecution in Punjab and that there is a serious possibility that he would be sought in other parts of India, I allow this appeal and direct the Secretary of State to grant the Appellant leave to enter the United Kingdom as a refugee".

8. Mr Pichamuthu submitted that these conclusions turned on internal flight. Mr Jackson's submitted that the Adjudicator had found that the Respondent had a well founded fear of persecution for a Convention reason throughout India, not just in the Punjab. After a careful reading of paragraphs 15 and 16 we find that the Adjudicator is likely to have intended to say that the Respondent had established a well founded fear of persecution throughout India because, if he returned to a part of India other than the Punjab, the police would be looking for him and would either arrest and seriously ill treat him or return him to the Punjab where the same

thing would happen. If we are mistaken and the Adjudicator intended to say that it would be unreasonable or unduly harsh to return the Respondent to a part of India other than the Punjab it would appear to be for the same reasons. We draw these inferences from the phrases, "will be targeted as a "history sheeter"" and "he would be sought in other parts of India".

9. Leave to appeal was not granted on the ground that the determination was unsafe because it was prepared outside the usual three-month period. It was only just outside this period and the Appellant did not seek leave to reopen the issue at the hearing.
10. None of Mr Pichamuthu's submissions persuade us that the second ground of appeal in respect of which leave was granted can make any material difference to the determination or our conclusions. Sufficiency of protection is not a relevant consideration in circumstances where the persecution feared, and found, is at the hands of the authorities, in this case the police in the Punjab and elsewhere in India.
11. The only other ground of appeal is that, "the Adjudicator erred in his findings in (sic) internal flight. There is no evidence of any charges having been issued against the Appellant or any convictions. In the circumstances it is argued that the Appellant is not a "history sheeter".
12. The only country information before us is the Home Office India Country Assessment dated October 2001. It would appear that this was the main source of information before the Adjudicator. The most important paragraph is 5.6.74 which states,

"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. "History sheeters" i.e. those with a record of previous arrests and detentions and "habitual offenders" - those who are rounded up whenever anything untoward happens - might also be at risk. Lists of habitual offenders are apparently distributed across India by the police computer system".

The conflicting evidence to which the Adjudicator refers comes from the preceding paragraph in which the last sentence states, "Reference was made to the fact that the authorities in Delhi are not informed about those wanted in Punjab".

13.The Adjudicator addressed the question of whether "history sheeters" and "habitual offenders" fell within one composite or two separate categories. He appears to have concluded that they formed one composite category. We do not agree. We interpret paragraph 5.6.74 to contain two categories. History sheeters are those with a record of previous arrests and detentions. Habitual offenders are those who are rounded up whenever anything untoward happens. We accept that there may be an overlap. It is likely that the Respondent comes within both categories. Whilst he may not have a record of being charged and/or convicted the definition of history sheeters refers to a record of previous arrests and detentions, which he suffered, not a record of previous charges or convictions. In the light of the Adjudicator's findings of fact the Respondent was rounded up at regular intervals and it is reasonable to conclude that this would have included occasions on which something untoward had happened.

14.The last sentence in paragraph 5.6.73 of the Country Assessment is difficult to reconcile with paragraph 5.6.74. In the circumstances the Adjudicator was correct to resolve the ambiguity in favour of the Respondent. Paragraph 5.6.74 is clear.

15.We agree with the Adjudicator's conclusions and dismiss the Secretary of State's appeal.

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P. R. Moulden  
Vice-President