

**FEDERAL COURT OF AUSTRALIA**

**Singh v Minister for Immigration & Multicultural Affairs [2001] FCA 1653**

*Migration Act 1958* (Cth)

*Chan Yee Kin v Minister for Immigration & Ethnic Affairs [1989] HCA 62; (1989) 169 CLR 379* followed

*Minister for Immigration & Ethnic Affairs v Guo [1997] HCA 22; (1997) 191 CLR 559* followed

*Kalala v Minister for Immigration and Multicultural Affairs [2001] FCA 1594* considered

**DEEP SINGH v MINISTER FOR IMMIGRATION & MULTICULTURAL AFFAIRS**

**S 63 of 2001**

**MANSFIELD J**

**ADELAIDE**

**27 NOVEMBER 2001**

**IN THE FEDERAL COURT OF AUSTRALIA  
NORTHERN TERRITORY DISTRICT REGISTRY S 63 OF 2001**

**BETWEEN:** DEEP SINGH

APPLICANT

**AND:** MINISTER FOR IMMIGRATION & MULTICULTURAL  
AFFAIRS

RESPONDENT

**JUDGE:** MANSFIELD J

**DATE OF** 27 NOVEMBER 2001

**ORDER:**

**WHERE MADE:** ADELAIDE (HEARD IN DARWIN)

**THE COURT ORDERS THAT:**

1. The application be dismissed.
2. The applicant pay the respondent costs of the application to be taxed.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.

**IN THE FEDERAL COURT OF AUSTRALIA**

**NORTHERN TERRITORY DISTRICT REGISTRY S 63 OF 2001**

**BETWEEN: DEEP SINGH**

**APPLICANT**

**AND: MINISTER FOR IMMIGRATION & MULTICULTURAL AFFAIRS**

**RESPONDENT**

**JUDGE: MANSFIELD J**

**DATE: 27 NOVEMBER 2001**

**PLACE: ADELAIDE (HEARD IN DARWIN)**

**REASONS FOR JUDGMENT**

1. This is an application to review a decision of the Refugee Review Tribunal (the Tribunal) given on 10 April 2001. The Tribunal affirmed a decision of a delegate of the respondent of 9 July 1998 to refuse to grant to the applicant a protection visa for which he had applied under the *Migration Act 1958* (Cth) (the Act).
2. The applicant is a national of India. He was born on 12 July 1972 in the Punjab region of India and is of Sikh ethnicity and of Sikh religion. He is married.
3. The applicant arrived in Australia on 26 May 1998, with his wife. He was travelling on an Indian passport issued in his name on 23 August 1995. He acknowledged to the Tribunal that he falsely claimed that the purpose of that travel was for a honeymoon following his marriage shortly beforehand. Its purpose was to secure entry to Australia to apply for a protection visa. On 30 June 1998 he applied for a protection visa under the Act. To be eligible to be granted that visa, it was necessary for the delegate of the respondent, and on review the Tribunal, to be satisfied that the prescribed criteria for that visa had been satisfied: s 65(1) of the Act. Relevantly for present purposes, that meant that the delegate of the respondent, and on review the Tribunal, had to be satisfied that the applicant is a person to whom Australia owes protection obligations under the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 as amended by the Protocol relating to the Status of Refugees done at New York on 31 January 1967 (the Convention): s 36(2) of the Act. In practical terms, the satisfaction referred to had to be that the applicant is a refugee as defined in Article 1A(2) of the Convention, namely a person who:

*"... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; ..."*

4. The applicant claimed to have a well-founded fear of persecution if he is returned to India by reason of political views which would be imputed to him, or which might be imputed to him, by the Punjab police that he was or is a member of or associated with the terrorist organisation known as the Khalistan Liberation Force (KLF) or is otherwise a Sikh militant.

5. The basis upon which the applicant claimed that he may be imputed with that political opinion derives largely from an experience which he asserted to have occurred in about April 1995. He had travelled by bus from his village to a neighbouring village to see a doctor. In that neighbouring village he was arrested by the authorities and over a period of seven days (as he first said) he was detained and seriously mistreated because he was suspected of being a Sikh militant and of being associated with the KLF. When arrested, he was either in the company of, or nearby to, another person who had travelled on the same bus and who the authorities apparently identified as a Sikh militant. The applicant claimed that he was released on payment of a bribe. There is considerable more detail to that claim to which the Tribunal referred, and to which I will refer when addressing the Tribunal's reasons for its decisions. The applicant further claimed that, following his release, his parents' home was visited by the police on many occasions seeking payment from him or his parents under threat of him being killed "in a false encounter", that is in a contrived confrontation with suspected KLF militants. He was not at home when that first visit was made, and subsequently left his village and stayed with relatives to avoid being the subject of such threats.

6. On 18 March 1996 the applicant travelled to Singapore on a work permit procured on his behalf by a relative, and remained there until he returned to his home in the Punjab on 17 March 1998. Shortly after his return home, he married. He first claimed that he had done so in a town some 35-40 kilometres away because of fear of the authorities. He then left with his wife and arrived in Australia in the circumstances to which I have referred above. It was because the authorities, on his claim, suspected him of being associated with the KLF that he feared returning to India because he would then be killed or severely mistreated by the authorities if he were to do so.

7. The Tribunal was not satisfied that the applicant was a refugee as defined in the Convention. That was simply because it had serious doubts about the truthfulness and reliability of the applicant's claims. After reciting at some length his claims as made in support of his initial application for the protection visa, at the time of his application for review by the Tribunal, and at the hearing which the Tribunal conducted on 29 November 2000, it explained the reasons why it doubted the applicant's reliability and truthfulness. It gave nine reasons. The applicant admitted at the hearing that he had not provided his true name in his primary application for the protection visa, and that his name was in fact Gurdeep Singh. Secondly, the Tribunal found, upon the basis of information which it had available, and the accuracy of which the applicant acknowledged during the hearing before the Tribunal, that the applicant did not initially accurately provide details of his work history. He claimed to have worked as a machinery mechanic only whilst in Singapore between March 1996 and March 1998. He later acknowledged that, contrary to his claim of having been unemployed between March 1988 and March 1996, he had also spent some time working in Singapore in the period 1993 to 1994 or 1995 and had returned only when his student visa to Singapore had expired. The Tribunal also discerned serious inconsistencies in his account of his arrest, detention, mistreatment and release by the authorities in April 1995. They were put to the applicant in the course of the hearing before the Tribunal and acknowledged by him. There were also inconsistencies related to the information the applicant had provided in his claims to officers of the respondent in support of his application for the protection visa, and to the Tribunal. Those inconsistencies related to the time of day at which he had been apprehended, and the

period of the apprehension in April 1995. Those inconsistencies were not explained by the applicant to the satisfaction of the Tribunal when they were presented to him during the hearing on 29 November 2001. The Tribunal also had regard to the applicant's acknowledgment that, when applying to the Australian authorities in New Delhi for a visa to visit Australia, he had provided false information as to the purpose of that visit. It also noted inconsistency between the applicant's claim that he had married at a place well away from his village through fear of the authorities, and his marriage certificate which showed that he had been married in his own village. That too was presented to the applicant for comment, and as the Tribunal records, he gave an unsatisfactory range of responses. Further, there were also three documents which the applicant produced to the Tribunal to support his claim for the visa, and which the Tribunal rejected as unreliable. One was an undated medical report purporting to be from a surgical specialist in confirming that the applicant had been hospitalised between 22 April 1995 and 2 May 1995 with injuries consistent with having been tortured by the police as he alleges. The Tribunal caused enquiries to be made as to the genuineness of that document. The telephone number on the letterhead purporting to be that of the hospital was ascertained to be the private residence of a person who was not the doctor but some unrelated person. The telephone number on the letterhead purporting to be the telephone number of the residence of the doctor was ascertained to be the telephone number of another person who is a practising veterinary surgeon. Those matters appeared to the Tribunal to indicate that the document was fabricated. They were put to the applicant in the course of the hearing before the Tribunal, but he declined to comment upon them. The Tribunal had sound reason to conclude, as it did, that that was a fabricated document. The other two documents were letters from persons purporting to confirm the fact of the applicant's arrest by the police in April 1995 and his detention and torture. The Tribunal again formed the view that the contents of those letters were not genuine. In my view, it had sound reasons for that conclusion. Each of the letters is almost identically worded. Moreover, as the Tribunal noted, each of the letters to an ordinary observer has been typed on the same typewriter and contains the same poor grammar and expression. The idiosyncratic positioning of individual letters from the typewriter used on one letter is replicated in the other letter. Consequently, the Tribunal put to the applicant its concerns about the two letters, but it did not receive from the applicant any comments that explained this concern. The fact that the applicant presented letters which the Tribunal was satisfied were not genuine in support of his claim was, in my view, material to which it could legitimately have regard in assessing his credibility.

8. The remaining reason of the Tribunal for doubting the applicant's reliability as a witness was expressed in the following terms:

*"Fifth, I cannot be satisfied that the Applicant was in India in April 1995. While the evidence on the point is inconclusive, I consider that there is a likelihood that the Applicant was in Singapore at the time of the alleged 'encounter' with the Punjab police. In any event, I do not accept that the applicant received injuries at that time of the alleged incident which required hospital treatment. I am satisfied that the Applicant did not attend a hospital. I am not satisfied that the alleged encounter with the police did take place."*

That paragraph of the Tribunal's reasons seems to me to be more in the nature of a conclusion, having formed an unsatisfactory view as to the applicant's reliability,

rather than a reason for doubting his reliability. However, as the above recital of the Tribunal's reasons indicates, it had ample reason to be concerned about the reliability of the applicant in the information he had provided to the Tribunal. Given his failure previously to mention his travel to Singapore in the period 1993 to about 1995, and the fact that the applicant did not ultimately clearly identify the dates that he had been in Singapore on that earlier visit, it was open to the Tribunal from the view that the applicant was in Singapore still in April 1995. The balance of that paragraph represents conclusions of the Tribunal on matters about which, in a practical sense, it was appropriate to form a view as a step in addressing the ultimate question of whether the applicant has a well-founded fear of being persecuted for a Convention reason if he were to return to India.

9. Having referred to its reasons for doubting the reliability of the applicant's evidence, the Tribunal concluded:

*"Given the unsatisfactory evidence provided by the Applicant and my finding that the 'encounter' with the police never took place, I cannot be satisfied that the applicant is a person who has, at any time, been of interest to the police in Punjab. I am not satisfied that the police ever came to the home of the family of the Applicant and I am not satisfied that the police ever sought the Applicant or threatened relatives of the Applicant. I am not satisfied that the applicant has ever suffered any mistreatment at the hands of the Punjab police. I am satisfied that the likelihood of the Applicant suffering any mistreatment in the future which could amount to persecution for a Convention reason is remote in the extreme."*

10. The Tribunal also referred to and noted the independent information concerning the treatment of Sikhs in the Punjab area of India. That indicated to the Tribunal that, at present, only high profile militant suspects are at risk in the Punjab, and that Sikhs with only slight connections to the militant groups, or those subject to the perception that they have slight connections to militant groups, would not now be targets of the Punjab police. The applicant did not claim to be suspected of having been a high profile activist or militant with the character of those persons who are still at risk in the Punjab. For that reason also the Tribunal was not satisfied that the applicant would be at risk of mistreatment if he were to be returned to the Punjab by reason of his ethnicity or religion.

11. The only ground of review maintained by the applicant is that the Tribunal erred in law by imposing an onus of proof upon the applicant, apparently on the balance of probabilities, to establish that he is a refugee. It is accepted that the Tribunal, in its reasons for decision, has accurately recorded the way in which it should approach the question of whether the applicant has a well-founded fear of persecution on the basis of his imputed political opinion. That approach has been explained by the High Court in *Chan Yee Kin v Minister for Immigration and Ethnic Affairs* [1989] HCA 62; (1989) 169 CLR 379 and in *Minister for Immigration and Ethnic Affairs v Guo* [1997] HCA 22; (1997) 191 CLR 559 (*Guo*).

12. It is submitted, however, that although having properly expressed the approach which the Tribunal should take to considering the applicant's claim, it then in fact applied a different measure to determine his claim. The submission is that the Tribunal approached the matter with a view to impugning the applicant's credibility

because of vagueness or inconsistencies in peripheral details, and then proceeded to find that the applicant's entire claims are fraudulent on the basis of its conclusions relating to those peripheral details. Thus, it is contended, the "well-founded fear" test has been replaced by the Tribunal applying an onus of proof test on the balance of probabilities upon the applicant.

13. In my judgment the Tribunal has not erred in the way the applicant contends. In *Guo*, the Court (Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ) explained at 574 - 575 that it is commonly appropriate for the Tribunal to make findings as to what has occurred in the past as a guide to determining whether there is a real chance that something will occur in the future. Their Honours said at 575:

*"Determining whether there is a real chance that something will occur requires an estimation of the likelihood that one or more events will give rise to the occurrence of that thing. In many, if not most cases, determining what is likely to occur in the future will require findings as to what has occurred in the past because what has occurred in the past is likely to be the most reliable guide as to what will happen in the future. It is therefore ordinarily an integral part of the process of making a determination concerning the chance of something occurring in the future that conclusions are formed concerning past events."*

14. In this matter it was an integral part of the applicant's claim to demonstrate that he had a well-founded fear of persecution if he were to return to the Punjab that he had in the past been imputed with the political opinion of being an active member of, or a discerned sympathiser to, the aims and objectives of the KLF. He sought to establish that imputation of political opinion by reference to his claimed arrest, detention and mistreatment in April 1995. Whether or not the Tribunal was satisfied that those past events had occurred was in the circumstances a significant issue for the Tribunal to address to determine whether the applicant has a well-founded fear of persecution in the future. It was also appropriate for the Tribunal to address the issue as to the reliability of the applicant in reporting upon that event. If it did not form a view about his reliability on that score, then it would not be performing the proper function of deciding whether the past events had occurred as he alleged. Of course, as the Full Court in *Kalala v Minister for Immigration & Multicultural Affairs* [2001] FCA 1594 (*Kalala*) emphasised, it may not necessarily be enough for the Tribunal simply to make findings about past events on the balance of probabilities. There are circumstances in which the Tribunal, having regard to its obligation to consider whether there is a well-founded fear of persecution, must consider the possibility of the alleged past events having occurred as then informing its decision on the critical question (see per North and Madgwick JJ at [5-9]). In this matter, however, the Tribunal reached a firm adverse view about the applicant's reliability as a witness and hence about whether he had been arrested, detained and mistreated on April 1995 as he claimed. In my judgment, in the light of its conclusions in those matters, it did not then fall into error in deciding that the applicant did not have a well-founded fear of persecution for a Convention reason if he were to return to India.

15. Accordingly, I consider that the application should be dismissed. I so order. The applicant should pay to the respondent costs of the application to be taxed.