

Heard at Field House
On 10 September 2002
Separatists) India CG [2002] UKIAT 04714

Appeal No HX38664-2001
LS (Internal Relocation-Sikh -

IMMIGRATION APPEAL TRIBUNAL

Date Determination Notified

.....08.10.2002.....

Before

Mr S L Batiste (Chairman)
Mr M L James
Mrs W Jordan

LAKWINDER SINGH

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The Appellant, a citizen of India, appeals, with leave, against the determination of an Adjudicator, Miss P Clough, dismissing his appeal against the decision of the Respondent on 25 November 2000 to issue removal directions and refuse asylum
2. Mr A Stedman instructed by Messrs Asghar & Co represented the Appellant. Mr C Buckley, a Home Office Presenting Officer, represented the Respondent.
3. The Appellant, who comes from the Punjab, claims in his written statement that for twelve years prior to 1999 he was pressurised, together with his parents, into providing support for the proscribed Sikh terrorist group, Babbar Khalsa, in the form of money, accommodation and assistance. During 1999 he was arrested and detained twice by the police, for a few days each time, and was tortured. He was released on both occasions upon payment of a bribe by his father. He left India in June 1999 and arrived in the UK six months later, in January 2000. He did not know where he had been taken during his journey.
4. The Adjudicator found that the Appellant's claim was not credible and dismissed his appeal. Leave to appeal was sought and granted on the basis that it was arguable the Adjudicator's adverse credibility finding was in error. Mr Buckley, whilst defending the adverse credibility finding also argued before us that there was a viable internal flight option, and it would not be unduly harsh for the Appellant to take advantage of this rather than seek international protection.

5. In assessing this appeal, the Tribunal first noted that there were two obvious but uncorrected typographical errors in the determination. In paragraph 1, the Appellant's date of birth was given as 1994, when it should have been 1974. In paragraph 15, the Adjudicator stated that the Appellant claimed he first came into contact with Babbar Khalsa in 1981, when he was 13. However, the Appellant was 13 in 1987, not 1981, and 1987 is also twelve years before the Appellant left India, which fits his evidence. Neither Representative offered any reason to oppose the correction of these errors.
6. In paragraph 16 of the determination, the Adjudicator gave the reasons for her adverse credibility finding, which may be summarised as follows.
 1. It was not credible that the Appellant and not his father should have been held responsible by the Punjabi police for helping Babbar Khalsa.
 2. The Appellant claimed to have been helping Babbar Khalsa financially and by providing food and accommodation from the age of 13. It was not credible that his father would have allowed such behaviour by the Appellant in view of the then unrest in the Punjab. The Tribunal notes the evidence also that the father did not support Babbar Khalsa himself.
 3. If the Punjabi police received information that the Appellant was helping Babbar Khalsa, it was inconceivable that his father would not have been arrested or questioned by the police as well.
 4. If the Appellant had been of any interest to the police in connection with Babbar Khalsa, it was not credible that his father could twice have obtained his release by paying bribes.
 5. The Appellant had difficulty remembering the date of his last arrest, giving alternatively August 1999 (after he had allegedly left India) and May 1999.
 6. The Appellant's evidence regarding the completion of his SEF was that it was completed incorrectly by his first solicitors, there were difficulties with the interpreter, and it was not read back to him. However the Appellant's second and present solicitors admit in the skeleton argument that the SEF was filled in by representative of their firm.
7. In paragraph 17 of the determination the Adjudicator dealt with the medical evidence. It came in the form of a very brief letter from Dr Shaida, the Appellant's GP, which stated that the appellant had scars consistent with the assaults described. The Adjudicator observed that the doctor did not state his qualifications or expertise in examining torture victims, and she did not therefore accept his expertise in the matter or accept that his opinion either proved or disproved the provenance of the Appellant's scars.
8. As to reason 1, the Tribunal notes that according to the Appellant's statement, whilst he was allegedly helping Babbar Khalsa, he was living with his father, who did not agree with Babbar Khalsa but was unable to refuse to help them also for fear of being killed. The Adjudicator was therefore properly entitled to take the failure of the police to arrest his father as well into account, especially as the claim is that accommodation, finance and food was provided for Babbar Khalsa and it is implausible that this could have been provided without the father's knowledge and participation.
9. Mr Stedman accepted that reasons 2 and 5 were valid and that the Adjudicator correctly held them to go against the Appellant's credibility. He argued however that they were insufficient in themselves to justify a comprehensive adverse credibility

finding. The Tribunal does not agree. Reason 2 is an important finding, which goes to the core of the claim. The objective material shows that up to 1997 many Sikh families were pressurised by Babbar Khalsa and other terrorist groups into providing them with support. The support, if any, provided by the Appellant's family was alleged to be in the form of money, accommodation and food that could only have come from the father and not from the Appellant himself, who was for much of the time very young and then just worked on his father's farm. It is not plausible that such help could have been given by the Appellant independently of his father. The Tribunal also notes, as argued by Mr Buckley, that according to the objective evidence the various Sikh terrorist groups had effectively been crushed by the Indian authorities by 1997 and in 1997 and subsequently there were no reports that the terrorist groups were able to force Sikhs in the Punjab to provide them with assistance as claimed by the Appellant. It is therefore contrary to the objective material that any support to Babbar Khalsa was provided between 1997 and 1999 by the Appellant or his father, and this further undermines the Appellant's claim to have been arrested in 1999. As to reason 5, there is a clear inconsistency in the Appellant's evidence about the timing of the arrest that allegedly led to his fleeing India. It is not a minor issue. These matters taken together with reason 1 above undermine the very core of the Appellant's claim.

10. Mr Steadman argued that reason 3 was wrong because it was the Appellant was actually assisting Babbar Khalsa and not his father. However it is clear from Appellant's statement, as we have described above, that any support provided, even under duress, had to come from the father as well, and there is therefore no error in the Adjudicator's conclusion.
11. With regard to reason 4, Mr Steadman argued that the Adjudicator was wrong to find that the Appellant could not have been released twice by bribery because corruption is commonplace in India. However, the Indian authorities take Babbar Khalsa very seriously indeed as the objective material shows, and the Adjudicator was entitled to take the view that if the police did have any reason to suspect the Appellant of being involved with them, they would not have released him once, even on payment of a bribe, let alone twice.
12. As to reason 6, it may be that the Adjudicator was misled in her belief that the Appellant had two solicitors, though given the vagueness of much of the evidence such a mistake would not be surprising. However it is also clear, as Mr Buckley correctly pointed out, that the Adjudicator was concerned not only with who filled in the SEF but also the vagueness of its contents. For this reason she referred to his explanation that he had difficulties with the interpreter and the document was not read back to him. However this is not in itself a particularly important point,
13. Turning to the medical evidence, the report from Dr Shaida merely stated that the Appellant has two scars which are consistent with the assaults he described. It does not say what else they could be consistent with and the Tribunal considers that the Adjudicator's conclusion that it neither proved nor disproved the provenance of the scars was entirely correct.
14. In summary, the Tribunal considers that the reasons given by the Adjudicator for her adverse credibility finding were properly justified by the evidence and cumulatively fully support her conclusion and her decision to dismiss the appeal.
15. She did not go on to consider the question of internal flight because it was not

necessary in the light of her decision. Internal flight only arises if the Appellant has established a real risk of persecution in his home area, which he has not. However the Tribunal records its acceptance of Mr Buckley's argument that even if the Appellant had his claimed difficulties with the police in the Punjab and his claim were wholly credible, there would be a viable internal relocation option anywhere else in India outside the Punjab and that it would not be unduly harsh to expect him to avail himself of this rather than to seek international protection. There is a very large Sikh community in most cities and states of India. There is free movement within India and no requirement for registration or obstacle to employment. The Punjabi police would only pursue history sheeters and wanted criminals outside their state and the Appellant is not in either of these categories. The only reason advanced by the Appellant for not being able to live in another state was that he would be killed by the authorities there also. The Tribunal considers that there is no substance in this argument and notes that the Appellant's father suggested that he could live in other states.

16. For the reasons given above this appeal is dismissed.

Spencer Batiste
Vice-President