

CANADA / JUDGMENT

MA9-08346

COURT

Refugee Protection Division

DECIDED

24 October 2011

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Immigration and Refugee Board Refugee Protection Division Commission de l'immigration et du statut de réfugié Section de la protection des réfugiés RPD File / No. dossier SPR : MA9-08346 Private Proceeding Huis clos Claimant(s) Demandeur(e)s d'asile XXXXXXXX Date(s) of Hearing Date(s) de l'audience October 3, 2011 Place of Hearing Lieu de l'audience Montréal, Québec Date of decision Date de la décision October 24, 2011 Panel Tribunal Me Haig Basmajian Claimant's Counsel Conseil du demandeur d'asile Me Jeffrey Platt Tribunal Officer Agent du tribunal Myriam De Bailleul [Dépôt de documents] Designated representative Représentant désigné N/A Minister's Counsel Conseil du ministre N/A [1]

INTRODUCTION

- [1] The following are the reasons concerning the refugee claim of Mr. XXXXXX (the Claimant), a citizen of India, who is claiming "refugee protection" in virtue of sections 961 and 97(1)2 of the Immigration and Refugee Protection Act (the IRPA)3.
- [2] The Claimant made the following allegations in his personal information form (PIF) form, particularly in his answer to question 31. SUMMARY OF ALLEGATIONS
- [3] The Claimant alleges that while he lived in India, he was a partner in a company called XXXX XXXXXXXX which is specialized in XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXX. The Claimant alleges that one of his principal competitors was an individual by the name of Mr. XXXX who was also a member of the RSS organization. The Claimant alleges that Mr. XXXX used the pretext that the Claimant is a Muslim and was involved in XXXXXXXXXXXX XXXXXXXXXXXX Hinduism in order to obtain his arrest and negative publicity against his business.
- [4] Claimant alleges that he was interrogated and arrested by the police being accused XXXXXXXX which the Claimant says is a serious offence in India. Claimant alleges that he was detained and tortured and was able to leave following the payment of a significant bribe.

- [5] Claimant alleges that on XXXXX, 2009, he was arrested a second time again under the pretext that he was XXXXXXXX and sheltering Muslim militants. Claimant alleges that on XXXXX, 2009, after the payment of 50,000 rupees, he was able to obtain his release from detention.
- [6] Fearing for his life, the Claimant left India on XXXXX, 2009 and arrived in Canada the same day where he sought refugee protection a few weeks later inland. Identity
- [7] The identity of the Claimant was established to the satisfaction of the Panel by taking into account the photocopies of his Indian passport⁴, the originals being held with Citizenship and Immigration Canada.

ANALYSIS

- [8] The determinative issue for this claim is the internal flight alternative (IFA).
- [9] Most of the testimony of the Claimant was deemed reliable and credible. He provided considerable details regarding the specialized business he was in and regarding the various trips he took around the world to promote his successful business. Claimant also testified to the extent that he had a good life in India where he owned two homes and ran a very successful business. The Claimant testified to the fact that he currently fears the RSS and members of the Indian police who would be under their influence as well he fears Mr. XXXXX, a former competitor, which would be at the root of the problem which he had in India.
- [10] Questioned about the fact that if the goal of Mr. XXXXX was to eliminate XXXXXXXXXXXX and the Claimant as a competitor, then why would he still be after the Claimant especially given the fact that the Claimant testified that since his arrival in Canada, his partners have dissolved the business. The Claimant answered that it would be because he assumes that Mr. XXXXX would be afraid that the Claimant could start a new business and become a competitor again. Questioned to find out if he knows if Mr. XXXXX is still continuing in this business, the Claimant answered: "Yes", and that he has heard that his business is currently doing well. Questioned to find out if his three partners who remained in India have had any problems since the Claimant has left India, he answered: "No" when asked why would his partners not have the same problems which he faced. The Claimant answered: "Because they were simply financial backers", and that the Claimant was the one who possessed the technical expertise.
- [11] When asked if any other businesses in India are involved in the specific niche, XXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXX, the Claimant answered that there are probably five or six such companies. When asked if he knew if Mr. XXXXX targeted these five or six other companies, the Claimant answered: "No" and added that it was probably because they were Hindus and not of Muslim faith, as the Claimant is. When asked if Mr. XXXXX ever proposed some type merger or commercial association with the Claimant, he answered that "yes", he was approached by partners of Mr. XXXXX in 1998 but he had refused and he believes that

it would be one of the reasons why Mr. XXXXX is still upset at him and would still want to target him.

- [12] When asked if his family members who have remained at the same home, in India, have had any problems since the Claimant has left, he answered: "Not particularly", that sometimes they have people asking about his whereabouts but that it is not that bad and that they are still in the same city. He added also that the problems are with him and not with his family.
- [13] Given his considerable business background and skills, notably attending XXXXXX around the world and conducting business in various countries, the Claimant was asked if he could not move his business elsewhere in India. The Claimant answered that he could but that XXXXX would only be available in XXXXX where he was based and that this would result in an increase in costs for his business and also it would be hard to find the specialized labour and this would all hinder his competitive position. When asked if given his considerable business skills, could he not live elsewhere in India, in a related field or doing another business where his skills would be exportable, the Claimant said that he thinks he would still have problems because once you become a target of the RSS, they try to finish the job. When asked if he was sure of this, given the fact that he testified to the fact that this seems to be at the base of a commercial dispute, the Claimant did not really respond, saying this is what he thinks. When asked if he thought Mr. XXXXX targeted him principally for commercial reasons or because of his religion, the Claimant answered because of business reasons.
- [14] As internal flight alternative options, the cities of Bangalore, Mumbai and Delhi were suggested as these are thriving business districts in India. Again the context of the Claimant working in a related business or a totally new business where his skills could certainly be utilized was suggested. The Claimant acknowledged that his skills could be used in other industries given the fact that he has reached agreements with different customers around the world and has travelled extensively for his business, that again he thinks that his agent of persecution would still be after him in these areas.
- [15] The Panel is of the opinion that, objectively, it cannot agree with this view. Notably, because of several aspects including the fact that, at the base, there seems to be a commercial dispute where the main goal was to drive the Claimant's business out the market place by his main competitor per the Claimant as XXXXXXXXXXXX, was perceived as a market leader. Given the fact that Mr. XXXX has succeeded in obtaining what he wanted, which essentially was to drive XXXXXXXXXXXX out of business, the Panel cannot conclude objectively that he would invest time and money to target the Claimant in these other cities in India, notably Bangalore, Mumbai and Delhi, especially if the Claimant is not involved in the same business which is a very, very small niche XXXXXXXXXXXX XXXXXXXXXXXX. The Claimant's business skills and experience are considerable and they could be easily utilized in related fields in XXXXXXXX or in other non-related businesses. Also the Panel took into account the fact that the Claimant's family continues to live in the same city in XXXXX and have not had any particular problems with Mr. XXXXX or the RSS. As such, the Panel is of the opinion that the Claimant would have an internal flight alternative in these three suggested cities.

- [16] Despite this conclusion, the Panel wishes to acknowledge the fact that it was very impressed with the tremendous experience and wealth of knowledge and business skills possessed by the Claimant and, also, by the fact that it has been very difficult for him to be away from his family for such a long time. These are very considerable aspects and, also, the skills which the Claimant has, could certainly be considered an asset to any country. As important as this is, they are unfortunately not aspects that can be taken into account for this type of decision-making process. However, another instance which could have jurisdiction in this matter might want to consider it.

CONCLUSION

- [17] The Panel determines that the Claimant, Mr. XXXXXX, is not a "Convention refugee", nor a "person in need of protection" under the terms of sections 96 and 97(1) of the IRPA. Consequently, his claim is refused. Me Haig Basmajian Me Haig Basmajian October 24, 2011 Date /ml REFUGEE PROTECTION DIVISION / ENTREPRENEUR / RELIGION / CUSTOM / DETENTION / TORTURE / CHANGE OF CIRCUMSTANCES / INTERNAL FLIGHT ALTERNATIVE / MALE / NEGATIVE / INDIA 1 " 96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,
- (a) is outside each of their countries of nationality and is unable or, by reasons of that fear, unwilling to avail themselves of the protection of each of those countries; or
 - (b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country." 2 " 97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally
- (a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or
 - (b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if
- (i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country, (ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country, (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and (iv) the risk is not caused by the inability of that country to provide adequate health or medical care." 3 S.C. (2001), chap. 27, as amended. 4 Exhibit A-2 : Immigration documents.

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