Kang v. Canada (Minister of Citizenship and Immigration), 2005 FC 1128 (CanLII)

Date:	2005-08-10
File number:	IMM-775-05
Other citation:	[2005] FCJ No 1400 (QL)
Citation:	Kang v. Canada (Minister of Citizenship and Immigration), 2005 FC 1128 (CanLII), <https://canlii.ca/t/1lhjk>, retrieved on 2021-05-07

Date: 20050817

Docket: IMM-775-05

Citation: 2005 FC 1128

Vancouver, British Columbia, Wednesday, the 18th day of August 2005

Present: THE HONOURABLE JUSTICE LUC MARTINEAU

BETWEEN:

HARDIP KAUR KANG

Applicant

- and -

THE MINISTER OF CITIZENSHIP

AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] This is an application for judicial review under section 72 of the*Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act") of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the "Board") dated January 14, 2005, in which the applicant was found not to be a "Convention refugee" pursuant to section 96 of the Act or a "person in need of protection" pursuant to section 97 of the Act.

[2] Hardip Kaur Kang is a 30-year-old female citizen of India who claims to be a "Convention refugee" and a "person in need of protection" due to a death threat from her maternal uncle, Dhana Singh Jhutty, after she refused to give him her inherited land. On this matter, the applicant's father died in November 2002 and her mother died in October 2002.

[3] The applicant arrived in Canada by way of Taiwan on April 8, 2003, and made a claim for refugee protection on the same day. The Board found that the applicant was not a "Convention refugee" or a "person in need of protection" on the basis of a lack of nexus and adequate state protection.

[4] The applicant contests both findings on the basis that the Board erred by not having regard to the totality of the evidence before it.

[5] First, it is submitted that the Board did not turn its mind as to whether the *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution* (the "Guidelines") would have provided the basis for the applicant having been found to have a nexus.

[6] Second, it is submitted that there is no indication in the Board's decision that it considered any of the documentary evidence on record before concluding that state protection was available to the Applicant in India. It is submitted, alternatively, that the documentary evidence does not support the Board's finding of state protection in view of the fact that police corruption exists throughout India. Indeed, it was suggested to this Court that the applicant's uncle could bribe police officers whenever a complaint was made by the applicant to the police.

[7] Despite the able presentation of applicant's counsel, I am not satisfied that the Board made a reviewable error.

[8] First, the entirety of the evidence need not appear in the Board's written reasons. The Board is presumed to have taken all of the evidence into consideration and it is not necessary to specifically refer to each piece of evidence it has considered (see *Florea v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598 (F.C.A.) (QL); *Hassan v. Canada (Minister of Employment and Immigration)* (1992), 147 N.R. 317; [1992] F.C.J. No. 946 (F.C.A.) (QL)). This presumption exists whether or not the Board mentions the fact that it has considered all of the evidence before it. The failure to specifically refer to a document does not *per se* amount to a failure to consider relevant evidence (see *Kisungu v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 446; [2001] F.C.J. No. 729 (F.C.T.D.) (QL)). Consequently, I find that the Board did not err by making its decision without specific reference being made to the 2003 U.S. State Department Report and an Amnesty International Report. This also applies to the failure of the Board to expressly refer to the Guidelines in its decision (see *Ayub v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1411; [2004] F.C.J. No. 1707 (F.C.T.D.) (QL); *Legault v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 (CanLII), [2002] 4 F.C. 358 (FCA) (QL); *Hazarat v. Canada (Secretary of State)*, [1994] F.C.J. No. 1774 (F.C.T.D.) (QL)).

[9] Second, it is trite law that to establish a claim to refugee status, there must be a clear link between a refugee claimant and one of the five prescribed grounds in the Convention refugee definition. In the case at bar, the Board found that the applicant had not successfully linked her fear to a Convention reason. In particular, the Board determined that the applicant was not persecuted because of her membership in a particular social group. Her uncle is targeting her because of what she did as an individual - refusing to give him her parents' property and selling the land that her uncle wanted to own. Therefore, the Board found that there was no nexus to this claim. I have examined this aspect of the Board's decision (as well as its finding with respect to state protection) on a reasonableness *simpliciter* standard.

[10] Membership in a particular social group is a recognized ground under section 96 of the Act. Moreover, while personal targeting is not required, refugee claimants must nonetheless establish a link between themselves and persecution for a Convention reason. They must be targeted for persecution in some way, either personally or collectively: *Rizkallah v. Canada (Minister of Employment and Immigration)* (1992), 156 N.R. 1 (F.C.A.). On this matter, victims or potential victims of crime, corruption or personal vendettas, generally cannot establish a link between fear of persecution and Convention reasons. In my opinion, the Board's finding that there is no nexus is consistent with the case law and accords with the cautionary remarks found in the Guidelines which provide that "[w]hen an assessment of a woman's claim of gender-related fear of persecution is made, the evidence must show that what the claimant genuinely fears is persecution for a Convention reason as distinguished from random violence or random criminal activity perpetrated against her as an individual."

[11] Nothing here suggests that the acts of violence the applicant fears are gender-related. While rape and other forms of sexual harassment are reported to be a frequent form of torture in police custody and domestic violence is common and also a serious problem in India, the acts which the applicant reproaches her uncle fall short of coming within the ambit of such gender-related acts of violence (which would certainly include Sati, the practice of burning widows). Moreover, there is no evidence that the applicant was residing with her uncle or otherwise under his control as a male family elder. There is no allegation that the applicant, as a single and young woman, was forced by tradition or customary law to surrender her property to this uncle. Indeed, applicant's counsel concedes that Indian law recognizes that women can inherit and possess land. This case does not fall into one of the enumerated categories mentioned in the Guidelines and, in my opinion, is not apparent to situations of domestic violence or acts perpetrated against women in situations of civil war or other gender-related crimes which are referred to in the Guidelines or in the documentary evidence. Accordingly, the conclusion of lack of nexus made by the Board because the applicant's fear was the result of her individual experience as a victim of crime was reasonably open to it and should not be modified.

[12] Third, as for the applicant's allegations on the matter of adequate state protection, it is well established that the Board must weigh the evidence in connection with the state of origin of the applicant (*Canada (Minister of Employment and Immigration) v. Malgorzat*, [1991] F.C.J. No. 337 (F.C.A.) (QL). The Board can, in order to make its decision, look at all the evidence with respect to the state's efforts to protect its citizens. The Supreme Court of Canada stated in *Canada (Attorney General) v. Ward*, 1993 CanLII 105 (SCC), [1993] 2 S.C.R. 689 at 724-725:

... however, clear and convincing confirmation of a State's inability to protect must be provided. For example, a claimant might advance testimony of similarly situated individuals let down by the State protection arrangement or the claimant's testimony of past personal incidents in which state protection did not materialize. Absent some evidence, the claim should fail, as nations should be presumed capable of protecting their citizens. Security of nationals is, after all, the essence of sovereignty.

[13] State protection does not have to be perfect. As long as the protection provided by the state is timely and adequate, even if not perfect, it is considered to be available. In the case at bar, the Board found that the applicant did not succeed in rebutting the presumption of state protection. The burden of proof that rests on the claimant is, in a way, directly proportional to the level of democracy in the state in question: the more democratic the state's institutions, the more the claimant must have done to exhaust all the courses of action open to him or her. A number of cases suggest that when the state in question is a democratic state, as in the case at bar, the claimant must do more than simply show that he or she went to see some members of the police force or other judicial authority and that his or her efforts were unsuccessful (see *Kadenko et al. v. Canada (Solliciteur général)* (1996), 1996 CanLII 3981 (FCA), 206 N.R. 272 (F.C.A.); *Zhuravlvev v. Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 17128 (FC), [2000] 4 F.C. 3 (F.C.T.D.). Indeed, it has been decided that a local refusal to provide protection is not state refusal in the absence of evidence of a broader state policy to not extend state protection to the target group (*Zhuravlvev, supra*).

[14] Fourth, the question of refusal to provide protection should be addressed on the same basis as the inability to provide protection and the documentary evidence, including the Guidelines, may be relevant to this issue. In that regard, when considering whether it is objectively unreasonable for a claimant not have sought the protection of the state, the Board should consider, among other relevant factors, the social, cultural, religious, and economic context in which the claimant finds herself. If, for example, a woman has suffered gender-related persecution in the form of rape, she may be ostracized from her community for seeking protection from the state (see the Guidelines). However, as I have already mentioned above, the applicant has not satisfactorily established that she fears gender-related persecution. In the case at bar, counsel was not able to refer this Court to any part of the documentary evidence as "clear and convincing proof" of failure of state protection, which means that the Board had to evaluate the testimony of the applicant herself regarding past personal incidents where state protection did not materialize.

[15] In the case at bar, the Board simply found that it was unreasonable for the applicant not to have sought protection from higher authorities in India. The Board's general reasoning accords with the general principles mentioned above, and found in relevant, applicable, case law (although the views of the Court may not be unanimous regarding the particular application of these principles and their extent). Despite the fact that police corruption exists in India, it remains that the applicant only made one attempt. Accordingly, while a different result would seem possible, this Court should not disturb the Board's ultimate finding of adequate state protection which is not unreasonable in the particular circumstances of this case.

[16] No question of general importance has been submitted and none shall be certified.

ORDER

THIS COURT ORDERS that the present application for judicial review be dismissed.

(Sgd.) "Luc Martineau"

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-775-05

STYLE OF CAUSE: HARDIP KAUR KANG

- and -

THE MINISTER OF CITIZENSHIP

AND IMMIGRATION

PLACE OF HEARING: Vancouver, BC

DATE OF HEARING: August 10, 2005

REASONS FOR ORDER AND ORDER: MARTINEAU J.

DATED: August 17, 2005

APPEARANCES:

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Mr. Scott Nesbitt	FOR RESPONDENT

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