



RPD File / No. dossier SPR : MA8-13753

Private Proceeding

Huis clos

Claimant(s)

Demandeur(e)s d'asile

XXXXX XXXX

Date(s) of Hearing

Date(s) de l'audience

May 24th, 2011

Place of Hearing

Lieu de l'audience

Montreal, Quebec

Date of decision

Date de la décision

July 20th, 2011

Panel

Tribunal

M^e Diane Sokolyk

Claimant's Counsel

Conseil du demandeur d'asile

M^e Marie-José Blain

Tribunal Officer

Agent du tribunal

Linda Doutre
(Deposit of documents)

Designated representative

Représentant désigné

N/A

Minister's Counsel

Conseil du ministre

N/A

INTRODUCTION

[1] The claimant, **XXXXX XXXX**, is a citizen of India. She is twenty-four (24) years old. The claimant arrived in Canada on **XXXXX**, 2008 under a student visa obtained under false allegations through an agent and on August 29, 2008 asked for refugee protection in Canada under her own name pursuant to section 96 of the *Immigration and Refugee Protection Act* (the *Act*), alleging a well-founded fear of persecution for her imputed political opinion. The claimant also requested Canada's protection pursuant to section 97 of the *Act* as a person whose removal to her country of nationality would subject her personally to a risk to her life or to a risk of cruel and unusual treatment or punishment or torture.

ALLEGATIONS

[2] In her Personal Information Form (PIF), the claimant alleged that her problems in India began on **XXXXX**, 2008. Her father had disappeared ten days earlier, after reporting to a local police station. When she and her mother enquired as to her father's whereabouts, the local police advised that her father had been released from their custody after reporting. The claimant, her mother and her maternal uncle had consulted a lawyer on **XXXXX**, 2008 to ask what could be done to file a case against the police with respect to the disappearance of her father. Two days later, the claimant and her mother were arrested in an aggressive manner by the local police. They were questioned. The claimant's mother was raped. The claimant was arrested again on **XXXXX**, 2008. Her family was able to secure a bribe of 100,000 rupees and have her released the same day. The claimant's mother hired an agent and the claimant obtained a student visa that was obtained using false information. The claimant left for Canada on **XXXXX**, 2008. Since then, and for the last two and one-half years, her mother and sister have been living in hiding with the agent in **XXXXX**.

DETERMINATION

[3] The Tribunal concludes that the claimant is neither a "Convention refugee" nor a "person in need of protection" for the reasons given below.

ANALYSIS

Identity

[4] The Tribunal accepts the claimant's identity.

[5] To support her identity, the claimant produced a passport from India (Exhibit A-2), and certificates of her study in India (Exhibit R-2).

ISSUES

[6] The main issue explored at the hearing was the claimant's credibility.

Credibility

[7] The Tribunal did not find the claimant to be a credible witness. Examples will be given below.

The Documents

[8] The claimant was largely a very composed and articulate witness. She took charge of her hearing, stopping to correct the interpreter when she felt that her words could have been better translated. The claimant claimed Canada's protection on the basis of her imputed political opinion. However, according to her own written documents and her testimony, the claimant's imputed political opinion was never the focus of her problem. The focus of her alleged problems in India was the possibility that her family might make a complaint against the police. She and her mother were not questioned about their relationship with militants, but rather about making a complaint against the police. The Tribunal finds that the claimant is not at risk because of her political opinion. The link to the *Convention* is made as the claimant is a member of the social group of women. The claimant is not, however, alleging persecution because she is a woman, but she is alleging fear of persecution from reprisals she expects from the police as a result of having been a person who considered making a complaint against the police.

[9] Considering the claimant's young age, the sensitive nature of the evidence she had to give about her mother's rape, and her own fear of rape in India, the Tribunal applied *Chairperson's Guidelines No. 4*, with respect to Women Refugee Claimants Fearing Gender Related Persecution and explained the guidelines to the claimant prior to the hearing. The Tribunal also ensured, prior to the commencement of the hearing, that the claimant was aware that the hearing was confidential and she could speak freely without fear that her words could be repeated. In considering her testimony, the Tribunal noted that the claimant states in her PIF that she has eighteen years of education and has a Bachelor's degree in XXXXX.

[10] Given the high level of education and the claimant's rigorous interest in her file, the Tribunal found the documentary proof seriously lacking in substance that could have been available to the claimant. The claimant did not produce any documentary evidence about her father, mother or sister at the hearing. The Tribunal found this unusual as in the facts of her claim and in testimony, she emphasized what a happy family she came from and how distressed she was, on a daily basis, not to be together with her parents and her sister. She stated that they had enjoyed a very comfortable lifestyle together. There were no photos submitted of any member of her family at the hearing. She also did not produce any personal identification other than her passport and certificates of study. No ration card, electoral card or other forms of identity which might have corroborated her address or family members were submitted. There was no affidavit from the claimant's mother who was a direct witness to the events allegedly suffered by the claimant. There was no affidavit from her maternal uncle who was allegedly coordinating the evidence required. There was no proof that her father was hospitalized in 2006, after having allegedly been severely beaten.

[11] The claimant stated that her uncle had sent the ration card and voting card to her recently in the mail. These documents were not submitted. She was unsure whether he had sent the documents by ordinary postage or by courier. The only personal evidence the claimant submitted with respect to the facts of her claim were a general affidavit from a municipal councillor of XXXX (Exhibit R-2); an affidavit from the lawyer whom she, her mother and her uncle had consulted with on XXXXX, 2008 (Exhibit R-7); her school certificates from high school and university (Exhibit R-3); and two photographs of older Sikh men with beards and turbans who were allegedly the two militants with whom her father had been friendly. The Tribunal asked the claimant why the only photographs submitted had been of these two men – who could have been anyone. She first stated that her interpreter had advised her that the photograph on the ration card would be sufficient. Then, she added that she had asked her maternal uncle to go to her former house to look for family photographs. She stated that her mother had told him to look in a trunk of family photographs kept under one of the beds. Her uncle looked in the trunk of photographs and apparently only found the two single photos of Sikh men filed as Exhibit R-4. The Tribunal found it inconsistent with the claimant's story that these would be the only photographs available of her family. The Tribunal gave the claimant two weeks to produce family photographs showing her with her parents and her sister in India. After the hearing, the claimant produced a photograph of persons she alleged to be her mother and father standing

against a cement wall and a photograph of her father standing between herself and her sister against a cement wall. The claimant also produced two other photos of herself with her mother and one of her sister and her mother. It is not possible to locate where these photographs were taken or at what time. The photographs with the claimant look very recent. The Tribunal draws a negative inference from the fact that other evidence was not produced that should have been easily available to the claimant. The claimant has been in Canada for over two and one-half years. The Refugee Protection Division Rules and the PIF clearly state that the obligation to produce evidence to support the case rests with the claimant. The Tribunal also considers the fact that Exhibit A-1, at Tab 3.5¹ states that fraudulent documents are easily obtained in India. The claimant's own visa application was obtained based on fraudulent declarations and false documents.

The Family Background

[12] The Tribunal will first review the credibility of the claimant's background information. She stated that her father had been friendly with two men who were actively involved in the Shiromani Akali Dal party: XXX XXXX and XXX XXXX. Their alleged photographs were attached as Exhibit R-4. The Tribunal does not find these photographs have much probative value as they are simply individual head shots. These photographs have no context and no relationship can be made with the claimant and her family. They could be photographs of two people from anywhere in the world.

[13] The claimant's father's troubles with the police began in XXXXX 2006. XXXX XXXX disappeared from the village and the claimant's father and XXXX XXXX were arrested and tortured for three days. There was no further police involvement for six months - until XXXX 2007- when XXXX XXXX also disappeared. The claimant's father was arrested a second time and was tortured again. He was released after one week of detention and torture on condition that he reports to the police station once a month. The Tribunal draws a negative inference about the credibility of the father's alleged problems with the police from the fact that no corroborative evidence of the claimant's father's troubles was presented at the hearing. The Tribunal would have expected to see photographs of the claimant's father alone and with his good friends, and evidence that he had been medically treated for several days of torture. If the claimant's father had been brutally tortured for

¹ Exhibit A-1 – Index of the National Documentation Package on India, May 31, 2010, tab 3.5 : [IND102461.E](#).
26 April 2007.

three days in 2006 and for a week in 2007, he would have required medical treatment. There was no corroborative evidence about such treatment. The claimant's father's problems with the police are the reason for the claimant's problems and there is no evidence that he exists or had such problems.

[14] Six months after his second arrest, on XXXXX, 2008, the claimant's father did not return to the family home after reporting to the police station. After searching for him, they asked at the police station and were told that he had returned home. The claimant, her mother and her maternal uncle consulted a lawyer about filing a court case against the police. The lawyer advised them to collect witnesses to testify at a court case and to meet with the District Commissioner. The next day, her mother and her maternal uncle approached their neighbours, but only one was willing to help. The District Commissioner was not in. According to the letter filed by the claimant's lawyer, no case was filed. The lawyer confirms that the claimant's maternal uncle, her mother and the claimant all came to consult him. The Tribunal notes that the claimant's maternal uncle has not suffered any reprisals from the police for his active participation with the claimant and her mother in locating her father. According to the claimant's testimony, her maternal uncle has provided a bed rock of support for her mother and her for the last two and one-half years: he organized the visit to the lawyer and accompanied them; he worked the whole next day with her mother to ask the neighbours to act as witnesses in the court case; he helped to arrange the agent for the claimant; he arranged telephone calls for the claimant with her mother and her sister; he watches the claimant's family home and he had collected the affidavits and documents on behalf of the claimant. The uncle apparently lives in XXXXX which is approximately one and one-half hours away from the claimant's village. She stated that when he went there to 'keep an eye on the place' and to get documents for her, he found out from somebody that police are still watching her house. The Tribunal finds it not credible, if the police were truly concerned about the activities of this family, that the police would only allegedly pursue the claimant, her mother and sister, but not her maternal uncle who is living openly not far away.

The Claimant's Arrest

[15] According to the claimant's testimony, while she and her mother were enjoying their morning tea, four aggressive and rude policemen came to their house in a police jeep. They tried to take her mother away, but the claimant began screaming and holding onto her mother's skirt. The police then arrested both of them. The claimant testified that the police arrived shouting profanities and alleging

that the claimant and her mother had been making complaints about them. The Tribunal finds this implausible. First of all, no case had been filed. How did the police know that the reason the claimant, her mother and her maternal uncle had been to the lawyer was to file a court case against them? Counsel for the claimant argued that to walk to the law courts one had to walk through a courtyard and then enter a small room where the lawyer had his office. Claimant's counsel suggested that this was a very public way to consult a lawyer. The Tribunal does not find it plausible that the police would be interested or capable of following each person to the law courts, to see if they consulted a lawyer on the suspicion that a complaint might be filed against them. In support of her comments, the claimant's counsel referred to the document prepared by Human Rights Watch entitled "Broken system – Dysfunction, Abuse and Impunity in the Indian Police" stating that it was "more than plausible" that the police behaved as the claimant had described.² The Tribunal reviewed this document and agrees that it has been established that the police in India are prone to corruption and acceptance of bribes to compensate for their poor salaries. The document also states, however, that police stations have very limited resources and staff. Policemen work an average of 12 to 16 hours per day (at p. 29). Each police station in a rural area will be responsible for 50 -60 villages (at p. 26). Policemen routinely use their own mobile phones to communicate with each other and ride their own motorcycles as there are on average about seven police vehicles for every 100 police (at p. 22). The lack of available vehicles prevents police from following up on leads that swiftly turn cold (at p. 24). The article also states that the police suffer from a shortage of personnel. There is a national average of one civil police officer for every 1,037 people. Staff shortages are apparently worse in rural areas (at p. 26). In considering this information, the Tribunal finds it not credible that four policemen from the small city of XXXX would be urgently deployed to arrest a woman and her daughter on suspicion that they may have been intending to complain about the police. If the police are so grossly understaffed and overworked, why would they allot precious resources to such a speculative arrest?

[16] The Tribunal notes that in the Port of Entry Notes, at question 23, the claimant was asked whether she had ever been arrested in her country and why. She replied that she had been arrested on two occasions – once overnight and once for the day only. She states that she was arrested because of her father who disappeared and "police harassing us as they wanted to know his whereabouts from

² Exhibit A-1 - Exhibit A-1 – Index of the National Documentation Package on India, May 31, 2010, tab 7.2: [IND102465.E](#). April 30, 2007.

me”. The claimant does not say that her mother was also arrested the first time, that her mother was raped or that the arrest was made because of the complaint filed against the police. In testimony at the hearing, the claimant stated that when she and her mother were arrested, they were questioned at the police station about her father’s whereabouts. This does not explain why the claimant would have omitted these critical parts of her story at the Port of Entry. The Tribunal draws a negative inference about the claimant’s credibility from this omission and this inconsistency.

[17] In Immigration Form IMM 5474, at question 3 c) and d), the claimant is asked to explain who she fears in India and why. She states that she fears the Indian police might kill her. This is an extremely general statement that does not reflect any of the substance of the claimant’s case. Considering this particular claimant’s high level of education, and her composed and articulate manner, this initial vague and general statement detracts from the claimant’s credibility.

[18] The affidavit from the lawyer the claimant consulted with is vague and does not address the substance of her story (Exhibit R-7). The lawyer states that he met with the claimant, her mother and her uncle once, advised them to see the District Commissioner and advised them to file a complaint against the police. He notes that they did not return and he did not file a case. He then states that he “came to know that due to their visit at my law office, Mr. XXXXXXXX XXXX wife Mrs. XXXXXXXX XXXX and XXXXX XXXX were arrested by the police”. In other words, the lawyer does not have personal knowledge of the arrest, but has been told that it took place and the alleged reason for it. The Tribunal attaches a low probative value to this affidavit.

[19] The arrest is also chronicled in the affidavit of the Municipal Councillor of XXXX, a woman named XXXXX XXXX (Exhibit R-2). The claimant does not mention in her PIF that she, her mother or her uncle ever consulted with the Municipal Councillor. She does say that her mother sought help from “prominent persons” of the area. In paragraph 6, the Municipal Councillor states that it was upon her advice that the claimant’s mother went to see the lawyer. On reading the affidavit, the Tribunal does not have the sense that the Municipal Councillor has any personal knowledge of the events which transpired as the recitation is so general. She states that she knows the family very well as they are residents of her area. On this basis, the Municipal Councillor appears to conclude that the claimant might be targeted by police if she were sent back to India (paragraph 11) and “please give a chance to live in Canada” (paragraph 12). She states this broad conclusion in the affidavit on the basis

of one alleged consultation with the claimant's mother prior to XXXXX, 2008. When she states that the claimant and her mother were arrested and beaten (paragraph 6), she does not mention that the claimant's mother was raped by the police. The Tribunal finds this to be a significant omission under the circumstances. The rape would have been a traumatic, violent and degrading experience for both the claimant's mother and her daughter. This omission diminishes the probative value of the affidavit of the Municipal Councillor.

[20] Furthermore, there was no proof either by documentary evidence or in testimony that the claimant's mother was medically treated afterwards or suffered any physical or psychological consequences from the rape. The Tribunal found this to be a significant omission from the evidence under the circumstances. The Tribunal does not believe the claimant and her mother were arrested on XXXXX, 2008, that the claimant and her mother were beaten or that her mother was raped. The Tribunal draws a negative inference about the claimant's credibility with respect to her arrest and the consequences.

[21] For the reasons discussed above, the Tribunal does not find that the claimant was a credible witness. The Tribunal finds that she did not meet the burden of proof to establish that she suffers a risk of persecution on any basis in India or that there is a risk to life or of cruel or unusual treatment or punishment or torture to the claimant in returning to India. No additional evidence was led by the claimant which could support a claim on the basis of Section 97 of the *Act*.

CONCLUSION

[22] Having considered all of the evidence, the Tribunal concludes that the claimant, **XXXXX** **XXXX**, has not discharged the burden of proof which requires her to demonstrate that there is a serious possibility that she would be persecuted in India under one of the *Convention* grounds. Furthermore, the Tribunal concludes that the claimant has not established, on the balance of probabilities, that, if she were to return to India, it is more likely than not that she would be subject to a risk to her life, or to a risk of cruel and unusual treatment or punishment or torture.

Diane Sokolyk

M^e Diane Sokolyk

July 20th, 2011

Date

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REFUGEE PROTECTION DIVISION / POLITICAL OPINION / GENDER RELATED
PERSECUTION / RAPE / ARREST / CREDIBILITY / PRODUCTION OF DOCUMENTS /
RULES / FEMALE / NEGATIVE / INDIA