

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 24 2008

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

BALDEV SINGH GILL,

Petitioner,

v.

MICHAEL B. MUKASEY,** Attorney
General,

Respondent.

No. 04-73799

Agency No. A77-843-999

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted October 19, 2007
San Francisco, California

Before: KLEINFELD and RAWLINSON, Circuit Judges, and RESTANI,****
Judge.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** Michael B. Mukasey is substituted for his predecessor, Peter D. Keisler, as Attorney General of the United States, pursuant to Federal Rule of Appellate Procedure 43(c)(2).

**** The Honorable Jane A. Restani, Chief Judge, United States Court of International Trade, sitting by designation.

The evidence compels a finding that the IJ's adverse credibility determination was not based on substantial evidence.¹ Here, the IJ based his credibility determination on four factors: (1) the discrepancy between Gill's testimony and his father's affidavit about the political affiliation of Gill's two cousins, (2) the discrepancy over whether the photographs of Gill introduced were taken in California or Washington, (3) Gill's inability to identify who signed the All India Sikh Student Federation letter, and (4) Gill's inability to recall his father's exact age. Each of these reasons either inaccurately reflect the record or have no bearing on Gill's credibility.

The IJ claimed that Gill was silent when asked about the discrepancy between Gill's testimony and his father's affidavit regarding the political affiliation of Gill's two cousins. The record reflects that Gill actually stated that the discrepancy may have been due to clerical error, or that his cousins may have been a member of two parties, Akili Dal Mann and All India Sikh Student Federation, at the same time. The dissent incorrectly claims that Gill was "absolutely silent" when asked how often individuals are members of both organizations. Although he was asked about the frequency of dual membership, instead of being allowed to

¹Farah v. Ashcroft, 348 F.3d 1153, 1156 (9th Cir. 2003).

answer, he was interrupted by a question from the judge, “How old is your father?” Neither the judge nor the lawyers remembered to give him a chance to answer the question about dual membership in these ideologically similar Sikh organizations.

Whether photographs of Gill were taken in California or Washington is a minor inconsistency that does not affect Gill’s credibility pertaining to his asylum claim. The “inaccuracies” regarding the photographs were merely over whether they were taken in Fremont or Blaine, an inaccuracy easy for anyone to make about his photos.

Gill’s inability to identify the signature on the All India Sikh Student Federation letter does not relate to his credibility since there were no allegations pertaining to the letter’s authenticity. We disagree with our dissenting colleague

that Gill “recanted” his testimony about his party membership. He just amplified and clarified what he had said in response to questions.²

Gill’s inability to recall his father’s exact age is also a minor issue that does not affect Gill’s credibility.

The petition for review is GRANTED and we REMAND for further proceedings.

² Q. And it’s your testimony that Herminder Singh Gill signed that letter?

A. Yes.

Q. I was under the impression that Mr. Gill is the president of the All-India Sikh Student Federation.

A. Yes.

Q. And he is in addition to that also the propaganda secretary?

A. There like he told his secretary to write this letter.

Q. Well, sir, earlier I asked you who wrote this letter and you said it was Mr. Gill. So Mr. Gill did in fact not write the letter.

A. Like he ordered his secretary to write the letter.

(Transcript of Removal Proceeding at 78-79, November 14, 2002).