

Federal Court



Cour fédérale

Date: 20150319

Docket: IMM-7579-13

Citation: 2015 FC 349

Ottawa, Ontario, March 19, 2015

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

MALIK WAHEED AHMAD

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is the judicial review of a decision of the Refugee Protection Division [RPD] wherein it was held that the Applicant was neither a Convention refugee nor a person in need of protection. The RPD held that credibility was the determinative issue.

II. Background

[2] The Applicant is a citizen of Pakistan who fears returning there because he has been persecuted for being of the Ahmadi faith. Ahmadis consider the Ahmadiyyah sect to be a branch of Islam; however, Ahmadis are considered from some perspectives to be non-Muslims. The Applicant's parents were raised as Ahmadis but due to violence against Ahmadis, they recanted their faith and raised their children as Sunni. After the Applicant's father died, the Applicant resumed contact with his extended family who had stayed true to the Ahmadi faith. He then began his religious journey back to the faith.

[1] In 2007, he travelled to Canada for two months to visit his daughter (a child from his first marriage) and while there, he befriended a neighbour, an Ahmadi, who took him to the local mosque. This led eventually to his conversion at a public ceremony during which he signed an allegiance document known as a Ba'a'it. His second wife and children of that marriage participated by telephone.

[2] His daughter in Canada, with whom he was living, remained steadfastly opposed to the Ahmadi faith and his conversion was hidden from her until he returned to Pakistan.

[3] The Applicant's claim was based on the consequences of his being "outed" as an Ahmadi by his Canadian resident daughter and his ex-wife. The consequences included threats, the decline of his business, the public shunning of the Applicant and his family, assault on the Applicant and his son and the eventual kidnapping of the Applicant and his son – both released

upon payment of a ransom. Whereupon he travelled to Canada in July 2012 and filed his refugee claim.

[4] The RPD, having declared credibility as the determinative issue, stated that it was apparent throughout the hearing that there were numerous contradictions, inconsistencies and implausibilities in the Applicant's testimony and documentary evidence. The RPD found the inconsistencies to be central to the claim and held that the Applicant had not provided reasonable explanations to address these concerns.

[5] Central to the RPD's ultimate conclusion is, in effect, a finding that the Applicant is not Ahmadi (see Decision, paragraph 21).

III. Analysis

[6] The standard of review of credibility determinations has been held to be reasonableness (*Uygur v Canada (Citizenship and Immigration)*, 2013 FC 752). The decision at issue was a mix of true credibility findings (believability/untruthfulness) and implausibility findings. This Court has afforded great deference to credibility findings but has held that implausibility findings are subject to greater scrutiny and require greater explanation.

[7] Central to the legitimacy issue is the documentary evidence. The Applicant filed an Ahmadi Certificate and an affidavit from a lawyer specializing in this area confirming that the Certificate is *prima facie* proof that the bearer is Ahmadi and detailing the extensive procedures and rigorous criteria that must be satisfied before a Certificate will be issued.

[8] The Applicant also provided donation receipts, an ID card and a document from the Ahmadiyya Movement in Islam attesting to his membership.

[9] At the request of the RPD to adduce corroborating documentary evidence to substantiate that he had converted in 2007, the Applicant submitted the Ba'ait, a copy of the allegiance document and post-hearing submissions. This type of document had not been nor needed to be provided to the RPD in the past in cases where the person was accepted as Ahmadi.

[10] In rejecting the claim, the RPD made a number of findings:

- his explanation of not knowing the location of the mosque was unreasonable;
- the initial documents of membership were insufficient and unreliable to support that he was a devout or practising Ahmadi;
- some of his testimony about actions related to his faith was unreliable;
- the lateness of filing his Ba'ait undermined his credibility and no weight was to be given to an affidavit from the neighbour because it was signed after the PIF and the neighbour was out of the country at the time of the hearing;
- the Applicant would say or do anything to remain in the country;
- his evidence of practising his faith in 2006 was contradictory;
- he was vague about his practice upon return to Pakistan;
- his passport listed his faith as "Islam" not "Ahmadi"; and
- because he hid his faith from his daughter, he was willing and capable of hiding other matters.

[11] While the Court would normally accord considerable deference to the RPD's credibility/implausibility findings, deference is not a blank cheque. The RPD still must explain the reasons for not accepting evidence, explain the basis of its implausibility findings, and address the critical evidence.

[12] The Court is familiar with the persecution of Ahmadi Muslims in Pakistan and recently sent back for re-determination RPD credibility findings. In *Anwar v Canada (Citizenship and Immigration)*, 2014 FC 681 [*Anwar*], Justice Manson stated at paragraph 22:

[22] While it may seem implausible that the Applicant did not face persecution during his career as a teacher, implausibility findings are subject to special requirements on the reasonableness standard. In the context of this application, the Board's exclusive reliance on this implausibility finding is unreasonable. As Justice Simon Noël decided in *Ansar v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1152:

17 Initially, an important distinction must be made between the RPD's credibility findings and its conclusion that the threat posed by Mr. Choudhry was "implausible". The panel must be mindful of the use of this term and its implications. Implausibility findings must only be made "in the clearest of cases" (*Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7, [2001] F.C.J. No. 1131). The panel's inferences must be reasonable and its reasons set out in clear and unmistakable terms (*R.K.L. v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at para 9, [2003] F.C.J. No. 162). As Justice Richard Mosley explains in *Santos v. Canada (Minister of Citizenship & Immigration)*, 2004 FC 937 (F.C.) at para 15, [2004] F.C.J. No. 1149 (F.C.):

[P]lausibility findings involve a distinct reasoning process from findings of credibility and can be influenced by cultural assumptions or misunderstandings. Therefore, implausibility determinations

must be based on clear evidence, as well as a clear rationalization process supporting the Board's inferences, and should refer to relevant evidence which could potentially refute such conclusions.

[13] The implausibility findings in this case are similar to those in *Anwar* in that:

- the RPD rejected as implausible the Applicant's description of how his conversion became public knowledge but did not explain why the description was implausible;
- the RPD rejected the Applicant's explanation for not changing his passport to reflect his faith as "Ahmadi" and left it as "Islam". Given that Ahmadis view themselves as Muslim, although the Pakistan government does not, and given that persecution of Ahmadis is well known in Pakistan, it was unreasonable to reject the explanation without explaining why the Applicant's position was implausible; and
- the RPD rejected the Applicant's explanation of how he kept his conversion hidden from his daughter without explaining why the explanation was implausible.

[14] In my view, the most critical error was in handling the corroborating evidence requested by the RPD. There is no explanation why the Ba'ait document, entirely consistent with all the other documentary evidence, was rejected and held to be a mark of lack of credibility. At no time does the RPD suggest that the documents, and this critical document in particular, is false, fraudulent, a forgery or in any way not valid.

[15] In the face of valid documents attesting to the Applicant's Ahmadi faith, the RPD offers no reasonable basis for its overall conclusion that he is not Ahmadi. It fails to address this central evidence which aside from being unreasonable is a legal error.

IV. Conclusion

[16] For these reasons, this judicial review will be granted, the decision will be quashed and the matter referred back to the RPD for a new determination by another member.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted, the decision is quashed and the matter is to be referred back to the Refugee Protection Division for a new determination by another member.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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