

Federal Court



Cour fédérale

Date: 20160408

Docket: IMM-4557-15

Citation: 2016 FC 396

Ottawa, Ontario, April 8, 2016

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

**AZHAR MUHAMMAD ALI
(A.K.A. MUHAMMAD ALI, AZHAR)
SAHAR AZHAR
AHMED ALI
ELIA BATOOL
(A.K.A. ELLIA, BATOOL)
ZOHA FATIMA AZHAR
(A.K.A. ZOHA FATIMA, AZHAR)**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The present judicial review application made by the applicants, who are Pakistani citizens of Shia faith, is well founded. The Court accepts all the applicants' arguments that the impugned decision, made by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board,

is unreasonable and does not fall “within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[2] Since the impugned decision was rendered, the Federal Court of Appeal has delivered its judgment in *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93. Justice Gauthier notes at paragraph 78 of that decision that “the role of the RAD is to intervene when the RPD is wrong in law, in fact or in fact and law”, and that “[t]his translates into an application of the correctness standard of review.”

[3] The availability of an Internal Flight Alternative [IFA] was determinative of the result of the applicants’ appeal. Except for a short citation taken from the UNHCR Guidelines on Refugee Claimants from Pakistan, and an incomplete commentary by the RAD with respect to the sectarian violence and extremism in Lahore and Multan, there is a total lack of analysis by the RAD of the relevant documentary evidence pertaining to the IFA for the cities identified by the Refugee Protection Division [RPD]. In addition, the RAD ignored highly relevant documentary evidence supporting the grounds of appeal raised by the applicants.

[4] It was not sufficient for the RAD to simply state that it “conducted an independent analysis of the evidence in order to decide, whether the RPD’s reasons were supportable in regards to the viability of an internal flight alternative for the Appellant” [emphasis added]. In order to sustain the reasonableness of the RAD’s decision, this Court must be satisfied that the RAD truly acted as an appeal tribunal and came to its own conclusion with respect to the correctness of the RPD’s findings of law, fact or fact and law, even if the RAD refused to admit

new evidence on appeal. In practice, this means that there must be some minimal discussion in the RAD's reasons of the errors raised by an appellant and their respective merit, in light of the relevant parts of the documentary evidence that were not considered by the RPD. The reasons provided by the RAD in this case do not meet this minimal standard.

[5] For these reasons, the judicial review application is allowed. Counsel for the parties agree that this case does not raise any question of general importance.

JUDGMENT

THIS COURT'S JUDGMENT is that the decision dated September 14, 2015 is set aside and the matter is returned to the Immigration and Refugee Board for redetermination by another panel of the Refugee Appeal Division. No question is certified.

"Luc Martineau"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4557-15

STYLE OF CAUSE: AZHAR MUHAMMAD ALI (A.K.A. MUHAMMAD ALI, AZHAR), SAHAR AZHAR, AHMED ALI, ELIA BATOOL (A.K.A. ELLIA, BATOOL), ZOHA FATIMA AZHAR (A.K.A. ZOHA FATIMA, AZHAR) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 7, 2016

JUDGMENT AND REASONS: MARTINEAU J.

DATED: APRIL 8, 2016

APPEARANCES:

Ms. Lani Gozlan FOR THE APPLICANTS

Ms. Sally Thomas FOR THE RESPONDENT

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