

Federal Court



Cour fédérale

Date: 20160504

Docket: IMM-4834-15

Citation: 2016 FC 498

Ottawa, Ontario, May 4, 2016

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**KHURRAM, MUHAMMAD
(A.K.A. KHURRAM SIDDIQUE, MUHAMMAD)
MUHAMMAD KHURRAM, FATIMA
KHURRAM, OMAR MUHAMMAD
(A.K.A. MUHAMMAD KHURRAM, OMAR)
MUHAMMAD KHURRAM MUH, HAMZA
(A.K.A. MUHAMMAD KHURRAM, HAMZA)**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Credibility findings cannot be solely based on objective country conditions, without taking into account key problematic non-credible findings of a narrative of applicants, itself.

II. Introduction

[2] The Applicants seek judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a decision by the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada, wherein the RPD rejected the Applicants' claim for refugee protection under sections 96 and 97 of the IRPA.

III. Background

[3] The Applicants, Muhammad Siddique Khurram [Principal Applicant] (age 36), Fatima Muhammad Khurram (age 34), Hamza Muhammad Khurram Muh (age 6) and Omar Muhammad Khurram (age 5), are citizens of Pakistan.

[4] The Principal Applicant is a Sunni Muslim; and his wife is a Shia Muslim. They married in 2009. Upon their marriage, they returned to the United Arab Emirates [UAE] for employment purposes. The Applicants then, in October 2012, travelled to Pakistan for medical treatments for their eldest son. On November 7, 2012, while the Applicants were still in Pakistan, the Principal Applicant alleges that he was abducted because he is married to a Shia Muslim by what he believes to be members of an Islamic organization. He was allegedly released upon accepting to leave a package inside a Shia mosque.

[5] The subsequent day, the Principal Applicant stated that he went to the police station; and, that the police officers had refused to take his complaint; and, thus, not write a report. On November 9, 2012, the Applicants fled to Dubai; their applications for visas to Canada to visit

the Principal Applicant's brother were denied; and, in June 2014, they travelled to the United Kingdom for a family vacation. In January 2015, the Applicants successfully obtained visas for the United States but their applications for temporary visitors' visas to Canada were again rejected in February 2015. In February 2015, the Principal Applicant alleges that he began to receive threatening text messages by members of the organization who had abducted him in November 2012. His wife and children had also been victims of two car accidents; which had been intentionally caused. Still, the Principal Applicant did not report these significant incidents and the text messages to the authorities in the UAE due to fear of deportation. According to the Principal Applicant the incidents are related.

[6] On May 31, 2015, the Applicants left Dubai for the United States and arrived in Canada on June 2, 2015. The Principal Applicant alleges that even while in Canada he kept receiving threatening text messages from the same individuals; but, still did not report the incidents to the Canadian authorities.

IV. Impugned Decision

[7] In a decision, dated September 15, 2015, the RPD held that the Applicants are not Convention refugees or persons in need of protection pursuant to sections 96 and 97 of the IRPA. The RPD held that the Applicants are not credible except for the fact that the Principal Applicant is a Sunni from Pakistan and his wife is a Shia, born and raised in the UAE, and is a citizen of Pakistan, both children are citizens of Pakistan. In essence, the RPD found that the Principal Applicant's story of abduction is not plausible. In addition, the Principal Applicant's claim that the Pakistani police had refused to register a "First Information Report" is not supported by

documentary evidence. The RPD also held that the Applicants contentions that they were not able to approach the UAE authorities about the alleged threats are not reasonable or credible; as both the Principal Applicant and his wife had legal resident status in the UAE; and, the documentary evidence does not support their claim of deportation simply because his wife is a Shia Muslim. Moreover, the RPD found that it was implausible that the Principal Applicant would not have changed his cellphone number in the UAE and in Canada simply because of his friends and due to his work. The RPD also did not believe that the Principal Applicant did receive threatening text messages while in Canada.

[8] Regarding the issue of state protection, the RPD examined the documentary evidence, as a whole, and held on balance that “[t]here is no reference to the targeting and persecution of Sunni Muslims who are married to Shia Muslims by extremists, other groups or any authority in Pakistan”; and, that “[t]here is no evidence to confirm that Sunni Muslim and Shia Muslim marriages are illegal or subject to discrimination let alone discrimination that would amount to persecution” (para 27 of the RPD’s decision).

[9] As a result, the RPD rejected the Applicants refugee claim.

V. Issues

[10] The central issues to be determined by this application for judicial review are:

- 1) Did the RPD erroneously frame the claim as a fear of persecution on the basis of an interfaith marriage?
- 2) Did the RPD err in its credibility findings?

3) Did the RPD err by not performing a separate section 97 analysis?

VI. Legislation

[11] The following are the relevant legislative provisions of the IRPA:

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on

Définition de “réfugié”

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n’a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s’il y a des

substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A également qualifié de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

VII. Position of the Parties

[12] The Applicants submit that the RPD unreasonably held that the Applicants refugee claim should be rejected. They raised several arguments to support their position. Broadly, they submit that the RPD unreasonably limited its analysis of the persecution faced by the Applicants on the basis of a mixed Sunni-Shia Muslim marriage; when in fact the claim of persecution is on the basis that the Principal Applicant's wife is a Shia Muslim in Pakistan. Secondly, the RPD made unreasonable plausibility findings and consequently led the RPD to inaccurately hold that the Principal Applicant was not credible. Furthermore, the RPD's credibility findings towards the Principal Applicant are unreasonable as the RPD had misstated evidence and ignored corroborating documentary evidence. Thirdly, the RPD erred by relying on specialized knowledge without affording them an adequate opportunity to respond. Finally, the RPD erred by not making a full analysis of the Applicants' claim under section 97 of the IRPA.

[13] Conversely, the Respondent submits the negative credibility findings of the RPD are reasonable as the implausibility findings are reasonable; the Applicants narrative lacks corroborative evidence; the RPD did not rely on specialized knowledge; and, the RPD reasonably disbelieved the Applicants' allegations. Secondly, the RPD did not unduly restrict its analysis of the Applicants' claim; and, the Court must read the RPD's decision as a whole. Finally, since section 96 of the IRPA is based on a lower standard, the RPD did not err by rejecting the Applicants' claim under section 97 of the IRPA without providing reasons.

VIII. Standard of Review

[14] All three issues before this Court must be reviewed under the standard of reasonableness as they deal with mix law and fact findings and factual findings by the RPD (*Iqbal v Canada (Citizenship and Immigration)*, 2014 FC 415 at para 15; *Dunkova v Canada (Citizenship and Immigration)*, 2010 FC 1322).

IX. Analysis

A. *RPD's framing of the claim as an interfaith marriage*

[15] The Applicants submit that the RPD erred by restricting the claim to an interfaith marriage. The claim was generally based on the fact that the Applicant's wife is a Shia in Pakistan and that the risk of persecution was heightened by the fact that he, as a Sunni Muslim, had entered into an interdenominational marriage. The Court does not find that this is the case. At paragraph 28 of its decision, the RPD clearly considered the fact that Shia Muslims have been targeted by Sunni fundamentalist groups throughout Pakistan; and, that the *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan* (dated 14 May 2012) states that members of the Shia community may be in need of international protection. Hence, it would be erroneous to find that the RPD unreasonably restricted its analysis of the claim to one of interfaith marriage and not to the fact that the Applicant's wife is a Shia Muslim in Pakistan. Credibility findings cannot be solely based on objective country conditions, without taking into account key problematic non-credible findings of a narrative of applicants, itself.

B. *RPD's credibility findings*

[16] The RPD made a negative credibility finding in regard to parts of the narrative of the Applicants, themselves. As such, the RPD held that on the balance of probabilities, the Principal Applicant's narrative of motives and reasons for and surrounding his 2012 visit to Pakistan was fabricated. This negative credibility finding is the result of numerous implausibility findings by the RPD. The RPD held that it was implausible that: i) the Principal Applicant had been abducted by an Islamic organization in Pakistan in November 2012; ii) the Pakistani police would have refused to register a First Information Report the day after the alleged abduction; iii) the Applicants were unable to approach the UAE authorities regarding the threatening text messages received by fear of deportation given that the Principal Applicant's wife is a Shia; iv) the Principal Applicant's wife two motor vehicle accidents having been deliberately caused; v) the Principal Applicant would not change his phone number after receiving threatening calls and text messages; vi) the Principal Applicant would not change his phone number upon his arrival in Canada; and, vii) the Principal Applicant would not report the threatening texts to the Canadian authorities.

[17] The Principal Applicant submits that the RPD made adverse credibility findings that are not supported by the evidence. Great deference is owed by this Court to RPD's assessment of the evidence and credibility findings – such as plausibility findings (*Ahmadzai v Canada (Citizenship and Immigration)*, 2013 FC 1025 at para 23). Nonetheless, where the RPD make credibility findings that rest on plausibility determinations, “the implausibility must be clear and the RPD should provide a reliable and verifiable evidentiary base against which the plausibility

of the Applicant's evidence may be judged” (*Pavlov v Canada (Citizenship and Immigration)*, 2016 FC 282 at para 14). The RPD must not make implausibility findings without regard to the claimant’s milieu and culture; as such, what might be implausible on the basis of Canadian standards may be based on the claimant’s milieu (*Valtchev v Canada (Minister of Citizenship and Immigration)*, [2001] FCJ No 1131 at para 7); however, that was done, in measure by the RPD. The Court agrees with Justice Peter B. Annis who disagreed with the statements that “plausibility findings are dangerous and should only be made in the clearest of cases” [Emphasis in original.] (*Bercasio v Canada (Citizenship and Immigration)*, 2016 FC 244 at para 29). There is a need for plausibility findings; however, must be based on either significant subjective, or objective evidence, or both which in this case, they are.

[18] With the only possible exception of the negative credibility inference regarding the First Information Report, the Court is of the opinion that the RPD’s negative plausibility findings are reasonable as they are intertwined with numerous adverse credibility conclusions which are supported by reliable and a verifiable evidentiary based reasons, made with regard to the Applicants’ milieu.

[19] The RPD’s implausibility finding regarding the lack of a registered First Information Report is, in itself, perhaps, opened to question, as the documentary evidence specified by the RPD is that the registration of a First Information Report generally requires the payment of a bribe. As the RPD did not dig deeper and did not ask the Principal Applicant as to whether he had been told to pay a bribe and as to why the Pakistani police refused to register a First Information Report, it was possible to reflect on why the RPD found that the lack of a First

Information Report undermines the Applicants' claim. Nonetheless, as this one implausibility finding, in and of itself, is not central to the overall negative credibility finding; and, given that the RPD did rely on numerous other significant elements of evidence to arrive at its conclusion, it was reasonable for the RPD to arrive at a negative finding regarding the Applicants and to disbelieve their narrative on the basis of a lack of credibility (*Kosumov v Canada (Citizenship and Immigration)*, 2015 FC 1297 at para 11; *Lin v Canada (Citizenship and Immigration)*, 2011 FC 1235 at paras 59-60).

[20] The role of the Court, in reviewing RPD's reasons, is not to engage in a line-by-line hunt for a possible error, its role is to approach the decision as an organic whole, a sum of all parts (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd.*, 2013 SCC 34, [2013] 2 SCR 458 at para 54; cited in *Kanthasamy v Canada (Citizenship and Immigration)*, [2015] 3 SCR 909, 2015 SCC 61 (CanLII) at para 138, dissenting).

C. *Separate analysis for section 97 of the IRPA claim*

[21] As the state protection analysis of the RPD applied equally to sections 96 and 97 of the IRPA, there was no need for the RPD to make a separate analysis under section 97 of the IRPA as the Court is satisfied that the RPD considered the criteria applicable for each section (*Karafazlioglu v Canada (Citizenship and Immigration)*, 2016 FC 302 at para 13; *Bellingy v Canada (Citizenship and Immigration)*, 2015 FC 1252 at para 53).

X. Conclusion

[22] Consequently, the application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review be dismissed.

There is not serious question of general importance to be certified.

"Michel M.J. Shore"

Judge

FEDERAL COURT
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