Federal Court Cour fédérale

Date: 20160907

Docket: IMM-648-16

Citation: 2016 FC 1011

Ottawa, Ontario, September 7, 2016

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

MUHAMMAD TAHIR BHATTI
ASMA TAHIR
HAFSA TAHIR
MUHAMMAD AMMAR TAHIR

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Tahir and his family are citizens of Pakistan who lived in Karachi. Mr. Tahir was a successful businessman who was kidnapped in 2015 by individuals who he suspected to be

affiliated with the Taliban. He was held for four days and released after a ransom was paid by his father-in-law. After his release, Mr. Tahir reported the kidnapping to the police.

[1] Immediately after reporting the kidnapping, Mr. Tahir was contacted through his wife's cell phone. He was told that his kidnappers were aware that he had been in contact with the police and they threatened to kill him. He also believes that the individuals were observing his daughter at school. Holding a valid visa, the Tahir family fled to the United States in August 2015. Ms. Tahir has a brother in Canada. In October 2015, the family came to Canada and claimed refugee protection.

[2] In January 2016, the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada, rejected the claim finding the Tahir family were neither Convention refugees nor persons in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Although the RPD accepted that Mr. Tahir's allegations were credible, the RPD determined that (1) no nexus existed between the fears advanced and a Convention ground under section 96, (2) the risks were generalized in nature under sub-paragraph 97(1)(b)(ii) of the IRPA, (3) the presumption of adequate state protection had not been rebutted; and (4) there were viable internal flight alternatives [IFAs] in Lahore, Faisalabad or Islamabad.

[3] The Tahir family asks that I quash the decision and return the matter for reconsideration by a differently constituted panel. They submit that the findings of the RPD in respect of generalized risk, state protection and the availability of IFAs were unreasonable.

[4] In oral submissions, the respondent acknowledged that the RPD's findings in respect of both state protection and generalized risk were problematic but argued that the IFA finding was determinative of the claim. The respondent submits that the IFA determination was reasonable.

[5] The sole issue I need determine is whether the RPD erred in concluding that the Tahir family have viable IFAs in Lahore, Faisalabad or Islamabad. The reasonableness standard of review will be applied (*Khokhar v Canada (Minister of Citizenship and Immigration)*, 2008 FC 449 at paras 21-22 and *Frederick v Canada (Minister of Citizenship and Immigration),* 2012 FC 649 at para 14).

[6] After having heard oral submissions I requested the parties provide further written submissions on the RPD's application of the two-prong IFA test. I have reviewed and considered the parties additional written submissions.

II. Analysis

A. *Did the RPD err in concluding that the Tahir family have viable IFAs in Lahore, Faisalabad or Islamabad?*

[7] Justice Catherine Kane recently summarized the legal principles on the law relating to IFAs in *Pidhorna v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1 at paragraphs 39 and 40:

> The test for an IFA is well established. There is a high onus on the applicant to demonstrate that a proposed IFA is unreasonable (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164, [2000] FCJ No 2118 (FCA)).

> The two part test for an IFA was established in *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589, [1993] FCJ No 1172 (QL) (FCA) [*Thirunavukkarasu*]. The test is: (1) the Board must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the proposed IFA; and, (2) conditions in the proposed IFA must be such that it would not be unreasonable, upon consideration of all the circumstances, including consideration of a claimant's personal circumstances, for the claimant to seek refuge there.

[8] In articulating the first prong of the IFA test the RPD correctly noted that the Tahir family was required to establish that there is a serious possibility they would be persecuted or be subjected to a danger of torture or a risk to life or a risk of cruel and unusual treatment or punishment throughout their country. However, later in the decision, the RPD stated: “In regards to the first aspect of the test, I find that you have not established that it is probable that those you fear would seek and find you in one of these cities.” Still further, the RPD stated:

> You have not either established that the fact that you defied their authority makes it that they would more likely than not use their resources to hunt you down throughout the country. **We are not looking at whether this is a serious possibility, we are looking at whether it is probable that if you relocate yourselves several hundred kilometers away from Karachi, they would have the interest and capacity to find you and then do what you fear from them.** [emphasis added]

[9] The respondent argues that the decision reflects the awareness of the decision-maker of the correct test to be applied for IFAs and that, where “probability” was articulated as the standard, he was addressing factual findings, not risk. The respondent submits that a reading of the decision as a whole demonstrates that the test was correctly applied. I do not agree.

[10] I recognize that on judicial review the individual words and phrases of a decision-maker should not be considered in isolation but must be read within the context of the whole of the decision (*Huerta Morales v Canada (Minister of Citizenship and Immigration)*, 2009 FC 216 at para 11).

[11] The RPD correctly identified and set out the first prong of the test at the outset of its IFA analysis. It is not this statement but rather the statements that follow that raise doubt as to whether the correct test has been applied. In this regard, I would characterize the articulation of the test at the outset of the IFA consideration as a "boiler plate" statement and thus not necessarily persuasive of the standard applied by the RPD in conducting its analysis, particularly where apparently contrary statements are set out in that same analysis (*Caprio v Canada (Minister of Employment and Immigration)* [1994] FCJ No 383 at para 14 referred to in *Ghose v Canada (Minister of Citizenship and Immigration*), 2007 FC 343 at para 22).

[12] In this case the RPD appears to have required the Tahir family to demonstrate that "… it is probable that if you relocate yourselves … [the agents of persecution] would have the interest and the capacity to find you and then do what you fear from them". In my view the situation here is similar to that in *Ghose* and *Caprio* and raises a doubt as to whether the correct test was in fact applied by the RPD. This is a reviewable error warranting the intervention of this Court.

III. Conclusion

[13] The application for judicial review is allowed. The parties have not proposed a question for certification and no question arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is granted. The matter is returned for reconsideration by a differently constituted panel. No question is certified.

"Patrick Gleeson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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