Federal Court  Cour fédérale

Date: 20161123

Docket: IMM-1219-16

Citation: 2016 FC 1297

Ottawa, Ontario, November 23, 2016

PRESENT: The Honourable Madam Justice Gagné

BETWEEN:

CHAUDHRY AZHAR JOVINDA
NAILA MASOOD
AHMED NAWAZ
ALI NAWAZ

Applicants

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Mr. Chaudhry Azhar Jovinda [Principal Applicant], his wife, and two of their adult sons applied for judicial review of a decision of the Refugee Protection Division [RPD], whereby it refused the applicants' claims for refugee protection. The RPD determined that the applicants

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. This determination was a result of credibility concerns with both the oral and documentary evidence, and a finding by the RPD that the applicants had a viable internal flight alternative [IFA].

[2] For the reasons discussed below, this application for judicial review is dismissed.

II. Facts

[3] The applicants are citizens of Pakistan. They left their country for the United States on August 30, 2015, with visitors' visas, to visit their other son/brother. Approximately three and a half months after arriving in the United States, the applicants arrived at the Canadian border and made refugee protection claims.

[4] Their claims are based on a series of events beginning in January 2015, when they opened an evening tuition centre next to their home. They provided private tutoring to children irrespective of gender and faith. They hoped to improve literacy among local children and prevent them from falling into the illegal drug trade prevalent in the region.

[5] This created issues with the local authorities as they did not want the applicants teaching non-Muslim children.

[6] The situation escalated to the point where the police were looking for the three male applicants and the family decided to leave Pakistan in order to avoid being arrested.

III. Impugned Decision

[7] The RPD concluded that the applicants are not Convention refugees as they do not have a well-founded fear of persecution, in that their removal to Pakistan would not subject them personally to a risk to life or to a risk of cruel and unusual treatment or punishment. The RPD also found that there are no substantial grounds to believe that their removal to Pakistan would subject them personally to danger or torture.

[8] It came to this conclusion as a result of not believing that the arrest warrants filed by the applicants were genuine. Consequently, it found that there was insufficient evidence to demonstrate that the applicants would be subjected to persecution and/or harm, or that they would be pursued if they moved to another location within Pakistan. The RPD found that the applicants have an IFA; therefore they could live safely in another part of their country.

A. *Credibility*

[9] Overall, the RPD found that the Principal Applicant's testimony at the hearing was articulate and effusive. However, his testimony faltered and he was inconsistent in his responses to questions about the arrest warrants.

[10] When asked where he was when he discovered police had issued warrants against him and his family, the Principal Applicant testified it was while he was in Sargodha, but he later changed his testimony to state that he was in the United States when he became aware of the warrants. The testimony of where he was when he became aware of the arrest warrants went

back and forth throughout his testimony, between Sargodha and the United States. Furthermore, he did not answer the question of how he personally learned of the warrants.

[11] The RPD noted that the issue of where the applicants were when they discovered there were warrants for their arrests is material because these warrants were issued on September 3, 2015 – after the applicants had left the country on August 30, 2015. Consequently, the applicants could not have learned about the warrants while in Pakistan.

[12] In its decision, the RPD expands on the significance of the existence of the arrest warrants by explaining that a warrant for arrest is indicative of new and heightened dangers for the applicants, not just where they lived, but throughout Pakistan, and would hamper their ability to travel. Moreover, an arrest in Pakistan carries with it the risk of mistreatment and torture in police custody and imprisonment. Therefore, the RPD concluded that it was "remarkable" and not credible that the Principal Applicant could not reliably recall where he was when he learned this news.

[13] Second, the RPD added that the absence of specific reference to the warrants prior to them being disclosed into evidence also eroded the Principal Applicant's credibility. Questions in Citizenship and Immigration Canada [CIC] forms, which should have been answered in the affirmative as a result of the warrants, were answered in the negative. The applicants didn't mention the arrest warrants at their port of entry [POE] interviews, and the arrest warrants are not explicitly mentioned in the Basis of Claim [BOC] form, in which the applicants merely mentioned that during a "raid" police came to the applicants' relatives' home in Sargodha with a

warrant and detained someone – making it unclear whether this was a search warrant to raid the home, or an arrest warrant, and for whom.

[14] When confronted with these issues at the hearing, the Principal Applicant explained that the mistakes on the CIC forms and the POE interviews were a result of poor interpretation and their belief that the questions were asked in relation to terrorism, and that they did not understand the words “any country” to include Pakistan.

[15] The RPD member did not find the applicants’ explanations to be credible. The RPD also emphasized that if there was a problem with the interpreter at any stage, the applicants had a duty to raise it. There was no evidence before the RPD that anyone did. Regarding the CIC forms, the applicants’ counsel was present while they were being completed and the questions were not ambiguous. Moreover, counsel signed a declaration swearing to accurate assistance in the completion of the CIC forms. Additionally, the Principal Applicant’s sons are university graduates. Accordingly, the RPD member found that they would not be likely to struggle to understand the questions posed. Regarding the concerns about the quality of the interpretation during the POE interviews, the RPD stated in its decision that the applicants ought to have raised the issue, sought another interpreter, and booked another appointment.

[16] Third, the RPD found that the authenticity of the arrest warrants was undermined by the prevalence of fraudulent documents in Pakistan. The RPD relied on the findings of the European Asylum Support office, which writes that officials in the country accept bribes in exchange for the issuance of documents. A Response to Information Request in evidence before the RPD also

indicated that the availability of fraudulent documents is “widespread” and it is “very easy” to obtain fraudulent documents in Pakistan.

[17] Therefore, the RPD concluded that by virtue of the serious credibility issues surrounding the arrest warrants and the prevalence of fraudulent documents in Pakistan, the warrants are not genuine.

B. *Internal Flight Alternative*

[18] The RPD concluded that, on the balance of probability, the applicants could live safely in other parts of Pakistan, such as Hyderabad, without a serious possibility of persecution or a risk of harm.

[19] First, since the RPD found that the warrants were not genuine, it concluded that the applicants would not be precluded from relocating.

[20] Second, the RPD concluded, on the basis of the Principal Applicant’s testimony, that since he had never had problems with the police or government officials prior to the opening of the tuition centre, and since the tuition centre is now closed, it would be unlikely that the applicants would be pursued on this basis.

[21] Third, the Principal Applicant testified that his participation in protests was a basis for a continued threat. However, the RPD found that his participation prior to opening the tuition centre did not engender conflict with politicians. Since the applicants have not been voicing

opposition to the politicians and have not for over six months, the RPD concluded that their political profile is not sufficiently high so as to garner attention from politicians after the fact and therefore, it would be unlikely they would be pursued in Hyderabad, over 1,000 kilometres away and among six million residents.

[22] Fourth, the RPD found that it would be unlikely that the politicians would be alerted to the applicants' relocation. There is very little in the way of information sharing among police across jurisdictions in Pakistan.

[23] Finally, the RPD found that Hyderabad was a reasonable place for the applicants to relocate to. This city has less violence and is a major commercial centre for the agricultural produce in the region. The applicants are experienced in agriculture, and the sons hold university degrees. The member found it likely that the sons would be able to sustain the family in Hyderabad.

IV. Issues and standards of review

[24] This application for judicial review raises the following questions:

A. *Whether the translation provided to the applicants during the hearing was inadequate so as to constitute a breach of procedural fairness?*

B. *Whether the RPD's credibility analysis was reasonable?*

[25] Questions of procedural fairness, such as the adequacy of the translation, are to be assessed on the standard of correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *CUPE v Ontario (Minister of Labour)*, 2003 SCC 29 at para 100; *Zaree v Canada (Citizenship and Immigration)*, 2011 FC 889 at para 7). Put differently, my role is to assess whether the process before the RPD was unfair.

[26] On the other hand, the appropriate standard of review applicable to credibility findings is that of reasonableness (*Khosa*, above; *Dunsmuir v New Brunswick*, 2008 SCC 9; *Jia v Canada (Citizenship and Immigration)*, 2016 FC 33 at para 14).

V. Analysis

A. *Whether the translation provided to the applicants during the hearing was inadequate so as to constitute a breach of procedural fairness?*

[27] The foundation of translation adequacy was set out by the Supreme Court of Canada in *R v Tran*, [1994] 2 SCR 951, which was applied by the Federal Court of Appeal in *Mohammadian v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 191 with respect to immigration matters. In *Mohammadian*, the Court stated that "the interpretation provided to applicants before the Refugee Division must be continuous, precise, competent, impartial and contemporaneous." This Court elaborated on the requirements of translation in that translation need not be perfect when performed at a hearing where contemporaneous translation is required, it must, however, be adequate (*Bouanga v Canada (Citizenship and Immigration)*, 2014 FC 1029; *Singh v Canada (Citizenship and Immigration)*, 2010 FC 1161).

[28] The applicants had a duty to raise the translation issue at the first opportunity (*Mohammadian*, above at para 13) and I agree with the respondent that they did not do so.

[29] In *Mohammadian*, the errors occurred in the language of the applicant, such that the applicant could not properly understand the interpreter. Thus, the Court concluded that the applicant could have, and should have, raised the issue at that moment. In the present case, the applicants do not allege that they could not understand the interpreter; rather, they take issue with the way in which the questions were translated from English to Urdu, which they state they could not have brought up until the oral transcript was reviewed. Nevertheless, the *Mohammadian* principle still applies as it states that where problems of interpretation could be reasonably addressed by the applicant at the time of the hearing, there is an obligation to address them then, before the Board, and not later, in judicial review proceedings.

[30] I am of the opinion that the alleged problems of interpretation could have been addressed by the applicants at the time of the hearing. The Principal Applicant's two sons, who are also applicants in this case, were present at the hearing, and both understood English, as evidenced by their statement that they did not require assistance to complete the application forms as they were "sitting beside son and he was completing them" (Applicants' Record, p 106). At the end of the hearing, the Principal Applicant also stated that "the sons will understand everything I am saying" indicating they do not require translation of counsel's submissions in English (Certified Tribunal Record, p 1129). Any issues the applicants had with the translation should have been raised at the hearing or shortly thereafter.

[31] I do not accept the applicants' argument that the circumstances at bar are analogous to those in *Zaree*, cited above. In *Zaree*, the applicant did raise his concerns regarding the translation at the hearing, and was assured by the panel that there would be no issues. That is not the case here. In this case, neither the Principal Applicant, nor the Principal Applicant's two sons who both understand English, raised any objection or made any comment to the member regarding the quality of the translation being provided or any concerns with the interpretation. Therefore, the circumstances at bar are not analogous to those in *Zaree* and I find that the applicants are deemed to have waived their right to object to the interpretation on judicial review.

[32] In addition, I also find that, despite waiver being made out in this case, the translation provided at the hearing was adequate and therefore there is no procedural fairness issue.

[33] I agree with the respondent that while the translation may not have been perfect, it was adequate. The Principal Applicant was asked about the arrest warrants on numerous occasions and gave inconsistent answers. I do not agree with the applicants that this was caused by a defect in the interpretation, and more specifically, I do not agree that the interpreter had a duty to differentiate between arrest warrants, First Information Reports, or if the police were seeking the applicants. The interpreter's duty is to translate the questions as asked by the member and in turn translate the answers as given by the applicants.

[34] What's more, the member was able to clarify when necessary. Therefore, I cannot agree with the applicants' argument that had the member been aware of the mistranslated questions

during the hearing, the Principal Applicant's inconsistent answers as to his whereabouts when he found out about the arrest warrants would have been understood.

[35] Therefore, I find that the interpretation provided at the hearing was adequate and as such, there was no breach of procedural fairness.

B. *Whether the RPD's credibility analysis was reasonable?*

[36] The applicants submit that the member's decision regarding their credibility is unreasonable because she misconstrued and ignored evidence with respect to the arrest warrants and unreasonably founded her decision on the Principal Applicant's testimony. I do not agree.

[37] I agree with the respondent that as the trier of fact, the RPD's role is to assess credibility. I also agree that the RPD is entitled to decide adversely with respect to credibility on the basis of contradictions and inconsistencies in the applicants' testimony (*Dhindsa v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 2011 at para 41). Therefore, it was reasonable for the member to weigh the Principal Applicant's testimony in her credibility assessment.

[38] I also agree with the respondent that since assessing credibility is within the RPD's expertise, this Court must show significant deference to these findings. The role of this Court is not to substitute its decision for that of the RPD, even where it would have reached a different conclusion (*Thavarathinam v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1469 at paras 9-10). The credibility findings made by the RPD cannot be set aside by this Court unless they are clearly made without regard to the evidence. Thus, the applicants must show that the

evidence, viewed reasonably, is incapable of supporting the tribunal's finding of fact regarding credibility (*Dhindsa*, above at para 43).

[39] The member made her credibility finding on the basis of the answers given by the applicants in their immigration forms, the answers given at the oral interview, and her observations of the Principal Applicant's demeanour at the hearing. Despite later claiming that there were warrants out for their arrests in Pakistan, the applicants made no mention of this in the early stages of their refugee claims.

[40] In the immigration forms, the applicants answered questions pertaining to being sought, arrested, or detained by police in any country in the negative. They answered such questions at the oral interview in the negative as well. Furthermore, they did not specifically mention arrest warrants in their BOC form. Their explanation for this was that they believed that the questions in the immigration forms were asked in relation to terrorism and they believed that the words "any country" excluded Pakistan. However, there is nothing to suggest any reasonable basis for them to hold this belief. Additionally, regarding the BOC form, they explained that they did mention a "warrant", however, as the member stated; it was unclear whether this was a search warrant or an arrest warrant.

[41] I therefore find that the evidence is capable of supporting the member's assessment of the applicants' credibility and that the decision is reasonable.

VI. Conclusion

[42] This application for judicial review is dismissed. The parties have not proposed any question of general importance for certification and none arises from this case.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed;

2. No question of general importance is certified.

"Jocelyne Gagné"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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