

Federal Court



Cour fédérale

Date: 20161219

Docket: IMM-2660-16

Citation: 2016 FC 1392

[ENGLISH TRANSLATION]

Ottawa, Ontario, December 19, 2016

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**SHEIKH KASHIF MEHMOOD
IRUM KASHIF
SHEIKH MUHAMMAD ABDULLAH
SHEIKH MUHAMMAD ALI
ISHMAL KASHIF**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [IRPA], of a decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated May 19, 2016, in which the applicants were deemed not to be persons in need of protection under section 97 of the IRPA.

II. Facts

[2] The applicants are citizens of Pakistan. The principal applicant is 48 years old. He was accompanied by his spouse, who is 36 years old, as well as their three children aged 13, 11 and 9. They left Pakistan on November 5, 2015, and arrived in Canada via the United States on November 26, 2015, immediately claiming refugee protection.

[3] The principal applicant operated two computer stores in the city of Rawalpindi. In August 2015, he was reportedly the victim of extortion and threats from a Pakistani Taliban group known as Tahrik-a-Taliban. If he failed to pay the amount demanded, they would kidnap his children and kill him and his spouse. Out of fear and under threat, he did not file a complaint with the authorities. Having failed to get the money by the required deadline, the applicant was kidnapped by a Taliban group in September 2015 and was physically and verbally assaulted (RPD decision, at paragraph 10). His assailants gave him one more day to get the rest of the money. This is when the principal applicant and his family left Pakistan.

III. Decision

[4] The hearing before the RPD was held on May 5, 2016. The RPD pointed out that the applicants' refugee protection claim was based exclusively on paragraph 97(1)(b) of the IRPA. The RPD acknowledged that the principal applicant had been extorted, but determined that such a risk was faced by the public as a whole, or at least by Pakistani merchants. After having reviewed all of the evidence, the RPD found that the principal applicant had not established, on a balance of probabilities, that the risk he faced was different from that faced by the rest of the population. Thus, on May 19, 2016, the RPD dismissed the applicants' claim for refugee protection on the ground that they had failed to show that they were persons in need of protection within the meaning of paragraph 97(1)(b) of the IRPA.

IV. Parties' Submissions

[5] The applicants submit that they were personally targeted by the Pakistani Taliban group and that it was unreasonable for the RPD to find that the risk faced by the applicants was a generalized risk among Pakistani merchants (*Correa v. Canada (Citizenship and Immigration)*, 2014 FC 252 at paragraph 46 [*Correa*]; *Portillo v. Canada (Citizenship and Immigration)*, 2012 FC 678).

[6] Conversely, the respondent argues that it was open to the RPD to conclude that a large segment of the population of Pakistan – in this case, merchants – faced the same risks as the principal applicant. The RPD's decision, supported by the objective documentary evidence, was therefore reasonable (*Correa*, above, at paragraph 82).

V. Issue

[7] The issue in this case is whether the RPD erred in fact and in law in finding that the applicants faced a generalized risk in Pakistan and, therefore, did not qualify as persons in need of protection under paragraph 97(1)(b) of the IRPA. This RPD decision is reviewable on a standard of reasonableness (*Correa*, above, at paragraph 19).

VI. Relevant Provisions

[8] The applicable provision in this case is paragraph 97(1)(b) of the IRPA:

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

...

(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

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 :

[...]

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

or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

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

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

VII. Analysis

[9] Given the facts presented, the Court finds that the RPD erred in fact and in law in determining that the applicants did not face a personalized risk or a risk of cruel and unusual treatment. Indeed, the RPD did not impugn the applicants' credibility and accepted that the principal applicant had been the victim of threats and that he had been kidnapped and beaten. Thus, the generalized risk he was facing, as faced by other merchants, had materialized: he and his family had become personally targeted by the Pakistani Taliban group. As noted by Justice James Russell of this Court in *Correa*, above, at paragraph 46:

While a full consensus has yet to emerge, I think that there is now a preponderance of authority from this Court that personal targeting, at least in many instances, distinguishes an individualized risk from a generalized risk, resulting in protection under s. 97(1)(b). Since “personal targeting” is not a precise term, and each case has its own unique facts, it may still be the case that “in some cases, personal targeting can ground protection, and in some it cannot” (*Rodriguez*, above, quoted with approval in *Pineda v. Canada (Minister of Citizenship and Immigration)*, 2012 FC 1543 [*Pineda (2012)*]). However, in my view there is an emerging consensus that it is not permissible to dismiss personal targeting as “merely an extension of,” “implicit in” or “consequential harm resulting from” a generalized risk. That is the main error committed by the RPD in this case, and it makes the Decision unreasonable.

[10] Accordingly, the RPD's decision fails to meet the standard of reasonableness.

VIII. Conclusion

[11] The application for judicial review is allowed and the RPD decision dated May 19, 2016, is set aside.

JUDGMENT

THIS COURT'S JUDGMENT IS that the application for judicial review is allowed and the matter is referred back to the RPD for reconsideration by a differently constituted panel. There is no question of importance to be certified.

“Michel M.J. Shore”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: SHEIKH KASHIF MEHMOOD, IRUM KASHIF,
SHEIKH MUHAMMAD ABDULLAH, SHEIKH
MUHAMMAD ALI, ISHMAL KASHIF v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

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