Federal Court  Cour fédérale

Date: 20180227

Docket: IMM-3492-17

Citation: 2018 FC 215

Montréal, Quebec, February 27, 2018

PRESENT: The Honourable Mr. Justice Grammond

BETWEEN:

ASIF RAZA, SONIA SAJJAD, NAJAF ALI, ZENA RAZA AND LUJAIN RAZA

Applicants

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

[1] The applicants, the Raza family, are citizens of Pakistan of the Shia Muslim faith. They allege that they were persecuted by a Sunni extremist group, Lahsher-e-Jhangvi. Their application for refugee status was denied. They then applied for a pre-removal risk assessment [PRRA], which was also denied. They now seek judicial review of the denial of their PRRA application. For the reasons that follow, I am denying this application.

I. Facts and Decision under Review

[2] This application is brought by Mr. Asif Raza, his wife, Ms. Sonia Sajjad, and their three children, who are all citizens of Pakistan. The Raza family had lived in Kuwait between 2002 and early 2015, but had returned to Mian Channu, Pakistan, every year to help organize Shia Muslim religious observances. Mr. Raza returned to Pakistan on January 23, 2015, after losing his job in Kuwait. At this time, Mr. Raza claims that he received threats from the Lahsher-e-Jhangvi Sunni extremist group for his involvement in the Shia community. The family left Pakistan for Canada on February 11, 2015.

[3] The Raza family claimed refugee protection on March 9, 2015. On July 10, 2015, the Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB] dismissed their claim. The RPD found that Mr. Raza's testimony was not credible. It noted that their failure to make a refugee claim during a previous stay in Canada was inconsistent with a genuine fear of persecution. It further found that the Raza family could escape persecution by moving to Islamabad – this is called an "internal flight alternative" [IFA]. The Raza family appealed the RPD decision to the Refugee Appeal Division [RAD], which upheld the RPD's determination on January 6, 2016.

[4] The Raza family then applied for a pre-removal risk assessment, according to section 112 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. That procedure allows for the assessment of new risks or new evidence that emerged after the negative decision of the RPD.

[5] The PRRA officer was provided with information to the effect that, on December 14, 2016, Mr. Raza's mother was victim of a home invasion by four men who were looking for Mr. Raza and threatened to kill him anywhere in Pakistan. In support of that allegation, the following evidence was offered:

- a police deposition made by Mr. Raza's mother concerning the incident;
- an affidavit from Mr. Raza's brother-in-law describing the incident in terms similar to those of the deposition;
- a newspaper article describing the incident;
- a letter from a Councillor in Ward 18, Municipal Committee Mian Channu describing the incident and recommending the Raza family remain abroad;
- a letter from the Great Husseini Association describing the incident; and
- a letter from Rana Babar Hussain, Parliamentary Secretary of Finance for Punjab, denouncing the incident and offering support for Mr. Raza's mother.

[6] On June 28, 2017, the PRRA officer rejected the application and commented as follows on the evidence of the December 14, 2016 incident:

> I give little weight to this alleged occurrence because, in spite of the documentation provided, I have not been provided with any police report concerning this alleged event. I have only documentation from persons known to the principal applicant's mother who, herself, has a vested interest in assisting her son and his family's efforts to remain in Canada. […] I find these documents to be self-serving and of little probative value.

[7] The Raza family brought an application for judicial review of the decision of the PRRA officer before the Federal Court.

II. Analysis

[8] This Court reviews PRRA decisions on a standard of reasonableness (*Fadiga v Canada (Citizenship and Immigration)*, 2016 FC 1157 at para 8; *Orliczki v Canada (Citizenship and Immigration)*, 2017 FC 1033 at para 11). This means that I must ensure that the decision under review is based on a defensible interpretation of the applicable legal principles and a reasonable assessment of the evidence (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190).

[9] Mr. Raza's challenge is mainly based on the fact that the PRRA officer assigned little weight to the evidence of the December 14, 2016 incident, given its "self-serving" character. By its own nature, evidence concerning acts of persecution abroad often comes from persons who are connected to the applicants. It often includes statements by family members. While decision-makers are allowed to take self-interest into account when assessing such statements, this Court has often held that it is a reviewable error to dismiss entirely such evidence for the sole reason that it is self-interested. In this regard, Justice Yves de Montigny (now of the Federal Court of Appeal) wrote:

> […] I do not believe it was reasonable for the Officer to award this evidence low probative value simply because it came from the Applicants' family members. Presumably, the Officer would have preferred letters written by individuals who had no ties to the Applicants and who were not invested in the Applicants' well-being. However, it is not reasonable to expect that anyone unconnected to the Applicants would have been able to furnish this kind of evidence regarding what had happened to the Applicants in Mexico. The Applicants' family members were the individuals who observed their alleged persecution, so these family members are the people best-positioned to give evidence relating to those events. In addition, since the family members were themselves

> targeted after the Applicants' departure, it is appropriate that they offer first-hand descriptions of the events that they experienced. Therefore, it was unreasonable of the Officer to distrust this evidence simply because it came from individuals connected to the Applicants.
>
> (*Cruz Ugalde v Canada (Public Safety and Emergency Preparedness)*, 2011 FC 458 at para 28; see also *Tabatadze v Canada (Citizenship and Immigration)*, 2016 FC 24; *Giorganashvili v Canada (Citizenship and Immigration)*, 2017 FC 100 at para 19; *Duroshola v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 518 at paras 21-23)

[10] In this case, however, there were further grounds for assigning little weight to the December 14, 2016 incident, beyond the mere self-interest of family members or persons known to them. These grounds may not be immediately apparent upon a cursory reading of the PRRA officer's reasons. Yet, a reviewing court may look to the evidentiary record to reach a more complete understanding of the reasons (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 at para 15 [*Newfoundland Nurses*]). In this case:

- Certain statements contained in the new evidence appeared to be tailored to respond to the IFA finding of the RAD, when it is alleged that the assailants threatened to kill Mr. Raza "anywhere in Pakistan."
- A statement contained in the municipal councillor's letter suggests that it was written for the purposes of bolstering the Raza family's claim to remain in Canada.
- Apart from Mr. Raza's mother and brother-in-law, the persons who wrote the letters did not witness the incident first-hand.
- The language employed in Mr. Raza's mother's deposition, in Mr. Raza's brother-in-law's affidavit and in the newspaper article is quite similar.

[11] Moreover, the PRRA officer was entitled to take into account the negative credibility findings of the RPD and RAD, which found that Mr. Raza's story of persecution was implausible.

[12] Mr. Raza argues that the PRRA officer erred when he mentioned that no "police report" had been filed in evidence. He asserts that his mother's deposition was in fact a complaint made to the police, on a form provided by the police, and that it contains annotations that show that it was received by the police, so that it should count as a "police report." The PRRA officer made no error in this regard. His reference to the lack of a police report must be understood as referring to a document emanating from the police that would have shown that the police took further action as a result of the complaint.

[13] Mr. Raza also challenges the PRRA officer's treatment of a newspaper article that provides a short description of the alleged incident. However, the PRRA officer did not reach an explicit conclusion as to its reliability or weight and offered no specific reason why it should not be believed. That article is an important piece of evidence, as it purports to come from a disinterested party and would provide corroboration to the statements of family members. Rejecting it without giving reasons comes close to contravening the rule established in the oft-quoted case of *Cepeda-Gutiérrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at para 17:

> […] the agency's burden of explanation increases with the relevance of the evidence in question to the disputed facts. Thus, a blanket statement that the agency has considered all the evidence will not suffice when the evidence omitted from any discussion in the reasons appears squarely to contradict the agency's finding of fact. Moreover, when the agency refers in some detail to evidence

> supporting its finding, but is silent on evidence pointing to the opposite conclusion, it may be easier to infer that the agency overlooked the contradictory evidence when making its finding of fact.

[14] Nevertheless, I am prepared to show deference to the PRRA officer on this issue. Assessing the credibility or probative weight of various pieces of evidence lies at the core of the PRRA officer's jurisdiction. In particular, the PRRA officer is in a better position to assess risk, credibility and plausibility. While the newspaper article may appear to corroborate Mr. Raza's mother's statement, it is very short, we do not know who wrote it and there is no indication that the newspaper conducted its own inquiry before publishing it. In those circumstances, I find the words of Justice Rosalie Abella of the Supreme Court of Canada particularly relevant:

> Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion […]
>
> (*Newfoundland Nurses* at para 16)

[15] On balance, I do not find that the PRRA officer reached an unreasonable result or failed to justify his decision in an intelligible manner.

[16] Mr. Raza also faults the PRRA officer for failing to conduct a separate inquiry under section 97 of IRPA. While section 96 of IRPA governs refugee status, section 97 defines the slightly different concept of protected person. However, in this case, the alleged persecution was entirely based on religious grounds, which come under section 96. There was no need to conduct

a separate section 97 analysis (*Brovina v Canada (Citizenship and Immigration)*, 2004 FC 635 at para 18).

[17] At the hearing, counsel for Mr. Raza argued that the PRRA officer should have conducted a hearing under section 113(b) of IRPA. This argument was not raised in Mr. Raza's memorandum of argument and this Court may decline to rule on it (*Zhou v Canada (Citizenship and Immigration)*, 2018 FC 182 at para 6). Be that as it may, I fail to see what purpose such a hearing would have served, as Mr. Raza was not a first-hand witness of the December 14, 2016 incident (*Sanchez v Canada (Citizenship and Immigration)*, 2016 FC 737 at para 8).

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is denied;

2. No question is certified.

"Sébastien Grammond"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3492-17
STYLE OF CAUSE:	ASIF RAZA, SONIA SAJJAD, NAJAF ALI, ZENA RAZA AND LUJAIN RAZA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	FEBRUARY 22, 2018
JUDGMENT AND REASONS:	GRAMMOND J.
DATED:	FEBRUARY 27, 2018

APPEARANCES:

Max Berger	FOR THE APPLICANTS
Margherita Braccio	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Max Berger Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT