

Federal Court



Cour fédérale

Date: 20190508

Docket: IMM-2302-18

Citation: 2019 FC 612

Ottawa, Ontario, May 8, 2019

PRESENT: Mr. Justice Favel

BETWEEN:

ZEESHAN HAIDER

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is an application for judicial review filed pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [IRPA] against a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [Board], dated April 19, 2018. The RPD determined that the Applicant is not a Convention refugee and is

not a person in need of protection within the meaning of sections 96 and 97(1) of the IRPA, pursuant to subsection 107(1) of the IRPA.

II. Background

[2] The Applicant, aged 60, is a citizen of Pakistan who claims to be a member of the Ahmadi religion from a devout Ahmadi family in Lahore.

[3] In his Basis of Claim [BOC], the Applicant alleges numerous ways in which he feels persecuted as an Ahmadi in Pakistan. In 1974, the Ahmadis were declared non-Muslims by the government of Pakistan. In 1984, the law has barred Ahmadis from identifying themselves as Muslims, preaching in public, or referring to their faith as Islam.

[4] The Applicant alleges several difficulties he had to face as a result of his Ahmadi faith throughout his life, stating that he could not practice his religion on a regular basis in Pakistan. He also mentions having been harassed and discriminated against by non-Ahmadis, thus preventing him from attending mosques from fear of violent attacks.

[5] On May 28, 2010, religious extremists attacked two Ahmadi mosques following Friday prayers in Pakistan, killing at least 98. The Applicant alleges having been present at one of the mosques during these attacks. Since then, the Applicant states having been traumatized by this day. It has been difficult for the Applicant to concentrate on his prayers while at the mosque, because he is constantly afraid that the mosque might be attacked.

[6] In January of 2011, the Applicant and his wife travelled to the United Kingdom [UK] to see their daughter and son-in-law. According to his BOC, the Applicant considered making an asylum claim with his wife, however, the couple returned to Pakistan after staying no more than one month in the UK.

[7] On December 22, 2015, the Applicant travelled to the United States of America [USA] to attend a wedding. He did not file an application for asylum in the USA.

[8] On January 22, 2016, the Applicant entered Canada and filed a refugee claim. The Applicant's uncle is a Canadian citizen who resides in Ontario.

III. The RPD's Decision

[9] On April 19, 2018, the RPD determined that the Applicant is not a Convention refugee or a person in need of protection and therefore rejected the claim. The determinative issues were identity and credibility.

[10] The RPD accepted, on a balance of probabilities, that the Applicant is a citizen of Pakistan and Ahmadi. The Applicant had put before the panel a number of documents, including a copy of his passport which clearly identifies him as Ahmadi. However, the RPD found that the Applicant was not a devout or practising Ahmadi in Pakistan and that "it is not of particular importance to this claimant's religious identity for him to practise and manifest his faith openly in Pakistan".

[11] In rejecting the claim, the RPD made a number of credibility findings and came to the following conclusions:

- The Applicant lied to the Canadian authorities on whether he had applied for asylum in the UK. On January 22, 2016, the Applicant was fingerprinted upon entry to Canada. It was found that the Applicant had filed two asylum applications in the UK dated February 15, 2011 and October 27, 2011, which were refused by the authorities respectively on March 4, 2011 and December 8, 2011.
- In his BOC narrative, the Applicant wrote that he and his wife only considered applying for asylum in the UK, but did not actually file an application.
- The Minister disclosed information obtained through a biometrics report indicating that the Applicant's passport was "likely altered to deceive the viewer into believing that the claimant left Pakistan on February 28, 2011, rather than January 23, 2012". The panel drew a negative credibility inference from the Applicant's decision to enter Canada with a fraudulent passport rather than correcting that false stamp "once in a safe country".
- Almost two years later, on February 15, 2018, the Applicant filed an affidavit admitting that he had falsely stated in his BOC narrative that he had not filed refugee applications in the UK. The Applicant explained that he lied to the authorities due to fear of being deported to Pakistan.
- The RPD found that there was a lack of documentation regarding the Applicant's UK asylum claims. The Applicant did not seek to obtain the paperwork from his UK lawyer or his present lawyer.
- The panel also found inconsistencies between the Applicant's oral and written evidence. The panel concluded that "it cannot rely on the claimant's written or oral evidence since

he is willing to lie to establish or embellish his claim”. Some of the incidents to which the Applicant testified were not mentioned in his BOC narrative or were not detailed enough. The panel considered such omissions from the BOC to be central elements of the claimant’s narrative.

- The RPD found that the Applicant was not a credible witness and “the country condition documents disclosed have no bearing on his personal circumstances”.

IV. Issues

[12] This matter raises the following issues:

1. Did the RPD err in its analysis of section 97 of the IRPA?
2. Did the RPD err in its assessment of the Applicant's credibility?

[13] The reasonableness standard applies to the RPD’s determinations of fact and mixed fact and law, such as its consideration of evidence, as well as its assessment of credibility (*Tariq v Canada (Citizenship and Immigration)*, 2015 FC 692 at para 9 [*Tariq*]; *Ye v Canada (Citizenship and Immigration)*, 2014 FC 647 at paras 17-18). “[T]he RPD is recognized to have expertise in assessing refugee claims and is authorized by statute to apply its specialized knowledge” (*Tariq* at para 10). Therefore, the Court should not substitute its own findings for those of the RPD if its conclusions fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]).

V. Relevant provisions

[14] Section 96 of the IRPA states:

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.

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.

[15] Subsection 97(1) of the IRPA states:

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

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

subject them personally	habituelle, exposée :
(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	B soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,	(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
(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,	(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) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	(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) 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.

VI. Analysis

[16] For the following reasons, the application for judicial review is dismissed.

[17] The Court finds that the RPD did not err in its credibility finding. The RPD identified credibility as one of the determinative issues in the assessment of the refugee claim. The onus was on the Applicant to support his claim (*Kahumba v Canada (Citizenship and Immigration)*, 2018 FC 551 at para 49). The RPD reasonably drew a negative inference from the lack of documentation regarding the Applicant's asylum claims in the UK. The RPD also determined that the Applicant failed to provide corroborative documentation to prove that he was taking medications and was suffering from "pressure and anxiety" following the attack at the mosques in 2010, as alleged. The RPD further noted that the Applicant did not submit "any written statement, letters of confirmation, or any other documentation from anyone to confirm that he attended prayer centers or a mosque, while in Pakistan". According to the RPD, this finding reasonably undermined the Applicant's credibility.

[18] While the RPD mentioned in its reasons that a claimant is presumed to tell the truth, it nonetheless found several inconsistencies and contradictions between the Applicant's BOC narrative and his testimony, thus giving the panel valid reasons to doubt his overall credibility. It is acknowledged that "[c]redibility findings go to the very core of the RPD's expertise and have indeed been described as the "heartland" of the RPD's jurisdiction" (*Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 15). Therefore, the Court agrees with the Respondent and finds that it was reasonable for the Board to reject the Applicant's explanations with regard to the inconsistencies found (*Lawal v Canada (Citizenship and Immigration)*, 2010 FC 558 at para 22 [*Lawal*]; *Sinan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 87 at para 10).

Contradictions, omissions, and discrepancies in the evidence of a refugee claimant has long been recognized as a basis for a finding

of lack of credibility (*Rajaratnam v Canada (Minister of Employment & Immigration)* (1991), 135 NR 300, 1991 CarswellNat 851 at para 14 (WL Can) (FCA); *Fang v Canada (Citizenship and Immigration)*, 2013 FC 241 at paras 16-18).

Bushati v Canada (Citizenship and Immigration), 2018 FC 803 at para 33.

[19] The Court notes that the Applicant's written submissions before this Court are similar to those that were submitted before the RPD. Having reviewed both parties' submissions, as well as the entire evidence on file, the Court is of the view that the Applicant is simply in a disagreement with the RPD's conclusions as his arguments take issue with the RPD's weighing of the evidence. The Court reminds that it is not its role to interfere on judicial review by reweighing the evidence before the RPD (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 61). In determining that the Applicant was not a devout Ahmadi, the RPD considered all the evidence on file, referred to the material evidence submitted by the Applicant, and clearly explained why it gave little or no weight to the material evidence before it, including the Applicant's donation receipts to the Jamaat.

[20] Based on the evidence and documents on file, the Court finds that the RPD did not err in concluding that the Applicant was not a credible and reliable witness. The RPD "may make credibility findings based on implausibility, common sense and rationality" (*Liu v Canada (Citizenship and Immigration)*, 2017 FC 736 at para 19). Having determined that the Applicant chose to continuously lie to the authorities, including the Canadian government, it was reasonable for the RPD to find that "it cannot rely on the claimant's written or oral evidence since he is willing to lie to establish or embellish his claim".

[21] The Court next finds that the RPD did not err in its analysis of section 97 of the IRPA. Having determined that the Applicant was not credible, it was reasonable for the panel to find, on a balance of probabilities, “that the claimant did not experience problems in Pakistan and is not likely to experience problems upon return to that country [Pakistan]”. Although the panel accepted the Applicant’s identity as Ahmadi, it was not convinced that the Applicant manifested his faith openly in Pakistan. Even after determining that the Applicant lacked credibility, the RPD considered the relevant country conditions evidence on Pakistan and found that it had “no bearing on his personal circumstances”.

[22] Even if the RPD identified the Applicant as Ahmadi, it did not believe the Applicant’s story, in relation with the objective evidence, that he would be persecuted in Pakistan as a result of his Ahmadi faith. “Such a general finding of lack of credibility extends to all relevant evidence emanating from the Applicant’s version” (*Lawal* at para 22). [Emphasis added by the Court].

73. Mere membership of a particular religious community will normally not be enough to substantiate a claim to refugee status. There may, however, be situations where, due to particular circumstances affecting the group, such membership will in itself be sufficient ground to fear persecution. [Emphasis added by the Court].

(Handbook and Guidelines on Procedures and Criteria for determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, UNHCR 1979)

[23] The Court is satisfied that the RPD “has carefully considered this evidence and all other information before it, including the post-hearing submissions received from counsel for the

claimant on March 2, 2018”. The documentary evidence does not contradict the RPD’s findings. The RPD made a reasonable assessment of section 97 of the IRPA.

[24] For the reasons above, the Court concludes that the RPD’s decision is reasonable and falls within “a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir* at para 47).

VII. Conclusion

[25] The Application for judicial review is dismissed. No question of general importance is certified and none arises.

JUDGMENT in IMM-2302-18

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

There is no question of general importance for certification. There is no order as to costs.

“Paul Favel”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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