Federal Court  Cour fédérale

Date: 20240117

Docket: IMM-6603-22

Citation: 2024 FC 72

Ottawa, Ontario, January 17, 2024

PRESENT: Madam Justice Azmudeh

BETWEEN:

SHAHZAD ASHIQ
NAZIA SHAHZAD
ASSAM SHAHZAD
ABISHAY SHAHZAD
ASHIR SHAHZAD

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

JUDGMENT AND REASONS

I. Overview

[1] Under section 72(1) of the *Immigration and Refugee Protection Act* [IRPA], the Principal Applicant, Shahzad Ashiq [the PA], along with Nazia Shahzad, Assam Shahzad, Abishay Shahzad and Ashir Shahzad [collectively, the Applicants], are seeking a judicial review of the rejection of their refugee claim by a visa officer under the Convention Refugee Abroad Class and

the Country of Origin Asylum Class. For the reasons below, I find the applicants have established that the Officer's decision is unreasonable and I am therefore quashing the decision.

[2] The Applicants are citizens of Pakistan and members of the Christian minority religion. They have been residing in Thailand as asylum seekers since 2014.

[3] The adult Applicants allege that they were teachers for Christian religious education at a Christian school. Their teaching included teaching of holy Christian songs, verses and Bible stories to the Christian students. This enraged a number of Muslim extremists who first threatened and then murdered the head of the school. The Applicants then started receiving threatening calls. They were also attacked during a school Christmas program in December 2013. The Applicants then went into hiding at the female Applicant's mother home until they left the country in April 2014. In September 2017 and while the Applicants were residing in Thailand, a group of Muslim extremists approached the PA's brother with questions about the Applicants' whereabouts. When he refused, they allegedly killed him.

[4] The Applicants allege the decision is unreasonable because the Officer solely and only focused on the credibility of past allegations of persecution and rejected their claim once they were found to lack credibility. The negative credibility findings included questioning the cause of the brother's death, the implausibility of Muslim extremists attending a Christian school, issues with their First Information Report, or the unavailability of the United Nations High Commissioner for Refugees [UNHCR]'s reasons for refusing the asylum claim. However, the Applicants submit that the Officer failed to consider or address all aspects of the claim, namely their undisputed profile as Christians from Pakistan and the risks associated with it. In short, they allege that what makes the decision unreasonable is the Officer's failure to analyse the serious

possibility of a forward-looking risk of persecution on a Convention ground, namely religion. The Officer did not engage with the Country conditions on Christians at all.

[5] The Applicants further allege that while the Officer's letter states their case was assessed under both the "Convention refugees abroad" and the "Country of asylum class" and that they did not meet the requirements of either class, the reasoning did not contain any explanation or analysis addressing one of the two categories. The Officer's silence would therefore leave one to speculate whether they even considered that the Applicants, as Christians who worked in Christian education, are affected by systemic human rights violations in Pakistan. This is part of the test applied in the "Country of asylum class". They argue that reasons that leave a significant legal question to speculation would lack transparency and intelligibility and are therefore unreasonable.

[6] The Applicants further allege that the Officer breached the principles of natural justice by not giving them a fair opportunity to address their concerns during the interview, in part because of problems with interpretation.

[7] The Respondent submits the Officer reasonably assessed the evidence to conclude that the Applicants are not members of the prescribed classes under the *Immigration and Refugee Protection Regulations* [IRPR] because they had not established a well-founded fear of persecution or that they were personally affected by civil war, armed conflict or a massive violation of human rights, under s. 147 IRPR. The respondent submits the Officer's reasons contain no shortcomings or flaws sufficient to warrant this Court's intervention on judicial review.

II. Decision

[8] I grant the Applicants' judicial review application because I find that the Officer's decision was unreasonable.

III. The Issues and Standard of Review

[9] I summarize the issues articulated by the Applicants as follows:

i) Was the Officer's decision unreasonable?

ii) Did the Officer reach the decision in a procedurally unfair manner?

[10] The parties submit, and I agree, that the standard of review applicable to refugee determination decisions is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*] at para 23; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1645 at para 13; *Shah v Canada (Citizenship and Immigration)*, 2022 FC 1741 at para 15). A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker" (*Vavilov* at para 85). The reviewing court must ensure that the decision is justifiable, intelligible, and transparent (*Vavilov* at para 95). Justifiable and transparent decisions account for central issues and concerns raised in the parties' submissions to the decision-maker (*Vavilov* at para 127).

[11] The issue of procedural fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*Canadian Pacific Railway Company*] at paras 37-56;

Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship), 2020 FCA 196 at para 35). The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paras 21-28 (*Canadian Pacific Railway Company* at para 54).

[12] Regarding questions of procedural fairness, as Mr. Justice Regimbald recently wrote in *(Nguyen v Canada (Citizenship and Immigration)*, 2023 FC 1617 at para 11:

> the reviewing court must be satisfied of the fairness of the procedure with regard to the circumstances (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 215 at para 6; *Do v Canada (Citizenship and Immigration)*, 2022 FC 927 at para 4; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific Railway*]). In *Canadian Pacific Railway*, the Federal Court of Appeal noted that trying to "shoehorn the question of procedural fairness into a standard of review analysis is… an unprofitable exercise" (at para 55). Instead, the Court must ask itself whether the party was given a right to be heard and the opportunity to know the case against them, and that "[p]rocedural fairness is not sacrificed on the altar of deference" (*Canadian Pacific Railway* at para 56).

IV. Analysis

A. *Legislative Framework:*

[13] Section 139 of the IRPR sets out the conditions under which foreign nationals who are sponsored for permanent residency under the "Refugee Classes" can be issued a visa. The two classes under which the Applicants were examined are set out in sections 145 and 147 of the IRPR respectively:

Immigration and Refugee Protection Regulations, SOR/2002-227 [IRPR]

Member of Convention refugees abroad class	Qualité
145 A foreign national is a Convention refugee abroad and a member of the Convention refugees abroad class if the foreign national has been determined, outside Canada, by an officer to be a Convention refugee.	145 Est un réfugié au sens de la Convention outre-frontières et appartient à la catégorie des réfugiés au sens de cette convention l'étranger à qui un agent a reconnu la qualité de réfugié alors qu'il se trouvait hors du Canada.
Member of country of asylum class	Catégorie de personnes de pays d'accueil
147 A foreign national is a member of the country of asylum class if they have been determined by an officer to be in need of resettlement because	147 Appartient à la catégorie de personnes de pays d'accueil l'étranger considéré par un agent comme ayant besoin de se réinstaller en raison des circonstances suivantes :
(a) they are outside all of their countries of nationality and habitual residence; and	a) il se trouve hors de tout pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle;
(b) they have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in each of those countries.	b) une guerre civile, un conflit armé ou une violation massive des droits de la personne dans chacun des pays en cause ont eu et continuent d'avoir des conséquences graves et personnelles pour lui.

Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]

Convention refugee	Définition de réfugié
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,	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) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	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) 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.	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.

Issue 1: Was the Officer's decision unreasonable?

[14] My decision to allow this Application for judicial review turns on a key issue raised by the Applicants surrounding the Officer's assessment of their undisputed residual risk profiles as Christians from Pakistan (*Kajenthiran v Canada (CIC)*, 2023 FC 1474). It is not for the Court to make findings of facts on whether the evidence supports the conclusion Christians from Pakistan face a serious possibility of persecution on their return to the country. This is the Officer's job. However, in this case, the Officer failed to engage with the Country conditions to analyse the Applicants' prospective risk based on their residual profile. This is a legal error that renders the entire decision unreasonable.

[15] It is undisputed facts that the Officer accepted that the Applicants are Christians from Pakistan. The Officer's decision and reasons, including what was noted in Global Case Management System [GCMS], contain no evidence of any engagement with, or knowledge of, the country conditions with respect to the treatment of the Christian minority in Pakistan, other than in the context of the plausibility findings that I will explain later in my reasons. In sum, the Officer failed to conduct any assessment of the Applicants' forward-looking risk based on their undisputed Christian identity.

[16] As a result, the Officer based their conclusion only and solely on credibility findings with respect to specific incidents of past persecution.

[17] The applicants submit, and I agree, that the Officer was required to determine whether there was independent evidence, untainted by the negative credibility findings, to support a forward-looking risk: *Pathmanathan v Canada (Minister of Citizenship and Immigration)*, 2012 FC 519 at para 56.

[18] As stated, the Officer did not dispute the Applicants' Christian identity but did not assess whether in light of the country conditions, this would expose them to a well-founded fear of persecution. This is while in rejecting the credibility of their claim, the Officer found it to be implausible that Christian teachers would take the risk to teach about Christianity to Christian students within the earshot of Muslims.

[19] At the hearing, the Respondent first argued that the Officer's duty was limited to the credibility findings of past acts of persecutions and there was no need to assess the prospective risk. When I asked whether they could refer to any authorities for their statement, counsel for the Respondent stated that in fact, the Officer had assessed the country conditions and the prospective risk in their findings. When I asked to refer to the specific parts of the record on the Officer's assessment, counsel referred to a reference on GCMS notes on March 30, 2021, during the file's pre-assessment that read as follows: "Admissibility Flags: Other: UNHCR Refugee Status: Not of Concern". When I asked to explain how this statement could shed light on either the country conditions or whether the officer assessed the forward-looking risk, counsel for the Respondent submitted that the Officer only needed to base their decision on the credibility issues of past persecution. My own assessment of the Record, together with this exchange with the Respondent's counsel, confirmed that the Officer had not engaged with the Applicants' residual

profile as Christians from Pakistan. In light of the Country conditions before the Officer, the decision can therefore not be reasonable.

[20] This case is analogous to this Court's decision in *Isaac v Canada (Citizenship and Immigration)*, 2022 FC 940 [*Isaac*]. In *Isaac*, the Officer had dismissed the application by Pakistani Christians based solely on credibility findings with respect to one incident. In light of the country evidence from the National Documentation Package (NDP), the Court held that the Officer still had to consider the Applicants' forward-looking risk as Christians to determine whether, irrespective of the credibility findings, their profile would place them within the classes in question.

[21] The Respondent argues that the Officer was not required to engage in a forward-looking risk assessment or additional country condition evidence because the Applicants' credibility concerns with specific acts of past persecution fully disposed of the application. Unlike *Isaac*, the Officer here made negative credibility findings about several aspects of the Applicants' narrative, including problems alleged to be indicative of their risk as Christians in Pakistan. It was therefore not necessary for the Officer to engage in a forward-looking risk assessment since he made a general non-credibility finding against the Applicants based on their inconsistent statements, improbable alleged events and documentary evidence issues.

[22] The Respondent submits that *Isaac* is distinguished because the Officer had relied on a single inconsistency between Mr. Issac's and his spouse's account of when they arrived home after an alleged abduction due to their Christianity. I do not agree with the Respondent's characterization of the case. The issue in *Issac* was very similar to this case: the Officer's failure

to engage with the forward-looking risk was what rendered the decision unreasonable and not the quantity of the credibility findings.

[23] The Officer's decision failed to engage with the conditions affecting the Christian minority in Pakistan. This affects not only the Convention Refugees Abroad Class, but also the Country of Asylum Class – which deals with widespread human rights abuses and requires a consideration of country conditions. For the Convention Refugees Abroad Class, the Officer had a duty to assess whether the Applicants are Convention Refugees, which includes the assessment of their forward-looking risk as Christians in Pakistan, irrespective of whether their account of past persecution was found to be credible. The Officer's reasons do not display any awareness of the relevant country conditions, when the evidence included facts such as the use of blasphemy laws to target religious minorities including Christians.

[24] In this case, the Respondent agreed that the Officer possessed expertise in knowing about the country conditions and the Court should presume that they considered it. This is consistent with this Court's finding in *Saifee v Canada (Citizenship and Immigration)*, 2010 FC 589 that general country evidence is assumed to be "before the Officer" prior to a decision being made. Therefore, there is no dispute between the parties that the Officer possessed relevant country conditions on the treatment of Christians.

[25] Both parties acknowledge that officers are not under a duty to cite specific country documents. However, they must still display their awareness of the relevant country conditions in their reasons. Both also agree that the country documents imply potentially relevant issues to a refugee claim for Christians. Both parties referred to country documents before the Officer on

the Record, and the Applicants also referred to additional publicly available documents expected to be known to the Officer, including those on the National Documentation Package of the Immigration and Refugee Board of Canada. At the hearing, the Respondent acknowledged that the Officer possessed country condition expertise and referred to their finding of implausibility that the Applicants would teach at a Christian school within the earshot of Muslims as evidence of that expertise.

[26] This Court recently held in *Anku v Canada (Citizenship and Immigration)*, 2021 FC 125 that an Officer's failure to make any "factual findings" on the country conditions in the country of reference results in a decision that lacks the coherence and justification required by *Vavilov*. Therefore, I agree with the Applicants that the Officer should have assessed the relevant country conditions in their analysis. This Court is not making a finding on how the country conditions should have been assessed by the Officer. However, the failure to assess the relevant documents on the condition of Christians in Pakistan in the context of the prospective risk renders the decision unreasonable.

[27] I find the Respondent's argument to be internally inconsistent in a manner that does not assist the Court to reach a different conclusion: on one hand, the Respondent agrees that the Officer possessed the expertise and the documents on Christians. To substantiate this, the Respondent also relies on the overall scenario of Applicant teaching religious education at a Christian school in Pakistan where Muslim children attended, or their participation at Christmas celebrations, unlikely to be true. However, the Officer limited their analysis to plausibility findings against their credibility and not in the context of the prospective risk. On the other hand, the Respondent submits that the credibility findings on key incidents of past persecution in the

circumstances of this case were sufficient and made it unnecessary to assess the forward-looking risk of persecution based on the Applicants' undisputed Christian identity. I disagree. This is not a case where the lack of credibility for past events would reasonably taint the forward-looking risk of persecution.

[28] By not assessing the Applicants' Refugee case with the proper legal test, i.e., whether there is a prospective risk of persecution upon their return based on their undisputed identity as Christians from Pakistan, the decision is unreasonable.

[29] The Applicants have also made submission on the unreasonableness of the Officer's findings with respect to the past persecutions. For example, the Officer's conclusion on the overall scenario of the adult Applicants teaching religious education at a Christian school in Pakistan where Muslim children attended unlikely to be true was not based on any evidence other than the Officer's unsubstantiated assumptions. The same logic was applied to the Officer's disbelief of the Applicants' attendance at a school's Christmas event despite the First Incident Report and alleged threats from the Muslim extremist persecutors. I agree that these credibility findings are based on implausibility of the Applicants' account. The case law on this issue was reviewed by this Court in *Zaiter v Canada (Citizenship and Immigration)*, 2019 FC 908, and the Applicants rely on the principles stated therein:

> [8] Adverse credibility determinations can be drawn from the implausibility of a claimant's account but the law is clear that such inferences are inherently dangerous and caution is required before they are drawn. The need for caution is obvious. Implausibility determinations based on common sense or common experience can be entirely erroneous when that "common sense" or "common experience" is grounded in social or cultural norms that may have no application to the case at hand [citations omitted].

> [9] It is important to remember that the ultimate question for the decision-maker is not whether the events in question occurred but whether the claimant is to be believed when he or she says that they did. Adverse credibility determinations based on implausibility should not be made simply on the basis that is it unlikely that things happened as the claimant contends. Individual experiences need not always follow the norm. Unlikely events can still happen. Something more is required before a claimant may be found not to be credible on the basis of implausibility alone. Importantly, this restriction on this type of fact-finding helps mitigate the risk of error if a claimant's account is rejected that an adverse credibility finding based on the implausibility of the claimant's account "should be made only in the clearest of cases, i.e. if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant" (emphasis added). As Justice Gleason put the same point in *Zacarias v Canada (Citizenship and Immigration)*, 2012 FC 1155 at para 10 [*Zacarias*], "this Court has often cautioned that such determinations are best limited to situations where events are clearly unlikely to have occurred in the manner asserted, based on common sense or the evidentiary record" (emphasis added). Thus, an allegation may be found to be implausible "when it does not make sense in light of the evidence before the Board" (*Zacarias* at para 11).

[30] I agree with the Applicants that the Officer relied on unreasonable plausibility findings with no basis in the evidence. However, since I have already made the finding that the Officer's decision is unreasonable for the reasons stated, I will not deal with the Applicants' other arguments, including on the other credibility findings or the breach of procedural fairness.

JUDGMENT IN IMM-6603-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted. The case is returned to the Visa Post to be decided by a different decision-maker.

2. There is no question for certification.

"Negar Azmudeh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6603-22
STYLE OF CAUSE:	SHAHZAD ASHIQ ET AL. V. MCI
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	JANUARY 15, 2024
REASONS FOR JUDGMENT AND JUDGMENT:	AZMUDEH J.
DATED:	JANUARY 17, 2024

APPEARANCES:

Samuel PLETT	FOR THE APPLICANT
Alexandre PETTERSON	FOR THE RESPONDENT

SOLICITORS OF RECORD:

DESLOGES CARVAJAL LAW GROUP-PROFESSIONAL CORPORATION Toronto (Ontario)	FOR THE APPLICANT
Department of Justice Canada Ottawa (Ontario)	FOR THE RESPONDENT