

Date: 20080213

Docket: IMM-2231-07

Citation: 2008 FC 182

Toronto, Ontario, February 13, 2008

PRESENT: The Honourable Barry Strayer

BETWEEN:

MOHAMMAD-RAHIM ZAZAY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Immigration and Refugee Board of Canada (Refugee Protection Division) (“Board”) dated May 4, 2007 which determined that the Applicant was not a Convention refugee or a person in need of protection.

Facts

[2] The Applicant was born in 1980 and is a citizen of Afghanistan. He lived with his parents in Kabul, working for his father in their convenience store. According to him his step-uncle was Bidar Zazay, a former Muhajadeen who still retained a militia. He had become a Member of Parliament and moved to Kabul. In May, 2006, according to the Applicant, his step-uncle sent militia men to

his father's house and evicted the Applicant and his family from that house, the step-uncle claiming that it was his. The Applicant says that he and his father tried to remedy this situation by filing a petition in court and also by filing a complaint with a human rights organization, although he could produce no documentary evidence of these proceedings. In both cases, the proceedings were unsuccessful. The institutions appeared to take no action. The Applicant says that after these attempts he was forcibly taken to his step-uncle's house where his step-uncle threatened to kill him for having filed these claims. The Applicant left Afghanistan a few days later, arriving in Canada on January 13, 2006 whereupon he filed a refugee claim. He gave sworn evidence in an expedited interview concerning his claim. The matter went to a full hearing and he gave evidence again. In its decision the Board said it had many credibility concerns and that the claimant had not established a well-founded fear of persecution in Afghanistan. It therefore concluded that the claimant is not a Convention refugee and is not a person in need of protection.

Analysis

[3] While the Applicant asserts in these proceeding that the Board made various errors of law, the arguments presented really amount to complaints against the Board's findings of fact and credibility. The standard of review for decisions of this nature is patent unreasonability: see e.g. *Harb v. Canada* 2003 F.C.A. 39 at para. 14.

[4] I have concluded that several of the Board's findings of fact and credibility are patently unreasonable. First, the Board finds that the Applicant has not proved the family relationship between him and Bidar Zazay because he has produced no documents. He has, nevertheless, sworn to this relationship several times and no evidence was identified which challenged his assertion.

When an Applicant swears the truth of certain allegations there is a presumption that those allegations are true unless there are reasons to doubt their truthfulness: *Maldonado v. M.E.I.* [1980] 2F.C. 302 (CA). There is nothing intrinsically unbelievable in the Applicant's testimony that Bidar Zazay is his step-uncle.

[5] The Board apparently disbelieved that Bidar Zazay was at the relevant time a Member of The General Assembly of Afghanistan. The Applicant produced translated printouts from the Afghanistan parliamentary web site showing Bidar Zazay as a member of the finance committee of the General Assembly and as a member of the General Assembly from Kabul. The Board instead focused on its own documentation which included a list of members of the Afghanistan cabinet and Bidar Zazay was not among the members. Nor was the Finance Minister named in that list a member of the finance committee. The Board found in this a contradiction. However, the Applicant did not allege that his step-uncle was a member of cabinet but only a member of the General Assembly. There was no evidence to suggest that a member of the finance committee would automatically be a cabinet minister or that the Minister of Finance would be a member of the finance committee of the General Assembly. It was therefore unreasonable for the Board to find on this evidence that the Applicant's version was not credible.

[6] In his personal information form, the Applicant stated that after he had filed the claims in court and with a human rights organization, his step-uncle threatened to kill him. In his subsequent testimony the Applicant said that he was forcibly taken to his step-uncle's home where his step-uncle threatened to kill him. The Board found in this an inconsistency that made the whole

allegation that the step-uncle had threatened to kill the Applicant of doubtful credibility. I believe that this was an exaggerated conclusion that was not reasonable.

[7] The Board disbelieved the Applicant in respect of the complaints to the court and a human rights organization as he had no documentary evidence for them. The Applicant explained that there were no copying facilities at the institutions in question and it appears to me unreasonable to assume that such documentation as we might assume to be normal is available in the current circumstances of Afghanistan.

[8] The Board also made this curious finding:

“Further, the claimant’s own testimony shows that the authorities took his complaint seriously against a person who the claimant testified is a former Muhajadeen and now a Member of Parliament and that the authorities took action in this regard, which shows that the authorities were not influenced by this individual.”

In fact the sworn evidence of the Applicant is quite to the contrary, namely that nothing was done by either institution and he was advised on behalf of the court that proceedings could not be taken against his step-uncle because he was now so important. This was an unreasonable conclusion by the Board.

[9] This is not a case where I can say that notwithstanding these patently unreasonable conclusions there was enough other evidence to justify the Board’s conclusion. I must therefore find the decision of the Board to be patently unreasonable. This is of course not to say that the Applicant’s claim is fully convincing and that everything he says is credible. I simply do not think the Board has demonstrated in its reasons a sound basis for rejecting his credibility.

Disposition

[10] I will therefore set aside the decision and refer the matter back to the Board for reconsideration by a different panel. Counsel did not suggest any questions for certification and none will be certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the decision of the Immigration and Refugee Board of Canada (Refugee Protection Division) of May 4, 2007 be set aside and the matter referred back to the Board for reconsideration by a different panel.

"B. L. Strayer"
Deputy Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2231-07

STYLE OF CAUSE: MOHAMMAD-RAHIM ZAZAY

v.

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 11, 2008

**REASONS FOR JUDGMENT
& JUDGMENT :** Strayer, D.J.

DATED: February 13, 2008

APPEARANCES:

Randal Montgomery
Jamie Todd

FOR THE APPLICANT
FOR THE RESPONDENT

SOLICITORS OF RECORD:

Rodney Woolf
Barrister and Solicitor
Toronto, Ontario
John H. Sims, Q.C.
Deputy Attorney General of Canada
Toronto, Ontario

FOR THE APPLICANT

FOR THE RESPONDENT