

Federal Court



Cour fédérale

Date: 20100122

Docket: IMM-2720-09

Citation: 2010 FC 60

Ottawa, Ontario, this 22nd day of January 2010

Before: The Honourable Mr. Justice Pinard

BETWEEN:

AYAZ MALIK

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION CANADA**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of Martin Ginsberman of the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated April 24, 2009, wherein the Board rejected the applicant’s claim for refugee protection finding that the applicant is neither a “Convention refugee” nor a “person in need of protection” pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[2] The applicant based his claim on a fear of persecution from certain people in Pakistan on the basis of his membership and activism with the Pakistan Peoples Party (“PPP”). He alleges that there is an outstanding warrant for his arrest for defaming a political party leader.

[3] At the outset of the hearing, as it appears from the decision under review, the Board set out the key issues for the hearing, namely, the applicant’s credibility, the well-founded fear of persecution, and the availability of an Internal Flight Alternative (“IFA”) in Islamabad, Pakistan. In the decision, the Board found the applicant not to be credible and that there was no well-founded fear. The Board did not make a determination as to the availability of the IFA.

[4] In its decision, the Board wrote the following:

Mr. Malik presented a Domicile Certificate issued on November 29, 1998. I have reason to doubt the authenticity of this document. The photograph on this certificate was taken against a blue background. I disclosed my specialized knowledge that the official background for photographs on this type of document is red. The claimant was asked who took this photo and whether they knew it was for a Certificate of Domicile. He testified that a professional photographer took the photo and he did not know that it would be for such a certificate. I can accept that a professional photographer took the photo and he might not know why it was needed. I cannot accept that a government clerk would affix a photo with the wrong coloured background on a valid government certificate. One explanation is that this document may be genuine but illegally obtained. There is evidence that false documents are easily obtained in Pakistan (PAK102657.E). I give this document no weight because the affixed photograph does not meet the government standard. That the claimant proffered one false document impugns his overall credibility.

We are told that the document was issued because the claimant needed it to register for college. According to his sworn information in his Personal Information Form (PIF) (Question 6(c)), he entered university in 2001. In 1998, he would have been 14 years old. In

sworn testimony, he said he was 18 when he entered college. When the contradiction about his age was pointed out to the claimant, he said that the reason this document was obtained was because he needed it for his matriculation. This contradicts his original answer that he needed it for college admission. I make a negative finding about his credibility because of the change in his oral testimony.

[5] It appears, therefore, that the primary negative credibility finding was that the applicant supplied a Domicile Certificate which had been issued on November 29, 1998. The Board stated in its reasons that “[t]he photograph on this certificate was taken against a blue background” and according to the Board’s disclosed specialized knowledge, government documents should include a photograph on a red background. The Board attached no weight to this document and deemed the document was a forgery. Consequently, the Board held that by providing a forged document the applicant’s overall credibility was impugned.

[6] It also appears that the applicant provided contradictory evidence regarding the purpose of this document: initially the applicant stated that it was required for registration with a college, and then the applicant asserted that he needed the certificate for matriculation. The Board found this contradiction undermined the applicant’s credibility.

[7] The determinative issue for the Board, which accepted that the applicant was a member of the PPP, was whether the applicant had the sufficient profile of a PPP member to cause him to be attacked as alleged. The applicant had submitted two letters written in English, by persons within the Pakistan Student Federation and from the Central Executive Committee of the PPP. This documentary evidence was tendered to prove that he was an activist within the PPP and was a

known leader. They were written in poor quality English and purported to be from persons with university level education who were trained in English, the second official language of Pakistan. The Board found that it was implausible that such persons would have had tolerance for errors in their written English. In light of the documentary evidence suggesting that documents are easily forged in Pakistan, the Board held that these documents were likely forgeries. In coming to this determination, the Board appears to have taken into account its earlier finding that the applicant had submitted a forged Certificate of Domicile.

[8] The Board found that it was improbable that the alleged events of February 2, 2007, where he said he was chased by police and had to go into hiding, occurred for a number of reasons. First, the Board held that it was improbable that the PPP would have distributed leaflets 200 yards from a police station. When asked about the number of leaflets the applicant was asked to distribute, the applicant guessed it was around 200 or 250. The Board found it was implausible that the applicant would not have known the exact number of leaflets he was asked to distribute. In addition, the Board noted that the applicant had difficulty describing the physical appearance of the police officers who chased him that day. He provided inconsistent and contradictory testimony in regard to his placement at the roundabout and his distance from the police station when he drew a sketch of the area. In light of the poor quality of evidence, the applicant could not have handed out leaflets as described, according to the Board.

[9] In support of his account of February 2, 2007 the applicant had produced a letter from a lawyer his mother retained which affirmed the existence of an outstanding warrant for the applicant's arrest. The applicant also produced the First Information Report of the February 2, 2007

incident and a copy of the warrant. The Board dismissed all three documents because they referred to the events of February 2, 2007 which it had already determined had not occurred, on a balance of probabilities. Again, the Board relies on its knowledge that forged documents are easy to obtain in Pakistan. Specifically in regard to the lawyer's letter, the Board noted that the lawyer did not make any mention of court proceedings or any current attempt by the authorities to locate the applicant. The Board held that it was reasonable to conclude that if the authorities were still interested in the applicant the lawyer's letter would have included this information.

[10] The applicant's principal argument is that the Board made a gross error when providing its reasons for dismissing the applicant's Certificate of Domicile. The Board states clearly that the background of the photo was blue and should have been red. However, the photograph provided to the Board on the Certificate of Domicile was on a red background. This is not disputed by the parties. The applicant asserts that the Board made a fundamental error in assessing the evidence. The error led to a general negative credibility finding which influenced the Board's subsequent findings with respect to the likelihood of forgery of other documents. For this reason alone, the decision should be quashed and the matter sent back to the Board for redetermination.

[11] However, the respondent argues that the Board simply mixed up the colours, referring to blue when it meant red when setting out its reasons. It was clear from the transcript that the Board was always concerned with the fact that the background was red and should have been blue. What the applicant refers to as a gross misapprehension of the facts is simply a clerical error, according to the respondent.

[12] The Minister has set out a portion of the transcript where the Board member announced that the background colour should be blue and not red for Pakistan government documents. I agree with the Minister that in light of the transcript the written reasons contained an error and it is best categorized as gross inattention.

[13] When confronted with the Board's specialized knowledge that Pakistan official government documents are to be issued with a photograph on a blue background, the applicant asserted that the requirements for Certificates of Domicile are different. The applicant did not provide any other evidence to refute the Board's noted specialized knowledge. The Board found this evidence was insufficient to refute its understanding of the official background colour. The document was likely a forgery and it was reasonably open for the Board to find it impugned the general credibility of the applicant.

[14] As for the Board's appreciation of all the other facts, including the inferences drawn from them, I am not satisfied, after reviewing the evidence and hearing counsel for the parties, that it was unreasonable. Although I have some reservations with the inferences taken by the Board with regard to the improbability of the February 2, 2007 event which forms the basis of this claim, this Court must not interfere with a decision when it falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (see *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190). The Board's conclusions were open to it on the face of the record and, therefore, the application for judicial review is dismissed.

JUDGMENT

The application for judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board, dated April 24, 2009, rejecting the applicant's claim for refugee protection is dismissed.

“Yvon Pinard”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-2720-09

STYLE OF CAUSE: AYAZ MALIK v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION CANADA

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: January 13, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** Pinard J.

DATED: January 22, 2010

APPEARANCES:

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