Federal Court Cour fédérale

Date: 20100226

Docket: IMM-4500-09

Citation: 2010 FC 229

Ottawa, Ontario, February 26, 2010

PRESENT: The Honourable Justice Johanne Gauthier

BETWEEN:

BASHARAT-UL-ZAM MALIK

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA

Respondent

<u>REASONS FOR ORDER AND ORDER</u>

[1] Mr. Malik seeks judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board (RPD) who denied his claim as a convention refugee or person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, R.S.C. 2001, c. 27 (the *Act*) because he had an internal flight alternative (IFA) in Pakistan.

[2] Mr. Malik, a citizen of Pakistan, arrived in Canada on October 2, 2007 with a false passport and Canadian visa. He filed his claim for refugee protection the next day. His claim is based on an alleged fear of persecution due to his religion (Shi'a). The applicant testified that he had been physically assaulted and had received threats from a local religious cleric (Moulvi Fazal Din) who later filed a false charge of blasphemy against him, a crime punishable by not more than three (3) years in jail or a fine or both,[1] and who issued a fatwa against him. Also, as a result of the aforementioned false charge, a warrant of arrest was issued by the local Court and directed to the local police where the cleric had sympathizers. The applicant testified that he fears the local police and the Sipah-e-Sahaba Pakistan (SSP), a now outlawed organization that is still a powerful underground group with a large membership including Moulvi Fazal Din (a local leader). It is also worth noting that Mr. Malik has a large family in Pakistan, including his wife and children. They are all Shi'a and live in the same area as the applicant did. They have not been persecuted because, contrary to the applicant, they were not actively involved in organizing religious gatherings.

[3] The RPD found the applicant to be credible and accepted the central elements of his story. However, it concluded that although the evidence indicates that state protection is not available to Mr. Malik in his village or in his district and would not likely be available if he returned there, the applicant had not demonstrated that he could not move to, and live in, a large city within Pakistan such as Karachi where there would be no serious possibility of persecution.

[1] There is no evidence as to the customary sentence actually imposed for such charge.

[4] Mr. Malik does not allege that the RPD made an error in the legal test it applied to determine if an IFA was available to him. Rather, he argues that the decision maker erred in its factual findings and that it based its conclusion on unreasonable inferences which vitiates the whole decision.

[5] It is well settled, and the parties are agreed, that in respect of such issues, the Court should apply the standard of reasonableness: *Rueda c. Canada (Ministre de la Citoyenneté et de l'Immigration)*, 2009 CF 828, [2009] A.C.F. no 937 (QL) at paragraph 58.

[6] This standard requires the Court to inquire into the qualities of the decision and to be concerned with the existence of justification, intelligibility and transparency in the decision making process. The Court must also determine whether the decision falls within a range of possible acceptable outcomes: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, 329 N.B.R. (2d) 1 at paragraph 47.

[7] I shall deal first with the alleged error in respect of the applicant's fear of the SSP throughout Pakistan. The RPD's finding that there was a lack of state protection in the applicant's village was derived from the applicant's evidence and testimony, not documentary evidence. The applicant has not pointed to any critical piece of information from the documentary evidence that would call into question the RPD's finding that: "[a]lthough SSP exists throughout the country, I am not persuaded that its members in Karachi would be on the lookout for a small rural landlord from

the Punjab, against whom a relatively minor Sunni extremist, alleged to be an SSP member, had issued a fatwa […]".

[8] Furthermore, the RPD is presumed to have examined all of the evidence and need not mention and discuss every such document. To the extent that the documentary evidence explains that the SPP still operated throughout Pakistan, certainly the RPD acknowledged this in the above mentioned passage.

[9] The parties are agreed that there are about 5,000 fatwa posted online every day in Pakistan, this is in addition to those that are only publicized locally. The applicant testified that the fatwa in this case was only publicized locally through announcements on the public address system from the cleric's madressa (his school), through local posters and by marking the door of his house with a cross.

[10] The applicant also says that the RPD failed to give proper weight to the danger that comes with the issuing of a fatwa and points to documentary evidence discussing their deadly effect. However, the documentary evidence also clearly indicates that the weight of a fatwa depends on the stature of the person making it. It is exactly on that basis that the RPD chose not to give much weight to the danger posed in Karachi by the fatwa issued by the local cleric.[2] I am not convinced that this finding was unreasonable.

---

[2] This finding should also be put in context, as mentioned, Mr. Malik's family has not been persecuted by this cleric and there is no evidence as to whether the said cleric, whose goal was evidently to put an end to the applicant's religious activities, would still have an interest in pursuing him outside of his district.

[11] Mr. Malik also argues that the RPD failed to consider that he would have to use his national identity card (NIC) on many occasions if he lived in Karachi and that this would make it easy for the Karachi police to discover the existence of the outstanding warrant and to alert his persecutors – which include the local police in his district – to his presence in Karachi. He also says that the RPD based its conclusion on an unwarranted assumption that the local police records (FIR and warrants) which are issued manually are not thereafter included in a computerized system that would make it easy for the local police to provide information about him.

[12] It is evident that the RPD found that there was insufficient evidence to objectively conclude that the subjective fear of the applicant of being investigated by the Karachi police was well founded. Mr. Malik testified that he fears being investigated by the Karachi police who would likely suspect him of being a member of the SSP and/or a terrorist upon noting that the permanent address on his NIC is in Punjab. In that respect, the RPD noted that "[n]o evidence was adduced to suggest that the Karachi police would have such suspicions [that he is a major criminal or suspected terrorist] beyond the statement that the claimant is Punjabi. Given the fact that the large majority of Punjabis are not active terrorists or major criminals, I find it implausible that the mere fact of being from Punjab would be of significant concern to Karachi police."

[13] As mentioned by the RPD, Karachi is a major metropolis with a population of several million people – although the applicant's counsel said that he had no idea how large the city was, it

is easy to ascertain that it is in fact, one of the largest, if not the largest, cities in the world. It is in that context that the RPD noted that:

> Given the manual hand written system of lodging complaints and warrants in Pakistan and the over 170,000,000 citizens, it was implausible that the police in Karachi would expend much effort getting local village police in the Punjab to <u>manually</u> go through their files to see if there was any information on the claimant unless the said Karachi police had suspicions that the claimant was a major criminal or suspected terrorist.
>
> [Emphasis added.]

[14] Much was said at the hearing about the use of the word “manually” in the last sentence referred to above. The Court cannot agree that this word has the significant impact attributed to it by the applicant. In my view, the finding that it was implausible that the police in Karachi would expend much effort getting local village police in Punjab to provide them with information about the claimant, was implausible for reasons explained above, whether the local search was done by hand or on a local computer system (also a rather big assumption considering the information available as to how the system works and the fact that when the national card system was computerized, this fact was documented in the binder on Pakistan used by the RPD). In his testimony, Mr. Malik only said that the Karachi police could call or fax the local police. He did not know about computer systems used by the police.

[15] Like the RPD, the Court cannot simply assume, as suggested by the applicant’s counsel, that there exists a level of police cooperation and computerization of police information such that there is a serious possibility that this particular applicant would be apprehended in Karachi and sent back

to his village or that the local police would come to Karachi to arrest him themselves. There is simply no evidence in that respect. The Court notes that in *Navarro v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 358, 169 A.C.W.S. (3d) 626, [2008] F.C.J. No. 463 (QL) Justice Yves de Montigny noted at paragraph 21 that in Mexico (where there are several cities which have over one million inhabitants) there is very little coordination between Mexican police forces and that the applicant had done no more than make vague allusions to the risk of being found which arose from the computerization of data in a modern country without providing any actual concrete evidence.

[16] The applicant had been advised well in advance of the hearing that the existence of an IFA was an issue in his case. This was again reiterated at the beginning of the hearing. He presented no documentary evidence (nor did he seek permission to do so later) to support his subjective fear of being investigated and sent back to his village from anywhere in Pakistan. The applicant did not even say, during his testimony, that the police forces are known to cooperate in similar circumstances or to have good computer systems that enable them to execute warrants for what appears to be a relatively minor offence throughout Pakistan. In the circumstances, the Court can find no reviewable error in this finding.

[17] Finally, the applicant, in his written submissions (not raised during the hearing), states that the RPD erred in comparing Karachi to Montreal and in reaching the conclusion that because the applicant was willing to relocate to Montreal it was not unreasonable to expect that he could relocate in another large city in Pakistan. In that respect, it was noted that his large family is well-off

and would be in a position to provide financial support were he to relocate to Karachi or another large urban centre.

[18] While there is no doubt that there are many significant differences between Montreal and Karachi, the Court is not satisfied that the RPD made an unreasonable inference that if the applicant had the ability to voluntarily relocate to a large city halfway around the world, he must at least have the same ability to relocate within Pakistan.

[19] In conclusion, the decision is brief but cogent. The conclusion reached was within the possible acceptable outcomes based on the evidence before the RPD.

[20] The application is dismissed.

[21] The parties did not seek certification of any question and the Court finds that this case turns on its own facts.

ORDER

THIS COURT ORDERS that:

[1] The application is dismissed.

"Johanne Gauthier"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4500-09
STYLE OF CAUSE:	BASHARAT-UL-ZAM MALIK v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA
PLACE OF HEARING:	Montreal, Québec
DATE OF HEARING:	February 24, 2010
REASONS FOR ORDER AND ORDER:	GAUTHIER J.
DATED:	February 26, 2010

APPEARANCES:

Mr. Eric Freedman	FOR THE APPLICANT
Ms. Patricia Nobl	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Brownstein, Brownstein & Associates Montreal, Québec	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada Montreal, Québec	FOR THE RESPONDENT