

Federal Court



Cour fédérale

Date: 20120425

Docket: IMM-6896-11

Citation: 2012 FC 483

Ottawa, Ontario, April 25, 2012

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

ALI RAZA ABID

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], for judicial review of a decision of a member of the Refugee Protection Division of the Immigration and Refugee Board [Board] who determined that the applicant was neither a Convention refugee nor a person in need of protection within the meaning of sections 96 and 97 of the IRPA.

[2] The applicant has failed to convince me that the impugned decision, which is almost exclusively based on credibility findings, does not fall “within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v New Brunswick*, [2008] 1 SCR 190 at para 47; *Canada (Citizenship and Immigration) v Khosa*, [2009] 1 SCR 339 at para 59). These are my reasons for so finding.

FACTS

[3] The applicant is a 25 year old citizen of Pakistan, from the city of Vehari in the Punjab province. He alleges that while studying at the Bahauddin Zakariya University he was approached, harassed and assaulted by members of the Muslim Student Federation (MSF) – which is allegedly the student wing of the Muslim League Quaid-e-Azam (MLQ) and also related to a terrorist group called Shabab-e-Milli – because of his refusal to join the MSF. He also alleges that one of his friends who had also refused to join the MSF was hit by a car by MSF members and quit the college shortly after.

[4] The applicant alleges that on January 18, 2007, he became involved in an altercation with the brother of Tahir Iqbal Chaudhary, a member of the provincial assembly for the Vehari district who was also a member of the MLQ. The applicant alleges that after this incident, during which his left leg was broken, his family and himself moved to another location in the city and the applicant never went back to college except for his exams. Also, in January 2007, the applicant’s father wrote a letter to the president of the local traders association (Anjuman Tajiran) to solicit their intervention with Tahir Iqbal in order to cease the harassment against the applicant. During the month of March 2007, the applicant received a letter threatening his life for having opposed the MSF in the student

elections. His father was also threatened and insulted when he attempted to meet with Tahir Iqbal to find out whether he was involved in the writing of the letter.

[5] Before the Board, the applicant testified that two days after this incident he was arrested by the police at their family jewellery shop where the applicant worked and was kept under detention for seven to eight hours. During detention, the applicant was told to stop disturbing Tahir Iqbal. The applicant allegedly stopped working after this incident. The applicant also testified that he was arrested by the police on another occasion in May 2007 after his father attempted again to seek help from the traders association. This time the applicant was detained for three to four hours and his father had to pay a bribe to the police to release him from detention. The applicant allegedly definitely quit work thereafter. However, he continued receiving anonymous phone calls at home and written messages threatening his life.

[6] The applicant also testified that on the night of February 12, 2008, an unknown person came to their house asking for the applicant. When the applicant's father told him that he was not at home, the person became violent and fired bullets at the house before running away. His father lodged a complaint at the police station but no police report was registered that day. By that time, his father contacted an agent and plans were made for the applicant to come to Canada and claim refugee protection. The applicant left Pakistan on July 9, 2008 and arrived in Canada on April 11, 2010, after a long travel via Dubai, Brazil, Venezuela and a 21 month transit in the Dominican Republic where no claim for refugee status was made.

DECISION UNDER REVIEW

[7] The Board found that because of the lack of credibility and plausibility with respect to determinative issues of the applicant's claim, the applicant did not establish that he has a well-founded fear of persecution. Moreover, the Board found that a reasonable Internal Flight Alternative (IFA), namely Karachi, existed for the applicant.

[8] The Board focused much of its reasons on the issue of credibility, finding that the applicant's evidence, including his oral testimony, was not credible. It noted several major concerns with respect to the inconsistencies and contradictory declarations reflected in the responses furnished by the applicant in his Claim for Refugee Protection form completed upon his arrival in Canada [Claim Form], as compared with his Personal Information Form (PIF) narrative, dated May 6, 2010, and his testimony at the hearing before the Board. In general, the Board found the pre-PIF information to be more candid and less circumspective; therefore more credible.

[9] These inconsistencies or contradictions can be summarized as follows:

- First, the Board noted that the applicant reversed the chronology of the events described in his Claim Form, as compared with the PIF narrative. In response to question 43 of the Claim Form, the applicant stated that his problems began with a group of boys in his neighbourhood (including the brother of Tahir Iqbal) and were later extended to members of the MLQ political party, while in his subsequent response to question 31 of the PIF he states that his problems started at the university with the MSF and were carried over to his neighbourhood later when he was attacked by the brother of Tahir Iqbal and his friends.

- Second, the Board found the applicant's statement in response to question 24 of the Claim Form according to which he continued to work in the family jewellery shop until July 2008 to be more credible than what he testified at the hearing, i.e. that he stopped working after the alleged threats to his life during the Month of May 2007. The applicant explained that he did not want to declare to immigration authorities that police was involved in those incidents and that he was detained. The Board rejected this explanation on the basis that in response to question 43 of the Claim Form the applicant did indicate that police became involved with the incident during that time and refused to register his complaint. The Board also found it implausible that the applicant stayed at home and did not work for 14 month, from May 2007 to July 2008, because of his fear for his life.
- Third, the Board noted that the applicant's testimony according to which he wrote his final exams during the months of November and December 2006 and that his family moved to another location after the incident of January 2007 is contradicted by his PIF narrative where he stated that he wrote his exams after the move. The Board added that this testimony is also confused by the applicant's response to question 25 of his Claim Form where he stated that his family moved to Sharqi in October 2006.
- Fourth, the Board found that in view of the evidence the applicant's alleged persecutors were aware where the applicant's family had moved to by no later that May 2007 since threats were allegedly being received on the residential telephone. The Board found that the applicant would not have continued to live in the same place until July 2008 if he had subjective fear for his life. The Board stated that knowing where the applicant lived and worked the alleged persecutors could have killed him during this time if that was their intention.

- Fifth, the Board noted that contrary to what he alleged afterwards, in response to question 37(c) of his Claim Form the applicant stated that he has never been detained by the police or by any other authority. The Board concluded that the applicant had not been detained in Pakistan either in March or in May 2007.

[10] The Board also gave little to no probative value to certain documentary evidence submitted by the applicant:

- The Board noted that the admission/discharge certificate from City Hospital Vehari, dated January 18, 2001, as well as the treatment bill and the letter from the administrator of the hospital, indicate that the applicant sustained a broken leg but there is no indication of the cause of such fracture or of any other kind of injury caused to the applicant during the altercation.
- The Board gave no credence to the letter dated January 3, 2007 that the applicant's father allegedly addressed to the president of a local traders association after the incident of January 18, 2007. The Board found the letter to be a fabrication because it predates the incidents described by the applicant, which started on January 18, 2007 according to the Claim Form (response to question 43) and the PIF narrative (response to question 31).
- On the basis of this finding, the Board also refused to give weight to two other letters from the applicants' father; namely an "application for registration of a case against unknown accused", dated February 12, 2008, and an undated statement from the applicant's father in which he states that his son's life is in danger in Pakistan.

- The Board also rejected another undated letter from the applicant's brother in which he states that he was beaten by five people including the brother of Tahir Iqbal and that the police refused to intervene because the accused are in the ruling party. The Board gave no credence to this letter which assumes that Tahir Iqbal was responsible for the beating and that the police refused to take any action while the applicant's brother did not file a complaint.

[11] This now brings us to the existence of an IFA in Karachi. The applicant testified at the hearing that the MLQ, with which the MSF is associated and which is linked to a criminal gang, Shabab-e-Milli, would be able to locate him in Karachi because the Shabab-e-Milli is active all over Pakistan and Tahir Iqbal would be still looking for the applicant. However, the Board found it implausible that Tahir Iqbal would be seeking to relocate the applicant and would want to kill him because of his refusal to join the MSF five years ago or because the applicant's father sought help from the traders association in May 2007. Furthermore, the Board noted that its examination of the most recent National Documentation Package on Pakistan has not indicated any reference to the alleged criminal gang with supposed connections all over Pakistan. Counsel for the applicant did not refer the Board, or the Court in the present application for judicial review, to any documents corroborating the applicant's allegation with this respect.

ANALYSIS

[12] The applicant takes issue with all of the Board's various credibility findings as well as its determination with respect to the availability of an IFA in Karachi. The sole issue raised in this

judicial review is thus whether the Board's findings of fact are supported by the evidence and are reasonable in the circumstances.

[13] The applicant contends that the Board member placed an overabundant amount of weight on the statements contained in the Claim Form which, according to the applicant, contains incomplete information provided by the applicant while he was in detention, and has been editorialized by an immigration officer. The applicant is of the view that his PIF narrative and his testimony, which corroborate one another, should have been given more weight by the Board.

[14] The applicant also contends that the different sequence of facts in his PIF narrative and testimonial evidence was not reasonable grounds to impugn his credibility because this was due to the order in which the questions were posed in the questionnaire. He explains that the substance of his claim was not set out in his Claim Form because he was specifically told by the immigration officer to be brief in his responses and that part of what he said did not fit in the limited space of the form.

[15] However, as underlined by the respondent's counsel at the hearing before the Court, the inconsistencies or contradictions noted by the Board in his decision are major and concern central elements of the claim such as the cause of his problems and when they started, the dates when the applicant moved, stopped to work, whether he was arrested or not by the police, etc. In such circumstances, the Board was certainly entitled to consider the statements in the Claim Form as it is apparent that the negative credibility findings are not just based on minor or trivial variations or omissions (*Chavez v Canada (Citizenship and Immigration)*, 2007 FC 10 at paras 13-15; *Garay*

Moscol v Canada (Citizenship and Immigration), 2008 FC 657 at paras 21-22; *Hidalgo Carranza v Canada (Citizenship and Immigration)*, 2010 FC 914 at paras 20-22).

[16] Moreover, I do not agree with the applicant that the reversed order of facts was due to the order in which the questions were asked. The Board did not raise a problem of chronology of events. It rather questioned the fact that the applicant did not start with what was most important in his claim, namely his problems with the student organization, when asked why he was asking protection in Canada. In the Court's view, this was a reasonable finding. Furthermore, the explanation given by the applicant with respect to why he gave shorter answers at the port of entry was considered and rejected by the Board. This was also reasonable and certainly within the Board's purview.

[17] In the end, it is the Court's view that the applicant simply disagrees with the findings of the Board and now puts forward various reasons as to why the Court should also disagree with the Board's findings of fact. It should be remembered that the task of the Court in a judicial review is not to substitute its view for that of the Board on credibility issues: *Juarez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 890 at para 14.

[18] The applicant contends that the Board cannot blame him for not having mentioned either at the hearing or in his PIF narrative that he sought protection from the police while he did state so in his Claim Form. The applicant submits that the Board should have given him an opportunity to respond to its concern that no police protection was sought. However, the jurisprudence is to the effect that "the duty of fairness does not require that the applicants be confronted with information

which they themselves supplied” (*Azali v Canada (Minister of Citizenship and Immigration)*, 2008 FC 517 at para 26; *AYMD v Canada*, 2009 FC 1232 at paras 29-30). I agree with the respondent that even if the applicant did at some point during the hearing state he sought police protection, this does not render the Board’s finding unreasonable.

[19] The applicant submits that when he stated in response to question 37(c) of his Claim Form that he has never been detained by the police or by any other authority, in his mind the question dealt with whether he had been suspected of or detained for having committed any criminal acts and that is why he answered with a negative. Again, this explanation does not render the Board’s decision unreasonable. The question does not imply in any way that it was exclusively concerned with criminal acts. It explicitly asks whether the claimant or her/his accompanying minors have “ever been detained by the police, the army or any other authority”. The Board did not err in finding that had the applicant been detained at any time before arriving in Canada he would not have answered to this question in the negative.

[20] The applicant also takes issue with the Board’s finding with respect to the hospital documents indicating that the applicant had a broken leg. The applicant says that it would have been inappropriate and highly suspect if the medical report had stated what the fracture was due to. In the Court’s view, the Board’s overall conclusion that the medical report did not indicate any injuries other than the fracture in the applicant’s leg, is not unreasonable. One could reasonably expect that the applicant suffered other injuries during the altercation.

[21] The applicant did not convince the Court that the Board's findings of fact with respect to his lack of credibility and his lack of subjective fear are arbitrary or capricious. Therefore, the Court cannot agree that the Board acted in an unreasonable manner in refusing to give credence to the letters from the applicant's father and brother or the threat letter. A general finding of lack of credibility can affect all relevant evidence submitted by the applicant and ultimately cause the rejection of the claim (*Ayub v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1411 at paras 8-9).

[22] At the hearing before the Court, the applicant's counsel developed at length a number of other grounds of attack with respect to the findings of fact made by the Board, and referred to the applicant's explanations in the transcripts with respect to different inconsistencies and apparent contradictions noted by the Board in paragraphs 9 to 17 of its reasons. Again, it was exclusively to the Board to gauge the applicant's credibility and it is not the task of the reviewing court to enter into a microscopic analysis of the impugned decision. Although, it may contain some errors of fact, I am satisfied that none is determinative in a way as to affect the reasonableness of the overall conclusion reached by the Board.

[23] Given that the issue of credibility is determinative, there is no real need for the Court to address the issue of an existing IFA in Karachi or the availability of state protection (*Carillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at para 14; *Butt v Canada (Citizenship and Immigration)*, 2010 FC 28 at para 9 [*Butt*]; *Houshan v Canada (Citizenship and Immigration)*, 2010 FC 650 at para 15). However, I will simply add that the finding made by the Board in this regard is also supported by the evidence and reasonable in the circumstances (*Jilani v*

Canada (Citizenship and Immigration), 2007 FC 1354 at paras 12-13; *Trevino Zavala v Canada (Citizenship and Immigration)*, 2009 FC 370 at para 5; *Butt*, above, at paras 9-15; *Malik v Canada (Citizenship and Immigration)*, 2010 FC 229 at paras 12-15).

[24] Therefore, having had the opportunity to review the documentary evidence, the transcripts of the hearing, the submissions of the parties and the Board's decision, the Court finds the final determination that the applicant is not a convention refugee pursuant to section 96 of the IRPA or a person in need of protection within the meaning of section 97 of the IRPA to be reasonable and accordingly dismisses the present application for judicial review.

[25] No question for certification was submitted by counsel and none shall be certified by the Court.

JUDGMENT

THIS COURT’S JUDGMENT is that this application for judicial review is dismissed.

No question of general importance is certified.

“Luc Martineau”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6896-11

STYLE OF CAUSE: ALI RAZA ABID v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Montréal, Québec

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REASONS FOR JUDGMENT: MARTINEAU J.

DATED: April 25, 2012

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