

Federal Court



Cour fédérale

Date: 20120418

Docket: IMM-5847-11

Citation: 2012 FC 453

Ottawa, Ontario, April 18, 2012

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

**AQRAR AHMAD RANA
SAIMA RANA
SHERIN RANA
RAMZA AHMED RANA
MAHAM RANA
AZKA RANA**

Applicants

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 Refugee Protection Division of the Immigration and Refugee Board (the Board), dated August 9, 2011. The Board found that the Applicants (Aqrar Ahmad Rana, Saima Rana, Sherin Rana, Ramza Ahmed Rana, Maham Rana and Azka Rana) were neither Convention refugees nor persons in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

I. Facts

[2] The Applicants are citizens of Pakistan. After spending three months in the United States (US) from April 20, 2009 to July 21, 2009, they arrived in Canada and made a refugee claim.

[3] This claim was based on a fear of extremist Sunni Muslims as the Applicants do not adhere to the ideology of “Jihad” and violence. In particular, the Male Applicant (Aqrar Ahmad Rana) insisted that extremists objected to his operation of a photography business.

II. Decision Under Review

[4] In general, the Applicants were not seen as satisfying the Board that they are Convention refugees or persons in need of protection “in a credible and trustworthy fashion.”

[5] The Board noted that although the Male Applicant is not part of a religious minority, he and his family alleged being targeted by extremists due to his photography business. It stated:

The claimant was in the photography business for 18 years in Lahore, Pakistan, and on March 21, 2009, was attacked, shot at and his studio was damaged. The panel was presented with sufficient documentary evidence to satisfy itself that the adult male claimant was in the photography business in Lahore, Pakistan. In support of their claims, the panel notes of two affidavits in exhibit C-7, pages 195 and 198. Although the documents describe the adult male claimant as a successful business man, they do not identify what type of business the adult male claimant was involved in and why the claimants were targeted by religious extremists. The panel gives little to the affidavits as presented and makes a negative credibility finding as a result.

[6] The Board could not discern from photos provided that the Male Applicant's studio was damaged after he left for the US. There were no additional photos of the studio to support these claims. This led the Board to make another negative credibility finding.

[7] Little weight was also assigned to a medical letter from the Rasheed Hospital in Lahore as the Board had no idea how the Male Applicant sustained the injuries and what caused his chest and back pain. According to the Board, this "could have been caused by a multitude of things."

[8] The Board made a negative a credibility finding for the Applicants' lack of action in pursuing refugee protection in the US. It would not accept the explanation provided that they had friends in Canada who suggested that the Government granted asylum to people like them and indications from US lawyers that they had no chance pursuing a claim in that country. Their actions amounted to refugee shopping, particularly in light of previous failed requests for Canadian Visas.

[9] In addition, the Board found that it was not remotely credibly that alleged religious extremists who assaulted the Applicant and shot at him would not have attempted to attack his mother other than an alleged threat against her and his sister's life two weeks after he left Pakistan.

[10] Considering letters from alleged extremists warning the Male Applicant to stop his business, the Board found there was "insufficient credible and trustworthy evidence given why the claimants' lives would be at risk, in a forward looking analysis" since the business is no longer operational.

[11] While the Board acknowledged Pakistan has a poor human rights record and widespread corruption, it also concluded that “the series of events as so laid out by the claimants in their Personal Information Forms, based on the varied credibility concerns referred to earlier in these reasons, minimizes the truthfulness and the credibility of the story as presented.”

[12] The Board also found that the Applicants had a viable Internal Flight Alternative (IFA) in Karachi. Given that the Male Applicant’s business was no longer operational and this was the primary source of their problems, there was “no credible reason why the extremists would be interested in the claimants with a view of taking their lives in Pakistan or anywhere in the world.” Moreover, the Applicants did not provide a credible response as to how the Taliban or religious extremists would be able to locate them in Karachi. Even if the Applicants were found, the Board did not have sufficient credible and trustworthy evidence to conclude that state protection would not be afforded to them.

III. Issues

[13] This application raises the following issues:

- (a) Did the Board err in determining that the Applicants were not credible?
- (b) Did the Board err by finding that the Applicants had a viable IFA?
- (c) Did the Board fail to properly consider the Applicants’ claim under section 97?

IV. Standard of Review

[14] Findings of fact and credibility are reviewed according to the reasonableness standard (*Aguirre v Canada (Minister of Citizenship and Immigration)*, 2008 FC 571, [2008] FCJ no 732 at paras 13-14). This standard also applies to the Board's finding of an IFA (see for example *Galindo v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1114, [2011] FCJ no 1364 at para 18) and any assessment of risk under section 97 (see for example *Acosta v Canada (Minister of Citizenship and Immigration)*, 2009 FC 213, [2009] FCJ No 270 at paras 10-11).

[15] Accordingly, the Court will only intervene if the decision does not demonstrate “the existence of justification, transparency and intelligibility” or falls outside “a range of possible, acceptable outcomes defensible in respect of the facts and law” (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

V. Analysis

A. *Credibility*

[16] The Applicants challenge the Board's approach to analyzing the evidence in making several negative credibility findings. More specifically, they take issue with the Board: (i) failing to examine credibility and well-founded fear independently; (ii) drawing negative inferences from the documents submitted; (iii) faulting the Applicants for failing to claim in the US; (iv) making

implausibility findings; and (v) referring to a “series of events” as not credible. I will address each of these arguments in turn.

(i) Credibility and Well-founded Fear

[17] I cannot accept the Applicants’ contention that the Board erred in failing to conduct distinct analyses of credibility and the well-foundedness of their fear. While the issues may be “related but not identical” as *Hettige v Canada (Minister of Citizenship and Immigration)*, 2010 FC 849, [2010] FCJ no 1056 at para 17 implied; the failure to consider the issues independently was not the particular error identified by Justice Michael Kelen in that case. As a consequence, the absence of separate headings in the assessment by the Board of the Applicants’ circumstances does not by itself warrant the Court’s intervention.

[18] The Board’s determinations in this regard were clear to the Applicants. Their narrative was not considered credible. This reasonably led to the conclusion that their fear was not subjectively well-founded. Indeed, the Board stated at paragraph 18 of its reasons that “there is insufficient credible and trustworthy evidence given why the claimant’s lives would be at risk.” Perhaps more significant is that the Board’s additional finding of an IFA in Karachi undermines any subjective and objective fear. Given the clarity in the Board’s overall assessment, failing to explicitly address credibility and well-founded fear independently did not ultimately confuse the issues as the Applicants assert in their submissions.

(ii) Negative Inferences from Documents

[19] The Applicants contend that the Board's findings on the photography studio were made without regard to the evidence before it. They note that documents were provided to substantiate the Male Applicant's ownership of that business. The Board proceeded to make a negative inference from silence in the Applicants' affidavits as to the exact nature of the business.

[20] I am not convinced, however, that the Board's assessment was in error. The Board is presumed to have considered all of the evidence (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ no 598 (CA)). It is not required to specifically mention every piece of evidence (*Hassan v Canada (Minister of Employment and Immigration)* (1992), 147 NR 317, [1992] FCJ no 946 (CA)). Although the decision does not mention all documents related to the photography business as referred to by the Applicants, the Board concluded that it was "presented with sufficient documentary evidence to satisfy itself that the adult male claimant was in the photography business in Lahore, Pakistan."

[21] The Board's negative inference came from the failure of the Applicants' affidavits to address why they were targeted and the nature of the business at issue. Instead, reference was simply made to them being targeted by religious extremists. This Court found in *Osman v Canada (Minister of Citizenship and Immigration)*, 2008 FC 921, [2008] FCJ no 1134 at para 39 that "where there is no reasonable explanation" for some "material omissions, they can be the basis of an adverse inference and impugn an applicant's credibility." The Board's conclusion was justified

since the Applicants' affidavits omitted crucial information regarding their claim as to the operation of what sort of business resulted in them being targeted by extremists.

[22] The Applicants further dispute the Board's negative credibility finding because it did not have pictures of the business that was damaged on March 21, 2009. According to the Applicants, they corrected issues associated with the labelling of the photos during oral testimony and there should have been no reason to doubt the date of the attack.

[23] The Respondent maintains that the Board did not ignore the photographic evidence as to this attack. There was understandably confusion from the mislabelled photos that seems to have made its way into the reasons. However, this does not affect the Board's finding.

[24] I must agree with that assessment. Irrespective of confusion as to which photograph was at issue, it was reasonably open to the Board to draw a negative inference from a failure to provide photographs for both of the alleged incidents.

[25] Regarding the assessment of a medical letter, the Applicants charge that the Board failed to consider the totality of the evidence. The Board attributed little weight to the letter and made a negative credibility finding from the failure to describe how the injuries were sustained, despite other information related to physical assaults and photos of the damaged studio.

[26] I fail to see how the Board's conclusion was unreasonable. The letter did not provide sufficient information to confirm how the injuries occurred and link them to the threat posed by

religious extremists. It was therefore accorded little weight. As the Respondent notes, the letter contains one sentence summarizing the injuries.

[27] In general, the Board's negative credibility findings were justifiable, transparent and intelligible as they were related to the Applicants' failure to provide the documentary evidence that would corroborate their specific claims.

(iii) Failure to Claim in the US

[28] I also find it was reasonably open to the Board to make a negative credibility finding based on the Applicants' lack of action in pursuing a refugee claim in the US. This position is supported by relevant jurisprudence. For example, Justice Judith Snider stated in *Remedios v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 437, [2003] FCJ no 617 at para 23:

[23] In my view, the Board did not err by concluding that the Applicants were country shopping. The principal Applicant clearly testified that they had the option of seeking asylum in the United States, but chose not to do so because their chances of success were much greater in Canada. This testimony supports the finding that the Applicants' refugee claims are based on a desire to immigrate to Canada and not on a well-founded fear of persecution.

[29] This reasoning is equally applicable to the Applicants' circumstances. Their explanation for not claiming in the US as the Board paraphrased it was that "they wanted to come to Canada; they had two friends in Canada" and that they were told that the Canadian government granted asylum to people like them. They also suggested that two lawyers told them they had no chance of pursuing a claim in the US. The Board gave these explanations due consideration before making its negative

credibility finding. Its position was supported by previously failed attempts to acquire visas to enter Canada.

[30] The Applicants' reference to *Gurusamy v Canada (Minister of Citizenship and Immigration)*, 2011 FC 990, [2011] FCJ no 1217 at para 36 is of limited assistance.

Justice James Russell suggested that if the applicant in that case truly believed that seeking protection in the US would lead to him being detained and deported, then he should not be expected to seek protection in that country. A critical aspect of his reasoning was the Board's failure to consider the applicant's subjective fear in claiming in the US and his transit through the UK and US was "simply held against him in a formulaic and thoughtless way."

[31] There was, however, no issue in the Board's consideration of the explanations provided by the Applicants in this instance, as this was done in a detailed manner. The Applicants' belief on the word of two lawyers in the US that they had no chance of success was acknowledged by the Board. Furthermore, there were several other factors that supported the Board's overall negative credibility finding; namely the desire to come to Canada, the belief that the Canadian Government would be more receptive and previous attempts to enter the country on visas. Their situation more closely resembles that of *Remedios* than *Gurusamy*, above.

[32] Having considered the Applicants' explanations, the Board's negative credibility findings on the failure to claim in the US were within the range of possible, acceptable outcomes.

(iv) Implausibility Findings

[33] The Applicants take issue with the Board's suggestion that it was implausible religious extremists would not pursue other family members after they left Pakistan. They insist this finding was unreasonable.

[34] Since the Male Applicant alleged in his Personal Information Form (PIF) that extremists wanted to harm his immediate family, the Respondent maintains that the implausibility finding was appropriate in the circumstances. I agree. The lack of threats to extended family was yet another factor in assessing whether extremists were truly seeking to harm the Applicants. As a result, it was reasonable to make additional negative credibility findings.

(v) "Series of Events" Reference

[35] Contrary to the Applicants' submissions, there is no substantive confusion that arises in the Board referring to a "series of events." The Board stated "the series of events as so laid out by the claimants in their Personal Information Forms, based on the varied credibility concerns referred to earlier in these reasons, minimizes the truthfulness and the credibility of the story as presented."

[36] Understood in context, the Board was summarizing its broader conclusion regarding credibility rather than reaching a separate or unclear finding. As the Respondent contends, this was merely a reference to the Applicants' entire story. The Applicants should not expect this Court to intervene on the basis of these semantics or by taking statements out of context.

[37] The Board is entitled to deference in its credibility assessments and the reasons provided must be read as a whole (see for example *Jarada v Canada (Minister of Citizenship and Immigration)*, 2005 FC 409, [2005] FCJ no 506 at para 22).

B. *Internal Flight Alternative (IFA)*

[38] In finding a viable IFA, the Board must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in that part of the country and that it would not be unreasonable, in all the circumstances of the case, for the claimants to seek refugee there (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 at para 4 (CA); *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589, [1993] FCJ no 1172).

[39] The Applicants argue that the Board erred in its application of this test by finding that they had a viable IFA in Karachi. Focusing exclusively on the Male Applicant's business, they contend the Board failed to consider the origin of their difficulties with extremists, such as the refusal to send his son to a religious school. The Board therefore conducted a narrow assessment to find that since the business was no longer operational, they would not be at risk. The Applicants stress the significance of fatwas issued against them and the network of extremists operating in Pakistan.

[40] As the Respondent makes clear, however, the Board reasonably concluded that the Male Applicant's business constituted the "primary source of the problem" and consequently that its

cessation would reduce the risk. The fatwas issued clearly object to the operation of a “non-Islamic business.” In addition, the Board’s assessment did not completely foreclose a consideration of other factors.

[41] I cannot accept that the Board ignored evidence presented regarding the fatwas by focusing on the issues associated with his business. The Board is entitled to significant deference in its weighing of the evidence. As in *Florea*, above, it is presumed to have considered all of this evidence unless the contrary is shown. It was within the range of possible, acceptable outcomes for the Board to conclude that there was no serious possibility that the Applicants would be persecuted in Karachi, given that the main reason the Applicants were targeted by extremists was due to a business now closed.

[42] The Applicants had the onus of establishing how the extremists would be able to find out they left and pursue them to Karachi. This Court has previously found that the failure to provide evidence that fatwas can be extended outside of a particular locality would not result in an unreasonable finding (see *Ghuri v Canada (Minister of Citizenship and Immigration)*, 2007 FC 881, [2007] FCJ no 1145 at para 15; *Zia v Canada (Minister of Citizenship and Immigration)*, 2007 FC 131, [2007] FCJ no 184 at para 11). In this instance, the Male Applicant’s testimony implied that the fatwas had influence in the local area. The additional evidence referred to by the Applicants in relation to state protection applied to the situation in Lahore, as opposed to that of Karachi.

[43] The Board also reasonably considered the second aspect of the IFA test in noting that there was no evidence to show the Applicants would not be able to find adequate employment in Karachi.

[44] As a consequence, the Board reasonably weighed the evidence before it in concluding that a viable IFA existed for the Applicants in Karachi. The Applicants simply disagree with that assessment and the Board's focus on certain critical factors.

C. Section 97 Analysis

[45] Given my previous findings, I also consider it unnecessary to require the Board to conduct a more detailed section 97 analysis of the risks facing the Applicants.

[46] The Applicants insist that the Board's credibility findings were unreasonably extended to reach a conclusion under section 97. This is not supported by the decision or relevant jurisprudence. Even the Applicants acknowledge that where a general lack of credibility finding is made, "that determination is sufficient to dispose of the claim unless there is independent and credible documentary evidence in the record capable of supporting a positive disposition on the claim" and the onus of demonstrating that evidence rests with the claimants (see *Canada (Minister of Citizenship and Immigration) v Sellan*, 2008 FCA 381, [2008] FCJ no 1685 at para 3).

[47] In this instance, the Board did not believe the Applicants' claims under sections 96 or 97. As in *Ayaichia v Canada (Minister of Citizenship and Immigration)*, 2007 FC 239, [2007] FCJ no 300 at para 19, where the "evidentiary basis for both claims is the same and the applicant's story

is not believed, there will be no need to proceed to a separate section 97 analysis.” This is particularly so in the context of an IFA finding that necessarily implies one is neither a refugee nor person in need of protection (see Justice Snider’s conclusion in *Sarker v Canada (Minister of Citizenship and Immigration)*, 2005 FC 353, [2005] FCJ no 435 at para 7).

VI. Conclusion

[48] The Board was reasonable in its assessment of the Applicants’ credibility and the finding of an IFA in Karachi. In light of this conclusion, it was not required to conduct a detailed section 97 analysis.

[49] For these reasons, I dismiss this application for judicial review.

JUDGMENT

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

“ D. G. Near ”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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