

Federal Court



Cour fédérale

Date: 20120802

Docket: IMM-8270-11

Citation: 2012 FC 961

Ottawa, Ontario, August 2, 2012

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**ABDULLAH FAIZY AND
SALIMA FAIZY**

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr Abdullah Faizy and his wife, Salima, and their son, Olia, applied for permanent residence in Canada from Pakistan. They are of Hazara ethnicity, originally from Afghanistan.

[2] In 1985, Abdullah had a dispute with his cousins who were occupying his land in Bamiyam. He fled with his then wife and children to Ghazni. In 1995, his entire family, his wife and five

daughters, were killed in a rocket attack. He went to live with a neighbour and eventually married the neighbour's niece, Salima.

[3] When the situation in Ghazni became unstable, the couple fled to Pakistan, where Olia was born. They settled in Peshawar, where Abdullah worked selling fruit. However, the family faced discrimination and extortion so they relocated to Rawalpindi, but the extortion continued.

[4] In 2011, after they applied for permanent residence in Canada, an immigration officer at the High Commission in Islamabad interviewed them. The officer refused their application on the basis that they did not qualify as members of the country of asylum class. The officer felt that the applicants merely had economic reasons for not returning to Afghanistan, and that they had failed to show that they remain seriously and personally affected by the conflict in Afghanistan.

[5] The applicants argue that the officer's conclusion was unreasonable because it did not take account of the circumstances that caused them to leave Afghanistan. They also contend that the officer failed to consider the persecution they would encounter as Hazara. Finally, they maintain that the officer failed to consider the ongoing blood feud between Abdullah and his cousins. They ask me to quash the officer's decision and order a different officer to reconsider their application.

[6] I agree with the applicants that the officer's conclusion was unreasonable. I must, therefore, allow this application for judicial review on that basis.

II. The Officer's Decision

[7] The officer stated that he sympathized with the applicants' desire to improve their economic situation and secure a brighter future. He found that the applicants' reasons for not returning to Afghanistan were really economic. Therefore, they failed to establish that they remain seriously and personally affected by the conflict in Afghanistan. According to the officer's notes, when Abdullah was asked why they could not return to Afghanistan, he said: "My land is occupied by my cousins. There is no security, there is no stability." Salima stated: "My husband he was a very wealthy man. His cousins tried to occupy his lands. He reject[ed] that, but he left Ghazny." Abdullah also mentioned that he has no family members in Afghanistan, and that the applicants were having difficulty meeting their needs in Pakistan. It was this evidence that led the officer to conclude that the applicants were motivated mainly by economic considerations.

[8] When the officer expressed his concern that the application was economically motivated, Abdullah replied: "In the place I am living I have cousins and they are very dangerous people and I can't live with them for even a single day." The officer felt that this explanation did not address his concern. Therefore, their application was refused.

[9] The officer also considered whether the applicants fell within the Convention refugee abroad class, but found insufficient evidence that the applicants had a well-founded fear of persecution in Afghanistan.

III. Was the Officer's Conclusion Unreasonable?

[10] The applicants contend that the officer's concern about an economic motivation for their application was not supported by the evidence. They also submit that the officer failed to consider the lasting emotional impact of the rocket attack that killed Abdullah's family.

[11] Members of the country of asylum class must show that they are in need of resettlement because they are outside their country of nationality, and are seriously and personally affected by a civil war, armed conflict or massive violation of human rights in that country (*Immigration and Refugee Protection Regulations*, SOR/2002-227, s 147; see Annex).

[12] In my view, the officer did not appreciate the reasons why the applicants could not return to Afghanistan. When the officer suggested that the family was motivated mainly by economics, Abdullah cited his ongoing dispute with cousins as being the reason he could not return to Afghanistan. The officer seemed to think that the cousins were in Pakistan because Abdullah used the present tense when he said "in the place I am living I have cousins and they are very dangerous people." In context, however, it is clear that Abdullah was talking about his cousins in Afghanistan with whom he had violent disputes over his land. Accordingly, Abdullah did attempt to address the officer's concern that his motives were economic by explaining why the family could not return to Afghanistan.

[13] In addition, the officer did not consider the possibility that the effects of Abdullah's loss of his family are ongoing and provide a further explanation for not returning to Afghanistan. Abdullah

told the officer that he had rebuilt his life and was recovering from the loss of his family. The Minister maintains that this evidence shows that Abdullah is no longer “seriously and personally affected” by the emotional effects of losing his family in a tragic bombing. In my view, however, at a minimum, the evidence warranted consideration of the possibility that the loss of his family explained, at least in part, Abdullah’s inability to return to Afghanistan. The fact that Abdullah had taken steps to build a new life in Pakistan did not necessarily mean that he was fully able to reconstitute his life in Afghanistan.

[14] In my view, therefore, the officer’s decision was unreasonable because it was based on a misinterpretation of the applicants’ evidence about why they could not return to Afghanistan, and failed to consider that Abdullah’s loss of his family might present a further valid reason for not returning there.

IV. Conclusion and Disposition

[15] The officer’s decision failed to recognize the basis for the applicants’ claim not to be able to return to Afghanistan and, instead, presumed that their motives were economic. Accordingly, I find that the officer’s conclusion did not fall within the range of defensible outcomes based on the facts and the law; it was unreasonable. Therefore, I must allow this application for judicial review. No question of general importance arises.

JUDGMENT

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is allowed. The matter is referred back to another officer for reconsideration;
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

Annex

Immigration and Refugee Protection Regulations, SOR/2002-227

Règlement sur l'immigration et la protection des réfugiés, DORS/2002-227

Member of country of asylum class

Catégorie de personnes de pays d'accueil

147. A foreign national is a member of the country of asylum class if they have been determined by an officer to be in need of resettlement because

147. Appartient à la catégorie de personnes de pays d'accueil l'étranger considéré par un agent comme ayant besoin de se réinstaller en raison des circonstances suivantes :

(a) they are outside all of their countries of nationality and habitual residence; and

a) il se trouve hors de tout pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle;

(b) they have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in each of those countries.

b) une guerre civile, un conflit armé ou une violation massive des droits de la personne dans chacun des pays en cause ont eu et continuent d'avoir des conséquences graves et personnelles pour lui.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8270-11

STYLE OF CAUSE: ABDULLAH FAIZY AND SALIMA FAIZY
v
MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: July 5, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: August 2, 2012

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