

Federal Court



Cour fédérale

Date: 20120125

Docket: IMM-2065-12

Citation: 2013 FC 79

Ottawa, Ontario, January 25, 2013

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

MUHAMMAD AYAZ

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant, Mr. Muhammad Ayaz, is a citizen of Pakistan who fears persecution in Pakistan because of his adherence to the Muslim Zikri-Mehdvi (Zikri) faith. In a decision dated February 6, 2012, a panel of the Refugee Protection Division of the Immigration and Refugee Board (the Board) concluded that the Applicant is not a Convention refugee or a person in need of protection under s. 96 or ss. 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). In so finding, the Board concluded that the Applicant had an internal flight alternative (IFA) in areas outside of the town where he was allegedly persecuted.

[2] The Applicant seeks to overturn this decision.

[3] The decision is reviewable on a standard of reasonableness. The role of the court when a reasonableness standard is appropriate is to determine “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law” (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]). A court should also examine whether the decision displays “justification, transparency and intelligibility within the decision-making process” (*Dunsmuir*, above at para 47). In spite of the high degree of deference owed to the decision-maker in this case, I conclude that the Court’s intervention is warranted.

[4] The Board believed the Applicant’s story of persecution at the hands of a local Mullah in the neighbourhood of one of his business offices and appears to have accepted that a warrant for his arrest, on charges of blasphemy, had been issued by the police in the Baldia town district of Karachi (Baldia). The Board recognized that the Applicant’s fear was that he would be at risk in other areas because of the blasphemy charges. In concluding that the Applicant would not be persecuted in an IFA outside of Baldia, the Board made two critical findings. With respect to the blasphemy charges, the Board found that it was “unlikely that the authorities in other parts of the country would become aware of or have a serious interest in following up on these charges” (Decision, paragraph 22). In the event that he were to be arrested on the blasphemy charges, the Board concluded as follows:

Any belief that he would not receive a just hearing is largely speculative, particularly in light of objective evidence that many such charges are baseless, bogus, laid largely for harassment

purposes, and are ultimately found frivolous and dismissed (Decision, paragraph 24).

[5] I have serious problems with both of these findings.

[6] The Applicant does not dispute the Board's finding that Zikri adherents may suffer discrimination but are not persecuted in all regions of Pakistan. The Applicant also acknowledges that the Board applied the correct two-part test for IFA (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, 140 NR 138 (CA)). However, as the Applicant pointed out during the hearing before the Board, the issue is with respect to the blasphemy charge and not just his fear of the Mullah in his local region. Quite simply, the charge of blasphemy, which was accepted by the Board, puts a much more serious risk into play.

[7] The Board correctly identified the fact that, in Pakistan, warrants issued in one jurisdiction are not automatically forwarded to other jurisdictions. There is a process for registering warrants in other areas. However, under the Pakistani *Code of Criminal Procedure*, a warrant may be executed anywhere in Pakistan. There was not a single piece of evidence before the Board that would allow it to conclude that warrants are not routinely transferred or accessed electronically by police in other jurisdictions. In supporting its finding that the charges would not be referred outside Baldia, the Board relies on the "nature of the alleged charges". The Board does not appear to take into account the seriousness of blasphemy charges against a person of a minority religion in a country where religious intolerance is notorious. The Board also refers to the Applicant's "profile" as another reason why the charges would not be known outside Baldia. While the Board recognizes the source of the charges as a business dispute, the Board fails to

address the fact that this dispute resulted in charges of blasphemy, a very serious allegation against the Applicant, regardless of its origin.

[8] The second part of the Board's decision – that the Applicant would be afforded due process – is simply not intelligible. Even if the charges are ultimately dismissed, the Applicant will face considerable time in prison before his acquittal. The Board did not evaluate the treatment of a person of the Applicant's profile; that is, as a member of religious minority charged with blasphemy. Yet, the record before the Board included significant, credible documentary evidence that Pakistani courts fail to protect the rights of religious minorities, that individuals subjected to such charges may spend lengthy periods in detention and that torture of those in custody is commonplace. The Board erred by failing to have regard to this relevant and probative evidence.

[9] Moreover, this is not a case where, as part of the judicial review, an applicant selects extracts from the evidence which were not relied on during the hearing. In the hearing before the Board, counsel for the Applicant made extensive and specific reference to this evidence. It should have been considered.

[10] For these reasons, I conclude that the Board's decision does not display justification, transparency and intelligibility within the decision-making process. I wish to emphasize that I am not finding that the Applicant should have been afforded refugee protection; that is a matter for a newly-constituted Board to determine with a full understanding of the nature of the claim and an appreciation of the evidence.

[11] Neither party proposes a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. the application for judicial review is allowed, the decision quashed and the matter remitted to a different panel of the Board for re-determination; and
2. no question of general importance is certified.

“Judith A. Snider”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2065-12

STYLE OF CAUSE: MUHAMMAD AYAZ v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: JANUARY 21, 2013

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

DATED: JANUARY 25, 2013

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