

Federal Court



Cour fédérale

Date: 20150605

Docket: IMM-5207-14

Citation: 2015 FC 692

Ottawa, Ontario, June 5, 2015

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

MUHAMMAD USMAN TARIQ

Applicant

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

Respondent

AMENDED JUDGMENT AND REASONS

[1] This is an application for judicial review by Muhammad Usman Tariq [the Applicant] under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision by the Immigration and Refugee Board of Canada, Refugee Protection Division [RPD], dated June 13, 2014, wherein the RPD found that the Applicant's claim did not have a credible basis and that he was not a Convention refugee or a person in need of protection.

[2] I have read the written submissions and heard the oral submissions of counsel for the parties.

[3] This application for judicial review should be dismissed for the reasons set out below.

[4] The Applicant was born on September 18, 1988. He is a citizen of Pakistan and alleges being a follower of the Lahori Ahmadi faith. He left Pakistan in December 2010, and after spending 3 years in Ecuador, came to Canada where he arrived on December 6, 2013. He claimed refugee protection in Canada alleging persecution from extremist groups such as Jummiat Tulbah Islam and Lashkar e Jhangvi due to his profile as a student leader of Lahori Ahmadi faith. The RPD rejected the Applicant's claim for refugee protection on June 13, 2014. The Applicant filed an application for leave and for judicial review and leave was granted on February 25, 2015.

[5] The RPD was satisfied as to the Applicant's identity as a Pakistani national. The determinative issue was credibility.

[6] The RPD noted that it was mindful of the Applicant's age, education and background in assessing his credibility. Precisely, the RPD noted that the Applicant had completed his university studies and earned a degree in Journalism from the Punjab University and that he has some knowledge of English and Spanish. After having had the benefit of observing the Applicant for over three hours of hearing, the RPD found him to be a sophisticated and capable individual. However, the RPD decided that his evidence should not be accepted and various documents filed

in support were not accepted to displace the credibility findings. The specific findings are outlined later. Based on these, the RPD found that the Applicant was not credible with respect to his religious identity as a Lahori Ahmadi and that he was therefore not credible with respect to the incidents of harm which he alleged to have occurred because of his religion as a Lahori Ahmadi. The RPD also found that the Applicant generally lacked credibility, and that any of the significant events that he alleged happened to him did not actually happen. The RPD found that the Applicant's oral testimony was as a whole neither trustworthy nor credible and that his lack of credibility as a witness combined with a lack of persuasive documentation to support his claim was fatal to his claim.

[7] The RPD, based on its cumulative findings, found that the Applicant had not satisfied his burden of establishing that there was a reasonable possibility of persecution on a Convention ground or that he would be personally subjected to a risk to life or a risk of cruel and unusual treatment or punishment or a danger of torture in Pakistan. The RPD consequently found the Applicant was not a Convention refugee or a person in need of protection. Therefore, the RPD rejected the Applicant's claim. The RPD also found that there was no "credible basis" for his claim, pursuant to subsection 107(2) of the *IRPA*.

[8] This matter raises the issue of whether the RPD made findings without due regard to the evidence properly before it.

[9] As to the standard of review, in *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 57, 62 [*Dunsmuir*], the Supreme Court of Canada held that a standard of review analysis is unnecessary

where “the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question.” It is well established that reasonableness is the applicable standard of review to determinations of fact and mixed fact and law by the RPD, such as its consideration and treatment of evidence, as well as its assessments of credibility: *Ye v Canada (Minister of Citizenship and Immigration)*, 2014 FC 647 at paras 17-18. In *Dunsmuir* at para 47, the Supreme Court of Canada explained what is required of a court reviewing on the reasonableness standard of review:

A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[10] Because this is a case that turns almost exclusively on credibility, it is useful to note other law in this regard. It is well established that the RPD has broad discretion to prefer certain evidence over other evidence, and to determine the weight to be assigned to the evidence it accepts: *Medarovich v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 61 at para 16; *Pushpanathan v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 867 at para 67. Analyzing findings of fact and determinations of credibility fall within the heartland of its expertise: *Giron v Canada (Minister of Employment and Immigration)* (1992), 143 NR 238 at 239 (FCA). In fact, the RPD is recognized to have expertise in assessing refugee claims and is authorized by statute to apply its specialized knowledge: *Chen v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 805 at para 10. Therefore, the Court should not substitute its own

findings for those of the RPD where the conclusions it reached were reasonably open to it: *Giron v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1377 at para 9 [*Giron*].

[11] The Federal Court of Appeal stated in *Siad v Canada (Secretary of State)*, [1997] 1 FC 608 at para 24 (FCA), that the RPD:

is uniquely situated to assess the credibility of a refugee claimant; credibility determinations, which lie within ‘the heartland of the discretion of triers of fact’ are entitled to considerable deference upon judicial review and cannot be overturned unless they are perverse, capricious or made without regard to the evidence.

[12] The Applicant submits that the RPD made numerous errors concerning the evidence which warrant intervention by way of judicial review. With respect, I disagree. In my opinion, the Applicant does not raise any reviewable issue on the evidence. Instead, the Applicant asks that this Court reweighs the evidence that was before the RPD. This is not the role of a reviewing court on judicial review: *Giannaros v Canada (Minister of Social Development)*, 2005 FCA 187 at para 12.

[13] In particular, I will set out some of the findings criticized by the Applicant followed by my comments:

- i. The Applicant omitted to specify in his Basis of Claim [BOC] that his father told him that members of JTI and LeJ were still “often” looking for him. The Applicant said he forgot to mention that information. The RPD noted that this omission was material in that it concerned the continued interest of the agents of persecution. The RPD noted that the Applicant was represented by competent counsel and that he testified at the start of the hearing that his BOC was complete,

true and correct. The RPD drew a negative inference to the Applicant's credibility and found that members of the JTI and LeJ did not continue to search for him.

Court comment: This finding is reasonable given the deference due to credibility findings of the RPD. I also note that it seems these groups were not searching for the Applicant during the 3 years he was in Ecuador, although he said his contact with family members was limited in this period.

- ii. The RPD noted multiple concerns regarding the Applicant's religious identity, noting that while the Applicant was able to talk generally about some historical events, the situation for Ahmadis in Pakistan and the restrictions upon them, he was unable to talk about other basic aspects of the Lahori Ahmadi religion, as well as certain historical and current events that, in the RPD's view, he should reasonably have known without prompting. For example the Applicant did not know the official name of the Lahori Ahmadi sect was Ahmadiyya Anjuman Isha'at-i-Islam. The Applicant instead said that he was told by his father that they were known as Lahori Ahmadis. The RPD noted that objective evidence indicated that in 1914 the Ahmadiyya Mouvement in Islam split into two branches, the Ahmadis and the Lahore group, the latter of which was known as the Ahmadiyya Anjuman Isha'at-i-Islam. The RPD found that the Applicant, having alleged to be a practicing Lahori Ahmadi, should reasonably have known the full name of the Lahore group. The RPD drew a negative inference as to the Applicant's credibility in this regard. Court comment: While the official name of particular religions including that of the Applicant might not be known by all its adherents,

on balance, these findings are reasonable given the deference afforded to the RPD on matters of credibility and given its expertise and experience.

- iii. The Applicant testified that there were not two different sects within the Ahmadi community. However, when asked by the RPD whether there were the Lahori and Qadiani sects, the Applicant said that was correct and explained that he was unable to say so without being prompted because his mind was somewhere else. While the Applicant was able to describe the main difference between the Lahori Ahmadi and Qadiani Ahmadis, the RPD found that the Applicant should reasonably have known that the Ahmadi community is divided in two different groups without being prompted. The RPD drew a negative inference to the Applicant's credibility in this regard. Court Comment: Again, the Applicant was only able to answer correctly when prompted by the RPD. On balance, this finding is reasonable.
- iv. When asked if there was any significance to the year 1984 regarding religious persecution of Ahmadis, the Applicant testified that he did not remember any specific incident but that he remembered the year 1977 to be significant. When the RPD asked the Applicant if he had heard of Ordinance XX (referred to as the "anti-Ahmadi" legislation) and read some of the objective evidence pertaining to Ordinance XX, he testified that he had "not heard of it but absolutely there must be". Given the historical significance of Ordinance XX for the history of persecution of Ahmadis, the RPD found it reasonable that the Applicant, if he were a genuine practicing Lahori Ahmadi, would have some knowledge of Ordinance XX without being prompted. The RPD drew a negative inference to

the Applicant's credibility in this regard. Court comment: This finding is reasonable given the deference due to credibility findings of the RPD and its expertise.

- v. When asked if there had been any major attacks on the Ahmadi community in the past few years, the Applicant testified that he did not know. When the RPD asked if there had been serious bombing on Ahmadi mosques in May 2010, the Applicant replied "about this I don't know." The RPD noted that the Applicant testified that he was residing in Peshawar at that time and that he moved back to Lahore in June 2010. When the RPD read documentary evidence which indicated that "on 28 May 2010, co-ordinated attacks on two separate Ahmadi mosques in Lahore left close to a 100 people dead" and asked the Applicant again if he remembered these attacks, the Applicant testified that "yes, it did occur". The RPD rejected the Applicant's explanation that he forgets things, gets nervous and that his mind goes somewhere else. When asked by his counsel why he could not remember the attacks despite living in Pakistan at the time and moving back to Lahore the month following the attack, the Applicant explained that he was focused on his own problems at the time. The RPD rejected the Applicant's explanation, noting that he only indicated that he forgets things or that his mind goes somewhere else when confronted with credibility issues. The RPD found it unreasonable that the Applicant would not have known about this attack given the seriousness of the attack and that it occurred to members of his own religious community. The RPD drew a negative inference to the Applicant's credibility in

this regard. Court comment: This conclusion is reasonable, particularly given the Applicant has a degree in journalism as the RPD had noted.

- vi. The RPD gave little weight to a membership letter from Ahmadiyya Lahore given the other credibility concerns and negative inference drawn, as well as given the prevalence and availability of fraudulent documents in Pakistan. Court comment: This finding is reasonable, particularly since the Applicant testified that he did not know who the author of the letter is and given that his father had supplied the document to him.
- vii. When asked whether he belonged to a mosque in Canada or if he was involved in the Lahori Ahmadi community in Canada, the Applicant testified that “in Canada there is no mosque for Lahori Ahmadis”. When asked whether he was aware of the Ontario Ahmadiyya Anjuman Isha’at Islam (OAAIL), the Applicant explained that it was his friend that told him that there were no Lahori Ahmadi mosques in Canada and that he did not do his own research as he was disturbed and stressed. The RPD acknowledged that the Applicant may have been stressed and disturbed, but that he was nonetheless able to contact his family in Pakistan in order to have documents sent to him for his refugee hearing such as affidavits from family and friends, as well as donation receipts, and that he reasonably could have also researched whether or not there was a Lahori Ahmadi community in Canada. The RPD drew a negative inference to the Applicant’s credibility in this regard. Court comment: Again, this finding is reasonable and based on the evidence, and is stated clearly as required.

viii. The three donation receipts from the Ahmadiyya Anjuman Lahore presented into evidence by the Applicant all dated after he had left Pakistan and shortly before his arrival in Canada 3 years later. The Applicant explained that his father made the donations on his behalf. The RPD found that these receipts did not, in and of themselves, corroborate the Applicant's religious identity as a Lahori Ahmadi. The RPD gave the receipts little probative weight given the other credibility concerns and negative inference drawn, as well as given the prevalence and availability of fraudulent documents in Pakistan. Court comment: In my view, it is reasonable for the RPD to have given little if any probative weight to a small handful of contributions that were admittedly made not by the Applicant himself, but by a third party (his father).

ix. The affidavits presented by the Applicant were not dated. The RPD found it was difficult to ascertain their veracity. The RPD also noted having had the opportunity to test the Applicant's credibility, found him not to be credible, and therefore accorded little probative weight to the untested affidavits of his friends and family. Court comment: this finding is also reasonable and in accordance with settled law, namely that when a general negative credibility finding is made by the RPD, it is open for it to give low probative value to other documents even if they reflect the claimant's own statements. That is exactly what happened here, and is permitted and I find reasonable. As stated in *Giron* at para 11:

11. Documents that are reflective only of statements made by a claimant may not be given such probative value once a negative credibility finding has been made. At paragraph 21 of *Hamid v. Canada* (MEI) (1995), 58 A.C.W.S. (3d) 469, Nadon J. (as he then was) wrote:

21 Consequently, in my opinion, the applicant's assertion that the Board is bound to analyze the documentary evidence "independently from the applicant's testimony" must be examined in the context of the informal proceedings which prevail before the Board. Once a Board, as the present Board did, comes to the conclusion that an applicant is not credible, in most cases, it will necessarily follow that the Board will not give that applicant's documents much probative value, unless the applicant has been able to prove satisfactorily that the documents in question are truly genuine. In the present case, the Board was not satisfied with the applicant's proof and refused to give the documents at issue any probative value. Put another way, where the Board is of the view, like here, that the applicant is not credible, it will not be sufficient for the applicant to file a document and affirm that it is genuine and that the information contained therein is true. Some form of corroboration or independent proof will be required to "offset" the Board's negative conclusion on credibility.

- x. While the RPD did not question the psychological report's diagnosis, it noted that the psychological report did not indicate that the Applicant had any cognitive difficulties or problems with his memory. The RPD further noted that the psychological report appeared to have been based on fabricated incidents and events that were relayed to the psychologist by the Applicant, and that the evidence with respect to his psychological state in relation to those experiences was therefore not reliable. Court Comment: These are reasonable findings for the RPD to make on the facts of this case. Applicant's counsel emphasized that the Applicant was nervous and had short term memory issues. However, there was no reference to short term memory issues (self-reported by the Applicant) in his psychologist's report. In any event, the questions to which the Applicant failed to respond reasonably, as set out above, were not matters of short term memory.

[14] It is noteworthy that the letter by the Ahmadi organization confirming his membership, the donation receipts, the psychological report, and the affidavits by his father and family friends were all explicitly noted by the RPD in its reasons, followed by its concerns and reasons for giving such material little weight.

[15] In my opinion, both with respect to the evidence and the documents, the RPD conducted the very type of credibility assessment it is required to perform. Its decision is justified, and its reasons are transparent and intelligible. Its decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. Therefore, judicial review must be dismissed.

[16] Neither party proposed a question to certify and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed,
no question is certified, and there is no order as to costs.

"Henry S. Brown"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5207-14

STYLE OF CAUSE: MUHAMMAD USMAN TARIQ v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 25, 2015

JUDGMENT AND REASONS: BROWN J.

DATED: MAY 29, 2015
Amended June 5, 2015

APPEARANCES:

Lani Gozlan FOR THE APPLICANT

Alexsandra Lipska FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lani Gozlan FOR THE APPLICANT
Barrister & Solicitor
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of
Canada
Ottawa, Ontario