

Federal Court



Cour fédérale

**Date: 20160810**

**Docket: IMM-236-16**

**Citation: 2016 FC 911**

**Ottawa, Ontario, August 10, 2016**

**PRESENT: The Honourable Madam Justice Kane**

**BETWEEN:**

**KHANSA ABBAS  
MUHAMMAD WAQAS SHEIKH  
(aka MUHAMMAD WAQAS SARFRAZ  
SHEIKH)  
MUHAMMAD ANAS WAQAS  
MUHAMMAD IBRAHEEM WAQAS  
(aka MUHAMMAD IBRAHE WAQAS)  
MUHAMMAD AOUN WAQAS  
QANITA WAQAS**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicants, a family from Pakistan, seek judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] of the January 4, 2016 decision of

the Refugee Protection Board [RPD] of the Immigration and Refugee Board which found that they are not Convention refugees or persons in need of protection.

[2] The determinative issue for the RPD was the applicants' credibility. On judicial review the applicants argue that the credibility findings were not reasonable and that the RPD failed to consider the profile of the applicants and the objective evidence of persecution of Shias in Pakistan with the applicants' profiles. For the reasons set out below, I find that the RPD's credibility findings warrant the Court's deference and its decision is reasonable. As a result, the application for judicial review is dismissed.

#### I. Background

[3] The applicants seek refugee protection based on religious persecution. Mr. Sheikh was raised as a Sunni Muslim and his wife, Ms. Abbas was raised as a Shia Muslim. Mr. Sheikh converted to the Shia faith before marrying his wife.

[4] The applicants recount that Ms. Abbas and her family were known in their community; she preached Shi'ism, built Imam Bargahs, helped poor Shia families arrange their marriages, and became the propaganda secretary of the ladies' wing of the local Imam Bargah (which the applicants describe as including assisting the Imam and preaching).

[5] The applicants allege that they were victims of several "small incidents". They also highlight as major incidents: the murder of Ms. Abbas' step-uncle and his son in February 2013; the robbery of their home in December 2014, allegedly by Sunni extremists, and subsequent

telephone threats; and, that Mr. Sheikh and his son were shot in their car in a similar manner as the murder of Ms. Abbas' step-uncle, in July 2015.

[6] Mr. Sheikh also noted in his Basis of Claim form [BOC] that he owned flour mills and, although other flour mills stopped selling flour to Shia Imam Bargahs, he continued to do so and was threatened as a result.

[7] The applicants applied for Australian visas in March 2015, which were refused. They applied for U.S. visas in June 2015, received them in July 2015, and left Pakistan in August 2015. They arrived in Canada via the U.S. and made a refugee claim on September 9, 2015.

## II. The RPD decision

[8] The RPD refused the applicants' application for refugee protection and found that, due to credibility findings, the applicants had not established that there is a reasonable chance or serious possibility that they will face persecution on a Convention ground, pursuant to section 96 of the Act. The RPD also found that on a balance of probabilities the applicants would not face a risk pursuant to subsection 97(1) of the Act upon their return to Pakistan.

[9] The RPD noted the governing principles regarding assessments of credibility, including that there is a presumption that an applicant's statements are true unless there is a reason to doubt their truthfulness and that the totality of the evidence must be considered.

[10] The RPD noted specific exchanges which led to adverse credibility findings based on evasive, indirect and non-responsive answers and noted, more generally, that the RPD member often had to repeat questions posed to Mr. Sheikh because he did not provide a direct answer.

[11] The RPD found that Mr. Sheikh's responses to questions regarding the applicants' fear of persecution due to their preaching were "all over the map" and that he could not clearly indicate where the preaching took place, to whom they preached or why this posed problems for them. The RPD added that this was an important aspect of the claim.

[12] The RPD also found that the allegation that the applicants tried to convert Sunnis was inconsistent with the practices in and law of Pakistan, based on information in the National Documentation Package [NDP]. The RPD concluded that this allegation was an embellishment to further their claims.

[13] With respect to the two major incidents recounted, the RPD noted that there was no proof that the break-in and robbery in 2014 was committed by Sunni extremists and found that it was not probable that the robbers were seeking to kill the applicants due to their religious proselytizing, but, if they were, the robbers could have attacked the applicants while they were at home.

[14] The RPD also noted that the shooting of the applicants' car in July 2015 took place the year following the robbery and after they had received their U.S. visas. The RPD found, on the

basis of this timing, that this incident, as well as the 2014 robbery, were more likely random crimes than targeted attacks for their religious preaching.

[15] The RPD found that the applicants' allegation that they were at risk also because Ms. Abbas' step-uncle, a prominent doctor, was murdered in 2013 was not supported by the evidence and was an embellishment to their story.

[16] The RPD noted that according to the U.S. Central Intelligence Agency, as of July 2014, Shias constitute 10-15% of the Muslim population in Pakistan and that there are about 20- 30 million Shias in Pakistan. The RPD referred to the Response to Information Request in the NDP and noted that there is violence perpetrated by Sunni extremists against Shias, but other than random violence, targeted killings in Pakistan are perpetrated against persons with particular profiles, which do not match those of the applicants.

[17] The RPD found, based on its credibility findings and in the context of the documentary evidence, that there is no more than a mere possibility that the applicants would be persecuted upon their return. As noted above, the RPD also found that the applicants had not established their section 97 claim on a balance of probabilities.

### III. The Issues

[18] The applicants raise two issues: that the RPD's credibility findings were unreasonable and that the RPD failed to conduct an objective assessment of the risk they faced.

[19] With respect to credibility, the applicants submit that the RPD made unreasonable credibility findings by misinterpreting and selectively reading the testimony and evidence and by subjectively assessing the manner in which the testimony was given rather than pointing to contradictions and inconsistencies in the evidence.

[20] The applicants also submit that the RPD erred in its assessment of the objective basis of the claim because it did not identify the profile of the applicants against the objective evidence which indicates that violence against Shia is increasing in Lahore and Multan, where the applicants had lived and that community leaders and people in prominent positions, as well as others, are targeted.

#### IV. The Standard of Review

[21] There is no dispute that the standard of review of issues of fact, including credibility, and mixed fact and law is reasonableness. The RPD's decision should be given deference as long as the decision "falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47, 53, 55, [2008] 1 SCR 190; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59, [2009] 1 SCR 339).

#### V. Relevant Principles Regarding Credibility

[22] It is well established that boards and tribunals, such as the RPD, are best placed to assess credibility (*Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732

(QL) at para 4, 160 NR 315 (FCA) [*Aguebor*] and that their credibility findings should be given significant deference ( *Lin v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1052 at para 13, [2008] FCJ No 1329 (QL); *Fatih v Canada (Minister of Citizenship and Immigration)*, 2012 FC 857 at para 65, 415 FTR 82; *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at para 7, 228 FTR 43 [*Lubana*]).

[23] However, credibility findings are not beyond review. They may be found to be unreasonable, for example, when the inconsistencies or omissions are insignificant or result from a microscopic examination, when explanations have been unreasonably discounted, or when relevant information has not been considered.

[24] In *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319, [2012] FCJ No 369 (QL) [*Rahal*], Justice Mary Gleason summarized the key principles from the jurisprudence regarding credibility (at paras 41-46). She highlighted the Court's limited role in reviewing credibility findings at para 42:

[42] First, and perhaps most importantly, the starting point in reviewing a credibility finding is the recognition that the role of this Court is a very limited one because the tribunal had the advantage of hearing the witnesses testify, observed their demeanor and is alive to all the factual nuances and contradictions in the evidence. Moreover, in many cases, the tribunal has expertise in the subject matter at issue that the reviewing court lacks. It is therefore much better placed to make credibility findings, including those related to implausibility. Also, the efficient administration of justice, which is at the heart of the notion of deference, requires that review of these sorts of issues be the exception as opposed to the general rule. As stated in *Aguebor* at para 4:

There is no longer any doubt that the Refugee Division, which is a specialized tribunal, has complete jurisdiction to determine the plausibility

of testimony: who is in a better position than the Refugee Division to gauge the credibility of an account and to draw the necessary inferences? As long as the inferences drawn by the tribunal are not so unreasonable as to warrant our intervention, its findings are not open to judicial review...

(see also *Singh* at para 3 and *He v Canada (Minister of Employment and Immigration)*, 49 ACWS (3d) 562, [1994] FCJ No 1107 at para 2).

[25] Other key principles noted by Justice Gleason in *Rahal*, at paras 43-36, include:

- Contradictions in the evidence, particularly in the applicant's own testimony, will provide a reasonable basis for finding the claimant to lack credibility, but such contradictions must be real and more than trivial or illusory.
- While the sworn testimony of the applicant is to be presumed to be true in the absence of contradiction, it may reasonably be rejected if the RPD finds it to be implausible. A finding of implausibility must be rational, sensitive to cultural differences and clearly expressed.
- The Board may consider the demeanor, including hesitations, vagueness and changes or elaboration of the story in assessing credibility, but it is preferable if there are also other objective facts to support the credibility finding.
- The Board must make clear credibility findings with sufficient particulars.

[26] In *Lubana*, Justice Luc Martineau had set out similar guiding principles at paras 7-10, describing the assessment of credibility as the "heartland" of the Board's jurisdiction. Justice Martineau cautioned against a microscopic examination of the evidence at para 11, noting that not every inconsistency or implausibility will support a negative finding and "[i]t would not be proper for the Board to base its findings on extensive 'microscopic' examination of issues irrelevant or peripheral to the applicant's claim." Justice Martineau further cautioned against



applying North American logic to the applicant's behaviour at para 12 of *Lubana*, noting that consideration should be given to, among other things, the applicant's age, cultural background and social experience.

[27] The jurisprudence has also noted the need to take into account the role of the interpreter in assessing the testimony of a refugee claimant (for example, *Attakora v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 444 (QL), 99 NR 168 (FCA); *Owusu-Ansah v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 442 (QL), 98 NR 312 (FCA)).

[28] With respect to plausibility findings, the applicants highlighted the guidance provided by Justice Michael Phelan in *Hassan v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1136 at paras 12-13, [2010] FCJ No 1409 (QL) [*Hassan*]:

[12] However, credibility findings and plausibility conclusions cannot be based on speculation or conjecture and must be adequately explained (see *Aguebor v. (Canada) Minister of Employment and Immigration (F.C.A.)*, [1993] F.C.J. No. 732). In this case, the findings related to plausibility. The test for such findings is often repeated from the judgment of Justice O'Halloran in *Faryna v. Chorny*, [1951] B.C.J. No. 152 at para. 10:

If a trial Judge's finding of credibility is to depend solely on which person he thinks made the better appearance of sincerity in the witness box, we are left with a purely arbitrary finding and justice would then depend upon the best actors in the witness box. On reflection it becomes almost axiomatic that the appearance of telling the truth is but one of the elements that enter into the credibility of the evidence of a witness. Opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly what he has seen and heard, as well as other factors, combine to produce what is called credibility, and cf. *Raymond v. Bosanquet* (1919), 50

D.L.R. 560 at p. 566, 59 S.C.R. 452 at p. 460, 17 O.W.N. 295. A witness by his manner may create a very unfavourable impression of his truthfulness upon the trial Judge, and yet the surrounding circumstances in the case may point decisively to the conclusion that he is actually telling the truth. I am not referring to the comparatively infrequent cases in which a witness is caught in a clumsy lie.

[13] The consideration of plausibility is largely subjective and requires the Board to refer to evidence which could refute their implausibility conclusions and explain why such evidence does not do so (see *Leung v. Canada (Minister of Employment and Citizenship)*, [1994] F.C.J. No. 774).

[29] Similarly, in *Aguilar Zacarias v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1155, [2012] FCJ No 1252 (QL), Justice Mary Gleason reviewed the jurisprudence on plausibility and related credibility findings and noted:

[11] An allegation may thus be found to be implausible when it does not make sense in light of the evidence before the Board or when (to borrow the language of Justice Muldoon in *Vatchev*) it is “outside the realm of what reasonably could be expected”. In addition, this Court has held that the Board should provide “a reliable and verifiable evidentiary base against which the plausibility of the Applicants’ evidence might be judged”, otherwise a plausibility determination may be nothing more than “unfounded speculation” (*Gjelaj v Canada (Minister of Citizenship and Immigration)*, 2010 FC 37 at para 4, [2010] FCJ No 31; see also *Cao v Canada (Minister of Citizenship and Immigration)*, 2012 FC 694 at para 20, [2012] FCJ No 885 [Cao]).

[30] It is against all these principles that the RPD’s findings have been reviewed. I have reviewed the transcript, the record and the applicants’ arguments and considered whether the credibility findings were based on real contradictions in the testimony on non-peripheral matters, whether the RPD’s scrutiny was microscopic, and whether the RPD’s credibility findings were based on more than simply evasive and roundabout answers to some questions.

VI. The Credibility Findings Are Reasonable

[31] The review of the written transcript of Mr. Sheikh's testimony cannot perfectly convey the dynamics of the hearing or the exchange of questions and answers as it unfolded, but it does reveal the manner of the testimony, which the RPD found to be vague, evasive and unresponsive to direct questions, many of which were repeated and clarified.

[32] Although the RPD's credibility findings were largely based on Mr. Sheikh's vague and indirect responses and, in some cases, his failure to respond to the question asked, rather than clear contradictions between the BOC and the testimony, the cumulative nature of the evasive and indirect responses and some internal contradictions on key aspects of the claim is, in these circumstances, a sufficient basis for the RPD to find that the applicants' claim as recounted lacked credibility and was insufficient to establish their risk of persecution. The applicants submit that Mr. Sheikh's testimony did not contradict his BOC, however, his BOC did not provide the details of the applicants' allegations. The RPD, therefore, probed the allegations at the hearing seeking the details and assessed the oral testimony.

[33] The RPD heard the testimony directly and observed Mr. Sheikh. The RPD provided opportunities for him to clarify his answers. The RPD also rephrased and refocused its questions to encourage a response on issues that were the key elements of his claim.

[34] The role of the interpreter was taken into account by the RPD, but the transcript reveals that Mr. Sheikh spoke over the interpreter on several occasions, causing the RPD member to

request that one person speak at a time. Contrary to Mr. Sheikh's submission that he was interrupted, it was he who often interrupted the interpreter or spoke at the same time as the interpreter and/or the RPD member. Moreover, despite the interruptions, Mr. Sheikh had the opportunity to provide answers. There is no suggestion that the interpreter did not accurately interpret the questions or the answers.

[35] The applicants and respondent have focussed their arguments on the details of Mr. Sheikh's testimony with respect to particular issues and other evidence, as noted below.

A. *The Testimony whether Ms. Abbas was Sufi*

[36] With respect to the questions regarding whether Ms. Abbas was Sufi and the meaning of Sufism, the applicants argue that the RPD member first asked what Ms. Abbas' religion was and Mr. Sheikh responded that she is Shia. The RPD then asked if she was Sufi, and Mr. Sheikh responded that he did not understand the question. When the question was repeated, he responded that "No. She's a preacher, she preaches the religion." The applicants argue that the RPD's subsequent questions were confusing because the answer had already been provided.

[37] A review of the transcript of this exchange supports the RPD's finding that the answers were vague and indirect. Mr. Sheikh's testimony, that he did not understand the question, that he did not know what "Sufi" means and then that Sufism is a branch of Sunnism, shows some internal inconsistency on an issue that is important in the context of the applicants' claim.

B. *The testimony regarding the Sufi saint*

[38] The applicants dispute the finding that Mr. Sheikh's answer to questions regarding a Sufi saint made "little sense". Mr. Sheikh stated that he knew that Abul Hassan was a Sufi saint because he was "close to God". The applicants submit that his acknowledgement of the shrine and his testimony that he regularly visits the shrine is not at all confusing.

[39] The RPD noted that the responses regarding Sufis and their saints were relevant because Mr. Sheikh's most frightening event was the shooting en route home from a shrine dedicated to a Sufi saint.

[40] In my view, Mr. Sheikh's responses do not rise to the level of nonsense, but the RPD's adverse credibility finding is reasonable, given that Mr. Sheikh had expressed some confusion about the meaning of Sufism yet knew that the saint mentioned was Sufi.

C. *The testimony about the flour mill*

[41] With respect to Mr. Sheikh's testimony about the link between his ownership of a flour mill and the allegations of risk, the applicants argue that Mr. Sheikh was attempting to explain this link, but stated that the main problem was his wife's preaching. The applicants submit that there were no inconsistencies in his testimony.

[42] The respondent submit that Mr. Sheikh did not respond to the RPD's clear and repeated questions about how his ownership of a flour mill and his refugee claim were linked until the RPD member asked a leading question. The respondent argues that it was reasonable for the

RPD to probe this issue because the applicants' BOC stated that they were threatened because they sold flour to Imam Bargahs.

[43] In my view, the RPD did not make any specific credibility finding based on the belaboured questioning about the flour mill. The RPD noted only that this was another example of the indirect manner in which Mr. Sheikh responded to questions. The exchange, which ended with Mr. Sheikh again stating that his wife preached and worked at the Imam Bargah, led to other questions about his wife's role as "propaganda secretary".

D. *The testimony about preaching to Sunnis*

[44] With respect to the testimony regarding the applicants' preaching to Sunni Muslims, the applicants submit that the RPD member asked the interpreter to repeat Mr. Sheikh's answers several times and interrupted him as he attempted to give his answers. The applicants submit that his responses were not inconsistent or contradictory.

[45] The applicants also argue that the RPD erred by making a finding that is not supported by the documentary evidence. First, the RPD did not cite the Pakistani law which it relied on in finding that the conversion of Sunnis "flies in the face of the law of Pakistan." Second, Mr. Sheikh did not testify that he tried to forcibly convert anyone from being a Sunni to a Shia. Third, the documentary evidence relied on by the RPD does not refer to conversions from Sunni to Shia.

[46] The applicants also submit that this was a plausibility finding made without a specific and clear reference to the evidence (*Hassan* at para 13).

[47] In the respondent's view, this was a credibility finding based on the inconsistent responses given by Mr. Sheikh about where and to whom the applicants preached. Moreover, Mr. Sheikh's testimony clearly indicated that the applicants attempted to convert Sunnis, although not by force, but in various locations, and this was not limited to those who approached them. In addition, the exhibits from the NDP referred to by the RPD support the finding that the applicants' allegations that they attempted to convert Sunnis was contrary to the attitudes of moderate Sunnis.

[48] While the Court may not have reached the same conclusion as the RPD that Mr. Sheikh's testimony about preaching and converting Sunnis was inconsistent with his testimony that this was not a key tenet of their faith, the RPD's finding that his responses on this issue, overall, were untenable, is not unreasonable and was open to the RPD. The RPD's finding that the applicants' claim to preach to convert Sunnis was an embellishment, which goes against common sense to those who know the situation in Pakistan, was a finding made by the RPD with reference to the objective evidence, which was quite voluminous, and described many aspects of religious conflict in Pakistan, including conflict between Sunnis and Shias and between Sunnis and minority religions more generally. Readers of the voluminous information may reach different conclusions about whether the documentation confirms that attempts by Shias to convert Sunnis to Shi'ism would expose them to such a high level of risk as to deter such activity, but the RPD's interpretation of the documentary evidence is not unreasonable. Whether characterized as a

plausibility finding or a credibility finding, the RPD did point to the objective evidence relied on to support its finding.

E. *The two key incidents*

[49] With respect to the key incidents which the applicants relied on to support their allegations of risk – the robbery in December 2014 and shooting in July 2015 – the applicants argue that the RPD erred in attributing these incidents to random violence without considering that, at the time of these incidents, the applicants were receiving threats from Sunni extremists. The applicants argue that mixed motives, for example of both robbery and religious persecution, should have been considered.

[50] In my view, the RPD decision does not suggest that it ignored the possibility of mixed motives. Rather, the RPD found that there was no evidence that the robbers were Sunni extremists or that the men who shot at Mr. Sheikh were Sunni extremists. The RPD noted that, while it was possible that the robbers were seeking to kill them for their religious proselytizing, it was not probable.

[51] The RPD also noted that Mr. Sheikh's own evidence was that he did not know who robbed his home in 2014 or who his attackers were in 2015.

F. *The objective assessment of risk*



[52] With respect to the applicants' argument that the RPD failed to objectively consider their section 96 claim, regardless of the adverse credibility assessment, I find that the RPD did conduct such an assessment, albeit briefly. The RPD noted that the applicants did not meet the profile of Shia at risk of being targeted. The applicants argue that their profile, as a prominent family, was not assessed by the RPD. However, the RPD did not make any finding that they were prominent and found that their claim to be related to a prominent doctor who had been murdered was an embellishment. The RPD found that, based on the credibility findings and in the context of the deaths reported in the objective evidence, they would not be persecuted.

[53] In conclusion, the determinative issue for the RPD was the credibility of the applicants' claim that they had and would face persecution due to their religion and their preaching in Pakistan. The credibility findings made by the RPD should be given significant deference and should not lightly be disturbed. The Court's role is not to reweigh the evidence and reassess credibility of witness where the RPD has heard that testimony first hand, observed the witness, probed the testimony, and made findings that are within the range of acceptable outcomes. In the circumstances of this case, the RPD's key credibility findings are reasonable and, as a result, the overall finding that the applicants are not Convention refugees or persons in need of protection is reasonable.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. No question is certified.

"Catherine M. Kane"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-236-16

**STYLE OF CAUSE:** KHANSA ABBAS MUHAMMAD WAQAS SHEIKH  
(aka MUHAMMAD WAQAS SARFRAZ SHEIKH),  
MUHAMMAD ANAS WAQAS, MUHAMMAD  
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**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JULY 13, 2016

**JUDGMENT AND REASONS:** KANE J.

**DATED:** AUGUST 10, 2016

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