Federal Court Cour fédérale

Date: 20160921

Docket: IMM-5681-15

Citation: 2016 FC 1072

Ottawa, Ontario, September 21, 2016

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

RABIA TAQADEES
FIZA NADEEM

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The principal Applicant, Rabia Taqadees, and her daughter, 11-year old Fiza Nadeem, are both citizens of Pakistan and Shia Muslims. They claim persecution associated with their faith.

[2] The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada determined that the Applicants are not Convention refugees or persons in need of protection under section 96 or 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. They appealed this determination to the Refugee Appeal Division [RAD], which dismissed the appeal. This result was set aside on a previous judicial review in *Taqadees v Canada (Minister of Citizenship and Immigration)*, 2015 FC 909. The RAD subsequently re-determined, but again dismissed, the appeal. The Applicants now seek judicial review of this redetermination.

[3] As explained in greater detail below, this application is dismissed, because I have not found the RAD to have erred as argued by the Applicants.

II. Background

[4] Ms. Taqadees alleges that, after she and her husband began hosting Shia religious activities in her home in early 2012, she began receiving threatening notes and phone calls. She requested assistance from the police but claims that they did not file a report and that the threats then became more frequent. Ms. Taqadees alleges that she was subsequently attacked by several masked men who demanded she cease her religious activities. Again she reported this incident to the police, but they did not file a report.

[5] In April 2012, the Applicants moved to the home of a friend in a different area, but her friend began to receive threatening phone calls. The Applicants then acquired visas to travel to Canada and left in December 2012. They claimed refugee protection in March 2013, resulting in

the decision of the RPD which rejected their claim, the Applicants' subsequent appeal to the RAD, and the RAD's redetermination that is the subject of this judicial review. The decisions of both the RPD and the RAD turned on findings that the Applicants had not established that the agents of persecution belonged to an extremist group and that the Applicants have a viable Internal Flight Alternative [IFA] in Karachi.

III. Issues

[6] The Applicants submit that the issues for the Court's consideration are:

a) Whether the RAD applied the appropriate standard of review to the RPD's decision;

b) Whether the RAD was unreasonable in confirming the RPD's credibility and IFA finding; and

c) Whether the RAD erred in applying an incorrect test for a well-founded fear of persecution.

IV. Analysis

A. *Whether the RAD applied the appropriate standard of review to the RPD's decision*

[7] The Applicants have argued both: (a) that the RAD erred by applying a reasonableness standard to its review of the RPD's decision; and (b) that the RAD erred by conducting an

independent assessment of the claim which it should not have done without holding a new hearing. While at first blush these may appear to be inconsistent positions, I understand the Applicants to be arguing that the RAD failed to apply the correctness standard prescribed by the Federal Court of Appeal in *Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93 [*Huruglica*] and that, in the application of that standard, the RAD should have been guided by the direction in *Huruglica* as to when the RAD can refer a matter back to the RPD for redetermination.

[8] The RAD's decision was issued before the Federal Court of Appeal released its decision in *Huruglica.* The RAD stated that it would follow the guidance of Justice Phelan's decision in *Huruglica v Canada (Minister of Citizenship and Immigration),* 2014 FC 799, as to the relevant standard of review; it would come to an independent assessment of whether the Applicants were Convention refugees or persons in need of protection, while respecting credibility findings of the RPD or other findings where the RPD had a particular advantage in reaching its conclusions.

[9] In submitting that the RAD failed to apply the correctness standard prescribed by *Huruglica,* I do not understand the Applicants to be arguing that the RAD erred by applying Justice Phelan's articulation of the standard of review rather than that of the Federal Court of Appeal. Nor would I consider this to be an error by the RAD (see *Canada (Minister of Citizenship and Immigration) v. Ali*, 2016 FC 709, at para 34).

[10] Rather, the Applicants argue that the RAD's decision demonstrates that it actually applied a reasonableness standard to its review of the RPD's decision. First, they point to

language in the decision in which the RAD finds that the application of a standard of review is not necessary in this case. While this is an unusual statement by the RAD, I find it comprehensible when placed in context. The RAD stated that it can confirm the RPD's determination by making its own findings on the IFA issue and that the application of a standard of review is not necessary because it was conducting its own assessment of the viability of an IFA based upon the record. I interpret the RAD to be stating that it would focus not upon the RPD's analysis of the IFA issue but rather would assess that issue independently. Contrary to the Applicants' position, this does not indicate that the RAD was applying a deferential reasonableness standard but rather expressly indicates that it was conducting an independent assessment, as required by the jurisprudence.

[11] The Applicants' second submission related to the standard of review relies upon the manner in which the RAD addressed their submission that the RPD disregarded the guidelines entitled *Women Refugee Claimants Fearing Gender-Related Persecution* [the Gender Guidelines] issued by the Chairperson under section 65(3) of IRPA. The Applicants argued before the RAD that the objective evidence showed that women in Pakistan are strictly discriminated against and would therefore be more at risk because of their gender. The RAD noted that the Gender Guidelines make specific reference to the consideration of an IFA, which prompts the RPD to contemplate whether a woman can safely travel and reside in a suggested IFA and to take into account religious, economic and cultural factors.

[12] The RAD noted that the RPD did not make explicit reference to the Gender Guidelines but concluded from the RPD's reasons that it had considered the factors set out in the Guidelines.

The RAD concluded that the RPD assessed whether the Applicants would be able to live in Karachi and looked at their ability to practice their religion and the ability of Ms. Taqadees to gain employment and earn an income.

[13] The Applicants argue before the Court that the RAD's analysis of this issue demonstrates the application of a reasonableness standard rather than an independent analysis engaging the Gender Guidelines. In my view, the RAD's decision must be considered more broadly to assess whether it applied the correct standard of review and, following such consideration, I cannot conclude the RAD to have erred. In addition to its express statement, as noted above, that it would conduct its own assessment of the viability of an IFA based on the record, its reasons demonstrate a review of the documentary evidence which referred to violence against Shia and the availability of an IFA in various parts of Pakistan. The RAD concluded that, considering the country conditions, the particular IFA identified, and the profile of the Applicants, they had not provided sufficient evidence to find that Karachi was not a reasonable IFA. The RAD's decision demonstrates that it not only stated it would conduct an independent assessment of the IFA but that it did so.

[14] With respect to the portion of the RAD's decision addressing the Gender Guidelines, the RAD was responding to the Applicants' specific argument that the RPD had disregarded those Guidelines. As such, the RAD cannot be faulted for analysing this issue in those terms, that is whether the RPD considered the factors set out in the Gender Guidelines. In the larger context of the decision, I cannot conclude that this represents an error by the RAD in its application of the standard of review.

[15] It is still necessary to consider the Applicants' argument that the RAD, in its own independent assessment, committed a reviewable error by failing to apply the Gender Guidelines. That issue is considered below in assessing whether the RAD was unreasonable in confirming the RPD's IFA finding.

[16] As noted above, the Applicants have also argued that the RAD erred by conducting an independent assessment of the claim which it should not have done without holding a new hearing. I find no merit to this argument. As the Respondent correctly points out, section 110 (3) of IRPA provides that, subject to certain circumstances resulting from the introduction of new evidence, the RAD must proceed without a hearing on the basis of the record before the RPD.

[17] The Applicants rely on paragraph 103 of *Huruglica*, in which the Federal Court of Appeal held that it is only when the RAD is of the opinion that it cannot provide a final determination of the merits of a refugee claim without hearing the oral evidence presented to the RPD that the matter can be referred back to the RPD for redetermination. The Applicants note that the RAD stated in its decision that it found their evidence surrounding the affiliation of the agents of persecution with an extremist group to be confusing. They argue that, having found the evidence confusing, the RAD should have referred the claim back to the RPD. I do not read this portion of the RAD's reasons as indicating that it was of the opinion that it cannot provide a final determination of the merits of the claim. Rather, the RAD considered the Applicants' evidence and found that it did not establish that the agents of persecution belonged to an extremist group.

B. *Whether the RAD was unreasonable in confirming the RPD's credibility and IFA finding*

[18] The RPD found Ms. Taqadees to be a poor witness and, in particular, found that she lacked credibility related to the identity of the agents of persecution. While she said that she feared religious extremists and testified that they belong to an organization called the Tehreek e Tahafuz e Islam, the RPD found Ms. Taqadees' testimony on this issue confusing and concluded that she had not established that the agents of persecution were associated with any organization at all.

[19] The RAD considered the findings of the RPD related to evidence of the alleged agents of persecution. It assessed the evidence in this area and found that the RPD did not make an overall credibility finding but dealt only with the portion of credibility that was central to the determinative issue of the IFA. It noted that RPD had found Ms. Taqadees lacking in credibility in her allegation that the agents of persecution belonged to an extremist organization. The RPD considered her evidence on this issue to be confusing, noted the omission of the names of any extremist groups in her Basis of Claim [BOC] form, and found that her evidence as to the name of a group appeared to materialize during her testimony. The RAD considered the evidence and the Applicants' arguments but did not identify an error in the RPD's credibility finding. The RAD found, based on the confusing evidence and omission of from the BOC, that that it was not established that the agents of persecution belonged to an extremist group.

[20] The Applicants argue that the RPD's credibility finding was not made in clear terms and that no deference is owed to it by the RAD. They also say that the RAD should have considered whether it could grant an oral hearing. I have rejected this argument in my above analysis of the Applicants' submissions on standard of review and again find no authority for the proposition that the Applicants were entitled to an oral hearing. With respect to the deference owed to the RPD's finding, it may have been available to the RAD to show such deference, given that the finding is one of credibility. However, the decision demonstrates that the RAD proceeded to analyse the evidence and reach its own conclusion that the Applicants had not established that the agents of persecution belonged to an extremist group. This finding was based on the confusing testimony and the omission from the BOC of any identification of an extremist group and cannot be characterized as unreasonable.

[21] Turning to the viability of the IFA, the RPD first considered whether there was a serious possibility of the Applicants being persecuted in Karachi. It concluded that they would be safe from persecution there, as the Applicants had not established that the agents of persecution belonged to a group that would have an agenda or organizational capacity to seek them out in Karachi.

[22] The RPD then turned to whether to whether it would be unreasonable for the Applicants to seek refuge in Karachi and considered the testimony and submissions that Karachi is generally unsafe, that they could not openly practice their religion there, and that Ms. Taqadees would not be able to find employment there. The RPD considered documentary evidence and accepted that Shia Muslims were victims of sectarian violence all over Pakistan. However, taking into account

the size of the Shia population, it did not find that such attacks were happening at a rate such that the Applicants could not find safety in the populous city of Karachi. The RPD also referred to Ms. Taqadees' experience as a teacher and did not find enough convincing evidence to conclude that she could not earn a livelihood there. It therefore found that the Applicants had a viable IFA in Karachi.

[23] Following a review of the RPD's reasoning and its own analysis, the RAD found that Karachi was a viable IFA for the Applicants. The Applicants argue the RAD's findings are unreasonable, as the documentary evidence describes widespread violence against Shia Muslims, and submit there is nothing in the RAD's analysis suggesting that Karachi is safer for Shia Muslims than anywhere else in Pakistan, other than that it is a large city. They also argue that the RAD failed to consider the visible nature of Ms. Taqadees' practice of the Shia faith.

[24] The applicable two-part test for the viability of an IFA was recently expressed in *Sargsyan v Canada (Minister of Citizenship and Immigration)*, 2015 FC 333 [*Sargsyan*], at para 12, as follows:

> [12] The two-prong test applicable in an IFA analysis is:
>
> 1. The RPD must be satisfied, on a balance of probabilities, that there is no serious possibility of the Applicant being persecuted in the part of the country in which it finds an IFA exist; and
>
> 2. That the conditions in that part of the country are such that it would not be unreasonable for the Applicant to seek refuge there …

[25] Following its identification of the above test, the RAD reviewed the RPD's IFA analysis and proceeded with its own review of the documentary evidence. It acknowledged the evidence establishing sectarian violence against the Shia minority in Pakistan and considered the discussion as to the possibility of an IFA contained in the *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan.* The RAD found that, while this document indicates that there may not be a viable IFA for religious minorities targeted by an extremist group, it does not rule out the possibility of a viable IFA for individuals such as the Applicants. The RAD noted that, regarding Shia Muslims in particular, the UNHCR stated that an IFA will generally not be available in certain areas of Pakistan but that whether relocation to other urban centres such as Karachi may constitute a viable alternative should be considered on a case-by-case basis.

[26] The RAD then concluded that, considering the country conditions, the particular IFA identified, and the profile of the Applicants, it had not been provided with sufficient evidence to find that Karachi was not a viable IFA. The RAD stated that, despite the fact that Pakistan is far from perfect on the issue of religious intolerance, it found on a balance of probabilities that the Applicants can live safely and reasonably in Karachi. Reiterating that the viability of relocation to an IFA varied in different parts of Pakistan and that the viability of relocation to an urban center such as Karachi should be considered on a case by case basis, the RAD found that the Applicants had not produced any evidence to show that they belong to a high profile Shia sect such that they would be targeted.

[27] I find no basis to conclude that the RAD's analysis of the IFA issue is unreasonable. It considered the documentary evidence, the particular IFA proposed, and the Applicants' particular circumstances, and reached a conclusion which is supportable based on the evidence.

[28] I have also considered the Applicants' argument that the RAD erred in failing to apply the Gender Guidelines in its IFA analysis. In the RAD's independent assessment of the viability of the IFA, it does not expressly refer to the Guidelines, nor does it expressly refer to the Applicants' gender or to the circumstances of women generally in Pakistan.

[29] While failure to engage with the Gender Guidelines or their principles in a meaningful way may represent a reviewable error, I do not find this to be the case in the present application. The portion of the Guidelines that speaks to determining the reasonableness of a woman's recourse to an IFA reads as follows:

> C. Evidentiary Matters
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> When an assessment of a woman's claim of gender-related fear of persecution is made, the evidence must show that what the claimant genuinely fears is persecution for a Convention reason as distinguished from random violence or random criminal activity perpetrated against her as an individual. The central factor in such an assessment is, of course, the claimant's particular circumstances in relation to both the general human rights record of her country of origin and the experiences of other similarly situated women. Evaluation of the weight and credibility of the claimant's evidence ought to include evaluation of the following considerations, among others:
>
> ….
>
> 4. In determining the reasonableness of a woman's recourse to an internal flight alternative (IFA), decision-makers should consider the ability of women, because of their gender, to travel safely to the IFA and to stay there without facing undue

> hardship. In determining the reasonableness of an IFA, the decision-makers should take into account factors including religious, economic, and cultural factors, and consider whether and how these factors affect women in the IFA.

[30] The Respondent argues that these provisions are inapplicable, because the Applicants' claim is not one of gender-based violence. I note that the above portion of the Gender Guidelines is framed as related to an assessment of a woman's claim of gender-related fear of persecution. However, neither of the parties has cited authorities addressing the extent to which the Guidelines' requirement, to consider the effect of gender upon the reasonableness of an IFA, applies in the context of claims of persecution unrelated to gender. In the absence of more fulsome argument on the point, I am not prepared to conclude that the requirement to consider the ability of women, because of their gender, to safely travel to and stay in an IFA applies only in the context of claims of gender-based violence. Where the evidence raises concern about the reasonableness of an IFA because of the claimant's gender, I would expect this concern, including how religious, economic and cultural factors may affect women in the IFA, to be taken into account in the assessment of whether it would be reasonable for the claimant to seek refuge there.

[31] The difficulty with the Applicants' reliance on the Gender Guidelines in the case at hand is that they have raised no relevant evidentiary support for their position. The Applicants argue that their evidence showed that women in Pakistan are strictly discriminated against and that they would be more at risk because of their gender. However, when asked at the hearing of this application to identify the evidence on which they rely, the Applicants referred to documentary evidence on conditions in Pakistan faced by women who are victims of domestic violence or

other forms of gender -related violence. This evidence does not appear to have any relevance to the Applicants' circumstances.

[32] I have concluded above that the RAD conducted an independent assessment of the viability of the IFA. It also addressed the Applicants' submission that the RPD had disregarded the Guidelines. In the absence of any evidence that the Applicants' gender affects the reasonableness of the IFA, I cannot conclude that a failure to refer to the Gender Guidelines, or otherwise to refer to gender as a factor, in the RAD's independent assessment of the evidence related to the IFA represents an error that would make the RAD's decision unreasonable.

C. *Whether the RAD erred in applying an incorrect test for a well-founded fear of persecution.*

[33] The Applicants note that, in reaching its conclusions as to the viability of Karachi as an IFA, the RAD stated that it found, on a balance of probabilities, that the Applicants can live safely and reasonably in Karachi. The applicants argue that the reference to "balance of probabilities" indicates that the RAD applied an elevated test, rather than requiring the Applicants only to demonstrate that they would face a serious possibility of persecution in the IFA.

[34] Reading the decision as a whole, I do not find the RAD to have erred on this issue. As noted above, the RAD correctly cited the first prong of the test, as expressed in *Sargsyan*, that the RPD must be satisfied, on a balance of probabilities, that there is no serious possibility of the

Applicant being persecuted in the part of the country in which it finds an IFA exists. In referring to the burden on a refugee claimant, the RAD also correctly referred to the statement of the Federal Court of Appeal in *Thirunavukkarasu v Canada (MCI)* [1993], FCJ No 1172, that a claimant need only show that there is a serious possibility of being persecuted in the new location. I interpret the RAD's reference to finding on a balance of probabilities that the Applicants can live safely and reasonably in Karachi, which followed the RAD's review of the evidence, to be a reference to the standard of proof to be applied to the evidence, and not an incorrect statement of the legal test to be applied to the likelihood of persecution.

V. Conclusion

[35] Having found no reviewable errors by the RAD, this application for judicial review must be dismissed. Neither of the parties has proposed any question of general importance for certification for appeal, and none is stated.

JUDGMENT

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

No question is certified for appeal.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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