

Federal Court



Cour fédérale

**Date: 20161108**

**Docket: IMM-1248-16**

**Citation: 2016 FC 1243**

**Ottawa, Ontario, November 8, 2016**

**PRESENT: The Honourable Mr. Justice Annis**

**BETWEEN:**

**RENEE MARIE CHAPPELL & ZACHERY  
MELVIN CHAPPELL & TARA RHYE-ANN  
CHAPPELL THROUGH HER LITIGATION  
GUARDIAN RENEE MARIE CHAPPELL**

**Applicants**

**And**

**THE MINISTER OF IMMIGRATION,  
REFUGEES, AND CITIZENSHIP**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is a judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act], of a March 8, 2016 decision by the Refugee Appeal Division [RAD] dismissing the Applicants' appeal of the decision of the Refugee Protection Division [RPD].

[2] The Applicants argue that the RAD erred in its analysis of the Applicant's Internal Flight Alternative [IFA].

[3] A review of the RAD's decision reveals no error and, as such, the application is dismissed.

I. Background

[4] The Applicants are citizens of the Islamic Republic of Pakistan [Pakistan]. The Principal Applicant [PA], Renee Marie Chappell, and her family are members of the Roman Catholic minority living in Karachi, Pakistan. Her husband resides in Dubai and is not a party to this claim. Her children are the remaining applicants.

[5] As her husband's salary was insufficient to support the family, the PA was forced to take a position as an English teacher and babysitter for the children of a man called Mr. Rashid [the employer] in January 2015. The employer soon demanded she leave her husband, convert to Islam, and marry him. When she refused, he threatened to report her to the police for blaspheming Islam. Her claim is based on the fear that if this occurs, she could face torture or death from a mob. Her children claim to be at risk for the same reason.

[6] The Applicants fled to Canada, arriving on June 10, 2015. The PA claims to have since heard that the employer has come to her sister's home multiple times demanding to know her

whereabouts. The RPD dismissed the Applicants' claim on December 1, 2015 and the RAD dismissed the appeal on March 2, 2016 concluding that she had an IFA in Islamabad.

## II. The Impugned Decision

[7] The RPD first raised the issue of IFA with the Applicants and specifically proposed that they could seek refuge in Islamabad. The only reason given as to why she could not live in Islamabad was that a police First Incident Report [FIR] may have been registered, which the RPD found was speculative. After inquiry, it found that the Applicants faced no specific danger either from the employer or any other elements in Islamabad. It also found that there was no serious barrier to their residence in this region. The RPD dismissed the Applicants' claim on this basis.

[8] The Applicants submitted three new pieces of evidence to the RAD: 1) a FIR filed by the PA's sister alleging that the employer had gone to her home to find out her whereabouts and stating that if she did not accept his proposal of marriage he would have her arrested; 2) an Affidavit from the PA providing additional evidence to address issues raised at the hearing and evidence of the employer's inquiries at her sister's home; and 3) a collection of news articles alleging that the proposed IFA is unsafe for Christians. The two first pieces of evidence were rejected as they could have reasonably been tendered prior to the RPD decision. The portions of the third piece of evidence post-dating the RPD's decision were admitted and considered. Upon examining the file, the RAD confirmed the RPD's finding that the Applicants had a viable IFA in Islamabad and affirmed its decision, which the Applicants challenge on a number of grounds.

### III. Issues

[9] This application raises the issue of whether the RAD erred in its IFA analysis.

### IV. Standard of Review

[10] The parties agree that the standard of reasonableness applies to the RAD's IFA analysis. As the IFA analysis is primarily a factual inquiry, it attracts deference (*Verma v Canada (Citizenship and Immigration)*, 2016 FC 404 at para 14). The Court will not intervene unless the RAD's conclusions fall outside the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]).

### V. Analysis

[11] The Applicants' principal argument concerns the RAD's conclusions that a blasphemy accusation would be speculative unless registered. The PA testified that her main concern about the continuing danger from the employer were the Applicants to move to Islamabad would arise from the employer's possible registration of an FIR alleging blasphemy, leading to her being at risk. The RAD concluded that a speculative concern about the registration of the FIR was insufficient as a ground to refuse moving to Islamabad. It concluded that the PA was required to demonstrate that the FIR had been registered against her by the employer. The RAD concluded that the PA could have made arrangements to obtain a copy of the employer's FIR, if one had been registered.

[12] The Applicants first argue that it was inappropriate for the RAD to refuse to accept the FIR filed by the PA's sister as evidence, and yet to later consider it in impugning the Applicants' case. There is no contradiction in refusing the evidence of the sister regarding the FIR on the ground that it predated the RPD hearing, yet accepting the evidence to prove a different fact, namely that the PA could arrange to have a copy of the employer's FIR from the police, if one had been registered. There is no rule that says the same evidence cannot be used to establish different factual conclusions for whatever purpose as long as they are relevant to the matter in hand.

[13] The Applicants' second submission was that the RAD did not appreciate that the PA's sister was the author of the FIR produced, as opposed to being that of the employer. I disagree that there is any evidence of confusion in the RAD's decision. The sister's evidence went to establish that the employer was searching for the PA by coming around to her home, evidence she confirmed by a copy of her FIR registered with the police. The RAD however, used her evidence to demonstrate that the Applicants should have been able to obtain the employer's FIR by her sister requesting it.

[14] It is an equally reasonable assumption, and not speculative as alleged, that the PA's sister could procure a copy of the employee's FIR from the police. Conversely, it is speculative to argue that corruption issues attributed to the Pakistani police would prevent the sister from obtaining the employer's FIR, if registered and requested.

[15] Finally, there was no debate with respect to the danger of a blasphemy accusation being known in the Applicants' new community should they move to Islamabad. However, the Applicants' argument is premised upon the accusations of blasphemy somehow being known in Islamabad. Without the FIR being registered, there was no basis to assume the accusations would become known.

[16] With respect to the Applicants' other arguments that the RAD did not consider the documentary evidence concerning the general risk of religious persecution of Christians in Islamabad, or the reasonableness of the Applicants relocating to the IFA, the Court concludes that it is being asked to reweigh evidence with no specific indication of what error is being argued. The decisions with respect to these issues are sufficiently supported by the factual findings and meet the requirements of reasonability set by the *Dunsmuir* test.

[17] With respect to the Applicants' argument that the RAD failed to consider and apply the *Gender Guidelines*, this issue was not argued before the RAD. The appellate bodies rely upon parties represented by counsel to direct them to the issues in contention between the parties in an adversarial setting. If Applicants' Counsel did not think it necessary to bring to the RAD's attention concerns about the failure to apply the *Gender Guidelines*, it is difficult to criticize the tribunal for not considering the issue.

[18] In any event, the failure to refer to the *Gender Guidelines* does not in itself constitute a reviewable error: *Sargsyan v Canada (Minister of Citizenship and Immigration)*, 2015 FC 333. If the findings of the tribunal indicate that the Guidelines would have no application, or the reasons

indicate that their requirements have been met, then it is not necessary to specifically refer to them. The PA was a successful employed woman who was raising two children on her own. She experienced no apparent limitations on her ability to find employment and acknowledged that she led a comfortable life in Pakistan. Moreover, she was clear in stating that the basis of her fear in moving to Islamabad stemmed from concerns that her employer had registered a FIR attesting to an accusation of blasphemy. These facts do not suggest that the *Gender Guidelines* would have any application to the Applicants' circumstances or result in a different outcome.

## VI. Conclusion

[19] Accordingly, the application is dismissed. There is no question for certification for appeal.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is dismissed and no question is certified for appeal.

"Peter Annis"

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Judge



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

**DOCKET:** IMM-1248-16

**STYLE OF CAUSE:** RENEE MARIE CHAPPELL & ZACHERY MELVIN  
CHAPPELL & TARA RHYE-ANN CHAPPELL  
THROUGH HER LITIGATION GUARDIAN RENEE  
MARIE CHAPPELL v THE MINISTER OF  
IMMIGRATION, REFUGEES, AND CITIZENSHIP

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 21, 2016

**JUDGMENT AND REASONS:** ANNIS J.

**DATED:** NOVEMBER 8, 2016

**APPEARANCES:**

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