

Federal Court



Cour fédérale

**Date: 20161207**

**Docket: IMM-4824-15**

**Citation: 2016 FC 1347**

**Ottawa, Ontario, December 7, 2016**

**PRESENT: The Honourable Madam Justice Roussel**

**BETWEEN:**

**KHALID SAFI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant seeks judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB], dated September 30, 2015, which found him to be neither a Convention refugee nor a person in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] For the reasons set out below, the application for judicial review is allowed.

I. Background

[3] The Applicant is a citizen of Afghanistan who arrived in Canada on October 20, 2012, and claimed refugee protection on the basis of three (3) alleged grounds of risk for which he claims to have a well-founded fear of persecution: (1) the identity of his late father, a well-known and highly-regarded General in Afghanistan who fought against the Russian invasion; (2) the fact that he worked as an interpreter for the United States Special Forces at the Bagram Air Base in Afghanistan; and (3) the fact that he has been diagnosed with schizophrenia and suffers from unwanted auditory hallucinations and delusions that he is being pursued by the Central Intelligence Agency [CIA].

[4] The Applicant's claim was heard by the RPD over the course of two (2) days on May 20, 2015 and July 14, 2015. In light of the Applicant's vulnerable status, a designated representative from the Schizophrenia Society of Ontario was appointed to assist him during the RPD hearings. His counsel was also allowed to question him first.

[5] To support his claim, the Applicant produced a number of documents, including documentation demonstrating his father's reputation and prominent position in the Afghan government, a letter from an interpreter contracting company in Afghanistan confirming that he had worked as an interpreter at the Bagram Air Base, a psychiatric evaluation report, a letter from his primary care physician in Canada and a letter from the Schizophrenia Society of Ontario. The Applicant also relied on country condition reports establishing that Taliban and

other anti-government elements in Afghanistan routinely target, kidnap and murder perceived sympathizers, spies, or associates of the American Forces as well as evidence confirming the lack of mental health care for individuals with schizophrenia in Afghanistan.

[6] On the first day of the hearing, the RPD heard testimony from the Applicant. In a pre-hearing conference which immediately preceded the Applicant's testimony, the RPD member indicated that he wished to submit the letter from the interpreter contracting company for verification by the Special Investigations Research Unit [SIRU] of the IRB. After the hearing, the SIRU communicated with the Canadian Embassy in Afghanistan, who in turn contacted the interpreter contracting company. The company's response was that the letter was a counterfeit and recommended that the Applicant's application process be cancelled. This information was communicated to the Applicant and the RPD hearing resumed on July 14, 2015, at which time the RPD heard additional testimony from the Applicant and his designated representative as well as submissions from the Applicant's counsel.

[7] The RPD rejected the Applicant's claim for protection on September 30, 2015.

## II. RPD decision

[8] The RPD found that, on the balance of probabilities, the Applicant was neither a Convention refugee nor a person in need of protection as per sections 96 and 97 of the IRPA. Given the false documentation submitted as evidence of his employment with the interpreter contracting company, as well as the absence of any evidence to corroborate his work for the United States Special Forces, the RPD found the Applicant's allegations to be non-credible. It

also found the Applicant's claim that he is at risk of persecution in Afghanistan based on his schizophrenia to be "simply speculation". Finally, the RPD found that it did not have jurisdiction to consider whether, on a humanitarian and compassionate basis, the Applicant should be allowed to remain in Canada in order to receive further attempts at treatment.

### III. Analysis

[9] The Applicant submits that the RPD breached procedural fairness in failing to address two (2) of the three (3) grounds of risk arising from his claim for protection: the risk based on his hallucinations and delusions that he is being pursued by the CIA and the risk based on his father's prominent profile.

[10] The Applicant contends that the evidence is undisputed that he suffers from schizophrenia and that he has auditory hallucinations and delusions that the CIA is monitoring his every move and communicating with him directly. If he returns to Afghanistan and verbalizes these thoughts, he is objectively at risk of being persecuted because of what will be perceived to be an association with the CIA. The documentary evidence adduced before the RPD clearly demonstrates that the Taliban and other anti-government and anti-Western armed groups routinely target Afghan citizens with known associations to the United States or international forces, or those suspected of being spies. The Applicant argues that the RPD failed to address this specific and distinct ground of risk.

[11] The Applicant further submits that the RPD failed to consider and address the additional ground of persecution stemming from his fear of recruitment by the Taliban due to his father's

profile. Since there was corroborative evidence of his father's position and prominent reputation in Afghanistan, along with objective evidence of forcible recruitment by the Taliban, the RPD had the obligation to assess this ground of risk, even if it found his claim that he worked for the United States Special Forces at the Bagram Air Base not to be credible.

[12] The Respondent argues on the other hand that the RPD's decision was reasonable and should not be disturbed. The negative credibility finding of the Applicant was reasonable as it was based on the submission of a false document. Moreover, the RPD did address the Applicant's schizophrenia but concluded that any related risk was speculative. Despite the evidence indicating that the Applicant suffered from delusions and hallucinations, it did not indicate that he was prone to share them with others.

[13] As for the risk resulting from the Applicant's father's profile, the Respondent contends that the evidence adduced before the RPD only confirms the position held by the Applicant's father. It does not confirm that the Applicant was targeted for recruitment in the hopes of attracting others to join the cause of the Taliban. There was also no evidence that the Taliban wanted to harm him based on the profile of his late father. The RPD's negative credibility assessment of the Applicant's allegations impugned his overall credibility, including his alleged recruitment by the Taliban.

[14] It is well established in jurisprudence that the RPD is required to assess all grounds of risk which are apparent on the face of the record. This duty was articulated by the Supreme Court of Canada in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at page 745 and reiterated

by this Court in *Thurairaja v Canada (Citizenship and Immigration)*, 2015 FC 409 at paragraph 10, *Ajelal v Canada (Citizenship and Immigration)*, 2014 FC 1093 at paragraphs 19 to 21; *Varga v Canada (Citizenship and Immigration)*, 2013 FC 494 at paragraphs 5 and 6. This duty persists in all situations, even where an applicant's credibility is impugned (*Jama v Canada (Citizenship and Immigration)*, 2014 FC 668 at paras 19-20; *Hannoon v Canada (Citizenship and Immigration)*, 2012 FC 448 at para 47; *Bastien v Canada (Citizenship and Immigration)*, 2008 FC 982 at paras 8, 10-13).

[15] In the case at hand, whether reviewed on a standard of reasonableness or correctness, I am of the view that the RPD committed a reviewable error in failing to assess and address two (2) of the three (3) grounds of risk raised by the Applicant.

[16] The evidence before the RPD clearly demonstrated that the Applicant has been diagnosed with schizophrenia and post-traumatic stress disorder and that he suffers from auditory hallucinations and delusions. He claims to hear the voice of a man he befriended while working at the Bagram Air Base in Afghanistan and believes that he is being monitored by the CIA. While the medication he has been prescribed helps him sleep at night, it has not eliminated his auditory hallucinations. This undisputed evidence was accepted by the RPD at paragraph 5 of its decision.

[17] The Applicant's designated representative from the Schizophrenia Society of Ontario also testified before the RPD that it is common for individuals like the Applicant to verbalize their auditory hallucinations. She also testified that schizophrenia is a chronic mental illness whose

symptoms are always present and that while the Applicant's symptoms may be controlled with medication and the capacity for managing them may change over time, they are likely to intensify if he is removed to Afghanistan.

[18] Moreover, the country condition documentation submitted by the Applicant also attests to the risk faced by people in Afghanistan who are associated or perceived to be associated with the Americans, or who are suspected as spies.

[19] While I agree with the Respondent that a mental illness does not give a non-Canadian the right to remain in Canada (*Beaumont v Canada (Public Safety and Emergency Preparedness)*, 2007 FC 787 at para 14), I consider that in the present case, the objective risk based on a perceived association with the CIA was apparent on the face of the record. It was also expressly pleaded by his counsel. When the RPD member indicated at the pre-hearing conference that he wished to have the letter from the interpreter contracting company authenticated, the Applicant's counsel explained to the RPD member that, leaving aside the letter and the Applicant's work with the United States Special Forces as an interpreter, two (2) independent grounds of risk remained that required examination by the RPD, including the objective risk stemming from his continued hallucinations and delusions regarding the CIA. Counsel specifically stated that if the Applicant vocalizes in Afghanistan that the CIA is in contact with him, an objective risk profile would be created in addition to the already existing risk resulting from the level of intolerance associated with people who suffer from mental illness. In this case, the RPD had a duty to assess this specific objective risk.

[20] The Respondent submits that the RPD considered the risk associated with the Applicant's schizophrenia and relies on the following passage in the decision to support its contention:

[9] What I am left with is the claimant being diagnosed with schizophrenia in Canada. While counsel speculated that if the claimant were to return to Afghanistan he may continue to claim to be a person who worked for the Americans, that this may somehow come to the attention of the Taliban and this would then cause him to be persecuted, this is simply speculation.

[21] Contrary to the Respondent's contention, I do not consider that this passage demonstrates that the RPD assessed and considered the objective risk of the Applicant's perceived associations with the CIA as a ground of persecution distinct from the risk associated with his work as an interpreter for the Americans in Afghanistan. If so, the RPD's assessment is insufficiently extensive and detailed to render the decision transparent and intelligible. I would also add that it is unclear from this passage whether the RPD found it speculative that the Applicant would verbally express his hallucinations and delusions if he returned to Afghanistan, that his delusions would come to the attention of the Taliban or that the hallucinations would result in persecution.

[22] The RPD's failure to assess and consider this specific ground of risk which was both apparent from the record and raised by the Applicant constitutes a reviewable error and as such, the decision cannot stand.

[23] While this error is sufficient to dispose of the application, I am also of the view that the RPD failed to address the Applicant's ground of persecution based on his risk of being recruited due to his late father's identity. While the Respondent contends that there is no evidence that the Taliban wanted to recruit the Applicant in the hopes of attracting others to their cause or that the



Taliban would harm him based on the profile of his late father, there was evidence on the record corroborating the prominent reputation of the Applicant's father as well as objective evidence of forcible recruitment by the Taliban. The fact remains that the RPD's decision is silent on this issue and one cannot know whether the RPD turned its mind to it or not. Once again, the RPD's failure to address this ground of persecution constitutes a reviewable error which warrants this Court's intervention.

[24] For these reasons, the application for judicial review shall be allowed and the matter remitted to a differently constituted panel of the RPD for redetermination.

[25] The parties did not propose any certified question in the present proceedings.

**JUDGMENT**

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

1. The application for judicial review is allowed and the matter is remitted back for redetermination by a differently constituted panel of the Refugee Protection Division;
2. No question is certified for appeal.

"Sylvie E. Roussel"

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Judge

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

**DOCKET:** IMM-4824-15

**STYLE OF CAUSE:** KHALID SAFI v THE MINISTER OF CITIZENSHIP  
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**PLACE OF HEARING:** TORONTO, ONTARIO

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

**JUDGMENT AND REASONS:** ROUSSEL J.

**DATED:** DECEMBER 7, 2016

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