Federal Court  Cour fédérale

Date: 20170608

Docket: IMM-1168-16

Citation: 2017 FC 561

Ottawa, Ontario, June 8, 2017

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

SANAZ NAZARI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Sanaz Nazari, is a citizen of Iran and of Shia faith. Her husband is a citizen of Pakistan and of Sunni faith. In November 2000, they were married in the United Arab Emirates [UAE] where the Applicant's husband was working as an agricultural engineer. The Applicant resided with her husband in a house provided by his employer in a camp outside of Abu Dhabi.

[2] In June 2003, their son was born in the UAE. By virtue of having a Pakistani father, the Applicant's son is a citizen of Pakistan. He does not hold UAE or Iranian citizenship.

[3] In July 2005, the Applicant moved to Iran with her son to live with her parents since her husband's employer was no longer able to accommodate families at the worksite camp where they had been living. While in Iran, the Applicant attended university and studied business management. Every few months, she travelled to the UAE to visit her husband. This allowed the Applicant to maintain her permanent resident status in the UAE and to renew her son's Iranian visa.

[4] When the Applicant's husband obtained new employment in 2008 which allowed for his family to live with him, the Applicant returned to the UAE with her son. The Applicant and her son visited Iran regularly, at least once per year. The family resided in the UAE until the Applicant came to Canada with her son in February 2015, where they are currently living with the Applicant's sister.

[5] In June 2015, the Applicant sought refugee protection for herself and her son. Alleging that her husband was at risk of losing his status in the UAE and was considering returning to his native village in Pakistan near the Afghanistan border as he was now very religious and close to his family, the Applicant claimed that she would be killed or persecuted in a region dominated by the Sunni religion and rejected by her husband's devout family on account of her Shia faith. She also claimed that it would be too dangerous for her son to live with his father alone, and in any event, her husband did not want to care for the child.

[6] The Applicant also asserted that it would be impossible for her to live with her son in Iran as he would never obtain citizenship or permanent residence there. While Iranian men are able to convey their nationality to their children or to their wives of foreign nationality, Iranian women do not have the right to pass on their nationality to their children or to their husbands of foreign nationality pursuant to article 976 of the Civil Code of the Islamic Republic of Iran [Civil Code]. This meant that the Applicant's son would not be able to attend school or obtain medical care or any other social benefits. Moreover, her son could only go to Pakistan to get his Iranian visitor's permit renewed every three (3) months and this would be too dangerous for him.

[7] On September 28, 2015, the Refugee Protection Division [RPD] accepted the refugee claim of the Applicant's son against Pakistan, concluding that if the Applicant's son lived in his father's village in the tribal areas of Pakistan, there was a serious possibility that he could be forced to join a Taliban militia group or be targeted as the son of fighting age of a Shia woman.

[8] Despite determining that the Applicant's son was a Convention refugee, the RPD nevertheless rejected the Applicant's claim against Iran. The RPD noted that while the Applicant resided in Iran with her son, her biggest problems were mostly administrative complications linked to the fact that her son was not a citizen of Iran. Otherwise, her life in Iran was normal and she had not been ostracized because of her marriage to a citizen of Pakistan. The RPD found the fact that she returned regularly to Iran with her son from 2008 to 2014 demonstrated that she did not fear being persecuted or that her son would be in danger. In addition, the RPD found that while Iran's nationality laws were discriminatory towards women, this did not amount to persecution as family unity is not a concept recognized by Canadian refugee law. Finally, relying

on the decision of this Court in *Nakawunde v Canada (Citizenship and Immigration)*, 2015 FC 309 at paras 29-30, the RPD concluded that the forced separation from her son would not constitute cruel and unusual treatment or punishment pursuant to section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Rather, the Applicant's concerns were relevant to humanitarian and companionate relief under section 25 of the IRPA.

[9] The Applicant appealed the RPD's decision to the Refugee Appeal Division [RAD].

[10] In a decision dated February 24, 2016, the RAD upheld the RPD's decision and confirmed that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the IRPA.

[11] The Applicant now seeks judicial review of the RAD's decision.

II. Analysis

[12] The reasonableness standard of review applies when this Court is reviewing the RAD's determination on a question of mixed fact and law (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35). The Court should not intervene if the RAD's decision is justifiable, transparent and intelligible and if it falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]).

[13] While framed differently in her application for judicial review, the Applicant's main contention is that the RAD should have considered and given more weight to Canadian and international law which holds that the discriminatory interference with family life, unity and integrity constitutes persecution. The Applicant argues that a fundamental human right is breached where a state fails to recognize the fundamental relationship between a parent and a child or interferes with that relationship being maintained. According to the Applicant, the breach is even more compounded where the denial of that relationship is rooted in discrimination based on gender.

[14] I am of the view that the RAD's decision is reasonable for the following reasons.

[15] Contrary to the Applicant's contention, the RAD did indeed consider the Applicant's arguments that her right to family unity should be construed in a manner compliant with international human rights instruments. The RAD accepted there are international norms at play, citing for instance the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*. It added, however, that Parliament is the ultimate source of the law in Canada and that the Applicant's claim must be adjudicated based on "clear provisions of an Act of Parliament" which in the Applicant's case relate to sections 96 and 97 of the IRPA and the regulations, rules and jurisprudence which flows from such law.

[16] Relying on Canadian jurisprudence related to the meaning of persecution, the RAD indicated that it simply could not accept the proposition that the administrative requirements to maintain the Applicant's proximity to her son amounted to persecution. The RAD found that

even if it accepted that the Applicant fell within the category of "a particular social group" pursuant to section 96 of the IRPA—Iranian women who marry foreign men and are unable to convey their nationality to their husbands and children or a mixed-marriage Shia-Sunni family—the Applicant's situation did not amount to persecution as understood in Canadian law.

[17] Canadian jurisprudence recognizes the general right of countries to regulate and control the granting of citizenship and the entry of non-nationals into their territory (*De Guzman v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 436 at para 97). Parliament has done so principally through the IRPA (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 9; *Canada (Public Safety and Emergency Preparedness) v J.P.*, 2013 FCA 262 at para 14, rev'd on other grounds in *B010 v Canada (Citizenship and Immigration)*, 2015 SCC 58).

[18] Canadian jurisprudence also provides that if a country or state exercises this right in a discriminatory manner which imposes limitations based on one of the enumerated grounds of persecution, such discrimination is a factor to be considered in assessing whether a claimant has an objective fear of persecution (*Canada (Minister of Citizenship and Immigration) v Hamdan*, 2006 FC 290 at paras 23-24).

[19] Having said that, even if one were to agree with the Applicant that the alleged discrimination in this case is gender-based and that the Applicant falls within the category of a "particular social group" as defined under section 96 of the IRPA, the issue at the core of the Applicant's argument is whether the definition of Convention refugee incorporates the concept

of family unity. The Applicant indeed admitted before the RPD that other than administrative problems, she herself faced no personal harm in Iran, eliminating any issue of personal risk.

[20] While Canadian immigration laws may strive to facilitate family unity in certain circumstances such as those contemplated by section 25 of the IRPA, Canadian refugee law does not recognize any fundamental right for refugee claimants to live together (*Chavez Carrillo v Canada (Citizenship and Immigration)*, 2012 FC 1228 at paras 15, 17; *Jawad v Canada (Citizenship and Immigration)*, 2012 FC 1035 at para 10; *Canada (Minister of Citizenship and Immigration) v Khan*, 2005 FC 398 at para 11). Moreover, the concept of family unity does not relieve a refugee claimant of the *onus* of demonstrating that he or she falls within the definition of "Convention refugee" (*Garcia Garcia v Canada (Citizenship and Immigration)*, 2010 FC 847 at para 15).

[21] The RAD's decision is therefore consistent with the jurisprudence of this Court.

[22] I do not find that the RAD's failure to address in further detail certain elements of the Applicant's evidence or arguments indicates that the RAD ignored them (*Thiara v Canada (Citizenship and Immigration*), 2007 FC 387 at paras 18, 28, 41, aff'd in *Thiara v Canada (Citizenship and Immigration*), 2008 FCA 151 at para 9). It was not necessary for the RAD to do so given that the determinative issue for the RAD was that it considered the Applicant's claim to be based on both speculation and implausibility.

[23] The RAD considered speculative the Applicant's allegation that it would be impossible for her son to immigrate to Iran. Like the RPD, the RAD found it difficult to believe that there was no mechanism, albeit difficult, for the Applicant to secure permanent status for her son in Iran provided her husband was willing to cooperate. The RAD noted that the Applicant's son was able to move in and out of Iran on several occasions to maintain his status in Iran and concluded that the Applicant had not established that it was impossible for her son to secure permanent status in Iran.

[24] This conclusion is both reasonable and supported by the evidence on the record. In one of the articles provided by the Applicant, the author discusses the limitations on the ability of Iranian women to pass citizenship to their children. While most of the article relates to the situation of children "born in Iran" to Iranian mothers and foreign fathers, I note that the author also indicates that children of Iranian women born outside of Iran "must pursue citizenship through other naturalization procedures in the Civil Code, a difficult task". This statement is supported by a footnote referring to article 983 of Iran's Civil Code which sets out the process for submitting an application for naturalization. Accordingly, it was not unreasonable for the RAD to find that the Applicant had not demonstrated that it was impossible for her to secure status in Iran, even if it would be difficult to do so.

[25] The RAD also found inconsistent the Applicant's argument that she was at risk in Iran because she married a Sunni. The RAD properly noted that the Applicant had lived and travelled in and out of Iran repeatedly since her marriage in 2000 and there was no evidence that she had experienced any problems between 2000 and 2015.

[26] In addition to finding some of the Applicant's allegations to be speculative, the RAD also considered "simply implausible" the Applicant's allegation that her husband would want to return to a small village in Pakistan. Her husband had lived in the UAE since at least 2000 and at least two (2) of his brothers were also present in the UAE, one of whom had lived there for over twenty-five (25) years.

[27] Overall, the RAD was of the opinion that all of the Applicant's allegations were "open to question" and that if the Applicant returned to Iran, she had not identified a real risk of harm of persecution or a risk under section 97 of IRPA.

[28] While the Applicant may disagree with the RAD's assessment and the weight it gave to the Applicant's evidence, it is not the function of this Court upon judicial review to substitute its own view of a preferable outcome and to reweigh the evidence that was before the RAD and the RPD (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59, 61). The RAD's decision must be viewed as an "organic whole" (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54) and the adequacy of reasons is not a stand-alone ground of review (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 14, 16).

[29] Ultimately, I find that the concerns of the Applicant would be best addressed in a humanitarian and compassionate application, as per section 25 of the IRPA. At the hearing, counsel for the Applicant indicated that such an application had been filed but I am unaware if it has been adjudicated at this point.

[30] To conclude, I find the RAD's decision to be reasonable as it is justified, transparent and intelligible and falls within the range of possible acceptable outcomes that are defensible in respect of the facts and law (*Dunsmuir* at para 47).

[31] The Applicant proposes a number of certified questions. Because I find that they are not dispositive of the matter, I will not certify these questions (*Zhang v Canada (Citizenship and Immigration*), 2013 FCA 168 at para 9; *Canada (Minister of Citizenship and Immigration) v Zazai*, 2004 FCA 89 at para 12; *Pierre v Canada* (*Citizenship and Immigration*), 2012 FC 1249 at paras 46-47).

JUDGMENT in IMM-1168-16

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed and no question of general importance is certified.

"Sylvie E. Roussel"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1168-16
STYLE OF CAUSE:	SANAZ NAZARI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUÉBEC
DATE OF HEARING:	SEPTEMBER 27, 2016
JUDGMENT AND REASONS:	ROUSSEL J.
DATED:	JUNE 8, 2017

APPEARANCES:

David Berger	FOR THE APPLICANT
Evan Liosis	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Goldberg Berger Barristers and Solicitors Montréal, Québec	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Montréal, Québec	FOR THE RESPONDENT