Federal Court  Cour fédérale

Date: 20180315

Docket: IMM-3224-17

Citation: 2018 FC 299

Ottawa, Ontario, March 15, 2018

PRESENT: The Honourable Madam Justice McDonald

BETWEEN:

SHERRY IQBAL, FARKHANDA ZIA, AND ALEXIA SHERRY AND JAYDEN ABRAHAM (BY THEIR LITIGATION GUARDIAN SHERRY IQBAL)

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants are a Christian family from Pakistan who seek review of the denial of their application for permanent residence in Canada as refugees from abroad. They claimed refugee status pursuant to s.145 of the *Immigration and Refugee Protection Regulations* [IRPR] (Convention refugee abroad class), s.96 of the *Immigration and Refugee Protection Act* [IRPA] and s.147 of IRPR (humanitarian-protected persons abroad country of asylum class). The Visa

Officer [the Officer] denied their claim and determined they had an internal flight alternative [IFA] in Pakistan. For the reasons that follow this judicial review is granted.

I. Background

[2] The Principal Applicant, Sherry Iqbal [PA], his wife, and two children currently reside in Thailand. They seek refugee status on the basis of an incident in 2013 when the PA, a nurse, was asked to render medical assistance to a patient. The PA says that after examining the patient he advised the men present that the patient was in serious condition and would need to go to a hospital. The PA alleges that one of the men then took out a weapon and demanded that the PA treat the patient immediately. When the PA claimed that was not possible, he was attacked. The PA "begged them to stop for the sake of God." The PA then claims he was called an infidel, "because they knew I was a Christian" and he and his family were threatened with death if he did not provide treatment. The men attacked the PA and he was rendered unconscious. When he awoke, he was eventually released. The PA alleges that his assailants are affiliated with the Taliban.

[3] The PA claims that after this incident he left for Lahore, Pakistan, to stay with relatives. However, on September 1, 2013, the PA alleges that the same assailants attacked his home, where his father and other family members lived. His father was killed in the attack.

[4] After these events, the PA and his family left Pakistan and arrived in Thailand on October 17, 2013. The Applicants applied for refugee status with the United Nations High Commissioner

for Refugees, but their claim was denied. Afterwards, the PA and his wife were interviewed at the Canadian embassy in Bangkok on March 27, 2017.

II. Visa Officer's Decision

[5] The decision is comprised of the May 26, 2017 letter of the Officer as well as the Global Case Management System [GCMS] notes of the Officer. In the letter, the Officer states that the PA did not meet the legislative requirements of the IRPA and IRPR for the classes for which he applied.

[6] In the GCMS notes, the Officer questions whether the PA's assailants would continue to be seeking him out three years later. The Officer further notes that even if the assailants were looking for the PA they were not able to find him in Lahore where he relocated after the attack. The Officer concluded that there was no compelling evidence that the assailants were a continuing threat to the PA or his family.

[7] With respect to the PA's fear of terrorists in Pakistan, the Officer concluded that this is a general risk faced by all citizens of Pakistan. Based on this, the Officer stated that it did not appear that the PA feared persecution "based on his membership to any specific group." For that reason, the Officer concluded that the PA's general fear of terrorists does not rise to the level protected by Convention refugee status.

[8] The Officer determined that the PA had a viable IFA within Pakistan. The Officer noted that the PA had lived in different parts of Pakistan at various times, and while the PA was once

the victim of a stabbing attack while living in Karachi, this attack was random and did not demonstrate persecution. Therefore, the Officer concluded that the Applicant had an IFA.

[9] The Officer denied the country of asylum class claim under s.147 of the IRPR as he concluded that there was no evidence that Pakistan is engaged in a civil war, armed conflict, or massive violation of human rights.

[10] The Officer concluded that the PA, and therefore his family, did not meet the legislative requirements of the relevant IRPR classes, and the application was refused.

III. Issues

[11] Although the Applicants raise a number of issues, the following issues will be addressed:

A. Was the Officer required to consider religious persecution?

B. Was the IFA analysis proper?

C. Are the Applicants entitled to costs?

IV. Standard of Review

[12] Reasonableness is the standard of review of a visa officer decision determining eligibility for the Convention refugees abroad class or the country of asylum class (*Saifee v Canada (Citizenship and Immigration)*, 2010 FC 589 at para 25 [*Saifee*]; *Bakhtiari v Canada (Citizenship and Immigration)*, 2013 FC 1229 at para 22).

[13] Reasonableness is also the standard that applies to the assessment of the IFA on the facts (*Reci v Canada (Citizenship and Immigration),* 2016 FC 833 at para 17 [*Reci*]). However, whether the Officer applied the correct test for an IFA is assessed on the correctness standard (*Reci*, at para 16).

V. Analysis

A. *Was the Officer required to consider religious persecution?*

[14] The PA argues that the Officer completely failed to consider the religious persecution aspect of the claim despite the PA clearly noting that he faced risk as a Christian. In fact, the PA argues that the event which forced him and his family to flee Pakistan was the assault and threats made on account of his Christian beliefs.

[15] In *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, the Supreme Court held that "It is not the duty of a claimant to identify the reasons for the persecution. It is for the examiner to decide whether the Convention definition is met; usually there will be more than one ground."

[16] Here, it is apparent from the decision that the Officer only considered the "social group" category of Convention refugee status when he stated that the PA did not have any fear because of his membership in a particular social group. The Respondent argues that this is reasonable because the PA did not advance the grounds of religion or political opinion, and the onus is on him to advance all relevant grounds for his refugee claim (*Sing v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 125 at para 71).

[17] Be that as it may, the statement from the Supreme Court of Canada is clear and it requires the Officer to consider *all* potential relevant grounds of persecution from the PA's statements. It is true that the PA stated, during the interview, that he is just an "ordinary person who could be targeted." However the Officer did not turn his attention to the PA's other statements, where he said that "They knew I was Christian and that's why they said that you are eligible for killing." As the PA claimed he was told he was "eligible to be killed" because he is Christian, the Officer should have assessed this ground of persecution.

[18] The failure of the Officer to assess this ground of persecution impacts the Officer's conclusion with respect to the IFA available to the PA. While the Officer notes that an IFA may be available for Christians, the Officer does not consider the issue of the PA's Christian beliefs as against contradictory evidence in the record. Given that this evidence is significant, and was presumed to have been considered by the Officer (*Saifee,* at para 28), it increases the likelihood that the Officer's decision on this aspect of the claim is unreasonable if the evidence is not referenced by the Officer (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425).

[19] The failure to address contradictory evidence in light of the failure to assess all grounds of the PA's claim renders the Officer's decision unreasonable.

B. *Was the IFA analysis proper?*

[20] The IFA analysis has two aspects:(1) whether there is a serious possibility that the PA will be persecuted in the part of the country in which an IFA exists, and (2) whether it would be

unreasonable for the PA to seek refuge in the IFA (*Rasaratnam v Canada (Minister of Employment and Immigration,* [1992] 1 FC 706 (CA) at 711). In relation to the second prong of the test, refuge will only be unreasonable where there is undue hardship in relocation (*Thirunavukkarasu v Canada (Minister of Employment and Immigration,* [1994] 1 FCR 589 (CA) at 688 [*Thirunavukkarasu*]).

[21] The Applicants argue that the Officer failed to apply the correct test of "serious possibility" in the first part of the IFA test and instead concluded that there was a "low risk" that the PA would be harmed again.

[22] The reasons of the Officer in the letter or the GCMS notes do not reference the two-pronged test for an IFA consideration. As noted by the Court in *Estrada Lugo v Canada (Citizenship and Immigration),* 2010 FC 170 at para 36, "The Board must not only state the correct test but it must also apply the correct test." Setting out the basic test for determining IFA is a question of law for which the Officer is not entitled to any deference (*Kamburona v Canada (Citizenship and Immigration),* 2013 FC 1052 at para 17 [*Kamburona*]). Here, there is no indication that the Officer turned his mind to the correct test because it is not stated anywhere. Therefore there is no indication that the decision-maker applied the correct IFA test (*Reci,* at para 29).

[23] Furthermore, even assuming the Officer was aware of the correct test, upon review of the decision as a whole it is not possible to determine that the Officer applied the correct test to the facts before him (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador*

(Treasury Board), 2011 SCC 62 at para 14). The Officer cites a UK Home Office Report which states that "[I]nternal relocation may be a viable option, where it would not be unreasonable or unduly harsh to expect them to do so…". However this alone is not a statement of the correct IFA test. Therefore, this case is not like *Abdalghader v Canada (Citizenship and Immigration),* 2015 FC 581 [*Abdalghader*] where the reasons indicated that the decision-maker applied the correct test even though it was not expressly noted (*Abdalghader*, at para 23).

[24] Here the Officer concludes that there is a "low risk" of "harm" in the IFA, but there is no assessment of the reasonableness of relocation according to the "undue hardship" standard set out in *Thirunavukkarasu*.

[25] Even on a generous reading of the decision, it cannot be determined that the Officer applied the proper IFA test (*Kamburona*, at para 34). This is an error.

C. *Are the Applicants entitled to costs?*

[26] The Applicants seek costs on the basis of what they call the Officer's blatant failure to consider religious persecution.

[27] Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules* provides that no costs are awarded in immigration proceedings unless the Court, for special reasons, so orders.

[28] The Federal Court of Appeal in *Ndungu v Canada (Citizenship and Immigration)*, 2011 FCA 208 at para 7 [*Ndungu*] outlined the potential circumstances giving rise to "special reasons":

> "Special reasons" justifying costs against the Minister may be found where:
>
> i) the Minister causes an applicant to suffer a significant waste of time and resources by taking inconsistent positions in the Federal Court and the Federal Court of Appeal.
>
> ii) an immigration official circumvents an order of the Court.
>
> iii) an immigration official engages in conduct that is misleading or abusive.
>
> iv) an immigration official issues a decision only after an unreasonable and unjustified delay.
>
> v) the Minister unreasonably opposes an obviously meritorious application for judicial review (citations omitted).

[29] Costs will not be awarded against the Minister simply because, as here, an immigration official has made an erroneous decision (*Ndungu*, at para 7; *Sapru v Canada (Citizenship and Immigration)*, 2011 FCA 35).

[30] I am not satisfied that any special reasons arise on this matter. Therefore there will not be an award of costs.

JUDGMENT in IMM-3224-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted. The decision of the Visa Officer is set aside and the matter is remitted for redetermination by a different officer;
2. No question of general importance is proposed by the parties and none arises; and
3. There will be no order as to costs.

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	SHERRY IQBAL, FARKHANDA ZIA, AND ALEXIA SHERRY AND JAYDEN ABRAHAM (BY THEIR LITIGATION GUARDIAN SHERRY IQBAL) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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