

Federal Court



Cour fédérale

Date: 20180319

Docket: IMM-2284-17

Citation: 2018 FC 309

Ottawa, Ontario, March 19, 2018

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

AIN FOOR KHAN

Applicant

and

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

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr Ain Foor Khan fled Pakistan in 2014 and, after travelling for several months through numerous countries, he claimed asylum in the United States. He based the claim on his fear of persecution by the Taliban. In 2016, after his US claim was dismissed, Mr Khan travelled to Canada and claimed refugee protection at the border.

[2] A panel of the Refugee Protection Division (RPD) dismissed Mr Khan's application on the basis that he could likely live safely away from the Pakistan-Afghanistan border where the Taliban is most active. In other words, he had internal flight alternatives (IFAs) within Pakistan. Mr Khan appealed to the Refugee Appeal Division (RAD), which upheld the RPD's decision.

[3] Mr Khan argues that the RAD's conclusion that IFAs were available to him in Pakistan was unreasonable because it failed to take account of evidence showing that the Taliban is capable of carrying out attacks throughout Pakistan. He asks me to quash the RAD's decision and order another panel to reconsider his claim.

[4] I can find no basis for overturning the RAD's decision because its conclusion was supported by the evidence before it.

[5] The sole issue is whether the RAD's decision was unreasonable.

II. Factual Background

[6] Mr Khan lived in Zangali in the Peshawar district of Pakistan. In 2007, after clashes between the Taliban and the Pakistan army, Mr Khan joined a local peace committee, eventually becoming a leader of a sub-group. He was involved in tracking the activities of the Taliban and reporting back to the government of Pakistan. In 2011, the Taliban became aware of Mr Khan's actions and left pamphlets at his house demanding that he stop.

[7] In 2012, Mr Khan and his family moved to Adam Khel, in Khyber Pakhtunkhwa province, where a militant group called Ansar-UI Islam was active. The group sought protection money from Mr Khan and beat him when he refused to pay.

[8] The following year, due to clashes between the Ansar-UI Islam and the Taliban, Mr Khan and his family returned to Zangali. After members of the Taliban came to the house, the family moved again to the Gulbahar area of Peshawar. Mr Khan left for the US in 2014.

III. The RAD's Decision

[9] The RAD reviewed the prior decision of the RPD, in which the RPD had found that Mr Khan's account of events was credible. However, the RPD had found that the Taliban rarely singles out individuals who are not high-profile targets. Therefore, Mr Khan, a leader of a small sub-group, could likely live safely in places such as Hyderabad, Multan, or Lahore where, as an experienced automobile mechanic, he could probably find a job.

[10] The RAD agreed with the RPD's analysis and conclusion. It reviewed documentary evidence, including fresh evidence filed by Mr Khan, and concluded that the Taliban was a fragmented organization unable to track the movements of individuals in Pakistan. In fact, there was no evidence that it had carried out targeted attacks in the proposed IFAs. Further, there was no indication that the Taliban continued to be interested in him. Therefore, according to the RAD, it would be reasonable for Mr Khan to seek refuge within Pakistan instead of seeking asylum in Canada.

IV. Was the RAD's decision unreasonable?

[11] Mr Khan maintains that the RAD made three errors that led it to an unreasonable conclusion. First, the RAD wrongly stated that the RPD had found that he lacked credibility. Second, the RAD erred by failing to give any weight to the report of a psychotherapist, who concluded that he showed symptoms of post-traumatic stress disorder (PTSD). Third, the RAD's finding that there were three IFAs in Pakistan was unreasonable on the evidence.

[12] I disagree with each of Mr Khan's submissions.

[13] First, it is true that the RAD wrongly stated that the RPD had found Mr Khan not to be credible. However, read in context, I am satisfied that the RAD simply made a clerical or inadvertent error by inserting the word "not." The RAD accepted all of Mr Khan's testimony as true, and in any case, reviewed his evidence afresh.

[14] Second, the RAD discounted the psychotherapist's report on the basis that she was not qualified to provide the diagnosis set out in it. While Mr Khan maintains that the psychotherapist was providing merely an assessment, not a diagnosis, the RAD was entitled to consider that the report merited little weight given that it was not authored by a licensed physician, psychologist, or psychiatrist. In addition, the psychotherapist had little on which to base her opinion about the impact that returning to Pakistan might have on Mr Khan, possibly departing from a purely mental health perspective to advocacy on Mr Khan's behalf.

[15] Third, the documentary evidence before the RAD did not indicate that Mr Khan would be in danger from the Taliban in the proposed IFAs. Even the fresh evidence Mr Khan tendered stated that Pakistani anti-terrorist authorities had successfully defeated or arrested members of ISIS and the Taliban in those cities. None of it showed that the Taliban was carrying out targeted attacks on particular individuals.

[16] Mr Khan cites a 2015 case in which the RAD concluded that an IFA was not available in Pakistan for a claimant who had been targeted by the Taliban ([2015] RADD No 1052). However, that case involved a claimant who had received personal threats by telephone, had been shot at by Taliban gunmen, and whose brother had been kidnapped in an effort to obtain information about the claimant's whereabouts. The RAD found that the documentary evidence showed that the Taliban did carry out retaliatory attacks in Lahore, the single IFA proposed in that case. The circumstances are not comparable to Mr Khan's. There is no evidence of equally precise targeting of Mr Khan, and there are other alternatives to Lahore in play here.

V. Conclusion and Disposition

[17] The RAD arrived at a reasonable conclusion about the alleged risks facing Mr Khan if he returned to Pakistan. In particular, its finding that Mr Khan had reasonable IFAs available to him was not unreasonable on the evidence. I must, therefore, dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT IN IMM-2284-17

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

"James W. O'Reilly"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2284-17

STYLE OF CAUSE: AIN FOOR KHAN v THE MINISTER OF
IMMIGRATION, REFUGEES AND CITIZENSHIP

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 11, 2018

JUDGMENT AND REASONS: O'REILLY J.

DATED: MARCH 19, 2018

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