

Federal Court



Cour fédérale

Date: 20200220

Docket: IMM-2550-19

Citation: 2020 FC 275

Toronto, Ontario, February 20, 2020

PRESENT: Madam Justice Simpson

BETWEEN:

EHTISHAM-UL HAQ

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Delivered orally from the Bench in Toronto, Ontario on February 19, 2020)

[1] This application is for judicial review of a decision of a Senior Immigration Officer [the Officer] at Citizenship and Immigration Canada dated April 4, 2019 [the Decision], in which she denied the Applicant's application for permanent residence on Humanitarian and Compassionate [H&C] grounds. The Officer found that the Applicant, whose wife and children all live in

Pakistan, did not warrant an H&C exemption. This application was brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

I. BACKGROUND

[2] The Applicant is a 49-year-old citizen of Pakistan. His wife and four children, who are currently 25, 23, 21, and 17 years old, live in Gujranwala, Pakistan. The Applicant lives in Canada in a home occupied by his father and two of his brothers and their wives, together with five minor children who are the Applicant's nieces and nephews.

[3] The Applicant arrived in Canada on a valid visitor's visa on June 6, 2006. He made a refugee claim in September of that year saying that he left Pakistan because the police suspected that he was connected to a murder, and because he was attacked twice following his participation in political meetings. In December 2008, the Refugee Protection Division denied his claim on the basis that his allegations lacked credibility.

II. THE DECISION

[4] The Officer noted that the Applicant has lived in Canada for 13 years and that he and his brother Jahangir operated an appliance business from 2007 to 2014. Since 2014, the Applicant has been employed as a driving instructor. The Officer also noted that the Applicant volunteers in Canada and cares for his father.

[5] The Officer considered the father's letter, which states that the Applicant is his primary caregiver and, that he has a heart condition. The Officer gave weight to the Applicant's close relationship with his father, but noted that the father lives with two of the Applicant's siblings, who can provide him with assistance when necessary.

[6] The Officer considered the Applicant's wife and four children. She considered the assertion that without the funds the Applicant sends to his family in Pakistan, his children would not be able to attend university and high school. The Officer also considered the Applicant's submission that he has been away from of Pakistan for a long time and would not be able to find a job on his return.

[7] The Officer concluded that the Applicant had not demonstrated that he could not support his family if he returned to Pakistan. The Officer found that while the Applicant may experience a period of difficulty, he will return to Pakistan with additional skills, including a working knowledge of English that will help him to re-establish himself. The Officer found that there was no evidence to suggest that the Applicant had struggled to support his family before he came to Canada. The Officer noted that the Applicant was able to start a business in Canada within a year of his arrival, and found that there was no reason why he could not use the same entrepreneurial skills to succeed in Pakistan, where he is familiar with the language and culture.

[8] The Officer acknowledged that the Applicant believes the best thing for his children would be to support them from Canada, but she gave greater weight to his presence with his

children and wife in Pakistan. The Officer found that his ties to his immediate family in Pakistan are stronger than his ties to his extended family in Canada.

[9] The Officer concluded that the Applicant had not overcome the negative credibility findings made by RPD and noted in his PRRA decision. In particular he had not shown that he would be arrested if he returned to Pakistan. The Officer also found that, despite Applicant's counsel's submission that Pakistani police target vulnerable people like the Applicant, there was insufficient evidence to show that the Applicant is a vulnerable person.

III. ISSUES

1. Did the Officer err in her analysis of the Best Interests of the Children [BIOC]?
2. Did the Officer unreasonably speculate that the Applicant would find employment in Pakistan?
3. Did the Officer err in assessing the Applicant's hardship if he returned to Pakistan?

IV. DISCUSSION

A. *Issue 1*

[10] The Applicant submits that the Officer did not explicitly engage with the interests of the Applicant's minor daughter, aged 17. The Applicant submits that the Officer lumped her best interests analysis into a broader assessment of the Applicant's family group. The Applicant also submits that the Officer did not consider the best interests of the Applicant's Canadian nephews and nieces.

[11] In my view, having found that the Applicant's 17 year old daughter lived in the family home in Pakistan with her mother and older sisters, the only question was whether her best interests were served by her father's presence or by his financial support from Canada. The Officer's conclusion that his presence was preferable was reasonable given that she concluded that he could find employment in Pakistan which would fund his daughter's high school tuition.

[12] The Officer also noted that in his role as an uncle, the Applicant was never called on to be the sole caregiver for his nieces and nephews. In my view, it was therefore reasonable of the Officer to simply treat the Applicant's role as a positive factor in the H&C assessment.

[13] If the Applicant returns to Pakistan, both the Applicant's minor daughter and his minor nieces and nephews in Canada will all be cared for by their two parents in their respective family homes. Given these facts and in the absence of any concerns about, health, mental fitness, or marital stability in the families, the Officer was not required to conduct a more in-depth BIOC analysis. Her decision that the BIOC did not pose an issue was reasonable in the unusual circumstances of this case in which the Applicant's removal will lead to family reunification.

B. *Issue 2*

[14] Contrary to the Applicant's submissions, the Officer did not reach her conclusion about the Applicant's employment prospects in Pakistan in a vacuum. She had evidence to show that the Applicant had demonstrated entrepreneurial skills in Canada and that he had learned English. As well, the political party he supported before he left Pakistan is now in power. The Officer

clearly concluded that even though Pakistan's unemployment figures were high, these matters would offset his lack of a formal education.

[15] Further, it was not unreasonable of the Officer to note, as part of her analysis, that the Applicant had been able to afford the flight to Canada when he left Pakistan. He also applied for a one year multi-entry visa which suggests more costly flights were contemplated. Regarding his work history in Pakistan the Officer stated: "Insufficient evidence was provided to suggest that he (the Applicant) was struggling to support his family before he came to Canada".

[16] In my view, the Applicant cannot leave gaps in the evidence on significant issues such as his financial status and employment in Pakistan before he came to Canada and then criticize an officer for reaching reasonable conclusions based on the evidence that was available.

C. *Issue 3*

[17] I can find nothing unreasonable about the Officer's assessment of potential hardship. There was no reliable evidence to show that the Applicant would be arrested or that he would be targeted as a vulnerable person. It is important to note that on the basis of the elements of the claim that the RPD believed, his interactions with police were never negative.

[18] The Applicant says that in March 2010 while he was in Canada and after the RPD decision, six unknown and armed individuals entered his family's home in Pakistan. They started firing guns and asked where he was. However this intrusion was not given significant weight by the PRRA officer, who also decided this H&C, because it occurred a long time ago

and has not been repeated. Further, the record shows that it was not mentioned in the letters his wife and children sent to support the H&C application. In these circumstances the Officer did not need to discuss this episode again when she considered H&C factors.

V. CERTIFICATION

[19] No question was posed for certification for appeal.

VI. CONCLUSION

[20] For all these reasons the application for judicial review will be dismissed.

JUDGMENT in IMM-2550-19

THIS COURT'S JUDGMENT is that this application for judicial review is hereby dismissed.

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2550-19

STYLE OF CAUSE: EHTISHAM-UL HAQ v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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