

Federal Court



Cour fédérale

Date: 20200917

Docket: IMM-5296-19

Citation: 2020 FC 902

Ottawa, Ontario, September 17, 2020

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

ABDUL GHAFFAR CHAUDHRY

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of a decision of the Refugee Protection Division [RPD] dated August 14, 2019 [the Decision], refusing his claim for refugee protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] As explained in greater detail below, this application is allowed, because I have found reviewable errors in several material components of the RPD's analysis, rendering its Decision unreasonable.

II. Background

[3] The Applicant is a citizen of Pakistan, formerly employed as a judge, who came to Canada in February 2017 and claimed refugee status. He alleges that he faces persecution in Pakistan for a number of reasons. He asserts that he has been targeted by: (a) religious extremists due to his involvement in building a shrine for his uncle, a local religious leader who converted from Sunni to Shia Islam; (b) extremists dissatisfied with his judgments; and (c) the Pakistani state following his failure to return to Pakistan in compliance with an electoral assignment.

[4] In the Decision that is the subject of this application for judicial review, the RPD identified the determinative issues to be credibility and the availability of an internal flight alternative [IFA]. The RPD considered the Applicant's behaviour to be inconsistent with there being a credible threat against him in Pakistan and found there were unexplained discrepancies in the evidence, all of which undermined the Applicant's credibility. It also found that, as a former judge who had decided civil cases, he did not fit the profile of judges whom the country condition evidence indicated could be at risk.

[5] The RPD then considered whether the Applicant has a viable IFA in Islamabad or Karachi. Under the first prong of the IFA test, related to the risk of persecution in the proposed IFA, the Applicant submitted that he cannot live in either location due to his profile as a judge

and the threats he has received. However, as he was no longer a judge and due to the credibility issues related to other risks he asserted, the RPD rejected the Applicant's objection. The RPD also concluded there was little evidence that the agents of persecution had the means or willingness to locate the Applicant in either IFA location.

[6] Regarding the second prong of the test, whether it would be reasonable for the claimant to seek refuge in a proposed IFA, the RPD noted that the proposed IFAs are the largest cities in Pakistan and that 95% of the population are Sunni Muslims, the religion of the Applicant. This would provide a significant degree of anonymity. The RPD also noted that the Applicant speaks both Urdu and English, has many years of work experience, is financially able to relocate, and has some supportive family members in Pakistan. It concluded that the evidence did not demonstrate the Applicant would be unable to locate housing or address other needs in either of the IFA locations.

[7] In conclusion, the RPD found the Applicant was not a Convention Refugee or a person in need of protection under sections 96 and 97 of IRPA.

III. Issues and Standard of Review

[8] The Applicant raises the following issues for the Court's consideration:

- A. Did the RPD make an unreasonable general credibility finding?
- B. Did the RPD make an unreasonable credibility finding with respect to the risk
from:

- i. Extremists due to the Applicant's construction of the shrine;
- ii. Extremists and others due to the Applicant's role as a judge; and/or
- iii. The Pakistani state due to the Applicant's failure to comply with an order to return to Pakistan?

C. Did the RPD unreasonably conclude that the Applicant has a viable IFA?

[9] Although the Applicant's Memorandum of Fact in Law articulates all these issues as engaging the reasonableness standard, it also raises an additional argument that it characterizes as a breach of procedural fairness. The Applicant submits that the RPD erred in refusing to admit certain country condition documentation [CCD] relevant to his risk as a judge or former judge. At the hearing of this application, I requested the Applicant's counsel's position on the standard of review applicable to this submission. Characterizing this submission as raising a procedural fairness issue, he argued that correctness or a standard akin thereto applies. However, the Applicant also takes the position that, in the event the reasonableness standard applies, the RPD's refusal to admit the CCD was unreasonable.

[10] The Respondent takes the position that the reasonableness standard applies to this issue, as it engages the RPD's application of the legislation governing its admission of evidence. I am inclined to favour the Respondent's position that, based on the guidance in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, the applicable standard is reasonableness. However, I need not decide this point. As explained later in these Reasons, my decision on the RPD's refusal to admit the relevant CCD remains the same, whether applying the standard of correctness or the more deferential reasonableness standard.

IV. Analysis

[11] The Applicant raises a number of arguments in support of its position that the Decision is unreasonable. It is not necessary to address every argument and issue advanced by the Applicant, as I find that certain of the Applicant's principal arguments identify errors in the RPD's analysis that are material to the Decision and require that it be set aside.

A. General Credibility

[12] First, in the area of general credibility, the Applicant argues that the RPD erred in its treatment of the evidence of the Applicant's wife, surrounding threats she received after the Applicant's departure from Pakistan. She provided a letter describing an incident that occurred on September 24, 2017, when unknown men with a gun threatened her and members of her family, identified her husband, and demanded to know where he lived. The RPD observed that the documentary evidence included two reports made to the local police, one describing this incident as occurring on September 24, 2017 and the other describing an identical incident occurring on September 24, 2014. Based thereon, the RPD found the Applicant's wife not credible in relation to either incident and found that these events were fabricated to support her husband's claim.

[13] The Applicant submits that the two documents to which the RPD refers are two English translations of the same original report, written in the Urdu language, with the latter translation having corrected an error in the first translation that identified the incident as having occurred in 2014. The Applicant argues this relationship between the documents is evident from the fact the

index to the documentary submissions describes the second translation as a replacement for the first. Moreover, the 2017 date appears within the Urdu original.

[14] The Respondent argues that it was incumbent upon the Applicant to point out to the RPD the relationship between the two reports and that the Applicant should not succeed in advancing this argument unless he can show he could not have anticipated the RPD's analysis of this evidence. The Respondent also submits that this evidence and finding are not particularly material to the Decision, which turned on whether the Applicant could establish a forward-looking risk if he were to return to Pakistan.

[15] I agree with the Applicant that this aspect of the Decision demonstrates a misunderstanding by the RPD of the evidence before it. In my view, the Applicant and his counsel could not have anticipated the RPD would conclude based on this evidence that the Applicant's wife had fabricated the incident in order to bolster her husband's claim. I also cannot agree with the Respondent that this error was immaterial to the RPD's assessment of forward-looking risk. As the Applicant points out, his wife's evidence is relevant to forward-looking risk, because it relates to whether the alleged agents of persecution maintained an interest in the Applicant following his departure from Pakistan.

[16] I recognize the Respondent's point that the RPD identified other difficulties with the Applicant's evidence, independent of that of his wife, which contributed to its adverse credibility findings. However, the RPD's error, leading to a finding that a portion of the evidence was fabricated, is a serious one. Indeed, the RPD repeats that conclusion later in the Decision, in

finding that alleged threats by Pakistani security forces were also fabricated to bolster the Applicant's claim. The RPD's reasoning is sufficiently tainted by its error that the Court cannot know if the RPD would have reached the same Decision absent this error (see, e.g., *Grau-Parra v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1068 at paras 27-30).

B. Risk Due to the Applicant's Profile as a Judge

[17] In support of his claim, the Applicant gave evidence of numerous occasions on which he was targeted by persons angered by his judgments. He submits that the RPD erred in discounting that evidence, based on its conclusion that the risk of threats and violence to judges in Pakistan is limited to those involved in cases surrounding blasphemy, terrorism, high profile matters, and cases in Christian areas or disputed territories. The Applicant argues the RPD failed to take into account CCD indicating that such risks were not limited to these types of cases, including evidence of an attack on someone who, like the Applicant, is a former judge. The CCD upon which he relies includes documentation which he submitted to the RPD in advance of the hearing but which the RPD refused to admit.

[18] The Applicant identifies the rule governing his request for admission of this evidence as section 34(3) of the *Refugee Protection Division Rules*, SOR/2012-256, made under IPRA. This section provides that, if a party wants to use a document in a hearing, it must provide a copy of the document to the other party and to the RPD no later than 10 days before the date fixed for the hearing. The Applicant's request for admission of its documentation is dated May 24, 2019. The hearing was scheduled for, and took place on, June 5, 2019. The RPD's reasons for refusing the Applicant's request read as follows:

I note that the articles provided in the application are dated well before the June 5, 2019 hearing. There was no explanation provided as to why the country articles dated from May 2017 until April 2019 were not submitted in a more timely manner.

[19] The RPD's refusal to accept admit this documentation is difficult to understand. As the Applicant argues, his request for admission of the CCD was submitted more than the required 10 days before the hearing date. The Respondent has not offered any explanation to support either the reasonableness or correctness of this ruling. Applying either standard of review, I agree with the Applicant that the RPD erred in refusing to accept this material.

[20] The Respondent submits that identification in the CCD of isolated instances, where judges have been targeted in relation to cases outside the categories cited by the RPD, does not necessarily render the RPD's analysis unreasonable. However, the Court cannot know whether the content of this additional CCD would have altered the Decision. The Applicant was unreasonably deprived of the opportunity to rely on relevant CCD, which might have influenced the Decision.

C. Internal Flight Alternative

[21] It remains necessary to consider the RPD's IFA analysis. It is often the case that, even if the analysis of another aspect of a refugee claim contains an error, a decision will be upheld if it includes a reasonable conclusion that the claimant has a viable IFA. However, I agree with the Applicant that, in a case where the RPD has erred in its assessment of the risk of persecution faced by a claimant in a manner that taints its IFA analysis, the finding of a viable IFA cannot save the decision.

[22] In my view, this is such a case. Under the first prong of the IFA test, in assessing whether there is a serious possibility of the Applicant being persecuted in the proposed IFA, the RPD relies on its adverse credibility finding in relation to the Applicant's risk from building the shrine, as well as the fact the Applicant is no longer a judge. I have found reviewable errors in the Decision related to the RPD's credibility determination and its failure to admit evidence relevant to the Applicant's risk as a former judge. These errors render the RPD's IFA analysis unreasonable as well.

V. **Conclusion**

[23] I therefore find the Decision as a whole to be unreasonable and must allow this application for judicial review. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-5296-19

THIS COURT'S JUDGMENT is that this application for judicial review is allowed, the Decision is set aside, and the matter is remitted to a differently constituted panel of the Refugee Protection Division for re-determination.

“Richard F. Southcott”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5296-19

STYLE OF CAUSE: ABDUL GHAFAR CHAUDHRY v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE VIA TORONTO

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