

**Date: 20071120**

**Docket: IMM-1630-07**

**Citation: 2007 FC 1215**

**Ottawa, Ontario, the 20th day of November 2007**

**Present: the Honourable Mr. Justice Blanchard**

**BETWEEN:**

**SAIRA GHAFAR**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

I. Introduction

[1] This is an application for judicial review of a decision by the Immigration and Refugee Board (the IRB) on March 29, 2007. In that decision, the IRB concluded that the applicant did not qualify as a Convention “refugee” or a “person in need of protection” pursuant to section 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the IRPA).

II. Factual background

[2] The applicant was born on December 12, 1962, in Madi Bahauddin, in the province of the Punjab in Pakistan, and holds the nationality of that country. Since May 10, 1990, she has been married to Abdul Ghaffar and has three children, two sons and a daughter.

[3] The applicant contended that she fell in love with one Arshad and they became lovers. On December 20, 2004, the applicant's parents-in-law, accompanied by an Imam (Allah Rakha) saw Arshad leaving the applicant's house. They struck and threatened the applicant with death if she did not change her behaviour. Although she went to see the police, they refused to register the complaint.

[4] On January 10, 2005, when the applicant and Arshad were together at her home, her parents-in-law and the Imam burst in, breaking down the door. Arshad escaped through the back door but the applicant was beaten, accused of adultery and threatened with death. She managed to escape and found refuge with a female friend.

[5] On January 12, 2005, she said she learned that the Imam announced in the mosque that she and Arshad had committed adultery and deserved to be stoned.

[6] On January 15, according to the applicant, charges of adultery were laid against her by the police authorities.

[7] With the help of her brother and a travel agent, the applicant left Pakistan and arrived in Canada on February 11, 2005. On February 16, 2005, the applicant filed an application for protection as a refugee on the ground that she feared being killed by her in-laws.

[8] The applicant went to live with her sister Qaisar, who lives in Montréal. Qaisar is married to Tariq Harif and they have a daughter, Tahmina. Her sister and niece hold Canadian citizenship.

[9] On July 13, 2005, the Minister of Public Safety notified the IRB that he wished to intervene based on the following documents:

- (1) a postal seizure involving the applicant dated May 3, 2005;
- (2) an undated letter of accusation concerning the applicant from Qaisar Harif;
- (3) an undated letter of accusation concerning the applicant from Tahmina Harif.

[10] On December 23, 2005, counsel for the applicant contacted the IRB to tell it he had received an unsolicited letter from a Pakistani physician, handwritten and dated December 14, 2005. The letter in question asserted that the applicant was suffering from major depression and was under medical care. Further, the letter stated that the applicant had [TRANSLATION] “lost contact with reality” and suggested that a representative be appointed to assist her. As a consequence of this evidence the IRB appointed Robert Naylor as representative.

[11] On August 17, 2006, counsel for the applicant asked the IRB to summon the writers of the letters of accusation, Tahmina and Qaisar Harif, as witnesses to explain the letters.

[12] The hearing before the IRB was scheduled for June 21, 2006. However, the necessary summonses were not served on the two witnesses. The hearing was adjourned and directions were given that the summonses in question should be served.

[13] The Board member retired and the case came before a new member *de novo* on January 21, 2007. On that date, the summonses had still not been served. The IRB decided to hear the case on that date on the understanding that the hearing would be adjourned to allow the summonses to be served. However, on February 8, 2007, the IRB was informed that the individuals who were the subject of the summonses no longer lived at the address shown in the record. Accordingly, the IRB decided to render a decision based on the written and oral evidence submitted.

### III. Impugned decision

#### A. *Evidence*

[14] It is worth reviewing some points in the evidence before the IRB, namely the letters from Tahmina and Qaisar Harif and the blank letters sent by Abdul Ghaffar.

##### (1) Letter from Tahmina Harif

[15] The applicant's niece sent an (undated) letter maintaining that the application for refugee status was fraudulent. The allegations contained in the letter may be summarized as follows:

- (1) the applicant did not commit adultery and was happy in her marriage to Abdul Ghaffar;
- (2) the applicant and Abdul Ghaffar had tried to come to Canada in the past, but without success;
- (3) the applicant falsely alleged that she had three children, Talha, Aisha and Ammar;
- (4) in October 2002 Abdul Ghaffar, through the firm of Brownstein and Brownstein, tried to immigrate to Canada as a professional: only Talha's name appeared on the application; his application was denied;
- (5) the applicant concocted the story of adultery;
- (6) her lover Arshad did not exist;
- (7) the applicant's son (Talha) is at present living with her mother and brothers;
- (8) the applicant bribed people in her village to ensure the [TRANSLATION] "truth" of her story;
- (9) the applicant has only one son: the names of Aisha and Ammar, her brother's children, were added so she could get a larger family allowance;
- (10) the applicant had a hysterectomy in 1994 and so was unable to give birth to Ammar in 1997;
- (11) she forged birth certificates for Ammar and Aisha;
- (12) the applicant is planning to weep at the hearing in order to get the IRB's sympathy;
- (13) the applicant receives an allowance, from which she keeps \$300 and sends the rest to Pakistan to her husband and son.

(2) Letter from Qaisar Harif and blank letters

[16] The letter written by Qaisar Harif is also undated and was sent to the Canada Border Services Agency. The letter was accompanied by the following documents:

- (1) an envelope sent by Abdul Ghaffar and addressed to Qaisar Harif;
- (2) a blank letter with the heading “Babu Muhammad Yamin of the Advocate High Court, Dist. Courts Mandi, Bahaudinn, Legal Advisor”, with the lawyer’s seal;
- (3) a blank letter with the heading of Dr. Muhammad Iftikar, with the doctor’s seal.

In his letter, Qaisar explained that she did not know why she received these documents. Further, she did not want to be associated with the refugee status application of her sister (the applicant).

*B. Credibility*

[17] The IRB came to a negative conclusion on the applicant’s credibility. First, it wondered why a woman who was charged with adultery, whose husband was furious and wanted her dead, would try to help him in his effort to obtain refugee status by sending him blank letters from a physician and a lawyer? Further, if she left Pakistan secretly, how did her husband know she had left the country and was in Canada and know her postal address and telephone number?

[18] The IRB answered these questions by concluding that the husband sent the documents to help the applicant in her efforts to secure recognition as a refugee, and rejected the implausible explanation of the physician, who stated:

I hereby confirm that I never gave any letterhead with my seal to anyone in the past. A theft occurred in my office during March 2005, in which some of my letter pads were also lost. Maybe my letterhead with my stamp mailed to Saira Ghaffar is part of these stolen pads. (Emphasis added.)

[19] The IRB found that:

- (1) the applicant's husband knew that she was living in Montréal;
- (2) her husband sent her blank letters to help her in her efforts to secure refugee status;
- (3) the applicant did not commit adultery;
- (4) the lawyer's letter stating that an arrest warrant against the applicant for adultery was a fabrication;
- (5) the physician's report was also a fabrication; and
- (6) the affidavit from Khalid Mahmood (in support of the application) was a fabrication.

[20] The IRB also noted certain contradictions in the applicant's testimony regarding her children.

#### IV. Issues

- [21]
- (1) Did the panel contravene the principles of procedural fairness and natural justice by taking the two accusations written by the applicant's sister and niece into account?
  - (2) Did the panel err in its assessment of the evidence and its conclusions on the applicant's credibility?

#### V. Standard of review

[22] The appropriate standard of review applicable to a decision on credibility and the relevance of evidence is patent unreasonableness (*Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, [2005] S.C.J. No. 39, para. 38; *Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315, para. 4).

[23] A significant infringement of the rules of procedural fairness and the rules of natural justice requires intervention by the Court as such.

## VI. Analysis

[24] The applicant contended that the panel should not have used the accusations against the applicant sent to the IRB in support of its denial, since the witnesses had not appeared despite the efforts made by the IRB to secure their attendance through subpoenas.

[25] As to the letters, the applicant maintained that the allegations in the letters written by her sister and niece were false and exaggerated. She stated that it was a very religious family which wanted her to return to Pakistan to [TRANSLATION] “meet her fate for deceiving her husband” and [TRANSLATION] “pay for her sin”. She noted that the niece’s letter contained [TRANSLATION] “a lot of hatred and an atmosphere of revenge” and that she [TRANSLATION] “was attacked in all aspects of her life, in Canada and Pakistan”. Accordingly, the applicant believed [TRANSLATION] “that the members of her sister’s family secured these false letters in order to discredit her and told her clearly from the outset that she would have to go back to Pakistan”.



[26] The applicant noted that the letters were not sworn to and had no date, and the motivation of the accusers was unknown. She maintained that the letters in question had no evidentiary value as long as the writers did not appear to answer counsel for the applicant's questions under oath. Without giving the applicant an opportunity to test this evidence, the applicant maintained that the hearing was not fair and that the IRB made a reviewable error by considering the said letters and giving them some evidentiary value.

[27] I cannot accept the applicant's arguments. A careful reading of the IRB decision indicates that the letters of accusation were not conclusive, and that on the contrary it was the blank letters from a Pakistani lawyer and physician that undermined the applicant's credibility. At page 15 of its decision, the IRB said the following:

This I find, is the major reason why the claimant's overall evidence lacks credibility and casts serious doubt on all of her evidence throughout this hearing. There are other matters which cast doubt on her credibility as well. When I questioned her whether her children were living with her mother or any of her brothers in Multan as alleged in Tahmina's letter, she replied: --"No, they are not". Then she stated under oath – they all live together with my brother's friend". However, she contradicts her evidence in her PIF narrative wherein she states – "My brother has made arrangements for my children to be hidden in Multan or in any other city." (Respondent's emphasis.)

[28] I concur with the respondent's argument that the IRB's negative decision was based on evidence other than the letters of accusation. The blank letters from a physician and a lawyer, supposedly sent by Abdul Ghaffar to the applicant's last known address, are an important factor in the case at bar. When questioned on this point, the applicant indicated that the documents

were sent to her sister and the question should be put to her. I note that in her arguments the applicant maintained that there was an arrest warrant in Pakistan against her for adultery. She further stated that she was suffering from major depression, as mentioned in the letter from the Pakistani physician dated December 14, 2005. These two points were important factors in her application for refugee status. I feel it was not unreasonable for the IRB to conclude that the sending of blank sealed letters from a physician and a lawyer could not be used for any other purpose than to help the applicant reinforce her fraudulent claims. In its decision, the IRB also found that the applicant's credibility had been further undermined by certain contradictions in her testimony.

[29] Despite the fact that the IRB did not rely on the accusations from the applicant's sister and niece in dismissing the application, it would have been justified in considering the evidentiary weight of these various aspects of the evidence at its discretion. It should be borne in mind that the panel is not bound by strict rules of evidence and controls its own procedure (section 170(g) of IRPA). Extrinsic evidence may be accepted provided the applicant is given the chance to give explanations: this was the case in the proceeding at bar at the hearing, with regard to the letters of accusation (*Edobor v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 883).

VII. Conclusion

[30] I feel that the IRB did not infringe the rules of natural justice by considering the letters of accusation. The IRB also did not err in its assessment of the evidence or its findings on credibility. There is no basis for intervening in the IRB's decision.

[31] For the foregoing reasons, I consider that the application for judicial review made by the applicant should be dismissed.

[32] The parties did not suggest the certification of a serious question of general importance as contemplated by paragraph 74(d) of the IRPA. I am satisfied that such a question does not arise in the case at bar. Accordingly, no question will be certified.

**ORDER**

**THE COURT ORDERS that:**

1. the application for judicial review made by the applicant is dismissed;
2. no question is certified.

“Edmond P. Blanchard”

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Judge

Certified true translation

Brian McCordick, Translator

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1630-07

**STYLE OF CAUSE:** SAIRA GHAFFAR v. MCI

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** October 24, 2007

**REASONS AND ORDER BY:** the Honourable Mr. Justice Blanchard

**DATED:** November 20, 2007

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