

Date: 20080122

Docket: IMM-4682-07

Citation: 2008 FC 65

Montreal, Quebec, January 22, 2008

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**AHMED ABDUL MUHAMMAD LAKHANI
KARIMA AHMED LAKHANI
AMIN AHMED LAKHANI
KAWISH AHMED LAKHANI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION
AND THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS**

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

OVERVIEW

[1] A motion to stay the removal of the Applicants was presented on January 21, 2008:

- (a) The Applicants' initial Pre-Removal Risk Application (PRRA), submitted in February 2006, was argued from the point of view of their establishment in Canada and was denied for lack of any risk allegations, in April 2006, as none had been presented, due to their particular circumstances, as specified below;
- (b) The Applicants have before the Court an application for leave on the refusal of their current PRRA;

- (c) The Applicants are Ismaili Shias, a minority within a minority group in Pakistan. The Applicants presented evidence to prove their Ismaili faith: letters of identification from His Highness Prince Aga Khan Imami Ismaili Council for all members of the family, with pictures of the principal male and female Applicants, respectively, on separate certificates, in addition to a certified true copy of a certificate of honour for a teacher's training program for Mrs. Lakhani from his Highness Prince Aga Khan Imami Ismailia Association, and, also, a certified true copy of an Aga Khan Council certificate from the Institute of Computer Studies for Mrs. Lakhani from the same association;
- (d) The PRRA officer found them credible as to their religious denomination: "Je suis satisfaite que les demandeurs appartiennent à cette communauté religieuse";
- (e) Ismailis are labelled as "infidels" as they do not follow the same customs as Sunnis or even other Shias, who are not Ismailis; for instance, Ismailis, both men and women pray together in the same mosque (Motion Record, p. 133);
- (f) "... on November 25, unknown persons burnt down an Ismaili place of worship in Chitral district. HRCP reported that no arrests had been made." (Pakistan – Country Reports on Human Rights Practices – 2006, Released by the Bureau of Democracy, Human Rights, and Labor – March 6, 2007; Motion Record, p. 177);
- (g) The Applicants were personally placed at risk in events describing violations which were accepted as credible by the PRRA officer.

BACKGROUND

[2] The Applicants' names are Ahmed Abdul Muhammad Lakhani, Karima Ahmed Lakhani, Amin Ahmed Lakhani and Kawish Ahmed Lakhani.

[3] In August 2001, Mr. and Mrs. Lakhani, together with their two sons, Kawish and Amin, land in Canada under a business immigration category – entrepreneur category.

[4] They have been in Canada since that time and have not returned to Pakistan, their country of citizenship, nor travelled elsewhere.

[5] Mr. Lakhani is 43 years old, Mrs. Lakhani is 36 and their minor sons are 15 and 12, respectively.

[6] Not having met the conditions of landing of entrepreneurs within the two year period prescribed by the former Immigration Regulations (the current Regulations allow three years to meet the prescribed conditions), departure orders were made against them by the Immigration Division, on February 3, 2004.

[7] The Applicants appealed to the Immigration Appeal Division (IAD), pursuant to subsection 63(3) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), and a hearing took place, on June 20, 2005.

[8] The IAD considered the Applicant's investment of \$100,000 into Bensus International, a company in which Mr. Lakhani was first an employee shortly after arrival in Canada. The IAD decided that he did not make "a significant contribution to the Canadian economy", neither did Mrs. Lakhani's employment as an assistant educator, nor did the children's interests warrant granting special relief, which dismissed their appeal, on September 22, 2005.

[9] The judicial review motion in respect of IAD's decision was dismissed on January 13, 2006, and in April 2006, the Applicants filed an application for permanent residence from within Canada on humanitarian grounds (Exhibit B).

[10] Also, on April 26, 2006, their initial PRRA application was refused.

[11] One year later, on April 25, 2007, Mr. and Mrs. Lakhani attended an interview for an H&C. Their application on H&C grounds was refused a few days later, on April 30, 2007.

[12] Since the application on H&C was prepared by Mr. Moosa, a Consultant, he did not represent the Applicants in filing an application for leave.

[13] An application for leave on the H&C refusal was filed, on September 21, 2007.

[14] The Applicants' Record was filed on October 19, 2007.

[15] On October 31, 2007, the Applicants served and filed a motion to stay their removal to Pakistan within the file IMM-3872-07 (application for review of the H&C refusal). Leave was denied by this Court, on January 10, 2008.

[16] On November 2, 2007, another negative PRRA determination was communicated to the principal male Applicant in person, together with reasons for decision, dated October 30, 2007.

[17] At the same time, the officer accorded the Applicants a postponement of departure until January 25, 2008.

[18] On November 12, 2007, the Applicants filed an application for leave of the PRRA refusal, dated October 30, 2007, and the Applicants' Record was submitted December 12, 2007.

Did the officer err by exceeding jurisdiction or placing too much emphasis on one factor?

[19] Within the PRRA assessment, the officer placed too much emphasis on one factor by giving more weight than exists within her specific jurisdiction in regard to the fact that the Applicants did not meet the conditions of the entrepreneur program, rather than a PRRA assessment of the Applicants' evidence as a whole.

[20] In fact, in the reasons for decision (page 20 and following of the Record), the officer makes several references to this factor:

Je constate que le requérant et sa conjointe ont toujours subvenus aux besoins de leur famille par leur travail depuis leur arrivée en 2001. Cependant ils sont venus comme immigrants dans la catégorie des entrepreneurs et ils n'ont pas respectés leurs conditions. La présente demande n'est pas un palier de révision de la perte de résidence...

Je constate qu'il a fait cet investissement [\$100,000] quelques jours seulement avant son enquête pour non respect des conditions...

J'accorde par contre un poids significatif dans ma décision au fait que le requérant n'ait pas respecté les conditions du programme des entrepreneurs.

(Motion Record, officer's decision, p. 24.)

[21] IRPA provides for a specific procedure of establishing whether or not conditions have been met, starting with an application to cancel conditions of landing and ending with an appeal to a Member of an IAD under subsection 63(3) of the IRPA.

SERIOUS ISSUE

Did the officer commit unreasonable errors in evaluating whether the Applicants would be persecuted or subject to risk to life or safety based on their religion if returned to Pakistan?

[22] The Applicants presented evidence to prove their Ismaili faith:

- Letters of identification from His Highness Prince Aga Khan Imami Ismaili Council;
- Certified true copy of certificate of honour for Mrs. Lakhani from his Highness Prince Aga Khan Imami Ismailia Association;
- Certified true copy of a certificate of honour for a teaching program for Mrs. Lakhani;
- Certified true copy of an Aga Khan Council certificate from the Institute of Computer Studies for Mrs. Lakhani.

[23] The PRRA officer found them credible as to their religious denomination: “Je suis satisfaite que les demandeurs appartiennent à cette communauté religieuse”. (Motion Record, p. 32, officer’s decision, 4th paragraph.)

[24] The officer accepted their explanation as to why no risk allegations were presented by their Consultant (who was not a lawyer) in their first application for protection in 2006 and considered all of the evidence presented by the Applicants regardless of the date of such evidence (before or after the first PRRA refusal):

Conformément à l’Article 113(a) de la *Loi sur l’immigration et la protection des réfugiés* (LIPR) :

Le demandeur d’asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n’étaient alors pas normalement accessibles ou, s’ils l’étaient, qu’il n’était pas raisonnable, dans les circonstances, de s’attendre à ce qu’il les ait présentés au moment du rejet.

Les demandeurs expliquent qu’ils ont été mal conseillés par leur premier représentant. Ils n’auraient donc pas présenté d’allégations de risque. J’accepte ces explications. Tous les documents présentés par les demandeurs seront donc considérés comme éléments de preuve au titre de l’alinéa 113 a) de la LIPR.

(Motion Record, officer’s decision, p. 30.)

[25] The Applicants submitted in their current PRRA that, because of their religious minority status, they would face persecution and risk to life and safety; and, since they left Pakistan in August 2001, the country conditions (documentation) in their regard have deteriorated significantly.

[26] In fact, since their landing in Canada, six and half years ago, the Applicants have not returned to Pakistan.

[27] They indicated in the PRRA that, even before coming to Canada, they lived through the following events that had placed them at risk, all of which incidents were accepted as credible by the PRRA officer:

- They were called “Kaafir” by the Sunnis, a derogatory word that means “infidels” as they do not follow the same customs as Sunnis or other sects of Islam; for instance, both men and women pray together in the same mosque (Motion Record, female Applicant’s submissions, p. 133);
- “They (Sunni muslims) always treated me like I was inferior to them because I believe in the Agakhan as our Ismaili spiritual leader, they would say that Ismailis are committing ... the greatest Sin, and they say Koran is for true Muslims not for us. The situation... was such that if I/we argued to defend our religion they could start a fight. So I/we had to keep quiet. I do not want for my children to be treated like that.” (Motion Record, male Applicant’s submissions, p. 137);
- The principal male Applicant was harassed for money at his business and threatened that his sons would be kidnapped (Motion Record, p. 138);
- The female Applicant had to run from someone following her on a street of a neighbourhood in Karachi where many Ismailis live as it is close to their mosque, when she was eight months pregnant with her first son, which forced her to never go out alone on a street again (Motion Record, p. 133).

[28] According to the country conditions documentation, the courts could not protect its minorities; the whole, according to the US Country Report on Human Rights Practices – Pakistan 2006 and the Religious Freedoms Report 2007, provided to the officer as objective evidence.

[29] In fact, on April 23, 2007, four armed men stormed into the house of Mr. Lakhani's mother. She describes this event in her affidavit, that was before the PRRA officer:

3. That in the morning time on 23/04/2007 at about 4 A.M. four robbers / Docoit equipped with fire-armed illegally entered into by break – opening window of my above said house and they roped our hands and put clothes into our mouth and then confined forcibly me, my husband, my son Abdul Aziz and my daughter-in-law Mst. Saleema in a room.
4. That thereafter, they extended threats and warned us that if any value thing and precious items are not recovered from your house then your grand son and grand daughter will be kidnapped.
5. That after putting clothes into our mouth, roping and confining us in a room, those four docoits break opened the locks of all our Almirahs lying in various rooms and took away Gold Ornaments, Diamond Rings, Jewelry, Price Bonds and Cash Rs. 12,00,000/- (One Million and Two Hundred Thousand only.)
6. That after taking in their possession all the valuable articles / goods/ items and all the saving I made in my whole life taken-away and at the time of leaving our house they threatened us on gun-point that if any FIR or complaint is lodged against them, I and my whole family will be finished.

(Motion Record, p. 143-144).

[30] The PRRA officer evaluated evidence in this manner:

Je constate que cet affidavit ne fait pas le lien entre cet évènement et le fait que la famille appartient à une minorité religieuse. Il s'agit d'un évènement isolé. D'ailleurs, la représentante des demandeurs précise « no-one has ever broken into the client's or their family's home before ». Cet évènement ne démontre pas à ma

satisfaction que les demandeurs sont ciblés comme membres d'une minorité religieuse.

Les demandeurs ne soumettent aucun document quant aux menaces et à la fermeture de leur mosquée, le fait que trois autres familles *Ismaili* ont été ciblées et ont été victimes de vol ainsi que la police soit corrompue. Conséquemment, la preuve quant à l'établissement de ces faits ne me satisfait pas.

D'autre part, le guide du HCR distingue la discrimination qui résulte en un simple traitement de faveur de celle qui équivaut à une persécution. La persécution, par effet cumulatif ou à elle seule, restreint gravement la jouissance par le demandeur de ses droits fondamentaux : sérieuses restrictions au droit d'exercer un métier ou au droit d'avoir accès aux établissements d'enseignement et/ou de santé normalement ouvert à tous ou des mesures économiques imposées qui détruiraient les moyens d'existence d'un groupe religieux donné.

(Motion Record, officer's decision, p. 33.)

[31] In *Raza v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 385, [2007] F.C.J. No. 1632 (QL), the Federal Court of Appeal confirmed Justice Richard Mosley's conclusions as to the standard of review applicable to decisions of PRRA officers.

[32] Justice Mosley found that the standard of review for questions of law was correctness, for questions of fact – patent unreasonableness, and for questions of mixed fact and law – reasonableness.

[33] Analysis of the issue of whether the events related by the Applicants fit the definition of “persecution” within the Convention refugee definition involve mixed issues of law and fact and, therefore, the correctness standard is that of reasonableness.

[34] A very detailed analysis of the notion of persecution and whether or not past events are enough to be qualified as persecution was undertaken by Justice J. François Lemieux in *Ranjha v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 637, [2003] F.C.J. No. 901 (QL).

[35] In this case, Mr. Ranjha, a refugee claimant from Pakistan, was believed by the Immigration and Refugee Board (IRB) as to what he had been subjected to in Pakistan (he was beaten and burned by the Pakistan Muslim League (PML) goons in Pakistan and was arrested by police for his involvement in a protest against the government, who also used tear gas and batons).

[36] In the case at bar, the PRRA officer found Applicants credible as to the armed break-in at the family home, on April 23, 2007, and, as to the violations they had suffered prior to coming to Canada.

[37] Mr. Ranja's claim for refugee status was denied because, according to the tribunal, "these alleged incidents were not repetitive, persistent and systematic, and therefore, do not cumulatively amount to persecution" and because "[T]hese encounters were a result of participation in protests and rallies where police used batons and, on one occasion, tear gas to break up the activity; only one incident involved arrest". (*Ranjha*, above, paras. 7 and 31.)

[38] In the case at bar, the PRRA officer also found that "Il s'agit d'un évènement isolé... Cet évènement ne démontre pas à ma satisfaction que les demandeurs sont ciblés comme membres

d'une minorité religieuse... je ne suis pas satisfaite que la discrimination alléguée atteigne le niveau de gravité qu'on attribue à la persécution". (Motion Record, officer's decision, p. 33.)

[39] Justice Mosley returned the matter for reconsideration and held :

[42] In my view, the error the tribunal made in its analysis of persecution is not to have determined the quality of incidents in terms of whether they constituted a fundamental violation of human dignity, e.g. body mutilation as expressed in *Chan*, supra, viz torture, beatings, violent physical mistreatment or the breaking up of peaceful rallies. **It seems to me that what led the tribunal to this error was an exaggerated emphasis on the need for repetition and persistence.**

[43] The evidence shows the applicant was severely burned by PML goons in 1993, was arrested and tortured in 1996 and his arm was fractured by the police when dispersing a rally in 1999.

[44] I have no hesitation in holding these incidents were serious enough as to constitute a fundamental violation of the applicant's human dignity and have so been recognized by judges of this Court. I need only cite *Kang v. Canada (Minister of Employment and Immigration)*, [1995] F.C.J. No. 1119, and Justice Nadon's decision as a member of the Trial Division in *Saad v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1140, where one incident of torture qualified, in his view, as persecution. (Emphasis added.)

[40] For the reasons similar to those in *Ranjha*, the PRRA officer appears to have placed exaggerated emphasis on the need for repetition and persistence when she stated that "Il s'agit d'un évènement isolé... Cet évènement ne démontre pas à ma satisfaction que les demandeurs sont ciblés comme membres d'une minorité religieuse...". The officer even quotes the undersigned submissions within the PRRA application that no-one ever stormed into the Applicants' home before, in order to support her conclusion that the event of April 23, 2007 was an isolated incident, yet this fact was brought to her attention as to how the situation of minorities deteriorated in Pakistan since the Applicants' departure.

[41] Moreover, the officer failed to determine the gravity of this event, which may very well be attributed to the same reason as mentioned by Justice Mosley in *Ranjha*, above, placing too much emphasis on the need for repetition.

[42] In fact, looking at how the officer analyzes this serious incident in her analysis of the evidence, on page 33, at paragraph 6, of the Motion Record, the officer refers to it as if it were only a theft:

En ce sens, je ne suis pas satisfaite que la discrimination alléguée (**la possibilité d’être volé** ainsi que les paroles et les gestes inappropriés de d’autres membres de communautés religieuses à leur égard) atteigne le niveau de gravité qu’on attribut à la « persécution ». (Emphasis added.)

[43] Having accepted the event related in respect of the principal male Applicant’s mother, in her affidavit, had occurred, a need exists to consider all of the circumstances in context and not only the fact that the Applicants’ family was deprived of their valuables and money :

- There were four robbers and they were armed with guns;
- They tied the hands of their captors and stuffed clothes into the mouths of a 63 year old woman (male Applicant’s mother), her husband, her son and her daughter-in-law and forcibly confined them;
- They threatened to kidnap the grandchildren if they do not obtain all of their valuables inside the house;
- After having taken the valuables and money, the robbers threatened the family at gunpoint not to complain or file an FIR or else they will be “finished”.

[44] The PRRA Manual produced as Exhibit C, guides officers in the same direction as the jurisprudence on the issue of persecution: “It will be necessary to determine whether or not the harassment or sanctions that the applicant fears are sufficiently serious to constitute persecution. Threats to a person’s life and freedom for one of the reasons in the definition will constitute persecution...” (Motion Record, p. 218.)

[45] Yet, instances of violations personally suffered by the Applicants as well as the objective evidence provided as to the situation of minorities in Pakistan, speak for themselves.

[46] The question, the PRRA officer, asked herself, appears to be whether the incident of April 23, 2007 was sufficient, in and of itself, to be qualified as persecution: “Il s’agit d’un évènement isolé... Cet évènement ne démontre pas à ma satisfaction...”.

[47] It is not until her conclusion on the issue of persecution that she holds that the violations alleged do not constitute persecution.

[48] The question is whether all of the incidents of violations in the Applicants’ evidence and the country conditions, as a whole, in addition to the evidence of treatment of the specific minority in Pakistan, cumulatively, constitute persecution. (*Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, *Ranjha*, above; para. 6.4 “Persecution” of the PRRA Manual on page 218 of the Motion Record.)

[49] A single violation or mistreatment may or may not amount to persecution, depending on the circumstances, its severity and possibility to be repeated; however, this was not the issue that the PRRA officer had before her.

[50] In addition to the event of April 23, 2007 and the violations specified, the Applicants described the extortion at the principal male Applicant's business prior to their arrival in Canada, in addition to the Applicants having been threatened that their sons would be kidnapped.

[51] This factor was not given any analysis, other than mentioned by the officer in her decision, which must be examined in respect of fact and law.

[52] They also stated that the female Applicant had been followed on a street of her Ismaili neighbourhood during her pregnancy.

[53] This factor was not considered within the officer's analysis of the persecution in respect of the ground of belonging to a religious minority, and, consequently, does not appear in the officer's conclusion.

[54] Lastly, the Applicants filed evidence that outlined the situation of minorities in Pakistan in today's environment, this evidence is produced on page 148 and following of the Motion Record and consists of the US County Report on Human Rights Practices for 2006, the International Religious Freedoms Report 2007 – Pakistan, and the Amnesty International Report 2007 – Pakistan.

[55] The Applicants and their counsel brought the officer's attention to the underlined passages in this evidence and referred the officer to the chapter on the frequency of women being raped in Pakistan, as well as specifically quoting the following passages:

On November 25, unknown persons burned down an Ismaili place of worship in Chitral district. HCRP reported that no arrests have been made. (Motion Record, p. 140.)

...The documentation speaks of much more than simple discrimination and corruption, it speaks of police torturing and raping citizens, of failure of the courts to protect the minority rights, of a killing of a Shia leader on February 14, 2007, of a businessman Syed Anwar Abbas being killed outside his shop on March 9, 2007etc.

...security forces tortured and abused persons. (Motion Record, p. 114.)

[56] This important evidence requires analysis in respect of alleged persecution and demonstrates a need to consider the totality of the evidence in the case at bar.

[57] Having failed to consider the objective evidence provided as to the human rights violations perpetrated against minorities, the officer made the following finding of fact and law when she states: "Les demandeurs ne soumettent aucun document quant aux menaces et à la fermeture de leur mosque, le fait que trois autres familles *Ismaili* ont été ciblées et ont été victimes de vol ainsi que la police soit corrompue." (Motion Record, p. 33.)

[58] "The nature of the test for well-founded fear of persecution is described in terms of "reasonable chance": Is there a reasonable chance that persecution would take place were the applicant returned to the country of origin? An applicant need not show probability of persecution but need only show "reasonable chance" or "serious possibility"."

[59] In light of the facts accepted by the PRRA officer, and, in light of the country conditions documentation, are these allegations reasonable?

[60] The country conditions documentation states: “Corruption was widespread in the government and police forces, and the government made little effort to combat the problem.” (Motion Record, p. 161, Country Report on Human Rights Practices 2006.)

[61] The PRRA officer’s requirement, to assess the gravity of all the circumstances of this incident, necessitates analysis due to the possibility of exaggerated emphasis on the need for repetition of such incident, and her consideration of the incident as “discrimination”, requires further examination.

[62] Lastly, although the officer does not doubt the event of April 2007 did occur, as described in the affidavit, she mentions : “Je constate que cet affidavit ne fait pas de lien entre cet évènement et le fait que la famille appartient à une minorité religieuse”.

[63] The principal male Applicant’s mother, who adduced the affidavit, stated clearly in the very beginning, thereof, that she is Shia Imami Ismaili. (Motion Record, p. 143.)

[64] The link between the event and the religious beliefs becomes obvious in recalling that the home of the in-laws is located in an Ismaili neighbourhood, that it is not possible to practice one’s religion and attend an Ismaili mosque without it being public knowledge.

[65] The officer notes the issue of persecution when she considers the document entitled Response to Information Request (RIR), dated April 1, 2004. (Motion Record, p. 194.)

[66] This document speaks of generally peaceful coexistence between the two groups with the exception of some instances of violence; it was presented to the officer to demonstrate the situation of minorities, prior to, and up to, the year 2004, but does not take into account the current situation which should have been carefully examined, specifically from the period of 2004 to 2007, as was produced in the country conditions documentation of the case at bar for the second PRRA.

[67] The officer considers that this document establishes the same scenario as examined before and, refrains from making a clear distinction in her conclusion as to whether or not the situation of the religious minorities has deteriorated in the last three years.

[68] She simply holds that “P-6 (Religious Freedom Report 2007) and P-8 (Country Report on Human Rights Practices 2006) vont dans le même sens que le rapport précédent (the RIR, dated April 1, 2007) à l’effet que les relations entre les différentes communautés religieuses sont tendues”, without any further substantial analysis. (Motion Record, p. 32.)

[69] The officer seems to have accepted that the female Applicant was at risk of being raped:

La demanderesse allègue qu’étant une jeune femme elle risquerait le viol à son retour au Pakistan...

... Les viols et les autres formes de violences sont également fréquents, spécialement pour celles qui sont détenus par les autorités policières (P-7 et P-8).

... Il est vrai que la preuve documentaire générale indique que le Pakistan est aux prises avec de nombreux problèmes notamment avec le traitement des minorités et des femmes par les forces policières. Toutefois, l'arrêt *Ward*, indique que, sauf dans le cas de l'effondrement complet de l'appareil étatique, il y a lieu de présumer qu'un État est capable de protéger ses citoyens...Or, la demanderesse ne soumet aucune preuve démontrant qu'elle a demandé la protection des autorités de son pays ou qu'elle n'a pu le faire ou qu'elle ne pourrait recourir à cette protection dans le future. Je conclus donc que cette protection est effectivement disponible.

(Motion Record, officer's decision, pp. 31-22.)

[70] Firstly, the officer, when having accepted that an applicant is at risk, has an obligation to study the issue of the state protection (Motion Record, p. 221; PRRA Manual), as the PRRA officer is to possess an expertise in assessing the issues of state protection.

[71] Secondly, the Applicant and her counsel explained that country protection cannot be obtained for these Applicants as the human rights record is such that it is unable to provide such protection. (Motion Record, p. 113-114 and 134.)

[72] In order to support these submissions, the relevant passages from the country evidence were underlined for the officer, to name but a few:

... Discriminatory legislation and the Government's failure to take action against societal forces hostile to those who practice a different faith fostered religious intolerance, acts of violence, and intimidation against religious minorities.

... Public pressure routinely prevented courts from protecting minority rights.

... Police often refused to prevent violence and harassment or refused to charge persons who commit such offenses.

... Police were at times implicated in rape cases.

(Motion Record, pp. 148, 152, 157 and 182.)

[73] All of the above does, therefore, point to a serious issue under *Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302 (F.C.A.), [1988] F.C.J. No. 587 (QL).

IRREPARABLE HARM

[74] The Applicants' religious background was accepted as proven.

[75] Given that:

- The Applicants were informed that their faith is accepted as a relevant factor within the current PRRA application;
- The human rights violations of the minority increased most significantly in the last three years;
- On April 23, 2007, the Applicants' family's home in Karachi was broken into by armed men who stuffed clothes into their mouths and ordered them to give all their valuables and threatened to kill them should they seek protection from police.

[76] Their initial PRRA, submitted in February 2006, was argued from the point of view of their establishment in Canada and was denied for lack of any risk allegations, in April 2006, as none had been presented, as specified above, due to their particular circumstances.

[77] It is too late for the Applicants to ask for protection as refugees, as they have departure orders rendered against them precluding them from asking for such protection.

[78] Also, while the Applicants were allowed to wait for their H&C to be processed, after the dismissal of the initial PRRA, the situation of the Applicants worsened considerably, as shown by the event of April 23, 2007 and based on the objective country documentation.

[79] Such documentation is reproduced on page 109 and following of the Motion Record and includes an International Religious Freedoms Report for 2007 by the US Bureau of Democracy, Human Rights, and Labour, released on September 14, 2007, a US Country Report on Human Rights Practices 2006, released on March 6, 2007, Amnesty International Report on Pakistan.

[80] For comparative purposes, a Response to an Information Request, dated April 1, 2004, was also provided within the PRRA application.

[81] This document states that 96% of the population in Pakistan is Muslim, majority of who are Sunni Muslims, while the minority Shia population is between 10 and 20% and the Ismaili minority, within that, is even smaller.

[82] The minority consists of Bohras, Dawoodies, Ismailis, and Khojas. (Motion Record, p. 194.)

[83] “The government took some steps to improve its treatment of religious minorities during the period covered by this report, but serious problems remained. Law enforcement personnel abused religious minorities in custody. Security forces and other government agencies did not adequately

prevent or address societal abuse against minorities. Discriminatory legislation and the Government's failure to take action against societal forces hostile to those who practice a different faith fostered religious intolerance, acts of violence, and intimidation against religious minorities.” (Motion Record, Religious Freedoms Report 2007, p. 148.)

[84] “Relations between religious communities were tense. Societal discrimination against religious minorities was widespread, and societal violence against such groups occurred. Societal actors, including terrorist and extremist groups and individuals, targeted religious congregations.” (Motion Record, above.)

[85] “...The consequences for contravening the country's blasphemy laws are death for defiling Islam or its prophets; life imprisonment for defiling, damaging, or desecrating the Qur'an; and 10 years' imprisonment for insulting another's religious feelings. These laws are often used to settle personal scores as well as to intimidate reform-minded Muslims, sectarian opponents, and religious minorities.” (Motion Record, above, p. 149.)

[86] “Public pressure routinely prevented courts from protecting minority rights. These same pressures forced justices to take strong action against any perceived offense to Sunni orthodoxy. Discrimination against religious minorities was rarely placed before the judiciary. Courts would be unlikely to act objectively in such cases.” (Motion Record, above, p. 152.)

[87] “There were several incidents involving the abuse of religious groups carried out by individuals or organizations designated as terrorist organizations by the U.S. Secretary of State under Section 219 of the *Immigration and Nationality Act* and by armed sectarian extremist groups with strong links to such organizations.” (Motion Record, above, p. 156.)

[88] “... on November 25, unknown persons burnt down an Ismaili place of worship in Chitral district. HRCP reported that no arrests had been made.” (Motion Record, above, p. 177.)

[89] “Police were at times implicated in rape cases. According to the NGO Women Against Rape (WAR), there were 369 rape cases reported in the media, which WAR estimated to be less than 5 percent of actual incidents. According to the HRCP, statistically a woman was raped every two hours, or gang-raped every eight hours.” (Motion Record, above, p. 182.)

[90] As a young woman of an Ismaili minority, living in an Ismaili neighbourhood, Mrs. Lakhani is subject, not only to the same risks to life and safety as the rest of the Applicants, but also to the particular consequences of her belonging to a minority of a minority.

[91] Although history of discrimination of religious minorities in Pakistan is not a new phenomenon, and the Lakhani family experienced violations before, such as extortion for money at Mr. Lakhani’s business before coming to Canada, no-one has ever broken into the Applicants’ family’s home before, threatening the family with a kidnapping of their children.

[92] The Response to Information, covering the period 2001 to 2004, speaks of general “peaceful coexistence” between the Shia and the Sunni, with occasional outbreaks of violence between the extremist groups of Shia and Sunni, and attacks on doctors.

[93] In an overview of today’s country conditions situation of Ismaili and other minorities, it is evident that the situation has deteriorated significantly.

[94] As specified in the submissions, recent bombings of reform-minded supporters of Benazir Bhutto demonstrate that Sunni extremists who support Al Qaeda and Taliban are a real and imminent threat to the lives of those whom they perceive to be against them, including the minorities of minorities, such as the Applicants.

BALANCE OF CONVENIENCE

[95] The balance of convenience lies in favour of granting a stay for the following reasons:

- They have a pending application for judicial review raising serious issues;
- They present neither a threat nor a burden to Canadian society;
- They have renewed all their passports on their own.

CONCLUSION

[96] For all of the above reasons, the stay of the removal is granted until a final decision is rendered on the underlying application for leave and for judicial review of the PRRA.

JUDGMENT

THIS COURT ORDERS that the stay of the removal be granted until a final decision is rendered on the underlying application for leave and for judicial review on the PRRA.

“Michel M.J. Shore”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4682-07

STYLE OF CAUSE: **AHMED ABDUL MUHAMMAD LAKHANI
KARIMA AHMED LAKHANI
AMIN AHMED LAKHANI
KAWISH AHMED LAKHANI v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION and THE MINISTER OF PUBLIC
SAFETY AND EMERGENCY PREPAREDNESS**

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: January 21, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** SHORE J.

DATED: January 22, 2008

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