

**Date: 20090910**

**Docket: IMM-5696-08**

**Citation: 2009 FC 889**

**OTTAWA, Ontario, September 10, 2009**

**PRESENT: The Honourable Louis S. Tannenbaum**

**BETWEEN:**

**Muhammad Maner HAJI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of the October 22, 2008 decision of Pre-Removal Risk Assessment (“PRRA”) Officer M.C. Bennett.

**Background**

[2] The Applicant is a 71-year-old citizen of Pakistan. He left Pakistan in December 1991 for the United States and entered Canada in July 1992. His application for refugee protection was

rejected in 1994. The Applicant was removed to the United States in April 1997, but returned to Canada later that year and made a second refugee claim. This claim was based largely upon the same facts as the first, and was dismissed on July 30, 1999. On judicial review however, Justice Pelletier (as he then was) set this decision aside. Following a re-hearing by the Immigration and Refugee Board (“IRB”), the Applicant’s claim was again rejected because the Applicant lacked credibility. On April 29, 2003, Justice Kelen dismissed the Applicant’s application for leave and judicial review in respect of the third decision.

[3] The Applicant filed his PRRA application on August 21, 2007. He based his claim upon four grounds. He stated first that he feared persecution or death at the hands of the Pakistan Peoples Party (“PPP”) due to his affiliation with the Jamiat Ulema-e-Islam (“JUI”) party. He next claimed that his return would result in continued persecution at the hands of the Pakistani police. Third, he feared persecution at the hands of the Pakistani military and the militant Sipah-e-Sahaba and Lashkar-e-Jhangvi groups. This fear stemmed from threats made by his daughter-in-law, whom he claimed has ties to these organizations. Finally, he alleged that his brother, who resides in Pakistan, had also threatened his life.

[4] While the Applicant requested an oral hearing in order to permit the Officer to properly assess his credibility, the Officer declined this request, finding it unnecessary in the circumstances. In rejecting the PRRA application, the Officer concluded that the Applicant had failed to present sufficient objective evidence in support of his claim that he faced a personalized risk in Pakistan.

#### Issues

[5] The issues are as follows:

1. Did the Officer err by failing to acknowledge the presumption of truth in respect of the Applicant's sworn evidence?
2. Did the Officer err by basing his decision upon the issue of credibility without affording the Applicant an oral hearing?

### Standard of Review

[6] Credibility findings are at the heart of a PRRA officer's decision. As a result, the standard of patent unreasonableness has in the past been applied to the review of such findings: *Tekie v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 39 at para. 6 (F.C.). The standards of patent unreasonableness and reasonableness simpliciter were collapsed into the single standard of reasonableness following the Supreme Court of Canada's decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190. I therefore conclude that the appropriate standard of review for this issue is reasonableness.

[7] In *Karimi v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 1289 (F.C.), Justice Beaudry found that the issue of whether an officer should have ordered a hearing pursuant to paragraph 113(b) of the *Immigration and Refugee Protection Act* was a question of mixed fact and law, reviewable on the standard of reasonableness.

### Law and Argument

*Did the Officer err by failing to acknowledge the presumption of truth in respect of the Applicant's sworn evidence?*

[8] The Applicant contends that the Officer failed to assess whether the Applicant's evidence was itself probative and instead proceeded directly to the conclusion that corroboration was required. The Applicant submits that the sworn testimony of a person claiming protection enjoys a presumption of truth absent a valid reason to doubt it: *Maldonado v. Canada (Minister of Employment and Immigration)* (1979), 31 N.R. 34 at para. 5 (F.C.A.).

[9] The Respondent submits that the presumption of truth may be rebutted upon a lack of corroborating evidence, when such corroboration might reasonably be expected: *Adu v. Canada (Minister of Employment and Immigration)*, [1995] F.C.J. No. 114 (F.C.A.); *Khan v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 520 (F.C.T.D.). The Respondent argues that the Applicant failed to provide any such corroborating evidence and that the Officer's decision was therefore reasonable.

[10] In my view, it was reasonable in the circumstances to expect the Applicant to have provided objective evidence in support of his allegations of risk. Such evidence could have been in the form of third party affidavits sworn by his political colleagues and family members. The Applicant also could have submitted a copy of the charges allegedly filed against him by his daughter-in-law with the Toronto police. Absent this evidence, which one would reasonably expect to find filed in support of his application, it was open to the Officer to conclude that the Applicant's unsubstantiated statements were insufficient to warrant the granting of his PRRA.

*Did the Officer err by basing his decision upon the issue of credibility without affording the Applicant an oral hearing?*

[11] The Applicant submits that the Officer's conclusion that he failed to provide sufficient objective evidence reveals that the Officer's decision was rooted in the belief that the Applicant lacked credibility. An officer's sufficiency findings may amount to credibility findings: *Liban v. Canada (Minister of Citizenship and Immigration)* (2008), 76 Imm. L.R. (3d) 227 at para. 14 (F.C.). The Applicant submits that a hearing must be held if credibility is "at the heart" of a PRRA decision: *Karimi, supra*.

[12] The Respondent submits that a hearing is only held in exceptional circumstances and only where credibility is central to the PRRA decision. It argues that such was not the case here, as the Officer did not take issue with the Applicant's credibility. Rather, the Officer based his decision on the lack of objective evidence demonstrating both the risks previously considered by the IRB and the new risks put forward by the Applicant.

[13] Section 167 of the *Immigration and Refugee Protection Regulations*, S.O.R./2002-227 sets forth the factors that must be considered when an officer is determining whether to hold a hearing:

**167.** For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following:

(a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;

(b) whether the evidence is

**167.** Pour l'application de l'alinéa 113b) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise :

a) l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui concerne la crédibilité du demandeur;

b) l'importance de ces éléments

central to the decision with respect to the application for protection; and

de preuve pour la prise de la décision relative à la demande de protection;

(c) whether the evidence, if accepted, would justify allowing the application for protection.

c) la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

[14] It is clear on the face of the decision that the Officer was critical of the lack of objective evidence because he took issue with the Applicant's credibility. At page four of his decision, the Officer states:

I find that [the Applicant] has not provided sufficient reliable or trustworthy evidence to address the credibility concerns raised by the IRB and I am not persuaded to arrive at a different conclusion on the basis of the evidence presented in this PRRA application.

[15] Nonetheless, the Officer acknowledged the existence of political violence, extrajudicial killings, the increasing number of disappearances of political opponents and corruption within the police forces in Pakistan.

[16] The Officer's findings respecting the Applicant's credibility were central to his application. Given the Officer's conclusions respecting the documentary evidence, it follows that if the Officer had believed the Applicant, he would likely have granted the PRRA. I am satisfied that the circumstances of this case are such that the factors under section 167 were met. Consequently, it was contingent upon the Officer to hold a hearing. His failure to do so constitutes a reviewable error.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** for the reasons given, the application for judicial review is allowed and the matter referred back to a different PRRA Officer for redetermination. No question of general importance has been submitted for certification.

"Louis S. Tannenbaum"

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Deputy Judge

**AUTORITIES CONSULTED BY THE COURT**

1. *Maldonado v. Canada (M.E.I.)* (1979), 31 N.R. 34 (F.C.A.)
2. *Ward v. Canada (A.G.)*, [1993] 2 S.C.R. 689, at 713-14
3. *Ahortor v. Canada (M.E.I.)* (1993), 21 Imm. L.R. (2d) 39
4. *Attakora v. Canada (M.E.I.)*, [1989] F.C.J. No. 444 (F.C.A.)
5. *Zheng v. Canda (M.C.I.)*, 2007 FC 974
6. *Naqvi v. Canada (M.C.I.)*, 2008 FC 779
7. *Nilam v. Canada (M.C.I.)*, 2004 FC 1037
8. *Adu v. Canada (M.E.I.)*, [1995] F.C.J. No. 114 (F.C.A.)
9. *Liban v. Canada (M.C.I.)*, 2008 FC 1252
10. *Latifi v. Canada (M.C.I.)*, 2006 FC 1388
11. *Komahe v. Canada (M.C.I.)*, 2006 FC 1521
12. *Zokai v. Canada (M.C.I.)*, 2005 FC 1103
13. *Shafi v. Canada (M.C.I.)*, 2005 FC 714
14. *Fernandez Ortega v. Canada (M.C.I.)*, 2007 FC 601
15. *Karimi v. Canada (M.C.I.)*, 2007 FC 1010
16. *Tekie v. Canada (M.C.I.)*, 2005 FC 27
17. *Ferguson v. Canada (M.C.I.)*, 2008 FC 1067
18. *Pachment v. Canada (M.C.I.)*, 2008 FC 1140
19. *Jasim v. Canada (M.C.I.)*, [2003] F.C.J. No. 1290
20. *Krishnapillai v. Canada (M.C.I.)*, 2005 FC 244
21. *Mobarekeh v. Canada (M.C.I.)*, 2004 FC 1102



22. *Rolfe v. Canada (M.C.I.)*, 2005 FC 1514
23. *Pankou v. Canada (M.C.I.)*, 2005 FC 203
24. *Alam v. Canada (M.C.I.)*, 2005 FC 4
25. *Hassan v. Canada (M.C.I.)*, 2005 FC 601
26. *Bains v. M.E.I.* (1990), 109 N.R. 239 (F.C.A.)
27. *Kurniewicz v. M.E.I.* (1974), 6 N.R. 225 (F.C.A.)
28. *Wu et al v. M.E.I.*, [1989] 2 F.C. 175 (T.D.)
29. *Virk v. M.E.I.* (1991), 13 Imm. L.R. (2d) 119 (F.C.T.D.)
30. *Khan v. Canada (M.C.I.)*, 2002 FCT 400
31. *Ortiz Juarez v. Canada (M.C.I.)*, [2006] F.C.J. No. 365
32. *Selliah v. Canada (M.C.I.)*, 2005 FCA 160
33. *Gerardo Chavarria Gonzalez v. Canada (M.C.I.)*, (IMM-3659-03, May 30, 2003)
34. *Li v. Canada (M.C.I.)*, 2005 FCA 1
35. *Canada (M.C.I.) v. Flores Carillo*, 2008 FCA 94
36. *Baker v. Canada (M.C.I.)*, [1999] 2 S.C.R. 817
37. *Owusu v. Canada (M.C.I.)*, 2004 FCA 38
38. *Lewis v. Canada (M.C.I.)*, 2007 FC 778
39. *Gong v. Canada (M.C.I.)*, 2008 FC 600
40. *Kim v. M.C.I.* (2003), 33 Imm. L.R. (3d) (F.C.)
41. *Kazmi v. M.C.I.*, 2004 FC 1375
42. *Younis v. M.C.I.*, 2004 FC 266
43. *Sylla v. M.C.I.*, 2004 FC 475
44. *Abdou v. S.G.C.*, 2004 FC 752

45. *Malhi v. M.C.I.*, 2004 FC 802
46. *Iboud c. M.C.I.*, 2005 CF 1316
47. *Ray v. M.C.I.*, 2006 FC 731
48. *Saadatkhani v. M.C.I.*, 2006 FC 614
49. *Yousef v. M.C.I.*, 2006 FC 864
50. *Sen v. M.C.I.*, 2006 FC 1435
51. *Lake v. Canada (Minister of Justice)*, 2008 SCC 23
52. *Mehterian v. Canada (M.E.I.)*, [1992] F.C.J. No. 545
53. *Via Rail Canada Inc. v. National Transportation Agency*, [2001] 2 F.C. 25
54. *Ghavidel v. Canada (M.C.I.)*, [2007] F.C.J. No. 1205

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-5696-08

**STYLE OF CAUSE:** Muhammad Maner HAJI v.  
THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** June 23, 2009

**REASONS FOR JUDGMENT:** TANNENBAUM D.J.

**DATED:** September 10, 2009

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