

Federal Court



Cour fédérale

**Date: 20110829**

**Docket: IMM-5637-10**

**Citation: 2011 FC 1025**

**Ottawa, Ontario, August 29, 2011**

**PRESENT: The Honourable Justice Johanne Gauthier**

**BETWEEN:**

**ZAFAR IQBAL  
WAJIA PARVEEN  
USMAN ZAFAR IQBAL  
FILZA IQBAL ZAFAR**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] Wajia Parveen (the main applicant), her husband, Zafar Iqbal, and their two children<sup>1</sup> seek judicial review of the decision of the Refugee Protection Division of the Immigration and Refugee Board (RPD) rejecting their application pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*).

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<sup>1</sup> Usman Zafar Iqbal is the stepson of Wajia Parveen while Filza Iqbal Zafar is the young daughter of this couple.

### Background

[2] For reasons that will become evident later on, the Court feels that it should review in some detail the story of the applicants.

[3] All four applicants are citizens of Pakistan; more particularly they are from Azad Kashmir, a separately administered region of Pakistan. The main applicant is her husband's second wife. His first wife and their two daughters remain in Pakistan.

[4] The main applicant is a social worker.<sup>2</sup> Her social work focussed on promoting rural development and social services for women in Azad Kashmir, more particularly in the Bagh District. She completed her social work training in 1989 and was very active for more than 10 years before she founded the "A.K. Women Association" in 2000 (hereinafter A.K.). Ms. Parveen received significant recognition for her work in promoting women's welfare, including receiving the Presidential Award on March 23, 2000, which she described as Azad Kashmir's highest award (Certified Tribunal Record (CTR) in her Personal Information Form (PIF), at p 56). It appears that during that period and until the events described hereinafter that took place in 2008, she was regularly harassed and humiliated because of her work but she does not claim that this amounted to persecution until May-June 2008.

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<sup>2</sup> And occasional poet.

[5] She met her husband in 1999 and married him with the express consent of her husband's first wife on December 30, 2000. At the time she had made it clear that it was one of the conditions of her marriage that she would be able to pursue her work with the A.K.

[6] Zafar Iqbal is also from the Bagh District, although he left and worked outside of Pakistan for many years before 2008, that is, since 1991, shortly after being forced into an arranged marriage to a woman who bore him three children (one son, two daughters) but with whom the relationship never worked. During the hearing Mr. Iqbal explained that he did not divorce his first wife because of the serious stigma associated with divorce in Pakistan, particularly in the tribal system. He simply separated from her and continued to take care of her and her children financially until he left for Canada.<sup>3</sup>

[7] It appears that the brother of Mr. Iqbal's first wife, Mr. Tahir Nazir, objected to his second marriage. However, this aspect of their story was not explored during the hearing and it is far from clear for what reason he raised such objection (for example, was it because of the activities or the status of Ms. Parveen?).

[8] Be it as it may, in May 2002 the main applicant obtained her temporary resident visa in the United Arab Emirates (UAE) and joined her husband who was working there, it being understood again that she would regularly go back to Kashmir to pursue her social work.

[9] While the main applicant and her husband were in the UAE, they were advised by Mr. Iqbal's first wife that Mr. Nazir had enlisted Usman in a Madrassa. Fearing that Usman would

be brainwashed into joining the Jihad and with the consent of his two wives, Mr. Iqbal brought his son to the UAE in September 2003. This apparently further enraged Mr. Nazir, who sent him threatening messages promising revenge.<sup>4</sup>

[10] Apart from these threats from Mr. Nazir, it appears that the couple had no particular problem until 2005.

[11] On October 8, 2005, Azad Kashmir was devastated by a terrible earthquake. The main applicant and her husband returned to assist with aid efforts and to be with their families given that they had lost many members of their families in the disaster. It is well documented that the post-earthquake work provided a means for religious extremist organizations to garnish public support by participating in relief and reconstruction work. According to the main applicant, one especially active organization in her region was the Awami Action Forum (AAF) which was led by the Mullah in charge of the mosque next to her mother's house in Bagh.

[12] Apparently, these organizations were objecting strongly to women participating in aid work and post-earthquake reconstruction. In addition to taking work away from unemployed men, it was viewed as "un-Islamic" for women to work next to men.

[13] The main applicant, presumably through the A.K., worked with the international non-governmental organizations (NGOs) for about a month before returning to the UAE.

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<sup>3</sup> She still lives in the house he inherited from his father.

[14] It is to be noted that the Mullah heading the AAF is reported in the newspaper clipping filed before the RPD to have issued threats if the United Nations (UN) did not stop hiring women to work next to men, a behaviour religious extremists found obscene. The documentary evidence also indicates that a UN spokesperson stated that the UN and other NGOs had temporarily ceased their activities because the situation had become “life threatening” after a fire destroyed the house of one of the aid workers.<sup>5</sup>

[15] It is to be noted that the main applicant was in Bagh from January to June 2007. After a few months in the UEA, she returned there with her daughter at the end of October 2007. She remained in Bagh until she left for Canada in June 2008.

[16] Sometime in early 2007, her husband got into a dispute with his sister’s husband in respect of their common business venture in the UAE.<sup>6</sup> As it could not be resolved, he decided to leave the partnership altogether and he looked for different work for a couple of months after the main applicant left for Kashmir at the end of October 2007. Having failed to find any work because his brother-in-law was refusing to issue a document which was required by potential employers, Mr. Iqbal and his son returned to Bagh on December 10, 2007. Shortly thereafter he opened a hardware store there.

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<sup>4</sup> The number and exact nature of these messages is not very clear given that there was little questioning in that respect during the hearing.

<sup>5</sup> The authorities dismissed the UN’s claim that the fire was related to the threats and the women issue, saying that the fire originated from an electric malfunction.

<sup>6</sup> Also in July 2007, while living in UAE, the applicants applied and obtained a tourist visa for visiting Canada. They testified that at the time they were well off and just wanted to visit. This visa, however, later gave them the opportunity to choose to escape to Canada when things allegedly became dangerous for them.

[17] Mr. Iqbal testified that when he returned to Bagh, he had lost the support of his brother-in-law (his sister's husband) and his other cousins who sided with the latter because of the business dispute. It appears that both the said brother-in-law and Mr. Nazir blamed the main applicant for the bad influence she had on her husband, particularly what Mr. Nazir perceived as anti-Islamic views (refusing to send his son to the Madrassa) as well as the familial strife. It also appears that in February 2008 Mr. Nazir took Usman to the Madrassa again.<sup>7</sup> Mr. Iqbal intervened and asked him to stop.

[18] According to the applicants, Mr. Nazir used the main applicant's work since her return and her husband's refusal to send his son to a Madrassa to convince the head of the AAF, the Mullah in the applicants' village, that he should intervene to stop her "un-Islamic" activities. Both applicants also testified that Mr. Nazir was known for his links with unidentified jihadi organizations. He apparently had the "big beard and all",<sup>8</sup> characteristic of these extremists.

[19] The main applicant noted that she was very involved in motivating local women to defend their rights and to play a more significant role in the development of the area devastated by the earthquake. This involved telling them that more of the money sent for the reconstruction should be used for projects such as rebuilding the girls' school in their area whereas most of these funds were used to build mosques.

[20] It appears that until April 26, 2008 the main applicant only suffered the same kind of intimidation and harassment as before (see for example p 610 of the CTR) .On April 26, 2008 Mr.

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<sup>7</sup> Mr. Iqbal's first wife told him that she was powerless, given that even her own sister had started to teach at the Madrassa.

Nazir, having succeeded in convincing the local Mullah heading the AAF to act, visited the applicants' house with the Mullah and some of his followers in order to ask the main applicant to stop her activities, particularly to stop saying things against the religious organizations. When she explained that she was solely trying to bring people's attention to serious issues, they threatened her and her husband of "dire consequences".

[21] A month later, on May 25, 2008, Mr. Nazir and other extremists came to Mr. Iqbal's shop to discuss why he opposed sending his son to the Madrassa and appears to be against Jihad. The discussion turned into violence. They destroyed his shop. However, Mr. Iqbal was apparently able to flee to the police station to report the attack. But, the police refused to file a complaint and advised him that he should try to get along with these people who are influential in the region. Mr. Iqbal, after discussing the matter with his wife, fled with Usman to Rawalpindi where one of the main applicant's sisters lived. The next day, the same group came to the main applicant's house to enquire about her husband. They issued threats saying that her husband would soon "meet his end". Upon hearing of these threats Mr. Iqbal decided to leave Pakistan with Usman on May 30, 2008. He arrived in Canada on June 5, 2008 with his son.

[22] On June 2, 2008, the main applicant wrote to the Deputy Commissioner of the police for the Bagh District and personally went to see him to deliver her letter. In the said letter, she summarizes the difficulties encountered because of Mr. Nazir's personal enmity with her husband and how he incited the head of the AAF and spiritual leader of the Bagh mosque against her, saying that she was westernizing and misguiding the women of the area. She reports the events of April and May 2008 and seeks some protection from the police against these religious extremists. She apparently was

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<sup>8</sup> Mr. Iqbal's testimony at p 692 of the CTR.

only able to see the said gentleman for fifteen minutes and he told her to give her letter to his private secretary after having advised her that she should calm herself and not get involved with these people, “because they have been patronized by the Government and patronized by the army and the ISI” (CTR, p 621).

[23] The main applicant explained that in May 2008 she decided to stay in Bagh because she felt that the recent threat had only been against her husband and, although she was afraid, she had to face those difficulties, for that was exactly what she was asking the women in her area to do. She strongly felt it was her duty to remain there. This is why she sought protection from the Deputy Commissioner instead. When this help failed to materialize, she organized a meeting of her Association at a hotel in Bagh on June 14, 2008. One of the issues to be discussed was her own situation and what should be done about it. Allegedly, the Mullah heard about the meeting and a protest was organized outside the hotel; the participants shouted that she was trying to westernize the women in the area. She was counselled to leave the meeting through the back door and she did. Later that night, a group which included Mr. Nazir and the head of the AAF attacked her house,<sup>9</sup> throwing stones and breaking windows while shouting death threats. Although they did not actually enter her house, she believes that if she had gone out as they were asking her to do, they would have killed her. She indicated that at that moment she realized that the situation had escalated and reached a point where she was viewed as a threat to the AAF. Fortunately, the group dispersed, threatening that sooner or later the family would meet its end (Applicant’s PIF, CTR p 59). The next morning she left with her young daughter for Rawalpindi.

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<sup>9</sup> More or less a temporary shelter rather than a house made of concrete, because of the earthquake.



[24] A few days later, she learned from her sister living in Bagh that on June 19 the Mullah had organized a protest against the A.K., focussing on her westernized ways and activities and seeking a ban of the organization. This protest was later reported in a newspaper which also mentioned her name (CTR, p 400).

[25] The main applicant then left for Canada with her daughter to join her husband. All the applicants claimed refugee status the next day, on June 23, 2008.

[26] The hearing before the RPD took place in two sessions; the first being devoted almost exclusively to the questioning of the main applicant by the Tribunal officer and the RPD.

[27] With respect to the current situation of her association in Kashmir, the main applicant referred to a letter from her sister sent on September 4, 2008 which described how it was then not only difficult but almost impossible to continue with the activities of the A.K. She went on to explain the more current situation given that she has kept in close contact with those currently heading the A.K. (her sister and two women she had trained) by telephone.<sup>10</sup> It appears that since the date this letter was sent, the A.K. has been able to survive by no longer promoting the type of ideas she was fighting for when she was there in 2008 (especially with respect to the involvement of women in the reconstruction work). It now limits itself to operating a health dispensary or clinic in Thob, and a few centres where they teach new skills to women in the area. Allegedly, after her departure and the protest against the A.K., some of these centres were closed because families

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<sup>10</sup> As explained in the letter of her sister filed as exhibit P-26, CTR p 430, at the time the telephone communications were still very difficult in this part of the reconstruction zone but they were re-established later on.

prevented the women from going there and the volunteers were asked to leave the space that had been loaned to the association.<sup>11</sup>

[28] Although her sister still receives threats, she has not been physically harmed. That said, the main applicant still feels that she is on the AAF's hit list because she was repeatedly used by the AAF as an example of western conspiracy. After her departure, they described her as an agent of the West who now lives in luxury in Canada. If she were to return, she might be viewed as a threat to the AAF's authority and power and she would be eliminated wherever she went in Pakistan because of the close links between the AAF and other jihadi organizations and the support given to them by the Pakistan Army and Inter-Services Intelligence (ISI). It is worth mentioning that the main applicant does not know if a fatwa was actually issued against her. She confirmed that there is no evidence that a First Information Report (FIR) or warrant has been issued against her.

[29] Finally, although Mr. Iqbal also testified at the second hearing, his testimony added little to that of the main applicant except that he mentioned that the AAF included as its members other extremist groups. Also, when asked, assuming that the agents of persecution did not exist, what else would prevent them from living in one of Pakistan's large cities other than Azad Kashmir, he mentioned that the society had now become even more conservative and that his wife would not be able to continue her social work. It is also clear that he had little direct knowledge about the detailed activities of the AAF. For example, when asked whether the AAF trained for suicide missions, he speculated and readily admitted that his affirmative answer was entirely based on what he had heard from other people.

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<sup>11</sup> However, it appears they were able to open some new centres in other villages. The A.K. is based on volunteer service and the loan of space and equipment such as sewing machines from the people of the villages.

[30] Usman, who was then 18 years old, did not testify at either hearing. In that respect, it is worth noting that the RPD repeatedly said to the applicants' counsel that his presence and that of his sister were not necessary at the hearings.

[31] In its decision, the RPD rejected the claim on two bases. First, it noted that because of the contradictions, vagueness and fundamental implausibilities outlined in the decision, it did not believe the claimants' story and therefore did not find them credible. It expressly noted that this finding is fatal to their claim for protection.

[32] Secondly, the RPD dealt with the existence of a viable internal flight alternative (IFA) and concluded that there is no serious possibility for the claimant being persecuted or at risk of being harmed or subjected to cruel or unusual punishment or torture mainly because the AAF and Mr. Nazir have no means or even intent to find them in large cities such as Karachi unless the applicants tell them where they are.

### Issues

[33] The applicants argue that the RPD's findings in respect of both credibility and the IFA are flawed and unreasonable. These questions of fact and mixed facts and law respectively are reviewable on the standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, 51, [2008] 1 SCR 190; *Ambat v Canada (MCI)*, 2011 FC 292 at para 15, [2011] FCJ no 377 (QL)).

[34] Although the applicants also raised a constitutional argument based on sections 7 and 12 of the *Canadian Charter of Rights and Freedoms* and argue that it should be considered at this stage, they gave me no valid reasons why I should not, on the basis of judicial comity, follow the reasoning and conclusion of Justice Pierre Blais in *Kikina Biachi v Canada (Minister of Citizenship and Immigration)* 2006 FC 589, at para 21-24, 152 ACWS (3d) 498. I thus find that it would be premature to deal with these issues at this stage where the RPD only look at the validity of the applicants' claim under sections 96 and 97 of *IRPA*.

[35] Normally, when the Court is satisfied that there is no reviewable error with respect to the RPD's conclusion that there is a viable IFA it does not review the other findings. However, here the sweeping statement made with respect to the applicants' story appears to have an impact on the RPD's analysis with respect to the IFA for, as mentioned, it specifically states that it is fatal to their claim. Moreover, it will also certainly have a negative impact on all the other processes open to these applicants under *IRPA*. The Court will thus review both questions.

i) Credibility of the applicants and their story

[36] The principles applicable to the assessment of credibility by the RPD are well summarized by my colleague Justice Luc Martineau in *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116, at para 7-14, [2003] FCJ no162 (QL) [*Lubana*].

[37] Given that the determination of a claimant's credibility is the heartland of the RPD's jurisdiction, the Court must be particularly careful in its application of the standard of review. In this case, the Court has read and re-read the decision in light of the evidentiary record several times to

ensure that it was not simply substituting its own views of the evidence to that of the RPD and that the findings discussed were indeed not part of the acceptable outcomes justifiable on the facts and the law.

[38] As mentioned in *Lubana*, it is certainly easier for the Court to judge the reasonability of findings based on implausibility, especially when they are relying on common sense and rationality.

[39] It is also worth repeating again, as Justice Muldoon wrote in *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776, at para 7, [2001] FCJ no 1131 (QL), that :

[7] A tribunal may make adverse findings of credibility based on the implausibility of an applicant's story provided the inferences drawn can be reasonably said to exist. However, plausibility findings should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant. A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu. [see L. Waldman, *Immigration Law and Practice* (Markham, ON: Butterworths, 1992) at 8.22]

[40] It is also an important principle that when the RPD wishes to rely on its specialized knowledge, it must advise the claimant of how its knowledge on a particular point may be contrary to the evidence of the claimant and give him or her a chance to comment (Rule 18 of the *Refugee Protection Division Rules*, SOR/2002-228 [*RPD Rules*]). In this particular case, it appears, from a reading of the transcript, that the RPD did indeed, at least on one occasion, raise a point on which

the applicants had testified and which appeared to be contrary to its specialized knowledge. Indeed, Mr. Iqbal was able to explain how the RPD's belief was not accurate (see CTR, p 677).<sup>12</sup>

[41] That said, and to start with, the RPD does not specify whether it found that the whole story is not credible or only certain portions of it. This makes it particularly difficult for the Court, especially considering some specific documentary evidence that is not discussed at all in the decision.

[42] The RPD starts its analysis with what appears to be the main implausibilities affecting the applicants' story.

[43] First, it notes that it is not plausible that "the two senior claimants could have aroused so much hostility given their very intermittent and sporadic presence in Pakistan". Before reaching that conclusion the RPD simply reviews, based on the list of residences attached to each claimant's PIF, how long each one had been in Azad Kashmir. With respect to the main applicant, it concludes that between 2002 and her departure for Canada in 2008, she spent less than two years in Pakistan. Thus, she was not running the A.K. two-thirds of the time. As for her husband, he lived primarily outside of Pakistan from 1995 until his departure for Canada in 2008.

[44] This finding is presumably based on common sense. However, with all due respect, it makes little sense to look at time spent in Pakistan without considering the specific context, especially considering that the situation in Bagh was far from ordinary after the earthquake. The issue of women's rights, including their right to get involved in the reconstruction work, was a particularly

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<sup>12</sup> See also CTR p 679 with respect to honour killings.

volatile issue in 2007, as evidenced by the fact that the UN and other international NGOs themselves felt that it had become life threatening.

[45] As indicated in her list of residences accepted and used by the RPD, Ms. Parveen was in Bagh for most of the year 2007. She was a well-known local, a leader, to use the wording chosen by the RPD during the hearing, who was advocating the same principles put forth by the international NGOs. In that specific context, the finding referred to above is simply not reasonable.

[46] Even with respect to Mr. Iqbal, time alone cannot rationally be a basis to consider his story implausible considering that the Madrassa issue had been festering since 2002, whether or not he was physically in Pakistan. It had to be considered through the lens of a religious extremist as it is uncontested and accepted that, whether or not the Mullah and the AAF were violent, they were clearly extremely religiously conservative, as was Mr. Nazir. This is not disputed by the RPD; in fact, it is used as the basis for the other implausibility findings made with respect to Mr. Iqbal which will now be discussed.

[47] In effect, as further support to reject Mr. Iqbal's story and no doubt given the weakness of its first finding, the RPD states that, in a traditional patriarchal society, it is not plausible that a Muslim extremist like Mr. Nazir would attempt to usurp the role of Mr. Iqbal vis-à-vis his only son. It also found it to be implausible that a Muslim extremist would object to Mr. Iqbal taking a second wife considering the Koran and the Sharia law allow him to do so.

[48] Here, the RPD is relying either on general common knowledge – facts that it can take judicial notice of, or specialized knowledge, albeit pretty general concepts that are not contested *per se* by the applicants. However one characterises the information used to justify the RPD's findings, the Court is convinced that they are flawed.

[49] In effect, if one characterises these general concepts as specialized knowledge as mentioned, Rule 18 of the *RPD Rules* would apply.

[50] The RPD never mentioned these concepts and certainly did not give Mr. Iqbal an opportunity to comment or to better explain both situations. In fact, Mr. Iqbal was never asked any question whatsoever in respect of Mr. Nazir's objection to his second marriage, including why his brother-in-law objected to it. Were family politics involved? Was he objecting to the character of the second wife as opposed to the principle of taking a second wife?

[51] If it is simply general knowledge (certainly these concepts are well-known to the Court), they are insufficient to justify the inference drawn from them, for they are taken totally out of context and without regard to the particular situations of the applicants that can explain the differences between these applicants' situation and the generalized norm (see for example *Sadeghi-Pari v Canada (Minister of Citizenship and Immigration)*, 2004 FC 282, [2004] FCJ no 316 (QL) where, in a similar context, Justice Richard Mosley found that, without such analysis, the findings of implausibility were capricious and should be set aside).



[52] To better illustrate the Court's thinking, one could ask the following question; are the stories of Romeo and Juliet or West Side Story implausible because in both instances the families objected to the marriage of the main characters who were good Christians and the Bible gives them a sacred right to get married? Obviously not, because we all understand that, in both stories, the problems were family politics and the background of the main characters.

[53] Be it as it may, it is certainly not the type of clear case that can justify putting aside the claimants' stories without further examining their personalized situation.

[54] With respect to the situation involving Usman, the Court notes that in the story put forth, Mr. Iqbal was clearly the one having the final say with respect to his son. Is it not because of this that Mr. Nazir kept harassing him? Also, in 2002 when the issue first arose, Mr. Iqbal had been living outside of the country for several years. Is it not also general knowledge that close male relatives may have authority in the absence of the father?

[55] Certainly, the testimony of Usman would have been particularly helpful with respect to Mr. Nazir's attempts to enrol him in the Madrassa. He could also have confirmed or clarified some issues for the RPD with respect to visits made to his house. In the particular circumstances, it is really quite unfortunate and difficult to understand that the RPD so clearly indicated that his presence was not necessary and that it never put Mr. Nazir's authority over his nephew into question.

[56] Turning now to paragraphs 24, 26, 28, 29 and 34; the RPD makes various comments relating to the power or nature of the AAF as compared with other well known groups of religious extremists and in light of their behaviour since the applicants' departure, how the pictures of the protest against the A.K. appear to show a quiet gathering with a speaker addressing an attentive small crowd, how it is described as a local organization in the newspaper article and how it was described initially by Mr. Iqbal in his testimony. From these comments, one understands that the RPD is not convinced that the AAF is a violent organization capable of murder as feared by the applicants.

[57] The RPD is certainly entitled to reach this conclusion. The fact that one's subjective fear is not objectively established is sufficient to dismiss a claim under section 96 of *IRPA*. However, these two concepts are distinct and must be dealt with as such. One cannot automatically conclude that a claimant's testimony is not credible as a whole simply because his or her genuine subjective fear is not well-founded objectively. For example, the fact that the main applicant believes that she could have been killed on June 14, 2008 does not necessarily mean that the AAF would actually have done so. It is for the RPD to assess this. However, by the same token, simply because the RPD was not satisfied, after weighing all the evidence, that the AAF is a violent extremist organization capable of murder, it does not mean that the applicant's story as a whole is not credible, especially if the AAF was able to make her believe, subjectively, that her life is really in danger.

[58] Although there may well be cases where a specific testimony in respect of one's subjective fear could justify a more general finding of non-credibility, adequate justification must be given in

the decision which must be transparent to be reasonable. Here the RPD does not appear to distinguish those concepts.

[59] With respect to problems with the main applicant's testimony, the RPD deals at length (paras 31, 32, 33) with what it apparently considers to be a major contradiction. In effect, the RPD says, with respect to the event of the night of June 14, 2008, "if her assailants intended to kill her as she said why did they not?". It notes that when asked about this, Ms. Parveen offered two explanations: first, maybe because they heard her daughter crying, or later, after taking more time to think about it, because they had to go to the mosque to pray. Both were clearly pure speculation about what this group may have been thinking. The RPD indicates that neither explanation is satisfactory because "if ruthless Islamic fundamentalists had intended to kill the principal claimant as she alleges neither crying nor a call to prayers would have stopped all of them." On that basis, the RPD concludes that "her description of the events of 14 June to be contradictory and her credibility is eroded."

[60] Again, as mentioned, although there may be other explanations,<sup>13</sup> the RPD could have found that the behaviour of the group as described by the main applicant indicates that in fact it may not have intended to kill her. This would only be contrary to the applicant's testimony that she believed that if she had gone out as they asked her to do, they would have killed her. But there is no explanation as to how it makes her factual story not credible. Does one need to be killed or severely injured to establish as a fact that a group of individuals did throw stones at one's house and make death threats? When one is asked to speculate about what somebody else had in mind, one should

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<sup>13</sup> The dynamics involved in group behaviour is a specialty *per se*.

not be blamed for offering an unsatisfactory theory. It is certainly difficult to imagine that it could be a reasonable basis for dismissing the whole factual basis of one's claim as non credible.

[61] Finally, although the RPD refers to vagueness in its conclusion at paragraph 35, the parties could only identify one such issue in the decision. At paragraph 27, the RPD notes that the principal applicant was asked several times to name other extremist groups in addition to the AAF who pose a threat to her and her husband. She said that one was the Mohammedian Group, a small local organization, and she was unable to recall the name of the other group.

[62] In fact, the said applicant testified that she would get back to it as soon as she could remember the name which was escaping her at the time the question was asked. She then identified the Jaish-E-Mohammad (CTR p 623). The RPD appears to have ignored that evidence, certainly in paragraph 29 where it refers to a list that includes this organization, noting the absence of the AAF. There is no indication that the RPD considered the objective evidence to support the allegation that at least that organization is a violent extremist organization.

[63] It is not necessary to comment further on the other points raised in the decision because, in light of the importance of the errors described above, the Court is not satisfied that the RPD would or could have concluded as it did simply on the basis of these other points. The decision does not refer to any other contradiction between what was said at the two hearings and what was said or written by the applicants at any time before the said hearings. Its conclusion that the applicants are not credible and that this finding is fatal to their claims cannot stand up to a probing examination. It is unreasonable.

ii) Internal Flight Alternative

[64] I have not been persuaded by the applicants that there was, in the record before the RPD, any particular piece of documentary evidence that was ignored by the decision maker when it stated that a) there was no evidence to establish that the principal claimant could not engage in social work in a proposed IFA (large cities outside Azad Kashmir) and b) there was no evidence that the ISI or the Pakistan Army would collaborate with jihadi groups in Azad Kashmir over issues such as the present one.

[65] Although it is not a basis on which I rely to set aside the decision under review, I must mention that I am somewhat puzzled by the fact that the RPD, without any discussion of P-37, went as far as concluding that the AAF was, as a matter of fact, a “small local conservative religious association led by a local prayer leader” (see para 29). This is quite different than concluding that the claimant has not, upon weighing all of the evidence, established that the AAF has influence outside of Bagh, or even Azad Kashmir.

[66] That said, it is clear that the RPD’s conclusion that an IFA was available to the claimants was deeply coloured by its flawed conclusion with respect to credibility. Thus, I am not satisfied that, in the particular circumstances of this case, this ground stands as a sufficiently independent ground for upholding the decision (see *Gobalasingam v Canada (Minister of Citizenship and Immigration)*, 2005 FC 696, at para 12-13, [2005] FCJ no 880 (QL)).

[67] This is especially so considering that the RPD does not discuss state protection at all and it appears from comments made by the decision-maker during the hearing that he would not deal with the availability of state protection (see CTR, pp 663-664) and need not hear evidence in that respect from the main applicant. Was this an acknowledgement that its availability anywhere in Pakistan was doubtful with respect to women such as the main applicant?

[68] In the circumstances, the Court has concluded that this matter should be reconsidered by a different panel.

[69] The parties have agreed that this matter does not raise any question that would warrant certification. It turns on its own facts.

**ORDER**

**THIS COURT ORDERS that** the application is granted. These claims for protection shall be reconsidered by a differently constituted panel.

“Johanne Gauthier”

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-5637-10

**STYLE OF CAUSE:** ZAFAR IQBAL, WAJIA PARVEEN, USMAN ZAFAR  
IQBAL and FILZA IQBAL ZAFAR  
v. THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Montreal, Quebec

**DATE OF HEARING:** April 7, 2011

**REASONS FOR ORDER  
AND ORDER:** GAUTHIER J.

**DATED:** August 29, 2011

**APPEARANCES:**

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Ms. Amelia Fink

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