

Federal Court



Cour fédérale

Date: 20111014

Docket: IMM-691-11

Citation: 2011 FC 1152

Ottawa, Ontario, October 14, 2011

PRESENT: The Acting Chief Justice

BETWEEN:

**RIZWANA ANSAR, VAHID ANSAR,
AROSA ANSAR, NAVID ANSAR
AND HAMARA ANSAR**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review brought under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] seeking to set aside a decision of the Refugee Protection Division [RPD] dated January 10, 2011. The RPD found that the applicants were not “Convention refugees” or “persons in need of protection” as set forth in sections 96 and 97 of the IRPA.

I. Facts Alleged by Applicants

[2] The applicants, Rizwana Ansar [the principal applicant] and her four children Vahid Ansar, Arosa Ansar, Navid Ansar, and Hamara Ansar, are all citizens of Pakistan. On April 11, 2003, the applicants entered Canada with visas mistakenly issued in the belief that the principal applicant's husband, Ansar Iqbal, had already received permanent residency. The applicants were considered dependents in Mr. Iqbal's application for permanent residency and allowed to remain in Canada.

[3] On March 12, 2008, the RPD vacated the decision granting Mr. Iqbal refugee status. The RPD determined that Mr. Iqbal's refugee status had been granted on the basis of a false identity, counterfeit documents, and fabricated allegations. As a result, the applicants now seek refugee status for themselves and filed Personal Information Forms [PIF] on February 20, 2009.

[4] The principal applicant fears what Altaf Choudhry, her cousin and husband's uncle, may do to her and her children should they return to Pakistan. Ms. Ansar traces the family's problems with Mr. Choudhry back to 1995, when rumours spread that Mr. Choudhry's wife had inappropriate relations with other men. Zulfiqar Ali, Ms. Ansar's brother, testified that their father had in fact spread the rumours, that they were true, and that as a result, Mr. Choudhry and his wife were "ex-communicated" from the family and no one was to have any communication or dealings with them.

[5] In 2000, it appears a family member living in the United States helped Mr. Ali and Mr. Choudhry reconcile. In March of that year, Mr. Iqbal travelled to the United States and for over a year, lived with Mr. Choudhry. During this period, Ms. Ansar accuses Mr. Choudhry of taking advantage of her husband, of manipulating him, treating him like a hostage, and withholding his

passport and other identification. Mr. Choudhry allegedly demanded that Mr. Iqbal divorce Ms. Ansar and that their daughter, Arosa Ansar, be married off to a cousin. Ms. Ansar testified that Mr. Choudhry has even threatened to have Arosa kidnapped and forcefully married if necessary.

[6] Ms. Ansar states that in May of 2001, unable to tolerate Mr. Choudhry's treatment any longer, Mr. Iqbal fled to the safety of a Pakistani community in Montreal. Ms. Ansar explains that her husband was forced to obtain fake documentation because Mr. Choudhry would not return his passport and that he used a false identity so that Mr. Choudhry could not trace his whereabouts.

[7] Showing questionable judgment, Mr. Ali then purchased a gas station from Mr. Choudhry in January of 2002. Six months later, Mr. Choudhry demanded to have the gas station returned to him. The dispute escalated to such a degree that Mr. Ali had Mr. Choudhry arrested. Mr. Ali called the police a second time in 2003 when Mr. Choudhry continued to threaten him and has since filed a lawsuit to resolve their commercial dispute.

[8] In October of 2006, while visiting his ailing father in Pakistan, Mr. Ali was attacked by two men allegedly sent by Mr. Choudhry. During another visit in July of 2007, as many as fifteen men came looking for Mr. Ali on three separate occasions. Following an altercation, two men were arrested and apparently admitted to being paid by Mr. Choudhry, saying he was also behind the attack in 2006.

[9] Ms. Ansar alleges Mr. Choudhry has consistently threatened her and her family, even after the applicants fled Pakistan in 2003. They now fear Mr. Choudhry will finally act on his threats if they are forced to return.

II. Impugned Decision

[10] The RPD made several adverse credibility findings of which I note the following:

1. Because Mr. Iqbal's refugee claim in 2001 was not based on any of the allegations now laid against Mr. Choudhry, in all likelihood such events never occurred or at least not to the extent necessary to constitute a well-founded fear of persecution.
2. The RPD questioned why, despite Mr. Iqbal's supposed refusal to marry off his daughter in 2000, the applicants had suffered no harm or threats in the years leading up to their departure from Pakistan in 2003.
3. The panel found that Ms. Ansar contradicted herself while testifying by failing to initially raise more recent threats made by Mr. Choudhry. The panel concluded she was fabricating the latest threats to bolster her claim.
4. As for Mr. Ali's testimony that Mr. Choudhry had paid men to attack him in Pakistan, the panel found that regardless of its veracity, it had no bearing on whether the applicants had a well-founded fear of persecution from Mr. Choudhry.

[11] As a result, the RPD questioned the credibility of the applicants' principal narrative and concluded the applicants did not have a well-founded fear of persecution. The panel also noted that Arosa had stated she would rather return to Pakistan than stay alone in Canada without her family. This meant that subjectively, she did not have a well-founded fear of persecution in Pakistan.

[12] Based on its analysis and the evidence presented by the applicants, the panel did not find it plausible that Mr. Choudhry would harm the applicants if Mr. Iqbal and Ms. Ansar did not divorce

or marry off their daughter. The panel also did not find it plausible that Mr. Choudhry would abduct Arosa Ansar and force her to marry his nephew.

[13] Finally, the RPD concluded there was no evidence to suggest that adequate state protection would not be available to the applicants. The panel thus concluded that the applicants were not “Convention refugees” or “persons in need of protection” as set out in the IRPA.

III. Position of the Parties

[14] The applicants submit that the RPD committed several errors in law reviewable by the standard of correctness. First, they argue the RPD’s review of the facts surrounding Mr. Iqbal’s falsified refugee claim constituted an abuse of power. They allege that, relying on the credibility findings made against Mr. Iqbal, the panel rejected all of the applicants’ allegations and summarily dismissed their claim. Secondly, the applicants believe the RPD failed to consider Arosa Ansar’s cultural background when it interpreted her refusal to stay alone in Canada, notably failing to consider the gender based guidelines of the Immigration and Refugee Board [IRB] and United Nations High Commission for Refugees [UNHCR].

[15] For its part, the respondent contends that the applicants’ claim was internally inconsistent and implausible, that the RPD’s conclusion is therefore not based on any error, and that the only issue to be examined by this Court is whether the panel’s decision was based on an erroneous assessment of the applicants’ credibility.

IV. Analysis

A. *Standard of Review*

[16] The Court finds that the determinative issue in this case is whether the RPD erred in its credibility findings. Assessments of credibility are within the panel's area of expertise, deserve deference, and are thus reviewable on a standard of reasonableness (*Aguirre v Canada (Minister of Citizenship and Immigration)*, 2008 FC 571, [2008] FCJ 732). In instances where the proper consideration of the gender based guidelines is at issue, this becomes subsumed in the standard of review of reasonableness as applied to credibility findings (*A.M.E. v Canada (Minister of Citizenship and Immigration)*, 2011 FC 444 at para 8, [2011] FCJ 589). The following analysis will therefore establish whether the RPD's conclusion falls within a range "of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]).

B. *Did the RPD err in questioning the credibility of the applicants' principal narrative?*

[17] Initially, an important distinction must be made between the RPD's credibility findings and its conclusion that the threat posed by Mr. Choudhry was "implausible". The panel must be mindful of the use of this term and its implications. Implausibility findings must only be made "in the clearest of cases" (*Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7, [2001] FCJ 1131). The panel's inferences must be reasonable and its reasons set out in clear and unmistakable terms (*R.K.L. v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at para 9, [2003] FCJ 162). As Justice Richard Mosley explains in *Santos v Canada (Minister of Citizenship and Immigration)*, 2004 FC 937 at para 15, [2004] FCJ 1149:

[P]lausibility findings involve a distinct reasoning process from findings of credibility and can be influenced by cultural assumptions or misunderstandings. Therefore, implausibility determinations must be based on clear evidence, as well as a clear rationalization process supporting the Board's inferences, and should refer to relevant evidence which could potentially refute such conclusions [emphasis added].

[18] In this case, the RPD's implausibility findings as to the danger faced by the applicants is apparently made "[o]n the basis of its analysis of the evidence and documentation put forth on behalf of the [applicants]" (Applicants' Record at p 11 [AR], RPD Decision at para 20), but the panel fails to refer to any specific evidence or analysis. The panel's general statement fails to meet the standard of both a clear rationalization process and reference to relevant evidence, as referred to in the case law above. We are left to assume the panel's "analysis" refers to its credibility findings, which constitute the vast portion of its decision. Such credibility findings, if reasonable, would be sufficient on their own to justify the RPD's overall conclusion. Unfortunately, I find they are not in fact reasonable.

[19] First, I take issue with the panel's conclusion that because Arosa testified she would rather return to Pakistan than stay alone in Canada without the rest of her family, "subjectively she does not have a fear of persecution" (AR at p 11, RPD Decision at para 20). For a panel to make such a determination based only on a nineteen year old girl's desire not to be separated from her parents and four brothers and sisters is unreasonable. In addition, a panel member questioning a young female Pakistani applicant in such a manner shows complete disregard for the gender based guidelines of the IRB and the documentary evidence before the panel. The IRB's Responses to Information Requests [RIR], PAK102656.E issued on December 4, 2007, explains that it is very difficult for young women of all classes in Pakistan to live alone. For the panel not to consider this when questioning Arosa and not to explore any further with her why she did not wish to stay alone

in Canada, given her age and cultural background, is clearly unreasonable. At the very least, the panel should have confirmed with Arosa that a young woman's experience living alone in Canada is very different from what she could expect to face in Pakistan, as evidenced by the IRB's RIR.

[20] I turn now to a second issue with the credibility findings, concerning Mr. Iqbal's refugee claim. The panel's very first conclusion in its analysis is that because Mr. Iqbal's refugee claim was not based on any of the allegations now laid against Mr. Choudhry, "in all likelihood, such events never occurred, and certainly not to the extent necessary to constitute a well-founded fear of persecution" (AR at p 8, RPD Decision at para 10). In this one statement, the panel appears to dismiss most if not all of the applicants' narrative: the rumours spread in 1995 and the resulting demands made that Mr. Iqbal divorce Ms. Ansar and marry off his daughter Arosa. It is not surprising that as a result, the applicants are of the view that their case was summarily dismissed based only on Mr. Iqbal's previous claim, or that they question the objectivity of any subsequent credibility findings when their principal allegations appears to have already been rejected. The panel's statement summarily dismissing the applicants' allegations, whether this was its intention or not, does not meet the standard of reasonability as set out in *Dunsmuir*, above. In the same vein, the panel's conclusion that Mr. Choudhry paying men to attack Mr. Ali in Pakistan had no bearing on whether the applicants had a well-founded fear of persecution from Mr. Choudhry, without further explanation is equally unreasonable.

[21] An additional error that cannot be ignored is the RPD's assertion that the applicants had suffered no threats in the years leading up to their departure from Pakistan in 2003, despite Mr. Iqbal's refusal to marry off his daughter in 2000 (AR at p 8, RPD's Decision at para 12). The RPD appears to ignore Ms. Ansar's testimony, both in her PIF (AR at p 18, PIF at lines 79-87) and during

the oral hearing (Tribunal Record at p 367, Hearing Transcript at p 17), which makes it clear that Mr. Choudhry had threatened Ms. Ansar before her departure.

[22] Finally I find fault in the RPD's conclusion that because of a contradiction in her testimony, Ms. Ansar had fabricated threats to bolster her claim. (AR at p 8, RPD's Decision at para 14). The alleged contradiction concerns testimony that her mother-in-law received threats from Mr. Choudhry six months earlier. The tribunal officer asked Ms. Ansar why she had not raised these sooner: "Is there a reason why this doesn't appear as an amendment or you do not say so at the outset when we asked, when the Board member asked you if there was anything else to be added? [emphasis added]", to which the interpreter then responds: "Sorry, she said I didn't remember. She used the word, English word knowledge" (Tribunal Record at p 391, Hearing Transcript at p 41). The panel based itself on this answer to say the following: "When [Ms. Ansar] was asked why had she not mentioned this incident at the outset of hearing when asked, she responded that she did [not] remember. The Tribunal doubts the truthfulness of this response and believes that the principal claimant was attempting to bolster her claim for refugee protection [emphasis added]" (AR at p 9, RPD Decision at para 14).

[23] First, the facts on which the panel based its conclusion are flawed. Contrary to what the tribunal officer stated and the panel wrote in its decision, it was not Ms. Ansar that was asked to mention any recent incidents but rather her counsel. A reading of the transcript also raises some doubt as to whether the question was even properly understood by counsel (Tribunal Record at p 360, Hearing Transcript at p 10). Furthermore, the exchange took place at the outset of the hearing during a procedural discussion between the presiding member and counsel, and nothing leads me to conclude Ms. Ansar would have understood this procedural discussion had become an invitation for

her to testify. I find the panel's conclusion that Ms. Ansar was attempting to bolster her claim, based on this one exchange, to be unreasonable.

[24] In addition, Ms. Ansar consistently testified to receiving constant threats from Mr. Choudhry. She addressed such threats in her PIF: "[T]oday, he still screams at my husband's mother for allowing us to leave Pakistan and continues to throw threats of making sure that we live in misery in Canada" (AR at p 19, Principal Applicant's Affidavit at lines 103-105). During the hearing, Ms. Ansar was equally consistent and forthcoming when questioned about Mr. Choudhry, indicating she remains in touch with her in-laws and that they tell her he continues to make threats when visiting Pakistan (Tribunal Record at p 368-370, Tribunal Transcript at p 18-20). In light of her PIF and oral testimony, it was unreasonable to conclude that the latest threats would be fabricated when they are consistent with the narrative given to date. While I believe these additional threats do not significantly alter the applicants' claim, the panel's erroneous finding must have certainly harmed it.

[25] The RPD's analysis of the applicants' credibility was deficient and unreasonable. The application is allowed and the matter is to be set for re-determination by a newly constituted panel. No question for certification arises and none was suggested by the parties.

JUDGMENT

THIS COURT’S JUDGMENT is that the application for judicial review is granted and the matter is to be sent back for re-determination by a newly constituted panel. No question is certified.

“Simon Noël”
Acting Chief Justice

FEDERAL COURT
SOLICITORS OF RECORD

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