

Federal Court



Cour fédérale

Date: 20120608

Docket: IMM-4996-11

Citation: 2012 FC 724

Ottawa, Ontario, June 8, 2012

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

NADIR SALEEM

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant Nadir Saleem seeks judicial review under section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (hereafter IRPA) of the decision of the Immigration and Refugee Board, Refugee Protection Division (hereafter the Board) which found that he was not a Convention refugee or a person in need of protection.

[2] For the reasons that follow, the application is granted.

BACKGROUND:

[3] The applicant is a citizen of Pakistan from the city of Sialkot in the Province of Punjab. He met a young woman through his sister and began a relationship with her which led to a marriage proposal contrary to her parent's wishes. The couple fled to the city of Mardan and took refuge with the family of a friend. They were married in October 2007. Charges of abduction and rape were filed against the applicant on the complaint of his wife's parents. He fled to Canada and sought protection. In August 2008 his wife gave birth to a son. The wife and son continue to live in Mardan with the friend's family.

DECISION UNDER REVIEW:

[4] The Board found the applicant's claim to be largely credible and supported by the evidence. This included the First Information Report (FIR), arrest warrant, marriage certificate, emails from the wife, son's birth certificate, national identification card and passport among other items.

[5] The Board found that the applicant had Internal Flight Alternatives (hereafter IFA) in the cities of Multan and Mardan. Both cities are more than 400 km from Sialkot and have large populations. The Board found that the applicant's in-laws would not be able to find him and his wife in one of those cities and did not, in any event, appear to be actively looking for him outside Sialkot. The Board considered that it would be easy for the applicant to relocate as he had a bachelors degree from Pakistan and had completed most of his MBA in the United States.

ISSUE:

[6] The sole issue is whether the Board's IFA finding was reasonable.

ANALYSIS:

Standard of review

[7] An IFA finding is a question of mixed fact and law attracting a standard of reasonableness: *Soto v Canada (Minister of Citizenship and Immigration)*, 2011 FC 360 at para 19; and *Guerilus v Canada (Minister of Citizenship and Immigration)*, 2010 FC 394 at para 10. Reasonableness is based on the existence of justification, transparency and intelligibility within the decision-making process and whether the decision 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; and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59.

Was the IFA finding reasonable?

[8] The test to establish that it is unreasonable for the applicant to relocate to a proposed IFA is strict. The applicant had to demonstrate on a balance of probabilities that he would face a serious risk of persecution in the proposed IFAs. If the Board is not satisfied that such risk exists, the

applicant had to demonstrate that it would be unreasonable for him to move to the proposed IFA: *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 2118 (FCA).

[9] The applicant submits, among other arguments, that the Board erred in its finding that the in-laws and the police were not actively looking for the applicant and his wife outside of Sialkot. He contends that the Board failed to consider the fact that he is subject to a warrant and that it was unreasonable for the Board to suggest that he can simply face the charges in Pakistan because he has a “reasonable” chance of getting them dismissed. The Board’s finding, he submits, goes against the evidence that the police and the lower courts are corrupt, and the evidence of violence against couples who get married against their parent’s wishes.

[10] It was open to the Board to find, as it did, that the in-laws and police could have found where the wife was living through her National Identification Card, which includes the residence address, as the record indicates that it was used in the issuance of the son’s birth certificate. It was mere speculation, however, to also conclude that the police and in-laws could have located her through the friend who offered shelter in Mardan as the evidence does not indicate that the friend was known to her family or the police. Moreover, the wife was not subject to the arrest warrant and the fact that she was able to live in Mardan, albeit discretely, for four years should not have been used to demonstrate that the applicant would not have been arrested had he returned to that city.

[11] As noted by the Board, Pakistan experiences a high number of honour crimes committed against couples who marry in defiance of parents. The evidence also indicates that the police allow themselves to be used as guardians of public morality to uphold tradition and culture. It was

unreasonable, in the circumstances, to suggest that the applicant live in hiding in the propose IFA:
Abdeen v Canada (Minister of Employment and Immigration), [1994] FCJ No 779.

[12] The Board relied on a research report to find that frivolous FIRs are often dismissed by the Pakistani courts. However, the Board failed to consider the effect of the arrest warrants. It assumed, without evidence, that the fact that FIRs are not accessible through a computerized system indicated that there is no computerized system to access warrants.

[13] The evidence describes FIRs as: “written reports prepared by police in response to the report of an event or criminal incident brought to their attention. FIRs are a record of the initial information that is provided by a complainant to the police”. Warrants, on the other hand, are formal orders for the arrest of the suspect issued by a magistrate and, under section 83 of the Pakistani *Code of Criminal Procedure*, can be executed outside of the local territorial jurisdiction of the magistrate and police. There is no indication in the evidence that warrants are not accessible through electronic or other means in other parts of Pakistan.

[14] The Board accepted that many lower courts in Pakistan are corrupt. That finding was supported by the objective country documentation. It was, therefore, contradictory for it to suggest that the applicant could return to face his accusers in Pakistan on the strength of an assumption that he would have a reasonable chance of success in defending himself against the charges. If arrested, the applicant would have been tried in Sialkot where his in-laws, according to the evidence accepted by the Board, appear to carry considerable influence. The evidence indicates that there also is a considerable backlog in the judicial system. This could result in serious consequences such as

indeterminate pre-trial detention: *Chowdhury v Canada (Minister of Citizenship and Immigration)*,
2008 FC 290 at para 16.

[15] With these concerns, I am not satisfied that the Board's decision is defensible on the facts and the law or that it falls within the acceptable range of outcomes.

[16] No serious questions of general importance were proposed and none will be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is granted and the matter remitted to the Refugee Protection Division for reconsideration. No questions are certified.

“Richard G. Mosley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4996-11

STYLE OF CAUSE: NADIR SALEEM

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: April 10, 2012

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

DATED: June 8, 2012

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