

Federal Court



Cour fédérale

Date: 20121128

Docket: IMM-4820-11

Citation: 2012 FC 1384

Ottawa, Ontario, November 28, 2012

PRESENT: The Honourable Mr. Justice Lemieux

BETWEEN:

MUHAMMAD ASHRAF GONDAL

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction and Background

[1] The Applicant is a citizen of Pakistan who came to Canada in June 2003 seeking this country's protection due to his fear of persecution at the hands of the Pakistan Muslim League (PML) arising from of his involvement in the Pakistan Peoples Party (PPP). He made his refugee claim shortly after coming to Canada.

[2] The proceeding before this Court is a challenge by the Applicant to the June 14, 2011 decision of a Pre-Removal Risk Assessment Officer (PRRA Officer) who found the Applicant does not face more than a mere possibility of persecution on any of the Convention grounds should he return to Pakistan and therefore his PRRA application did not meet the requirements of section 96 of the *Immigration and Refugee Protection Act, SC 2001, c 27 (IRPA)*. The PRRA Officer also found there was insufficient evidence to conclude he would be at a risk spelled out in section 97 of the *IRPA* and, in particular, under section 97(1)(b)(iii).

[3] In September 2007 the Refugee Protection Division (RPD) rejected his claims to be at risk either under section 96 or section 97 of the *IRPA*.

[4] The hearing before the RPD was scheduled to take place on December 8, 2005 but was postponed because the Immigration and Refugee Board of Canada (IRB) received information “that the claimant was assaulted at his work place in Canada (Toronto), suffered serious injuries, was in the hospital for a long period of time and then was placed in a rehabilitation facility. This limited his mobility and communications.”

[5] It is accepted Mr. Gondal was brutally and viciously attacked on June 21, 2005 while working in a gas station in Toronto awaiting the hearing of his refugee claim. That attack left him permanently disabled with a serious brain injury which led to the development of a medical condition called Aphasia, a communication impairment condition which prevents him from speaking and understanding a spoken language, to read and to write.

[6] As it turned out, the RPD had to appoint a designated representative but it was difficult for that representative to communicate with Mr. Gondal because of the language barrier and his difficulty to speak. There was no oral evidence from the Applicant before the RPD. He was simply not able to testify. The RPD's decision was based on the evidence presented by Mr. Gondal in his Port-of-Entry statement, his Personal Information Form (PIF), other supportive documents and the evidence presented by the Minister as well as the observations from the Refugee Protection Officer (RPO) the comments from the designated representative and from his counsel, an Immigration Consultant who was to present further submissions in writing but did not do so. In submissions to the PRRA Officer and before this Court, Mr. Gondal was represented by competent counsel.

[7] The RPD found his story not to be credible. The RPD had evidence from the Minister which states that Interpol tried to confirm if there was a false case of rape filed against him by his alleged persecutors, the PML, as asserted by PPP officials. The information received from Interpol was that there was no such case filed which lead the RPD to conclude the PPP's letters contained information which was false. The RPD also found his medical condition shows he would not be able to take care of himself let alone participate in political activities, and said "that the claimant would benefit if he returns to Pakistan, so his family in Pakistan can take care of him."

[8] Leave to seek judicial review was refused by a judge of this Court from the RPD's decision on April 2, 2008.

II. The PRRA Officer's Decision (dated June 14, 2011)

[9] The PRRA Officer reviewed the RPD decision of November 21, 2007 citing its conclusion which reads:

In summary, the panel finds that the core reasons presented by the claimant for the basis of his fear is impugned by the information presented by the Minister, which shows that the party the claimant allegedly supports and was a member of, provided letters stating that there was a false case of rape charges against the claimant, which actually does not exist. This leads the panel to believe that the letters are compromised and are not genuine.

[10] The PRRA Officer then wrote:

The applicant has not addressed any of the serious credibility findings of the RPD panel in this application. I acknowledge that the applicant was not able to testify at his refugee hearing due to his communication limitations, however, the RPD panel made a finding of a lack of credibility based on the information that he had already provided to Canadian authorities. While I am not bound by these findings, the RPD is a decision making body who are experts in the determination of refugee claims, I therefore give considerable weight to the findings of the RPD. Furthermore, leave to appeal the negative RPD decision was denied by the Federal Court in a decision dated 02 April 2008.

[Emphasis added]

[11] The PRRA Officer acknowledged that counsel for Mr. Gondal in support of this PRRA application and submissions submitted various country conditions documentation as it pertains to the human rights, political, security and medical availability in Pakistan. He found, "based on analysis of this evidence, ... it does not provide any new evidence to indicate the applicant would now be at risk upon return to Pakistan." He concluded by writing:

I have thoroughly reviewed the applicant's PRRA application and submissions, and it is my finding that there is insufficient objective evidence to indicate that his situation in Pakistan has changed since the RPD decision. The risk identified by the applicant was dealt with

at the Refugee Protection Hearing. A PRRA application is not an appeal of a negative refugee decision, or a review of a previous decision of the RPD, but rather an assessment based on new facts or evidence which demonstrate that the applicant is now at risk of persecution, torture, risk to life or risk of cruel and unusual treatment or punishment. Nonetheless, I have carefully read and considered the materials submitted by the applicant and current country conditions.

[Emphasis added]

[12] He further noted in 2008 Pakistan held national elections which brought to power a coalition led by the PPP and discussed Mr. Gondal's submissions that even though the PPP is now the governing party in Pakistan politics in that country are very unpredictable and the human rights situation remains poor, which the PRRA Officer recognized had some merit; he expressed the view, however, Mr. Gondal had provided insufficient evidence to persuade him he will be targeted upon return to Pakistan adding:

The applicant has not been in Pakistan for eight years and there is insufficient evidence before me that any particular group or individual would be interested in causing the applicant any harm. Furthermore, the applicant has not provided any evidence to indicate whether any of his family members in Pakistan are experiencing any difficulties due to his affiliation with the PPP. I find that it is mere speculation as to whether the applicant would experience any difficulties due to his political involvement with the PPP in the future.

[13] The PRRA Officer then addressed the issue which Mr. Gondal had also raised, namely that his life is at risk due to the fact that he will lose his medical support system in Canada and be faced with a poorly equipped, rural health care system in Pakistan.

[14] The PRRA Officer then reviewed the documentary evidence on the availability of medical care in Pakistan. I need not review this evidence because the PRRA Officer was alive to the provisions of Section 97(1)b) of the IRPA and particularly, section 97(1)b)(iv). He wrote:

According to Section 97(1)b) of the Immigration and Refugee Protection Act (IRPA), “A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally to a risk to their life or to a risk of cruel and unusual treatment or punishment if (iv) the risk is not caused by the inability of that country to provide adequate health or medical care.” Protection under 97(1)(b) is not granted when the risk arises from the state’s inability to provide adequate health or medical care. However, when treatment is available in the receiving country but the applicant is likely to be denied access to it, may establish a risk under 97(1)(b). Based upon careful analysis of the evidence before me, it is my finding that there is insufficient evidence before me to indicate that the applicant will not be able to obtain the health services/medication and/or treatments that he may need upon return to Pakistan. Furthermore, I do not find that there is sufficient evidence to persuade me that the applicant would be denied access to any medical care which he may require upon return to Pakistan.

[Emphasis added]

[15] In so doing, the PRRA Officer applied the decision of the Federal Court of Appeal in *Covarrubias v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 365, para 41, which held the exclusion in paragraph 97(1)b)(iv) would not cover situations where medical care is denied for an illegitimate reason such as prosecutorial reasons.

III. The Arguments

[16] Counsel for the applicant argued; (1) the PRRA Officer ignored the risk allegations which the applicant put forward, (2) he failed to address the medical evidence put forward, (3) he failed to consider the totality of the evidence and not each element of it in isolation with the rest.

[17] Counsel for the respondent counters by arguing the Officer's reasons show he considered all grounds of the risks alleged by the applicant, namely, (1) the situation in Pakistan being volatile with the risk of political violence always being present, (2) the risk associated with his medical condition. The respondent submits the Officer did not err in not considering, as counsel for the applicant advanced, the risk generated through the combination of his political affiliation and his medical condition. Counsel for the respondent submits they were presented and considered as two discrete grounds. As to the applicant's argument that the PRRA Officer failed to expressly consider specific pieces of evidence, counsel argued he was not obligated to mention each individual piece of evidence in his decision. Finally, counsel submitted the PRRA Officer did not give undue weight to the RPD's credibility finding.

IV. Analysis and Conclusions

(a) The standard of review

[18] Both parties agree the reasonableness standard applies to this decision. According to the Supreme Court of Canada's decision in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, at paragraph 47 tells us a reasonable decision is one which "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law."

(b) Conclusion

[19] The applicant did not challenge the RPD's credibility findings which led that tribunal to decide Mr. Gondal did not have a well-founded fear of persecution at the hands of the Pakistan Muslim League. The applicant's PRRA submissions focussed on Pakistan's weak human rights

record, the volatility of its politics and the lack of medical facilities in Pakistan to meet his specific needs.

[20] I agree with counsel for the applicant the PRRA Officer's analysis of medical availability in Pakistan to meet the applicant's needs was lacking. In the respondent's memorandum of fact filed on November 3, 2011 opposing the grant of leave, respondent's counsel, at paragraph 11, wrote that the applicant could not fault the Officer for not referring the medical documentation adduced because "he clearly understood the basic point of that documentation, to wit the facts of his disabilities and its effects on his life."

[21] That failure led this Court to quash the Officer's finding the applicant's H&C case had not been made out (See *Gondal v MCI*, 2012 FC 1383).

[22] Because of paragraph 97(1)(b) of the *IRPA* provides that protection is not granted when the risk arises from the state's inability to provide adequate health or medical care, the Officer's error in assessing the medical evidence is not determinative. That is why the Officer's decision under the H&C application was doubly important.

[23] The applicant has not shown how the PRRA decision was flawed otherwise. The decision was not unreasonable in the particular context of paragraph 97(1)(b) of the *IRPA*.

JUDGMENT

THIS COURT’S JUDGMENT is that this judicial review application is dismissed. No certified question was proposed.

“François Lemieux”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4820-11

STYLE OF CAUSE: MUHAMMAD ASHRAF GONDAL v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, ON

DATE OF HEARING: April 16, 2012

REASONS FOR JUDGMENT: LEMIEUX J.

DATED: November 28, 2012

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