

Federal Court



Cour fédérale

Date: 20130204

Docket: IMM-3082-12

Citation: 2013 FC 121

Ottawa, Ontario, February 4, 2013

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**SALMAN MOHAMMAD ISHAQ SIDDIQUI
(a.k.a. SALMAN SIDDIQUI)**

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] The Applicant, a citizen of Pakistan who has never lived there, sought refugee protection based on fear of a powerful family member. This is the judicial review of the negative decision by a member [Member] of the Refugee Protection Division [RPD].

II. FACTS

[2] The Applicant's story is long and involved. At its core, he feared returning to Pakistan because of harm from paternal relatives there who do not accept him as he was born out of wedlock. The family did not initially agree that his father could take his mother as his second wife. The parents subsequently married.

[3] The Member did not accept the psychological evidence submitted by the Applicant on the basis that the report did not contain the psychologist's credentials and that there had been no psychological assessment of the Applicant. The Member concluded that there was an insufficient connection between the Applicant's psychological condition and the events underlying the refugee claim.

[4] The Member had a number of credibility concerns about the events relied on by the Applicant. Some of these concerns related to inconsistencies in the chronology of events and the failures to include in the PIF events relied on at the hearing.

[5] There were numerous adverse credibility findings commencing with events at the beginning of the chronology. The thread running through the Applicant's story is that he had lived a life under threat.

[6] The Member rejected the Applicant's story that this threat began with an attempt by the first wife to choke the Applicant when he was one and a half years old. The basis of the adverse finding

is that the Applicant had failed to mention the incident in his PIF and only raised it at the hearing for the first time.

[7] The overall grounds for rejection of this application was credibility.

[8] The Applicant, in oral argument, raises three errors:

- rejection of the medical evidence;
- the adverse credibility finding; and
- the adverse finding that the claim was not well-founded.

[9] Given the result in this judicial review, I will limit my comments on the evidence. Had it not been for the two matters discussed below, I would have had no basis upon which to disturb this decision.

III. ANALYSIS

[10] With respect to the standard of review, a factual error may be a grounds for review where that error is material. More importantly, the review of credibility findings is based on reasonableness (*Thomas v Canada (Minister of Citizenship and Immigration)*, 2011 FC 572, 2011 CarswellNat 2052) and considerable deference is owed to the decision maker in this regard.

However, there are two factual errors which go to the root of key credibility findings which require Court review.

[11] In regard to the medical evidence, the Member erred on the facts. The psychologist's credentials were provided in the evidence. The absence of credentials was a principal reason for not accepting the report.

[12] The psychologist did in fact make an assessment of the Applicant. There was a detailed report on anxiety and the similarities with post-traumatic stress disorder (PTSD). The absence of an assessment was another reason for rejecting the evidence.

[13] There may have been other grounds for rejecting the report or giving it little weight but the reasons given do not accord with the facts. The psychologist's report goes to the issue of inconsistencies in the Applicant's narrative and might offer an explanation for these inconsistencies based on psychological conditions.

[14] The second grounds for granting this judicial review is the finding that the choking incident was first raised at the hearing. This is incorrect as the incident is referred to in the PIF.

[15] The Applicant's story is one of a life lived, at least from time to time, under threat. This alleged incident is the first of a string of alleged and related incidents. The rejection of the choking incident had a ripple effect on the credibility of some other incidents.

[16] There may be good reason to doubt the choking incident or the weight given it, but such rejection must proceed on an accurate factual basis.

[17] The Applicant's narrative is convoluted and at times difficult to follow. It is perhaps understandable that some matters would go off in the wrong direction. However, the Applicant is entitled to have his story assessed on the facts as they are.

IV. CONCLUSION

[18] Therefore, this judicial review will be granted, the RPD decision quashed and the matter remitted to a different member for a fresh determination.

[19] There is no question for certification.

JUDGMENT

THIS COURT’S JUDGMENT is that the application for judicial review is granted, the Refugee Protection Division decision is quashed and the matter is to be remitted to a different member for a fresh determination.

“Michael L. Phelan”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3082-12

STYLE OF CAUSE: SALMAN MOHAMMAD ISHAQ SIDDIQUI
(a.k.a. SALMAN SIDDIQUI)

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 19, 2012

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

DATED: February 4, 2013

APPEARANCES:

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