

Federal Court



Cour fédérale

Date: 20140711

Docket: IMM-3281-13

Citation: 2014 FC 681

Ottawa, Ontario, July 11, 2014

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

LATIF AHMAD ANWAR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the decision of Pasquale Fiorino, a member of the Refugee Protection Division of the Immigration and Refugee Protection Board [the Board], pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. The Board dismissed the Applicant's claim for refugee protection, concluding that he was not a convention refugee or person in need of protection under sections 96 and 97 of the Act.

I. Issues

[2] The issues in the present application are as follows:

A. Did the Board breach its duty of procedural fairness to the Applicant?

B. Was the Board's decision unreasonable with respect to its finding that the Applicant is not Ahmadi?

II. Background

[3] The Applicant is a citizen of Pakistan. He claims to be a member of the Ahmadiyya religion. Ahmadiyya is an Islamic religious movement.

[4] In his Personal Information Form [PIF] narrative, the Applicant alleges several ways in which he was persecuted as an Ahmadi in Pakistan. In 1974, the Pakistan government declared Ahmadis to be non-muslims. In 1984, the government prohibited most Ahmadi religious practices.

[5] The Applicant alleges several instances of personalized persecution. In 1953, there were persistent anti-Ahmadi riots in the neighbourhood where the Applicant lived. The Applicant and his family did not leave their house during these riots.

[6] After the riots ended, local extremists began to harass the Applicant and his family. The Applicant's father was threatened. The Applicant began practicing his religion in secret.

[7] From 1966 onward, the Applicant lived in Karachi. He became a teacher. His colleagues were aware of his religion but he did not reveal it to anyone in his neighbourhood. He encouraged his children not to reveal their religion to anyone. Other than a few negative comments about Ahmadis, this arrangement caused no problems for the Applicant until 2011.

[8] In October, 2011, the Applicant was accused by a neighbour of being Ahmadi. His neighbours began to verbally abuse him.

[9] In December, 2011, a man knocked on the Applicant's door and asked him to open it. The Applicant refused, as he did not recognize the man's voice. The man told the Applicant that he would "be back to deal with him" and that the Applicant could not escape.

[10] In January and February, 2012, garbage was dumped in front of the Applicant's home and anti-Ahmadi graffiti appeared on the walls of his home. In February, 2012, the Applicant received two threatening phone calls. In these calls he was threatened with death unless he recanted his Ahmadi beliefs. He could not identify the caller and did not contact the police, because he believed they would not act on his concerns. In fact, he believed that the police would cause him trouble because of his faith. The Applicant's health condition deteriorated as a result of these problems.

[11] Later in February, 2012, the Applicant overheard some children outside his home state that he would be "cut up piece by piece like a goat". Based on this, he assumed that adults in his neighbourhood were making similar comments.

[12] The Applicant became fearful for his safety and decided to leave Pakistan. He resigned his teaching job. The Applicant states that this was a difficult decision as he was paid well and enjoyed his job.

[13] The Applicant left Pakistan on March 6, 2012, and made a claim for refugee protection in Canada.

[14] The Board issued a thirteen paragraph decision in which the determinative issue was credibility. The substance of the Board's decision was as follows:

...I find it implausible that the claimant was able to work as an educator in public educational institutions for nearly fifty years, even being awarded the position of principal, and, with his co-workers being aware of his Ahmadi faith, he did not suffer any form of discrimination or persecution in any of the educational institutions where he was employed. He was employed as an educator for fifty years, without suffering any form of persecution, and a month after his retirement he comes to Canada and claims refugee protection. I find it implausible that, as a member of the Ahmadi faith, he did not suffer any threats or discrimination during his fifty years as an educator, especially since the claimant acknowledged that his co-workers were aware of his faith. I find, on a balance of probabilities, that the claimant has produced insufficient evidence to demonstrate that he is a member of the Ahmadi faith...Given this credibility finding, I give no evidentiary weight to the documentation submitted which alleges that the claimant was a member of the Ahmadi faith in Pakistan.

III. Standard of Review

[15] The standard of review for procedural fairness is correctness (*Lai v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 125, at para 51) and is reasonableness with respect to

the finding that the Applicant is not Ahmadi (*Dunsmuir v New Brunswick*, 2008 SCC 9, at paras 47, 51).

IV. Analysis

A. *Did the Board breach its duty of procedural fairness to the Applicant?*

[16] The Applicant argues that he was not given notice that the Applicant's religious identity was an issue before the Board. Given that this issue was determinative, the Board erred (*Kane v Board of Governors (University of British Columbia)*, [1980] 1 SCR 1105, at 1114).

[17] While compelling arguments were made by Applicant's counsel on this front, I do not find that there was a breach of procedural fairness. The Applicant was on notice that credibility was an issue, and was represented by counsel. His religious identity was decided on the basis of credibility. There is nothing in the Board's decision to suggest that the thrust of the Board's questioning was exclusively focussed on a distinct aspect of credibility unrelated to his religious identity. The Applicant has not brought a transcript of the hearing into evidence pursuant to Rule 317 of the *Federal Courts Rules*, SOR/98-106. Without this evidence, I am not satisfied that there was a breach of procedural fairness.

B. *Was the Board's decision with respect to its finding that the Applicant is not Ahmadi?*

[18] The Applicant notes that the substance of the Board's decision was a single-paragraph conclusion that the Applicant was not Ahmadi because it was implausible that he could work for

fifty years without suffering religious persecution. The Applicant argues that this reasoning was insufficient and ignored the Applicant's evidence.

[19] The Applicant also argues that the Board erred by ignoring evidence of the Applicant's religious identity (*Ahmed v Canada (Minister of Citizenship and Immigration)*, IMM-8166, June 6, 2011 [*Ahmed*]). This evidence includes twenty donation receipts to Ahmadi organizations in Pakistan and Canada dating back to 2006, the Applicant's Ahmadi Identification Card, and Ahmadi badges owned by the Applicant for his participation in Ahmadi conventions in Canada, England, the United States, and Italy from 2005 to 2011.

[20] Moreover, the Board failed to consider the Applicant's certification as a member of the Ahmadiyya Movement in Islam, which confirms that the Applicant is Ahmadi.

[21] The sole basis for the Board's negative credibility finding was an implausibility finding: the Board found that it was implausible that the Applicant did not face prior persecution. Based on this, the Board did not examine the evidence of the Applicant or the country condition information.

[22] While it may seem implausible that the Applicant did not face persecution during his career as a teacher, implausibility findings are subject to special requirements on the reasonableness standard. In the context of this application, the Board's exclusive reliance on this

implausibility finding is unreasonable. As Justice Simon Noël decided in *Ansar v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1152:

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] F.C.J. No. 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] F.C.J. No. 162). As Justice Richard Mosley explains in *Santos v. Canada (Minister of Citizenship & Immigration)*, 2004 FC 937 (F.C.) at para 15, [2004] F.C.J. No. 1149 (F.C.):

[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.

[23] In this case, the Board acknowledges that he did not examine any of the Applicant's supporting evidence that could refute his plausibility finding. Likewise, he did not cite any documentary evidence which supports his plausibility finding. His analysis as a whole effectively constituted a single paragraph. The reasons, together with the evidence on record, do not demonstrate that determining this application on the basis of this plausibility finding demonstrates justification or transparency within the decision-making process.

[24] Finally, while it is not determinative of this application, I agree with the Applicant that *Ahmed* supports his claim. Contrary to the Respondent's argument, the board in *Ahmed* ignored all evidence which would support the fact that the applicant was Ahmadi, not just his passport declaration of faith:

...the Board erred in concluding that he had failed to provide documents to corroborate his religious identity. In finding that there was no "credible documentation from Pakistan attesting to the Applicant's identity as an Ahmadi", the Board overlooked the Applicant's passport which lists his religion as Ahmadi. While the letter from the "Management Office of the Bahashti cemetery" may not have been evidence of persecution of the Applicant, it certainly is directed at his identity as Ahmadi. The Applicant also produced copies of receipts for donations made in years going back to 1987. Moreover, the Applicant tendered a document attesting to the prominent position that he holds as a leader amongst elders in Canada. In the face of this evidence, the Board's conclusion that the Applicant had not tendered evidence to establish that he was of Ahmadi faith is perverse and unreasonable.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is allowed and the matter remitted back to a different Board member for reconsideration;
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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