

Federal Court



Cour fédérale

Date: 20240507

Docket: IMM-9512-22

Citation: 2024 FC 701

Ottawa, Ontario, May 7, 2024

PRESENT: The Honourable Madam Justice Tsimberis

BETWEEN:

**BATOOL ZEHRA MOOSVI
SYED ASKARI MOOSVI**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION CANADA**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a Refugee Appeal Division [RAD] decision that rejected refugee protection claims for Batool Zehra Moosvi [Principal Applicant] and Syed Askari Moosvi [Associate Applicant], [collectively, Applicants], under either section 96 or 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] because the RAD confirmed

the Refugee Protection Division's [RPD] finding that the Applicants lacked credibility [Decision].

[2] The Applicants are citizens of Pakistan and Shia Muslims who claim to fear persecution by Sunni extremists, including the Lashkar-e-Jhangvi [LeJ] particularly, because of the Applicants' prominence in practicing the Shia faith and activities. They also fear the Pakistani police.

[3] The Applicants married in 2003. In July 2015, the Principal Applicant moved to the United Arab Emirates [UAE] to join her husband, the Associate Applicant, who was employed there. The Principal Applicant began to partake in Shia activities in the UAE, although secretly, and attended Imam Bargah. On occasion, Shia women attended the Principal Applicant's residence for small religious gatherings. The Principal Applicant returned to Pakistan periodically.

II. RAD's Decision under Review

[4] The Applicants argued on appeal before the RAD that the RPD relied on minor and immaterial inconsistencies between the Basis of Claim narrative and amendment [BOC] and the Principal Applicant's testimony, and erred in reaching its findings through an analysis of only three of an alleged thirteen attacks. The RAD found the RPD made no error in their analysis because, of the thirteen alleged attacks, the three analyzed by the RPD were the ones in which the Principal Applicant was present and could provide first-hand testimony. The RAD found that there were marked inconsistencies between the recounting of these three attacks in the BOC and

in the Principal Applicant's testimony before the RPD. The inconsistencies were neither minor nor immaterial because they were specific details, such as the sound of a gunshot or distinguishing one single shot and four men firing wildly in the air, which a first-hand witness would be able to recount accurately. The inconsistencies, omissions, and discrepancies between the BOC and the Principal Applicant's testimony undermined her accounts of all three attacks, and the RAD found that the Principal Applicant had not established these attacks took place as alleged.

[5] The RAD also found that the Principal Applicant's reavailments of Pakistan undermined her alleged subjective fear of the LeJ because she offered no reasonable explanation of the reavailments in the face of alleged risks of violence or death at the hands of militants. With respect to the first reavilment, the Principal Applicant had testified that, after the first threat in February 2019, she kept changing where she stayed because she felt unsafe. She also believed the LeJ had a broad network of informants throughout Pakistan. The RAD found that, under these alleged risks and beliefs, it was unreasonable for the Principal Applicant to return to Karachi in September 2019 even if the reason assigned was to visit her mother. With respect to the second reavilment, the RAD noted the Principal Applicant's only reason offered in the BOC was to attend the ceremony at the Imam Bargah. However, in her testimony before the RPD, the Principal Applicant said she had to go because she could not abandon her mother. When asked by the RPD why she had not mentioned this in the BOC, the Principal Applicant stated the importance of the ceremony. The RAD found these justifications were inconsistent and found that, if the Principal Applicant had indeed been the subject of at least five separate attacks and

knew the police refused to help her, it was unreasonable to return to Pakistan simply to attend a ceremony at the Imam Bargah.

[6] Lastly, the RAD took no issue with the RPD's treatment of the documentary evidence. The Maulana's affidavit could offer no support to the attacks because they were not a witness. The police complaints are indeed records of statements, but there was no verification that the events alleged in the complaints actually happened. The affidavits from the Applicants' family members were credible, but did not overcome the inconsistencies, contradictions, discrepancies, and omissions that the RAD found to undermine the Principal Applicant's credibility.

III. Issue

[7] The only issue before the Court is whether it was reasonable for the RAD to agree with the RPD that the Applicants lacked credibility and failed to establish subjective fear through their analysis of the three (out of thirteen) alleged attacks and the two reavailments to Pakistan from the UAE.

IV. Analysis

[8] As a starting point, the parties agree that the applicable standard of review is reasonableness.

[9] There are two key issues before the Court: the RAD's credibility findings, and the two reavailments to Pakistan. At the hearing, the Applicants in reply insisted (and I agree) that the

issue of credibility is determinative in this matter. As both issues were fiercely contested and ably argued by both parties, I shall address both in turn.

A. *Credibility findings*

[10] The parties agree the credibility findings central to this matter are those related to the alleged attacks. The Applicants maintain that whatever inconsistencies there were in the evidence were minor in nature and not core to the Applicants' refugee claim.

[11] In *Akhigbe v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 249 (CanLII), [2002] FCJ No 332 (FCTD) [*Akhigbe*], Dawson J set out certain principles governing the treatment to be given to evidence, which I consolidate as a presumption of the claimant's credibility that is rebuttable by findings of implausibilities, common sense, rationality, inconsistencies, or omissions, provided the decision-maker provides clear reasons and a basis in the evidence for their findings and inferences (*Akhigbe* at para 12). To begin an analysis, there exists a presumption that a refugee claimant's sworn testimony is truthful unless there is a reason to doubt it (*Konya v Canada (Citizenship and Immigration)*, 2013 FC 975 [*Konya*] at para 16, citing *Diaz Pinzon v Canada (Citizenship and Immigration)*, 2010 FC 1138 [*Diaz Pinzon*] at para 5).

[12] There are a few key credibility findings at the core of this matter:

1. October 6 attack: there was nothing in the evidence concerning the assailants being armed, but at the hearing, the Principal Applicant testified there was a pistol. When confronted by the panel on this omission from her BOC, she

explained she cannot tell the difference between guns. A negative credibility finding was drawn as this was found to be an unreasonable explanation for the omission.

2. October 17 incident: While the Principal Applicant was not an eyewitness to this incident being inside the house, her original evidence was that five armed men confronted her uncle outside his home. At the hearing, she testified that there were only four men, and one of these armed men fired a gunshot in the air. When confronted by the panel on this omission from her BOC, she explained she was only recollecting from what her uncle told her. The panel did not accept this and the RAD agreed with the RPD that she would have heard a gunshot from inside the house, drawing a negative credibility finding. To the RAD, the Applicants submitted that instead of one man firing a single gunshot, all four men were firing wildly in the air. Without any evidence to support this version of events, and after changing the story of this incident twice, the RAD drew a negative credibility finding.
3. January 2020 attack: The BOC states that the LeJ attacked the Principal Applicant and her cousin *on their way home from* the Imam Bargah, but her testimony was that it took place *on the way to* the Imam Bargah. Conversely, the BOC mentioned a gun in this attack, but the Principal Applicant did not mention one in her testimony until the panel asked her why she failed to mention the gun from her BOC in her testimony. This omission from her testimony also led to a negative credibility finding.

[13] Oddly, these inconsistencies share a common element: the presence and use of firearms.

[14] With respect to the October 6 attack, the RAD's finding that the Principal Applicant's explanation for the inconsistency in the evidence was insufficient is reasonable. The issue with her original evidence was not that she *misidentified* a gun, but that she *failed to identify the presence* of a gun. As the Respondent pointed out, whether or not the Principal Applicant is adept at identifying firearms is irrelevant; the original evidence was this incident had no weapon, and her subsequent evidence was that there was a weapon (however so identified).

[15] The RAD considered the Applicants' submission that this was a minor inconsistency and reasonably found it was not because the presence of guns was material to the allegation and spoke to the level of violence and danger. The RAD also reasonably considered the corroborative evidence submitted in respect of the October 6 attack. They gave little weight to the First Information Report [FIR] because it only contained a recounting of what the Principal Applicant told the police, there was no investigation or follow up. The RAD is entitled to require some corroborating evidence as long as the decision-maker is able to articulate why they are suspicious of an omission in the original recounting (such as in a BOC) or subsequent testimony of an event, or an inconsistency between them (see *Konya* at paras 16 and 18, citing *Diaz Pinzon* at para 5 and *Mohideen Osman v Canada (Minister of Citizenship and Immigration)*, 2008 FC 921 at paras 36-39). While the Applicants contend the cousin's affidavit is corroborative evidence, the RAD gave it little weight because it specifically has no mention of weapons, reinforcing the original version of this attack and undermining the Principal Applicant's

credibility. In this respect, the RAD's credibility finding was reasonable because the Applicants offered no evidence that corroborated their latest version of this event.

[16] With respect to the October 17 incident, I believe this is the penultimate example of why the RAD's negative credibility findings were reasonable. The Principal Applicant's evidence throughout the versions was that she was not an eye-witness, hiding inside her uncle's house and listening to the incident. While the RAD is entitled to make negative or adverse inferences regarding an Applicant's recounting of events, it must do so "with caution and not simply on the basis that it is unlikely that events happened as the Applicant said they did" (*Aliserro v Canada (Citizenship and Immigration)*, 2022 FC 412 [*Aliserro*] at para 31, citing *Zaiter v Canada (Citizenship and Immigration)*, 2019 FC 908 at paras 8-9). The RAD is not holding against the Principal Applicant her ability to recount the quantity of assailants, and I accept that the amount of armed men, being either four or five, is immaterial to the terror of the circumstances. However, it stands to reason that anyone within earshot would amply be able to discern the difference between no gunshot, a single gunshot from a single firearm, and four men simultaneously firing automatic weapons wildly in the air. Unless the Principal Applicant left out that she was hiding in a completely soundproof bunker, I cannot accept that she does not distinctly remember whether there were no gunshots, a single gunshot, or countless gunshots from several firearms simultaneously. The Principal Applicant's inconsistency on this issue justifies that the RAD's credibility finding here was done with caution. The sound of the gunshots, or lack thereof, is the only first-hand evidence the Principal Applicant could offer on this incident because her remaining evidence was hearsay from what her uncle had told her.

Between the various changes to the recounting of this incident and the entirely insufficient explanation for those inconsistencies, I find the negative credibility findings were reasonable.

[17] Likewise, with respect to the January 2020 attack, the cousin's affidavit that the Principal Applicant submitted to *support* her claim does nothing but *undermine* her credibility. Not only does the Principal Applicant offer nothing in the evidence to support her latest version of events, but the only thing her documentary evidence corroborates is that her latest version of events is likely not the real version of events. This Court has previously held that "not all inconsistencies and implausibilities will support a negative finding of credibility; such findings should not be based on "microscopic" examination of issues irrelevant to the case or peripheral to the claim" (*Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 [*Lawani*] at para 23). Alleged errors surrounding a negative finding of credibility should be based on whether the finding was drawn "from a clear evidentiary basis" (*Aliserro* at para 30). This is not a case where there is simply a *lack* of corroborative evidence. To the contrary, there is very specific evidence that corroborates a version of events, it is simply not the version of events the Principal Applicant now relies on. Insofar as the RAD was justified on the basis of the Applicants' own evidence, I find the negative credibility findings made by the RAD were reasonable.

B. *Reavailments*

[18] The Principal Applicant returned to Pakistan twice between 2019 and 2020, despite alleging a fear of persecution and risk to her safety and that of her family. The justification for the first return to Pakistan was to visit her ailing mother, and for the second return, was to attend the Imam Burgah ceremony. The Principal Applicant maintained that she feared for her safety

and that of her family while she was in Pakistan (both prior to and during her reavailments). She testified that she faced subsequent persecution upon return to Pakistan, and alleges this subsequent persecution undermines the reavilment issue. Subsequent persecution after reavilment does not preclude a person from making a claim for refugee status without being faced with the reavilment argument (*Gurusamy v Canada (Citizenship and Immigration)*, 2011 FC 990 at para 40, citing *Prapaharan v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 272 at para 17).

[19] A refugee claimant's reavilment to the jurisdiction in which they fear persecution or a type of harm contemplated by s. 97 of the *IRPA* seriously undermines allegations of subjective fear, particularly in the absence of a compelling reason for reavilment (*Obozuwa v Canada (Citizenship and Immigration)*, 2019 FC 1007 at para 25). The Principal Applicant originally offered two justifications for the second return to Pakistan: to attend the Imam Bargah ceremony, and to again visit her ailing mother. At the hearing, the Applicants abandoned this second justification, but I cannot ignore the fact that these justifications were made to the RAD and the RAD made their determinations after considering both these justifications. When a decision-maker does not accept an explanation for a reavilment and how it relates to subjective fear, they have to provide an explanation of why it was not acceptable (*Shabab v Canada (Citizenship and Immigration)*, 2016 FC 872 at para 49). As the RAD pointed out, the Principal Applicant's two returns to Pakistan, if all was true as she alleged, would have materially exposed not only herself but her ailing mother and the rest of her family to grave danger.

[20] Considering her justification for the 2019 return to Pakistan was to visit her ailing mother, and in light of her evidence that she took several measures to avoid detection in Pakistan because she felt unsafe, and considering her evidenced belief that the LeJ had a broad network of informants throughout Pakistan, I find the RAD did not err in determining this reavilment undermined the Principal Applicant's subjective fear of the LeJ. Regarding the Shia ceremony, despite the Principal Applicant's insistence of its importance both personally to her and to her community in Pakistan, importance of an event alone fails to mitigate her alleged fear that the LeJ would attack or kill her upon discovering her return, and certainly upon discovering she returned to attend a ceremony at the core of one of their alleged reasons for persecuting her in the first place. Regarding her still-ailing mother, I reiterate my reasons above in respect of the first return to Pakistan, amplified by the circumstances of the Shia ceremony and the heightened concern of the LeJ if they discovered the Principal Applicant had returned.

[21] In light of the above, the RAD's finding that the Principal Applicant's reavilments undermined and were dispositive of her subjective fear of the LeJ were reasonable.

V. Conclusion

[22] This judicial review is dismissed.

[23] There were no questions for certification.

JUDGMENT in IMM-9512-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. No questions are certified.

"Ekaterina Tsimberis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9512-22

STYLE OF CAUSE: BATOOL ZEHRA MOOSVI, SYED ASKARI MOOSVI
v THE MINISTER OF CITIZENSHIP, AND
IMMIGRATION CANADA

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: DECEMBER 13, 2023

JUDGMENT AND REASONS: TSIMBERIS J.

DATED: MAY 7, 2024

APPEARANCES:

HUSSAIN BUKHARI FOR THE APPLICANTS

DESMOND JUNG FOR THE RESPONDENT

SOLICITORS OF RECORD:

BUKHARI LAW FOR THE APPLICANTS
MISSISSAUGA, ONTARIO

ATTORNEY GENERAL OF FOR THE RESPONDENT
CANADA
TORONTO, ONTARIO