Federal Court Cour fédérale

Date: February 19, 2015

Docket: IMM-61-14

Citation: 2015 FC 212

Ottawa, Ontario, February 19, 2015

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

MOOL CHAND
MEENA ROOPANI

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicants seek to set aside a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the Board), dated December 18, 2013, which found that they were neither Convention refugees nor persons in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). For the reasons that follow the application is granted.

[2] The sole issue is whether the Board erred in determining that an internal flight alternative (IFA) existed for the applicants in Karachi, Sindh province, Pakistan. The viability of an IFA is a question of mixed law and fact that is to be determined on a standard of reasonableness.

[3] In the ordinary course, determination that an IFA exists would be left to the Board. Where, however, the finding is based on a selective and minimal reference to documents and, the balance of the evidence is very much to the contrary, the decision cannot be justified in light of the record and is unreasonable; *Rosales v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 1454 per Rothstein J (as he then was), paras 6-8. Here, the inferences drawn by the Board in finding that the applicants can avail themselves of an IFA, and its assessment of the documentary evidence, fall within this description of error.

[4] The applicants, Mool Chand and Meena Roopani, are a married couple of Hindu faith and citizens of Pakistan. The principal applicant, Mr. Chand, is a medical doctor who started a medical clinic in the city of Berani, in Sindh province. The applicant alleged that he has been subjected to discrimination and intimidation from Muslims, and had been subjected to threats, violence, and damage to his medical equipment and medical clinic at the hands of Muslim extremists. The applicant also alleged he was stopped at gunpoint and robbed of his motorcycle and cash, and told by the attackers that if he did not obey their orders and become a Muslim he would be robbed again. In April 2011, extremists threatened to abduct his children.

[5] The applicant was afraid for his safety, and applied for Canadian visas for himself, his wife and his children; however, visas were only granted for him and his wife. The applicants

came to Canada in February 2012 and made refugee claims. They left their children with the applicant's brother in Pakistan. After their arrival in Canada, the Muslim extremists attacked the applicants' home and destroyed the applicant's medical clinic.

[6] The Board accepted that the applicants had suffered the alleged incidents, but was not persuaded that the applicant identified the agent of persecution to its satisfaction. The Board explained that the identification of the agents of persecution was undermined as the applicant testified that the extremist Muslims he feared were members of the Islamic Tablighi group, but this group's name did not appear in the applicant's Personal Information Form (PIF). The Board was therefore unable to conclude that the attackers were members of a country-wide organization that would follow the applicants throughout the country.

[7] The Board proposed Karachi as an IFA, and after considering the situation of Hindus generally in Pakistan, the Board concluded that the applicants have a viable IFA in Karachi.

I. Analysis

[8] The test for an IFA is two pronged: first, the Board must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted or subject to risk in the IFA location: *Henriquez de Umana v Canada (Minister of Citizenship and Immigration)*, 2012 FC 326, para 24; *Campos Shimokawa v Canada (Minister of Citizenship and Immigration)*, 2006 FC 445, para 25. The second criteria that must be satisfied is that the conditions in the new location must be such that it would not be unreasonable for the claimant to seek refuge there:

Campos Shimokawa v Canada (Minister of Citizenship and Immigration), 2006 FC 445, para 25, *Valencia v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 1215 (TD).

[9] The IFA must also be realistically accessible to the claimant. The claimant is not expected to risk physical danger or undue hardship in traveling or staying in that IFA. Claimants are not compelled to hide out in an isolated region, such as a cave, desert or jungle: *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (FCA), para 14.

[10] In applying the second prong of the test, the Board erred in its conclusion that the documentary evidence is mixed and "paint[s] a varied picture." Although the Board noted that much of the documentation highlighted that attacks and discrimination occur in Pakistan against Hindus generally, the Board relied upon one article written by First Post suggesting Hindus were safe in Karachi. This finding is an unreasonable conclusion to draw from the content of the article, which is entitled "Pakistan's Hindus under Attack as extremism Grows."

[11] Further, the sentence in that article cited by the Board to support its conclusion that Hindus in Karachi are safe states "[s]igns of their former stature abound in Karachi… [a]t the 150-year-old Swami Narayan Temple… thousands of Hindus gather during the year…" The Board reasoned that "[a]ttacks on Hindus do occur, but thousands of Hindus in Karachi are able to live and observe their religious practices in historic temples." This conclusion is inconsistent with the balance of the article, a "rising tide of violence and discrimination against Hindus" and describes abductions and forced conversions of Hindus.

[12] While the Board cited various documents in assessing the ability of the applicants to find refuge elsewhere in Pakistan, the Board ignored, in substance, the *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan*, 2012 [UNHCR Guidelines]. The UNHCR Guidelines observe that "[a]cts of violence against Hindus are reportedly on the rise and hate speech against the community is reported to be tolerated with impunity." Further, "[i]n…Sindh provinc[e], for example, it is reported that Hindus from the Brahmin and higher castes are increasingly at risk of violence and abduction for ransom, and the authorities are allegedly unable or unwilling to provide effective protection" and "Hindu women and girls are reportedly subject to abductions for the purpose of forced conversion at the hands of Muslim men, particularly in Sindh province."

[13] The Board also relied on the applicant's own experience having spent a year in Karachi between June 2001 and June 2002 as evidence that the applicant was able to live and work in Karachi. This, however, was a selective distillation of the applicant's evidence, which included testimony of his experience of significant discrimination while working in a hospital in Karachi. Other documentary evidence submitted by the applicants also suggested that "Pakistan represents the worst situation in the world for religious freedom" (Ashish Kumar Sen, "Pakistan Tops Worst List for Religious Freedom", *Washington Times* (30 April 2013)) and that the government of Pakistan was indifferent to extremist groups who attack religious minorities (Dawn newspaper, "Security Forces Allowing Extremists to Attack Minorities: HRW" (2 February 2013) citing the Human Rights Watch annual report).

[14] It is not the job of this Court to reweigh the evidence: *Giles v Canada (Attorney General)*, 2010 FCA 54, para 6. However, in light of all the documentary evidence, and in light of the Board's mischaracterization of the principle document on which it did rely, it was unreasonable for the Board to conclude that the documentary evidence was mixed and therefore conclude that there was insufficient evidence of problems faced by Hindus generally in Karachi to meet the second prong of the IFA test. In reaching this conclusion I agree with the observation of counsel for the Minister that given the standard of review and the fact-based nature of the two pronged test, it is difficult to establish that an IFA is unreasonable: *Shehzad Khokhar v Canada (Minister of Citizenship and Immigration)*, 2008 FC 449, para. 4. In this case however, I believe the threshold has been met.

[15] In conclusion, I note the minister's concern that to accede to the applicant's argument would mean that there is no safe refuge for Hindus in Pakistan, and therefore every Hindu applicant from Pakistan would necessarily be a *Convention* refugee or person in need of protection pursuant to sections 96 and 97 of the *IRPA*. This, respectfully, misunderstands the nature of judicial review. Judicial review is directed to errors in procedure, and in disposing of an application, one way or another, the Court is not making a definitive statement on the factual substratum of the application. As Justice Judith Snider explained in *Konya v Canada (Citizenship and Immigration)*, 2013 FC 975, para 47, "[t]he task of the judge on judicial review is to review the decision to determine whether it is reasonable. Each case will be decided on the basis of the facts and arguments before the Court." Members are free to come to conclusions on the basis of the evidence before them. In reaching those conclusions, however, they must have

regard to the whole of the evidence before them and the conclusion must be reasonable in light of the evidence.

[16] There is no question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted. The matter is referred back to the Immigration Refugee Board for reconsideration before a different member of the Board's Refugee Protection Division. There is no question for certification.

"Donald J. Rennie"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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