

Federal Court



Cour fédérale

**Date: 20150305**

**Docket: IMM-3807-14**

**Citation: 2015 FC 279**

**Ottawa, Ontario, March 5, 2015**

**PRESENT: The Honourable Mr. Justice de Montigny**

**BETWEEN:**

**ADNAN ABDUL KARIM  
NAILA ADNAN  
ALYSSA ADNAN MICHAEL**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 seeking to set aside an April 15, 2014 decision by the Refugee Protection Division of the Immigration and Refugee Board (the Board) rejecting the Applicants' refugee claims. The Board found that the principal Applicant's story was not credible; further, the Board found that an internal flight alternative (IFA) was available.

[2] For the reasons that follow, I find that this application must be granted.

**I. Facts**

[3] The Applicants are from Pakistan. The principal Applicant (to whom I shall refer throughout as the Applicant), Adnan Abdul Karim, arrived in Canada on January 12, 2014, accompanied by his wife, Naila Adnan and daughter, Alyssa Adnan Michael. They made a refugee claim at the border. The Applicant fears persecution based on his Christian faith. Although both he and his wife testified at the hearing, the claim centres on the risk to the Applicant himself.

[4] The factual basis of his claim is as follows. The Applicant and his family are members of the Christian minority in Pakistan. In 2005, the Applicant lived in Rawalpindi. He ran a consultation and equipment company in the surveillance and security field. However in 2007, he started being harassed and threatened. His business was vandalized with anti-Christian messages, and two of his technicians were kidnapped. He believed this harassment was connected to his Christian religion. Because of the ongoing threats, he closed his business in 2011 and moved to Islamabad.

[5] After arriving in Islamabad, the Applicant worked at a general store. In November 2012, the Applicant began to work for his friend, Ram Dev, in the security equipment business. On December 3, 2012, the Applicant was forced to get into a car with three masked men. The Applicant thought the men looked like fundamentalists because of the way they were dressed, their dialect, and the fact that they were armed. He was beaten and asked to hire a member of the

fundamentalist group so they could gain access to the diplomatic missions with whom Ram Dev worked. He reported this incident to the police, but the police apparently said that they could not guarantee his protection and as a Christian, it was best that he leave the country.

[6] After this incident, the Applicant and his family went to live at a friend's house and later his aunt's house. They lived in hiding until they were able to leave the county in December 2013.

[7] Following the hearing on March 14, 2014, the Board rejected the Applicant's claim on April 15, 2014. The Applicant now seeks judicial review of that decision.

## **II. The impugned decision**

[8] The Board found that the determinative issues were credibility and internal flight alternative to Islamabad.

[9] As for credibility, the Board commented favourably on the Applicant's demeanour at the hearing. The Board also accepted the Applicants' identities. Based on the principal Applicant's testimony, the Board concluded that the Applicants are genuine Christians.

[10] The Board then reviewed documentary evidence on Christians in Pakistan. From the documentary evidence, the Board noted that Christians in Pakistan may face threats, violence, and discrimination. However, the Board added that it must analyze each case on its own merits.

[11] With respect to the agent of persecution, the Board made three major findings. First, the Board found that in Rawalpindi, the Applicant was targeted both because of his business and his Christian faith. Second, the Board found that the harassment in Rawalpindi was not connected to the incident in Islamabad in December 2012. Moreover, the assailants in December 2012 did not target the Applicant because he was a Christian; rather, they wanted him to hire their friend to gain access to sensitive locations served by Ram Dev's company. There is no evidence that the harassment in Rawalpindi is linked to the incident in Islamabad. Third, the Board did not believe that the Applicant went into hiding from December 2012 to December 2013, or that he was still being targeted after December 2012. The Board noted that while the Applicant was allegedly in hiding from December 2012 to December 2013, he and his wife were able to obtain passports. Moreover, the Applicant provided no evidence that he was still targeted by the individuals after December 2012. Furthermore, Ram Dev, the owner of the company, was still living in Pakistan and there is no evidence that Ram Dev was being targeted despite also being a member of a minority group (Hindu).

[12] Therefore, the Board concluded that the Applicant had not proved that he would be at greater risk of harm than that faced by other individuals in Islamabad. With regard to persecution based on religion, the Board found that the threats in Rawalpindi were both business and religion related; moreover, while as Christians, the Applicants may face discrimination and harassment, there was insufficient evidence that they would be persecuted everywhere in the country.

[13] Regarding the risk to life or unusual treatment, the Board found that the Applicant was targeted in the December 2012 incident not because of who he is, but because of the field in

which he worked. The Board found insufficient evidence that the Applicant would face greater risk of harm than other citizens of the country if the Applicant was not working in the security installation field.

[14] Finally, the Board found that Islamabad is a reasonable internal flight alternative. The Applicant explained that he would not be able to live in Islamabad because he would easily be identified as a Christian by the network of fundamentalists. However, the Board found that he was not targeted in Islamabad because of his Christianity, but because of his work in the security industry. The Board concluded that it would not be unreasonable for the Applicant and his family to live in Islamabad and to find work in another field.

### **III. Issues**

[15] This application raises only two issues:

- A. Was the Board's credibility finding reasonable?
- B. Was the Board's IFA finding reasonable?

### **IV. Analysis**

[16] The standard of review for both issues is uncontroversially reasonableness. For credibility, see *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732, at para 4 (FCA); *Tar v Canada (Citizenship and Immigration)*, 2014 FC 767, at para 30; *Karakaya v Canada (Citizenship and Immigration)*, 2014 FC 777, at para 9. For IFA, see

*Rosales Rincon v Canada (Citizenship and Immigration)*, 2006 FC 407, at para 19 [*Rincon*];  
*Kayumba v Canada (Citizenship and Immigration)*, 2010 FC 138, at paras 12-13.

A. *Was the Board's credibility finding reasonable?*

[17] In my view, the reasoning of the Board lacks the transparency and intelligibility required to meet the reasonableness standard. First of all, I agree with the Applicant that it is nonsensical to find that it was implausible to be in hiding and yet be able to obtain passports. Finding a way out of a country is precisely what persons who fear for their lives will do. The fact that they were able to obtain passports and visas over the course of a full year does not mean that they did not take precautions and that they were not otherwise living in hiding. I also note that the Board made two errors of fact regarding the Applicant's occupation and skills, and the wife's reason for leaving her job.

[18] More importantly, however, I find that the Board erred in failing to refer to evidence that corroborated the Applicant's testimony but contradicted the Board's findings. It is not necessary for the Board to refer to every document in the decision, since there is a presumption that the Board has considered all the evidence: see *Hassan v Canada (Minister of Employment and Immigration)* (1992), 147 NR 317, at para 3 (FCA); *Lewis v Canada (Citizenship and Immigration)*, 2004 FC 1195, at para 19. However, the more important or relevant the evidence is to a central issue, the more likely a Court will infer from the Board's silence that the evidence was ignored: *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35, at paras 15-17 (FCTD). In particular, where the Board fails to refer to evidence that contradicts its conclusion, it may be easier to infer that the Board overlooked this evidence.

Moreover, it is an error to say there is “no evidence” of an allegation when there is in fact some evidence: *Abdi v Canada (Minister of Employment and Immigration)* (1993), 68 FTR 319 (FCTD).

[19] In the case at bar, the Board made determinative factual findings that were central and fatal to the claim without regard to two signed declarations that contradicted those findings. The Board found that the Applicant was not targeted after December 2012, yet failed to refer to those two signed declarations that contradict this finding. The Board found that Ram Dev still lives in Pakistan, and there was “no evidence” that Ram Dev is targeted (Decision, para 38). However, the Board did not refer to the affidavit of Ram Dev, which states he was taking his “own security measures” following the Applicant’s abduction (Tribunal Record, p 379), which may explain why he had not been targeted. If the Board did not believe that declaration or was of the view that these security measures had nothing to do with Ram Dev’s religion, it ought to have said so and explained why it was of that view.

[20] Similarly, in finding that the Applicant had provided “no evidence” that he was pursued after the abduction (Decision, para 39), the Board made no reference to the signed declaration of Amar Calvin Ghori, the Applicant’s friend in Islamabad, which says that “unknown persons” had inquired about him while he was in hiding (Tribunal Record, p 378). Again, it may well be, as suggested by counsel for the Respondent, that it is not clear from that letter how Mr. Ghori knows that the Applicant is sought. If that is the reason why the Board did not give much credence to that letter, it should have said so clearly. On the contrary, there is no sign that the

Board considered or weighed Mr. Ghori's statements at all, and this is unacceptable since they are relevant and directly contradict the Board's findings.

[21] At the hearing, counsel for the Respondent argued that these letters had not been explicitly referred to by the Applicant when he appeared before the Board, and that if they were so important they should have been pleaded. According to the hearing transcript, counsel referred in passing to the signed declarations, but then reviewed Ram Dev's affidavit in detail to address the Board's concern that Ram Dev was not targeted (Tribunal Record p 451). In any event, the Respondent's argument is clearly not sufficient to absolve the Board from its obligation to address the evidence that, on its face, appears to contradict its conclusions. After all, these letters were part and parcel of the Applicant's record. At the end of the day, these statements may not have made any material difference to the Board's ultimate conclusion; in the absence of any certainty that they were duly considered by the Board, however, the decision cannot stand. The Board erred in stating that there was "no evidence" to support the Applicant's claim, and the Applicant was entitled to an explanation as to why the letters filed in support of his claim were found to be inconclusive.

B. *Was the Board's IFA finding reasonable?*

[22] In my view, the Board's analysis of internal flight alternative is unreasonable. First, the Board's finding that Islamabad is an IFA is patently illogical. Second, the Board failed to consider the Applicant's emotional state in deciding whether it was reasonable for the Applicant to seek refuge in the proposed IFA.



[23] The test as to whether an internal flight alternative exists is two-fold. The Board must be satisfied on a balance of probabilities that, first, there is no serious possibility of persecution in the IFA region; and second, it would not be unreasonable to expect the claimant to seek refuge in the IFA area: see *Rincon*, above, at para 21; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589, at para 12 (FCA). Although the Board stated this test, it failed to effectively apply it.

[24] At first blush, it seems illogical that Islamabad would be an internal flight alternative, since it is the exact location of the 2012 abduction, a fact the Board apparently accepts. It is also not clear whether the IFA analysis depends on the credibility finding, or whether it is an alternative to the credibility finding. If it depends on the credibility finding, that is, it starts from the premise that there was no risk after December 2012, it is not really an IFA finding at all, but rather a mere restatement of the credibility finding. If it is an alternative, that is, it takes all the allegations as true and assumes he was still targeted after 2012, it fails to take into account the Applicant's testimony about why he felt targeted after 2012.

[25] The Applicant testified that he fears the group that kidnapped him, not only because he did not get them the access they demanded, but also because he reported the matter to the police when the group clearly threatened him not to do so. The Applicant also testified that if he were to relocate elsewhere in Pakistan (and even more so within Islamabad), he fears that he would be discovered because as a new Christian family in a given area, they would come to the attention of the local Madrassa, through which fundamentalist groups operate. The Board did not take that testimony into account, and seemed to be of the view that the Applicant's problems in Islamabad

arose only because of his work. Yet the Applicant's fear of reprisals and of being identified through the fundamentalist network would be unaffected irrespective of his line of work. Even if religion was not the motivation of the abductors in Islamabad, the fact that they now know he is a Christian may well be a further motivation to target him and to seek him out through the Madrassas and the fundamentalist networks. If one adds to this the fact that the police advised him that they could not protect him, one is at a loss to understand how the Board could come to the conclusion that there is no serious possibility of persecution in Islamabad if the Applicant only changes his line of work.

[26] The Board's finding that it was not unreasonable for the Applicant to live in Islamabad is also problematic because it fails to take into account the Applicant's testimony about his emotional state. The Board acknowledged that the Applicants, as Christians, may face discrimination and tensions with other members of the Pakistan religious community, and that they may also have to make "some adjustments" in their life in Islamabad, but does not appear to turn its mind to the problems encountered by the Applicant and his "permanent fear" for himself and his family. After all, the Board believed that the Applicant was targeted both because of his business and his faith as a Christian while he was working in Rawalpindi from 2005 to 2011, and also accepted the documentary evidence indicating that members of minority religious groups owning businesses are targeted by the Muslim majority. The Board also accepted that the Applicant was kidnapped in December 2012 by armed individuals who threatened to kill him unless he provided access passes to the diplomatic missions for which Ram Dev was providing security systems. In those circumstances, the fear of the Applicants was not beyond the pale or clearly irrational, and deserved to be assessed within the second prong of the IFA test to

determine whether it would be unreasonable to expect the Applicants to relocate in Islamabad.

Yet the Board does not mention this testimony anywhere in its IFA analysis. While the Applicant's state of mind may not have been determinative to the Board's finding, it is problematic that the Board altogether failed to mention this evidence at all in its analysis.

[27] For that second reason, I find that the decision of the Board ought to be set aside.

## **V. Conclusion**

[28] For all of the above reasons, the Court finds that the Board's decision does not fall within a range of "possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47). The decision lacks intelligibility and many findings were made without regard to the evidence. Accordingly, the application for judicial review is granted.

[29] The parties have not proposed any question for certification, and none arises.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is granted. No question is certified.

"Yves de Montigny"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3807-14

**STYLE OF CAUSE:** ADNAN ABDUL KARIM NAILA ADNAN ALYSSA  
ADNAN MICHAEL v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

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**APPEARANCES:**

Styliani Markaki FOR THE APPLICANTS

Alain Langlois FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Styliani Markaki FOR THE APPLICANTS  
Barrister and Solicitor  
Montréal, Quebec

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Montréal, Quebec