

Federal Court



Cour fédérale

Date: 20150316

Docket: IMM-6528-13

Citation: 2015 FC 326

Ottawa, Ontario, March 16, 2015

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

ABDUL WALI KHEDRI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Defendant

JUDGMENT AND REASONS

[1] Mr. Khedri challenges a decision of an immigration officer refusing his application for permanent residence in Canada as a member of the Convention refugee abroad class or the country of asylum class. He has a spouse and five dependent children who would be accompanying him to Canada.

Background

[2] In 1992, Mr. Khedri and his parents left Kabul, Afghanistan, for the northern province of Parwan to escape civil unrest. Meanwhile, Ms. Zeba Khedri fled to Pakistan with her family in 1993. In 1995, while Mr. Khedri was still in Parwan, his home in Kabul was taken by a warlord named Commander Sher [Sher]. Sher was a member of the Ittihad-i-Islami political party.

[3] A report was made to the police and the house was returned. Two months after this incident, Sher was arrested for other crimes. He was released from prison after six months allegedly due to the influence of his uncle, Mullah Izattullah, a powerful commander of the leader of the Ittihad-i-Islami, which, at that point, had “taken full power in the government of Afghanistan” and Sher’s uncle “controlled the north districts of Kabul.” Mr. Khedri says that Sher blamed Mr. Khedri for turning him in to the police and in act of retribution he looted his house and then destroyed it. As a consequence, Mr. Khedri fled Afghanistan with his parents in January 1996. Sher has since become a high ranking officer working for the Ministry of the Interior and he has “taken many houses” and his uncle is commander of the north districts of Kabul.

[4] Mr. Khedri married Ms. Khedri in Pakistan in 1997 and their children were born in Pakistan. He says that while they were in Pakistan, relatives frequently advised him that Sher was still looking for him and for this reason, he did not return.

[5] Mr. Khedri and his family did not have refugee status in Pakistan, though they were registered as refugees with Focus Humanitarian Assistance, an affiliate of the Aga Khan

Foundation, and had Focus cards. Mr. Khedri missed the opportunity to apply when the UNHCR in Islamabad was issuing refugee cards in 2007 because he had taken his father for medical treatment in Karachi. The family tried again in 2010 to register but was unable to do so. He stated in the application interview that they did not know the citizenship legislation in Pakistan, so they did not apply to live there legally.

[6] Starting in 2010, the police in Pakistan started to check documentation and Mr. Khedri was stopped and asked for identification by police many times. Since he did not have a UNHCR refugee card, he showed police his Focus card and sometimes had to take the officers to the Ismaili Refugee Commission where the family was registered. The police released him on that basis.

[7] In 2012, Mr. Khedri's nephew, a Canadian citizen, agreed to sponsor him and his family for permanent residency in Canada through Tajikistan. On August 24, 2012, the family traveled back to Parwan province in order to get passports. While in Afghanistan, they lived in hiding because they feared being recognized by Sher and his contacts. They traveled to Tajikistan on September 3, 2012 and applied for refugee protection in that country upon arrival. No decision has been made on that application.

[8] Mr. Khedri told the officer during the interview that the warlords in Afghanistan have connections in all the cities and towns, making it unsafe for them anywhere in Afghanistan. His wife testified that she cannot return to Afghanistan due to the risk to her husband's life and that she is not sure whether the children would be able to attend school in Afghanistan.

[9] The officer determined that Mr. Khedri did not meet the statutory requirements for immigration to Canada, citing section 11(1) and 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 and section 145 and paragraph 139(1)(e) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations].

[10] The officer was not satisfied that Mr. Khedri had a well-founded fear of persecution based on a Convention ground, noting that he had “provided only one reason for fear based on the activities of the warlord Sher” and that the “police did intervene on your behalf.”

[11] The officer was also not satisfied that Mr. Khedri would be “identified, targeted and threatened in every region of the country nor that [he had] explored any other solutions to the situation” while residing in Pakistan or Tajikistan. The officer was also not satisfied that he did not have a “durable solution” and therefore, found that he did not meet the requirements of section 96 of the Act.

[12] Finally, the officer stated that he or she had also “considered the Country of Asylum Class but found that [Mr. Khedri] did not meet the requirements of [147 of the Regulations].”

Issues

[13] Mr. Khedri raises the following issues:

1. Did the officer err in law in failing to consider whether he met the criteria of Convention refugee pursuant to section 96 of the Act, namely his perceived political opinion?

2. Did the officer fail to consider whether he met the criteria of country of asylum class under section 147 of the Regulations?
3. Did the Officer base his or her decision on erroneous finding of fact that was made in a perverse or capricious manner without regard for material?
4. Did the Officer fail to observe principles of natural justice, procedural fairness or other procedure that was required by law to observe?

Analysis

Convention Refugee Claim

[14] Mr. Khedri submits that the officer erred by failing to consider whether he had a well-founded fear based on “being perceived as denouncing the illegal activities of [a] member of a political party which is affiliated with the government.”

[15] I agree with the respondent that there was little if any evidence offered to support the claim of his perceived political opinion. While the opposition of corruption may be an expression of political opinion (*Klinko v Canada (Minister of Citizenship and Immigration)*, [2000] 3 FC 327 (FC) [*Klinko*]), the existence of a political opinion and nexus to a Convention ground must be determined on a case-by-case basis (*Neri v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1087).

[16] Mr. Khedri, relying on *Klinko*, submits that his perceived denunciation of Sher amounts to an expression of political opinion. However, the circumstances of the present case are

distinguishable from those in *Klinko*, where six Ukrainian businessmen made an organized protest against widespread government corruption and Mr. Klinko suffered retaliation as a result. *Klinko* was a clear case where the “machinery of the state” was engaged – the event that triggered the applicant’s persecution was political in nature and he was persecuted due to the actions of state actors.

[17] There is little evidence, other than Mr. Khedri’s testimony that Sher has political influence, upon which to suggest that Mr. Khedri fled Afghanistan due to any political motivation. Making a police report and resisting criminality does not necessarily impute a political opinion: See *Lozano Navarro v Canada (Minister of Citizenship and Immigration)*, 2011 FC 768. Further, Sher was not affiliated with the Afghan government when this all took place. Mr. Khedri’s situation is reasonably characterized as a fear of criminality, which falls outside section 96 of the Act.

[18] Mr. Khedri also raised concerns in the decision regarding state protection and internal flight alternatives and procedural fairness issues relating to these aspects of the decision; however, given that the finding that he was not a Convention refugee is reasonable, they need not be addressed.

Country of Asylum Class

[19] In contrast to the analysis of the Convention refugee claim, the officer did not refer to any evidence related to the claim under the country of asylum class. The officer simply stated that he or she had “further considered the Asylum Country Class, but found that you did not meet the

requirements of this class either.” The officer did not refer to section 147 of the Regulations or assess the individual requirements for eligibility in the country of asylum class. The Computer Assisted Immigration Processing System notes, which form part of the decision, consist of the text of the decision letter and the officer’s notes of what Mr. Khedri and his wife said during the interview and do not provide any assessment of that evidence. One cannot discern from the decision letter or the CAIPS notes how the officer arrived at the conclusion that there was no claim in the country of asylum class.

[20] While a decision-maker is not required to make explicit findings on each constituent element that led to the final determination, the reasons must be sufficient to allow the reviewing court to understand why the decision was made and permit it to determine whether the conclusion is within the range of acceptable outcomes. In the present case, neither the decision nor the CAIPS notes contain any reference to or assessment of Mr. Khedri’s personal circumstances, statutory requirements, or country conditions in relation to the country of asylum class. The considerations for the Convention refugee abroad and country of asylum class situations are very different, so the reasons the officer gave with regard to the claim under section 145 of the Regulations (Convention refugee abroad class) cannot be used to supplement the decision under section 147 of the Regulations (country of asylum class).

[21] For these reasons the officer’s reasons are not justifiable, transparent or intelligible and do not conform to the standard set by the Supreme Court of Canada. The officer’s section 147 decision is unreasonable and must be set aside.

[22] No question was proposed for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is allowed, the applicant's application is to be redetermined by a different officer, and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6528-13

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