Federal Court  Cour fédérale

Date: 20150325

Docket: IMM-390-14

Citation: 2015 FC 380

Toronto, Ontario, March 25, 2015

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

ETHISHAM-UL HAQ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review of a decision of a Pre-Removal Risk Assessment ("PRRA") Officer dated December 6, 2013 wherein it was determined that the Applicant would not be subject to risk of persecution, danger of torture, risk to life or risk of cruel and unusual punishment if returned to Pakistan.

[2] The Applicant is an adult male citizen of Pakistan. He claims to be a member of a particular group, Nazim, and of a particular political affiliation PML(N). He claims that twice, when he was out of the country, he was accused of killing someone in Pakistan, which required him to clear his name by demonstrating that he was out of the country. He claims that he was personally attacked, and that a colleague of the same minority and political affiliation was killed.

[3] The Applicant's claim for refugee protection in Canada was rejected in a decision dated December 9, 2008. In May 2010, the Applicant applied for PRRA which resulted in the decision under review, inexplicably some three years later.

[4] Applicant's Counsel argues that new and significant evidence was overlooked and given no weight or too little weight by the Officer. Respondent's Counsel argues that the so-called new evidence is little more than a repetition of the evidence before the Refugee Board which was found not to be credible.

[5] The refugee claim was based on allegations by the Applicant that he had been falsely accused of a murder in Pakistan. He was out of the country at that time and went to the police to his clear his name. He thought that had been done so he left for a holiday in Canada. He feared returning to Pakistan.

[6] The Board found the Applicant not to be credible for a number of reasons, and concluded that he would not be at risk if he were to return to Pakistan. Further, the Board found that the

political scene in Pakistan had changed and the party to which the Applicant belonged was no longer in power.

[7] The Applicant applied for a PRRA in May 2010. Among the pieces of evidence provided were:

- two arrest warrants issued in 2009;
- a newspaper article dated in 2010 reporting that arrest warrants had been issued against the Applicant and that he was a wanted person;
- sworn statements from the Applicant's father, wife, father-in-law and two friends respecting various persons continuing to inquire after the Applicant;
- a police report respecting a complaint made by the Applicant's wife as to a raid on her house by unknown persons in March 2010.

[8] The Officer's decision was written some three years after the submission of the PRRA application. There is no apparent reason for the delay which leaves the puzzling remark in the Officer's decision that evidence was required to show that the 2009 warrants remained outstanding as of 2013, some four years later, unanswered. Does an Applicant bear some onus to report on some periodic basis that, in respect of the evidence submitted upon the filing of the PRRA application, nothing has changed during the period that it languishes with Citizenship and Immigration Canada?

[9] The Officer failed to recognize that the 2009 arrest warrants not only validate the claims found not to be credible by the Refugee Board but, more importantly, provide evidence that, since the Board's decision, the Applicant continues to be at risk.

[10] The 2010 newspaper article which reports on the 2009 arrest warrants provided evidence of public awareness of the fact of the warrants and supports the validity of the warrants. The Officer fails entirely to note the importance of that evidence. Possibly this is because the file had not been looked at for three years.

[11] The Officer minimizes the sworn statements of relatives and friends of the Applicant because it was from relatives and friends. As pointed out by Justice de Montigny of this Court in *Ugalde v Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FC 458 at paragraph 28, it is unreasonable to distrust evidence from relatives and friends simply because it came from such sources. Often they are the best or only persons capable of giving such evidence.

[12] Further, it was wrong to ignore such evidence because it is like that given at the refugee hearing. If such evidence is as to harassment continuing after the refugee hearing, it is new and relevant evidence.

[13] Yet further, the Officer mishandled the report as to the complaint of the Applicant's wife to the police. The evidence shows only that they undertook to make a report. There is no evidence that they took appropriate action to protect her or investigate as to her assailants (see

Justice Kane in *Flores v Canada (Minister of Citizenship and Immigration)*, 2013 FC 938 at paragraph 45).

[14] I find that there are sufficient errors in the Officer's decision, possibly caused by the long delay in giving attention to the matter, that the decision must be considered to be unreasonable. The application will be allowed.

[15] No party requested a certified question.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application is allowed;
2. The matter is returned for re-determination by a different officer;
3. No question is certified;
4. No Order as to costs.

"Roger T. Hughes"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-390-14
STYLE OF CAUSE:	ETHISHAM-UL HAQ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MARCH 24, 2015
JUDGMENT AND REASONS:	HUGHES J.
DATED:	MARCH 25, 2015

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