

Federal Court



Cour fédérale

Date: 20160719

Docket: IMM-5535-15

Citation: 2016 FC 828

Ottawa, Ontario, July 19, 2016

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

**USMAN AHMED
NAILA USMAN
SAAD USMAN
HAJIRA USMAN
ABDULLAH USMAN**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Usman Ahmed, the principal Applicant, his wife and three youngest children are citizens of Pakistan. Mr. Ahmed says he was attacked and beaten on two occasions in 2011 because of his opposition to jihadi groups, especially the Lashkar-e-Taiba [LeT]. Although he sought assistance from the local police in the city of Sialkot, they refused to help and told him to

stop spreading anti-LeT propaganda to guarantee his safety. After Mr. Ahmed and his family were shot at while on a shopping trip in the city of Gujranwala, they went into hiding at a friend's house in the city of Lahore. Upon learning that LeT members had been saying they would kill him and his family the next time, Mr. Ahmed obtained visas for his wife and three youngest children to travel to Canada. They left for Canada on October 7, 2011.

[2] After their arrival in Canada, Mr. Ahmed, his wife and three children sought protection as Convention refugees or persons in need of protection under sections 96 or 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. Their claims were rejected, however, by the Refugee Protection Division [RPD] of the Immigration and Refugee Board. In its decision dated November 13, 2015, the RPD found that Mr. Ahmed, his wife and three children had a viable internal flight alternative in Islamabad and, therefore, were not Convention refugees or persons in need of protection. The Applicants now ask this Court, pursuant to subsection 72(1) of the Act, to set aside the RPD's decision and return the matter to a different member of the RPD for redetermination.

I. The RPD's Decision

[3] The RPD found that the determinative issue was the availability of an internal flight alternative [IFA] for the Applicants in Islamabad, the capital city of Pakistan.

[4] On the question of whether Mr. Ahmed and his family would face a serious possibility of persecution or a risk to their lives in Islamabad, the RPD found there was no persuasive evidence to establish that LeT was presently in control of Islamabad or engaged in widespread terrorist

operations inside that city. There was also no persuasive evidence demonstrating that LeT was using its extensive network to track down and eliminate its political opponents inside Islamabad. The RPD noted that the documentary evidence generally indicated that Islamabad did not have a high incidence of politically-motivated, terrorist and sectarian violence.

[5] The RPD concluded that Mr. Ahmed's anti-jihadist activities in Sialkot were local in nature, and that he would not come to the attention of LeT upon relocating to Islamabad because his activities had not been such that he had acquired national notoriety as an anti-jihadi figure. Mr. Ahmed's claim that LeT could trace him through the registration process with the police upon renting an apartment was, in the RPD's view, not supported by the evidence. The RPD further concluded that there was a significant security apparatus in Islamabad and that neither LeT nor any other affiliated terrorist groups had infiltrated or taken over this apparatus, nor was there any widespread or systematic attacks against anti-jihadi opponents in Islamabad.

[6] On the question of whether relocation was reasonable, the RPD considered that Mr. Ahmed was a wealthy Pakistani businessman with the financial resources, knowledge, and level of skill and expertise with which he could easily rebuild and restart his businesses in Islamabad. Accordingly, the RPD found it was objectively reasonable for Mr. Ahmed and his family to seek refuge by relocating and residing in Islamabad.

II. Issues and Standard of Review

[7] This application for judicial review raises one primary issue: was the RPD's determination that the Applicants have a viable IFA in Islamabad reasonable?

[8] I reject the Applicants' argument that because the RPD misunderstood the test for determining the existence of an IFA, its decision should be reviewed on a standard of correctness. In my view, it is clear that the RPD correctly identified and reasonably applied the two-pronged test for an IFA emanating from the Federal Court of Appeal's decision in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (C.A), 140 NR 138. I agree with the Respondent that the RPD's application of this test should be reviewed on the standard of reasonableness.

[9] This being so, the RPD's assessment of the evidence is entitled to deference (see: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 53, [2008] 1 SCR 190 [*Dunsmuir*]; *Yin v Canada (Citizenship and Immigration)*, 2014 FC 1209 at para 34; *Mojahed v Canada (Citizenship and Immigration)*, 2015 FC 690 at para 14). The Court should not interfere if the RPD's decision is intelligible, transparent, and justifiable, and falls within a range of possible, acceptable outcomes defensible in respect of the facts and the law (*Dunsmuir* at para 47). Those criteria are met if "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes": *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708.

[10] Moreover, it is not up to this Court to reweigh the evidence that was before the RPD, and it is not the function of this Court to substitute its own view of a preferable outcome: *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 61, [2009] 1 SCR 339. The RPD's decision must be considered as an organic whole and the Court should not embark upon a

line-by-line treasure hunt for error (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper Ltd.*, 2013 SCC 34 at para 54, [2013] 2 SCR 458; see also *Ameni v Canada (Citizenship and Immigration)*, 2016 FC 164, at para 35, [2016] FCJ No 142).

III. Was the RPD's determination that the Applicants have a viable IFA in Islamabad reasonable?

[11] The Applicants contend that the RPD used an “effective certainty of persecution” test rather than relying on whether there were good grounds to believe that they would be personally targeted by LeT in Islamabad, thus leading to a stringent and near impossible burden of proof. However, the language in the RPD's decision to which the Applicants object refers to factual findings made in the context of determining whether the Applicants had established, on a balance of probabilities, that they faced a serious possibility of persecution or a risk to their lives in Islamabad. The strength of the words chosen by the RPD highlights the contrast between those regions of Pakistan where the LeT has significant and widespread influence and power, free of state interference, and Islamabad where there is not a high incidence of politically-motivated, terrorist and sectarian violence. This does constitute a misunderstanding or unreasonable application of the test for determining an IFA.

[12] I agree with the Respondent that the RPD's decision must be looked at as a whole and not, as the Applicants would have it, dissected and parsed in order to show that the RPD somehow misunderstood or misapplied the test for an IFA. As noted by the Court in *Huerta Morales v Canada (Citizenship and Immigration)*, 2009 FC 216 at para 11, 176 ACWS (3d) 205:

“it is not appropriate to assess words in isolation – one must examine the whole of the decision. The question to be asked is whether, on a reading of the whole of the decision, one is left in doubt as to whether the Board applied the right test [for determining the existence of an IFA]. If so, then the matter is reviewable. If there is no doubt that the correct test was applied, then the decision is not reviewable.” In this case, I have no doubt that the correct test was not only correctly identified but also reasonably applied by the RPD. Hence, the Applicants’ application for judicial review must be dismissed.

[13] The Applicants’ suggestion to the effect that the RPD did not base its conclusions on documentary evidence is without merit. The RPD cited extensively from the documentary evidence in the record throughout its decision. The RPD acknowledged all the evidence cited by the Applicants as to the prominence of LeT in Pakistan.

[14] The documentary evidence contained in the certified tribunal record shows that LeT is a serious and important militant or terrorist organization in Pakistan and that the government does not appear to be able to control it. However, while LeT is active in the Applicants’ home province of Punjab, none of the documentary evidence indicates any activity by LeT in Islamabad. Mr. Ahmed’s own testimony and supporting documents reveal that LeT is mostly active as a recruitment agent to send young jihadis abroad, particularly to fight against India for control of the Kashmir region. One report in the documentary evidence does mention that large caches of weapons have been found in the city of Islamabad, and another report provides details of sectarian violence in Islamabad. However, none of the documentary evidence contradicts or undermines the RPD’s findings that neither LeT nor any other affiliated terrorist groups had

infiltrated or taken over the security apparatus in Islamabad, and that there was no widespread or systematic attacks against anti-jihadi opponents in Islamabad.

[15] The RPD dismissed Mr. Ahmed's claim that LeT could trace him through the registration process with the police upon renting an apartment in Islamabad. This determination by the RPD appears to be misguided because a report in the certified tribunal record appears to indicate that registration of tenants by their landlords to the police is a requirement in Pakistan under the Tenancy Act, 1965. However, the record also shows that this requirement is loosely applied and appears to be revived and more strictly applied when heightened security measures are required, such as during Ramadan. Even if this requirement was followed with respect to Mr. Ahmed, there is no evidence in the record that the police in Islamabad would share any information they might have about Mr. Ahmed with LeT. The RPD's determination on this issue may have been misguided but it was not one which seriously undermines its decision as a whole.

IV. Conclusion

[16] The Applicants' application for judicial review is dismissed. The RPD's decision is intelligible, transparent, and justifiable, and falls within a range of possible, acceptable outcomes defensible in respect of the facts and the law. Moreover, the RPD's reasons for its decision allow the Court to understand why it made its decision, one which is well within the range of acceptable outcomes.

[17] Neither party raised a question of general importance and no such question is certified.

JUDGMENT

THIS COURT'S JUDGMENT is that: the application for judicial review is dismissed;
and no question of general importance is certified.

"Keith M. Boswell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5535-15

STYLE OF CAUSE: USMAN AHMED, NAILA USMAN, SAAD USMAN,
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APPEARANCES:

Celeste Shankland FOR THE APPLICANTS

Susan Gans FOR THE RESPONDENT

SOLICITORS OF RECORD:

Law Office of Lisa Rosenblatt FOR THE APPLICANTS
Barristers and Solicitors
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of
Canada
Toronto, Ontario