

Federal Court



Cour fédérale

**Date: 20170505**

**Docket: IMM-3796-16**

**Citation: 2017 FC 456**

**Ottawa, Ontario, May 5, 2017**

**PRESENT: The Honourable Madam Justice Roussel**

**BETWEEN:**

**RIZWAN (ALSO KNOWN AS RIZWAN  
PARVAIZ MASHI OR RIZWAN PARVAIZ  
MASHIH)**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, Rizwan (also known as Rizwan Parvaiz Masih or Rizwan Parvaiz Mashih), is a twenty-one (21) year old citizen of Pakistan, who has lived in Oman with his parents and siblings since 2003. He arrived in Canada from the United States on March 18, 2016 and sought refugee protection.

[2] The Applicant is a Christian, from a practicing Christian family. He claims to fear persecution both in Oman and in Pakistan from his friend's father who accuses him of trying to convert his son, a Muslim, to the Christian faith. The Applicant alleges he invited his friend to a Christmas party at his home and later brought him to a Christian church in Oman. His friend's father became very angry and threatened to bring charges against the Applicant in Oman that would lead to him being deported to Pakistan and to have the Applicant charged with blasphemy in Pakistan.

[3] In a decision dated August 16, 2016, the Refugee Protection Division [RPD] rejected the Applicant's claim for protection. The RPD determined that the Applicant had failed to establish with sufficiently credible evidence that he was at risk of harm in Pakistan from his friend's father or that he would be at risk of persecution based solely on his religion.

[4] The Applicant now seeks judicial review of that decision, alleging that the RPD unreasonably assessed the credibility of his allegations, as well as the risk of persecution he faces if he is returned to Pakistan.

[5] I will first deal with a preliminary question touching on the admissibility of an affidavit. The Applicant filed an affidavit from a lawyer setting out the lawyer's legal interpretation of the blasphemy laws in Pakistan and their applicability to the situation of the Applicant. The Respondent contests the admissibility of the affidavit, as it was not before the RPD in considering the Applicant's claim. The Applicant responds that the affidavit was submitted to

answer a new issue that was raised by the RPD, namely the capacity of the father to file a criminal complaint against the Applicant in Pakistan.

[6] It is trite law that the evidentiary record before this Court on judicial review is restricted to the evidentiary record that was before the decision-maker (*Association of Universities and Colleges of Canada and the University of Manitoba v The Canadian Copyright Licensing Agency Operating as "Access Copyright"*, 2012 FCA 22 at para 19; *Nshogoza v Canada (Citizenship and Immigration)*, 2015 FC 1211 at para 16). Since the Applicant has not demonstrated that the affidavit from the lawyer falls within the few recognized exceptions to the general rule, I find the affidavit to be inadmissible.

[7] The sole determinative issue in this application for judicial review is whether the RPD reasonably concluded that the Applicant was not at risk in Pakistan.

[8] The RPD's finding involves questions of mixed fact and law and as such, is reviewable under the standard of reasonableness. In assessing reasonableness, the reviewing Court is concerned with the "existence of justification, transparency and intelligibility within the decision-making process" and "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59 [*Khosa*]; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]). The Court must give deference to the RPD's findings on credibility and its assessment of the evidence, as the RPD is in a better position to appreciate the credibility

of the Applicant and to draw the necessary inferences (*Aguebor v Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 732 (CA) at para 4 (Q.L.)).

[9] Moreover, it is not the function of the Court upon judicial review to substitute its own view of a preferable outcome and to reweigh the evidence that was before the RPD (*Khosa* at paras 59, 61). The RPD's decision "should be approached as an organic whole, without 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; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 14, 16; *Gong v Canada (Citizenship and Immigration)*, 2017 FC 165 at para 7).

[10] Contrary to the Applicant's assertions, I find that it was reasonable for the RPD to draw a negative inference from the Applicant's failure to submit any corroborative evidence to substantiate his allegations (*Ma v Canada (Citizenship and Immigration)*, 2010 FC 509 at para 2). Aside from the Applicant's testimony and a letter from the Applicant's church pastor, the Applicant adduced no other evidence to corroborate his claim of persecution by his friend's father and provided no reasonable explanation for not doing so.

[11] Evidence, such as a sworn affidavit, from the Applicant's father could easily have been submitted, attesting to the telephone call he received from the friend's father threatening to make the Applicant's life difficult if he returned to Oman. The Applicant's father could equally have provided evidence regarding the discussions the Applicant had with his family when the decision was made that the Applicant should leave Oman. As well, the Applicant's grandfather and sister

could have attested to the friend's father coming to the Applicant's house to tell him that he was a bad influence on his son and was trying to convert him to Christianity, as they were allegedly home at the time. They were also present when the police came to the Applicant's house in March 2016 to inform him that they had completed their investigation and that no charges would be laid but that they would keep an eye on the Applicant for as long as he was in Oman. It was equally not unreasonable for the RPD to expect that the Applicant submit corroborating evidence regarding the police investigation in Oman. In my view, the elements for which the RPD would have liked to have seen some form of evidence were central to the claim and were not insignificant as contented by the Applicant (*Tellez Picon v Canada (Citizenship and Immigration)*, 2010 FC 129 at paras 11-12).

[12] I recognize that the RPD made an error in stating that the Applicant did not establish the existence of his friend. The pastor's letter corroborates the Applicant's assertion that he brought his friend to a church service in January 2016. However, I do not consider this error to be determinative as the rest of the pastor's letter is based on hearsay and does not establish the Applicant's problems with his friend's father.

[13] Moreover, I find that it was reasonably open to the RPD to conclude that the Applicant wanted to leave Oman for reasons other than his fear of his friend's father given the timing of the alleged events in Oman, the Applicant's precarious status in Oman and the rejection of the Applicant's two (2) visa applications. The RPD properly noted that "after years of living problem-free in Oman", the Applicant's problems began at the same time he was making efforts to obtain a visa to study abroad. I also note from the Applicant's affidavit that his application for

a temporary resident visa and study permit was received and subsequently refused in December 2015, the same month that his alleged problems began in Oman.

[14] The RPD's decision is not based solely on the insufficiency of credible evidence to substantiate the Applicant's alleged problems in Oman. The RPD also considered the Applicant's risk in Pakistan and found that, even if the problems in Oman had been established, the Applicant had not demonstrated that these problems would follow him to Pakistan. The RPD reasonably found that it was little beyond speculation that the friend's father would know that the Applicant was in Pakistan or that he would have the means or the motivation to have blasphemy charges brought against him in Pakistan. As for the Applicant's argument that his friend's father would come to know his whereabouts through Facebook, the RPD reasonably concluded that the Applicant could keep this information private and that this was not akin to living as a fugitive.

[15] The Applicant also submits that it was unreasonable for the RPD to make an adverse finding of credibility based on the fact that he had accompanied his family to Pakistan four (4) times, for about one (1) month each year between 2012 and 2015 to visit the Applicant's grandmother. I disagree. This is not a credibility finding nor is it a secondary issue to the claim, as suggested by the Applicant. Rather, the Applicant's repeated travel to Pakistan showed a lack of subjective fear and a lack of objective risk of persecution in Pakistan.

[16] The RPD also found, based on the objective documentary evidence, that the Applicant's profile as a Christian in Pakistan was not enough to put him at risk, even if discrimination and sectarian violence existed in Pakistan. By arguing that the RPD disregarded other more

favourable evidence in the country condition documents, the Applicant is, in effect, asking this Court to reweigh the evidence before the RPD and to come to a different conclusion. Such is not the role of this Court upon judicial review.

[17] In conclusion, even if the RPD's finding regarding the existence of the Applicant's friend is not supported by the record, its other conclusions are. Keeping in mind that the RPD's decision must be reviewed as an organic whole, I find that when viewed as a whole, the decision is reasonable as it falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir* at para 47).

[18] Accordingly, the application for judicial review is dismissed. No questions were proposed for certification and I agree that none arise.

**JUDGMENT in IMM-3796-16**

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

"Sylvie E. Roussel"

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Judge



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

**DOCKET:** IMM-3796-16

**STYLE OF CAUSE:** RIZWAN (ALSO KNOWN AS RIZWAN PARVAIZ MASHI OR RIZWAN PARVAIZ MASHIH) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 27, 2017

**JUDGMENT AND REASONS:** ROUSSEL J.

**DATED:** MAY 5, 2017

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