

Federal Court



Cour fédérale

Date: 26092018

Docket: IMM-2651-18

Citation: 2018 FC 953

Ottawa, Ontario, September 26, 2018

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

A.B. AND C.D.

Applicants

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent.

[1] This is an application for judicial review pursuant to section 72(1) of the Immigration and Refugee Protection Act, SC 2001, c 27 [the IRPA] of a pre-removal risk assessment [PRRA] dated April 26, 2018. In this PRRA, a Senior Immigration Officer [the Officer] determined that both Applicants would not be subject to risk of danger of torture, risk to life or risk of cruel and unusual treatment or punishment pursuant to section 97 of the IRPA if removed to India, and additionally that the Applicant C.D. would similarly not be subject to persecution pursuant to section 96 of the Act.

[2] The Applicants are A.B., a 35 year old man and his spouse, C.D., a 32-year old woman, who are both citizens of India. The Applicants claim that they fear return to India because of C.D.'s paternal uncle, Hardam. The Applicants claim that they both share the same fear that they will be killed or assaulted in an honour killing as a result of defying Hardam and entering into a love marriage. The female Applicant also claims to be a victim of persecution by her uncle.

[3] In October 1998, A.B. became a permanent resident of Canada by way of a family sponsorship. On January 14, 2010, he was convicted for conspiracy to distribute cocaine in the United States of America and was deported by the American authorities to India on April 22, 2011. A.B. returned to Canada on May 5, 2011 and subsequently was found to be inadmissible on the ground of his engagement in transnational crime pursuant to s. 37(1)(b) of the IRPA and was issued a Deportation Order. Thereafter, A.B. submitted his PRRA application on February 26, 2018. As he was found to be inadmissible, he is only subject to section 97 protections.

[4] C.D. arrived in Canada on August 30, 2010 on a student visa which was extended until March 31, 2012. C.D. did not leave Canada at the expiry of the validity period of her temporary stay. During her stay in Canada, C.D. created an online dating profile and subsequently met A.B. whom she eventually married on January 4, 2014.

[5] C.D. came to the attention of the Canada Border Services Agency [CBSA] in the course of the investigation into A.B.. On January 27, 2015 a CBSA Officer prepared a s. 44(1) Inadmissibility Report on the grounds of overstaying her student permit and her noncompliance with IRPA. In February 2015, C.D. submitted an application for permanent residence under the

Spouse in Canada class, sponsored by A.B.. On March 25, 2015, C.D. attended an interview with a Minister's delegate with regards to the allegations set out in the Inadmissibility Report. The Minister's delegate found the allegations to be valid and issued an exclusion Order against C.D.. At the end of the interview, the Minister's delegate provided notice to C.D. that she could apply for a PRRA. C.D. indicated that she did not wish to apply for a PRRA.

[6] With respect to her allegations of risk, C.D. alleges that when her father passed away, her uncle Hardam became the male head of the household and resided in their home in Punjab for much of her upbringing. She maintains that Hardam is an angry person with deep connections with the police and politicians, and that he has a history of violence with other persons in their village, but because of his connections with the police his actions have never been followed up on.

[7] C.D. claims that Hardam financed her studies in Canada, and planned to have her obtain permanent residency and eventually sponsor members of his wife's family to Canada following an arranged marriage. A.B. and C.D. were married in Vancouver. Although some members of C.D. family were aware of the marriage, no one had explicitly told Hardam that C.D. and A.B. were married prior to A.B.'s visit to India in 2016. However, as C.D. had continually refused to return to India, she believed Hardam was suspicious of the situation. A.B.'s family members all gave their blessing to the marriage.

[8] C.D. recounts an episode of some ten or twelve years ago when her cousin ran away to have a love marriage. She claims that Hardam threatened to kill her cousin and that he travelled

to Madhya Pradesh to try to find her. She was not found and has not been in contact with the Applicant since.

[9] A.B. visited C.D.'s mother in her village in India on March 21, 2016. Upon learning this, Hardam came to the house the next day, at which point he yelled at and threatened A.B.. A.B. left the village with the help of his brother and did not return, although remaining in India until April 2016.

[10] In November 2016, A.B.'s criminal case was published in the Vancouver Sun, and allegedly in the Punjabi media. As a result C.D.'s aunt in Canada heard the news and was allegedly furious that C.D. had married and associated the family with someone with such a reputation.

[11] In February 2017, C.D. applied for a PRRA. She feared that due to Hardam's history of violence, he would cause harm to her and her husband, or kill them in the name of honour. She also alleges that she would be at risk of persecution if she were to return to India.

[12] On April 26, 2018, a Senior Immigration Officer refused both A.B. and C.D.'s PRRA applications. The Officer found that the applicants were not, on a balance of probabilities subject to risk of honour crimes in India or that C.D. would be a victim of persecution. The Officer also noted that the Indian government was taking measures to prevent honour crimes and that Hardam was not motivated to locate the subject of his anger in a country approximate anywhere in the country of 1.3 billion people.

[13] The Applicants filed an application for leave and for judicial review of the PRRA decision and a stay of execution of their removal order was granted until the disposition of the underlying judicial review application, while the Respondent consented to an order granting leave for the application to bring this matter expeditiously before the Court.

[14] The Applicants raise three issues as grounds to set aside the Officer's decision. First, they submit that the Officer's conclusion that there was insufficient evidence to demonstrate that Mr. Hardam is a physically violent person was unreasonable because it failed to address specific evidence to the contrary effect, as well as failing to consider that these threats constituted persecution of C.D.. Second, they argue that the Officer incorrectly described the law on state protection by acknowledging that although the police were not always effective in preventing honor crimes; the state was nevertheless making efforts to better the situation. Third, they contend that the Officer made what constituted a finding of an internal flight alternative [IFA] without identifying where the Applicant could reasonably be expected to find a safe haven in India.

[15] In considering the three issues raised by the Applicants, the Court concludes that the second and third issues concerning state protection and the implicit availability of an IFA, only are germane if the Applicants are successful in convincing the Court of the unreasonableness of the Officer's finding that the evidence was insufficient to demonstrate that Mr. Hardam was not a physically violent, and that the evidence would not support a finding of future persecution of the Applicant C.D.. Having failed to convince the Court on these issues, the application must be rejected.

[16] The Officer considered the Applicants' allegations of risk. She considered Hardam's alleged political connections and history of violence and concluded that there was insufficient evidence to conclude that Hardam's actions ever crossed over from yelling and anger into the realm of violence. As such, the Officer found that the evidence did not support the Applicants' subjective fears. While the evidence pointed to Hardam yelling and threatening, there was nothing to demonstrate that he had been physically violent in the past and it was therefore unlikely on a balance of probabilities that he would become physically violent in the future.

[17] The Applicants contend that the Officer failed to consider the sentence in one paragraph of C.D.'s affidavit stating that "he had many violent fights with other people from the village over land or other disputes". This allegation was advanced without any indication of the nature of the disputes, the nature and extent of the violence and the harm to the alleged victims of Hardam's violent fights. The Court agrees that a single highly generalized statement, without particularization, and indeed corroboration to support this statement from other witnesses is insufficient to demonstrate that his anger had resulted in physical harm to others.

[18] For example, C.D.'s mother stated in her affidavit that Hardam is "an angry human being", without citing any incidents of actual physical violence that she might have been witness to or have heard of to support that his anger had been transformed into physical violence. Her reference to Hardam's issues with his neighbours was only that he had "been involved in property disputes with several people in his village and there were many police cases against him". The Court agrees with the Officer's conclusion that "there is very little evidence that he [Hardam] has acted on his anger in the past by the use of physical violence".

[19] The Officer also considered the alleged incident regarding C.D.'s cousin that occurred some 10 to 12 years previously. Upon reviewing her affidavit, the Officer concluded that it relied on hearsay rather than firsthand knowledge of Hardam's travel from the village to Medya Pradesh, a distance of roughly 1,100 kilometers. Although the Officer accepted that Hardam may have made statements about his efforts to locate C.D.'s cousin, she found that there was insufficient evidence to conclude that Hardam did in fact travel this long distance to find her. The Officer further noted that even if Hardam had travelled this distance to locate C.D.'s cousin, he gave up after one trip. The Officer found that this demonstrated that while Hardam may be angry, he lacks motivation to pursue the subject of his anger for long.

[20] The Officer also considered the visit of A.B. in March 2016, during which Hardam yelled and threatened him, but took no steps to physically harm him, even though the Applicant stayed until April before returning to Canada. The Court notes that in the Applicant C.D.'s submissions to the PRRA Officer, when Hardam threatened A.B., he kept repeating, "I will take care of you!" to A.B., and eventually another family member convinced Hardam to leave. Similarly, there is no evidence since 2016 of Mr. Hardam continuing to threaten the Applicants.

[21] This Court has held in many occasions that it is open to a PRRA Officer to assess the probative value of evidence. In particular, the Court has held that evidence from a witness with a personal interest in the case may be examined for its weight before considering its credibility, because such evidence typically requires corroboration in order to have probative value. The weighing exercise falls squarely within the Officer's mandate and his conclusions must be shown

deference: *Ferguson v. Canada (MCI)*, 2008 FC 1067 at paras 20-27, *Fadiga v. Canada (MCI)*, 2016 FC 1157, at para 26, and *Zdraviak v. Canada (MCI)*, 2017 FC 305 at para 17.

[22] With respect to the persecution claim by Applicant C.D., the Applicant did not provide submissions of Hardam threatening her specifically, beyond the fact that Hardam was angry about the marriage and apparently threatened to kill both Applicants, without however harming A.B.. While she alleges fear upon returning, because of his anger at the marriage, there is no direct evidence of him having threatened her personally in support of such a claim. The essence of the totality of the evidence is that Hardam is an angry man, but there is no evidence of his actually acting on his anger to physically harm anyone. The officer's conclusion falls within the reasonable category of findings that there is insufficient evidence to support a well-founded fear of persecution by C.D. of fear of persecution by threats of violence on her return to India.

[23] Moreover, the alleged IFA issue and the Officer's finding that there is very little evidence to suggest that Hardam has the resources or motivation to look for the Applicants in a serious way in any part of the country, must be understood in its context. This conclusion responds directly to counsel's submission on behalf of C.D. specifically raising an IFA issue and claiming that "Simratpreet is not safe anywhere in India" [the Court's emphasis] because when her cousin entered into a love marriage, her uncle travelled from Punjab to Madhya Pradesh, half-way across the country, to locate her. Having raised the issue in her submissions, the Officer's conclusion was reasonable based upon the evidence before her that it did not support "the presumption that Hardam is motivated or able to locate the subject of his anger in a country of approximately 1.3 billion people and which spans an area of about 3,287,000 square kilometers."

[24] The Officer also noted that the evidence with respect to runaway couples arose mostly in situations of inter-state and inter-religious marriages, and that C.D. would be accompanied by her husband so as to offer a level of protection for her, which conclusions are not unreasonable.

[25] In addition, the Officer also found insufficient support for the allegation that Hardam had close connections to the police in India due to his close relationship with a cousin who was in the police force and who died in 1995. The Court does not find the conclusion unreasonable that there was insufficient evidence that Hardam was treated with impunity due to his connections to local authorities in light of the lack of objective corroboration or specific examples supporting such an allegation.

[26] In conclusion, the Court finds that the PRRA Officer did not ignore any relevant evidence and that the Applicants are in essence disputing the weight accorded to their evidence by her. It is common ground that the standard of review is that of reasonableness and deference must be owed to officers in their assessment of the probative value of the evidence before them. So long as their assessments fall within the range of reasonableness, no reviewable error arises.

[27] In light of the Court's conclusions that the Officer committed no reviewable error in finding that there was insufficient evidence that Hardam would act in a physically violent manner towards the Applicants, or evidence of threats of violence against the Applicant C.D., their applications must be dismissed.

JUDGMENT in IMM-2651-18

THIS COURT'S JUDGMENT is that the application is dismissed and no question is certified for appeal.

"Peter Annis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

Gopi Dhillon	FOR THE APPLICANTS
Laura Best	
Helen Park	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Embarkation Law Corporation	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT