

Federal Court



Cour fédérale

Date: 20190513

Docket: IMM-5045-18

Citation: 2019 FC 670

Winnipeg, Manitoba, May 13, 2019

PRESENT: Madam Justice Elliott

BETWEEN:

FAISAL TARIQ

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a negative Pre-Removal Risk Assessment [PRRA] made on August 24, 2018 by Senior Immigration Officer N. Sohal [Officer] in which it was determined that Mr. Faisal Tariq, a national of Pakistan, had not presented sufficient new evidence to show that he was likely to face a danger of torture, or risk to his life and/or cruel and unusual treatment or punishment if returned to Pakistan.

[2] The sole issue is whether the Officer misinterpreted or misapplied section 113(a) of the *Immigration and Refugee Protection Act, SC 2001, c-27 [IRPA]* when considering family letters, which postdate the Refugee Protection Division [RPD] and the Refugee Appeal Division [RAD] decisions and were submitted in the PRRA application. The letters describe events that occurred approximately 14 months after the RAD decision.

II. **Background**

[3] Mr. Tariq alleged that he was being persecuted because, after making a speech at his college in May 2011, he had been perceived by Wahhabi Muslim students to have blasphemed Islam.

[4] Mr. Tariq alleged that following his speech, a large group of students accused him of insulting Islam and shots were fired in the air. He said he was beaten until police arrived and his attackers fled. After those events, he said he felt watched. He also claims that he was followed by a car and it tried to hit him when he was on his motorcycle. His home was stoned and painted with threatening graffiti. Bullets were fired at the house. Eventually he went into hiding at his uncle's home 60 kilometers away and did not go outside except for the medical examination he had to take when applying for his student visa to Canada.

[5] The RPD and the RAD both found Mr. Tariq's claims were not credible.

[6] The RPD found his testimony was inconsistent with the allegations in his Basis of Claim form and that he did not answer questions directly. It was also concerned that he did not make a

refugee claim until almost three years after he dropped out of school, at which time he was deportable.

[7] The Minister intervened before the RPD concerning a number of Facebook photos that indicated Mr. Tariq was not in hiding at his uncle's home as he had alleged, but rather was in Lahore where he was communicating with friends and attending events. The RPD rejected Mr. Tariq's explanation that his brother had posted the photos in order to throw off the persecutors and found that he was not in hiding.

[8] The RAD reviewed the RPD decision and made several additional comments on the evidence, all to the effect that it was either not credible or, it was insufficient. The RAD determined that Mr. Tariq's presumption of truthfulness had been rebutted and it concurred with the RPD's conclusion that Mr. Tariq was neither a Convention refugee nor a person in need of protection.

III. Analysis

[9] The only relevant part of the decision under review is the Officer's analysis of the new evidence that Mr. Tariq put forward for consideration in his PRRA application.

[10] The Officer's approach to admitting new evidence under section 113(a) of the *IRPA* is reviewed on a standard of reasonableness: *Asiri v Canada (Citizenship and Immigration)*, 2018 FC 1025 at para 11.

[11] A decision is reasonable if the decision-making process is justified, transparent and intelligible resulting in a determination that falls within the range of possible, acceptable

outcomes which are defensible on the facts and law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*].

[12] The new evidence was composed of three letters from family members - Mr. Tariq's elder brother, father and younger brother - all dated February 23, 2018. Each letter contained new evidence of risk, as follows:

Last two week (*sic*) before on 10 february 2018 someone fired 6 to 7 bullets at the front of our house, (*sic*) at midnight roundly 1:00 Am (*sic*). My [relationship and name] and [2nd relationship and name] wake up and watching on street from window, 4 to 5 unknown persons firing and throw stones on window. [Name or relationship] call to police and complain he come after 20 to 25 mins, the attacker runaway before police come. The unknown attacker come back again and again after 2 to 3 months and thread (*sic*) us and paint on the wall (handover faisal and die in hell).

[13] The Officer's treatment of the new evidence is very brief.

[14] The Officer first set out the text of subsection 113(a) of the *IRPA* and then noted that the PRRA submissions included the same allegations that were presented to the RPD.

[15] The Officer stated she was not satisfied the letters constituted new evidence. She acknowledged that the letters "refer to continued threats towards the applicant, notably in February 2018." The Officer then concluded that while the event post-dated the refugee decision the letters are "evidence of the same risk that the applicant alleged before the RPD."

[16] The Minister concedes that new evidence cannot be rejected just because it addresses the same risk as was considered by the RPD. The Minister, however, refers to *Raza v Canada*

(*Citizenship and Immigration*), 2007 FCA 385 [*Raza*] and submits that the evidence can be rejected if it is not material and/or does not contradict the factual credibility findings of the RPD.

[17] Unfortunately, the Officer did not perform any of the analysis set out in *Raza*. The Court does not have the benefit of the Officer's reasons for rejecting the evidence other than the statements that the letters postdate the refugee decision and it is evidence of the same risk alleged before the RPD.

[18] The Officer's reasons for rejecting the new evidence are not transparent nor are they intelligible. It is not possible to understand why the Officer rejected the new evidence

[19] If the reasons, when read as a whole, "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, the *Dunsmuir* criteria are met": *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16.

[20] In this case, the reasons provided by the Officer, even when read as a whole and viewed in light of the underlying record, do not meet the *Dunsmuir* criteria.

[21] This judicial review application is granted and the matter is remitted for redetermination by a different Officer.

[22] On these facts, there is no question for certification.

JUDGMENT in IMM-5045-18

THIS COURT'S JUDGMENT is that:

1. The application is granted.
2. The Officer's decision of August 24, 2018 is set aside and the matter is referred back for redetermination by a different Officer.
3. There is no serious question of general importance for certification

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5045-18

STYLE OF CAUSE: FAISAL TARIQ v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: WINNIPEG, MANITOBA

DATE OF HEARING: MAY 13, 2019

JUDGMENT AND REASONS: ELLIOTT J.

DATED: MAY 13, 2019

APPEARANCES:

David Matas FOR THE APPLICANT

Caroline Pellerin FOR THE RESPONDENT

SOLICITORS OF RECORD:

David Matas FOR THE APPLICANT
Barrister and Solicitor
Winnipeg, Manitoba

Attorney General of Canada FOR THE RESPONDENT
Winnipeg, Manitoba