

Federal Court



Cour fédérale

Date: 20220622

Docket: IMM-6379-20

Citation: 2022 FC 940

Ottawa, Ontario, June 22, 2022

PRESENT: Madam Justice Pallotta

BETWEEN:

**KHALID ISAAC
RUKHSANA NAZLI
MADAH KHALID
NABEEL KHALID
KEVIN KHALID**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, Mr. Khalid Isaac, his spouse, and their three children seek judicial review of the decision of a migration officer (Officer) that refused their application for permanent residence as members of the Convention refugee abroad class or the country of asylum class,

under sections 139(1)(e), 145, and 147 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*].

[2] The applicants are citizens of Pakistan who have been living in Malaysia since December 2013. They are Christian, and fear they would be targeted as members of the Christian minority and forced to convert to Islam if they return to Pakistan. In 2018, the Roman Catholic Episcopal Corporation for the Diocese of Toronto (Diocese) applied to sponsor the applicants as refugees to Canada. The Officer interviewed the applicants in Kuala Lumpur, Malaysia in August 2019 and refused their application on October 26, 2020.

[3] The applicants allege the decision is unreasonable because the Officer focused on one event, rejecting their claim based on unreasonable negative credibility findings about whether Mr. Isaac was abducted in an attempt to force him to convert to Islam. In addition, since the credibility findings were not dispositive, the Officer failed to consider or address all aspects of the applicants' claim, and rejected it without adequate analysis of their identity as Christians and the associated risks in Pakistan.

[4] The respondent submits the Officer reasonably assessed the evidence to conclude that the applicants are not members of the prescribed classes under the *IRPR* because they had not established a well-founded fear of persecution or that they were personally affected by civil war, armed conflict or a massive violation of human rights. The respondent submits the Officer's reasons contain no shortcomings or flaws sufficient to warrant this Court's intervention on judicial review.

[5] For the reasons below, I find the applicants have established that the Officer's decision is unreasonable. This application is allowed.

II. **The Application for Permanent Residence and the Officer's Decision**

[6] The applicants' application for permanent residence describes events that occurred in Pakistan in 2011 and 2012.

[7] The applicants state that Mr. Isaac's brother, a Presbyterian pastor, was arrested in 2011 and charged with blasphemy under section 295 of the Pakistan Penal Code. He was imprisoned for several months. Mr. Isaac and his nephew were also arrested and held for several days. The applicants state that the arrests were the result of a police raid in their home town, triggered by Muslim religious-political leaders and extremists who devised a plan to target the Christian minority by fabricating blasphemous materials and depositing them at Christian homes, schools, and churches. Mr. Isaac's brother fled to the United States after he was released. The applicants did not have the means to leave Pakistan at that time and Mr. Isaac returned to his job as a taxi driver.

[8] The applicants state that Mr. Isaac was arrested again in January 2012, on charges that he stole a taxi. They allege that Mr. Isaac did not steal the taxi, but rather was forced to abandon it when three passengers abducted him and held him at gunpoint in an attempt to force him to convert to Islam. Mr. Isaac states he was able to escape when two of the passengers left to find a mosque leader. He alleges that his employer, the owner of the taxi, lodged a complaint against him for stealing the taxi because the employer was under pressure from religious groups.

[9] Mr. Isaac states he was detained twice while awaiting trial in connection with this charge. Initially, he was detained for a few days and released after paying a bribe. The police detained him again in April 2012, allegedly in response to pressure from religious groups, and he remained in jail for 3-4 months. Mr. Isaac's case was ongoing when the applicants fled to Malaysia in December 2013.

[10] While in Malaysia, the applicants sought asylum through the UNHCR in 2014. Their application was not successful. As noted above, in 2018 the Diocese applied to sponsor the applicants as refugees to Canada.

[11] The Officer's decision and reasons for refusing the application are set out in a letter and in the Officer's notes as recorded in the Global Case Management System (GCMS).

[12] The refusal letter states the Officer was not satisfied that the applicants had established they are entitled to a permanent resident visa under paragraph 139(1)(e) of the *IRPR*, as members of the Convention refugee abroad class (section 145) or the country of asylum class (section 147). The letter explains:

[...] At interview, I raised a number of concerns with you, including the credibility of your alleged abduction and escape, your inability to identify any of the various factions who were allegedly the source of your persecution, and the discrepancies in [Mr. Isaac's and his spouse's] testimony on important events. Your responses did not overcome my concerns, and I am not satisfied the alleged events occurred. Therefore, you do not meet the requirements of this paragraph.

[13] According to the GCMS notes, the Officer was not satisfied that the alleged persecution and abduction that led the applicants to depart Pakistan had occurred. The GCMS notes state:

- a) the story was not credible and the reason for the abduction did not make sense;
- b) Mr. Isaac was unable to identify the groups who were pressuring his employer and the police (to arrest him), or provide sufficient evidence that unidentified groups were pressuring the police;
- c) Mr. Isaac was unable to identify any of the passengers who abducted him, even though they had booked the taxi in advance;
- d) since Mr. Isaac abandoned the taxi, his employer's concerns did not appear to be unreasonable; and
- e) Mr. Isaac and his spouse provided inconsistent narratives about what happened on the day of, and the day after, the alleged abduction: Mr. Isaac said that he returned home at 11:00 or 11:30 pm on the day of the abduction, his wife and children were home, and he told them what happened; Mr. Isaac's spouse said she expected him home around 10:00 pm on that day, she was worried because she had not heard from him and tried to call him many times, and he arrived home the next day and told her what had happened the day before.

[14] The GCMS notes indicate the Officer informed the applicants of concerns that the story of the abduction was "not believable on its face", that they were vague about who was causing problems for them, and Mr. Isaac and his spouse provided inconsistent accounts of how he told her about the abduction. The applicants' responses did not alleviate the Officer's concerns.

III. Issues and Standard of Review

[15] The applicants allege the Officer's decision is unreasonable because it: (i) lacks any evidence that the Officer considered or had knowledge of country conditions in Pakistan; (ii) provides no reasoning or analysis supporting the conclusion that they are not members of the country of asylum class; (iii) is based solely on credibility findings with respect to one incident, and fails to consider the totality of the applicants' claim of forward-looking risk; and (iv) unreasonably relies on implausibility findings that are speculative and have no basis in the evidence.

[16] The parties agree that the applicable standard of review is reasonableness, following the guidance in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]. In applying the reasonableness standard, the Court must ask whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility: *Vavilov* at para 99. A reasonable decision is based on an internally coherent and rational chain of analysis, and it is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85. The party challenging the decision bears the onus to demonstrate it is unreasonable: *Vavilov* at para 100.

IV. Analysis

A. *Parties' Submissions*

[17] As noted above, the applicants submit the Officer failed to properly consider and address all of the aspects of their claim. Instead, the Officer rejected their claim based on negative

credibility findings about a single incident that were not dispositive of their claim of forward-looking risk, and the credibility findings were unreasonable in themselves.

[18] First, the applicants submit the Officer assessed their application in a factual vacuum rather than in the context of country condition evidence documenting the treatment of the Christian minority in Pakistan. The applicants contend the Officer had a duty to be knowledgeable about and consider the country condition evidence—officers assessing refugee claims are presumed to have access to such evidence: *Saifee v Canada (Minister of Citizenship and Immigration)*, 2010 FC 589 at paras 28-33. They point to a selection of country condition documents, published by the Immigration and Refugee Board of Canada as part of the National Documentation Package (NDP) for Pakistan, which they say is representative of the public evidence deemed to be before the Officer. The Officer's decision and reasons do not indicate the Officer engaged with or had knowledge of such evidence. Relying on *Anku v Canada (Minister of Citizenship and Immigration)*, 2021 FC 125 at paragraph 20, the applicants argue that a failure to make factual findings about conditions in the country of reference can render a decision unreasonable.

[19] Second, the applicants state the Officer simply asserted that they are not members of the country of asylum class (section 147 of the *IRPR*), without reasons or analysis. The Officer did not dispute their identity as Christians and failed to assess whether they would be affected by human rights violations against the Christian minority in Pakistan.

[20] Third, the applicants submit the Officer was required to determine whether there was independent evidence, untainted by the negative credibility findings, to support a forward-looking risk: *Pathmanathan v Canada (Minister of Citizenship and Immigration)*, 2012 FC 519 at para 56. The Officer did not dispute the applicants' Christian identity, the blasphemy charges against Mr. Isacc's brother, or the impact of those charges on the applicants. Even accepting the Officer's finding that the abduction did not occur, the Officer erred by focusing on the abduction and failing to consider the totality of their claim of forward-looking risk based on their undisputed profile as Christians.

[21] Fourth, the applicants contend the Officer's negative credibility findings were unreasonable. The Officer relied on a single inconsistency between Mr. Issac's and his spouse's account of when he arrived home after the abduction, which was insufficient to reject the application without considering the remainder of the evidence. Other findings about the abduction amounted to unsupported implausibility findings or findings based on circular reasoning. The applicants contend the Officer: (i) baldly asserted that "the reason for the abduction does not make sense" without evidence that the reason for Mr. Isaac's abduction (forced conversion) is implausible in Pakistan; (ii) found it implausible that Mr. Isaac escaped while a passenger was guarding him, when there is nothing inherently implausible about escaping; and (iii) found that "the employer's concerns do not appear unreasonable", which amounts to circular reasoning because it would have been unreasonable for the employer to accuse Mr. Isaac of stealing the taxi if he had been abducted and forced to abandon it. To be reasonable, an implausibility finding requires either (a) that the account be clearly implausible on its face, or (b) that the account be implausible in light of other evidence in the record, including

country condition evidence. Adverse credibility determinations based on implausibility should not be made simply on the basis that it is unlikely that things happened as the claimant contends: *Zaiter v Canada (Minister of Citizenship and Immigration)*, 2019 FC 908 at paras 8-9 [*Zaiter*].

[22] The respondent submits the Officer was not required to consider country condition evidence to assess the objective basis for the applicants' claim. As in *Abreham v Canada (Minister of Citizenship and Immigration)*, 2020 FC 908 [*Abreham*], the Officer's findings in this case turned on inconsistencies in the applicants' testimony, not whether the alleged events were plausible in the context of Christians living in Pakistan.

[23] The respondent states the Officer turned their mind to eligibility under both prescribed classes under the *IRPR*. The refusal letter sets out the requirements of the Convention refugee abroad class and the country of asylum class, and states the Officer was not satisfied that the applicants are members of either class.

[24] The respondent submits the Officer considered the totality of the applicants' claim. The GCMS notes include the applicants' explanations of the alleged abduction, alleged harassment, and treatment at the hands of those who had taken Mr. Isaac to court. During the interview with the Officer, Mr. Isaac stated they had no other problems in Pakistan and his spouse stated the abduction was the only reason they left Pakistan.

[25] According to the respondent, the Officer conducted a thorough interview, and the credibility assessment was reasonable. The Officer had concerns with: (i) Mr. Isaac's credibility

about his abduction and escape, (ii) Mr. Isaac's inability to identify the factions pressuring his employer and the police, and (iii) the discrepancies between Mr. Isaac's and his spouse's testimony. The Officer explained these concerns and gave the applicants an opportunity to respond, but was not satisfied with the responses. The respondent states the Officer reasonably focused on the abduction as it was the main reason the applicants left Pakistan and a central aspect of their claim.

[26] In reply, the applicants submit the respondent's arguments do not engage with the substance of the reviewable errors they have identified. *Abreham* is distinguishable because in that case, the officer's credibility findings directly undermined the applicant's profile (which was the basis for his claim), whereas the Officer's credibility findings in this case were insufficient to dispose of the claim based on the applicants' identity as Christians and their forward-looking risk upon return to Pakistan. With respect to the country of asylum class, the refusal letter and GCMS notes provide no insight into the reasoning process that led the Officer to find the applicants are not members of the country of asylum class, and neither the Officer nor the respondent points to a connection between the negative credibility findings and the requirements of that class. The Officer's recitation of legislative provisions together with a statement that the applicants are not members of the prescribed classes does not meet the requirements for justification, transparency and intelligibility set out in *Vavilov*.

B. *Analysis*

[27] The applicants have established that the Officer's decision is unreasonable. The Officer's negative credibility findings did not relieve them from the obligation to assess the applicants'

claim in the context of the entirety of the evidence. In addition, the Officer's conclusion that the abduction did not occur was based in part on unreasonable findings.

[28] I agree with the applicants that the Officer did not properly consider and address the totality of their claim, and instead focused on a single event that was not determinative. In addition to the abduction, the applicants described other events and problems alleged to be indicative of their risk as Christians in Pakistan, including social prejudice and religious discrimination, harassment and threats for being associated with Mr. Isaac's brother who was accused of blasphemy, difficulties getting a job and being ostracized by coworkers, and the children's fear of going to school.

[29] The respondent suggests it was reasonable for the Officer to focus on the abduction because during the interview, Mr. Isaac stated that the applicants had no other problems in Pakistan and his spouse stated the abduction was the only reason they left. Even if the abduction precipitated the applicants' departure, in my view it was unreasonable to seize on these statements when the applicants had described, during the interview and in their written application forms, perceived risks and fears apart from those flowing from the abduction. The applicants also stated in their application forms that religious groups in Pakistan are very conservative and have a strong influence, that Pakistan's blasphemy law is "a naked sword on Christians" and "anything against their Holy book Quran or prophet Muhammad will be punished [by a] death sentence or life imprisonment", and that they will be at risk if returned to Pakistan.

[30] The Officer did not appear to dispute the applicants' identity as Christians, and did not make negative credibility findings about other aspects of the applicants' narrative including the other events and problems alleged to be indicative of their risk as Christians in Pakistan.

Accordingly, it was necessary to consider the forward-looking risks the applicants might face as Christians returning to Pakistan: *Manickan v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1525 at para 3, citing *Attakora v Canada (Minister of Employment and Immigration)* (1989), 99 N.R. 168. (FCA); see also *Okubu v Canada (Minister of Citizenship and Immigration)*, 2019 FC 980 at paras 16-17.

[31] The respondent correctly points out that an officer is not necessarily required to refer to country condition evidence to assess the objective basis for a claim: *Abreham* at para 17. If an applicant's story is not credibly established, and the applicant fails to establish a personal connection to adverse conditions in a country, country condition documents alone will not provide an adequate basis for a positive determination: *Gebrewldi v Canada (Minister of Citizenship and Immigration)*, 2017 FC 621 at para 27; see also *Walu v Canada (Minister of Citizenship and Immigration)*, 2021 FC 824 at para 78. However, in my view the applicants' case is distinguishable from the circumstances of these cases because the Officer's negative credibility findings about the abduction were insufficient to address the totality of applicants' claim. The applicants' claim was based more broadly on their identities as Christians, and the Officer erred by failing to consider the totality of their claim of forward-looking risk based on their profile as Christians.

[32] With respect to the negative credibility findings, I agree with the respondent that the Officer's credibility findings were multi-faceted, however, I disagree that the findings turned on inconsistencies in the applicants' testimony rather than whether the alleged events were plausible in the context of Christians living in Pakistan. The GCMS notes do not indicate that the negative credibility findings turned on the inconsistent testimony. Rather, the GCMS notes indicate that credibility turned on multiple findings, including three findings that were unreasonable, in my view.

[33] The first unreasonable finding was an unreasonable implausibility finding. Implausibility findings can be erroneous when grounded in social or cultural norms that may have no application to the case at hand: *Zaiter* at para 8. In this case, the applicants had stated in their application forms that forced conversions are common in Pakistan, and during the interview Mr. Isaac told the Officer that his employer (the taxi owner) stated it would be easier on him if Mr. Isaac converted to Islam because a lot of people were pressuring him about Mr. Isaac's work. On this application for judicial review, the applicants point to country condition documentation from the NDP for Pakistan that potentially supports their position about forced conversions. The Officer's reasons do not indicate that they considered whether the reason for the abduction did not make sense in this context.

[34] The applicants allege the Officer also made an unreasonable implausibility finding about Mr. Isaac's escape. I agree. From the GCMS notes, it appears that the implausibility of the escape was one of the reasons for disbelieving that the abduction had occurred, but the notes do not explain why the details of the escape were "outside the realm of what could reasonably be

expected”: *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7. The duty to justify findings is particularly important when a claimant’s credibility is affected by implausibility findings, which are inherently subjective assessments, and largely dependant on the decision maker’s perceptions of what constitutes rational behaviour: *Leung v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 774 at paras 15. In my view, this implausibility finding was not adequately justified by the Officer’s reasons.

[35] The applicants also allege the finding that “the employer’s concerns do not appear unreasonable” is circular. That may be so, but in my view it not clear what the Officer meant by this statement, nor is it clear how the reasonableness of the employer’s concerns supports the Officer’s determination that the abduction did not occur. In my opinion, this finding is unreasonable because it is not intelligible.

[36] A decision maker is certainly entitled to make findings based on implausibility, common sense, and rationality, and is entitled to reject evidence that is inconsistent with the probabilities affecting the case as a whole: *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 26; see also *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732, 160 NR 315 (FCA). However, in my view the errors noted above, which relate to three of the findings that underpin the Officer’s negative credibility determination about the abduction, cumulatively amount to a sufficiently serious shortcoming so as to render that determination unreasonable.

V. **Conclusion**

[37] The applicants have established that the Officer's decision is unreasonable. Accordingly, this application for judicial review is granted, the decision is set aside, and the matter shall be returned for redetermination.

[38] Neither party proposed a question for certification. In my view, there is no question to certify.

JUDGMENT in IMM-6379-20

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is allowed.
2. The Officer's decision is set aside and the matter shall be redetermined by a different officer.
3. There is no question to certify.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6379-20

STYLE OF CAUSE: KHALID ISAAC, RUKHSANA NAZLI, MADAH
KHALID, NABEEL KHALID, KEVIN KHALID v THE
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APPEARANCES:

Samuel Plett FOR THE APPLICANTS

Samar Mussallam FOR THE RESPONDENT

SOLICITORS OF RECORD:

Desloges Law Group FOR THE APPLICANTS
Professional Corporation
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Ottawa, Ontario