Date: 20071003

Docket: IMM-3832-07

Citation: 2007 FC 1017

Toronto, Ontario, October 3, 2007

PRESENT: The Honourable Mr. Justice Mandamin

BETWEEN:

SOHAIL SYED RIZVI, ANNE SOHAIL RIZVI,
MIKAELEH SOHAIL RIZVI

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

UPON motion dated the 26th day of September, 2007 on behalf of the applicants for:

1. a stay of the removal order against the applicants, until such time as the application for leave and judicial review is disposed with;
2. such other relief the Court may find just in the circumstances;

AND UPON considering the material before the Court;

AND UPON hearing from counsel for the applicants and for the respondent;

[1] The applicants seek a stay of a removal order to Pakistan which is scheduled for October 16, 2007 until their application for leave and, if granted, judicial review of the underlying Pre-removal Risk Assessment decision is finally disposed of by this court.

[2] The applicants are citizens of Pakistan and sought refugee protection on the grounds that they are Christians and would face persecution if they had to return to Pakistan. Sohail Syed Rizvi (the applicant father) is 67, Anne Sohail Rizvi, (the applicant mother) is 66 and Mikaeleh Sohail Rizvi (the applicant daughter) is 35. The applicant family lived for a number of years in Dubai where the applicant father worked until the Dubai government required all foreign non Westerners over 60 to leave unless they met certain requirements for residency. The applicant family then came to Canada. They applied for refugee status which was denied.

[3] The Refugee Protection Division (RPD) determined they were of mixed religion, the applicant father and daughter being Muslim and the mother Roman Catholic. The RPD member acknowledged that the applicant father and daughter may have been baptized Christian but decided they were Muslim because they had not practiced the Christian faith and their passports stated their religion was Islam. The applicants sought judicial review of the RPD member's decision which was denied.

[4] The applicants applied for a Pre-removal Risk Assessment and submitted new evidence to the PRRA officer. That evidence consisted of a letter from the pastor of a Toronto Christian church attesting to their attendance at Christian religious services and copies of their amended passports which now identify their religion as Christian.

[5] The PRRA officer assigned little weight to the new evidence submitted by the applicant father and daughter because it was evidence obtained after the RPD decision. He stated:

> I have considered that the applicants changed their passports and started regularly attending church in Toronto only after the RPD decision, which specifically addressed these two issues. In consideration of the timing of these events and their relation to the RPD's findings, I assign the letter and passports little weight in establishing that the applicants face risk in Pakistan due to their Christian faith.

[6] The PRRA officer went on to consider the 2006 U.S. Department of State International Religious Freedom Report on Pakistan noting that four million Christians are reported to live in Pakistan and 120,000 Catholics live in Karachi.

[7] The PRRA officer also stated that:

> I have also considered the principle applicant's stated risk that he will be killed because of the change of religion on his passport and note that according to the International Religious Freedom Report there is no law against apostasy in Pakistan.

[8] Despite assigning little weight to the new evidence, the PRRA officer seems to have accepted that the applicant father and daughter are Christian notwithstanding the RPD determination

the applicant father and daughter were Muslim. Moreover, he accepted that the applicant father and daughter may be considered apostates because of the change of religious designation in their passports.

[9] The PRRA officer's role in conducting the pre-removal risk assessment is not to reconsider the RPD's decision but to evaluate the new evidence and determine whether it demonstrates a change in the risk to the applicants. Mactavish J. stated in *Hausleitner v. Canada (Minister of Citizenship and Immigration)* 2005 FC 641:

> Rather, it seems to me that the question for the PRRA officer at this stage in the process should be whether the new evidence supplied by the applicants demonstrates a significant enough change to the conditions within the applicants' home country such that the state protection analysis conducted by the Immigration and Refugee Board is no longer valid.
>
> This interpretation of the scheme of the Act is confirmed by the wording of sub-section 113(a) of IRPA which makes it clear that, in such cases, the risk assessment to be carried out at the PRRA stage is not to be a reconsideration of the Board's decision, but instead is limited to an evaluation of new evidence that either arose after the applicant's refugee hearing, or was not previously reasonably available to the applicant: *H.K. v. Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 1945, 2004 FC 1612, *Bolubo v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 459, 2005 FC 375.

[10] The applicants seek a stay of the removal order so they may challenge the decision of the PRRA officer as in error in finding that there is adequate state protection available to the applicants in Pakistan.

[11] The test for a stay of a removal order is set out in *Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302 (F.C.A.). The applicants must show that there is a serious issue to be determined, that they would suffer irreparable harm if the stay is not granted and that the balance of convenience favours the applicants.

Serious Issue

[12] The applicants allege that the PRRA officer's assessment was superficial and failed to properly assess the inadequacy of state protection for the applicants should they be removed to Pakistan.

[13] The test of a serious issue is that set out in *RJR MacDonald*, [1994] 1 S.C.R. 311 where it was held that the threshold for a serious issue was low, the issue being that the application is not one that is frivolous or vexatious.

[14] The PRRA officer stated he gave little weight to the new evidence submitted by the applicant father and daughter, notably the change in the religious designation from Islam to Christian. Yet he then differed from the RDP determination that the family was of mixed Muslim and Roman Catholic faith concluding instead that the applicant family is of Christian faith. In doing so, he appears to have accepted the new evidence as significant.

[15] Moreover, the applicant father stated that he was at risk of being killed because of the change of his religion on his passport from Islam to Christian. The PRRA officer gave this issue

little significance merely noting that, according to the International Religious Freedom Report, there is no law against apostasy in Pakistan. Here, he appears to treat the new evidence as of little weight and essentially adheres to the RDP's decision.

[16] The PRRA officer's approach to the evidence makes little sense. I am satisfied that a serious issue arises about the PRRA officer's treatment of the new evidence before him.

<u>Irreparable Harm</u>

[17] The PRRA officer relied on the 2006 International Religious Freedom Report to find that there was no law against apostasy in Pakistan. He concluded that, while he acknowledged problems such as restrictions on freedom of religion and violence against women, there was insufficient evidence before him that the applicants would be personally at risk of these or other human rights problems in Pakistan.

[18] The applicants included the U.S. Department of State International Religious Freedom Report 2007 at p. 211 of their Motion Record. This is presumably the update of the report the PRRA officer referred to. At the very least, it is from the same source as that relied upon by the PRRA officer. On p. 213 of the 2007 report, after a discussion on interfaith marriages in Pakistan, there is the following stark statement:

> In addition, a convert from Islam becomes an apostate and is eligible for the death penalty.

The change in religious designation from Islam to Christian in the passports, which are official Pakistani government documents, may be seen as evidence of a conversion or re-conversion by the

applicant father and daughter. As such, they would be seen as apostates in Muslim eyes. It is to be remembered that ninety-six percent of the population of Pakistan is Muslim.

[19] The PRRA officer did not properly turn his mind to the risk the applicant father and daughter would be subject to as a result of being seen as converting or re-converting from the Muslim to the Christian faith. The risk to the applicant father and daughter would be materially different if they are seen as apostates than it would be if they are seen as always having been Christian.

[20] The assessment of risk done by the PRRA officer was inadequate. As a result I am satisfied that a serious question arises about the adequacy of the PRRA assessment of the risk to the applicants in Pakistan.

[21] To require the applicants to return to Pakistan based on a flawed PRRA assessment would place them at an unacceptable level of risk. I am satisfied that the applicants could face a real prospect of irreparable harm if they are removed to Pakistan.

Balance of Convenience

[22] The applicants have been contributing to Canadian society. They face the possibility of serious personal harm should they be removed to Pakistan.

[23] While observance of Canada's immigration procedures is an important consideration, the proper application of safeguards in the immigration refugee process is a vital element of the Canadian immigration system.

[24] I find the balance of convenience favours the applicants.

Conclusion

[25] The application for a stay of the removal order against the applicants is granted until such time as the application for leave and judicial review of the underlying matter is finally disposed of.

ORDER

THIS COURT ORDERS that a stay of the removal order against the applicants for October 16, 2007 is granted until such time as the underlying application for leave and judicial review is finally disposed with.

"Leonard S. Mandamin"
Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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APPEARANCES:

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