

**Date: 20080211**

**Docket: IMM-2994-07**

**Citation: 2008 FC 176**

**Ottawa, Ontario, February 11, 2008**

**PRESENT: The Honourable Mr. Justice Harrington**

**BETWEEN:**

**MUZZAFAR IQBAL SHEIKH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] Although many issues were raised, this judicial review turns on the treatment given by the Immigration and Refugee Board to three documents.

[2] Mr. Sheikh seeks status as a refugee on the grounds that he has well-founded fear of persecution in Pakistan because of his political opinions and religious beliefs. He claims that he has been a member of the PPP which brought him threats from local Mullahs and attacks from members

of the Muslim League. He left Pakistan after learning that an arrest warrant had been issued against him.

[3] The IRB Panel said there were many credibility issues and serious discrepancies in various documents. It focused its attention, however, on a First Information Report filed against Mr. Sheikh one month before his departure from Pakistan, a warrant for his arrest and a subsequent letter of explanation from the police station involved.

[4] As the other credibility issues and concerns with respect to documents were not identified, and no reasons were given, they cannot serve as the basis for the holding that Mr. Sheikh was not credible.

[5] The First Information Report (FIR) is the laying of a complaint at a police station. It bears number 241/03. The arrest warrant, apparently issued by a magistrate, bears the same number FIR 241/03. The IRB asked the Canadian High Commission in Islamabad to investigate. The response provided was that:

According to telephonic information obtained from Mr. Asghar Ahmad, assistant moharar (assistant report registrar) the FIR241/2003 does not/not exist as totalled registered FIRs in the year 2003 were 161 only.

[6] The Panel quite properly challenged the authenticity of the FIR and warrant, and gave Mr. Sheikh an opportunity to respond. He provided a letter on the letterhead of the police station in question which certifies that in 2003 an FIR 41, not 241, was issued against him. The addition of the

figure “2” was a clerical error which had since been corrected, as had the warrant for arrest. The letter went on to say:

Telephonic enquiry made by the office of Canadian High Commission Islamabad was done giving reference of FIR number only. Accordingly the answer from this office was negative. Later when the name of the accused was matched with the serious number of FIR’s it transpired that the above clerical mistake had occurred.

The letter appears to be signed by the same Asghar Ahmad.

[7] The Panel did not accept this letter of explanation. It was of the opinion that had the identification number of the FIR and warrant for arrest been erroneous, the claimant’s Pakistani lawyer would have come to that realization at the outset. This lack of credibility so permeated the matter that the Panel did not believe a word Mr. Sheikh said.

[8] This finding was patently unreasonable. If the lawyer inquired by name, how was he to know that the wrong number had been put on the form? The statement in the letter that the High Commission only inquired by FIR number, and not by name, has not been challenged. Indeed, such a query is more consistent with Canada’s privacy concerns.

[9] Although not mentioned in the reasons for the decision, the transcript shows the Panel expected that a corrected FIR and corrected Warrant for Arrest would be produced in addition to the letter. Although the overall burden is upon an applicant to make out his case, one cannot anticipate how demanding a Panel might be. The letter appears to be perfectly satisfactory on its face, and a

document apparently emanating from a foreign authority is *prima facie* valid (*Ramalingam v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 10, 77 A.C.W.S. (3d) 156, *Osipenkov v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 57, [2003] F.C.J. No. 59).

[10] The Panel could easily have caused another inquiry to be made of the police station in question. Natural justice requires that one be informed of specific concerns and be given an opportunity to meet them (*Adegbayi v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1348, [2004] F.C.J. No. 1615; *Khwaja v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 522, [2006] F.C.J. No. 703; *Guo v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 626, [2006] F.C.J. No. 795; and *Skripnikov v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 528, 61 Imm. L.R. (3d) 62). Either there are a First Information Report and a Warrant for Arrest or there are not. If there are, then the decision to dismiss Mr. Sheikh's claim without considering same is patently unreasonable.

[11] One should not infer that a certain situation or a certain document exists or does not exist when the true state of affairs is readily ascertainable (*Myle v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1073, [2007] F.C.J. No. 1389).

**ORDER**

**THIS COURT ORDERS** that for the reasons given above, this application for judicial review is granted. The matter is referred back to a different member of the Refugee Protection Division of the Immigration and Refugee Protection Board for redetermination. There is no serious question of general importance to certify.

“Sean Harrington”

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Judge

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

**DOCKET:** IMM-2994-07

**STYLE OF CAUSE:** MUZZAFAR IZBAL SHEIKH v.  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Montréal, QC

**DATE OF HEARING:** February 7, 2008

**REASONS FOR ORDER  
AND ORDER:** HARRINGTON J.

**DATED:** February 11, 2008

**APPEARANCES:**

Me Dan M. Bohbot FOR THE APPLICANT

Me Édith Savard FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Dan M. Bohbot FOR THE APPLICANT  
Barrister & Solicitor  
Montréal, Quebec

John H. Sims, Q.C. FOR THE RESPONDENT  
Deputy Attorney General of Canada