Date: 20080526

Docket: IMM-4682-07

Citation: 2008 FC 656

Ottawa, Ontario, May 26, 2008

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

AHMED ABDUL MUHAMMAD LAKHANI
KARIMA AHMED LAKHANI
AMIN AHMED LAKHANI
KAWISH AHMED LAKHANI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The applicants contest the legality of a decision rendered by Patricia Rousseau, a Pre-Removal Risk Assessment (PRRA) officer, on October 30, 2007, which rejected the applicants' PRRA application on the grounds that they would not be subject to risk of persecution, torture, risk to life or risk of cruel and unusual treatment or punishment if returned to their country of nationality or habitual residence.

[2] The applicants, Ahmed Abdul Muhammad Lakhani, Karima Ahmed Lakhani, Amin Ahmed Lakhani and Kawish Ahmed Lakhani, are citizens of Pakistan. They are Ismaili Shia, a minority within a minority group in Pakistan.

[3] In August 2001, Mr. and Mrs. Lakhani, together with their two sons, Kawish and Amin, landed in Canada under a business immigration category – entrepreneur category.

[4] They have been in Canada since that time and have not returned to Pakistan, nor have they travelled elsewhere.

[5] Mr. Lakhani is 43 years old, Mrs. Lakhani is 36 and their minor sons are 15 and 12, respectively.

[6] Not having met the conditions of landing of entrepreneurs within the two year period prescribed by the former Immigration Regulations (the current Regulations allow three years to meet the prescribed conditions), departure orders were made against them by the Immigration Division, on February 3, 2004.

[7] The applicants appealed to the Immigration Appeal Division (IAD), pursuant to subsection 63(3) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 as amended (the Act). Their appeal was heard on June 20, 2005.

[8] The IAD considered the applicant's investment of $100,000 into Bensus International, a company in which Mr. Lakhani was first an employee shortly after his arrival in Canada. The IAD decided that he did not make "a significant contribution to the Canadian economy". Further, the IAD was of the opinion that neither Mrs. Lakhani's employment as an assistant educator, nor the children's interests warranted granting special relief to the applicants. Their appeal was dismissed on September 22, 2005.

[9] The applicants sought to judicially review the IAD's decision; however, their application was dismissed on January 13, 2006.

[10] In April 2006, the applicants filed an application for permanent residence from within Canada on humanitarian and compassionate (H&C) grounds.

[11] At that time, the applicants also filed their initial PRRA application which was refused on April 26, 2006.

[12] Almost exactly one year later, on April 25, 2007, Mr. and Mrs. Lakhani attended an interview for their application on H&C grounds. This application was refused a few days later, on April 30, 2007.

[13] An application for leave on the H&C refusal was filed, on September 21, 2007 (Court file: IMM-3872-07).

[14] A few days after filing the application for leave of the H&C refusal, the applicants met with a Canadian Border Services Agency (CBSA) officer, Martin Desmarrais, to ask for a second PRRA application to be submitted for decision prior to their departure. The CBSA officer gave the applicants the requisite PRRA forms and also gave them a departure date of November 18, 2007.

[15] The applicants filed their second PRRA application in October 2007.

[16] On October 31, 2007, the applicants served and filed a motion to stay their removal to Pakistan within the file IMM-3872-07 (the application for review of the H&C refusal). Leave was denied by this Court on January 10, 2008.

[17] On November 2, 2007, the refusal of the applicants' second PRRA application was communicated to the principal male applicant in person, together with reasons for decision, dated October 30, 2007 (the impugned decision).

[18] At the same time, the PRRA officer accorded the applicants a postponement of departure until January 25, 2008. Accordingly, the applicant postponed the hearing of the motion to stay removal in the file IMM-3872-07.

[19] On November 12, 2007, the applicants filed the present application for leave of the impugned decision.

[20] On January 22, 2008, the Court stayed the applicants' removal until a final decision is rendered in the application for judicial review of the impugned decision (2008 FC 65).

[21] Before considering the merits of the arguments raised in this application, it is worthwhile to highlight, in brief, the arguments made by the applicants in support of their second PRRA application.

[22] The applicants submitted to the PRRA officer that, because of their religious minority status, they would face persecution and risk to life and safety. They presented evidence to prove their Ismaili faith, including letters of identification from His Highness Prince Aga Khan Imami Ismaili Council; a certified copy of certificate of honour for Mrs. Lakhani from his Highness Prince Aga Khan Imami Ismailia Association; a certified copy of a certificate of honour for a teaching program for Mrs. Lakhani; and, a certified copy of an Aga Khan Council certificate from the Institute of Computer Studies for Mrs. Lakhani.

[23] The applicants indicated that even before coming to Canada, they had faced the following forms of discrimination:

- They were called "Kaafir" by the Sunnis, a derogatory word that means "infidels" as they do not follow the same customs as Sunnis or other sects of Islam; for instance, both men and women pray together in the same mosque;
- "They (Sunni muslims) always treated me like I was inferior to them because I believe in the Agakhan as our Ismaili spiritual leader, they would say that Ismailis

> are committing … the greatest Sin, and they say Koran is for true Muslims not for us. The situation… was such that if I/we argued to defend our religion they could start a fight. So I/we had to keep quiet. I do not want for my children to be treated like that.";
>
> - The principal male applicant was harassed for money at his business and threatened that his sons would be kidnapped; and,
> - The female applicant had to run from someone following her on a street of a neighbourhood in Karachi where many Ismailis live as it is close to their mosque, when she was eight months pregnant with her first son, which forced her to never go out alone on a street again including been called derogatory words by the Sunni majority.

[24] The applicants stated that if they were to be returned to Pakistan today, they would face more than derogatory name calling or extortion of money at their business. Indeed, according to the country conditions documentation, the courts could not protect Pakistan's minorities. The applicants submitted that this lack of protection is evidenced by the fact that in April 2007, four armed men stormed into the house of Mr. Lakhani's mother and forcibly confined her and members of her family. The armed men threatened the family and stole their valuable possessions.

[25] Having examined the arguments raised by the applicants in support of their second PRRA application, the PRRA officer rendered the impugned decision.

[26] In doing so, she first reviews the immigration history of the applicants. She then identifies the risks the applicants face stating:

> La demanderesse craint, en tant que jeune femme, d'être victime de viol.
>
> Les demandeurs craignent d'être soumis à des risques de persécution et à des menaces pour leur vie en raison de leur appartenance à une minorité religieuse (Ismaili Shia), notamment en étant à nouveau victimes de vols et de discrimination sociétale.

[27] The PRRA officer notes that the applicants had made a previous PRRA application in 2006; however, she finds:

> Les demandeurs expliquent qu'ils ont été mal conseillés par leur premier représentant. Ils n'auraient donc pas présenté d'allégations de risque. J'accepte ces explications. Tous les documents présentés par les demandeurs seront donc considérés comme éléments de preuve au titre de l'alinéa 113a) de la [*Loi sur l'immigration et la protection des réfugiés*].

[28] Under the section "Considérations communes relatives à tous les motifs de protection", the PRRA officer concludes that the applicants failed to demonstrate that the State was either unwilling or unable to provide protection. In particular, with respect to the issue of the female applicant's risk of rape, the PRRA Officer finds:

> La demanderesse allègue qu'étant une jeune femme elle risquerait le viol à son retour au Pakistan.
>
> Selon la preuve documentaire consultée, la situation des femmes, de façon générale, au Pakistan n'est pas facile. […] Les viols et les autres formes de violences sont également fréquents, spécialement pour celles qui sont détenus par les autorités policières (P-7 et P-8).
>
> Toutefois, le gouvernement prend des mesures pour améliorer la situation des femmes […]

> Il est vrai que la preuve documentaire générale indique que le Pakistan est aux prises avec de nombreux problèmes notamment avec le traitement des minorités et des femmes par les forces policières. Toutefois, l'arrêt Ward, indique que, sauf dans le cas de l'effondrement complet de l'appareil étatique, il y a lieu de présumer qu'un État est capable de protéger ses citoyens. […]
>
> Or, la demanderesse ne soumet aucune preuve démontrant qu'elle a demandé la protection des autorités de son pays ou qu'elle n'a pu le faire ou qu'elle ne pourrait recourir è cette protection dans le futur. Je conclus donc que cette protection est effectivement disponible. […]

[29] In terms of the risks the applicants face because of their religious minority status (as Ismaili Shia), the PRRA officer evaluates the evidence in this manner:

> […] Je suis satisfaite que les demandeurs appartiennent à cette communauté religieuse.
>
> […] Malgré une coexistence généralement pacifique, certains évènements violents sont survenus entre les Chiites et les Sunnites.
>
> […] La discrimination sociétale contre les minorités religieuses est répandue et des incidents violents contre ces minorités existent. Plusieurs morts sont liées à la violence sectaire. […] On mentionne également que le gouvernement a pris certaines mesures pour améliorer le traitement des minorités religieuses […].
>
> Les demandeurs mentionnent certains faits quant à la détérioration de la situation de leur communauté depuis leur départ. […] En avril dernier, quatre hommes armés ont fait irruption chez les membres de leur famille et les ont volés en les menaçant de mort s'ils parlaient à la police. […]
>
> Je constate que [l'affidavit de la mère du demandeur principal] ne fait pas le lien entre cet évènement et le fait que la famille appartient à une minorité religieuse. Il s'agit d'un évènement isolé. D'ailleurs, la représentante des demandeurs précise « no-one has ever broken into the client's or their family's home before ». Cet évènement ne démontre pas à ma satisfaction que les demandeurs sont ciblés comme membres d'une minorité religieuse.

> Les demandeurs ne soumettent aucun document quant aux menaces et à la fermeture de leur mosquée, le fait que trois autres familles *Ismaili* ont été ciblées et ont été victimes de vol ainsi que la police soit corrompue. Conséquemment, la preuve quant à l'établissement de ces faits ne me satisfait pas.
>
> D'autre part, le guide du HCR distingue la discrimination qui résulte en un simple traitement de faveur de celle qui équivaut à une persécution. La persécution, par effet cumulatif ou à elle seule, restreint gravement la jouissance par le demandeur de ses droits fondamentaux : sérieuses restrictions au droit d'exercer un métier ou au droit d'avoir accès aux établissements d'enseignement et/ou de santé normalement ouvert à tous ou des mesures économiques imposées qui détruiraient les moyens d'existence d'un groupe religieux donné. […]
>
> En ce sens, je ne suis pas satisfaite que la discrimination alléguée (la possibilité d'être volé ainsi que les paroles et les gestes inappropriés de d'autres membres de communautés religieuses à leur égard) atteigne le niveau de gravité qu'on attribut à la « persécution ».

[30] The PRRA officer rejects the applicants' PRRA application on the grounds that they had not shown : « de façon claire et convaincante que la demanderesse ne pouvait bénéficier de la protection de l'État pakistanais en cas de viol. Ils n'ont également pas démontré à ma satisfaction qu'ils feraient face à des risques de persécution ou des menaces à leur vie en tant que membre d'une minorité religieuse tel que décrits aux articles 96 et 97 de la [*Loi sur l'immigration et la protection des réfugiés*] s'ils devaient retourner au Pakistan. »

[31] The applicants now seek to judicially review the impugned decision. They submit that the PRRA officer committed unreasonable errors in evaluating whether they would be persecuted or subject to risk to life or safety based on their religion if returned to Pakistan. The applicants allege that the situation with respect to sectarian violence in Pakistan has deteriorated since 2004. In

particular, the applicants allege the PRRA officer erred in her analysis of whether all of the incidents of violations described in the applicants' evidence and the country conditions, as a whole, in addition to the evidence of treatment of the specific minority in Pakistan, cumulatively, would constitute a well-founded fear of persecution should the applicants be returned to Pakistan. It is further argued that the PRRA officer placed exaggerated emphasis on the need for repetition and persistence when she stated that "Il s'agit d'un évènement isolé [...] Cet évènement ne démontre pas à ma satisfaction que les demandeurs sont ciblés comme membres d'une minorité religieuse [...] ". By placing too much emphasis on the need for repetition, the PRRA officer failed to determine the gravity of the events in question as a fundamental violation of human dignity. A single act of discrimination or mistreatment may amount to persecution depending on the circumstances, the severity of the act and the possibility of repetition. The applicants also submit that the PRRA officer erred in asking for evidence to corroborate the allegation that their neighbours in Pakistan had been targeted as Shia. Finally, the applicants state they "filed a mountain of evidence from credible and trustworthy sources that outlined the situation of the Shia and other minorities in Pakistan in today's environment" and that the officer ignored this evidence in her analysis, thereby committing a reviewable error. The applicants submit that the PRRA officer erred with respect to the availability of state protection. The applicants seek to have the impugned decision annulled and to have their PRRA application remitted to a different officer for redetermination.

[32] For the following reasons, this application for judicial review is dismissed.

[33] Prior jurisprudence emanating from this Court had established that the standard of review of a PRRA officer's decision, when considered globally and as a whole, was reasonableness *simpliciter* (*Figurado v. Canada (Solicitor General)*, 2005 FC 347, [2005] F.C.J. No. 458 (QL)). Justice Mosley in *Kim v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 437, [2005] F.C.J. No. 540 (QL) elaborated at para. 19 as follows: "the appropriate standard of review for questions of fact should generally be patent unreasonableness, for questions of mixed law and fact, reasonableness *simpliciter*, and for questions of law, correctness."

[34] Since the parties filed their submissions, the Supreme Court of Canada released the decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] S.C.J. No. 9 (QL) (*Dunsmuir*). The effect of *Dunsmuir* is to collapse the two reasonableness standards into one. It further allows that, where the type of decision being reviewed has been thoroughly assessed for the applicable standard, subsequent decisions may rely on that standard. Accordingly, in applying these principles, I find that the standard of review of a PRRA officer's findings, except where they concern pure questions of law, are reviewable on the reasonableness standard: See *Erdogu v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 407, [2008] F.C.J. No. 546 (QL) and *Aslani c. Canada (Ministre de la Citoyenneté et de l'Immigration)*, 2008 CF 324, [2008] A.C.F. no 390 (QL).

[35] In *Dunsmuir*, above, at para. 47, the Court gave useful instruction on applying the reasonableness standard. Reasonableness is concerned with the existence of justification, transparency and intelligibility within the decision-making process. It is also concerned with "whether the decision falls within a range of possible, acceptable outcomes which are defensible in

respect of the facts and law." Justification requires that a decision be made with regard to the evidence before the decision-maker. A decision cannot be a reasonable one if it is made without regard to the evidence submitted.

[36] In this instance, I am of the view that the PRRA officer's decision was reasonable and based on the evidence before her. Indeed, a thorough reading of the impugned decision in its entirety demonstrates that the PRRA officer carefully considered the risks of return as raised by the applicants. She neither ignored the evidence before her, nor did she misapply the correct legal tests. While this Court may have ultimately come to a different conclusion, I am unable to find that the PRRA officer committed an error warranting this Court's intervention. In this regard, I note the applicants' arguments appear, in essence, to be a general objection to the PRRA officer's weighing of the evidence on record.

[37] With respect to the issue of the risk of rape to the female applicant were she to be returned to Pakistan, contrary to what was alleged by the applicants in their written submissions and orally at the hearing, I am of the view that the impugned decision took into consideration the seriousness and gravity of the incident when the female applicant was 8 months pregnant as described above. However, the PRRA officer emphasized that this incident occurred in 1992 (approximately 9 years before the applicant left Pakistan) finding as follows:

> Elle n'aurait pas connu d'autres évènements semblables. Elle travaillait comme professeur dans une école privée à son départ du Pakistan en août 2001. La demanderesse n'indique pas avoir jamais porté plainte à la police.

[38] In this case, the PRRA officer clearly considered the applicants' submissions, as well as the recent documentary evidence with respect to ongoing human rights abuses in Pakistan. It is well-established that where there is evidence before a decision-maker which contradicts its conclusions, it must provide reasons why it did not consider this evidence credible or trustworthy (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1425 (QL), at para. 15). A failure to do so will result in a reviewable error. Nevertheless, in the case at bar, the PRRA officer carefully evaluated the evidence that both supports and contradicts her ultimate conclusion. For example, the impugned decision cites the Amnesty International Report 2007 and the Pakistan Country Report on Human Rights Practices -2006 as follows: « Selon la preuve documentaire consultée, la situation des femmes, de façon générale, au Pakistan n'est pas facile. […] Les viols et les autres formes de violences sont également fréquents, spécialement pour celles qui sont détenus par les autorités policières. »

[39] I am equally of the view that the PRRA officer did not err in concluding that the risk the applicants would face as Ismaili Shia did not amount to persecution. In this regard, the applicants strongly argue the PRRA officer put an exaggerated emphasis on the need for repetition and persistence of the discriminatory acts for them to amount to persecution.

[40] I disagree. Although the PRRA officer describes the incident in which four armed men entered into Mr. Lakhani's mother home; forcibly confined her and members of her family; threatened the family; and, stole their valuable possessions as isolated, I do not find that she places

an exaggerated (and erroneous) emphasis on the need for repetition or persistence. To the contrary, she states:

> La persécution, par effet cumulatif ou à elle seule, restreint gravement la jouissance par le demandeur de ses droits fondamentaux : sérieuses restrictions au droit d'exercer un métier ou au droit d'avoir accès aux établissements d'enseignement et/ou de santé normalement ouvert à tous ou des mesures économiques imposées qui détruiraient les moyens d'existence d'un groupe religieux donné. […]

[41] As such, I am of the opinion that her analysis corresponds with the Federal Court of Appeal's decision in *Rajudeen v. Canada (Minister of Employment and Immigration)*, [1984] F.C.J. No. 601 (QL) (*Rajudeen*), the leading case dealing with the notion of persecution under the Act in terms of refugee status under the Convention. In *Rajudeen*, above, the applicant, a young Tamil male, described his experiences of persecution he suffered in the space of eight months all at the hands of a group of Sinalese individuals who constituted the majority in the place where he lived and where the police offered no protection. These experiences amounted to four incidents including two beatings with sticks and two instances of threats to his life without physical violence being experienced. The Court had no hesitation in holding these incidents were serious enough to constitute a fundamental violation of the applicants' human dignity. The Court also noted that the focus of any refugee claim is not past persecution but is forward looking, that is, a well-founded fear of persecution should an applicant return to their country of nationality or habitual residence.

[42] Having correctly assessed the law with respect to discrimination and persecution, the PRRA officer was of the view, nevertheless, that the incidents in question were not serious enough to constitute a fundamental violation of the applicants' human dignity, nor did they demonstrate that

the applicants were targeted as members of a religious minority. In short, the evidence before the PRRA officer was insufficient to establish that the applicants face a well-founded fear of persecution should they return to Pakistan.

[43] This conclusion was reasonable, supported by the evidence and open to the PRRA officer. It is also worthwhile to reiterate at this point that the applicants are, in effect, asking this Court to reweigh the evidence and come to the contrary conclusion. That is not the role of the Court on judicial review. This Court does not see in what way the PRRA officer's decision was unreasonable and therefore the decision will not be vacated on this issue. In passing, there is no need to address the issue of state protection in Pakistan, as it is not a determinative element of the PRRA officer’s reasons to dismiss the PRRA application.

[44] For these reasons, this application for judicial review is dismissed. There is no question for certification.

ORDER

THIS COURT ORDERS that the application for judicial review is dismissed.

"Luc Martineau"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	AHMED ABDUL MUHAMMAD LAKHANI ET AL v. MCI
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