Date: 20080625

Docket: IMM-4508-07

Citation: 2008 FC 808

Toronto, Ontario, June 25, 2008

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

SYED FAHAD RAZZAK and SHAZIA IDREES

Applicants

and

THE MINISTER OF CITIZENSHIP & IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA or the Act) for judicial review of the decision of a pre-removal risk assessment officer (the officer) dated September 28, 2007, wherein the officer denied the applicants' H&C application.

[2] The applicants requested that the decision be set aside and the matter referred back to a new officer for redetermination.

I. Background

[3] Syed Fahad Razzak (principal applicant) and his wife, Shazia Idrees (collectively the applicants) are citizens of Pakistan. The principal applicant was born and raised in Karachi, Pakistan. He alleged that in 1998, he was attacked, kidnapped and beaten by members of the Mohajir Quami Movement Haquiqui (MQM-H) because of his family's strong ties to the Pakistan People's Party (PPP). Because of this incident, the applicant left Pakistan in August 1998 and travelled to the United States. While in the United States, the principal applicant was visited in 2000 by his now wife; they had previously met in Pakistan. In July 2002, it appears that the principal applicant's wife told her family, who lived in New York at the time, that she wanted to marry the principal applicant. The applicants submitted that the family opposed the union, and consequently detained and beat the principal applicant's wife. The applicants then fled to California.

[4] On January 3, 2003, the applicants travelled to Canada and made an application for refugee status at the port of entry in Fort Erie, Ontario. In a decision dated August 25, 2003, the applicants' refugee application was rejected. Leave to appeal the decision was denied on November 28, 2003. The applicants then submitted pre-removal risk assessment (PRRA) and humanitarian and compassionate (H&C) applications. These applications were considered by the same officer, albeit separately. In a decision dated September 27, 2007, the applicants' PRRA application was refused

and leave for judicial review was dismissed by this Court on January 22, 2008. In a decision dated September 28, 2007, the applicants' H&C application was also refused. This is the judicial review of the officer's negative H&C decision.

[5] The applicants have two Canadian born children.

II. Officer's Decision

[6] The officer began the decision by recapping the parties' submissions and previous immigration proceedings under the following headings:

a. Spousal family or personal relationship that would create hardship if severed?
b. Children of the applicants in Canada?
c. Degree of establishment demonstrated since January 3, 2003.
d. Establishment, ties or residency in any other country?
e. Hardship or sanctions upon return to Country of Origin?
    i. Applicant's submission of risk
    ii. Refugee Protection Division Findings
    iii. Research of Current Country Conditions

[7] The officer then provided an analysis of the evidence under a section entitled "Rationale". The officer first considered the submission that the applicants would face hardship if forced to return to Pakistan because of the wife's family's unwillingness to accept the marriage. The officer

noted that while a letter from Mr. Ahmed (the applicants' neighbour in Windsor) stated that both families were unhappy about the marriage, the principal applicant nonetheless indicated that he was close to his brother in Canada. The officer also stated that it had been five years since the couple came together and that they had not submitted any details as to how they have been threatened since the previous incident, or why their family would still be interested in harming either one of them.

[8] With regards to the risk to the principal applicant from the MQM-H, the officer stated that the evidence on the record "did not support that the applicant would be of interest to members of the MQM-H after being out of the country since 1998." The officer further found that the evidence did not support that the applicants would be at risk in Pakistan such that it constituted a hardship that was unusual, undeserved or disproportionate.

[9] With regards to establishment in Canada, the officer acknowledged that some degree of establishment had been made being that the applicants had received the benefit of the refugee process. The officer also acknowledged the applicants' good civil record. The officer considered the principal applicant's submission that he is involved in the community, but stated that there was no further evidence provided aside from a letter from a friend in Windsor.

[10] As to the best interest of the applicants' two Canadian born children, the officer noted that the children have relatives in Canada, but stated that the information did not demonstrate that the children had developed a particular relationship with any of the relatives in Canada such that harm would arise if severed. The officer also acknowledged that the children were not yet of school age

and that the information did not inform that they would be either physically or emotionally harmed if they went with their parents to Pakistan.

[11] And finally, the officer noted that based on past experiences the applicants had demonstrated an ability to adapt to new locales. The officer also stated that return to Pakistan was feasible and that the skills acquired by the family in Canada were transferable.

[12] In refusing the application, the officer concluded:

> I have reviewed the factors individually as well as cumulatively. The thought of leaving Canada and the friends and family that they have here is upsetting however, the hardship of having to apply outside of the country is not, in my opinion, unusual, undeserved or disproportionate and not anticipated by the legislation.

III. Issues

[13] The applicants submitted the following issues for consideration:

a. Did the officer err in law in failing to properly consider the rights of the children directly affected, as required by section 25 of the Act and the Supreme Court's decision in *Baker* v. *Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817?

b. Did the officer err in law by failing to apply the proper test in determining the existence of humanitarian and compassionate reasons to grant the application for permanent residence pursuant to section 25 of the Act?

c. Did the officer breach the principles of procedural fairness by failing to provide the applicants with proper reasons for the decision?

d. Did the officer err in law in failing to properly consider the risk that would be faced by the applicants if they were returned to their country of nationality?

[14] I would rephrase the issues as follows:

a. What is the appropriate standard of review?

b. Did the officer err in considering the best interests of the children?

c. Did the officer err in considering the risk to the applicants in returning to Pakistan?

d. Did the officer breach procedural fairness in failing to provide adequate reasons for the decision?

e. Did the officer err in the considering the availability of the state of Pakistan to protect the applicants?

IV. Applicants' Submissions

[15] The applicants submitted that the officer failed to properly consider the rights of the children directly affected. It was submitted that while the officer did consider the best interests of the children, the consideration was wholly inadequate. The applicants argued that the officer completely failed to consider the effect of the current socio-political situation in Pakistan. The applicants acknowledged that the best interest of the children is not determinative, but submitted that it is an error of law to conduct an inadequate consideration of it. The decision maker must be alert, alive

and sensitive to the rights of the children, particularly when those children are Canadian (*Kimotho* v. *Canada (Minister of Citizenship and Immigration)*, 2005 FC 1004). It was further submitted that the officer was under a duty to obtain further information concerning the best interest of the Canadian children (*Del Cid* v. *Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 416).

[16] The applicants argued that the officer erred in law in failing to apply the proper legal test in determining whether the applicants faced a risk in returning to Pakistan. It was submitted that the officer applied the more stringent test for risk as per sections 96 and 97 of the Act and that this was a reviewable error (*Melchor* v. *Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 1600). The applicants further submitted that there was no necessity for the officer to conduct an analysis of state protection as such an analysis is found in sections 96 and 97, not section 25 of the Act.

[17] The applicants also submitted that the officer breached procedural fairness in failing to provide the applicants with proper reasons for the decision. It was submitted that the reasons provided by the officer contained no real insight into the decision maker's reasoning process. Reasons are inadequate when they consist of a review of the facts and then state a conclusion without any analysis (*Adu* v. *Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 693).

[18] And finally, the applicants submitted that the officer failed to conduct a contextual analysis of state protection and as such did not consider Pakistan's real capacity to protect its citizens. It was

submitted that the jurisprudence is fairly specific that the protection offered by a state, even a democratic one, must be effective and real, not just theoretical.

V. Respondent's Submissions

[19] The respondent submitted that in H&C applications, the onus is on the applicants to demonstrate that they would face unusual and undeserved or disproportionate hardship by having to apply for permanent residence status from outside of Canada (*Arumugam* v. *Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 1360; *Owusu* v. *Canada (Minister of Citizenship and Immigration)*, 2003 FCT 94). The respondent also submitted that in order to successfully attack a negative decision, an applicant must show that the officer's decision was unreasonable because they erred in law, acted in bad faith, or proceeded on an incorrect principle (*Tartchinska* v. *Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 373 (T.D.); *Baker*, above; *Bandzar* v. *Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 772 (T.D.); *Ogunfowora* v. *Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 456 (T.D.)). With regards to the appropriate standard of review, the respondent submitted that H&C decisions are reviewable on a standard of reasonableness. Accordingly, if the impugned decision is based on reasons that can withstand a somewhat probing examination, the Court is not empowered to alter that decision.

[20] The respondent submitted that the officer adequately considered the best interests of the children. The respondent argued that given the lack of evidence provided by the applicants as to the best interest of their children, the officer's decision was reasonable. If the applicants fail to

adequately raise the impact of deportation on their children, the officer is not required to consider it (*Owusu* v. *Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38). Moreover, there is no duty on the officer to explore facts which the applicants do not raise or to remedy any deficiencies in the applicants' submissions (*Gallardo* v. *Canada (Minister of Citizenship and Immigration)*, 2003 FCT 45; *Baisie* v. *Canada (Minister of Citizenship and Immigration)*, 2004 FC 953). It was submitted that given the lack of information and documentation provided by the applicants on the issue of best interests of the children, the officer's assessment was adequate.

[21] With regards to the alleged risk faced by the applicants, the respondent submitted that once again the onus is on the applicants to raise the risk factor and make their case. The officer must decide the issue based on the evidence before the officer as there is no obligation to seek additional evidence (*Selliah* v. *Canada (Minister of Citizenship and Immigration)*, [2004] F.C.J. No. 1134). It was submitted that the officer considered the documentary evidence on Pakistan, specifically the political situation, and concluded that there was adequate state protection available to the applicants. The officer also reasonably found that the evidence did not indicate that the principal applicant was still at risk from the MQM-H being that he left Pakistan in 1998 and had provided no evidence that there was a continued threat. With respect to the situation of women in Pakistan, the officer considered improvements in the law and once again found that there was a lack of evidence to support that the applicants were still at risk of harm at the hands of their family. The respondent submitted that the officer's findings on the applicants' alleged fear were reasonable given the lack of evidence presented by the applicants in support of their claim.

VI. Applicant's Reply

[22] The applicants replied that the fact that the children in question may also have Pakistani citizenship should have no bearing on this judicial review as they are first and foremost Canadian citizens. The applicants also provided a response to the respondent's submissions on the appropriate standard of review. It was submitted that the appropriate standard of review for questions of law is correctness, whereas overall decisions by immigration officers are reviewable on a standard of reasonableness (*Pushpanathan* v. *Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982).

VII. Analysis and Decision

A. *Issue 1*

(1) What is the appropriate standard of review?

[23] The officer's findings on the best interests of the children directly affected by the decision are reviewable on a standard of reasonableness (*Baker*, above). The officer's findings on whether the applicants would be at risk in Pakistan such that it would cause a hardship that was unusual, undeserved or disproportionate and whether the state could protect the applicants are also reviewable on a standard of reasonableness. The adequacy of the officer's reasons is a question of procedural fairness and is reviewable on a standard of correctness (*C.U.P.E.* v. *Ontario (Minister of Labour)*, [2003] 1 S.C.R. 539.

B. *Issue 2*

(2) Did the officer err in considering the best interests of the children?

[24] The applicants submitted that the officer's consideration of the best interests of the children was inadequate and incomplete and that the officer should have approached the applicants for more information. The relevant portion of the officer's decision reads as follows:

> The applicant submits that it is in the best interest of the Canadian born children to remain in Canada. While I note that the children have relatives in Canada the information before me does not demonstrate that children [*sic*] have developed a particular relationship with any of the relatives that would cause them harm if it were severed. The children are not yet of school age. The information before me does not inform that it would be physically or emotionally harmful for them to go to Pakistan with their parents.

[25] With regards to the applicants' submission that based on the reasoning in *Del Cid*, above the officer should have requested further information, I believe that the present case can be distinguished from that case. In *Del Cid*, above the officer made a finding that the information presented by the applicants was insufficient to assess the best interest of the children (*Del Cid*, above at paragraph 30). The same cannot be said of the decision before this Court; the officer in the present case made no such finding.

[26] As to the applicants' submission that the officer erred by not considering whether the socio-political situation in Pakistan would cause harm to the children, the applicants have failed to convince me of this. Firstly, the officer did consider the socio-political situation in Pakistan and secondly, the applicants presented no evidence that there was a specific harm to the children based

on the socio-political situation in Pakistan. And finally, with regards to the adequacy of the officer's consideration of the best interest of the children, I am satisfied that it was adequate. The officer clearly considered all the evidence on the record and came to a reasonable finding. I would not allow the judicial review on this ground.

C. *Issue 3*

(3) Did the officer err in considering the risk to the applicants in returning to Pakistan?

[27] The applicants argued that the officer erred in law in applying the more onerous test for risk as per section 96 and 97 of the Act. I see no merit to this argument. In considering the risk to the applicants in returning to Pakistan, the officer stated that "the evidence [did] not support that the applicants would be at risk in Pakistan such that it would cause a hardship that was unusual, undeserved or disproportionate." It is clear from this statement that the officer applied the correct standard for the section 25 analysis. I would not allow the judicial review on this ground.

D. Issue 4

(4) Did the officer breach procedural fairness in failing to provide adequate reasons for the decision?

[28] The applicants submitted that the officer's reasons were inadequate as they merely listed the evidence and then rendered a decision without providing insight into the analysis undertaken. In making this submission, the applicants relied on *Adu*, above. While I accept the principal in *Adu*,

above as articulated by the applicants, I disagree that the reasons in the present case are comparable to the reasons provided by the decision maker in *Adu*, above. While the officer did begin the decision by summarizing the applicants' submissions, the officer went on to provide a section entitled "Rationale" wherein the officer provided the analysis of the evidence.

[29] For instance, with regards to the risk from the applicants' family, the officer clearly took issue with the lack of evidence submitted by the applicants as to how they have been threatened by their family since their arrival in Canada and as to why they still fear harm from the family. Moreover, the officer also found that the evidence did not support that the applicants would be targeted by MQM-H. With regards to the best interest of the children, the officer acknowledged that they had relatives in Canada, but found that the information did not indicate that the children would be physically or emotionally harmed if they were taken with their parents to Pakistan. In my opinion, it is clear from the reasons provided that the officer rendered a negative decision because of a lack of supporting evidence to convince the officer otherwise. The burden is on the applicants to provide sufficient evidence to convince the officer that an exemption under the Act is warranted. I am satisfied that the reasons provided were adequate and as such, would not allow the judicial review on this ground.

E. Issue 5

(5) Did the officer err in considering the availability of the state of Pakistan to protect the applicants?

[30] The applicants submitted that the officer erred in assessing state protection and in finding that there was adequate state protection for the applicants in Pakistan. In my opinion, the applicants have misunderstood the officer's consideration of the current country conditions in Pakistan. The officer considered the documentary evidence in order to understand whether the applicants would be at risk in Pakistan such that they would be subject to unusual, undeserved or disproportionate hardship in having to return there and apply for permanent residence. This is not similar to a state protection finding in a refugee case. I see nothing unreasonable with the officer's consideration of the country conditions in Pakistan. I would not allow the judicial review on this ground.

[31] The application for judicial review is therefore dismissed.

[32] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

JUDGMENT

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

"John A. O'Keefe"
Judge

ANNEX

Relevant Statutory Provisions

The relevant statutory provisions are set out in this section.

The *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA):

25.(1) The Minister shall, upon request of a foreign national who is inadmissible or who does not meet the requirements of this Act, and may, on the Minister's own initiative, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligation of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to them, taking into account the best interests of a child directly affected, or by public policy considerations.	25.(1) Le ministre doit, sur demande d'un étranger interdit de territoire ou qui ne se conforme pas à la présente loi, et peut, de sa propre initiative, étudier le cas de cet étranger et peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des circonstances d'ordre humanitaire relatives à l'étranger — compte tenu de l'intérêt supérieur de l'enfant directement touché — ou l'intérêt public le justifient.

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Wennie Lee	FOR THE APPLICANTS
Leanne Briscoe	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lee & Company North York, Ontario	FOR THE APPLICANTS
John H. Sims, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT