

Date: 20090909

Docket: IMM-5588-08

Citation: 2009 FC 888

Ottawa, Ontario, September 9, 2009

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

MAZHAR ELAHI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a Pre-Removal Risk Assessment (PRRA) decision dated October 14, 2008, in which it was determined that the Applicant would not be subject to persecution, danger of torture, risk to life or risk of cruel and unusual treatment or punishment if he were returned to Pakistan. For the reasons that

follow, I find that the Officer made no reviewable error and the application must be dismissed.

[2] Mr. Elahi is a citizen of Pakistan. In 1993 he became a member of the Pakistan Peoples Party (PPP), helping to organize meetings and conferences. He alleges that shortly after the February 1997 elections in Pakistan he began being harassed by members of an opposing political party, the Muslim League, who had recently come to power at the federal level.

[3] In March 1997 he claims to have been beaten by members of the Muslim League while he was working at his family store. Mr. Elahi filed an incident report with the police, but no action was taken. Mr. Elahi states that in April 1997 he began to receive regular phone threats. On April 20, 1997, some members of the Muslim League came looking for him at his home, but he was not there. The members attacked Mr. Elahi's brother, and threatened Mr. Elahi with death. This incident was also reported to the police, but no action was taken.

[4] In the last week of April 1997, Mr. Elahi was beaten again, and warned not to report the incident to the police. Out of fear, and based on his previous experiences, he did not report the incident to the police. Instead, he made the decision to leave Pakistan.

[5] In May 1997, Mr. Elahi left Pakistan for Tanzania but was unable to access asylum in Tanzania, so on November 22, 1998, he came to Canada and filed a refugee

claim. On June 29, 2000, the Convention Refugee Determination Division (CRDD) determined that Mr. Elahi was not a Convention refugee. An application seeking judicial review of that decision was denied by this Court on January 4, 2001.

[6] The CRDD did not believe Mr. Elahi's story, and made negative credibility findings against him. The CRDD drew a negative inference from the fact that Mr. Elahi had failed to provide a letter from the PPP candidate that Mr. Elahi had stated he worked for and determined, on a balance of probabilities, that Mr. Elahi was not a member of the PPP. The CRDD determined that even if Mr. Elahi was a member of the PPP, his mere membership would not subject him to risk of persecution should he return to Pakistan. The CRDD also found that there was an internal flight alternative available within Pakistan.

[7] On February 12, 2008, Mr. Elahi submitted a Pre-Removal Risk Assessment application. In support of his application, Mr. Elahi submitted a letter from the PPP Canada, a letter from Rao Sikandar Iqbal (the PPP candidate in question in the CRDD decision), and various news articles regarding instances of inter-political party violence in Pakistan. On October 14, 2008, Mr. Elahi's PRRA application was rejected.

[8] The Officer noted that the Applicant's allegations were essentially the same as those before the CRDD. The Officer considered the letter from PPP Canada, stating that the Applicant was at the time in question, and remains currently, an active member of the PPP. The Officer concluded that given the lack of details within the letter, the evidence

presented did not suggest that Mr. Elahi would be targeted at this time nor did it suggest that he would be of interest to the political opponents of the PPP.

[9] The Officer discussed in detail the political situation in Pakistan starting from 1999. It was noted that despite the assassination of Benazir Bhutto, the leader of the PPP, elections in February 2008 brought the PPP to power.

[10] The Officer noted that refugee protection is a surrogate system, and that there is an underlying presumption of state protection. The Officer determined that the changes in Pakistan would not negatively affect the Applicant, and that his activities with the PPP would not expose him to persecution. Regardless of the potential for persecution, the Officer concluded that state protection was available, stating that “the objective documentation supports that there would be avenues of recourse available to the applicant should he choose to seek them”.

Issue

[11] The Applicant essentially raises one issue with respect to the decision under review: Whether the Officer made an erroneous finding of fact by misconstruing or ignoring evidence.

Analysis

[12] The Applicant argues that the new evidence provided supported the conclusion that he was a member of the PPP, and that he would be at risk of persecution if returned

to Pakistan because of his involvement with the PPP. Some of the evidence he submitted warns him against returning to Pakistan for fear of the harm he would likely face. The Applicant contends that the Officer's failure to consider any of the country condition documents submitted amounted to a reviewable error.

[13] The Respondent argues that the Officer made no reviewable error in assessing the evidence, and that the conclusion reached regarding the threat of persecution to ordinary PPP workers was reasonable. The Respondent contends that there was no need to refer to the documentary evidence because, except for one document not related to the situation of ordinary PPP workers, all of the documents pre-dated important changes in the country conditions of Pakistan. They referred to the period of the assassination of Benazir Bhutto, the leader of the PPP, and did not relate to the more recent period following the elections in February 2008 that brought the PPP to power.

[14] The standard of review on a PRRA is one of reasonableness as are decisions on the appropriate weight to be given to a piece of evidence on such an application. The Officer recognized that the supporting letter from PPP Canada confirmed that the Applicant was an active member of the PPP; he was a polling agent. Apparently relying on the CRDD finding that only high profile PPP members are subject to persecution, the Officer found that this evidence did not support the conclusion that the Applicant would be targeted for his activities.

[15] The Officer did not refer to the hearsay statement within the PPP Canada letter that it had been told by the local PPP group in Pakistan that several of their workers had been persecuted and that Mr. Elahi would be targeted by both the opposition party workers and the police. The letter itself provides no evidence to support these assertions. The Respondent submits that given the lack of detail within the letter, and the fact that it pre-dated the PPP coming to power in February 2008, the Officer's silence was not fatal to its decision. I agree.

[16] I also agree with the Respondent's submission that it was not unreasonable for the Officer to not refer to the documentary evidence provided by the Applicant. The Officer engaged in a detailed discussion of the changes within the Pakistani political landscape since the Applicant's arrival in Canada. Most importantly, this includes the coming to power of the PPP in February 2008. The documentary evidence provided shows that there was violence during the election, but it does not support the contention that the Applicant would be at risk currently. The one article that post-dates the February 2008 election highlights the death of a high-profile security chief, and not an ordinary party worker.

[17] The Applicant has not challenged the Officer's finding on state protection and this is determinative of this application even if I were to have accepted his other submissions. However, I do not accept those other submissions. As indicated, it is my view that the Officer's decision was reasonable. He considered the Applicant's new evidence and determined that it was not sufficient to meet the Applicant's burden of proof regarding

risk on a forward looking basis. This conclusion was open to the Officer as a possible outcome based on the facts and law.

[18] The application for judicial review is dismissed. Neither party proposed a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed and no question is certified.

“Russel W. Zinn”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5588-08

STYLE OF CAUSE: MAZHAR ELAHI v.
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 3, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** ZINN J.

DATED: September 9, 2009

APPEARANCES:

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