

Federal Court



Cour fédérale

Date: 20090929

Docket: IMM-453-09

Citation: 2009 FC 977

Ottawa, Ontario, September 29, 2009

PRESENT: The Honourable Louis S. Tannenbaum

BETWEEN:

**FATIMA MUHAMMAD (a.k.a.: RAJA ALI MUHAMMAD),
RAJA FATIMA (a.k.a.: KANIZ FATIMA),
MAKKI AMNA (a.k.a.: AMNA MAKKI)
MAKKI MAMOONA (a.k.a. MAMOONA MAKKI) and
SHERAZ MUHAMMAD (a.k.a.: MUHAMMAD OMER)**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION CANADA**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”) of a decision of the Refugee Protection Division (“RPD”) of the Immigration and Refugee Board, dated January 8, 2009, in which the Applicants were found not to be Convention refugees nor persons in need of protection.

[2] It was Fatima Muhammad's (a.k.a. Raja Ali Muhammad), the principal male applicant (the "male applicant"), claim that, as a result of his marriage to Raja Fatima (a.k.a. Kaniz Fatima), the principal female applicant (the "female applicant"), a Shia Muslim, as well as his later conversion to Shi'ism, he and his family suffered persecution in their country of citizenship, Pakistan, at the hands of the members of *Sipah-e-Sahab* ("SSP") and his own Sunni family.

[3] The RPD, however, found a number of discrepancies in the allegations made by the male and the female applicants and the evidence presented in support of these allegations. The Tribunal, therefore, found the applicants' story of persecution in Pakistan to be a fabrication and rejected their refugee claim on that basis.

[4] The issues this Court must determine are the following:

- Did the Board commit a factual error which rendered the refusal of the applicants' refugee claim unreasonable?
- Did the Board err in assessing the applicants' credibility by rendering a decision while disregarding evidence before it?

[5] The Panel writes in his Reasons that the female applicant testified that her brother is of the same religion as her and that he is Sunni. The Panel found this to be fatal to the claim, as the female applicant is Sunni and there is no reliable evidence that she converted. The female applicant pointed to her initial affidavit, in which she attested to the fact that it is her recollection that at that part of the hearing, the Member did not ask her whether her brother was Shia, but rather whether her cousin

was Shia. Accordingly, she answered that he is Sunni, referring to her cousin. Upon reviewing the transcript of the hearing, at pages 427 and 428 of the Tribunal Record, the Member did in fact ask her about her cousin, not about her brother. The female applicant answered that her cousin is the same religion as her because that is the truth – they are both Muslim. When the Member asked the female applicant if her cousin is Shia she answered that he is not, because that is the truth – he is Sunni. The female applicant explained to the Member that in their society some people are Sunni and some are Shia, but that does not mean that they are of a different religion. According to the applicants, it is apparent on the face of the record that the Panel committed a serious error of fact, which went to the heart of his decision. The Panel himself writes that this answer, with respect to her brother being Sunni, was fatal to the claim. Upon reviewing this portion of the transcript, it is evident that the female applicant's answers were direct, consistent and truthful, and it is in fact the Panel who misunderstood or misinterpreted the female applicant's answers. The applicants submit that this application should be allowed on this basis alone, as this error fatally undermines the validity of the Panel's decision.

[6] The applicants further submit that the Panel erred in assessing the applicants' credibility by rendering a decision while disregarding evidence. In addition to the fact that the Panel ignored crucial evidence in the form of letters which spoke about the applicants' Shia affiliation, the applicants argue that the Panel also fails to mention the fact that Mr. Sib De Hassan testified in support of the applicants' claim. During his testimony, Mr. Hassan stated that the male applicant had in fact converted to Shi'ism and that the applicants had been forced to leave Pakistan because of the persecution that they suffered at the hands of his family.

[7] The applicants further submit that despite this lengthy and detailed oral evidence, the Panel writes that there was no reliable evidence that the male applicant converted. The Panel fails to even mention this testimony, which addressed this precise issue. It is open to the Panel to consider the evidence and ignore that which is not relevant, but the Panel must also consider and note the evidence which is relevant to its findings. It is evident that this was not done in the present case. Rather, the Panel simply ignored this evidence, which was critical to the applicants' claim for protection. This is a glaring omission from the Reasons which also warrants this Court's intervention.

[8] The respondent contends that since credibility findings are factual findings, a very high deference has always been given by the Court to the RPD's findings in this regard. In the past, the standard of review for such findings was patent unreasonableness. Although the Supreme Court of Canada's decision in *Dunsmuir v. New Brunswick*, 2008 SSC 9 has now eliminated the patent unreasonableness standard of review, significant deference must still be afforded to such factual findings. In *Dunsmuir*, above, the Supreme Court emphasized that significant deference must still be accorded to the decision-maker if reasonableness is the applicable standard.

[9] While the applicants argue that the RPD erred in assessing their credibility, it is, however, the respondent's position that the Tribunal's credibility findings fall within a range of possible and acceptable outcomes. The respondent makes the following arguments with respect to RPD's credibility findings disputed by the applicants.

[10] The RPD made a negative inference from the male applicant's failure to mention his denomination as Shia' Muslim in his Personal Information Form (the "PIF"). The Tribunal noted that the male applicant's wife had answered the same question by stating that she was Shia. The respondent submits that this omission is certainly not a determinative factor in this case especially given the male applicant's statements in the PIF narrative. However, this was one of many omissions and discrepancies noted by the Tribunal that cast doubts on the applicants' credibility.

[11] Even though the male applicant had allegedly converted to Shi'ism and endured persecution and although he acknowledged that there were theological differences between the Sunni and Shia sects, he seemed unable to distinguish between the faiths of the mosques he was attending in Canada. The negative credibility inference made by the RPD in this regard is certainly within the range of possible and acceptable outcomes.

[12] During the hearing, the male applicant was asked whether he had a certificate issued by the person who had converted him to the Shia faith. He said that he did not. The Response to the Information Request by the Research Directorate of the Immigration and Refugee Board indicated that usually conversion from the Sunni sect to Shi'ism is made official by obtaining a letter from a senior cleric of the said sect confirming the conversion and that this was not difficult to obtain. The applicants argue that because the name of the human rights activist in Lahore who had provided the Research Directorate with this information is not known and given that based on the information provided the certificates are "usually" available, the RPD erred in drawing a negative inference from their failure to produce such certificate. In response, the respondent submits that the applicants had confirmed before the RPD that the male applicant's conversion had taken place before a

religious leader. The applicants had the onus of satisfying why the religious leader who had witnessed the conversion could not provide them with a certificate. The applicants failed to do so. As the Transcript of the hearing indicates, the male applicant's responses to the Tribunal's concerns on this issue were vague and not on point.

[13] With respect to the argument that the Tribunal made a reviewable error by stating that the female applicant's brother was Sunni, the respondent submits that firstly, as stated in the Reasons, this was one of the issues that was also fatal to the claim. Therefore, even without the RPD's assessment of the female applicant's testimony regarding her family's faith, the refugee claim would have failed. Secondly, as the transcript of the hearing reveals, the Tribunal was concerned with the female applicant's statements that both she and her cousin belonged to the same sect and that her cousin was a Sunni. Therefore, although the RPD has erroneously referred, in its Reasons, to the female applicant's brother instead of her cousin, the fact remains that she had confirmed before the Tribunal and she and her cousin belonged to the Sunni sect and that was one of the factors that undermined the credibility of the applicants' story regarding their persecution in Pakistan.

[14] In the reasons for the decision the Member states:

“Next, Kaniz was asked whether her brother was Shia and she replied, “No he is Sunni.” I find that this answer is fatal to the claim. This entire basis of the claim is that Kaniz is Shia and that Raja Ali's problems are the result of his marriage and subsequent conversion. As Kaniz is Sunni and I have no reliable evidence that Raja Ali converted, I find that the family fabricated a story upon which to base a Convention refugee claim.”

[15] In his conclusion, the member writes:

“Fatima Muhammad (a.k.a. Raja Ali Muhammad) and Raja Fatima (a.k.a. Kaniz Fatima) lied to the panel by representing themselves as Shia Muslims when they are in fact Sunni Muslims, by Ms. Kaniz Fatima’s testimony. As such their claims fail.”

[16] I am of the view that the member made an error of fact in interpreting the testimony. He concluded that Fatima Muhammad and Raja Fatima had lied to the panel by representing themselves as Shia Muslims when they are in fact Sunni Muslims, and held that their claim must fail because of this. This finding by the Panel is not supported by the evidence and for this reason alone the decision should be set aside.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the decision of the Refugee Protection Division, dated January 8, 2009 is set aside for all purposes. The matter is referred back for re-determination before a different Panel. No question of general importance has been submitted by the parties and none will be certified.

“Louis S. Tannenbaum”

Deputy Judge

AUTHORITIES CONSULTED BY THE COURT

1. *Valtchev v. Canada (M.C.I.)*, [2001] F.C.J. No. 1131
2. *Leung v. Canada (M.E.I.)*, (1994) 81 F.T.R. 303
3. *Jeyaraj v. Canada (M.C.I.)*, 2009 FC 88
4. *Gomez-Bedoya v. Canada (M.C.I.)*, 2007 FC 505
5. *Woolaston v. Canada (M.M.I.)*, [1973] S.C.R. 102
6. *Mohacsi v. Canada (M.C.I.)*, [2003] F.C.J. No. 586
7. *J.O. v. Canada (M.C.I.)*, 2004 FC 1189; [2004] F.C.J. No. 1426
8. *Dunsmuir v. New Brunswick*, [2008] S.C.J. No. 9

FEDERAL COURT

NAMES OF COUNSEL

DOCKET: IMM-453-09

STYLE OF CAUSE: **FATIMA MUHAMMAD (a.k.a.: RAJA ALI MUHAMMAD) et al v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA**

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REASONS FOR JUDGMENT AND JUDGMENT: Tannenbaum, D.J.

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