Federal Court  Cour fédérale

**Date: 20130718**

**Docket: IMM-7940-12**

**Citation: 2013 FC 799**

**Ottawa, Ontario, July 18, 2013**

**Present: The Honourable Mr. Justice Roy**

**BETWEEN:**

**Muhammad Naveed MANGA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review made pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the "Act") of the decision of a member of the Refugee Protection Division of the Immigration and Refugee Board (the "Board"). The Board determined the applicant, Mr. Muhammad Naveed Manga, a citizen of Pakistan, was not a Convention refugee or a person in need of protection as defined in sections 96 and 97 of the Act.

[2] The Court has determined that, in view of the record before the Board, the matter has to be returned before a new adjudicator for decision. The reasons provided by the Board do not meet the

required standard. They do not serve the basic purpose of demonstrating that the decision falls within a range of possible outcomes. Given my conclusion, I do not express any opinion as to whether or not the applicant qualifies under sections 96 and 97 of the Act.

Facts

[3] It will not be necessary to delve into the facts of this case, other than to point to the abundance of articulated allegations before the Board that the applicant was subjected to physical violence, indeed death threat, due to political and religious reasons.

[4] The applicant fled to Canada on December 2, 2010, after a series of events starting in May 2010. The whole case turns on a plot of land, in Pakistan, that the applicant and his brother wanted to use in order to build an interfaith English school.

[5] The applicant alleges that the piece of land was taken from him by people who opposed the use of the land for a non-Islamic school.

[6] The applicant also alleged that he was politically active since 2007. As part of his activities, he would have been involved in attempts to discredit a member of the provincial assembly with, allegedly, ties to an Islamic extremist organization. Members of the extremist organization would be largely responsible for the violent events in relation to the applicant that took place, starting in May 2010.

Decision

[7] In spite of the evidence led, and the abundance of allegations made that violent incidents were related to political and religious motivations, the Board seems, for all intents and purposes, to have ignored the issue in its June 29, 2012 decision. Without providing any analysis or reason, the Board categorizes the taking away of the land as merely a land dispute. That characterization does not give rise to an application of section 96 of the Act because the persecution would not be on the basis of a Convention ground. As for section 97 of the Act, the Board concludes that the applicant is not at risk if he does not try to regain his land.

[8] The interrogation of the applicant by the Board went over two hearings. Much attention was given to the applicant's allegations about the violence towards him being over a plot of land. Indeed, the interrogation of the applicant conducted by the Board looked like a cross-examination more than once. Yet, the Board offers in the end little analysis for its decision.

Arguments and Standard of Review

[9] The parties agree that the standard of review is reasonableness. I concur. We are not confronted in this case with a situation where reasons are not provided when they should be. There are reasons. The question before the Court is one of mixed fact and law that attracts a standard of reasonableness. As the Supreme Court of Canada ruled in *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, [2011] 3 SCR 654, at paragraph 39:

> When considering a decision of an administrative tribunal interpreting or applying its home statute, it should be presumed that the appropriate standard of review is reasonableness.

[10] Where the issue is whether or not the reasons for a decision are deficient, a standard of reasonableness applies. In *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 [*Newfoundland and Labrador Nurses' Union*], the Court disposes of the issue thus:

> [22] It is true that the breach of a duty of procedural fairness is an error in law. Where there are no reasons in circumstances where they are required, there is nothing to review. But where, as here, there are reasons, there is no such breach. Any challenge to the reasoning/result of the decision should therefore be made within the reasonableness analysis.

[11] The applicant argues that the findings made by the Board were made in a perverse and capricious manner. Furthermore, the Board erred in the view of the applicant "in finding that the alleged risk lacked a nexus to a Convention ground" and was unreasonable in finding a lack of subjective fear.

[12] The respondent relies heavily if not exclusively on the deference that is owed to administrative tribunals.

Analysis

[13] The starting point of the analysis of what constitutes a reasonable decision is of course *Dunsmuir v New Brunswick*, [2008] 1 SCR 190 [*Dunsmuir*]. It is paragraph 47 which describes the qualities that make a decision reasonable. The paragraph reads:

> Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable

> conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But 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.

[14] The reviewing Court will show deference, but it will not abdicate its role. At the end of paragraph 48 of *Dunsmuir*, the Court acknowledges that much.

[15] On the other hand, the adequacy of reasons cannot, in and of itself, support the quashing of an administrative tribunal decision. The Supreme Court of Canada, in *Newfoundland and Labrador Nurses' Union*, cited above, saw the reasons being considered together with the outcome:

> [14] Read as a whole, I do not see Dunsmuir as standing for the proposition that the "adequacy" of reasons is a stand-alone basis for quashing a decision, or as advocating that a reviewing court undertake two discrete analyses - one for the reasons and a separate one for the result (Donald J. M. Brown and John M. Evans, Judicial Review of Administrative Action in Canada (loose-leaf), at ss.12: 5330 and 12: 5510). It is a more organic exercise - the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes. This, it seems to me, is what the Court was saying in Dunsmuir when it told reviewing courts to look at "the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes" (para. 47).

[16] In the case at bar, the Board negates the nexus with Convention grounds by simply concluding, without more, that the motivation for the acts of violence was the land. It never connects the taking of the land with a possible religious or political motivation. Not every argument

or small bit of evidence need be addressed in reasons. But an absence of analysis with respect to what constitutes the heart of the matter cannot be condoned. The Court in *Newfoundland and Labrador Nurses' Union*, at paragraph 16, provides some guidance as to when reasons will suffice:

> Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, [1975] 1 S.C.R. 382, at p. 391). In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

[17] Such is the test: the reasons must allow the Court to know why the decision was made. The reasons that would allow this Court to understand why the evidence of political and religious motivation must be discounted are non-existent. They do not have that intelligibility required by the law. It is not enough, in my view, to state facts and to reach a conclusion not even connected with the facts without offering any articulation. There has to be a reason for reaching a conclusion. In some cases, it may be implicit. In others, it must be articulated, even minimally, or enough to understand why it was made.

[18] There are many examples that could be used to illustrate the point. Thus, it is difficult to understand why the Board considers what it refers to as "the situation of similarly situated people in Pakistan." The evidence shows that the applicant's brother chose to leave the place where the plot of land is located following the violent expulsion. It would appear that the reference to "similarly situated people" might be for the purpose of contesting the legitimacy of the applicant's subjective

fear or risk. However, how that is relevant remains a matter of conjecture since it is the subjective fear of the applicant that counts, not that of his brother. Indeed the applicant's brother may not have left Pakistan but he also departed and would have moved some 100 miles from where the violence took place for fear of retribution. That, to some extent, may well show fear.

[19] The Board also contests the subjective fear on the basis that the applicant could have diminished or even eliminated the risk had he and his family sold the land at any price. To say the least, this is rather odd. This is in line though with the Board's belief that this was only a land issue. As it notes, the protection of property rights is not recognized as a valid basis for refugee protection. But in doing so, the Board, without reasons that could make understandable to a reviewing court its decision, does not seem to even consider that the acts of violence increased in their severity after the plot of land was taken away in August 2010 and the applicant and his brother were threatened and beaten on the site itself.

[20] It will suffice for the purpose of this decision to note that the applicant alleges that he continued to be the subject of violent attacks, even after the plot of land had been taken over. One such incident would have taken the applicant to hospital. Less than a month later, following a visit to a lawyer, four men on two motorcycles opened fire on a car he was in.

[21] In the end, the Board states on numerous occasions that the refugee claim fails, but without articulating reasons, whatever they may be, for such rejection. The reviewing court is left with bold statements, but without knowing if the evidence was misapprehended or disbelieved, and if so, why it is disbelieved. Another possibility for rejecting the refugee claim could be that the Board found

that the actions in Pakistan did not rise to the level of persecution or that other alternatives were available to the applicant. However, on the record before this Court, there is no way to tell.

[22] The admonition of the Supreme Court that "(R)eviewing judges should pay 'respectful attention' to the decision maker's reasons, and be cautious about substituting their own view of the proper outcome by designating certain omissions in the reasons to be fateful" (*Newfoundland and Labrador Nurses' Union*, *supra*, at paragraph 17) is well taken. In this case, it is not so much certain omissions in the reasons that are problematic as a general lack of articulation of reasons to make understandable the outcome chosen by the Board.

[23] As was again pointed out very recently by the Supreme Court in a case involving this Act, the Minister's reasons were found to be reasonable because "(A)lthough brief, they made clear the process he had allowed in ruling on the applicant's application. He reviewed and considered all the material and evidence before him. … In short, his reasons allow this Court to clearly understand why he made the decision he did" (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, at para 89).

[24] My Reasons for Judgment should be taken for what they are. This Court has found that it was not possible, on the basis of the decision of the Board, to ascertain if the decision is reasonable. Accordingly, it must be returned to a different panel for redetermination. Nothing in my reasons should be taken to suggest any assessment of whether or not the applicant is a refugee under the Act. That determination is for a differently constituted panel of the Board to make.

## JUDGMENT

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is granted.

2. This matter is to be returned to a different panel of the Refugee Protection Division of the Immigration and Refugee Board for redetermination.

3. There is no question of general importance to certify.

"Yvan Roy"

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-7940-12 |
| **STYLE OF CAUSE:** | MUHAMMAD NAVEED MANGA v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | Calgary, Alberta |
| **DATE OF HEARING:** | May 6, 2013 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | Roy J. |
| **DATED:** | July 18, 2013 |

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| Camille N. Audain | FOR THE RESPONDENT |

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