

Federal Court



Cour fédérale

Date: 20131010

Docket: IMM-893-13

Citation: 2013 FC 1025

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, October 10, 2013

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

SHAHID AHMADZAI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Preliminary

[1] The Refugee Protection Division (RPD) of the Immigration and Refugee Board (Board) correctly found following a thorough analysis that the case of the Afghani applicant is one of lack of credibility with flagrant ambiguity, contradictions and inconsistencies resulting in gaps.

II. Introduction

[2] This is an application for judicial review of a decision rendered on January 7, 2013, by the RPD, in which the Board found that the applicant was not a Convention refugee or a person in need of protection under section 97 of the *Immigration and Refugee Protection Act, SC 2001, c 27* (IRPA).

III. Facts

[3] The applicant, Shahid Ahmadzai, is a citizen of Afghanistan, born in Logar in 1988.

[4] The applicant stated that at the age of 13 (in September 2002), his father and his brother were allegedly killed by unknown murderers in Logar and that the applicant and his mother and brother went to live with his uncle in Kabul shortly after the incident.

[5] The applicant explained that in 2002 and 2003, unknown persons allegedly followed him in Kabul on two occasions. He believes that these unknown persons are the same ones that killed some members of his family. He stated that they also knocked on his door frequently and threw rocks at his windows during the night.

[6] The applicant stated that he arrived in Canada on September 21, 2009, and filed his refugee claim on September 23, 2009. Since the applicant had no identification documents in his possession at the time of his application, the Canada Border Services Agency (CBSA) immediately detained him.

[7] On October 27, 2009, after three detention reviews, the applicant testified before the Immigration Division (ID) of the Board that his real name was “Aimal Wafa”. The applicant testified that he changed his name because of his fear of murderers targeting members of his family to be able to play for the national cricket team in Afghanistan. (This admission only arose after a CBSA offer asked him if he was one of the members of the cricket team that had recently fled Afghanistan and had claimed refugee status in Canada.) The applicant also testified that he lied with respect to his age and itinerary (see hearing transcript of October 27, 2009).

[8] On November 10, 2009, the applicant was released by the CBSA because it was satisfied as to his identity.

[9] On January 7, 2013, the RPD rejected the applicant's refugee claim.

IV. Decision under judicial review

[10] In its decision, the RPD determined that Mr. Ahmadzai's version of the facts was not credible.

[11] The RPD found that there were several inconsistencies in his story for which no satisfactory explanation was provided. The RPD felt that the following elements undermined the applicant's credibility with respect to his fear of his family members' murderers:

- a) First, the applicant could not at all explain satisfactorily why he had stated in his port of entry statement that he feared being killed by the Taliban, after indicating that he

feared [TRANSLATION] “unknown” persons in his Personal Information Form (PIF) and his testimony. The applicant also could not explain why he was the only member of his family living to be targeted by these unknown persons. Further, he did not provide any evidence to confirm that his father and brother had indeed been killed;

- b) Second, the applicant had not indicated in his original PIF or amended PIF that he had complained to the police in Kabul after being followed by unknown persons. On the contrary, in his original PIF, he stated that he had not gone to the police since they were all connected to the Taliban. In his amended PIF, the applicant did not say anything about his complaint. The applicant only stated that he complained to the police when he filed his documentary evidence for the hearing of January 7, 2013.

[12] Regarding the applicant’s fear of the government of Afghanistan because of his refugee claim in Canada, the RPD found that the applicant was also not credible.

[13] First, the RPD determined that the applicant’s allegation that he had to change his name to Aimal Wafa in 2005 because he allegedly was afraid to be discovered by the Taliban was implausible, since none of the other members of his family living in Afghanistan were troubled by these unknown persons and had wanted to change their names. Given the concerns relating to the applicant’s credibility, the RPD gave little weight to his explanation relating to his name change.

[14] Similarly, the RPD found there was no connection between the applicant and Aimal Wafa; the applicant had not submitted any credible evidence that he was Aimal Wafa. The RPD noted that

the only similarity between the applicant and Aimal Wafa was that the two were cricket players and arrived in Canada around the same date.

[15] The RPD added that, even if it had believed that the applicant was indeed Aimal Wafa, there was no evidence on the record that showed an objective basis of risk that the applicant would be persecuted by the government of Afghanistan. The RPD found that it was implausible that the applicant would be persecuted by that government for deserting his sports team in claiming refugee status in Canada.

V. Issue

[16] Was the RPD's credibility analysis reasonable?

VI. Relevant statutory provisions

[17] Sections 96 and 97 of the IRPA apply in this case:

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

Personne à protéger

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent

(iii) la menace ou le

or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

Personne à protéger

(2) A également qualifié de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

VII. Standard of review

[18] A decision relating to credibility should be reviewed on a standard of reasonableness. As a trial court, the RPD is the best placed to assess the credibility of an applicant (*Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315 (FCA)).

[19] When the standard of reasonableness applies, the Court may only intervene if the RPD's reasons are not "justified, transparent or intelligible". To satisfy this standard, the decision must also fall within the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, at para 47).

VIII. Position of the parties

[20] The applicant alleges that the Board erred in its assessment of his credibility by neglecting to consider the documents on the record. The applicant also argued that the RPD did not assess and analyze his specific circumstances if he were to return to Afghanistan.

[21] The respondent argued that the RPD's decision is detailed and clearly explains the reasons for which they did not believe the applicant's allegations. The respondent argued that the applicant did not show behaviour compatible with someone who fears for his life and that the RPD acted reasonably in finding that the applicant was not credible.

IX. Analysis

[22] The only issue is whether the RPD's finding is reasonable in relation to the applicant's fear of the government of Afghanistan because of his refugee claim. The applicant did not seem to dispute the RPD's other findings, specifically in relation to his fear of the Taliban.

[23] It is well established that the RPD's findings affecting issues of credibility and the assessment of evidence are entitled to great deference (*Blanquez v Canada (Minister of Citizenship and Immigration)*, 2011 FC 566; *Serrato v Canada (Minister of Citizenship and Immigration)*, 2009 FC 176).

[24] Therefore, the reasons given by the RPD must not be subjected to a [TRANSLATION] "microscopic" examination by the Court. The RPD must also not be obliged to refer to each piece of evidence before it that is contrary to the findings of fact and explain how it dealt with this evidence

(Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration) (1998), 157 FTR 35, at para 16).

[25] In this case, the applicant alleges mainly that the RPD neglected to support its reasons with the evidence in the record. After reviewing the record, the Court cannot agree with this statement.

[26] The RPD took into account all the evidence available to it and all the explanations provided by the applicant with respect to his identity; including the three newspaper articles to which the applicant refers in his memorandum. However, the RPD determined that the applicant's version of the facts lacked credibility and that the objective evidence submitted did not demonstrate connections between the applicant and Aimal Wafa.

[27] Essentially, the applicant was not able to present persuasive evidence to the RPD that he is indeed Aimal Wafa. The connection between him and Mr. Wafa is too tenuous. While he had photographic evidence of a person called Aimal Wafa in the record, it was not clear. This shows a significant gap, a space without an answer. Thus, the RPD was not able to determine whether the person resembled the applicant sufficiently to make a link between the two. This assessment of the evidence was completely reasonable.

[28] It was understandable that the applicant disagreed with the analysis conducted by the RPD. However, the Court cannot substitute its opinion to that of the RPD. The RPD had the benefit of seeing and hearing the applicant; thus, it is in the best position to assess the probative value of any

evidence produced by the applicant (*Cepeda-Gutierrez*, above). Insofar as its assessment is reasonable, the Court cannot intervene in the RPD's decision.

[29] The RPD's decision, taken as a whole, falls within the range of possible acceptable outcomes of the evidence before the RPD. The Court did not note any reviewable error in the RPD's findings. The RPD's reasons are clear, detailed and weighed. In addition, the Court found that the RPD considered the applicant's specific circumstances if he were to return to Afghanistan. It is clear that the RPD assessed the applicant's particular situation relating to the fear of the government of Afghanistan.

[30] Following the evidence in the record that the RPD had before it and on which it was not obliged to comment (*Cepeda-Gutierrez*, above; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, (2011) 3 SCR 708; *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 SCR 654), the Court also noted that there were key inconsistencies in the central elements in the applicant's story. For example, the applicant's original PIF indicates that he had only been educated at home but his amended PIF and his testimony shows that he was educated at "King's Hall Public School" in Peshewar, Pakistan, from 1999-2003 and then at "Said Nour Mohammed Shah Mind" in Kabul, Afghanistan, from 2003-2009. The Court finds it difficult to see how the applicant could have forgotten to leave the country during his years of education. His friendships are also specified based on the story of the fear he alleged against the government of Afghanistan.

[31] The applicant was thus not in Logar when some members of his family were allegedly killed or in Kabul when, according to one of the versions, he was followed by unknown persons in 2002, because he was in Pakistan until 2003. These facts show that a part of an experience in the applicant's stated story or his second PIF has no inherent logic. This means that it was a very different path than what was given in the applicant's second account. Given the numerous significant discrepancies in the evidence in his record, the applicant does not seem to be able to provide a consistent account of his past experiences, even under name of Shahid Ahmadzai.

[32] Significant gaps in the core of the applicant's story as a result of the two contradictory versions in addition to the false names in the record gives weight to courts other than the RPD. The Court entirely agrees with the RPD's non-credibility findings.

X. Conclusion

[33] For all the foregoing reasons, the application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS the dismissal of the applicant's application for judicial review;
there is no question of general importance to certify.

"Michel M.J. Shore"

Judge

Certified true translation

Catherine Jones, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-893-13

STYLE OF CAUSE: SHAHID AHMADZAI v MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: OCTOBER 9, 2013

REASONS FOR JUDGMENT AND JUDGMENT: SHORE J.

DATED: OCTOBER 10, 2013

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