

Federal Court



Cour fédérale

Date: 20150611

Docket: IMM-7914-14

Citation: 2015 FC 737

Vancouver, British Columbia, June 11, 2015

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

NAVID KAWA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review of a decision of a Senior Immigration Officer dated November 18, 2014 wherein, in the context of a second Pre-Removal Risk Assessment (PRRA), it was determined that the Applicant would not be subject to risk of persecution, danger of torture, unusual treatment or punishment if returned to Kabul, Afghanistan.

[2] The Applicant is an adult male citizen of Afghanistan. He left that country in 2004 and entered the United States on a student visa. While in the United States, he was charged and convicted of the crime of obtaining prescription medicine by fraud and was ordered to be deported. Prior to the enforcement of that Order, the Applicant fled to Canada, entering Canada in May, 2014.

[3] The Applicant's claim for refugee status was refused on the basis of criminal ineligibility. His first PRRA application was rejected but was returned for re-determination. At issue here is that re-determination wherein it was determined that there was insufficient evidence to demonstrate that the Applicant would suffer personalized risk upon return to Afghanistan and there was a viable Internal Flight Alternative in Kabul.

[4] I will start by quoting two paragraphs of the decision at issue:

With respect to the option of internal relocation counsel writes that since there is a current temporary suspension of removals to Afghanistan "internal flight alternative is not an issue in this application". Counsel submits no further information regarding the current situation in Kabul aside from noting that suicide attacks, kidnappings and military attacks on the airport in Kabul have taken place. Although Canada Border Services Agency (CBSA) currently does not remove individuals to Afghanistan, as a Senior Immigration Officer I am tasked to assess personalized risk which only applies to the applicant. Having reviewed the applicant's particular profile and circumstances, I find that a viable IFA exists for him in Kabul.

...

In the present case, I find that the applicant has not established through sufficient evidence that it would be unrealistic or an unattainable option for him to return to Kabul in order to avoid any potential confrontation with the Taliban. I find that the applicant adduces insufficient evidence to demonstrate that the Taliban would have an interest in locating the applicant in Kabul,

a large municipality with the population of over 3 million people. While documentary evidence established that the Taliban's presence in Kabul has significantly diminished, I find that this terrorist group still has the capacity to carry out deadly attacks in Kabul and other major cities of Afghanistan. However, the evidence before me indicates that Taliban's targets in Kabul are primarily government officials, religious leaders, tribal elders, off-duty police officers and persons supporting the peace process. I do note that everyday people and bystanders have been killed by terrorist attacks carried out by the Taliban and other insurgency groups; however, it appears they happened to be innocent victims in the wrong place at the wrong time rather than specific targets.

[5] Having found that, even in Kabul where there are suicide attacks, kidnappings and military attacks, where there is a terrorist group that has the capacity to carry out deadly attacks primarily on government officials, religious leaders, tribal elders, off-duty police officers and persons supporting the peace process as well as innocent victims in the wrong place at the wrong time, is it the case that the Officer still found that the Applicant could be removed to Kabul.

[6] In fact, that is not quite what the Officer found. As set out in the last passage quoted above, the Officer found that *“the applicant has not established through sufficient evidence that it would be unrealistic or an unattainable option for him to return to Kabul”*.

[7] Section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c.27 (IRPA) speaks to a person who would be subjected personally to a danger or risk to life or cruel treatment. The Officer has set the bar too high in saying that sufficient evidence must be given to persuade him or her that safety would be unrealistic or unattainable.

[8] Afghanistan is a country that Canada has designated as one wherein removals are temporarily suspended. Brief mention of this was made in the decision at issue in the first passage previously quoted. It is recognized that subsection 230(3) of the *Regulations* under IRPA stipulates that a stay of removal order does not apply to, among other things, persons who are inadmissible on grounds of serious criminality under paragraph 36(1)(a) of IRPA. The Applicant is such a person. However, it would be unreasonable for the Officer not to inquire as to the nature of the offence committed. A person who altered a date on a prescription in order to obtain painkillers when their supply has run out is quite different from a murderer or terrorist. Similarly, the fact that a country is on a do not remove list is not to be ignored; it is to be taken into account as one of the factors under consideration. In other words, if a country is dangerous where many are killed or subjected to cruelty, a place within that country is not “safe” simply because fewer people are shot or subjected to cruelty within some area there.

[9] In the present case, the Applicant has presented evidence as to a number of factors which, taken cumulatively, place him within a narrow group of persons likely to be subjected to death or cruelty. The Officer was very selective in the consideration given to those factors. The decision was not reasonable. It will be set aside.

[10] No party requested a certified question.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that:

1. The application is allowed;
2. The matter is to be re-determined by a different Officer;
3. No question is certified;
4. No Order as to costs.

"Roger T. Hughes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7914-14

STYLE OF CAUSE: NAVID KAWA v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: JUNE 10, 2015

JUDGMENT AND REASONS: HUGHES J.

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APPEARANCES:

Fiona Begg

FOR THE APPLICANT

Aman Sanghera

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Fiona M. Begg Law Office
Barristers and Solicitors
Vancouver, British Columbia

FOR THE APPLICANT

William F. Pentney
Deputy Attorney General of
Canada
Ottawa, Ontario

FOR THE RESPONDENT