

Federal Court



Cour fédérale

Date: 20171204

Docket: IMM-2010-17

Citation: 2017 FC 1095

Ottawa, Ontario, December 4, 2017

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

**ZAMAN ALI NOORI
TOORPAKAI NOORI
MAHMOODA NOOR
ZUBAIDULLAH NOORI
FARHANAZ NOORI
HABIBULLAH NOORI
FRISHTA NOORI
SAMEERA NOORI
NOORULLAH NOORI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision dated March 1, 2017, by an immigration officer [the Officer] at the Canadian High Commission in Islamabad to reject the

Applicants' application for permanent residence as Convention refugees, because of credibility concerns developed by the Officer during the process of interviewing the Applicants [the Decision].

[2] As explained in greater detail below, this application is dismissed, because the Applicants have not demonstrated that the Officer's conclusions, surrounding credibility and inability to assess admissibility, were unreasonable or that the Applicants were provided with inadequate translation services during the interview.

II. Background

[3] The Applicants are Zaman Ali Noori [the Principal Applicant], his wife, and their seven children, who are citizens of Afghanistan. While the Applicants have lived in Pakistan since 1997, their status there is only valid until the end of 2017. The Applicants submitted an application from Pakistan, seeking permanent residence in Canada as Convention refugees. They allege that, while the Principal Applicant and his wife and eldest daughter were living in Afghanistan, the Principal Applicant's brother was kidnapped and returned only after a ransom was paid. They claim that they fled Afghanistan because the Taliban were looking for the Principal Applicant, that his family were beaten when the Taliban could not find him, and that they generally fear their lives would be at risk if they return to Afghanistan because of insecurity in the region and the persecution of their ethnic and religious groups in that country. The Applicants attended an interview with the Officer on February 27, 2017, assisted by an interpreter who translated between English and Dari.

[4] The Officer found that there were inconsistencies in the Principal Applicant's statements with respect to his military service and that his narrative about his brother's kidnapping was not consistent with the brother's own account of the event, provided to Canadian authorities when he himself sought refugee status in Canada. The Officer raised concerns about these two issues at the interview, and the Principal Applicant was provided with an opportunity to respond, but the responses did not disabuse the Officer of these concerns. The Officer was not satisfied that the Principal Applicant was eligible for Convention refugee status and not inadmissible to Canada and therefore denied his application.

III. Issues and Standard of Review

[5] The Applicants identify the following issues for the Court's consideration:

- A. Did the Officer make erroneous findings on credibility and admissibility by failing to have regard to the evidence and by misunderstanding the evidence?
- B. Did the Officer fail to consider the inconsistencies in the Principal Applicant's evidence in the context of the totality of the evidence and objective evidence?
- C. Did the Officer fail to observe principles of natural justice and procedural fairness by not providing the Principal Applicant with a fair hearing and with adequate interpretation?

[6] The parties agree, and I concur, that the standard of review is correctness for issues related to the duty of procedural fairness and that the standard of review is reasonableness for issues related to the Officer's assessment of the evidence and the Principal Applicant's credibility.

IV. Analysis

A. *Did the Officer make erroneous findings on credibility and admissibility by failing to have regard to the evidence and by misunderstanding the evidence?*

[7] The Decision states that that the Officer was unable to be satisfied that the Principal Applicant was eligible for status as a Convention refugee and that he was not inadmissible, because of concerns that he was not being truthful in his interview. The subject of that interview with which the Applicants principally take issue was Officer's questioning about the Principal Applicant's training in and use of weapons during his military experience. The Global Case Management System [GCMS] notes show that the Principal Applicant explained that he served in the Afghan military twice, from 1983 to 1986 in Kandahar and from 1988 to 1991 in Baghlan. He stated that he did not receive or provide weapons training and, when asked if he had ever fired a gun, he answered in the negative and stated that he didn't touch any arms when he was in training. The GCMS notes demonstrate that the Officer questioned this evidence, finding it hard to believe that the Afghan government would be recruiting soldiers during wartime and not provide them with any weapons training. After being reminded of the requirement to be truthful, the Principal Applicant stated that the second time he was in the military, he learned to use an AK-47, but just to open it, and the first time he was in the military he was trained to use a "carbine" (which the Officer noted from open-source research was a long-arm firearm). When asked if he learned to fire the gun, he replied in the affirmative that he received shooting training.

[8] Later in the interview, the Officer returned to this area of questioning, explaining his or her concerns about the information the Principal Applicant had provided and affording the

Applicants an opportunity to respond. The GCMS notes capturing this component of the interview read as follows:

... MILITARY EXPERIENCE/WEAPONS TRAINING I asked you if you had received or provided any weapons training during your military experience and you said no. I asked if you had ever fired a weapon, you said that you did not touch any arms while in training. Only after repeated questioning did you admit that you had in fact been trained on AK – 47 and Carbine. PA Response: In Kandahar, they forced me. You stated earlier that the first military experience was mandatory and the second time it was forced. The second time you said they forced you correct? The situation of war was there the first time. I served for 3 years then my training was over. After military service you have to spend three years in my home after that it was mandatory the second training. I stayed 18 months and they took me by force. How did they take you by force? The government was searching you at home, when they found you they took you by force. You stated repeatedly that you had never been trained to use weapons, nor had you ever fired a gun. In fact, after a series of questioning, you confirmed you had fired a gun. PA: When I was in training you have to guide the new recruits, how to walk, how to choose weapons. Repeat that he had not been truthful nor forthcoming about his experience and training with weapons. PA: For the first time, we didn't have training of weapons we just learned training device. Earlier, you said you were trained to use an AK47, when was that? For the second time. The teacher taught us that. My concern is that after repeated questioning, your answers continue to change and you have not been forthcoming or truthful about your weapons training.

[9] The Applicants argue that there was confusion in this area of questioning and a possibility of misunderstanding that was never clarified by the Officer. They submit that the Officer was referring to “military experience”, while the Principal Applicant was referring to “training” and used the terms “military service” and “military training” interchangeably. I find little merit to this submission. The Officer’s use of the term “military experience” in the GCMS notes reads as a broad reference to the Principal Applicant’s service in the Afghan military. The Principal Applicant sometimes used the term “training” with a similar meaning, i.e. relating to

his military service, and sometimes in the sense of receiving instruction. However, the GCMS notes do not demonstrate any confusion arising from such use of these terms or support a conclusion that the inconsistencies in the Principal Applicant's evidence resulted therefrom.

[10] The Applicants also submit that the Officer approached the interview as a cross-examination rather than providing a meaningful opportunity for the Applicants to understand and respond to the Officer's concerns. They note in particular the Officer saying to the Principal Applicant that he stated repeatedly that he had never been trained to use or ever fired a gun. They submit this mischaracterizes the evidence, arguing that, although the Officer repeatedly pursued this line of questioning, the Principal Applicant provided this answer only once.

[11] The GCMS notes record that the Principal Applicant stated first that he did not provide or receive weapons training, and then that he did not ever fire a gun and did not touch any arms while he was in training. This evidence would perhaps be better characterized as successive statements to the same effect, rather than a repetition of the same statement. However, the GCMS notes do not demonstrate the Officer's characterization of this evidence to have caused the Principal Applicant any confusion.

[12] Nor do I read the notes as demonstrating that the Officer treated the Principal Applicant in an inappropriate way in how he or she conducted this line of questioning. Rather, they show that the Officer initially found the Principal Applicant's evidence as to the lack of involvement with firearms to be implausible. The Officer therefore pursued the area further, resulting in what the Officer considered to be inconsistent testimony, following which the Principal Applicant was

given an opportunity to explain the inconsistency. The Officer's assessment of this component of the interview is captured in the GCMS notes as follows:

MILITARY EXPERIENCE/WEAPONS TRAINING o Applicant stated that he served with the Afghan military twice, from 1983–1986 (Kandahar) and from 1988-1991 (Baghlan). o Applicant stated that during his second service, he worked at the Training Center, training new recruits o Applicant stated that during his military experience he did not receive or provide weapons training. o Applicant stated that he never fired a gun and had not touched any arms while he was in training. Only after repeated questioning, did the applicant admit that he had been trained to use an AK-47 and a Carbine (long-arm firearm), and that he had learned to fire weapons.

[13] I find nothing inaccurate in this summary of the evidence or anything unreasonable in the Officer's subsequent conclusion that discrepancies in the Principal Applicant's evidence and lack of truthfulness after repeated questioning raised concerns about the veracity of his evidence.

[14] The Applicants also argue that the Officer failed to consider the documentary evidence represented by his military card/certificate and national identity card that were submitted by the Principal Applicant to the Canadian Embassy on the day of his interview. I note that at the hearing before the Court the parties took different positions on whether this documentary evidence was or should have been before the Officer. The Respondent points out that these documents are not part of the Certified Tribunal Record. However, the Principal Applicant states in his affidavit, filed in support of this application, that he submitted these documents to an officer at the Canadian Embassy on the day of the interview.

[15] Regardless of the question whether these documents were available to the Officer, I find them to be of little relevance to the Officer's concerns about the Principal Applicant's credibility. The English translation of the national identity card contains no information about the use of weapons. The Applicants point out that the military card/certificate has a column for "Receiving" and "Returning back" of weapons, both of which are blank. However, it is difficult to see how this document could be relevant to the question of whether the Principal Applicant was trained in the use of weapons or, more importantly, whether he gave inconsistent evidence on that subject.

[16] I also note the Applicants' submission that they made no effort to hide the fact of the Principal Applicant's military service. They argue that the Officer should have taken into account this candour, as well as the Principal Applicant's lack of sophistication, his grade 6 educational background, and the fact that almost 30 years had passed since his military service, in assessing his credibility. While those are all valid points to be taken into account, the fact that they are not expressly referenced by the Officer in the GCMS notes or the Decision is not a basis to conclude that the Decision is outside the range of reasonable, acceptable outcomes and therefore unreasonable.

[17] Finally, the Applicants argue that the Decision is unreasonable because the Officer asked the Principal Applicant no questions about his admissibility to Canada and conducted no analysis of his admissibility. The Respondent's position on this argument is that the inconsistencies in the Principal Applicant's evidence caused the Officer's sufficient concerns about the veracity of his testimony that further inquiries were precluded and the Officer was unable to conduct an admissibility assessment.

[18] I agree with the Respondent's characterization of this aspect of the Decision. The GCMS notes expressly state that the discrepancies in the Principal Applicant's evidence identified by the Officer and his lack of truthfulness after repeated questioning raised concerns about the veracity of the rest of the testimony the Principal Applicant had provided during the interview. The notes state that, as a result, the Officer was unable to be satisfied that the Principal Applicant is eligible and is not inadmissible. An immigration officer can reject an application without a specific finding of inadmissibility, on the basis that he or she cannot actually determine that the applicant is not inadmissible (see *Ramalingam v Canada (Citizenship and Immigration)*, 2011 FC 278 at para 37). If an applicant is untruthful, this can affect the reliability of the whole of his or her testimony, and an officer may be unable to conclude that the applicant is not inadmissible (see *Muthui v Canada (Citizenship and Immigration)*, 2014 FC 105 at para 33).

[19] It is important to note that the Officer's findings as to discrepancies arising from the Principal Applicant's interview extended beyond his testimony surrounding weapons use. The Officer was also concerned that his narrative about his brother's kidnapping was inconsistent with the brother's own account. Contrary to what he told the Officer during the interview, the Principal Applicant states in his affidavit filed in support of this application for judicial review that he was not present when his brother was captured by the Taliban. He says that, when the Officer asked him about the place where the incident took place, he did not know, could not respond, and told the Officer he had forgotten. But when the Officer insisted, he said that his brother was taken from outside their shop.

[20] The Respondent correctly argues that this explanation does not form part of the evidence before the Officer and therefore cannot be taken into account in assessing the reasonableness of the Officer's decision. The Officer gave the Principal Applicant an opportunity to address this particular inconsistency, and he did not provide this explanation. Moreover, even if it was appropriate to consider this explanation in the Principal Applicant's affidavit, I cannot conclude that this admission, that he gave the Officer information that was not accurate, can assist him in challenging the reasonableness of the Officer's conclusions as to his credibility and resultant inability to assess his inadmissibility.

B. Did the Officer fail to consider the inconsistencies in the Principal Applicant's evidence in the context of the totality of the evidence and objective evidence?

[21] The Applicants argue that, independent of the Principal Applicant's credibility, the Officer was required to consider their eligibility for Convention refugee status based on their Hazara ethnicity and Shia religious faith, which they asserted in their claim subjected them to persecution in Afghanistan. The Applicants also refer to the concern about the safety of their children and note that the Officer did not challenge the Principal Applicant's evidence about the Taliban searching his home and beating his family before their departure for Pakistan.

[22] The Applicants are correct that the Officer did not analyse these assertions or assess whether they were supported by the country condition evidence. However, as analyzed above, the Officer was unable to be satisfied that the Principal Applicant was not inadmissible to Canada, because of concerns about the veracity of his testimony. As the Applicants have not been successful in challenging the reasonableness of that finding, it precludes the Applicants

being eligible for Convention refugee status, and I cannot conclude that the Decision is unreasonable based on the Officer not having analysed the claimed risk of persecution due to the Applicants' ethnicity and religious beliefs.

C. Did the Officer fail to observe principles of natural justice and procedural fairness by not providing the Principal Applicant with a fair hearing and with adequate interpretation?

[23] The Applicants did not argue this particular ground of review at the hearing of this application; however, in their written submissions, they argue that it is apparent from the GCMS notes that the Principal Applicant did not understand the English language in which the Officer conducted the interview and that the interpretation between English and Dari was inadequate. The Principal Applicant states in his affidavit filed in support of this application for judicial review that he had reservations about the quality of interpretation and that the interpreter communicated with him in Dari but also sometimes in Pashtu and Urdu when looking for words to translate the Officer's questions. He also states that, when he told the interpreter that the Taliban, who are Sunni and Pashtun, persecuted the Applicants because they are Hazara and Shia, the interpreter's facial expression changed, and the Principal Applicant thought the interpreter was insulted by this assertion. Although this evidence was not before the Officer, it relates to a procedural fairness issue, and I therefore consider it appropriate for the Court to take it into account in considering the Applicants' submissions on this issue.

[24] In *Singh v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1161 at paragraph 3, Justice Lemieux summarized the principles enunciated in *Mohammadian v Canada (Minister*

of *Citizenship and Immigration*), 2001 FCA 191 [*Mohammadian*], governing the required quality of interpretation:

- A. The interpretation must be precise, continuous, competent, impartial and contemporaneous.
- B. No proof of actual prejudice is required as a condition of obtaining relief.
- C. The right is to adequate translation not perfect translation. The fundamental value is linguistic understanding.
- D. Waiver of the right results if an objection to the quality of the translation is not raised by a claimant at the first opportunity in those cases where it is reasonable to expect that a complaint be made.
- E. It is a question of fact in each case whether it is reasonable to expect that a complaint be made about the inadequacy of interpretation.
- F. If the interpreter is having difficulty speaking an applicant's language and being understood by him it is a matter which should be raised at the earliest opportunity.

[25] While the Applicants now assert that many errors are apparent from the GCMS notes, they do not point to particular components of the notes to identify such errors. The notes themselves identify certain instances where there is an issue with understanding or translation of a question. However, the notes demonstrate that the Officer was aware of the issue in those isolated instances, and I do not find that they represent a basis to conclude that the Applicants received translation services which fell short of the *Mohammadian* requirements.

[26] Moreover, the Principal Applicant expressly confirmed to the Officer at the beginning of the interview that he understood the interpreter. After the Officer provided instructions as to how the interview would proceed, he again confirmed that he understood these instructions and fully understood the interpreter. The Principal Applicant now asserts that there were issues with the quality of the interpretation and raises an additional concern impugning the objectivity of the interpreter. However, the Principal Applicant did not raise these concerns during the hearing. In his written submissions, he argues that he could not do so due to language barriers and feeling overwhelmed by the interpreter's change in body language when he referred to the Taliban's treatment of Hazara and Shia people. In my view, if the Principal Applicant had such concerns during the interview, it was reasonable for him to raise them at that time. As explained in *Mohammadian*, the claimant is always in the best position to know whether the interpretation is accurate and to make any concern with respect to accuracy known during the course of the hearing, unless there are exceptional circumstances for not doing so. The Applicants' arguments do not support a conclusion that there were exceptional circumstances surrounding this interview which would justify a departure from this principle.

[27] I therefore find no breach of procedural fairness arising from the adequacy of interpretation services which would justify interference with the Decision.

V. Conclusion

[28] As the Applicants' arguments have not demonstrated any reviewable error on the part of the Officer, this application for judicial review must be dismissed. No question was proposed for certification for appeal, and none is stated.

JUDGMENT IN IMM-2010-17

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

“Richard F. Southcott”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-2010-17

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