

Federal Court



Cour fédérale

Date: 20180713

Docket: IMM-4997-17

Citation: 2018 FC 734

Ottawa, Ontario, July 13, 2018

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

**ZARA JAMAL
ZAIN SULEMAN MUNAWAR
MAHAM MUNAWAR**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is a case about credibility. It is fitting to begin with some of the oral testimony that, in my mind, speaks volumes to the credibility of the account given by those claiming refugee protection in the matter before me:

If I had any other – we had any other incentive here in Canada – I am a dentist. 2012, the, the professional category was open. I could have applied as a dentist. That is the fastest track you can get your immigration. We could have been there without having – going through five years waiting here. We could have done that. My family is here 35 years. My sisters, siblings live here. Her siblings live here. We have never even thought of this thing, until this incident happened with the son. That was enough... We had no – I am, I am not happy delivering Domino's Pizzas here. So, who comes to anywhere to – you know, uproots the whole family at the age of 50?

[Dr. Munawar Jamal, Transcript of Hearing, Certified Tribunal Record (CTR), p. 243]

When we go out there will be a constant sword hanging on our neck. For literally the rest of our lives. And if my mother goes out to buy some groceries, that might be the last time that (inaudible). Same thing goes with my father. Goes with my – that is might be the last thing I might see my mother and same goes for my father. For myself and my sister.

[Zain Munawar, Transcript of Hearing, CTR, p. 244]

[2] Zara Jamal (“Ms. Jamal”), Zain Munawar (“Zain”) and Maham Munawar (“Maham”) (collectively, the “Applicants”) are citizens of Pakistan and submitted a claim for refugee protection in December 2012. They say that they fear persecution as converts to Christianity. They have sheltered persecuted members of their extended family. Zain has been beaten at school for allegedly committing blasphemy. There is a *fatwa* (religious decree) encouraging Muslim believers to kill their entire family.

[3] The Applicants’ claim was heard by the Refugee Protection Division (“RPD”) on October 17, 2017 and rejected by way of a decision (the “Decision”) dated October 26, 2017. The RPD found that the Applicants’ account of their persecution in Pakistan was not credible, and alternatively found that the Applicants had a viable internal flight alternative (“IFA”) in

Karachi or Hyderabad. Before this Court, the Applicants argue that the RPD erred by making unreasonable credibility findings, by finding that the Applicants have an IFA in Pakistan, and by failing to consider whether they are persons in need of protection under s. 97 of the *Immigration and Refugee Protection Act*. For the reasons that follow, judicial review is granted.

II. Facts

A. *The Applicants*

[4] The Applicants are citizens of Pakistan and members of the Christian faith. Prior to their departure for Canada in November 2012, they resided in Rawalpindi, Pakistan. Ms. Jamal is 47 years old. Her son Zain is 22 years old, and her daughter Maham is 16 years old. At the time of the initial application for refugee protection, the Applicants were listed as dependents on Dr. Munawar Jamal's ("Dr. Jamal") application. Since then, Ms. Jamal and Dr. Jamal have had an acrimonious separation, and as such Dr. Jamal is not a party to these proceedings.

[5] The Applicants assert that they began to face problems in Pakistan on account of their Christian faith in 2012. In February 2012, Ms. Jamal's cousin's husband was accused of blasphemy and their family was targeted. Ms. Jamal sheltered her cousin and three daughters for 11 days, until they moved to a non-governmental organization safe house. Ms. Jamal's cousin's family eventually fled to other parts of the Middle East, and the Applicants were accused of helping them escape.

[6] On April 16, 2012, Zain was badly beaten at his school. The incident involved an argument between Zain and one of his classmates; when Zain slammed his notebook, another student accused him of disrespecting a book which contained the names of Allah and the Prophet. Zain protested that the notebook did not contain such names, and the argument degenerated into a discussion about Christianity and Christ, and Zain was beaten up as a result. He was hospitalized and suffered a hairline fracture to his shinbone, as well as multiple contusions and lacerations. As a result, Zain and Maham were pulled out of school and instead tutored by a Christian teacher. The father of one of the boys who had attacked Zain is a member of the “Red Mosque administration,” and thus Ms. Jamal feared that Zain would be accused of blasphemy and pursued by them. In any event, the family subsequently received threatening phone calls, and fearing for their safety they fled to Canada in November 2012.

[7] In August 2016, Dr. Jamal contacted Ms. Jamal’s brother, Haroon Samson (“Mr. Samson”) and asked him to sell a piece of land that Dr. Jamal owned in Islamabad. Mr. Samson was approached by Raja Ansar (“Mr. Ansar”), who offered a very low price for the land. This low offer was apparently motivated by the fact that Mr. Ansar knew why the Applicants fled Pakistan, but Mr. Samson refused to sell. Mr. Samson later discovered that Mr. Ansar is affiliated with a “land mafia” that looks for unattended properties in Islamabad. On September 6, 2016, Mr. Samson took a potential buyer to view the land, and Mr. Ansar showed up at the site with a group of men, four of them armed with automatic weapons. The group threatened them, and forced the other buyer to leave. Mr. Samson was forced to call Ms. Jamal, and Mr. Ansar threatened her over the phone by saying “I will now show you what insecure is.”

[8] On September 10, 2016, Mr. Samson's friend, Rumman Ahmed ("Mr. Ahmed") discovered a *fatwa* posted at the Applicants' family home in Rawalpindi, declaring the following:

Everyone is informed that Zara Jamal w/o/ Dr. Jamal has insulted holy Prophet during a conversation with Ansar Raja. Because of her richness and approach [with higher officials] Zara Jamal in her madness of pride has insulted the Holy Prophet (PBUH). Therefore, this whole family should be killed.

[CTR, p. 206]

Mr. Ahmed called Mr. Samson to inform him of the *fatwa*. In turn, Mr. Samson called Dr. Jennifer Bennet ("Dr. Bennet"), a family friend, to investigate further. Later in the evening of September 10, 2016, she took a photo of the *fatwa*, printed it, and travelled to Lahore the next day to deliver it to Mr. Samson in person. The Applicants believe that Mr. Ansar bought off an Islamic cleric to have it issued.

B. *Decision Under Review*

[9] The Applicants were self-represented before the RPD. The RPD found the determinative issues of the claim to be credibility and IFA.

[10] With respect to credibility, the RPD makes several observations: that the Applicants contend that Zain's beating is what initially brought them to Canada, that they had received threatening phone calls after the incident, that there were no physical attacks on the family, that Ms. Jamal's cousin's family had been threatened as Christian converts, that Dr. Jamal has had a successful career as a dentist and that his children attend an elite school. The RPD then finds that

the Applicants provided insufficient evidence that their lives were in danger when they left Pakistan in 2012. With respect to the incidents since 2012, the RPD takes issue with the affidavit of Mr. Samson because only the first page is stamped, and the document is nowhere dated. The RPD notes the letter from the pastor of a church in Rawalpindi contains only second hand information. The RPD further notes that the affidavits of Dr. Bennet and Mr. Ahmed also contain second hand information, and that the latter document is undated. The RPD concludes its analysis of the Applicants' credibility by noting that they "disclosed all of this documentation to the Board on October 6, 2017, six working days before the hearing on October 17, 2017, and almost five years after the claimants made their claims" (Decision, para. 28). The RPD finds that this raises doubts about the legitimacy of the *fatwa*, and accordingly draws a negative inference in this regard.

[11] With respect to IFA, the RPD finds that the Applicants could seek safe haven in Karachi or Hyderabad. The RPD finds that the Applicants' alleged persecutors are only interested in their land, and since the land has already been taken, there should be no remaining risk. With respect to the first prong of the IFA test, the RPD notes that Karachi and Hyderabad are large cities with substantial Christian populations and far away from Rawalpindi, and that therefore there is no serious possibility that the Applicants would be persecuted in either of those cities. As for the second prong, the panel notes that Dr. Jamal is well educated and would likely be able to care for his family in either city.

III. Issue

[12] The Applicants seek to review the RPD Decision on three grounds:

- A. The RPD made unreasonable credibility findings;
- B. The RPD erred in analyzing the Applicants' IFA; and
- C. The RPD erred by failing to conduct a s. 97 analysis.

IV. Standard of Review

[13] The standard of review applicable to the RPD's credibility analysis is reasonableness: *Boztas v Canada (Citizenship and Immigration)*, 2016 FC 139 at paras. 4-5. The Court must respect and cannot interfere with a credibility assessment by the RPD unless it is satisfied that the RPD's reasons are not justified, transparent or intelligible, and that the result does not fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir v New Brunswick*, 2008 SCC 9 at para. 47.

V. Analysis

A. *The RPD Made Unreasonable Credibility Findings*

[14] The Applicants submit that the Decision is unreasonable because 1) the RPD misconstrued and misstated the evidence, and 2) because the RPD unreasonably rejected corroborative documents.

(1) Misconstrued / Misstated Evidence

[15] The Applicants submit that the RPD made a number of crucial misstatements of the evidence that tainted the Decision. For example, the RPD incorrectly states that the Applicants'

only basis for the claim in 2012 was the school incident concerning Zain, when in fact a number of reasons were offered: the experience of Ms. Jamal's cousin; the fear of being targeted as converts from Islam to Christianity; the beating of Zain at school; the threatening phone calls; the targeting of the family by those affiliated with the Red Mosque; the fact that the children had to be withdrawn from school; and, the increasing climate of intolerance towards religious minorities in Pakistan. In this regard, the Applicants point out that the RPD did not ask any questions about the threatening phone calls, blasphemy allegations against Ms. Jamal's cousin, or the climate of violence and fear that the family was experiencing in Pakistan.

[16] The Applicants further assert that the RPD erred in finding that there was no mention in the Personal Information Form ("PIF") about the Applicants being targeted as converts, and that there was no evidence about any extremist organization being involved in the Applicants' alleged persecution. The Applicants note that both statements are incorrect; the PIF narrative explains that the persecutors of Ms. Jamal's cousins also knew that her family were converts, and the Applicants identified the agents of persecution as extremists (such as adherents of the Red Mosque and the Movement for Implementation of Muhammad's Shariah).

[17] The Applicants further submit that the Decision focuses on the absence of physical harm, noting that the analysis must be forward-looking and ought not to be restricted to an overly-narrow definition of persecution.

[18] The Respondent has not provided a substantive response to the Applicants' contention that the RPD misconstrued or misapprehended the evidence. The Respondent affirms that the

Applicants' PIF noted that Zain's beating was the impetus for their claim, and notes that during the hearing, the Applicants answered that the event had been suppressed and no physical attacks had occurred, rendering the RPD's Decision reasonable. The Respondent further notes that Dr. Jamal's faith did not interfere with his career, and that accordingly there was insufficient evidence that the Applicants were in danger when they left Pakistan.

[19] I agree with the Applicants. The relevant portion of the Decision recalls that "[t]he claimant stated that the only basis for their claims in 2012 was the school incident" (Decision, para. 19). This statement is a total mischaracterization of the oral testimony. The RPD has conveniently selected a portion of the oral testimony to suggest that the Dr. Jamal agreed that the "only" motivation for the claim in 2012 was the school incident is particularly troubling. During the hearing, the RPD asked its question no fewer than 5 times before arriving at the answer that it quotes:

MEMBER: So what was the basis here of a, a refugee claim? This one incident in a school where your, your son was unfortunately beaten?

[...]

MEMBER: Is there any other basis for your claim in 2012?

CLAIMANT: Apart from the, you know, isolated cases of discrimination that one goes through.

[...]

MEMBER: So, it seems to me, that when you initially came here in 2012 and made a claim, the basis for that claim was the one incident that happened to your son. Are, are you under – I want to be clear that you are understanding me?

[...]

MEMBER: The basis of your claim was this one incident with your son and a kind of general environment of prejudice against Christians? Is that correct?

CLAIMANT: More than prejudice.

MEMBER: Sorry.

CLAIMANT: More than prejudice. Killings. Bombings.

MEMBER: I just want to answer – answer my question. For you, the only incident...

CLAIMANT: Yes for – yes.

MEMBER: ... that, that had...

CLAIMANT: Yes.

MEMBER: ... an impact on your lives was the attack on your son.

CLAIMANT: Oh, yes.

[Emphasis added]

[Transcript of Hearing, CTR, pp. 227-230]

In my reading of the transcript, the RPD plainly cross-examined Dr. Jamal into giving a particular answer, despite Dr. Jamal's repeated attempts to clarify that there were many factors behind the family's departure from Pakistan in 2012. Even though it is factually true that the only direct, physical incident that the family experienced prior to their departure was Zain's beating, it is a mischaracterization of the testimony to state that the Applicants' "only basis for the claim in 2012 was the school incident." Moreover, I find this statement to be troubling because it suggests that the RPD would require that persecution be physical or direct in order to substantiate a claim for refugee protection. That is simply not the law.

(2) Rejection of Corroborative Documents

[20] The Applicants argue that the RPD unreasonably rejected the documentary evidence by suggesting that the disclosure of the *fatwa* evidence was coincidentally timed days before the RPD hearing was scheduled. The Applicants note that the timing is not a coincidence at all, but rather is what the RPD rules require, and underline that the *fatwa* was posted in September 2016 – not in 2017 immediately preceding the hearing. The Applicants further take issue with the fact that the RPD doubted the legitimacy of the *fatwa* because it does not contain the name of the person who allegedly issued it, retorting that the RPD provides no authority for its finding that “only a person with authority and knowledge of Islamic law is able to issue a fatwa” (RPD Decision, para. 23). The Applicants argue that instead of simply dismissing the *fatwa* on account that there was no documentary evidence about the “Movement for Implementation of Muhammad’s Shariah,” the RPD ought to have put its concerns to the Applicants.

[21] With respect to the other documentary evidence, the Applicants further note that the RPD dismissed this corroborative evidence by speculating on the technical requirements for *fatwas* and affidavits from Pakistan, and by failing to put these concerns to the Applicants. The Applicants recognize that procedural fairness did not require the RPD to provide a “running score” of the weaknesses in the case, but did require that the RPD notify the Applicants of its concerns during the hearing.

[22] The Respondent argues that the RPD’s concerns with the documentary evidence were reasonable; it notes the alleged irregularities in the affidavits, and repeats the RPD’s finding that

the *fatwa* did not contain the name of the person who issued it. Thus, the Respondent argues that it was reasonable to afford the documents little weight.

[23] I agree with the Applicants' position that the RPD unreasonably discounted the *fatwa*'s credibility. As stated by the Applicants, the RPD's stipulation of who may sign a *fatwa* is not grounded in any evidence; it is no more than speculation on the part of the RPD. The Applicants are also correct to point out that the RPD engaged in further speculation about the technical requirements of affidavits in Pakistan. Finally, it is trite law that concerns about the legitimacy of documentary evidence must be put to an applicant where those concerns will then be relied upon for dismissing a critical piece of evidence: *Sivaraja v. Canada (Citizenship and Immigration)*, 2015 FC 732 at para. 50; *Karadag v. Canada (Citizenship and Immigration)*, 2015 FC 353 at para. 4; *Angulo v. Canada (Citizenship and Immigration)*, 2014 FC 1131 at para. 36. For these reasons, the RPD's analysis of the documentary evidence was unreasonable, and moreover the failure of the RPD to put its concerns about key evidence to the Applicants constitutes a breach of procedural fairness. On this basis alone, the Decision cannot stand.

VI. Certification

[24] Counsel for both parties was asked if there were questions requiring certification. They each stated that there were no questions arising for certification and I concur.

VII. Conclusion

[25] Having found that the RPD made unreasonable findings with respect to the Applicants' credibility, I need not consider the second and third issues. Notably, the issue of IFA is inextricably linked to the credibility issues that arise in this case and can only be resolved once the appropriate credibility assessments have been made. This matter will be returned for redetermination by a different panel member.

JUDGMENT in IMM-4997-17

THIS COURT'S JUDGMENT is that:

1. The decision under review is set aside and the matter referred back for redetermination by a differently constituted panel.
2. There is no question to certify.

"Shirzad A."

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4997-17

STYLE OF CAUSE: ZARA JAMAL, ZAIN SULEMAN MUNAWAR,
MAHAM MUNAWAR v THE MINISTER OF
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