

Federal Court



Cour fédérale

Date: 20190220

Docket: IMM-2582-18

Citation: 2019 FC 211

Toronto, Ontario, February 20, 2019

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

**REHANA BARKAT
ARIEL SERENA XVERIOUS (A MINOR)
AMY XVERIOUS (A MINOR)
ALIJAH XVERIOUS (A MINOR)**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (“RPD”) dated April 25, 2018, which found that the Applicants are not Convention refugees nor persons in need of protection pursuant to

s 96 and s 97, respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”).

Background

[2] The Applicants are citizens of Pakistan and are members of the Christian faith. They are a family comprised of a mother, Rehana Barkat (“Adult Applicant”), and her three minor children (“Minor Applicants”). When the RPD heard their claim, it was joined with the claim of the Adult Applicant’s husband, Xverious Xverious (“Xverious”), who is also the father of the Minor Applicants. However, as the Applicants entered Canada through the United States (“US”) by way of an exception to the Safe Third Country Agreement, they must seek judicial review of the negative RPD decision. Because Xverious entered Canada from the United States on a visitor’s visa, his appeal of the RPD’s negative decision must be made to the Refugee Appeal Division. In the result, Xverious is not an applicant in this matter.

[3] As described in the Basis of Claim form (“BOC”) of Xverious, which was relied upon by him and the Applicants when appearing before the RPD, the Applicants’ problems began in October 2016. At that time, a neighbour, who is a supporter of the Islamist political party Jamaat-e-Islami, confronted Xverious. The neighbour was upset about the then potential election of Donald Trump, which he felt would put the safety of Muslims at risk. The neighbour suggested that Xverious must have a close relationship with the US and Canada, as Xverious had travelled there many times. He also took issue with the Applicants’ Christian faith. The following day the neighbour suggested that Xverious was probably a spy for the US and that he

intended to report him to the police. On November 7, 2016, the neighbour again confronted Xverious. The neighbour demanded that Xverious and his family convert to Islam to demonstrate their loyalty to Pakistan and threatened to go to the police and make a report against the family if they did not comply. On November 9, 2016, Xverious went to the police and told them of his problems with the neighbour. The police questioned him about his business trips to the US and said that they knew and respected his neighbour and did not believe that he was forcing Xverious and his family to convert to Islam. The family then booked flights to depart from Pakistan on December 17, 2016 for travel to the US as they held visas for that country. In the meantime, Xverious continued to try to convince his neighbour and his neighbour's friends that Xverious was loyal to Pakistan and told them that the family would convert to Islam. His neighbour responded by saying that if the family did not convert he would not let them live in peace. The family flew to the US and Xverious entered Canada on December 22, 2016. The Applicants entered Canada on January 24, 2017. They made refugee claims in January 2017.

Decision Under Review

[4] The RPD found that the determinative issue was the existence of a viable internal flight alternative ("IFA"), specifically Hyderabad or Islamabad. As to the Applicants' neighbour, the RPD found that the preponderance of the objective country evidence before it did not establish, on a balance of probabilities, that the neighbour or Jamaat-e-Islami have an effective nationwide reach in Pakistan such that the Applicants would be located or identified were they to relocate to Hyderabad or Islamabad. The RPD gave its reasons for reaching this conclusion, which included that the neighbour was not a high-ranking party executive or holder of public office. Further,

even in his own hometown where he was known and respected by the police, the neighbour's serious allegation that Xverious was working for a foreign government against Pakistan did not cause the police to take any action. The RPD also considered the tenant registration system in Pakistan but found that the evidence did not establish that the system would be used by the authorities to locate the Applicants. As to Jamaat-e-Islami, the evidence indicated that it is not a major political party with significant national representation and decreased the likelihood of Jamaat-e-Islami having a substantial degree of power and a nation-wide reach through government apparatuses. Finally, the RPD noted that there was no evidence of the Applicants' neighbour making efforts to locate them, other than asking Xverious's brother where they were.

[5] The RPD then considered that the Applicants are Christian and stated that it had conducted a forward looking assessment reviewing any potential risk that the Applicants may face in Islamabad or Hyderabad as a result of their religion. The RPD noted that despite the allegation of the neighbour, no charge of blasphemy had been filed. Nor had his allegation of blasphemy led to the formation of mobs and violence, reports of which are found in the country conditions evidence. The RPD noted that the objective evidence indicated that there are 1.3 to 3.0 million Christians in Pakistan, that they are the second largest minority community and that they have been targeted for acts of violence and intimidated and discriminated against. However, Xverious's evidence was that during his life he had experienced no difficulties as a Christian other than with his neighbour. The RPD noted that the Applicants provided some mixed evidence but that Xverious's testimony was that he was able to safely practice his religion in Pakistan, the churches are generally safe and there is security. Further, his family members, including a brother and his mother, continue to live in Karachi and have not faced the types of

discrimination and societal violence reported in the country conditions, many of the victims of which are identified as poor or having a lower socio-economic status or class. The Applicants do not fit that profile. Further, Xverious's brother had moved to Islamabad and there was no evidence that Xverious's family there has faced persecution or harm. The Adult Applicant also has several siblings who remain in Pakistan with no reports of them facing harm or persecution. The RPD concluded that the Applicant's had not established on a balance of probabilities that they face a serious possibility of being persecuted or harmed in either of the IFA locations, Hyderabad or Islamabad.

[6] The RPD then considered whether it would be objectively unreasonable or unduly harsh for the Applicants to relocate to those cities noting, amongst other things, that the Applicants had not alleged any significant impediment to relocating within Pakistan, other than their allegations of safety. Having addressed a variety of other considerations, the RPD concluded that the evidence did not establish that the Applicants could not relocate.

Issue and Standard of Review

[7] In my view, the sole issue in this matter is whether the IFA assessment of the RPD was reasonable. The standard of review for that issue is reasonableness (*Kayumba v Canada (Citizenship and Immigration)*, 2010 FC 138 at paras 12–13; *Jimenez v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 1225 at para 9).

Analysis

[8] The Applicants submit that the RPD erred under both prongs of the IFA test and that its determination that the Applicants have a viable IFA in Hyderabad or Islamabad falls outside the range of possible acceptable outcomes. More specifically, the RPD failed to consider the situation of Christian girls and women in Pakistan, failed to conduct a reasonable forward looking assessment of the risk of religious persecution in Hyderabad or Islamabad, and misconstrued the evidence.

[9] In considering the Applicants' submissions, it is useful to first set out the two-pronged test for determining if there is a viable IFA. As set out in the RPD's reasons, this is found in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA):

- (1) The RPD must be satisfied on a balance of probabilities that there is no serious possibility of the claimants being persecuted in the proposed IFA;
- (2) Conditions in the part of the country proposed as an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimants to seek refuge there.

[10] Having identified the test, the RPD then noted that the Applicants' primary arguments against relocation within Pakistan were that they were Christian and there are a lot of prejudiced people in Pakistan; that they feared that their neighbour and Jamaat-e-Islami would locate them; and that they feared they would face a false blasphemy charge or be killed. The RPD then assessed these concerns.

[11] In relation to the first prong of the test, whether a serious possibility of persecution exists, the RPD first concluded that the Applicants had not established on a balance of probabilities that

they face a serious possibility of being persecuted in Islamabad and Hyderabad. In coming to this conclusion, it analysed the threat posed by the Applicants' neighbour and Jamaat-e-Islami and then analysed the risks that the Applicants would face due to their Christianity.

Misconstruing of evidence

[12] The Applicants submit that the RPD erred in concluding that their neighbour and Jamaat-e-Islami would be unable to locate them. However, as pointed out by the Respondent, the RPD did not err in finding that Jamaat-e-Islami holds only 4 of 340 seats in the Pakistan National Assembly. Given this, it was not unreasonable to find that Jamaat-e-Islami may have less strength and control than the Applicants assert. More significantly, I note that the RPD found that there was no evidence that the Applicants' neighbour was making any effort to locate them, other than simply making an inquiry of Xverious's brother. There was also no evidence that the neighbour or Jamaat-e-Islami were using a larger network or connections to locate the Applicants. The Applicants have not suggested that this conclusion by the RPD was unreasonable or pointed to any evidence to the contrary. In the result, as the Applicants' neighbour and Jamaat-e-Islami were not making efforts to find the Applicants, their capacity to locate the Applicants is immaterial.

[13] The Applicants also argue that the RPD misconstrued the objective evidence about the tenant registration system in Pakistan. They argue that the RPD conducted a selective reading of the evidence in the country documents and point to a number of statements within those documents that they argue contradict the RPD's finding. The Applicants make reference to

portions of the documentary evidence that speak to whether the system is widely implemented and strictly enforced and the capacity for police to use the tenant registration system to locate a specific individual.

[14] In this regard, I note that the RPD reviewed the objective evidence concerning the tenant registration system in Pakistan but found, on a balance of probabilities, that it did not establish that the system is used to check if every individual who buys a home, rents a home, or stays at a hotel, has any kind of record. Nor did it establish that such a check would be conducted in such a way as to involve and alert police in other cities and states where individuals have previously lived. The RPD acknowledged that there was mixed evidence as to whether tenant registration information is shared beyond the home province. But it found that because the Applicants did not have First Information Reports registered against them or criminal records, this reduced the likelihood that the Applicants would be of interest to local police, or that police outside of Hyderabad or Karachi would locate the Applicants in the proposed IFAs.

[15] In short, while the Applicants devoted a lot of attention to the likelihood that upon relocation to an IFA they would have to register under the tenant registration system, the RPD did not take issue with this. The RPD also accepted that the system can be used to locate individuals and explicitly recognized that such information could be shared beyond the province or the territory, with other law enforcement or government agencies if deemed necessary. It concluded, however, that the documentary evidence indicated that such information sharing is not done as a matter of course, or for every registered individual. Further, in the Applicants' circumstances, it was unlikely that registration would attract attention.

[16] In my view, this is not a circumstance where the RPD misconstrued the evidence as the Applicants submit. Rather the Applicants take issue with the weighing of the evidence. However, the RPD's analysis was reasonable based on the evidence before it and it is not the role of the Court to reweigh the evidence (*Tjipuravandu v Canada (Citizenship and Immigration)*, 2013 FC 927 at para 23; *Ezemba v Canada (Citizenship and Immigration)*, 2005 FC 1023 at paras 25, 29; *Peimli v Canada (Citizenship and Immigration)*, 2019 FC 119 at para 22).

[17] The Applicants also claim that one of the grounds upon which the RPD found that they would be safe in the proposed IFA was because the Adult Applicant's brother-in-law had moved to Islamabad and had not encountered any problems there. The Applicants submit that this was a mistake of fact. The evidence was that the Adult Applicant's brother-in-law was threatened by the neighbour and, as a result, moved to a different location within Karachi. Thus, there was no evidence to support the RPD's finding pertaining to the IFA.

[18] As noted above, the RPD found that there was no evidence of the Applicants' neighbour making efforts to locate them other than the neighbour asking Xverious's brother where Xverious was. The RPD noted that the brother, Philemon, had subsequently left the area. When assessing the risk to the Applicants as Christians, the RPD noted that Xverious's family members, including a brother and his mother who are Christians, continue to live in Karachi and have not faced the types of discrimination and societal violence reported in the country conditions. Later in its reasons, the RPD stated that while problems arose from the Applicants' neighbour, Xverious's brother had moved to Islamabad, one of the IFAs, and that the evidence did not establish that Xverious's family had faced any persecution or harm there.

[19] To the extent that the RPD erred, I agree with the Respondent that this argument actually undermines the Applicants' claim. The Adult Applicant's brother-in-law claims he was threatened by the same neighbour as were she and her husband. If the brother-in-law was able to evade the reach and influence of the neighbour and Jamaat-e-Islami, and hence the risk of persecution, by simply moving within the same city, this suggests that the Applicants will be safe from them in the proposed IFAs. Further, Xverious's BOC indicates that his mother and two brothers live in Karachi. The Adult Applicant's BOC indicates that her mother and four brothers live in Karachi. Her testimony before the RPD was that she has two brothers living in Karachi and two brothers living in Islamabad, the latter both having moved there from Karachi for business reasons. There was no evidence that these family members have experienced persecution in either city. In my view, nothing turns on this error.

Risk of religious persecution

[20] The Applicants also submit that the RPD erred by finding that they do not face a forward looking risk of religious persecution in Hyderabad or Islamabad. In support of this submission, they claim that the RPD unduly focused on Xverious's past experiences and failed to conduct a forward looking assessment. Further, that the RPD misconstrued the objective evidence regarding the situation for Christians in Pakistan, and failed to consider the implications of the Applicants moving from Karachi, which has one of the largest Christian populations in Pakistan, to Hyderabad or Islamabad.

[21] The RPD stated that it conducted a forward looking assessment, reviewing any potential risk that the Applicants may face in Islamabad or Hyderabad as a result of their religion. The RPD addressed the Applicants' fear that they would be at risk due to an allegation of blasphemy. It next noted that the country conditions documentation indicated that there are 1.3 to 3 million Christians in Pakistan, that they are the second largest religious group in that country, and that they have been targeted for acts of violence and intimidation, and face discrimination and societal violence. However, the RPD noted that the evidence of the Adult Applicant and her husband was that they had not experienced such problems, other than in connection with their neighbour. As to freedom of religion, the Adult Applicant and her husband had provided some mixed evidence, Xverious's evidence being that he was able to safely practice his religion in Pakistan, that the churches are generally safe and there is security. His mother and brother live in Karachi and have not faced the types of discrimination and societal violence reported in the country conditions reports. As well-educated and financially well off, the RPD found that the Applicants do not fit the profile of many Christian victims of violence who are illiterate, work manual labour jobs or are poor. The RPD also stated that the documentary evidence regarding country conditions for Christians in Pakistan does not personally connect the Applicants to the broader persecution and harm from any quarter other than their neighbour.

[22] The Applicants submit that it was incumbent on the RPD to consider whether the current discriminatory measures against Christians in Pakistan would amount to a serious risk of persecution for the Applicants. However, I am not persuaded that the RPD failed to conduct such an assessment. Consistent with country conditions documentation set out in the Applicants' written submissions, the RPD acknowledged that Christians in Pakistan may face discrimination,

targeted acts of violence and intimidation. However, the evidence before the RPD was that the Adult Applicant, her husband, and their respective families had not suffered religious persecution in Pakistan, other than in respect of the Applicants' conflict with their neighbour, before the Applicants fled Pakistan and that neither of the families of the Adult Applicant or her husband had subsequently suffered religious persecution.

[23] As to the suggestion that the RPD unduly relied on Xverious' testimony that he had not suffered past religious persecution, the relevance of past persecution is that it may support a well-founded fear of persecution in the future. However, it will not necessarily do so. Rather, the evidence must be evaluated to determine whether the fear remains well-founded. While the past experiences of the Adult Applicant and her husband may not be entirely indicative of their future experiences given that they would be moving to a new location, it was open to the RPD to draw on this evidence. And, in my view, when considered together with the absence of evidence that the Applicants' family in Pakistan has or is currently facing persecution, the RPD's finding was reasonable. This is especially true since the Adult Applicant testified that she has Christian family living in Islamabad.

[24] Nor do I agree with the Applicants' submission that the RPD ignored the Adult Applicant's evidence as to religious persecution and dealt only with the past experiences of her husband. In support of this, the Applicants point to a single exchange in the transcript, however, reading this in context it is clear that the Adult Applicant's inability to practise her religion freely stemmed from her husband's conflict with their neighbour. When asked if she was able to safely practice her religion prior to the incident, she responded that the family used to go to church to

pray and that prior to the incident she had never been unsafe. Moreover, the RPD acknowledged the mixed evidence on this point, which suggests that it considered both the Adult Applicant's evidence and that of her husband as to their ability to freely practice their religion. The RPD is presumed to have considered all of the evidence before it and need not reference each individual piece of evidence in its reasons, nor does the Adult Applicant's evidence contradict the RPD's conclusion (see *Gjoka v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 386 at para 57; *Jang v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 996 at para 29; *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at para 28).

[25] The Applicants also submit that the RPD misapprehended the country conditions evidence. They assert that the RPD found that only poor and marginalized Christians are targeted and that the evidence does not support the RPD's misguided finding that Christians who are not poor or marginalized are not targeted. In my view, and as submitted by the Respondent, the Applicants' argument mischaracterizes the RPD's finding. The RPD clearly acknowledged that Christians generally have been targeted for acts of social violence and have been discriminated against in many aspects of life. However, it noted that the evidence of the Adult Applicant and her husband was that this had not been their experience. The RPD stated that the victims in the reports of problems faced by Christians in Pakistan "are often identified" as those who are poor, working in blue collar jobs, or having a lower socio-economic status or class. However, the Applicants' situation is distinguishable from many of these reports as they are well educated, financially well off, had a successful business, and have a higher socio-economic class. On that basis, the RPD found that the Applicants do not fit the profile of many of the Christian victims.

Accordingly, I do not agree that the RPD found that only poor and marginalized Christians are targeted.

[26] Finally, the Applicants submit that the RPD failed to consider the potential implications of requiring the Applicants to move from Karachi, a city which has one of the largest Christian populations in Pakistan, to Hyderabad or Islamabad, which do not. However, I note that this issue was not specifically raised at the hearing or during the submissions made by Applicants' counsel at the hearing. And while the Applicants submit that specific evidence of Christian communities in these cities is sparse within the country conditions documents, the onus was on the Applicants to establish that it would not be reasonable for them to move to an IFA (*Fernandoupulle v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 91 at paras 21–25 (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 at paras 5–12 (CA)) because of their Christian faith. They do not point to any evidence that was before the RPD to support this submission and which was overlooked.

Girls and Women in Pakistan

[27] The Applicants submit that the RPD failed to consider the objective country evidence regarding the very serious problems and risks faced by Christian women and girls in Pakistan, including kidnapping, gang rape, forced conversion and forced marriage. Given that the Adult Applicant is a woman with two young daughters and the forward looking nature of an IFA, the Applicants submit that the RPD should have considered this evidence before concluding that it would not be objectively unreasonable or unduly harsh for the Applicants to relocate. Further,

the issue was raised in the Adult Applicant's BOC, yet the RPD did not mention the country conditions evidence it in its reasons.

[28] The Respondent submits that the Adult Applicant's claim was primarily based on Xverious's claim that his neighbour was specifically targeting him and his family because of their prior travel to the US and Canada and their Christian religion, and it was therefore reasonable for the RPD to approach its analysis from that perspective.

[29] I note that Xverious's BOC relates exclusively to risk arising from his conflict with his neighbour. He states that Christians are a small minority in Pakistan and are persecuted but that he was blessed because he did not face any discrimination or persecution while growing up and that that his problems began in 2016 with the confrontation with his neighbour. In his BOC, he does not raise a concern about the risk to Christian women. At the hearing, when asked what he feared if returned to Pakistan, he stated that the family feared Jamaat-e-Islami and being forcibly converted or killed if they refused to convert. Asked if there was anyone other than Jamaat-e-Islami that he feared, he replied Jamaat-e-Islami was the family's only enemy and then spoke to events concerning his neighbour. When pressed as to any other fear beyond this main concern, he stated that there was nothing else. When asked if there was any reason why he could not safely relocate in Pakistan, he replied that he did not think he would be safe anywhere in Pakistan because if he registered with a landlord, the police and Jamaat-e-Islami could locate the family. When again asked if there were any other concerns about relocating, he replied because things are not safe anywhere in Pakistan, there are a lot of prejudiced people who are against Christians.

[30] When interviewed at the port of entry, the Adult Applicant was asked why she feared returning to Pakistan. She spoke only to the religious conflict with her neighbour. The Adult Applicant in her brief BOC states that because of the family being Christians, their neighbours in Karachi were jealous of her husband's success and that the family were able to afford trips to the US. She states that she repeats and relies on her husband's BOC. She then states "As a Christian woman I am very afraid for my safety and my children's safety. I have two young daughters and in Pakistan young Christian girls are especially vulnerable. I have heard many news of Christian girls being kidnapped by Muslim men and being raped and forcibly converted to Islam."

[31] At the hearing, the RPD noted that the Adult Applicant had stated in her testimony that she has daughters and that they are young and she is scared that anything could happen to them. The RPD asked her exactly what it was that she feared would happen to her daughters. She replied that she had noticed in the newspapers and on TV "also that once (inaudible) they don't leave you and my kids go to school and I cannot send them alone because they're not safe there". When asked if her children continued to go to school while they were in Pakistan, she stated that they would go when she was able to walk with them or take them to school but, if not, they stayed home. When asked why, if she was afraid of going out because of the conflict with the neighbour, she would take the children to school, she stated that they were obliged to attend during exams which were important. As to seeing things on TV and in the newspaper, this related to kidnappings, which they first noticed before the October 2016 incident. When asked if there was anything beyond what her husband had said that she wanted the RPD to be aware of in making the decision about her refugee claim, she responded that all she wanted to say was that we cannot go back.

[32] When questioned by his counsel, Xverious was asked if he had similar fears as to his wife about his daughters, specifically. He stated that the main thing that he is afraid of is the blasphemy law which could be used as a weapon against the family, and his “children, his daughters are really young and what they do, they kidnap the young children and they brainwash them and they can kill us.” When asked about schooling, he responded that this was very important for the children and they are in a lot of danger.

[33] What is apparent from the BOCs and the testimony given at the hearing is that all of the concerns of the Applicants stemmed from the conflict with their neighbour, including the fear of the children going to school unaccompanied. The Applicants’ evidence was that they had not previously experienced any form of religious persecution.

[34] Thus, the RPD accurately stated that the Applicants’ alleged that they cannot relocate primarily because they are Christian and there are a lot of prejudiced people in Pakistan; that they feared that their neighbour and Jamaat-e-Islami would locate them; and that they feared they would face a false blasphemy charge or be killed. The RPD addressed these issues and found that the Applicants had not established on a balance of probabilities that they face a serious possibility of being persecuted or harmed in Hyderabad or Islamabad. In doing so, it specifically acknowledged that the country conditions documentation indicated that Christians suffer discrimination and societal violence in Pakistan. The RPD also stated that as part of its forward looking risk assessment it had reviewed any potential risks to the Applicants in the IFAs. While it would have been preferable for the RPD to specifically speak to the risk to Christian girls and women, which the Applicants now emphasize, in my view, this was encompassed by the RPD’s

overall assessment of the risk faced by the Applicants as Christians in Pakistan in their particular circumstances. Further, it is clear from the transcript of the hearing that the RPD gave the Applicants the opportunity to address this risk and that they did so primarily in the context of the conflict with their neighbour, which was fully addressed by the RPD (see *Dubat v Canada (Citizenship and Immigration)*, 2016 FC 1061 at para 24).

[35] In conclusion, the RPD's decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

JUDGMENT IN IMM-2582-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. There shall be no order as to costs; and
3. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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