

Federal Court



Cour fédérale

Date: 20191218

Docket: IMM-2587-19

Citation: 2019 FC 1645

Ottawa, Ontario, December 18, 2019

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

**MOHAMMAD ALI
KHADIJA MOHAMMAD ALI
MOHAMMAD ZAHOOR
BASMA MOHAMMAD ALI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by the Refugee Appeal Division [RAD] dated March 28, 2019, confirming the Refugee Protection Division's [RPD] decision that the applicants are not Convention refugees, nor persons in need of protection, under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act].

[2] The principal applicant, Mohammad Ali, is a citizen of Pakistan. However, he lived the majority of his life in Kuwait. He is also a successful businessperson. His wife and his two children are citizens of Pakistan as well [collectively, the applicants]. In 2012, they moved from Kuwait to Lahore, Pakistan. The principal applicant worked at his own import-export company. On December 15, 2015, he received an anonymous phone call, demanding money and threatening his life. He sought the help of the police, but without avail. They could only look for the extortionists if they had more details about their identity. On December 25, 2015, masked individuals entered the applicants' home and held the family at gunpoint, again demanding money. They took jewelry and left on the condition that the principal applicant would pay the rest of the sum demanded, or else his children would be taken. The applicants hid in Khanewal, a village 85 kilometers from Lahore. The principal applicant returned to Lahore on occasion to maintain his small business. The family fled to Canada in February 2016 and submitted a refugee claim.

[3] In a nutshell, the RPD concluded that the applicants' claim fell under section 97 of the Act – since it was fundamentally about extortion and general criminality, and had no *nexus* to a Convention ground under section 96. Moreover, the applicants have an Internal Flight Alternative [IFA] to Karachi. The applicants' appeal to the RAD was two-fold: the RPD erred by finding there was no *nexus* to a Convention ground and there was a viable IFA in Karachi. The RAD dismissed the appeal, leading to the present judicial review application.

[4] The availability of an IFA was determinative of the applicants' appeal, and it is not necessary today to examine that part of the RAD's decision dealing with the *nexus* issue. The

RAD's conclusion with respect to the availability of an IFA to Karachi is reviewable on a reasonableness standard. Thus, this Court will only intervene if the decision lacks justification, transparency or intelligibility within the decision-making process, or that it 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).

[5] The two-prong test for determining an IFA has been set out by the Federal Court of Appeal in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA):

- (a) First, the Board must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the part of the country where it finds an IFA exists;
- (b) Second, a proposed IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimants, to seek refuge there.

[6] Both the RPD and the RAD properly laid out the applicable test. Before this Court, the applicants submit, however, that the RAD incorrectly characterized the facts where it suggests that they were able to live safely in Khanewal, since they were in hiding. Further, when the principal applicant travelled back to Lahore he only met clients at their places with security and he never returned to his office. The applicants argue that their ability to hide without being located in Khanewal or Lahore should not be taken to mean that they would not be targeted in the future in Karachi by other criminals. The applicants argue that the RAD's conclusion that the

principal applicant does not have a risk profile putting him and his family at risk is flawed since the principal applicant was already the victim of extortion. Indeed, the RAD should have focussed on the applicants' identities, as perceived wealthy foreigners coming back from Kuwait. Moreover, the applicants further cite country condition documentation showing that local businesspeople are vulnerable to extortion or kidnapping in Karachi.

[7] The respondent argues that the applicants did not credibly establish that they would be at risk of future harm in Pakistan. The applicants could not provide evidence connecting their agents of persecution to the police or local politicians, and the applicants' claim that they were targeted because they recently came from Kuwait was rejected by the RAD. The respondent asserts that the RAD reasonably considered documentary evidence and the applicants' evidence to conclude that their problems were local to Lahore and that the principal applicant did not have a risk profile that would lead him to be targeted in Karachi. The applicants' arguments before the RAD about why Karachi was unsuitable were not clear and convincing because their arguments relied on speculation and were not objectively founded.

[8] While another decision-maker may have decided otherwise, the RAD's conclusion that the applicants have a viable IFA in Karachi is one that is defensible in respect of the facts and the law. The impugned decision must be read as a whole.

[9] The mere fact that the RAD suggests that Khanewal was a "safe place" – while in reality the applicants were hiding – do not render the decision unreasonable. Khanewal is only a small

village. It was never identified as an IFA. On the other hand, Karachi is a large city with a population between 20 to 24 million people.

[10] In the case at bar, it is not seriously challenged by the applicants that there is not sufficient credible evidence on record to establish that the agents of persecution in Lahore have geographic reach or capability to learn of the applicants' return to Pakistan or trace their movements in Pakistan. The applicants argued that they tried to identify the agents of persecution to no avail and that the police would not assist them; but, the RAD reasoned that the police stated that they would assist the applicants, should they provide additional information about the identity of the extortionists. Further, the applicants did not persuasively demonstrate that the police or politicians were involved in their extortion. The applicants also argued that another "mafia" would locate them wherever they went since they would be perceived as "new" arrivals, notably from Kuwait. The RAD disagreed, noting that the applicants were extorted three years after travelling to Lahore and so the principal applicant's argument that he was extorted because he was a newly arrived businessman from Kuwait was not, in fact, supported by the evidence and "made little sense". Further, the applicants could not provide to the RPD or the RAD any credible evidence to show that the agents of persecution tried to locate them at the principal applicant's brother-in-law's house either, and did not have follow-up information regarding whether there were further threats directed at their family since they left Pakistan. I fail to see any reviewable error in these conclusions or inferences of fact.

[11] The applicants also complain that the RAD failed to examine relevant documentary evidence. I kindly disagree. The RAD cited country condition documentation to show that

internal relocation is possible in Pakistan, notably in large urban centres. Particularly when examining the situation in Karachi, the RAD cited country condition documentation to show that there was little risk of violence in Karachi for people with a similar profile to the principal applicant. The principal applicant is a successful small businessperson. The RAD found that documentary evidence showed that kidnapping and extortion are risks for high profile politicians or members of government, unlike the principal applicant. And, although there is evidence that children are at risk of kidnapping, it is not associated with extortion and small businesspeople. This conclusion is reasonable.

[12] The fact that one document was not mentioned in the decision does not render the conclusion unreasonable. Indeed, where one has a closer look to the United States Department of State [DOS] Report upon which the applicants rely, the statement that “[c]riminal and extremist groups often target local businessmen and prominent families to extort ransoms for profit or to finance operations” is not in contradiction with the RAD’s finding that the principal applicant’s profile “does not rise to a level of wealth and prominence as described as being at risk in the documentary evidence”. The RAD is entitled to deference for its weighing of the evidence and its reasoning is intelligible. This Court should not reweigh the evidence.

[13] Finally, the RAD concluded that there was no persuasive evidence to suggest that Karachi would be an unreasonable IFA. Although the applicants will have to register with the police as tenants in Karachi, the police do not have a centralized database and so the information will not be available in other regions; and, the applicants are not being sought by the police. Moreover, the applicants would not suffer undue hardship relocating to Karachi. Indeed, both the

principal applicant and his wife are well educated by Pakistani standards. Further, while it is true that they do not have family support outside Lahore, they previously lived in Kuwait and later travelled to Canada; they have not reported any problems due to lack of family support. Again, I fail to see any reviewable error in these conclusions or inferences of fact.

[14] This application for judicial review is dismissed. No question of general importance is certified.

JUDGMENT in IMM-2587-19

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

No question of general importance is certified.

“Luc Martineau”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-2587-19

STYLE OF CAUSE: MOHAMMAD ALI, KHADIJA MOHAMMAD ALI,
MOHAMMAD ZAHOOR, BASMA MOHAMMAD ALI
v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

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