

Date: 20060727

Docket: IMM-3656-06

Citation : 2006 FC 932

Ottawa, Ontario, July 27, 2006

PRESENT: The Honourable Mr. Justice Lemieux

BETWEEN:

MAHMOOD ASIF

applicant

et

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION and
THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

respondent

REASONS FOR ORDER AND ORDER

- [1] These reasons are being issued in English so that they may be understood by the applicant.
- [2] The applicant seeks a stay of the execution of a removal order issued against him.
- [3] The underlying judicial proceeding is an application for leave and judicial review from the May 19, 2006 decision of a pre-removal risk assessment officer (the PRAA officer) who determined the applicant would not be at risk if returned to Pakistan.

[4] The applicant fled Pakistan on the 6th of July, 2000 arriving in Canada the following day.

[5] His refugee claim was dismissed for lack of credibility in October of 2001, with leave to appeal denied by a judge of this court.

[6] In his personal information form, he explained that he was born in a village situated in the district of Sialkot near Kashmir. His refugee claim was based on political opinion as an active member of the PPP. His expressed fear was of Islamic fundamentalists because he opposed them.

[7] In support of his PRAA application, the applicant filed the following documents:

- A First Information Report, Number 93/2000 dated May 9, 2000 (the FIR);
- A Warrant of Arrest dated February 4, 2001;
- A Notice of Proclaimed Offender dated January 5, 2002;
- Extracts of proceedings against the applicant in Magistrates Court based on his FIR; and
- A letter dated October 20, 2005 written by a police officer who confirms that FIR No. 93/2000 was issued against him.

[8] The PRAA officer reviewed these documents without the constraint of the new evidence rule contained in the *Immigration and Refugee Protection Act* (the Act), proclaimed in June of 2002. The reason for doing so was because the applicant had filed in March of 2002 an application for a risk assessment under the former Immigration Act.

[9] The PRAA officer asked the High Commission in Islamabad to verify the authenticity of these documents with the authorities except that no verification was asked of the extract of the proceedings in Magistrates Court.

[10] The PRAA officer, in her report, does not say how the verification was carried out. She indicates it turned out FIR number 93/2000 was not registered in the applicant's name and the FIR in question concerned a proceeding which was no longer alive. She indicates no warrant of arrest was registered against the applicant.

[11] She provided the High Commission investigative results to the applicant and his counsel for comment. Counsel indicated the Embassy document contained two errors, namely a search was made of the wrong FIR i.e. one registered on the 28th of March, 2005 rather than registered on the 28th of March, 2000 and the warrant of arrest mentioned in the verification was also wrong because it was dated February 4, 2000 rather than February 4, 2001.

[12] The PRAA officer felt obliged to ask the High Commission to delve into the matter again.

[13] The PRAA officer in her decision states a representative of the Embassy went directly to the police station in Sadar, Wazirabad and verified FIR's dated 93/2000; 93/2001 and 193/2000. She reports none of the FIRs were in the applicant's name. She indicates the FIR submitted by the applicant bore a date of May 9, 2000. She indicates there was no FIR registered on that date at the police station.

[14] Moreover, she stated the verifications demonstrated no letter dated October 20, 2005 was issued by a police officer at the station concerned and the police officer who purported to issue the letter was not known there.

[15] The PRAA officer does not tell us in her decision how the Embassy official carried out his verification at the police station.

[16] In my view, a stay should be issued.

[17] The serious issue I see is the lack of adequate reasons or explanation in the PRAA officer's decision how the second on-the-spot verification was carried out at the local police station by the Embassy official.

[18] The underlying investigative report from the High Commission in Islamabad dated May 3, 2006 (applicant's motion record, page 80) which was provided to the applicant and his counsel for comment suffers the same defect. Did the embassy representative conduct a record search himself or did he rely upon the word of local police officials whom he visited?

[19] The PRAA officer, in her decision, acknowledged there existed a problem of police corruption in Pakistan.

[20] It may well be the investigation on the authenticity of the documents was properly carried out but I do not know this at this point in time.

[21] I suggest this matter be addressed by counsel for the Ministers when opposing leave.

[22] I am troubled for a second reason. No authenticity check was made of the extract of proceedings in Magistrates Court. The PRAA officer simply cast that document aside because it was based on FIR 93/2000, a document which the PRAA officer said she gave no weight.

[23] The last entry of the extract of proceedings before Magistrates Court is dated February 17, 2006 and states that the accused was declared a Proclaimed Offender and a perpetual warrant of arrest of the accused had already been issued to the SHO concerned.

[24] If the documents relied upon by the applicant are not fakes, the applicant has demonstrated a risk to his life or a risk of cruel and unusual treatment or punishment.

[25] In the circumstances, the balance of convenience favours the applicant.

ORDER

THIS COURT ORDERS that a stay of the applicant's removal from Canada is issued until disposition of the applicant's leave for judicial review and if leave is granted until the judicial review is finally disposed of.

"Francois Lemieux"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET : IMM-3656-06

STYLE OF CAUSE: MAHMOOD ASIF c. MCI

PLACE OF HEARING: MONTRÉAL QUÉBEC

DATE OF HEARING: 24 JUILLET 2006

**REASONS FOR ORDER
AND ORDER** JUDGE LEMIEUX

DATE OF REASONS : 27 JULY 2006

APPEARANCES:

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