

Federal Court



Cour fédérale

Date: 20220623

Docket: IMM-7353-19

Citation: 2022 FC 949

Ottawa, Ontario, June 23, 2022

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

**SOHAIL ARSHAD
SONIA SOHAIL
SARAH RUTH SOHAIL
SHAROON JOHN SOHAIL**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are citizens of Pakistan who are currently living in Thailand. They claim to have fled Pakistan as a result of threats by religious extremists after the Principal Applicant, who is a lawyer, agreed to represent a Christian client who was seeking unpaid wages from his

employer. The Applicants seek review of a decision by a Canadian visa officer, determining that they did not meet the requirements to be considered members of the Convention Refugee Abroad class or the Country of Asylum class.

[2] As explained in more detail below, this application is allowed, because the Officer unreasonably analyzed the Principal Applicant's credibility.

II. **Background**

[3] The Principal Applicant, Sohail Arshad, is a citizen of Pakistan who has been living in Bangkok, Thailand since fleeing Pakistan in 2014. The other Applicants are the Principal Applicant's wife and their two children.

[4] The Principal Applicant practiced as a lawyer in Karachi, Pakistan prior to his departure to Thailand. He states that in December 2013 he was hired by a Christian mason named Joseph Masih, whose employer had threatened him with a blasphemy accusation to avoid paying him. The Principal Applicant sent a legal notice to the employer demanding payment.

[5] The Principal Applicant claims that, as a result of the payment demand, four members of the extremist religious organization, Sipah-e-Sahaba, came to his house on December 20, 2013, threatened him and his wife, and demanded he drop the case. The Principal Applicant says that he reported this incident to the police, but they refused to take any action. He states that he was again attacked by Sipah-e-Sahaba on January 13, 2014, when members shot at him on his way

home from court. Following this, the Applicants went into hiding, but Sipah-e-Sahaba continued to pursue the Principal Applicant and threaten him.

[6] In April 2014, the Applicants fled Pakistan for Thailand. They registered as asylum seekers with the United Nations High Commissioner for Refugees [UNHCR] in Bangkok, but their application was rejected in April of 2017. They also applied for permanent residence in Canada in 2015, but the application was rejected because the family had not been designated as Convention refugees. However, they made a second application in 2017 with the support of a Sponsorship Agreement Holder, as a result of which a UNHCR designation is not required. The Principal Applicant and his wife were interviewed at the Canadian Embassy in Bangkok in September 2019.

III. **Decision Under Review**

[7] In a letter dated October 11, 2019, an officer in the Migration Section of the High Commission of Canada in Singapore [the Officer] denied the Principal Applicant's application for a permanent resident visa in Canada as a member of the Convention Refugee Abroad class or the Country of Asylum class. The Officer concluded that the Principal Applicant was not credible regarding his story about being targeted by Sipah-e-Sahaba due to his client. The Officer provided the following reasons in the letter:

After carefully assessing all factors relative to your application, I am not satisfied, on balance, that you have established a well-founded fear of persecution or that you have been seriously and personally affected by civil war, armed conflict, or a massive violation of human rights. I am therefore not satisfied that there is a reasonable chance or good grounds that you are a member of any of the classes prescribed.

As noted at the interview, I do not find it credible or reasonable that you agreed to represent, and did represent, Joseph Masih as a lawyer in the way that you described. You stated that you would not have represented Joseph Masih had you understood the gravity of the situation. Yet it was obvious from your statements that the situation was potentially quite grave indeed and that Joseph Masih was at risk of being accused of blasphemy or something similar, and you agreed to represent him anyway. You failed to question Joseph Masih to any significant degree despite the fact that he openly stated that he had been threatened with accusations of being “irreverent towards the Koran.” On the whole, I find this and other aspects of your description to be unlikely and I find that I doubt your account as a result.

Additionally, your account of what Joseph Masih told you in relation to the threat of a blasphemy allegation changed several times. You initially stated that Joseph Masih told you “of something else they accused him of which he didn’t do” and this evolved into Joseph Masih telling you outright that they had threatened to accuse him of “wrongdoings because of religion” and “irreverence towards the Koran.” Your statements about what Joseph Masih told you reinforces my belief that there was obvious cause for concern that you apparently ignored, but also further erodes your credibility through their alterations.

Further, certain inconsistencies and concerns arising from the UNHCR refusal of your application and their reasons for refusal were pointed out to you at the interview. For example, the UNHCR was under the impression that you refused to drop Joseph Masih’s case when ordered to and that you had failed to establish that the men who came to your home were from Sipah-e-Sahaba. At interview, however, you stated that you did drop Joseph Masih’s case, and that you knew the men were from Sipah-e-Sahaba because it was written on the licence plate of their motorcycle. These details are absent in the UNHCR reasons for refusal. While not determinative in and of themselves, I find that these discrepancies further impact your credibility.

You were afforded an opportunity to address all of the above-noted concerns at the interview. I have considered and weighed your responses in my decision-making. However, I do not find that your responses sufficiently offset my assessment that your claim to refugee status lacks credibility and therefore fails to establish, on balance, that you are a member of one of the prescribed classes.

[8] The record before the Court also includes the Global Case Management System [GCMS] notes of the Officer, which contain transcribed questions and answers from the Principal Applicant's interview, as well as further analysis by the Officer.

IV. **Issue and Standard of Review**

[9] The sole issue articulated by the Applicants for the Court's determination is whether the Officer erred by making unreasonable credibility findings. As suggested by this articulation, the applicable standard of review is reasonableness.

V. **Analysis**

[10] My conclusion that the decision is unreasonable turns on the Officer's identification of inconsistencies or discrepancies between the Principal Applicant's evidence at his interview and the reasons provided by the UNHCR for rejecting the Applicants' asylum application. In particular, I find compelling the Applicants' argument that there is a logical error in the Officer's finding of a discrepancy surrounding the Principal Applicant's evidence that the men who threatened him were from Sipah-e-Sahaba.

[11] The Officer notes from the UNHCR's reasons its finding that the Principal Applicant had failed to establish that the men who came to his home were from Sipah-e-Sahaba. At his interview with the Officer, the Principal Applicant stated that he knew the men were from Sipah-e-Sahaba, because it was written on the license plate of their motorcycle. The Officer observes

that this detail is absent from the UNHCR reasons and describes this as a discrepancy affecting the Principal Applicant's credibility.

[12] However, as the Applicants' counsel submits, the UNHCR reasons do not purport to be a transcript or summary of everything that was said by the Principal Applicant in his interview with the UNHCR. The Officer's GCMS notes from the interview with the Principal Applicant record the Principal Applicant's explanation that he had provided a written statement to the UNHCR but that he had not brought it to the interview with the Officer. In the absence of a basis in the evidence to conclude that the UNHCR's reasons captured the entirety of the Principal Applicant's UNHCR interview, I find it unreasonable for the Officer to have concluded that the absence in those reasons of a reference to the Sipah-e-Sahaba license plate represents an inconsistency in the Principal Applicant's evidence at the two interviews, undermining his credibility.

[13] As reflected in the excerpt from the Officer's letter set out earlier in these Reasons, the Officer made several adverse credibility findings. In respect of each finding, the Officer states in the GCMS notes that it is not determinative or that it diminishes the Applicant's credibility, without identifying any finding as determinative. Therefore, as each adverse finding appears to have contributed to the overall credibility analysis and the ultimate decision, the Court cannot know whether, in the absence of a particular credibility finding, the Officer would have rejected the Applicants' application. It follows from the unreasonable credibility finding arising from the Officer's consideration of the UNHCR reasons that the decision is unreasonable and must be set aside.

[14] Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-7353-19

THIS COURT'S JUDGMENT is that this application for judicial review is allowed and the matter is returned to a different officer for redetermination. No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7353-19

STYLE OF CAUSE: SOHAIL ARSHAD, SONIA SOHAIL,
SARAH RUTH SOHAIL, SHAROON JOHN SOHAIL
V THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: HEARD VIA VIDEOCONFERENCE

DATE OF HEARING: JUNE 15, 2021

JUDGMENT AND REASONS: SOUTHCOTT J.

DATED: JUNE 23, 2021

APPEARANCES:

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