Federal Court  Cour fédérale

Date: 20230216

Docket: IMM-4276-20

Citation: 2023 FC 226

Ottawa, Ontario, February 16, 2023

PRESENT: Mr. Justice McHaffie

BETWEEN:

ASIF SHAFIQUE, JANICA SILLIA AND JOSHUA ASIF, ALISHA ASIF, AND RUBAIL ASIF BY THEIR LITIGATION GUARDIAN JANICA SILLIA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicants seek judicial review of the refusal of their application for a permanent resident visa as sponsored members of the Convention refugee abroad class or the humanitarian-protected persons abroad designated class. Their application and claim for refugee protection were based on asserted risks as Christians who had been assaulted on two occasions in June 2014 by members of the Punjabi Taliban for their work with a charitable foundation in Pakistan. They

argue the immigration officer who rejected their application made unreasonable credibility findings by improperly seizing on identified inconsistencies that were non-existent or inconsequential, conducting an overzealous examination of them during their interview, and ignoring corroborative evidence.

[2] Despite the able submissions of counsel, and the strength of some of those submissions regarding the officer's credibility findings, I conclude that the officer's decision was reasonable in at least one determinative respect. The officer found the principal applicant, Asif Shafique, had not met the requirement to answer truthfully all of the questions put to him, and therefore did not meet the requirements of subsection 16(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. This finding, based on the applicants' untrue responses to questions about prior visa applications, was fully supported by the record.

[3] The applicants' application for a permanent resident visa included a completed Schedule A, titled "Background/Declaration." That form asks the following question:

> 6. Have you, or, if you are the principal applicant, any of your family members listed in your application for permanent residence in Canada, ever: […] d) been refused refugee status, an immigrant or permanent resident visa […] or visitor or temporary resident visa, to Canada or any other country?"
>
> [Emphasis added].

[4] Both Mr. Shafique, and his wife, Janica Sillia, answered "No" to this question. As the applicants concede, this was untrue. Ms. Sillia had previously applied for a work permit to be employed by Mr. Shafique's uncle to care for Mr. Shafique's aunt, a Canadian citizen. That application was refused in January 2014, nine months before the applicants left Pakistan and a

little over two years before their application for permanent residence was filed in March 2016 with the uncle as a co-sponsor.

[5] This untrue answer was repeated during the course of the applicants' interview. According to the notes of the officer in the Global Case Management System (GCMS), early in the course of the interview, Mr. Shafique was asked if he or any member of his family had "ever applied for immigration, work/study/visit to Canada or any other country?" He answered no. The question was repeated and Mr. Shafique's answer was again recorded as being: "No. [M]y children are small." Ms. Sillia was similarly asked twice whether she had ever applied for a work, study, or visitor visa to any country, and she also responded no.

[6] Toward the end of the interview, the officer told Mr. Shafique and Ms. Sillia they were not satisfied the answers to these questions were true, because Ms. Sillia had applied for a work permit. The GCMS notes record Ms. Sillia's response as at first being simply "oh," and later, confirming she applied. Mr. Shafique indicated that in January 2014, Ms. Sillia had filled out the forms and that "[i]t was a try, it wasn't anything serious. […] She wanted to help someone in Canada as a nursing aid."

[7] The officer's refusal letter, addressed to Mr. Shafique, referred to these answers and found Mr. Shafique had not met the requirement to answer truthfully all questions put to him. As the particular language used in the letter is relevant to the applicants' arguments, I reproduce the relevant paragraphs here, which follow a recitation of the contents of section 96 of the *IRPA*,

sections 147 and 139(1)(*e*) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*], and subsection 16(1) of the *IRPA*:

> 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. Nor am I satisfied that you have met the requirement to answer truthfully all questions put to you.
>
> Your spouse was previously refused for a work permit application, to be employed by your uncle to care for your aunt, in January 2014. Neither you nor your spouse acknowledged this previous refusal, contrary to the requirement to answer truthfully all questions on the application and at interview. When I raised this concern with you, you stated that it wasn't anything serious. Your spouse responded that she had applied but had nothing further to add. These responses did not satisfy me that [the] omission was innocent. I am not satisfied that you have met the requirement to answer truthfully all questions put to you. In addition, this has impacted your overall credibility. There is very little documentary evidence on file supporting the alleged claim of persecution. There were inconsistencies between the testimony of you and your spouse. For example, the specific injuries described by you, the principal applicant, in comparison with the description of your injuries as articulated by your spouse were different. In light of the overall credibility concerns and the inconsistencies, and having considered both your and your spouse's responses to my concerns, I am not satisfied that you were attacked and persecuted as stated, which was the basis of your claim. Therefore, you do not meet the requirements of paragraph 139(1)(e) of the *Regulations* or subsection 16(1) of the *Act*.
>
> [Emphasis added.]

[8] A finding of non-compliance with subsection 16(1) of the *IRPA*, while discretionary, is sufficient to deny an application for permanent residence, including one based on membership in the Convention refugee abroad class and the humanitarian-protected persons abroad classes: *Osman v Canada (Citizenship and Immigration)*, 2021 FC 1279 at paras 1–3, 16–34; *Barud v*

Canada (Citizenship and Immigration), 2019 FC 1441 at paras 13–16; *Muthui v Canada (Citizenship and Immigration)*, 2014 FC 105 at para 32; *Garcia Porfirio v Canada (Citizenship and Immigration)*, 2011 FC 794 at paras 39–46; *Mescallado v Canada (Citizenship and Immigration)*, 2011 FC 462 at para 22.

[9] The applicants effectively make two arguments as to why the officer's finding that Mr. Shafique did not comply with subsection 16(1) should not be determinative of their application. First, they argue the officer's rejection of the application was based on subsection 16(1) of the *IRPA* and paragraph 139(1)(*e*) of the *IRPR* jointly. They therefore say that the officer's errors in respect of the credibility findings regarding their narrative taint the entire decision and that the officer might not have found that the omission was not innocent had they not made those errors. They argue, with reference to this Court's decisions in *Feradov* and *Balyokwabwe*, that the Court should not presume that the outcome would have been the same if not for the other errors: *Feradov v Canada (Citizenship and Immigration)*, 2007 FC 101 at paras 14, 23; *Balyokwabwe v Canada (Citizenship and Immigration)*, 2020 FC 623 at para 58.

[10] I am not persuaded. Reading the officer's decision as a whole, it is clear the officer made an independent finding with respect to subsection 16(1). The credibility concerns arising from this finding were then carried forward into their analysis of the claim of persecution. In two places, the officer expressly distinguishes between these findings ("Nor am I satisfied that you have met the requirement to answer truthfully all questions put to you."; "In addition, this has impacted your overall credibility." [emphasis added]). The conclusion with respect to subsection 16(1) is stated clearly and independently. In this context, and contrary to the

applicants' submissions, I cannot read the final conclusion that Mr. Shafique does not meet the requirements of both provisions to mean that the findings on each were interdependent or made jointly.

[11] Nor can I conclude that any unreasonableness in the officer's other credibility findings had the effect of tainting the decision as a whole. The applicants concede their answers about the earlier visa are untrue. This admitted fact was the basis for the officer's finding in respect of the truthfulness of the answers on the subject, not the credibility findings about the attacks in June 2014. Nor was the conclusion about the omission not being innocent based on the other credibility findings. It was expressly based on the responses Mr. Shafique and Ms. Sillia gave when the officer raised the concern at the interview. Even if some or all of the other credibility findings were unreasonable, which I need not determine, I cannot conclude that this unreasonableness would taint the independently reached finding of untruthfulness.

[12] Second, the applicants argue the work permit issue was unrelated to the merits of the refugee claim. They point to authority from this Court underscoring that credibility findings should not be made on the basis of irrelevant or peripheral matters, but rather on those that are sufficiently central to the claim: *Sheikh v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15200 (FC) at paras 23–24; *Afonso v Canada (Citizenship and Immigration)*, 2007 FC 51 at paras 25–26, 42; *Chen v Canada (Citizenship and Immigration)*, 2012 FC 510 at para 68; see also, more recently, *Apena v Canada (Citizenship and Immigration)*, 2023 FC 91 at paras 3, 32, 38–41.

[13] Again, I cannot agree. The Federal Court of Appeal has emphasized that the duty of candour reflected in the obligation to be truthful is an "overriding principle" of the *IRPA*: *Sidhu v Canada (Citizenship and Immigration)*, 2019 FCA 169 at paras 17, 70; see also *Chamma v Canada (Citizenship and Immigration)*, 2018 FC 29 at para 39; *Bodine v Canada (Citizenship and Immigration)*, 2008 FC 848 at para 41, citing *Baro v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1299 at para 15. Unlike section 40 of the *IRPA*, which addresses inadmissibility for misrepresentation, subsection 16(1) does not impose a requirement of materiality; the requirement is only that of relevance: *Mescallado* at paras 16–22; *Garcia Porfirio* at para 45; *Muthui* at para 32.

[14] In my view, both the questions about prior visas and the untruthful responses failing to disclose a visa application seeking to come to Canada to work for relatives five months prior to the alleged incidents in June 2014 meet the requirement of relevance to the applicants' application for permanent residence. Although the application was based on a claim for refugee protection as members of the Convention refugee abroad class or the humanitarian-protected persons abroad designated class, a complete and truthful picture of the applicants' immigration history was relevant to assessing the applicants' application.

[15] I therefore conclude that the officer made a distinct, determinative, and reasonable finding that the applicants' application should be refused based on non-compliance with subsection 16(1) of the *IRPA*. As this issue was independently determinative of the application, it is also determinative of this application for judicial review, regardless of the applicants' arguments about the officer's credibility findings regarding their claim.

[16] While I do not need to determine the matter, I note that at least some of the applicants' arguments regarding credibility appear to have merit. Although the officer only highlighted one inconsistency in their decision letter, pertaining to discrepancies between Mr. Shafique's and Ms. Sillia's evidence regarding Mr. Shafique's injuries, their notes include reference to a number of credibility concerns the officer raised with the applicants at the hearing. Some of these, such as the concern that Ms. Sillia did not refer to a mark on the face of one of the assailants, and the concern about Mr. Shafique's initial account of the assailants' words during the first attack, do not appear to involve an inconsistency unless viewed with an overly zealous eye. Another, regarding the injuries, appears to have involved at least some confusion on the part of the officer regarding whose injuries they were describing. As indicated, I need not determine whether these credibility findings are unreasonable or whether, viewed as a whole and in the context of the untruthfulness about the visa, the officer's rejection of the application on the basis of paragraph 139(1)(*e*) was reasonable. However, the dismissal of this application should not be taken as endorsement of the officer's reasons on these issues.

[17] The application for judicial review will therefore be dismissed.

[18] Neither party proposed a question for certification and I agree that none arises in the matter.

JUDGMENT IN IMM-4276-20

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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