

Federal Court



Cour fédérale

**Date: 20230515**

**Docket: IMM-6711-22**

**Citation: 2023 FC 685**

**Ottawa, Ontario, May 15, 2023**

**PRESENT: Mr. Justice O'Reilly**

**BETWEEN:**

**NASIR SHAHZAD**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Mr Nasir Shahzad fled Pakistan in 2014 fearing religious persecution as a Christian. He claims that he and his family were threatened and assaulted. He sought refugee protection from the United Nations High Commission for Refugees in Thailand, but the UNHCR determined that Mr Shahzad's claim was not credible. Mr Shahzad appealed that ruling unsuccessfully.

[2] In 2019, Mr Shahzad applied for permanent residence in Canada as a member of the Convention refugee abroad class and the country of asylum class. In 2022, an officer interviewed Mr Shahzad and provided him an opportunity to address issues relating to the credibility of his evidence. The officer dismissed Mr Shahzad's application, finding that those credibility concerns persisted.

[3] Mr Shahzad argues that the officer's decision was unreasonable because it failed to take account of evidence supporting his claim of political persecution and included faulty credibility findings. On this application for judicial review, Mr Shahzad requested admission of new evidence of the danger he would face if he returned to Pakistan. He urges me to admit the new evidence, find that the officer's decision was unreasonable, and order another officer to reconsider his application.

[4] The new evidence on which Mr Shahzad relies is not admissible – new evidence is rarely allowed on a judicial review. Further, I cannot conclude that the officer's decision was unreasonable. The officer gave Mr Shahzad an opportunity to respond to the credibility issues arising from his application and the officer weighed the relevant evidence in concluding that Mr Shahzad's application should not succeed. I must, therefore, dismiss this application for judicial review.

[5] There are two issues:

1. Should new evidence be admitted on this judicial review?
2. Was the officer's decision unreasonable?

II. Issue One – Should new evidence be admitted on this judicial review?

[6] Mr Shahzad maintains that new evidence is admissible on a judicial review. However, the authorities he relies on for that proposition do not apply here. He cites s 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]; that provision applies to the admission of new evidence on an appeal to the Refugee Appeal Division and has nothing to do with judicial reviews. He also refers to s 113(a) of IRPA; that provision applies to new evidence on an application for a pre-removal risk assessment and does not apply to judicial reviews.

[7] He also cites Rule 312(a) of the *Federal Courts Rules*, which does allow parties to file additional affidavits on an application for judicial review, with leave of the Court. The leading case on the admission of new evidence is *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22. *Access Copyright* recognizes three exceptions to the general rule that new evidence is not admissible on a judicial review: (1) where the new evidence provides general background information that would assist the reviewing Court; (2) where the new evidence may bring the Court's attention to procedural issues arising from the underlying decision; and (3) where the new evidence shows that there was a complete absence of evidence before the original decision-maker. More particularly, new evidence is not admissible to address the merits of the decision under judicial review (at para 20).

[8] Here, Mr Shahzad proposes to introduce new evidence to supplement the record that was before the officer on the merits of his application. Supplementing the record on the merits is not

permitted; it does not fall within the exceptions recognized in *Access Copyright*. Accordingly, the new evidence Mr Shahzad proffered is not admissible.

III. Issue Two – Was the officer’s decision unreasonable?

[9] Mr Shahzad contends that the officer’s decision was unreasonable in four respects. First, he says that the officer failed to recognize that the persecution by Mr Shahzad’s neighbour had been ongoing for many years – it did not arise “suddenly” as the officer seemed to think. Second, the officer asked why the family did not move after certain incidents but did not specify which incidents he was referring to. Third, the officer did not consider the possibility that Mr Shahzad might be pursued by extremists even though he was not a prominent member of the Christian church. Fourth, the officer concluded that, because Mr Shahzad had lived and worked in Hattar and Lahore safely, he had not been pursued by extremists.

[10] I disagree with Mr Shahzad. On my review of the evidence before the officer, the officer’s decision was not unreasonable.

[11] On the first point, the officer did ask Mr Shahzad why his neighbour would suddenly turn against him. Mr Shahzad explained that it was not sudden – his neighbour had harassed his father and his brother before threatening him. But the officer noted that Mr Shahzad’s father and brother continue to live safely in Pakistan, while Mr Shahzad felt it necessary to flee. Mr Shahzad conceded that other family members remaining in Pakistan are not in danger. The officer found that the evidence cast doubt on Mr Shahzad’s version of events.

[12] Second, when the officer asked Mr Shahzad why he didn't move, he said that "we didn't have any other way" because his father and brother were not working at the time. The officer interpreted this answer to mean that it was not possible for the family to move. Noting that the family had actually moved a number of times, the officer did not accept Mr Shahzad's answer. While there may have been some confusion in this exchange, the evidence supported the officer's finding that Mr Shahzad was able to move away from his neighbour.

[13] Third, the officer found it unlikely that extremists would go to great efforts to carry out a country-wide search for an insignificant member of the Christian faith. The officer relied on documentary evidence indicating that high-profile Christians are attacked sometimes; the remainder of the Christian minority experiences some discrimination, not persecution.

[14] Fourth, the officer asked Mr Shahzad about his time spent working in a small village outside Hattar, about 2 hours away from where his neighbour lived. Mr Shahzad said that extremists tracked him down at his place of work. The same thing happened, he said, when he moved to Lahore. The officer simply noted that Mr Shahzad was not in hiding at the time – he was openly living and working near Hattar and in Lahore.

[15] I cannot see anything unreasonable about the officer's findings in these four areas. The evidence supported them and the officer provided transparent, intelligible and justifiable reasons for denying the application.

#### IV. Conclusion and Disposition

[16] The officer made a number of findings that were supported by the evidence. I cannot conclude, therefore, that the officer's decision was unreasonable. Accordingly, I must dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

**JUDGMENT IN IMM-6711-22**

**THIS COURT'S JUDGMENT** is that:

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

"James W. O'Reilly"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-6711-22

**STYLE OF CAUSE:** SHAHZAD v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** BY VIDEOCONFERENCE

**DATE OF HEARING:** APRIL 5 2023

**JUDGMENT AND REASONS:** O'REILLY J

**DATED:** MAY 15, 2023

**APPEARANCES:**

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