Federal Court  Cour fédérale

Date: 20230817

Docket: IMM-8709-21

Citation: 2023 FC 1114

Ottawa, Ontario, August 17, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

SYED KHALID AHSAN,
SAMINA KHALID,
SYED HASSAN ALI AHSAN,
SYED ASAD AHSAN, AND
SYED HAMZA AHSAN,
BY HIS LITIGATION GUARDIAN,
SYED KHALID AHSAN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicants are a family of Pakistani citizens – two parents and their three sons. They sought refugee protection in Canada in 2018 on the basis of their fear of threats and violence from Islamists in Karachi because they are Barelvi Muslims and because they had financially

supported the Barelvi Muslim community in Karachi and surrounding areas. The applicants alleged that they were at risk from two Islamist groups in particular – *Jesh-e-Muhammad* (JM) and *Sipah-e-Sahaba* (SSP). The applicants also raised a fear of gender-related persecution on the part of Samina Khalid, the female claimant.

[2] The Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada (IRB) rejected the claim on June 3, 2019. The RPD found the applicants' allegations concerning the JM and SSP were credible but concluded that the applicants had an internal flight alternative (IFA) in Islamabad and Lahore. The RPD found that the applicants had not met their burden of establishing either a serious possibility of persecution within the meaning of section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*) or that, on a balance of probabilities, they would be at risk of harm within the meaning of section 97 in Islamabad or Lahore. The RPD also found that the applicants had not established that it would be unreasonable, in all of the circumstances, for them to relocate to either of these places. Finally, the RPD concluded that the applicants had provided insufficient evidence to support the claim based on gender-related persecution.

[3] The applicants' appeal to the Refugee Appeal Division (RAD) of the IRB was dismissed on August 15, 2019, for lack of jurisdiction under paragraph 110(2)(d)(i) of the *IRPA*. Their application for leave and judicial review of the RPD's decision was dismissed at the leave stage on December 10, 2019.

[4] In May 2021, the applicants applied for a pre-removal risk assessment (PRRA) under section 112 of the *IRPA*. The application was supported by a number of documents that were not before the RPD. This included an affidavit from Mr. Ahsan, updated country condition evidence, and recent medical and psychological assessments.

[5] A Senior Immigration Officer refused the PRRA application in a decision dated September 29, 2021. The officer concluded that Mr. Ahsan, the principal applicant, "has provided insufficient new evidence to challenge the RPD's determinations regarding the threat he faces from the JM and SSP, specifically the availability of IFAs in Islamabad and Lahore." The officer also found that Mr. Ahsan "has provided insufficient evidence to challenge the RPD's determinations regarding the threat his spouse faces from gender-based violence in Pakistan."

[6] The applicants now apply for judicial review of this decision under subsection 72(1) of the *IRPA*. They submit that the officer's conclusion that they have a viable IFA in Islamabad and Lahore is unreasonable.

[7] For the reasons that follow, I do not agree that the decision is unreasonable.

[8] The parties agree, as do I, that the officer's decision should be reviewed on a reasonableness standard. A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85).

A decision that displays these qualities is entitled to deference from the reviewing court (*ibid.*). The onus is on the applicants to demonstrate that the officer's decision is unreasonable. To set aside a decision on this basis, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[9] A key legal constraint on the officer's decision-making is that a PRRA application is not an appeal or reconsideration of the RPD's decision to reject a claim for protection (*Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at para 12). Rather, its purpose is "to determine whether on the basis of a change in country conditions or on the basis of new evidence that has come to light since the RPD decision, there has been a change in the nature or degree of risk" (*Kreishan v Canada (Citizenship and Immigration)*, 2019 FCA 223 at para 116; see also *Demesa v Canada (Citizenship and Immigration)*, 2020 FC 135 at paras 15-19). Thus, paragraph 113(b) of the *IRPA* imposes a constraint on the evidence a PRRA officer may consider when an applicant's claim for refugee protection has been rejected: the evidence must either have arisen after the decision rejecting the refugee claim or, if it pre-dates the rejection of the claim, it must not have been reasonably available to the applicant or the applicant could not reasonably have been expected to present it earlier. Unless there is evidence that meets one of these requirements, it is not open to a PRRA officer to revisit the RPD's determination; that determination must be respected (*Raza* at para 13; see also *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 47). This includes a finding that the applicant has a viable IFA (*Gombos v Canada (Citizenship and Immigration)*, 2017 FC 850 at para 64).

[10] In the present case, the existence of a viable IFA in Islamabad and Lahore was determinative for the RPD. Neither Mr. Ahsan's affidavit nor the written submissions in support of the PRRA application from counsel for the applicants (not Mr. Kingwell) address this issue at all, however. Instead, the submissions essentially re-argued the applicants' original claim, backing it up with additional evidence corroborating their fear of the JM and the SSP. None of the submissions were directed to persuading the officer, on the basis of new evidence, either that the JM or the SSP had the motivation to track the applicants to Islamabad or Lahore, or that it would be unreasonable for the applicants to relocate to either of these cities. Despite this, the officer considered whether there was new evidence (within the meaning of paragraph 113(a) of the *IRPA*) that provided a sufficient basis on which to reach a different conclusion than the RPD with respect to either part of the IFA test. The officer concluded that the applicants had failed to establish for reaching a different conclusion in either respect.

[11] I am not persuaded that this is an unreasonable determination.

[12] The officer accepted that there was evidence that met the test in paragraph 113(a) of the *IRPA* relating to the activities of the JM and the SSP as well as evidence of an ongoing interest in the applicants on the part of their agents of persecution in Karachi. However, none of that evidence was probative of the issue of the means or motivation of the agents of persecution to pursue the applicants in Islamabad or Lahore. On the whole of the evidence before the officer, the determination that there was no basis to reach a different conclusion than the RPD under the first part of the IFA test is reasonable.

[13] Similarly, the officer accepted as new evidence medical and psychological reports pertaining to the adult applicants as well as to their eldest son. Once again, however, none of that evidence is probative of whether it would be unreasonable for the applicants, given their particular circumstances, to relocate to Islamabad or Lahore. Indeed, neither the reports nor counsel's submissions addressed this question in any way. The officer's determination that there was no basis to reach a different conclusion than the RPD under the second part of the IFA test is also reasonable.

[14] On a more general level, it is well-established that PRRA applicants are expected to put their best foot forward in their applications (*Nhengu v Canada (Citizenship and Immigration)*, 2018 FC 913 at para 6). Moreover, among the factors that must be considered in assessing the reasonableness of a decision is whether the decision maker's reasons "meaningfully account for the central issues and concerns raised by the parties" (*Vavilov* at para 127). That being said, given the critically important interests at stake in a PRRA application (including the principle of non-*refoulement*), even if an application was not presented as effectively as it could have been, the PRRA officer must still be satisfied, on the basis of a reasonable and fair-minded review of the record, that the applicant is not a Convention refugee or a person in need of protection before refusing the application. There is no reason to think that this is not the case here.

[15] In short, the applicants have failed to establish any grounds on which to interfere with the officer's decision. This application for judicial review must, therefore, be dismissed.

[16] The parties did not propose any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-8709-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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