

Federal Court



Cour fédérale

Date: 20240212

Docket: IMM-11387-22

Citation: 2024 FC 235

Ottawa, Ontario, February 12, 2024

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

**ARSHAD MATEEN KHAN
BILAL ARSHAD
AMNA ARSHAD**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision (the “Decision”) by the Refugee Appeal Division (the “RAD”). The Decision denied the Applicants’ refugee claim, affirming the conclusion of the Refugee Protection Division’s (the “RPD”) on different grounds.

[2] As a preliminary note, counsel for the Applicants stated that there is an error in the Primary Applicant's name as written in the style of cause. Accordingly, I order that the name of the Primary Applicant be changed to "Arshad Mateen Khan", as requested by counsel.

II. Background

[3] Arshad Mateen Khan (the "Primary Applicant"), Amna Arshad (the "Associate Applicant") and their child, Bilal Arshad (the "Minor Applicant", and collectively with the Primary and Associate Applicants, the "Applicants"), are citizens of Pakistan.

[4] The Primary Applicant supported the Muttahida Quami Movement (the "MQM"), a Pakistani political party, since 1988. In 2018, the MQM splintered into multiple factions. The Primary Applicant alleges that one faction (hereafter, the "agents of harm") tried to force him to join them and that he refused to do so.

[5] The Primary Applicant states that, on a visit in February 2018 to Pakistan from the United Arab Emirates (the "UAE"), where he was employed and his family resided, the agents of harm opened fire near his house. He immediately left Pakistan and returned to the UAE.

[6] The Primary Applicant lost his job in the UAE in 2019. As he searched for other employment, the Associate Applicant and the Minor Applicant returned to Pakistan. The Applicants state that in December 2019, the agents of harm visited their home in Pakistan and demanded to see the Primary Applicant. The Associate Applicant left for a different city in Pakistan with the Minor Applicant. The Applicants allege that, while on the road, the agents of

harm opened fire at their vehicle and attempted to drive them off the road, which led to an accident that injured the Minor Applicant.

[7] The Applicants left the region in March 2020. They initially went to the United States, but then entered Canada a few days later, where they claimed refugee protection.

[8] The RPD rejected the Applicants' claim, finding that they had an internal flight alternative ("IFA") in the city of Lahore. The RPD indicated that it had some credibility concerns, but did not make any finding in that respect, as the IFA was determinative of the claim.

III. The Decision

[9] The Applicants appealed to the RAD. Upon examining the record, the RAD informed the Applicants that it had concerns with the credibility of their allegations. It gave them the opportunity to provide written submissions in that regard and accepted most of the new evidence they subsequently adduced. The evidence showed in part that the Associate Applicant was receiving cancer treatment at the time of the RPD hearing.

[10] The Applicants do not complain of the fairness or adequacy of the RAD's notice, nor its decision not to hold an oral hearing. Their application challenges the RAD's substantive analysis and findings.

[11] The RAD first examined the alleged events from February 2018. It observed that, while the Applicants' narrative on their Basis of Claim states that the agents of harm opened fire near

the Applicants' home in Pakistan, the Principal Applicant's oral testimony before the RPD made no mention of shots being fired. Instead, he testified that the agents of harm threatened the Applicants verbally.

[12] The RAD acknowledged the Applicants' submission regarding health issues. However, the RAD also noted that, in contrast to the Associate Applicant, the evidence does not indicate that the Primary Applicant was undergoing cancer treatment during the RPD hearing. The RAD acknowledged that the Associate Applicant may have caused stress on the Primary Applicant during the hearing, but it ultimately concluded that the Applicants' explanation of the discrepancy was unsatisfactory, particularly in light of the significance of the alleged event that took place in February 2018. The RAD concluded that the discrepancy was material and drew an adverse inference regarding the alleged events of February 2018.

[13] The RAD then examined the Applicants' claim that, in December 2019, the agents of harm shot at the Associate Applicant's vehicle and attempted to drive her and the Minor Applicant off the road, causing an accident that injured the Minor Applicant. The RAD noted that there were discrepancies in the medical report regarding the injuries. The report stated that the injury occurred on one side of the Minor Applicant's face, while photographs show that it occurred on the opposite side. Further, the report indicated that the injury resulted from a fall.

[14] The Applicants provided the RAD with a note that was allegedly written by the doctor who treated the Minor Applicant after the accident. The note claimed that the doctor identified the

wrong location of the injury by mistake. The note did not address why the medical report identified a fall as the cause of the injury.

[15] The RAD held that the doctor's note was inauthentic. It noted discrepancies in the way certain words were spelled, including the doctor's name, which was spelled differently in the medical report.

[16] The RAD took note of other evidence submitted by the Applicants to corroborate their allegations, including an affidavit from the Primary Applicant's brother. However, it found that that evidence did not resolve the discrepancies that the RAD identified and did not alter its findings.

[17] Finally, the RAD observed that the Primary Applicant visited Pakistan multiple times after the alleged attacks took place. Specifically, the Primary Applicant visited Pakistan in August 2018 and again in January 2020, only a few weeks after the Associate Applicant and Minor Applicant were allegedly targeted and driven off the road. The RAD found that the Primary Applicant's multiple returns to Pakistan undermined the credibility of the Applicants' allegations. It did not accept the Applicants' claim that the Primary Applicant visited Pakistan to try to resolve the differences he had with the agents of harm, finding that doing so would be inconsistent with the actions of a person who feared for their life.

[18] The RAD concluded that the Applicants' allegations lacked credibility. It denied the appeal solely on those grounds and did not assess the RPD's findings regarding the IFA.

[19] The Applicants argue that the RAD did not consider the affidavit from the Primary Applicant's brother and that its conclusions regarding the February 2018 incident, the December 2019 incident, and the Primary Applicant's visits to Pakistan were unreasonable.

IV. Issue

[20] Was the RAD's denial of the Applicants' refugee claim unreasonable?

V. Analysis

[21] The standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 25).

A. *The Brother's Affidavit*

[22] The Applicants argue that the RAD erred by not considering affidavit evidence from the Primary Applicant's brother in assessing the credibility of the Applicants' claim. The Applicants' submission is not that the RAD misapprehended the evidence, but rather that it "does not analyze or reference the affidavit anywhere" in its reasons.

[23] The RAD did consider the brother's affidavit, along with other evidence. The RAD held that "the affidavit states that the affiant was an eyewitness and that his life was threatened". However, the RAD ultimately found that the "affidavit [does] not address nor explain the inconsistencies in the evidence" as a whole.

[24] The RAD did not fail to consider the evidence submitted by the Primary Applicant's brother.

B. *The Reasonableness of the RAD's Findings*

[25] The Applicants state that the RAD's conclusions regarding the February 2018 incident, the December 2019 incident, and the Primary Applicant's visits to Pakistan were unreasonable.

[26] With respect to the February 2018 incident, the Applicants argue that the RAD's analysis did not consider how the Associate Applicant's health issues may have caused the omission. The Applicants say that the RAD provided nothing more than a simple statement that the Associate Applicant's health does not explain the omission.

[27] The Applicant does not consider the RAD's findings accurately. The RAD found that there is no evidence supporting the claim that the Primary Applicant was undergoing cancer treatment during the RPD hearing, unlike the Associate Applicant. The RAD then found that, even if the Primary Applicant was under stress because of his family's health circumstances, it would still not explain the failure to state that the agents of harm opened fire at their home in Pakistan. The RAD's findings in that regard were reasonable in light of the evidence.

[28] With respect to the credibility of the December 2019 event that caused the Minor Applicant's injuries, the Applicants claim that the RAD was unreasonable in its finding that the doctor's note was inauthentic because of certain spelling discrepancies. The Applicants say that the RAD did not account for alternate explanations to account for those discrepancies. They allege

that “[i]t is entirely possible that it was a new note pad that was being used to write the letter which had a spelling mistake... [and which] had changed the spelling of [the doctor’s name]”.

[29] The Applicants’ comments are speculative and lack any evidentiary basis. The RAD’s finding was based on the assumption that, had the note been real, its letterhead would accurately spell the doctor’s name, among other things. The fact that this was not the case led the RAD to conclude that the note was not authentic. This is a reasonable conclusion.

[30] Finally, with respect to the Primary Applicant’s multiple returns to Pakistan despite the allegation that he fears for his life, the Applicants say that the Primary Applicant returned to Pakistan to try to resolve his dispute with the agents of harm at the urging of other members of his political party.

[31] The Applicants’ submission repeats the same arguments made before the RAD and fails to demonstrate any error in its reasoning or conclusion. The RAD considered the Applicants’ claim that the impetus behind the visits was to seek a resolution, but concluded that that is not consistent with the actions of someone in fear for their life. The RAD was reasonable in making this inference.

[32] The Decision is reasonable.

VI. Conclusion

[33] The application is dismissed.

JUDGMENT in IMM-11387-22

THIS COURT'S JUDGMENT is that:

1. The name of the Primary Applicant is hereby changed to "Arshad Mateen Khan".
2. The application is dismissed.
3. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-11387-22

STYLE OF CAUSE: ARSHAD MATEEN KHAN, BILAL ARSHAD, AMNA ARSHAD v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 31, 2024

JUDGMENT AND REASONS: MANSON J.

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APPEARANCES:

Hart Kaminker FOR THE APPLICANTS

Brendan Stock FOR THE RESPONDENT

SOLICITORS OF RECORD:

Kaminker and Associates FOR THE APPLICANTS
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario