

Date: 20070914

Docket: IMM-4462-06

Citation: 2007 FC 912

Ottawa, Ontario, September 14, 2007

PRESENT: The Honourable Madam Justice Dawson

BETWEEN:

**TARIQ ALI QURESHI
AISHA BANO**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This application for judicial review is dismissed because the applicants have failed to establish either that the Refugee Protection Division of the Immigration and Refugee Board (RPD) made a capricious finding of fact or that it erred when it found that the applicants' testimony was not plausible or credible in certain respects.

[2] Tariq Ali Qureshi and his sister Aisha Bano are citizens of Pakistan who seek refugee protection. They say they face persecution at the hands of members of the Muttahida Qaumi

Movement (MQM) by reason of membership in a particular social group defined as family and political opinion. Ms. Bano also fears persecution by reason of her membership in a particular social group defined as women fearing gender-related persecution.

[3] The applicants' claims were rejected by the RPD, which made a number of adverse credibility findings in respect of their testimony. The RPD also found that there was insufficient credible evidence to establish that any MQM faction would currently be interested in Mr. Qureshi for any reason and that Ms. Bano's fears were speculative. The RPD concluded that any risk the applicants faced in Pakistan was a generalized risk of sectarian and political violence faced by many citizens in many areas of Pakistan.

[4] I now turn to the first asserted error, an alleged capricious finding of fact that the applicants did not have a prospective risk of persecution in Pakistan. In that regard, the RPD referred to recent documentary evidence that the MQM's political leadership had denounced violence and to the absence of any credible evidence that, at that time, any faction of the MQM used violence to coerce people to join the party. The applicants assert that the RPD ignored evidence to the contrary. Reliance is placed upon a Country of Origin Research document prepared in 2003 that referred to clashes between the MQM and the Pakistan People's Party during elections in October of 2002.

[5] The RPD did not err as alleged. The RPD acknowledged the existence of some inter-faction violence, but such evidence does not contradict its finding that there was no credible evidence that any faction of the MQM used violence to recruit members. There was documentary evidence to

support the RPD's finding that the leadership of the MQM had denounced violence and broken ties with its former militant wing.

[6] As to the second asserted error, relating to the RPD's credibility and plausibility findings, the applicants contend that the RPD erred by:

- (i) drawing a negative inference from Mr. Qureshi's inability to recall certain dates and details;
- (ii) failing to recognize that Ms. Bano was shielded from certain information because of gender-based cultural attitudes and practices;
- (iii) drawing a negative inference from the failure of the applicants to claim asylum in the United States;
- (iv) finding that the applicants' father's continued residence in Pakistan undermined the credibility of their claims; and
- (v) failing to put to the applicants what the RPD viewed to be an inconsistency between their testimony and the Personal Information Form (PIF) narrative of their brother.

[7] In my view, none of the RPD's impugned findings were patently unreasonable. The applicants are in fact taking issue with the manner in which the RPD weighed the evidence. The concerns of the applicants can be addressed as follows:

- (i) the RPD did not require Mr. Qureshi to recall precise dates; it required him to provide sufficient detail about the events he asserted gave rise to his fear of persecution. The applicants also complained that some of the dates Mr. Qureshi could not recall related to incidents concerning his father; however, the applicants were obliged to adduce credible evidence in support of their claims. To the extent that they relied upon events involving family members such as their father, they were obliged to provide details of those events. The applicants failed to do so, notwithstanding their evidence that they spoke regularly to their father by telephone. The RPD was also entitled to express concern, as it did, about the absence of any corroborative information;
- (ii) with respect to Ms. Bano, the RPD observed that she was now 26 years of age and that she could have either been more diligent in finding out more information about her claim or she could have provided evidence from someone who had more information about her alleged kidnapping. Such findings were not patently unreasonable and were made recognizing that, as a young woman, certain information regarding family problems would normally be kept from Ms. Bano. This, however, does not obviate the need for her to establish the basis for her claim by adducing credible evidence;
- (iii) as for the failure to claim protection in the United States, Mr. Qureshi lived and worked in the United States for approximately 12 years and his sister lived in the

United States for approximately five years. Mr. Qureshi arrived in the United States with his father who is a lawyer in Pakistan, while Ms. Bano arrived with her mother. A significant period of time, approximately eight years, elapsed before Mr. Qureshi attempted to legalize his status in the United States. The negative inference drawn by the RPD with respect to their failure to claim asylum in the United States was supported by evidence and was not patently unreasonable. While each claimant testified that they were young when they arrived and that they did not know about the asylum process, the RPD was entitled to infer, as it did, that if the applicants were truly at risk in Pakistan their adult family members would have attempted to seek protection for them;

- (iv) the RPD relied upon the fact that the applicants' father remained politically active in Pakistan while living in the family home in Karachi and while practicing law there. This finding is said to ignore the applicants' evidence that their father had recently been attacked by members of the MQM. However, the RPD considered the applicants' evidence and rejected it for a number of reasons that were grounded in the evidence. It was not patently unreasonable for the RPD to reject the applicants' evidence for the reasons that it gave; and
- (v) the applicants were represented at the hearing and chose to file their brother's PIF narrative as an exhibit. In his narrative, the brother said that their father was attacked because of the brother's problems with the MQM and that, after the attack, the father did not go to a doctor. The applicants' evidence was that their father was

attacked because he had witnessed a killing, and they tendered a note from a doctor who was said to have treated the father. These inconsistencies were blatant. This Court has held that there is no duty to specifically raise inconsistencies in the testimony of claimants who are represented by counsel. See, for example, *Ayodele v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 1833 (T.D.), distinguishing *Gracielome v. Canada (Minister of Employment and Immigration)* (1989), 9 Imm. L.R. (2d) 237 (F.C.A.). In any event, this inconsistency was only one of many bases for the RPD's conclusion that the applicants' evidence was not credible. Therefore, any error in this finding was not material to the RPD's credibility finding.

[8] For these reasons, the application for judicial review will be dismissed. Counsel posed no question for certification, and I am satisfied that no question arises on this record.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is dismissed.

“Eleanor R. Dawson”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-4462-06

STYLE OF CAUSE: TARIQ ALI QURESHI ET AL., Applicants
and
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION, Respondent

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 5, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT:** DAWSON, J.

DATED: SEPTEMBER 14, 2007

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