Federal Court  Cour fédérale

Date: 20100118

Docket: IMM-2492-09

Citation: 2010 FC 28

Ottawa, Ontario, this 18th day of January 2010

Before: The Honourable Mr. Justice Pinard

BETWEEN:

MUHAMMAD IQBAL BUTT

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, (the "Act") of the decision rendered April 21, 2009 by Alexander George Johnstone wherein he denied the applicant's refugee claim.

[2] Mr. Muhammad Iqbal Butt, the applicant, was born and raised in Sialkot, Punjab, Pakistan. He is 46 years old and came to Canada on October 18, 2007. He is a member of the Pakistan

Muslim League (Nawaz Group), PML-N, a political party. The applicant has been active in the party, like his father before him and has often attended political rallies and demonstrations.

[3] The applicant's stated persecutors were agents of the state, the Sialkot police, and members of the Pakistan Muslim League (Qaid-e-Azam Group), PML-Q, specifically Choudry Shujaat Hussain who was the local MP in Sialkot. The alleged motivation for the persecution was the applicant's political affiliation with the PML-N and particularly, his participation in rallies to oppose the ruling party.

[4] The issue for the Board member was whether the applicant's subjective fear was well-founded with regard to the documentary evidence. He also considered the evidence of the political climate in Pakistan in 2009 in comparison to 2007 when the applicant fled the country. The Board ultimately found that the evidence supporting persecution on the basis of political opinion was not well-founded with respect to the evidence presented at the hearing.

[5] The Board considered whether the applicant is a person in need of protection. The applicant testified that the leader of the PML-N lives in Lahore. He agreed that there was a "possibility" that he could have moved to Lahore but added that the police would arrest him upon arrival at the airport. The applicant explained that the police did not need an arrest warrant or a FIR to detain him. The "police network" exists such that the "system" made it unsafe for him to be in Lahore. The Board rejected this suggestion and found that there was an internal flight alternative ("IFA"), namely Lahore. Thus, should the applicant be returned to Pakistan there was not a serious possibility that he would be at risk of torture, or cruel and unusual punishment or death.

[6] Determining whether the applicant has met the legal grounds for objective fear of persecution set out in section 96 is a question of mixed fact and law. Similarly, determining whether the applicant is a person in need of protection is a question of mixed fact and law. Incorporated into the decision-making framework for sections 96 and 97 of the Act the Board will often make findings of fact with respect to the availability of a reasonable IFA and/or whether there has been a change in circumstances in the country of origin sufficient to negate a well-founded fear of persecution at the time the applicant fled his country (*Stoyanov v. Canada (M.E.I.)* (1993), 157 N.R. 394 (F.C.A), para. 3).

[7] According to the Supreme Court of Canada at paragraph 53 of *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, where the tribunal engages in an inquiry of legal and factual issues that cannot be readily separated, the reviewing court will accord deference to the tribunal. The standard of review applicable to this matter is "reasonableness". The Court noted at paragraph 47 that:

> . . . reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

It must not interfere to substitute its opinion unless the decision falls outside the range of reasonable outcomes although from time to time this Court will not agree with the weight accorded to various parts of the evidence.

[8] The applicant's fundamental argument is that the Board misapprehended the evidence before it and ignored corroborative evidence.

[9] The respondent asserts that the Board's conclusions on objective fear and the existence of an IFA are each determinative of the refugee claim. Thus, in order for this Court to quash the decision to reject the claim this Court must find the Board committed a reviewable error in respect of both issues. I agree.

[10] The respondent suggests that there is no reviewable error committed by the Board with respect to the objective fear of persecution and the existence of an IFA, and that the applicant objects merely to the weight accorded to the evidence by the Board.

[11] In *Omrane v. Minister of Citizenship and Immigration*, 2003 FCT 291, Justice Simon Noël wrote, at paragraph 11:

> In my opinion, all of these arguments concerning the applicant's credibility go to the assessment of the evidence and the facts. The IRB based its decision on the evidence on the record and interpreted it as it understood it. Contrary to the applicant's allegations, the IRB did not fail to consider the explanations he gave, but was simply not persuaded by or satisfied with them. Given the great deference that the Court must display in relation to a question of fact addressed in the assessment of the evidence, it is not the Court's duty to substitute its interpretation for that of the IRB.
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> (My emphasis.)

[12] Like in *Omrane*, *supra*, and *Multani v. Minister of Citizenship and Immigration*, 2009 FC 187, the applicant has provided the Board with explanations as to why the police could have the motivation to persecute him but the Board was not persuaded or satisfied by them.

[13] Furthermore, if the applicant could reasonably be expected to move to an IFA, his refugee claim will necessarily fail regardless of a well-founded fear (*Sarker v. Minister of Citizenship and Immigration*, 2005 FC 353, para. 5). The test for a finding of an IFA is that the Board must be satisfied, on a balance of probabilities, that there is no serious possibility of the applicant being persecuted in the proposed IFA and that in the circumstances particular to the claimant it is not unreasonable for the claimant to seek refuge there. The respondent cites *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589 (C.A.). This decision has been confirmed in many subsequent cases, most recently referenced by Madam Justice Snider in *Syvyryn v. Minister of Citizenship and Immigration*, 2009 FC 1027. See also, *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.). The Board properly expressed this test in its conclusion.

[14] The onus of proof is on the applicant to demonstrate that he will be persecuted anywhere in his country of origin or that it is unreasonable to expect him to move if an IFA is found (see *Pena v. Minister of Citizenship and Immigration*, 2009 FC 616). However, the applicant did not discharge this onus. Rather than a misapprehension of the facts, I find that there was an insufficiency of evidence to satisfy the Board that the Sialkot police continued to be interested in him. Given the change in political hierarchy since the applicant fled Pakistan, based on the evidence which was before the Board, it was reasonable for the Board to look for corroborating evidence of persecution anywhere in that country in order to find an objective fear.

[15] The applicant argues that the Board should accord him the benefit of the doubt that he will be persecuted upon his return anywhere in the country. The Board held that there was no indication

as to how the police would find out the applicant had arrived in Pakistan. The applicant's opinion as to the links in the police system and the general influence exerted by the PML-Q on the police was not satisfactory for the Board to find a serious possibility of risk of cruel and unusual punishment or death upon his return to Pakistan.

[16] In conclusion, it is my opinion that the reasoning of the Board falls within a range of reasonable outcomes and thus, this Court should not intervene.

[17] For all the above reasons, the application for judicial review will be dismissed.

JUDGMENT

The application for judicial review of the decision rendered on April 21, 2009 by Alexander George Johnstone wherein he denied the applicant's refugee claim is dismissed.

"Yvon Pinard"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-2492-09
STYLE OF CAUSE:	MUHAMMAD IQBAL BUTT v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	December 15, 2009
REASONS FOR JUDGMENT AND JUDGMENT:	Pinard J.
DATED:	January 18, 2010

APPEARANCES:

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Me Mireille-Anne Rainville	FOR THE RESPONDENT

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