Federal Court  Cour fédérale

Date: 20120614

Docket: IMM-8767-11

Citation: 2012 FC 746

Ottawa, Ontario, June 14, 2012

PRESENT: The Honourable Madam Justice Bédard

BETWEEN:

WAJID ALI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to paragraph 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the *Act*] of a decision made by the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated October 24, 2011, wherein it rejected the applicant's application for refugee protection in Canada. The Board determined that the applicant was neither a Convention refugee within the meaning of section 96 of the *Act* nor a person in need of protection within the meaning of section 97 of the *Act*.

I. Background

[2] The applicant is a citizen of India and is of Muslim faith. He bases his claim for protection on the following events.

[3] The applicant was a successful businessman and a partner in an Indian company called Elite International. This company specialized in manufacturing and exporting leather saddlery and other goods related to horseback riding.

[4] In order to gain a competitive advantage and undermine the applicant's business through negative publicity, one of his competitors, Mr. Naresh, who is a member of the RSS organization, accused the applicant of killing cows, a serious offence in India. For this offence, the applicant was arrested, detained and tortured and only released after the payment of a significant bribe. The applicant further alleges that on April 15, 2009, he was arrested a second time for killing cows and for sheltering Muslim militants. He was released four days later, after paying another bribe in the amount of 50,000 rupees. Throughout this time, he was also harassed by the police and members of the RSS.

[5] As a result of these incidents, he feared for his life and fled India. He arrived in Canada on May 13, 2009 and, a few weeks later, claimed refugee protection.

[6] After the applicant's departure from India, his partners dissolved the business.

[7] During his testimony, the applicant stated that the RSS organization is an anti-Muslim group that has followers all over the country. He explained that he fears both the RSS (specifically Mr. Naresh) and the Indian authorities.

II. Decision under review

[8] The Board accepted the applicant's testimony as credible and reliable and believed that the applicant feared the RSS, its members, Mr Naresh, and members of the Indian police who are allegedly under the RSS's influence. However, it determined that an Internal Flight Alternative (IFA) was available and that this issue was determinative of the claim. The Board identified the cities of Bangalore, Mumbai and Delhi as potential IFAs.

[9] When questioned about why he feared returning to India, the applicant stated that he believed that Mr. Naresh remained a threat. The applicant believed that if he returned to India, Mr. Naresh would assume that he would start a new business and, once again, become a competitor. The applicant also stated that he would continue to be a target of the RSS because once you become a target, you remain a target. Due to the links between the RSS and the police, the applicant believes that he cannot be safe in any part of India.

[10] Despite the applicant's testimony, the Board concluded that it was unlikely that the applicant would face persecution if he returned to India and lived in a different city. Based on the following elements, the Board did not believe that the applicant would still be of interest to Mr. Naresh, the RSS or the police:

- Mr. Naresh's main goal was achieved; the applicant's business was dissolved and he is no longer a competitor. The Board did not think that Mr. Naresh would invest the time and the money to target the applicant in the proposed IFAs, especially if the applicant is not involved in the same business;
- The applicant could transfer his business skills and experience to a new industry where he would not be a competitor or a rival to Mr. Naresh;
- The applicant's partners did not experience any problems;
- The applicant's family continues to live in the same city and has not experienced any particular problems with Mr. Naresh or the RSS.

III. Issue

[11] There is a single issue to be determined in this case and that is whether the Board's decision regarding the IFA is reasonable.

IV. Standard of review

[12] It is well established that determinations as to the availability of an IFA are reviewable according to the standard of reasonableness (*Anwuobi v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1352 at para 9 (available on CanLII); *Lopez Martinez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 550 at para 14 (available on CanLII); *Guerilus v Canada (Minister of Citizenship and Immigration)*, 2010 FC 394 at para 10 (available on CanLII); *Barbosa Ponce v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1360 at para 13 (available on CanLII); *Castor v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1267 at para 24, 208 ACWS (3d) 382).

[13] The Court's role when reviewing a decision against the standard of reasonableness is defined in *Dunsmuir v New Brunswick,* 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]:

> . . . A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, 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.

V. Analysis

[14] The question of whether or not an IFA exists is integral to the determination of a refugee claim (*Rasaratnam v Canada (Minister of Employment and Immigration)* (1991), [1992] 1 FC 706 at para 6 (available on QL) (CA) [*Rasaratnam*]. Further, an IFA assessment involves a two-prong test. First, the Board must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted, subject to a danger of torture, a risk to his life, or a risk of cruel and unusual treatment or punishment in the proposed IFA. Second, it must be reasonable for the claimant to seek refuge there, given the conditions in the proposed IFA (*Rasaratnam*, above, at para 10). Once the Board raises the possibility of an IFA, the applicant bears the burden of proving either that it does not exist or that, in the circumstances, it would be unreasonable for the applicant to avail himself/herself of this IFA. (*Thirunavukkarasu v Canada (Minister of Employment and Immigration* (1993), [1994] 1 FC 589 at para 12, 109 DLR (4th) 682 (CA)).

[15] In this case, the applicant takes issue with the Board's analysis under the first prong of the IFA test. He argues that it was unreasonable for the Board to conclude that there was no serious

possibility that he would be persecuted either by the RSS, and more particularly by Mr. Naresh, or by the police.

[16] The applicant argues that the Board overlooked the following salient evidence:

- The dispute was not merely a commercial dispute; it had a religious component to it and it led to dangerous consequences for him;
- The RSS have links with the police;
- His family members were harassed by the RSS and were asked about the applicant's whereabouts after his departure;
- His partners were asked about his whereabouts after his departure;
- The Board did not consider the documentary evidence about the increasing intolerance towards Muslims by Hindu fundamentalists and the resurgence of Hindu fundamentalism.

[17] The applicant further argues that the Board failed to consider his testimony about being an ongoing target of Mr. Naresh. The applicant stated that Mr. Naresh would assume that the applicant would start up a new business and, once again, become a competitor. The applicant also testified that he would remain a target of the RSS.

[18] With all due respect and despite the sadness of the applicant's story, I am of the view that the Board's decision is reasonable and that it does not warrant the Court's intervention.

[19] This Court must show a very high degree of deference to decisions regarding IFAs. In this case, the Board undertook the appropriate approach to assess whether an IFA was viable.

Furthermore, I do not agree that the Board overlooked salient evidence or that it failed to consider the applicant's testimony.

[20] It is apparent from the reasons that the Board did acknowledge that the applicant feared that he remained of interest to Mr. Naresh or to the RSS for two reasons: (1) he would still be perceived as a potential competitor and (2) once the RSS targets a person, "they try to finish the job." The Board considered this evidence but did not find it compelling enough to be convinced that an IFA was not viable. With all due respect, the applicant's evidence related to his subjective fear but did not establish that there was an objective basis for that fear. There must be an objective basis for the applicant's belief that he or she will be persecuted in the IFA (*Romero Quiroz v Canada (Minister of Citizenship and Immigration)*, 2011 FC 864 at para 7 (available on CanLII)).

[21] It was not unreasonable, either, for the Board to consider, in light of the evidence, that the root of the dispute that led to the applicant's problems was commercial rather than religious. In that context, and considering the Board's findings in that regard, it was not necessary for the Board to mention the documentary evidence concerning the Hindu fundamentalism. It is well-established by law that the Board need not mention each and every piece of evidence in its reasons (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 at para 16, 83 ACWS (3d) 264 (FCTD)) and that the Board is presumed to have considered all of the evidence (*Florea v Canada (Minister of Employment and Immigration)* (1993), [1993] FCJ no 598 at para 1 (available on QL) (CA)). Notably, the recent Supreme Court decision *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 CSC 62 at para 16, [2011] 3 SCR 708 [*Newfoundland and Labrador Nurses' Union*] explains:

> [16] Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, [1975] 1 S.C.R. 382, at p. 391). In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the Dunsmuir criteria are met.

[22] In reading the Board's decision, I am able to understand why the Board arrived at its conclusions and upon which evidence it based its findings. I am also satisfied that the Board assessed all the relevant evidence. There is nothing on record that leads me to believe that this decision could fall outside the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir*, above, at para 47). Furthermore, the fact that a different reasonable conclusion is possible is not a reason for the Court to set aside a decision. There may exist more than one reasonable outcome (*Dunsmuir*, above, at para 47; *Newfoundland and Labrador Nurses' Union*, above, at para 11).

[23] For all of the foregoing reasons, the application for judicial review is dismissed. The parties did not propose any question for certification and none arises in this case.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed. No question is certified.

"Marie-Josée Bédard"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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