Federal Court  Cour fédérale

Date: 20140113

Docket: IMM-8427-12

Citation: 2014 FC 36

Ottawa, Ontario, January 13, 2014

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

SHOJAHAT ABBAS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] for judicial review of a decision by a Senior Immigration Officer [Officer] dated 10 July 2012 [Decision], which refused the Applicant's application for permanent residence from within Canada on humanitarian and compassionate grounds [H&C application].

BACKGROUND

[2] The Applicant is a 25-year-old citizen of Pakistan who was born in Quetta in the province of Balochistan. He came to Canada with his parents and siblings on 21 October 1994, and has remained since. The family initially sought refugee protection, but that claim was rejected on 9 March 2000. After that, the Applicant was listed as a dependent on his family's H&C application. The Applicant says in his affidavit that this application received a positive response, but before the family were landed as permanent residents his father was convicted of breaching a recognizance in 2003, which rendered the entire family inadmissible to Canada. The Applicant has continued to live in Canada on a temporary resident permit which has been renewed annually.

[3] While the Applicant's father was pardoned on April 21, 2010, this came too late for the Applicant to benefit. In early 2010, the Applicant was convicted of theft under $5,000 and assault. He was placed on probation and ordered to complete 80 hours of community service within 8 months, which he completed. Because of the conviction, however, the Applicant suspected that he was now inadmissible.

[4] Meanwhile, the Applicant's family has grown. His parents had three more children after their arrival, all of whom are Canadian citizens. One of his older sisters has become a permanent resident and now has a daughter of her own.

[5] On May 20, 2011, the Applicant applied for exemptions from the Act on humanitarian and compassionate grounds, seeking permission to apply for permanent residence from within Canada

(an exemption from section 11) and an exemption from his own inadmissibility for criminality (an exemption from subsection 36(2)(a)).

DECISION UNDER REVIEW

[6] In a letter dated 10 July 2012, the Officer wrote that no exemption would be granted.

[7] The Officer's Reasons for Decision state that the Applicant was required to show that the hardship of having to obtain a permanent resident visa from outside Canada would be unusual and undeserved, or disproportionate. The Officer acknowledged that those concepts are not rigidly defined, but observed that unusual and undeserved hardship is hardship that is unanticipated by the Act or Regulations and usually beyond the Applicant's control. Disproportionate hardship is hardship that does not rise to that level, but which affects an applicant disproportionately due to his or her personal circumstances. The Officer recognized that the Applicant was seeking an exemption from subsection 36(2)(a), and found that he or she had the delegated authority to grant such an exemption. The Officer clarified, however, that such an exemption does not cure the inadmissibility; it simply relieves the Applicant from having to show that he is not inadmissible due to criminality before the permanent residence application can be processed.

[8] The Officer then set out the background for the Applicant's claim, noting that the claim had four main elements: his establishment in Canada; family-related factors; the best interests of the children; and risk of harm in returning to Pakistan. With respect to the last element, the Officer noted that claims of risk factors covered by sections 96 and 97 can only be assessed through the Immigration and Refugee Board or through a Pre-Removal Risk Assessment [PRRA]. The Officer

stated that the threshold for an H&C application is one of unusual and undeserved or disproportionate hardship, and this was the basis upon which the application was assessed.

[9] The Officer stated that some measure of establishment was expected since the Applicant was very young when he arrived in Canada and has lived here for approximately 18 years. However, his physical presence alone did not constitute establishment. The Officer viewed favourably the fact that the Applicant either worked or volunteered at his mosque, Brampton Maki Masjid, but found that the Applicant had not shown that leaving that employment would create significant hardship for either himself or his employer.

[10] The Officer also considered the Applicant's criminal convictions, and observed that the Applicant had not provided any evidence of the context of these convictions or any extenuating circumstances.

[11] With respect to community involvement, the Officer said that the Applicant's work at Brampton Maki Masjid was once again a positive factor, but nothing else in the file indicated how he was involved with his religious community. The Officer then considered letters from friends submitted with the application, but said that none of them showed how severing Canadian ties would be an unusual and undeserved or disproportionate hardship.

[12] As well, the Officer observed that the record contained no evidence of financial responsibility in Canada.

[13] Taken together, the Officer concluded that the Applicant had failed to show that he had integrated into Canadian society to the extent that his departure would cause unusual or undeserved or disproportionate hardship.

[14] The Officer then considered the Applicant's family-related factors and acknowledged that the Applicant's immediate family all live in Canada and are important to him. However, the Applicant is now an adult, and does have some extended family in Pakistan. Further, although the Applicant said that he helps support his family emotionally and financially, and the letters from his sisters confirm that he "helps out" and spends time with them, the Officer found that those claims were not elaborated upon or otherwise well-supported. As well, the Applicant had not explained how he could provide financial support to family on such a modest income. Altogether, the Officer decided that separation would be difficult for the Applicant, but would not amount to either unusual and undeserved or disproportionate hardship for him or his family.

[15] The Officer then assessed the best interests of the children affected by the decision, whom he identified as the Applicant's three Canadian-born siblings and his niece. The Officer accepted that the Applicant's sister enjoyed spending time with him and that the Applicant would drive his siblings to school and help out when possible, and considered this a positive factor. However, the Officer did not think this was enough to justify an exemption, noting that parents are presumed to be able provide for their children. The Officer noted that the onus was on the Applicant to provide evidence, and the Applicant had failed to show what sorts of difficulties the children would face if he was separated from them. Ultimately, the Officer did not feel that the impact on the children was so negative that it justified an exemption.

[16] Next, the Officer assessed the risk the Applicant would face in Pakistan, which the Applicant identified as discrimination because he is a member of the Hazara-Shia community. The Officer acknowledged that such individuals are sometimes persecuted in Pakistan, particularly by militant groups. About half of the Hazara population in Pakistan live in Balochistan, and it is in that province, and Quetta in particular, that most of the persecution is suffered. The Officer accepted that the government has generally failed to protect its people in Balochistan and that the situation in that region is close to civil war.

[17] However, the Officer noted that ethnic Hazara do live outside of Balochistan as well, and the situation for them is generally perceived as more stable. The Officer could not find any information about the availability and effectiveness of state protection for those individuals, but noted that Pakistan's constitution did promise such protection. Further, police effectiveness varies greatly by district, ranging from reasonably good to ineffective, and professionalism and training have been steadily improving. There is some police corruption, but these issues are not widespread throughout the country, and there are avenues of redress for victims of corruption. Thus, while the Officer accepted that Hazara people are not adequately protected in Balochistan, the Applicant had not proven that he would be at risk if he lived somewhere else in Pakistan, and had not shown that it would be a hardship to do so should it be required.

[18] Finally, the Officer considered the Applicant's argument that he would face a language barrier and culture shock in Pakistan since he only speaks English and has lived in Canada for most of his life. However, the Officer observed that English is one of Pakistan's official languages and is

spoken adequately by 49% of the population. Knowing English is also a valuable asset in the job market. The Officer found that the Applicant is probably employable because he is resourceful and adaptable and has acquired transferable skills. Further, since the Applicant has extended family in Pakistan and has not proven that he is estranged from them, it is reasonable to assume they would support him, if only emotionally. Altogether, the evidence did not show that the Applicant could not establish himself in Pakistan.

[19] Assessing all the factors together, the Officer found that the Applicant had not shown that returning to Pakistan would cause either unusual and undeserved or disproportionate hardship to himself or anyone else.

ISSUES

[20] The Applicant states that the issues are:

a. Having regard to the facts and material in the record, was the Decision made in a perverse and capricious manner?

b. Did the Officer ignore evidence, make selective reliance on the evidence or otherwise misconstrue the evidence before her resulting in a reviewable error?

STANDARD OF REVIEW

[21] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where

this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[22] The Applicant submits that a decision to grant H&C relief is a question of mixed fact and law which attracts a reasonableness standard of review: *Ebonka v Canada (Citizenship and Immigration)*, 2009 FC 80 at paragraphs 16-17. In my view, the issues are primarily factual, but either way the standard of review is reasonableness.

[23] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at paragraph 47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

STATUTORY PROVISIONS

[24] The following provisions of the Act are applicable in these proceedings:

Application before entering Canada	**Visa et documents**
11. (1) A foreign national must,	**11.** (1) L'étranger doit,

before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.

préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.

[…]

[…]

Humanitarian and compassionate considerations — request of foreign national

25. (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.

Séjour pour motif d'ordre humanitaire à la demande de l'étranger

25. (1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

[…]	[…]
36. […]	**36.** […]
Criminality	**Criminalité**
(2) A foreign national is inadmissible on grounds of criminality for	(2) Emportent, sauf pour le résident permanent, interdiction de territoire pour criminalité les faits suivants :
(*a*) having been convicted in Canada of an offence under an Act of Parliament punishable by way of indictment, or of two offences under any Act of Parliament not arising out of a single occurrence;	*a*) être déclaré coupable au Canada d'une infraction à une loi fédérale punissable par mise en accusation ou de deux infractions à toute loi fédérale qui ne découlent pas des mêmes faits;
[…]	[…]

ARGUMENT

Applicant

[25] The Applicant claims that the Officer's conclusions on establishment, family-related factors, and the Applicant's ability to return to Pakistan were perverse and capricious. With respect to establishment, the Applicant says it is absurd for the Officer to conclude that the Applicant's 18 years in Canada were nothing more than physical presence. He was just turning 6 years old when he arrived, so the Applicant has been exclusively educated, employed, and socialized in Canada. The evidence shows that the Applicant is culturally Canadian: he celebrates diversity, contributes to his mosque and his community, trains in Muay Thai, ponders Canadian politics and world affairs, and cherishes Canada and his family. The Applicant says this is far more than a mere physical presence, and the Officer's contrary conclusion is perverse.

[26] Further, the Applicant says that the Officer disregarded his personal circumstances and the fact that his presence in Canada was beyond his control. He was brought here by his parents as a young child and could not have been expected to leave on his own for at least 12 years. By that time he was firmly established. Further, he has consistently maintained legal authorization in Canada and nobody has ever tried to remove him. This may not be enough in itself to warrant H&C consideration, but the Officer's failure to acknowledge and consider it is indefensible: *Lin v Canada (Minister of Citizenship and Immigration)*, 2011 FC 316 at paras 2-3.

[27] Regarding the family-related factors, the Applicant says the Decision was neither realistic nor empathetic. The Applicant draws attention to the letters his sisters wrote, and says they show how close he is to his family. If he is deported, the family will be ripped apart for the first time. As well, he criticizes the Officer's finding that no evidence showed that he provided financial support to his family, since the letter from his sister Rabia said that "I can always count on [Wajahat and Shojahat] to support me whether it is financially or emotionally." Similarly, his sister Shagufta wrote that he teaches her soccer and sometimes pays for trips when their parents do not have enough money. While the Applicant admits that the evidence does not say his parents cannot provide for their family, the Officer was wrong not to consider the support he does provide. The Officer's statement that the Applicant lacked the means to provide financial support to his family was unreasonable since he lives with his family and his tax assessments show that he made $14,184 in 2008 and $6,403 in 2010.

[28] Finally, the Officer's finding that the Applicant's family in Pakistan could support him is speculative and contradicted by his H&C submissions, which said that he did not know any of his relatives in Pakistan. Although he may have aunts and uncles there, he has lived in Canada since he was 6 years old, and has never met them.

[29] Turning to the second issue, the Applicant claims that the Officer selectively ignored evidence about the difficulties faced by Hazara-Shia people in Pakistan. In particular, the Applicant notes that Hazara-Shia means that he is Hazara by ethnicity and Shia by faith. The Officer considered the situation of ethnic Hazara in Pakistan, but ignored a large body of evidence on persecution faced by Shia Muslims. They are a minority in Pakistan, comprising only five to twenty percent of the population, and there are significant differences between them and the majority Sunni population. Relying on the UK Home Office Country of Origin Report on Pakistan, dated 7 June 2012 [UK Report], the Applicant says that Shiites are persecuted throughout Pakistan. At section 19.04, that report quotes from an Asian Human Rights Commission report of the same year which observed that the authorities cannot protect religious minorities and fundamentalist Muslim leaders use blasphemy laws to undermine human rights. It goes on to say that "[m]embers of all faiths have been victims of these merciless violations of human rights including Christians, Hindus and even Shiites." There are a number of other quotations from the UK Report to similar effect, but the Officer ignored this evidence entirely. This was an error since risk is relevant to the hardship analysis, and "there cannot be selective reliance on evidence presented to the detriment of the person concerned, nor can relevant material be ignored": *Mui v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1020 at para 28.

[30] The Applicant says the Officer's conclusions on police protection were similarly selective in their reliance on the evidence, since the UK Report said at sections 18.02 – 18.04 that corruption in the police forces and government was widespread.

[31] For those reasons, the Applicant asks that the Decision be set aside and redetermined by another officer.

Respondent

[32] The Respondent argues that the Applicant is simply taking issue with how the Officer weighed the evidence, and it is not the job of this Court to reweigh that evidence.

[33] While establishment is an important factor, the Respondent says it only warrants an exemption on H&C grounds if displacing the Applicant would cause unusual and undeserved or disproportionate hardship. H&C applications are exceptional and are not meant to eliminate all hardship: *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 at paras 15-17. In this case, the Officer considered the following matters: it was unclear whether the Applicant worked or volunteered at Brampton Maki Masjud; the Applicant could probably find work in Pakistan; the Applicant was convicted of theft under $5,000 and assault, for which no mitigating circumstances were shown; the Applicant did not demonstrate that he was involved in his religious community; the letters from friends and family did not show how his removal would cause hardship to the degree required; and no financial responsibility was shown. The Officer did not ignore the evidence, but simply found that it did not show that it would be an unusual and undeserved or

disproportionate hardship to apply for permanent residence from outside Canada. The Applicant has not shown that the Officer ignored any evidence.

[34] Similarly, with respect to the family factors, the Officer observed the following facts: the Applicant is an adult; he has extended family in Pakistan; he has not shown how he supports his family financially or emotionally; his younger siblings and niece have their own parents to provide for them; and the best interests of the children do not outweigh the other factors. Further, the Officer did not fail to notice that the Applicant made money, but simply said that the Applicant had provided no evidence of how his small income was used to financially support the family. The Officer considered all of the evidence, and the fact that he did not reach the conclusion the Applicant wished does not mean that the Decision was unreasonable.

[35] With respect to the situation in Pakistan, the Respondent submits that it was reasonably considered. Even though the Applicant submitted no evidence on country conditions, the Officer located and consulted a variety of publicly available material. The Officer did not ignore the Applicant's faith or ethnicity; on the contrary, the Officer twice said that he would face discrimination because of it. The Officer thus considered whether state protection was available and recognized that it was not in many areas of the country. The Officer did not gloss over that evidence, or the evidence of police ineffectiveness in some areas. Nevertheless, some parts of the country are safe and the Officer concluded that it would not cause the Applicant unusual and undeserved or disproportionate hardship to move to one of those areas and seek state protection if he faced persecution or discrimination.

[36] The Applicant's entire case, the Respondent submits, is simply a one-sided re-presentation of evidence that was already reasonably considered and weighed by the Officer. As stated in *Johal v Canada (Minister of Citizenship and Immigration)*, [1997] FCJ No 1760 (FCTD) at para 11, "[o]ne cannot 'dissect' the evidence and use only that portion which underlines one's point of view." Further, an officer is presumed to have considered all the evidence that he or she says was relied upon, and is not required to refer to or address all evidence adverse to his or her conclusions: *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 (FCTD) at paras 16-17.

Applicant's Reply

[37] In reply, the Applicant argued that the Officer's finding that he provided contradictory evidence about his time at Brampton Maki Masjid was unsupportable; he only ever said that he volunteered there, and by listing it also as an activity he was not representing that he was employed there. If the Officer was concerned about this alleged contradiction then he or she should have contacted the Applicant and given him an opportunity to respond. Failing to do so was unfair and made the finding perverse and capricious: *Skripnikov v Canada (Minister of Citizenship and Immigration)*, 2007 FC 369 at para 21.

[38] The Applicant says also that the Officer was wrong in stating that the Applicant had not provided evidence of mitigating circumstances for his crime. To the contrary, he showed that he was sentenced to only 80 hours of community service, which he completed.

[39] Further, the Applicant says he did prove that he was active with his mosque since he demonstrated that he completed his community service there and two of his support letters said that he was active there.

[40] Finally, the Applicant argues that he is not "dissecting" the evidence. The Officer was required to consider the country conditions, and yet the Decision utterly failed to deal with the evidence that Shia Muslims are persecuted everywhere in Pakistan.

ANALYSIS

[41] The Applicant makes several assertions about what the Officer found or concluded that are not found in the Decision.

[42] For example, the Officer does not say that the Applicant has "merely been 'physically' present" in Canada for 18 years. Nor does the Officer find that the Applicant has not established himself in Canada. The Officer fully acknowledges the evidence for the Applicant's degree of establishment but concludes that it is insufficient to cause unusual and undeserved, or disproportionate hardship if he applies for permanent residence in the usual way from outside of Canada. The Applicant disagrees with this assessment and is asking the Court to reweigh the evidence. The Court cannot do this: see *Nagulathas v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1159 at para 46; *Olaya v Canada (Minister of Citizenship & Immigration)*, 2012 FC 913 at para 68; *Velychko v Canada (Minister of Citizenship and Immigration)*, 2010 FC 264 at para 26; *Zrig v Canada (Minister of Citizenship and Immigration)*, 2003 FCA 178 at para 42.

[43] The same can be said of the Officer's assessment of family-related factors and return to country of nationality. In my view, the Officer overlooks nothing that is material. The Officer weighs what evidence the Applicant submitted (and some of it was clearly deficient or unhelpful) and concludes that the requisite degree of hardship has not been established. These findings are reasonable and well within the range set out in para 47 of *Dunsmuir*, above, and the Court cannot interfere.

[44] In my view, the only issue of substance raised by the Applicant concerns his religious affiliation and the risks and related hardships it might expose him to if he returns to Pakistan. As the Officer points out, the Applicant did not provide documentary evidence to support hardships he would face in Pakistan related to risk of harm. Hence, the Officer undertook his or her own research.

[45] The Applicant now says that the Officer made selective use of the documentary evidence consulted, both as regards the risks and hardship he faces and the availability of state protection. Essentially, the Officer concludes that Hazara-Shia may face persecution in Pakistan, and that police protection varies greatly district by district, "ranging from reasonably good to ineffective," but that the "evidence indicates that avenues of redress are available to the applicant in other provinces and that it would not be a hardship to access them should it be required. Evidence does not support that the Applicant is unable to live where he chooses in Pakistan."

[46] In coming to the conclusion, the Officer relies upon the Australian Government's "Country Advice Pakistan" of May 3, 2011, which is included in the Certified Tribunal Record [CTR]. The

Officer incorporates parts of the following quotation from that report into the Reasons without specific attribution, but leaves out two significant statements in the evidence (CTR at pp. 585-586, emphasis added):

> **4. Is state protection available for Hazaras elsewhere in Pakistan?**
>
> No information has been located providing information specifically on the availability and effectiveness of state protection for ethnic Hazaras throughout the various provinces and cities of Pakistan. The right to state protection is enshrined in Article 4 of Pakistan's Constitution, which states "[t]o enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan."
>
> The degree to which state protection is available and effective varies from province to province and from agency to agency. The US Department of State reports that in 2011 police effectiveness in providing state protection ranged "from reasonably good to ineffective", adding that "[p]olice often failed to protect members of religious minorities, including Christians, Ahmadis, and Shia Muslims, from attacks".
>
> Pakistanis have little faith in the capacity of the police force to adequately protect them. Transparency International has ranked the police as the most corrupt institution in Pakistan in three consecutive surveys (2009, 2006 and 2002).

[47] There was also clear evidence in the Immigration and Refugee Board's Responses to Information Requests [RIR] on Pakistan for November 20, 2011 that complaints about the police are simply futile. Again, the Officer incorporates portions of this evidence into the Reasons, but leaves out the portion referring to the futility of complaints (CTR at p. 677, emphasis added):

> **Police Department Complaints Mechanisms**
>
> Sources indicate that there are mechanisms within the police departments for receiving complaints against police (HRCP 2 Nov. 2011; Pakistan 9 Nov. 2011). In a telephone interview with the Research Directorate, a representative of the High Commission of

> Pakistan in Ottawa said that to defend their own interests, local police stations might not accept a complaint against a fellow police officer (ibid.). He said that a complainant should go to the authority one level higher than the local police stations and submit a complaint to the regional police office (ibid.). He added that if the regional office does not accept the complaint, the complainant may contact the senior police superintendent or the inspector general (ibid.).
>
> The lawyer corroborates the statement that a grievance can be submitted to the "higher authorities" within the police force (Lawyer 6 Nov. 2011). He explained that to submit a complaint within the police department, such as to the police superintendent or the head of the city police, a complainant must submit an application (ibid.). He added that the complainant does not need to have a lawyer to submit the application (ibid.). However, according to the lawyer, submitting a complaint to the higher level police authorities is usually a "futile exercise" that "does not work" in a "great majority of cases" (ibid.). Moreover, The Nation states that complainants receive "humiliating treatment" at police stations (2 July 2011). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

[48] As these quotations reveal, the Officer made selective use of the evidence and ignored what specifically did not support his or her conclusions. Given the strength of the evidence for the violence and discrimination habitually practised against religious minorities in Pakistan, including Shiites, the availability of state protection was crucial for assessing the hardship that the Applicant will face. On this issue, the Officer deliberately ignores the evidence which says that "police often failed to protect members of religious minorities, including Christians, Ahmadis, and Shia Muslims, from attacks" and that complaints are futile in the majority of cases. Under the well-known principles established in *Cepeda-Gutierrez,* above, this approach by the Officer renders the Decision unreasonable because the Officer has not appropriately assessed the degree of hardship that the Applicant will face because of his Hazara-Shia affiliation if he is returned to Pakistan.

[49] Counsel agree there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is allowed. The Decision is quashed and set aside and the matter returned for reconsideration by a different officer.

2. There is no question for certification.

"James Russell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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