Federal Court Cour fédérale

Date: 20160315

Docket: IMM-2807-15

Citation: 2016 FC 313

Ottawa, Ontario, March 15, 2016

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

GUL AFZA HOSSAIN
JAFAR HOSSAIN
RAHIM HOSSAIN

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms Gul Afza Hossain and her two sons fled Afghanistan nearly 20 years ago to escape persecution on the basis of their ethnicity (Hazara) and their faith (Shia Muslim). They have been living in a refugee camp in Pakistan ever since. Without government assistance and having no right to work, they manage to support themselves by selling cans of soda or soup on the street.

The police harass them and demand bribes. Their future in Pakistan is uncertain as the government has recently threatened to remove Afghan refugees. The children cannot attend school.

[2] Ms Hossain's daughter, a Canadian citizen, attempted to sponsor the applicants for permanent residence in Canada. A visa officer in Islamabad interviewed the applicants to determine whether they had a well-founded fear of persecution if they were to return to Afghanistan, or could be considered to be seriously and personally affected by civil war, armed conflict or massive violation of human rights there. If the former, they would be considered refugees. If the latter, they would fall within the country of asylum class (according to s 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], and s 147 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] respectively – see Annex).

[3] The officer concluded that the applicants did not meet any of these tests. He found that their fear of returning to Afghanistan arose from general conditions in that country faced by the entire population. Further, according to the officer's reading of the documentary evidence, conditions have improved for Hazara Shia citizens of Afghanistan since the applicants left. They can now participate in the political and social life of the country, and are free to practice their faith. The government of Afghanistan now recognizes Shia Islamic law. Accordingly, the officer rejected their application.

[4] The applicants contend that the officer's conclusions were unreasonable. They say that he relied on outdated information and, even then, misinterpreted the evidence he purported to rely

on. Further, they argue that the officer unreasonably concluded that their concerns related to general conditions in Afghanistan and they fear that they will be specifically targeted as Hazaras. The applicants ask me to quash the officer's decision and order another officer to reconsider their application.

[5] I agree with the applicants that the officer's conclusions were unreasonable. He failed to take account of significant evidence favouring the applicants' position. I must, therefore, allow this application for judicial review.

[6] The sole issue is whether the officer's decision was unreasonable.

II. The Officer's Decision

[7] The officer relied heavily on a 2012 document – the Annual Report of the United States Commission on International Religious Freedom. That report notes that, after the fall of the Taliban, Hazara Shia people have experienced improved circumstances in Afghanistan. For example, they are represented in Parliament and hold positions in the public service. In addition, their places of worship have been rebuilt, and the Constitution has been amended to recognize Shia Islamic law.

[8] In light of this evidence, the officer interpreted the applicants' fears of returning to Afghanistan as being concerns about personal safety which all residents of that country currently experience. Further, the evidence did not show that the applicants fell within the country of

asylum class which requires that they be "seriously and personally affected by civil war, armed conflict or massive violation of human rights".

III. Was the officer's decision unreasonable?

[9] The Minister maintains that the officer's decision was reasonable because the documentary evidence did not support the applicants' fears, and their testimony at the interview did not support a finding that they fell within the country of asylum class. Further, the applicants lacked credibility as they failed to produce Afghani identification cards (called Tazkiras).

[10] I disagree.

[11] Any credibility concerns the officer may have had did not figure in the decision. The officer noted that the applicants had failed to produce Tazkiras. Some Tazkira numbers appeared on Ms Hossain's son's marriage certificate, but the applicants gave inconsistent answers about the source of those numbers. The officer found their story to be implausible. However, there is no indication that the officer doubted the applicants' identities or their country of origin. The officer appeared to give no weight to these issues in his decision.

[12] Regarding the documentary evidence on country conditions, as mentioned, the officer relied primarily on a 2012 report to conclude that the applicants' fears of mistreatment in Afghanistan were no longer well-founded. Even that report, however, noted that minority groups continued to endure religious persecution and that the safety of Shia Muslims would be uncertain if foreign troops were to leave Afghanistan, as they did in 2014.

[13] In addition, later reports from reliable sources, which pre-date the officer's decision, show that Shia Muslims are targeted for violence, intimidation, kidnappings, and execution and that they cannot rely on the state to protect them. Further, they reveal that Hazaras have endured various forms of abuse in recent years, including extortion, abduction, detention, and murder. The officer did not refer to any of that evidence.

[14] The recent evidence also supports the applicants' contention that their fear of returning to Afghanistan is not a general concern about safety that all residents of that country may experience. It points to specific threats to Shia Muslims and Hazaras. Again, the officer did not take that evidence into account when he concluded that the applicants had not demonstrated that they should be considered refugees or members of the country of asylum class.

[15] Given that there was substantial and widely available evidence that contradicted the officer's conclusions, which the officer did not take into account, I find that his conclusions do not represent a defensible outcome based on the facts and the law. They were unreasonable.

IV. Conclusion and Disposition

[16] The officer failed to take into account relevant and important evidence supporting the applicants' fear of returning to Afghanistan. Accordingly, I find that his conclusion was unreasonable based on the facts and the law, and will order another officer to reconsider the applicants' application. Neither party proposed a question of general importance to be certified, and none is stated.

[17] Ms Hossain asked that the style of cause be amended to include her sons, who are also applicants on this judicial review. I will grant her request.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed, and the matter is returned to another officer for reconsideration.
2. No certified question is stated.
3. The style of cause herein is amended to include Jafar Hossain and Rahim Hossain as applicants.

"James W. O'Reilly"

Judge

Annex

Immigration and Refugee Protection Act, SC 2001, c 27

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail himself of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Immigration and Refugee Protection Regulations, SOR/2002-227

Member of country of asylum class

147. A foreign national is a member of the country of asylum class if they have been determined by an officer to be in need of resettlement because

(a) they are outside all of their countries of nationality and habitual residence; and

(b) they have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in each of those countries.

Loi sur l'immigration et la protection des réfugiés, LC 2001, ch 27

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Règlement sur l'immigration et la protection des réfugiés, DORS/2002-227

Catégorie de personnes de pays d'accueil

147. Appartient à la catégorie de personnes de pays d'accueil l'étranger considéré par un agent comme ayant besoin de se réinstaller en raison des circonstances suivantes :

a) il se trouve hors de tout pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle;

b) une guerre civile, un conflit armé ou une violation massive des droits de la personne dans chacun des pays en cause ont eu et continuent d'avoir des conséquences graves et personnelles pour lui.

FEDERAL COURT

SOLICITORS OF RECORD

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