

Federal Court



Cour fédérale

Date: 20160629

Docket: IMM-4929-15

Citation: 2016 FC 736

Toronto, Ontario, June 29, 2016

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

**SYED WASEEM JAFRI
NAYYAR WASEEM JAFRI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review of a decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada dated October 7, 2015 wherein the Applicants' appeal was dismissed. The decision of the Refugee Protection Division (RPD) that the Applicants were neither Convention refugees nor persons in need of protection as there was a viable Internal Flight Alternative (IFA) for the Applicants in Islamabad, Pakistan, was confirmed.

[2] The Applicants are husband and wife, both are citizens of Pakistan. He is in his early 70's and in poor health; she is in her late 60's. They allege fear of persecution in Pakistan due to their religious identity as Shia Muslims.

[3] The RPD found that the male Applicant's behaviour was inconsistent with his alleged fear of persecution as displayed by lengthy delay in leaving Pakistan and a long delay in claiming protection in Canada. The RPD also found that a viable IFA exists for the Applicants in Islamabad, Pakistan.

[4] In the proceedings before the RAD the Applicants made a further submission, namely that they should be considered as refugees *sur place* because they have no intention of staying in Canada and decided to claim protection in Canada only after finding out that there was a higher risk for Shia should they return to Pakistan.

[5] The RAD confirmed the findings of the RPD on the basis that, on the balance of probabilities, the Applicants could live safely and reasonably in Islamabad. While the RAD mentioned the *sur place* claim it did not deal with it since it held that the IFA issue was determinative.

[6] Counsel are agreed that, having regard to the decision of the Federal Court of Appeal in *Huruglica (Minister of Citizenship and Immigration v Huruglica, 2016 FCA 93)* the standard to be applied on judicial review in this particular circumstance is reasonableness.

[7] Counsel are further agreed that the test to be applied with respect to Internal Flight Alternatives is twofold.

1. Is there, on a balance of probabilities, no serious possibility that the claimant will be persecuted in that part of the country where an IFA is said to exist; and, if no such possibility exists;
2. Is it not unreasonable in the circumstances, including circumstances particular to the claimant, for the claimant to seek refuge in that IFA?

[8] I find that the decision of the RAD is not reasonable because it draws incorrect conclusions from the evidence and fails to give proper consideration to other evidence, including:

- It fails to give proper consideration to the e-mail from the Principal Applicant's son; that e-mail clearly states that the risk to the Principal Applicant (dad) is personal, it is irrelevant that others as well as dad, may be at risk;
- It fails to give full and proper consideration to the acts of extreme violence and murder respecting Shia in Rawalpindi, a city adjacent the IFA, Islamabad;
- It gives improper weight to the UNHCR and Responses to Information Requests which discuss violence directed at Shia including in the Islamabad area;
- Failed to appreciate that, while the Principal Applicant was not a "high" profile Shia, he did have a sufficient profile that may attract radicals.

- Failed to give full consideration to the fragile health of the Principal Applicant who can receive care from his son in Canada but will have no one to care for him in Islamabad.

[9] While the RAD member did mention some of these matters it appears that he did not appreciate the full significance of them and was too willing to find reasons not to favour the Applicants. The approach was not well balanced hence not reasonable.

[10] No party registered a certified question.

JUDGMENT

FOR THE REASONS provided;

THIS COURT'S JUDGMENT is that:

1. The application is allowed;
2. The matter is returned to the Refugee Appeal Division for reconsideration by a different Member;
3. No question is certified; and
4. No Order as to costs.

“Roger T. Hughes”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4929-15

STYLE OF CAUSE: SYED WASEEM JAFRI, NAYYAR WASEEM JAFRI v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 28, 2016

JUDGMENT AND REASONS: HUGHES J.

DATED: JUNE 29, 2016

APPEARANCES:

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