

Federal Court



Cour fédérale

**Date: 20160930**

**Docket: IMM-570-16**

**Citation: 2016 FC 1094**

**Ottawa, Ontario, September 30, 2016**

**PRESENT: The Honourable Mr. Justice Annis**

**BETWEEN:**

**ASIF RAZA  
SONIA SAJJAD  
NAJAF ALI  
ZENA RAZA  
LUJAIN RAZA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is a judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA], of the January 15, 2016 decision by the Refugee Appeal Division (RAD) upholding a decision by the Refugee Protection Division (RPD) rejecting the Applicants' refugee protection claim.

[2] The Applicants argue that the RAD erred in finding that there was no breach of natural justice and affirming the RPD's credibility analysis.

[3] A review of the RAD's decision reveals no error and, as such, the application is dismissed.

I. Background

[4] Mr. Asif Raza (the Principal Applicant) along with his wife, Ms. Sonia Sajjad and their three minor children, Najaf Ali, Zena Raza and Lujain Raza (the remaining Applicants) are citizens of Pakistan. On January 15, 2015, the Principal Applicant lost his job in Kuwait, where the family had lived for a number of years. Having lost his work permit, they were forced to return to Pakistan and remained there from January 23, 2015 to February 11, 2015.

[5] The Applicants allege that, during this time, their life came under threat by a terrorist group identified as Lahsher-e-Jhangvi. The terrorist group allegedly threatened to blow up the Principal Applicant's house and kill him. Based upon these threats, the Applicants claim their whole family is at risk. The Principal Applicant is allegedly targeted by this terrorist group because he is an organizer, funder and prominent individual in the Shia community of Mian Channu in the Punjab Province of Pakistan.

[6] In February 2015, the Applicants travelled to Canada on a visitor visa and claimed protection in March 2015.

[7] The Applicants' claims were rejected by the RPD on June 16, 2015. The appeal to the RAD was denied January 6, 2016. An application for judicial review of this decision was submitted to the Federal Court on February 8, 2016.

[8] In their arguments before the RAD, the Applicants raised the issue of the competence of their representative before the RPD. In light of these allegations, the representative obtained an order permitting him to intervene in this application for judicial review before the Federal Court, without amendment to the style of cause, but including the filing of affidavits and a memorandum of argument. On August 26, 2016, the intervener was cross-examined on his affidavit sworn August 2, 2016.

## II. The RPD Decision

[9] The only issue of relevance from the RPD's decision was its rejection of the Applicants' claim for lack of credibility, which the RPD found to have been the determinative issue in the matter. The principal concern of the RPD related to key elements of the Principal Applicant's testimony that were omitted from the Basis of Claim Form (BOC). Though the Principal Applicant claimed he omitted these statements from the BOC as "he thought he would have an opportunity to tell the panel the rest at the hearing", the RPD did not find this explanation to be reasonable and instead found that the Principal Applicant's credibility was undermined. Further, the RPD found it was not plausible that the Applicants were personally targeted only in January 2015, since the Principal Applicant and his father-in-law's involvement in the religious community had been ongoing since 1992 and 1972 respectively.

III. The RAD Decision

[10] The RAD dismissed the appeal and confirmed the determination of the RPD. The only issues considered by the RAD related to 1) a new argument that there was a breach of natural justice caused by the alleged incompetent representation of the Applicants' representative before the RPD; and 2) the RPD's purported deficient credibility assessment.

[11] Following *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 [*Huruglica*] and *Njeukam v Canada (Citizenship and Immigration)*, 2014 FC 859, the RAD stated that it would show some degree of deference to the RPD with respect to its credibility assessment, while also providing its own assessment of the evidence to reach its conclusion on appeal.

[12] The Applicants argued that the RPD's findings of credibility were a by-product of the negligent representation by the Applicants' immigration consultant. The Applicants contended that they recounted specific incidents of persecution faced in Pakistan to the immigration representative; however, the BOC prepared by the immigration representative addressed their problems only in generalities contrary to the standard of practice of competent immigration representatives. Given the importance the RPD attached to the lack of particulars in their BOC, the Applicants contend that the consultant's incompetence was a determinative factor in the RPD's adverse credibility finding and the ultimate decision.

[13] The RAD rejected this argument finding that the Applicants had not satisfied the heavy burden for demonstrating incompetence. It found that the Applicants' submission blaming the representative for the lack of specificity in the BOC was not credible, implying the specifics of the claim were developed after the submission of the BOC. The RAD also rejected the Applicants' argument that the RPD erred in its credibility analysis based on similar plausibility findings as the RPD and its analysis of the country documentation evidence.

#### IV. Issues

[14] The following issues arise in this application:

1. Did the RAD err in its finding that there was no breach of natural justice owing to the incompetence of Applicants' representative?
2. Did the RAD err in its credibility analysis?

#### V. Standard of Review

[15] The question of whether there was a breach of natural justice goes to procedural fairness and is a question that should be reviewed on the standard of correctness (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43).

[16] The Parties agree that the applicable standard of review with regards to the RAD's credibility analysis is that of reasonableness. This analysis extends to the credibility issue of the Applicants' claim that the representative was incompetent. This standard has been reaffirmed in *Huruglica* at paragraph 35. The Court will not intervene unless the credibility analysis falls outside the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick, 2008 SCC 9* at para 47).

## VI. Analysis

### A. *Breach of Natural Justice by the Alleged Incompetence of Counsel*

[17] The reasonableness of the RAD's decision rejecting the Applicants' submission that their immigration representative was incompetent turns on its analysis of mutually exclusive and contradictory versions of the evidence pertaining to discussions between the Applicants and the representative. As indicated, the Applicants allege that they advised their representative of the specifics of their claim, information he chose not to include in the BOC. Conversely, the representative deposed that the Principal Applicant could not, or did not want to provide particulars of the persecution claim, although requested, and that he had been advised that the absence of particulars would prove harmful to the family's application.

[18] The representative, in his affidavit and during his cross-examination, specifically stated that there were four or five visits during which he requested more specifics for the Applicants' BOC. He alleged that the Principal Applicant was reluctant to do so, providing a number of different answers when requested at different times. Initially, he indicated that he would only

provide the information during the refugee hearing. Later, he indicated that he was in the process of gathering his thoughts, which he attributed to his depressed psychological situation. The representative claims that the Principal Applicant turned down offers of assistance, including a psychological review. The representative thought he would eventually be required to amend the BOC, but the additional information was never provided. He also indicated being somewhat limited by ethical concerns in pressing the Principle Applicant to provide more information, when it was apparent he was unable to do so.

[19] On the one hand, there are genuine concerns raised by the representative's apparent refusal to provide his file materials as undertaken. During argument, his Counsel attempted to provide an explanation for the file not containing relevant materials relating to the consultations. The Court refused to entertain this evidence. The Court is equally concerned by the representative's failure to provide the Applicants advice in writing outlining the risks to their claim by presenting a BOC based on bare allegations without specifics.

[20] However, the Court finds more persuasive the evidence from the Principal Applicant's testimony before the RPD. In reply to questions on four different occasions asking why the BOC did not include the specific information about which he had testified during the hearing, none of his answers indicated that he had provided the information to his representative or explained why the information was not included in the document. Instead, he answered that he believed he would have an opportunity to provide the panel with the information at the hearing. I recognize that the representative was Counsel at the hearing, which could have somewhat compromised the Applicant's response. Nevertheless, when pressed on so many occasions, one would reasonably

believe that he would have mentioned telling his representative, something he apparently strongly alleged, once new counsel had been retained. Given that the other family members apparently attended some of the consultations with the representative, they too could have urged the Principal Applicant to make this point to the Board.

[21] The Court similarly has some difficulty with the concept that an experienced immigration representative, practicing for some 13 years and acting on many occasions in matters of this nature, would not include particulars provided by the client in the BOC, when the adverse consequences to the client are notorious in immigration jurisprudence. If this was his practice, I cannot imagine that this issue would not have arisen much earlier in his career.

[22] Bearing in mind the significant onus on the Applicants and the requirement for specifics to clearly support a claim of incompetence against a former Counsel (*Memari v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1196 at para 36), I find that the RAD's conclusion that no breach of natural justice occurred in respect of the Applicants' representation before the RPD was reasonable.

#### B. *Credibility Analysis*

[23] The Applicants argue that the RAD erred in its credibility analysis. The RAD raising questions as to whether there have been recent attacks by the concerned terrorist group in the Applicants' city in no way can be construed as requiring the Applicants' to prove that the group will attack Shias in that city. There is no evidence to support the argument that the RAD lost sight of the appropriate standard of proof under s 96 of the IRPA. The Applicants also



misconstrue the RAD's analysis by arguing that it is speculating as to what is in the mind of the perpetrator when it questions why it would target two persons who spent so little time in the area. It is the RAD's role to determine whether an allegation is, on the basis of the evidence before it, plausible and worthy of credibility. On the basis of the evidence before it, the RAD found that it was not plausible that this family would be targeted by the concerned terrorist group. This finding was reasonable. The RAD's adverse credibility finding was based on many omissions, inconsistencies and implausibilities. In addition, the RAD also found the Principle Applicant not to be credible in testifying that he advised his counsel of the specifics of his claim.

[24] Moreover, the evidence relied upon by the Applicants to establish the country conditions regarding the Lahsher-Jhangvi group was highly dated, back to 1995, and did not appear to be relevant to the geographical area where the Applicants resided. The evidence did not support the profile of the Principal Applicant as a target of persecution. In addition, there remains the absence of a logical explanation for the alleged persecution occurring after so many years of involvement organizing and raising funds for events in the Shia community.

## VII. Conclusion

[25] For the foregoing reasons, the application for judicial review is dismissed and no question is certified for appeal.

**JUDGMENT**

**THIS COURT'S JUDGMENT** is that the application for judicial review is dismissed and no question is certified for appeal.

"Peter Annis"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-570-16

**STYLE OF CAUSE:** ASIF RAZA ET AL v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 19, 2016

**JUDGMENT AND REASONS:** ANNIS J.

**DATED:** SEPTEMBER 30, 2016

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