

Federal Court



Cour fédérale

**Date: 20170117**

**Docket: IMM-2862-16**

**Citation: 2017 FC 56**

**Toronto, Ontario, January 17, 2017**

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

**BETWEEN:**

**ABDULLAH RAHIMI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The applicant, Mr. Abdullah Rahimi, is a citizen of Afghanistan who entered Canada from the United States in January 2016. He claimed protection alleging a fear of the Taliban due to: (1) his father's work with UNICEF in Kabul; (2) his involvement in the education of girls in a village outside Kabul; and (3) his attendance at the American University of Afghanistan in Kabul.

[2] The Refugee Protection Division [RPD] refused the claim on the basis of credibility. Mr. Rahimi submits that the RPD's credibility findings were unreasonable. He argues that corroborating evidence was ignored, his personal evidence and testimony was misunderstood and misconstrued, the credibility findings were speculative and illogical, and the analysis supporting the RPD's decision was vague and imprecise.

[3] The sole issue raised on this application is whether the RPD decision is reasonable. Having considered the parties written and oral submissions, I find that the RPD's failure to address evidence corroborating Mr. Rahimi's claim and the misapprehension of evidence undermines the justifiability, transparency and intelligibility of the decision rendering it unreasonable. For the reasons that follow the application is granted.

## II. Background

### A. *The Claim*

[4] Mr. Rahimi alleged that on completion of high school, he enrolled as a student in the Professional Development Institute [PDI] at the American University in Kabul. While attending the PDI, he discussed the possibility of opening a school for girls with his father in their village outside of Kabul. His father had the financial resources to establish and operate a small school, he had property in the village, and his duties with UNICEF related to education. The school was opened in early 2014. Mr. Rahimi was responsible for supplies, books and the payment of staff. He travelled from Kabul to the village on weekends to perform these tasks. The school was a success.

[5] In late 2014, Mr. Rahimi alleges that he started to receive threatening calls from the Taliban telling him to close the school. Mr. Rahimi did not view the initial call as serious but after receiving a second call he stopped travelling to the village and made arrangements to support the school from Kabul where he was continuing his own studies. He did return to the village to attend a family funeral in late February 2015. He and his father were warned that the Taliban were looking for them. They left immediately after the funeral, but on the evening of the funeral the Taliban threatened family members, assaulted others and threatened to kill Mr. Rahimi and his father. Shortly thereafter, the Taliban forcibly shut down the school, delivered a threatening letter and announced at the local mosque that the applicant and his father would be punished. In May 2015, Mr. Rahimi reported that there was an attempt to abduct him in Kabul. The attempted abduction was reported but the police were unable to assist. Mr. Rahimi ceased attending university and looked for ways to flee Afghanistan.

B. *Decision under Review*

[6] The RPD recognized that the objective documentary evidence demonstrated that the Taliban often view individuals who work for international organizations as traitors and consider the education of girls as contrary to their ideology. The RPD further stated that there is no credible evidence to establish that the Taliban consider men who attend universities as traitors.

[7] The RPD found that the applicant's testimony contained several discrepancies and inconsistencies. It found him hesitant and vague throughout his testimony. As regard to Mr. Rahimi's studies at the American University in Kabul, the RPD found that his testimony was

confusing and concluded that there was no evidence that Mr. Rahimi was attending an American university as he claimed.

[8] With respect to his involvement in the education of young girls, the RPD found the evidence did not establish that Mr. Rahimi, who was 18 years old at the time, had the financial resources, the time or experience to establish and administer a school away from Kabul. The RPD took issue with Mr. Rahimi's claim that his father provided financing for the school and noted that the Mr. Rahimi had provided contradictory evidence with respect to the legal status of the school. Finally, the RPD expressed the view that after the closing of the school, there was no longer a reason for Mr. Rahimi to be targeted by the Taliban in Kabul. It held that the story relating to the school was incoherent and not believed.

[9] In regard to the father's employment with UNICEF, the RPD was not satisfied that the father's employment with an international organization established that Mr. Rahimi was a target of persecution. The RPD noted that the documentary evidence established that individuals working in Kabul face a lesser risk and if the father feared the Taliban he would have moved elsewhere or quit his job.

[10] Finally, the RPD highlighted a number of inconsistencies arising from the applicant's testimony relating to the timing of his departure from Afghanistan, his remaining in Kabul and his father's continued work with UNICEF. The RPD concluded that the applicant did not demonstrate a serious possibility of persecution and that his true intent was to study in Canada.

III. Standard of Review

[11] There is no dispute as between the parties; the standard of review to be applied is reasonableness. The RPD is owed significant deference but the decision must be reasoned and lead to a justifiable finding (*Shabab v Canada (Citizenship and Immigration)*, 2016 FC 872 at para 16, *Yang v Canada (Citizenship and Immigration)*, 2016 FC 543 at para 8 and *Njeri v Canada (Minister of Citizenship and Immigration)*, 2009 FC 291 at para 12).

IV. Analysis

A. *Is the decision reasonable?*

[12] In support of the claim, Mr. Rahimi placed corroborative documentation before the RPD.

This included:

- A. A March 2015 threat letter from the Taliban;
- B. Student identification cards to evidence his attendance at the American University in Afghanistan for at least part of the period he claimed to be studying at that institution;
- C. A letter from his father's cousin describing the Taliban actions after the family funeral in March 2015;

- D. Receipts for school supplies purchased in December 2013 and June 2014, setting out the name of the school and identifying Mr. Rahimi as the individual who paid for the supplies;
- E. Employment contracts evidencing the employment of two teachers at the school;
- F. A letter of agreement establishing the school, setting out Mr. Rahimi's responsibilities and his father's responsibility to cover all costs and provide rooms for the school; and
- G. A copy of a police report detailing the attempted abduction of Mr. Rahimi in May 2015.

[13] In rendering its decision, the RPD did not consider or analyze any of this documentary evidence with the exception of one of the ID cards. The respondent argues that this does not evidence an error, submitting the decision-maker was under no obligation to address each piece of evidence and is assumed to have considered all the evidence.

[14] I accept this well-established principle. However, a court may also infer that findings have been made without regard to the evidence where those findings have been made without reference to directly contradictory and relevant evidence. The more important the evidence not analyzed, the more willing a court may be to reach this conclusion (*Cepeda-Gutierrez v Canada (Citizenship and Immigration)*, [1998] FCJ No 1425 at para 15).

[15] In this case, there are numerous examples of findings which on their face, are contrary to the documentary evidence advanced in support of the claim. For example, the RPD concludes “[t]here is no evidence that the Claimant attended an American university as he claimed to explain why he was targeted by the Taliban in May 2015.” This statement fails to recognize that Mr. Rahimi placed two identification cards before the RPD that on their face, indicate that he did attend the American University of Afghanistan for at least some of the period claimed. The RPD’s contrary conclusion without reference to the totality of the corroborative evidence leaves the Court not knowing whether this evidence was given little weight or simply overlooked.

[16] Perhaps even more troubling is the RPD’s failure to address the Taliban threat letter delivered to Mr. Rahimi’s family. The letter is addressed to Mr. Rahimi and his father. The letter states that the two of them have been found guilty by a Shura, and there is no way left for them. This type of letter is described as a “night letter” in an IRB Response to Information Request [RIR]. The RIR describes targets and recipients of such letters. Mr. Rahimi and his father appear to match the profile described. The RIR describes the appearance, content and how such letters are delivered. Again, the RIR description is not inconsistent with the evidence that was before the RPD. The RIR also describes the consequences of receiving a night letter noting that they are taken seriously by Afghan targets and are followed-up by real violence.

[17] The respondent submits that the night letter was acknowledged by the RPD in the course of Mr. Rahimi’s testimony and in the decision where the RPD states that “... he claimed that he received written threats in Kabul ...”. However, there is no discussion of the night letter or the letter from the father’s cousin describing Taliban activity after the family funeral. There is no

indication in the decision that this evidence had been found unreliable or accorded little weight. The RPD did not engage in an analysis of this corroborative evidence when concluding that any threat from the Taliban would have ceased with the closing of this school.

[18] The RPD also appears to have misapprehended the circumstances leading to the closing of the school. The RPD decision suggests that Mr. Rahimi complied with Taliban demands and closed the school himself. That was not the evidence. The evidence as set out in his BOC and in testimony before the RPD was that the Taliban had forcibly shut down the school.

[19] I have similar concerns in respect of the finding that Mr. Rahimi had failed to establish that he was "... able to head a girl school in Logar". In reaching this conclusion, the RPD makes absolutely no mention of the letter of agreement establishing the school, the teacher's contracts, and the receipts for supplies identifying Mr. Rahimi and the school. All of this evidence directly corroborates Mr. Rahimi's narrative. While it was open to the RPD to reject the narrative, to do so without addressing this evidence, again renders the decision unreasonable.

[20] While Mr. Rahimi has identified other evidentiary related concerns, including that the RPD's finding relating to the nature of his testimony is imprecise and the credibility findings are speculative and illogical, I need not address these issues. The RPD's misapprehension of key parts of the evidence coupled with the failure to address highly relevant and directly contradictory documentary evidence corroborative of the claim undermines the justifiability, transparency and intelligibility the decision and renders it unreasonable (*Dunsmuir* at para 47).



V. Conclusion

[21] The application is granted. The parties have not identified a question of general importance and none arises.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is granted and the matter returned for redetermination by a different decision-maker. No question is certified.

"Patrick Gleeson"

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Judge

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

**DOCKET:** IMM-2862-16

**STYLE OF CAUSE:** ABDULLAH RAHIMI v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 10, 2017

**JUDGMENT AND REASONS:** GLEESON J.

**DATED:** JANUARY 17, 2017

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