

Federal Court



Cour fédérale

**Date: 20180831**

**Docket: IMM-5523-17**

**Citation: 2018 FC 881**

**Ottawa, Ontario, August 31, 2018**

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

**BETWEEN:**

**SALEEM KHAN**

**Applicant**

**and**

**THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Saleem Khan, seeks judicial review of the decision rendered on November 20, 2017 by Michelle Langelier, member of the Refugee Protection Division [RPD] of the Immigration and Refugee Board, pursuant to subsection 109(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], allowing the application of the Minister of Citizenship and Immigration [Minister] to vacate the refugee protection that had been conferred

to the Applicant by the former Convention Refugee Determination Division [CRDD] on December 8, 1997 [Decision].

[2] It is important to note from the outset that the Applicant admitted that he made false declarations and withheld information when he made his asylum claim in May 1996. In particular, the Applicant did not disclose to Canadian authorities that he had been out of his country prior to coming to Canada, that he had used a false identity and country of citizenship, that he previously has asked for asylum in Germany, and that he had a criminal record in Germany.

[3] The RPD concluded that the Applicant made false declarations on material facts relating to relevant matters in his original claim for refugee status before the CRDD and that he obtained refugee status as a result of the misrepresentations. The RPD found that the CRDD, on a balance of probabilities, would have considered that there are serious reasons for considering that the Applicant would be excluded from refugee protection under section 98 of the IRPA and Article 1Fb) of the *Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS 137 [Convention], in that there are serious reasons to believe that he has committed, outside of Canada, a serious non-political crime before entering Canada.

[4] The Applicant submits that the RPD denied him natural justice by refusing to adjourn the hearing and was biased against him. The Applicant also claims that the RPD erred in numerous ways when considering the evidence before it.

[5] None of the arguments advanced by the Applicant have any merit. At the end of the day, the Applicant cannot avoid the consequences of having made grave misrepresentations of material facts back in 1996 which, if disclosed to the CRDD, would have proven fatal to his asylum claim. The application is accordingly dismissed.

## II. Facts

[6] The Applicant entered Canada on April 30, 1996 with a false Belgian passport under the name of Sattar Khan and claimed refugee status. In his Personal Information Form [PIF], signed on May 13, 1996, the Applicant stated that his name was Saleem Khan, that he had never used any other name, that he was born in Karachi, Pakistan on December 30, 1959, that he had never married, that he was never convicted of any crime or offense in any country, and that he had not requested refugee status in another country.

[7] Based on the allegations in his PIF, including his asserted political affiliation with the Muttahida Qaumi Movement [MQM], and that he claimed to have been targeted following the assassination of his father in 1995, the Applicant was granted refugee status on November 17, 1997 by the CRDD. On January 23, 1998, Citizenship and Immigration Canada received the Applicant's application for permanent residence that repeats the same information in the PIF, including that he had never been convicted or charged with a crime in any other country.

[8] In 2001, the Minister received information that contradicted much of the Applicant's statements in his asylum claim in the form of two "poison-pen" letters. The unsigned letters state that, contrary to Mr. Khan's assertions in 1996, he was in fact married and had used different

names in different countries, such as Arshad Khan in Pakistan, Sharif Khan in Germany, Muhammed Khan in the United States and Saleem Khan in Canada. According to the anonymous sources, the Applicant sought asylum in Germany under the name Sharif Khan, claiming to be a citizen of Afghanistan. It is further alleged that the Applicant was arrested in Germany in 1985 or 1986 for smuggling heroin. Following a three year sentence, he was deported to Pakistan. The authors of the letters also indicate that at one point, the Applicant entered the United States under the name Muhammad Khan and transferred 5.9 million US dollars in drug money from Canada to Pakistan.

[9] In April 2003, the Minister received information from German authorities via Interpol confirming that the fingerprints of the Applicant, Saleem Khan, were found to be identical to those taken in Germany of an individual named Sayeed Sharif born December 30, 1949 in Kabul-Merbchkot in Afghanistan. The fingerprints were taken when Sayeed Sharif was charged for document forgery and for violation of the *Narcotic Drugs Act*. His asylum claim in Germany was refused on December 31, 1993. The Interpol database showed Sayeed Sharif as being the subject of an expulsion order and a warrant issued on February 17, 1997. He was listed as an Afghan citizen using the alias Saleem Khan with the birthdate of December 30, 1959.

[10] In 2005, the Minister presented an application to vacate the Applicant's refugee status. This application was withdrawn in 2008; however, it is unclear on what basis.

[11] In January 2007, the Applicant filed a second application for permanent residence in Canada, reflecting that he had used the name "Sharif Syed" in the past, that he was convicted and

incarcerated in Germany in 1983, and that he stayed in Germany from 1980 to 1985 where he applied for refugee status. In addition, the Applicant left a blank space in response to a question regarding membership or association with organizations. It should be remembered that in his original application in 1996, the Applicant had been granted refugee status on the basis of his political affiliation with the MQM.

[12] The Minister received further information from the authorities of Pakistan in February 2011 stating that the Applicant is known in Pakistan as Arshad Iqbal. This individual was arrested in 1994 for possession of heroin and escaped custody in 1995. There is an outstanding warrant for Arshad Iqbal's arrest since 2010. Furthermore, 5 million US dollars was sent from Canada to Pakistan by the Applicant, who is involved in international drug trafficking and residing in Toronto under the name Saleem Khan. The Pakistani authorities also confirmed that Saleem Khan is living and travelling with false documents.

[13] The current application to vacate the Applicant's refugee status was filed on September 2013. The Minister sought not only that the refugee protection granted to the Applicant in 1997 be vacated, as requested in the earlier application withdrawn in 2005, but also that he be excluded from refugee protection based on the commission of serious non-political crimes pursuant to Article 1Fb) of the Convention.

### III. Hearing before the RPD

[14] The proceedings before the RPD were delayed by several postponements. The hearing scheduled for November 2014 was postponed after the Applicant contested the validity of

documents submitted by the Minister and he presented documents that shed doubt as to whether he was Arshad Iqbal.

[15] Another hearing was scheduled for April 30, 2015. Three days before the hearing, counsel for the Applicant requested a postponement on the grounds that he was not available on that date and that the Applicant's medical condition did not allow him to prepare for the hearing. A note from a medical doctor in British Columbia was produced in support of the request. A postponement was granted by the RPD. On April 29, 2015, the RPD received further correspondence from counsel for the Applicant indicating that the Applicant's health problems were more serious than initially thought. Counsel indicated that a medical opinion on this issue would be sent, but nothing was ever submitted. The hearing was rescheduled for October 26, 2017, with two months' notice to the parties.

[16] Two days before the rescheduled hearing, counsel for the Applicant sought another postponement on the basis that his client was in a "psychological crisis" and unable to give instructions. The Minister objected to the request given the lack of proof supporting the Applicant's condition.

[17] At the hearing, counsel for the Applicant called two witnesses in support of his allegation that the Applicant was in Vancouver and unable to proceed for medical reasons. The Applicant's wife and a friend, who was a pharmacist in Pakistan, testified that they visited the Applicant in September 2017 and that, during the visit, the Applicant was agitated, talking nonsense, paranoid and constantly repeating that people want to kill him. Both witnesses testified that the Applicant

was taking medication; however, neither knew what medication had been prescribed to him. Both witnesses claimed that they did not know the Applicant's address or phone number, and were only able to get in touch with him through an "Indian guy" who lives in Vancouver. The RPD found the two witnesses not to be credible and, in the absence of evidence of incapacity of the Applicant or other impediment to attend the hearing, rejected the request for postponement. Detailed reasons were provided orally at the hearing and are set out in paragraphs 20 to 24 of the Decision.

[18] Counsel for the Applicant then made another request for a postponement on the grounds that he was not ready to proceed. Counsel stated that he had only prepared to request a postponement and had not prepared the case itself. According to counsel, he had three witnesses to call. The RPD denied the postponement request as counsel had had ample time to prepare his case and also declined the RPD's offer to have the witnesses testify by phone.

[19] Counsel for the Applicant then asked the RPD member to recuse herself from the case, arguing that she had acted in an "extremely belligerent fashion" towards him. Counsel claimed that the member constantly interrupted him in an impolite fashion, did not listen well to the witnesses, and did not act fairly. Counsel further accused the RPD member of snapping at him and behaving in an impolite fashion towards him in the past.

[20] Applying the test for bias set out in *Committee for Justice and Liberty et al v National Energy Board et al*, [1978] 1 SCR 369, 1976 CanLII 2 (SCC), the RPD rejected the recusal

motion, finding that the recusal request was arbitrary and not credibly grounded. The hearing subsequently proceeded, with no witnesses being called by the parties.

[21] As reflected earlier, the RPD allowed the application of the Minister to vacate the refugee protection that had been conferred to the Applicant by the CRDD and to exclude him from refugee status under article 1Fb) of the Convention.

#### IV. Issues

[22] This application for judicial review raises four issues, which will be analyzed in turn:

- A. *Was the RPD's decision denying the Applicant's requests for postponement of the hearing inconsistent with procedural fairness or constitute a breach of natural justice?*
- B. *Did the RPD member err in not recusing herself for alleged bias?*
- C. *Was the RPD's decision vacating the Applicant's refugee protection and excluding him from refugee status under article 1Fb) of the Convention unreasonable?*
- D. *Was the RPD's decision vacating the Applicant's refugee status on the basis that the Applicant is not Saleem Khan unreasonable?*

#### V. Standard of Review

[23] The parties agree that the standard of review applicable to breaches of natural justice, including recusal of a decision-maker for alleged bias, is correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Mission Institution v Khela*, 2014 SCC 24 at para 79).



[24] The applicable standard of review in respect of RPD decisions to vacate refugee protection and exclusion on the basis that the Applicant is not Saleem Khan and under Article 1Fb) of the Convention is reasonableness (*Frias v Canada (Citizenship and Immigration)*, 2014 FC 753 at para 9). Accordingly, this Court should not intervene so long as the RPD's decision is transparent, justifiable, intelligible, and within 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). Those criteria are met if "the reasons allow the reviewing court to understand why the [RPD] made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

## VI. Analysis

A. *Was the RPD's decision denying the Applicant's requests for postponement of the hearing inconsistent with procedural fairness or constitute a breach of natural justice?*

[25] The Applicant submits that he deserved the benefit of the doubt on his request for postponement based on medical grounds given that two witnesses testified about his psychological state at the hearing and stated that he was obviously incapable of proceeding. The Applicant claims that the RPD gave no valid reason for refusing to postpone the hearing and breached his right to a fair procedure by proceeding with the hearing and denying him an opportunity to call witnesses. I disagree.

[26] A review of the hearing transcript reveals that the adjournment request made by the Applicant's counsel was fully considered by the RPD, that the material factors relevant to the

request were assessed and weighed, and that, after hearing submissions from counsel, full reasons were given for refusing the request.

[27] The Applicant has failed to establish that the RPD made any error in rejecting the evidence of the Applicant's two witnesses called to testify about the Applicant's incapacity. The two witnesses claimed that the Applicant was agitated, talking nonsense and paranoid when they visited him in September 2017. According to these witnesses, the Applicant was in hiding, fearing that people were trying to kill him. They also claimed that the Applicant was on medication.

[28] The RPD member clearly raised her concerns regarding inconsistencies and implausibility in the testimony with the witnesses. The RPD member was skeptical that they did not know where the Applicant lived or have any contact information for him. She also questioned why they would travel from Montreal to Vancouver to visit someone they did not know and to set up a meeting with the Applicant. Neither witness knew this person's name or telephone number. They also could not identify the medication that the Applicant was taking or who prescribed it to him.

[29] The Applicant failed to provide credible evidence in support of his last minute request for adjournment. For the Applicant to now say that he was not given reasons for the refusal to adjourn based on his alleged incapacity is unconvincing given what the certified tribunal record [CTR] reveals.

[30] My reading of the CTR also leads me to conclude that the decision to deny the request by Applicant's counsel to adjourn the hearing because he was not prepared was amply justified. Counsel wrongly assumed that the request for postponement for medical reasons would be granted. In any event, counsel had a duty to disclose to the RPD that he was not prepared to proceed from the start rather than wait to hear the outcome of the initial postponement request. Such a piecemeal approach to adjournment requests is both inappropriate and unfair.

[31] The Applicant was not denied his right to be heard and/or to participate in the hearing. He was provided ample notice of the hearing date. As the hearing transcript reveals, the RPD invited the Applicant's counsel to use alternative means to participate in the proceedings. The Applicant did not avail himself of any of these alternate means.

[32] This does not constitute a denial of natural justice. At the end of the day, I am satisfied that the Applicant is the author of his own misfortune. He has only been deprived of the right to fully participate in the proceedings because of his own unjustified failure to attend.

[33] I should add that I read the affidavit of the Applicant dated June 18, 2018, filed in support of the application for judicial review. The Applicant confirms much of the evidence provided by his wife and friend at the hearing before the RPD. He claims that when he learned about the hearing after it took place, he stopped using the drugs he was prescribed and gradually got better. I place no credence in the Applicant's evidence and, in particular, his alleged miraculous recovery. His affidavit provides no details about his medical condition, including who was

treating him and who prescribed his medication. The Applicant's evidence is completely self-serving, after the fact, and uncorroborated.

B. *Did the RPD member err in not recusing herself for alleged bias?*

[34] The Applicant submits that the RPD member's treatment of the evidence and her attitude towards his counsel during the hearing displays her bias in favour of the Minister, causing the whole proceeding to be unfair. He claims that the RPD member erred in not recusing herself because she clearly rejected all of the Applicant's evidence for no reason. This argument has no merit.

[35] The test for determining if an apprehension of bias exists is well-established in

*Committee for Justice and Liberty et al v National Energy Board et al*, [1978] 1 SCR 369:

The apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude".

[36] A review of the hearing transcript reveals that the RPD member did not show any bias towards the Applicant or his counsel or any predisposition on any issues. To the contrary, the RPD member was professional and courteous and exhibited great patience with Applicant's counsel. Although she admonished Applicant's counsel on occasion, her interventions were warranted given that he repeatedly made assertions, without evidence. I am satisfied that the RPD member conducted the proceeding in a fair, impartial and judicious manner.

[37] Any informed person viewing the matter would not conclude there was a reasonable apprehension of bias from the RPD member. The Court reminds the Applicant that an allegation of bias against a tribunal is serious and cannot be invoked solely because the Applicant disagrees with the RPD's decision.

C. *Was the RPD's decision vacating the Applicant's refugee protection and excluding him from refugee status under article 1Fb) of the Convention unreasonable?*

[38] The Applicant argues that he has provided sufficient proof to establish that he is not Arshad Iqbal and that the real Arshad Iqbal was arrested and released in Pakistan. He submits court documents from Pakistan, with pictures of Arshad Iqbal, to prove that the real Arshad Iqbal was surrendered to the Pakistan authorities and acquitted in 2012 after having absconded for 17 years. According to the Applicant, the RPD's decision is unreasonable because he cannot be linked to the crimes committed by the real Arshad Iqbal and should not be excluded from refugee status under article 1Fb) of the Convention.

[39] This argument is nothing more than a red herring and meant to distract the Court from the real issues before the RPD. The Applicant was found to have made false declarations and to have withheld information from Canadian authorities in his asylum claims. This finding is unimpeachable. Not only was it well-established by the Minister, it was admitted by the Applicant.

[40] Furthermore, there was evidence before the RPD showing that the Applicant was known at one point in time as Arshad Iqbal. He was arrested in Pakistan with 9kg of heroine concealed

in a suitcase. He escaped custody during a stay at a hospital during his trial in 1995. Moreover, the Federal Investigation of Pakistan recovered money orders totalling over 49 million US dollars sent by the Applicant under the name Arshad Iqbal, which is linked to money laundering of profits made through drug trafficking. The Applicant has failed to establish any error by the RPD in accepting this evidence from reliable sources over that of the Applicant.

[41] The RPD concluded that the proper equivalent Canadian crime, in this case, is possession for the purpose of trafficking under subsection 5(2) of the *Controlled Drugs and Substances Act*, SC 1996, c 19, which constitutes a serious crime under Article 1Fb) of the Convention. This finding is not disputed by the Applicant.

[42] The RPD concluded that this, in itself, would be enough to raise concern about whether the CRDD's decision would have been different. The Applicant does not discuss the issue of exclusion in his memorandum of fact and law, choosing instead to focus on the actions of another person who appears to have impersonated the real Arshad Iqbal in Pakistan after the Applicant arrived in Canada. No reviewable error has been established in the RPD's analysis and findings.

D. *Was the RPD's decision vacating Mr. Khan's refugee status on the basis that the Applicant is not Saleem Khan unreasonable?*

[43] The RPD determined that the Applicant is not Saleem Khan and that, considering his 1997 refugee claim was based on the fact that he was targeted following the killing of his alleged

father, there is no other credible evidence that was considered by the CDRR that would support granting refugee protection.

[44] The Applicant claims that the RPD's decision was mainly focused on the allegations of misrepresentation rather than the full picture. He reiterates that he filed valid and acceptable identity documents such as his passport, which are presumed authentic. He also produced affidavits of many people, both in Pakistan and in Canada, to confirm his identity. He submits that this evidence should weigh more than a simple report from Pakistani authorities. As for the anonymous letters and the report from the Pakistani authorities, the Applicant argues that they are unproved and contain false information, as he was not married when he arrived in Canada and there is very little in these documents that can be corroborated from other sources.

[45] According to the Applicant, the RPD's decision was not reasonable because it failed to evaluate all the evidence available to prove his identity. I disagree.

[46] First of all, the allegations contained in the poison-pen letters proved remarkably accurate. Secondly, the RPD conducted a thorough examination of the whole of the evidence before coming to its conclusion. In extensive reasons, the RPD weighed the evidence and considered counsel's arguments, and ultimately concluded that there was no reason to doubt the authenticity of the documents provided by the authorities of Pakistan through a Royal Canadian Mounted Police Liaison Officer. I cannot discern any reviewable error in the RPD's analysis or findings. The analysis is clear, transparent, intelligible and fully supported by the record before the RPD.

[47] For these reasons, the application is dismissed. No certified question has been requested and none is formulated.



**JUDGMENT in IMM-5523-17**

**THIS COURT'S JUDGMENT is that:**

1. The application is dismissed.
2. There are no questions of general importance to be certified.

"Roger R. Lafrenière"

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Judge

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

**DOCKET:** IMM-5523-17

**STYLE OF CAUSE:** SALEEM KHAN v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

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**DATED:** AUGUST 31, 2018

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