

Federal Court



Cour fédérale

Date: 20180907

Docket: IMM-501-18

Citation: 2018 FC 896

Ottawa, Ontario, September 07, 2018

PRESENT: The Honourable Madam Justice McDonald

BETWEEN:

BUSHRA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Ms. Bushra, seeks review of a decision of the Refugee Appeal Division [RAD] denying her appeal from the Refugee Protection Division [RPD]. Both the RPD and the RAD concluded that Ms. Bushra did not prove that she had converted to the Ahmadi faith and that she was not at risk in Pakistan. For the reasons that follow, this judicial review is dismissed as the decision of the RAD is reasonable.

I. Background

[2] Ms. Bushra is a 56-year-old citizen of Pakistan. In 2011, she claims to have converted from the Sunni faith to the Ahmadi faith along with her daughter. She claims that she cannot openly practice her faith in Pakistan for fear of being targeted by extremists.

[3] In 2013, Ms. Bushra claims that her home was attacked and her husband was shot. After fleeing her village, she claims that a fatwa was issued against her family and there was a threat to burn down her house. She says that her sons were threatened and assaulted at school by extremists. According to Ms. Bushra, in 2015 and 2016, her husband and a family friend were attacked by extremists.

[4] In 2015, her daughter and son-in-law moved to Canada. In July 2016, Ms. Bushra came to Canada on a visitor visa and made a refugee claim four months later. Her claim was denied by the RPD in March 2017. Her appeal to the RAD was denied and the RAD confirmed the decision of the RPD.

II. RAD Decision

[5] The decision under review is the January 22, 2018 decision of the RAD. Ms. Bushra did not submit new evidence and did not request an oral hearing before the RAD.

[6] On her appeal to the RAD, Ms. Bushra argued that the RPD erred in its credibility findings and also erred by ignoring corroborative evidence. She argued that the RPD erred in finding there was insufficient evidence to establish that she would face persecution.

[7] On credibility, the RPD found that Ms. Bushra failed to provide a reasonable explanation for the lack of documentation to prove that she had converted to the Ahmadi faith. The RPD noted that she provided inconsistent testimony on this documentation, first claiming that she signed a conversion form but forgot to bring the form from Pakistan, and later stating that she was never given a copy of the form. She also stated that her daughter had the forms as they converted together, but the forms were taken away. Ms. Bushra claims that she forgot to tell the RPD that she never received the form. She claims she was nervous speaking to the RPD panelist (a Caucasian male) and she claims that the fact she is illiterate impacted her ability to give evidence.

[8] The RAD concluded that the RPD was correct to draw a negative inference from Ms. Bushra's inconsistent testimony considering that her religious conversion creates the basis of her refugee claim. On her claim that she is illiterate, the RAD noted that she did not request accommodation from the RPD, and she appeared to understand and was able to respond to the questions posed by the RPD.

[9] The RAD concluded that she demonstrated a limited knowledge of the Ahmadi faith. That the Ahmadi faith involves truthfulness and saying prayers five times a day are practices common to other Islamic sects, including the one she was part of for over 40 years.

[10] Ms. Bushra also argued that the RPD failed to consider a police report corroborating an attack on her family. While the RAD agreed that the RPD had not considered the report, the RAD concluded that the report did not corroborate her status as an Ahmadi because of the inconsistencies between the police report and her Basis of Claim [BOC]. According to the RAD, little weight could be given to the report.

[11] The RAD considered the inconsistency regarding the declared religion of Ms. Bushra's brother. She testified before the RPD that all eight of her brothers and sisters are Ahmadi, but this was inconsistent with her BOC in which she indicated that her brother is an extremist member of an anti-Ahmadi group who threatened to kill her because her daughter married an Ahmadi man. The RPD found her explanation that she forgot to mention her brother's conversion to be unreasonable and drew a negative credibility inference. The RAD upheld this finding.

[12] The RAD considered the evidence regarding the attacks on Ms. Bushra's husband and sons and found that she had not provided any documentation to support these claims. The RAD noted that her husband and sons are educated and should be able to provide supporting documentation. Further, the RAD noted that the incidents of violence did not directly relate to her conversion to the Ahmadi faith.

[13] The RAD considered the RPD finding that Ms. Bushra had not provided sufficient evidence to establish that she is a genuine member of the Ahmadi faith community. The RPD made a negative credibility inference from her failure to register with the Ahmadi Mosque in

Canada. The only evidence she provided of her Ahmadi faith in Canada was a card from a meeting she attended at the mosque in 2016. The RAD agreed with these findings and concluded that it is reasonable she provide some written confirmation of her attendance at the mosque even if she was not formally registered. Even without such documentation, the RAD concluded that some oral testimony confirming her involvement would have been expected.

[14] Taking all these findings together, the RAD concluded that the RPD did not err in its finding that Ms. Bushra did not convert to the Ahmadi faith or is a genuine practitioner of the Ahmadi faith.

[15] Although the RPD found there is some evidence that family members of the Ahmadi community in Pakistan may face persecution, there was insufficient evidence to establish that Ms. Bushra was at risk. She argued that the RPD erred by impugning her credibility because of the lack of corroborative evidence. She claims to have submitted evidence that accurately recorded all of the incidents pertaining to her family. The RAD was satisfied based upon the evidence that her daughter and her son-in-law were Ahmadi. Accordingly, the RAD considered the risk faced by Ms. Bushra as a result of her daughter's Ahmadi faith and her marriage to an Ahmadi man.

[16] The RAD noted that there was no evidence of the 2013 fatwa issued against the family. The RAD referenced documentary evidence which indicated that when a fatwa is issued it can be publicized. Here there was no evidence that the fatwa was publicized, and there was no evidence that there was any effort made to execute the fatwa against Ms. Bushra and her family.

[17] The RAD concluded that there was no corroborative evidence of any of the alleged attacks. The RAD noted that while there is some evidence on the record indicating that family or friends of Ahmadi people may experience persecution, the documentary evidence did not indicate that this always occurred.

[18] After an independent review and assessment of the evidence, the RAD concluded that there is not a serious possibility or reasonable chance that Ms. Bushra would be persecuted if she returns to Pakistan.

III. Issues

[19] The various issues raised by the Applicant can be addressed as follows:

- (1) Did the RAD err in its assessment of the Applicant's credibility?
- (2) Did the RAD err in its persecution analysis?

IV. Analysis

A. *Standard of Review*

[20] Reasonableness is the standard of review for the RAD's findings and assessment of evidence (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35). On judicial review, the RAD's credibility findings are owed significant deference (*Yan v Canada (Citizenship and Immigration)*, 2017 FC 146 at para 18).

(1) Did the RAD err in its assessment of the Applicant's credibility?

(a) *Religious Knowledge*

[21] Ms. Bushra argues that her knowledge of the Ahmadi faith was assessed against an unreasonably high standard. She relies upon *Dong v Canada (Citizenship and Immigration)*, 2010 FC 55 to argue that the RPD and the RAD placed unrealistic expectations on her level of knowledge of the Ahmadi faith. She claims that she was able to correctly identify the main tenets of her faith. She also argues that the RPD and the RAD unreasonably failed to acknowledge that the Ahmadi faith has similarities to the other Muslim faith that she previously practiced.

[22] This Court has held that the bar for religious knowledge is low, and that the decision maker cannot impose its own idea of what a genuine practitioner should know when making these assessments (*Lin v Canada (Citizenship and Immigration)*, 2012 FC 288 at paras 59-60).

[23] Although Ms. Bushra did know some elements of the Ahmadi faith, her level of knowledge was not above and beyond what other Muslims would know, or what others may know in general. The RAD considered the fact that she had practiced the Sunni faith for 40-50 years. The RAD also considered her background, lack of education, and her claim to have practiced the Ahmadi faith for 6 years. Ultimately, in considering all of these factors, the RAD concluded that her claim of conversion was not credible.

[24] As a relatively new convert to the Ahmadi faith, it was reasonable for the RAD and the RPD to assume that Ms. Bushra would be able to provide more detail or highlight the key

distinguishing features of her new faith. This is especially true considering it was the conversion to the Ahmadi faith that was the triggering event to allegedly put her at risk of persecution. Here the RAD set a reasonable bar for the religious knowledge it expected of Ms. Bushra in her particular circumstances (*Huang v Canada (Citizenship and Immigration)*, 2008 FC 346 at paras 10-11).

[25] The RAD also noted the lack of corroborative evidence of her conversion, and her inconsistent answers about this evidence. With respect to her Ahmadi conversion form, the RAD noted that she offered inconsistent and contradictory reasons as to why the conversion form was not provided. It was reasonable for the RAD and the RPD to draw a negative inference when it rejected the explanation offered for failing to provide this evidence (*Radics v Canada (Citizenship and Immigration)*, 2014 FC 110 at paras 30-32). Further, the RAD noted there were no barriers to her being able to provide corroborative evidence in either documentary format or testimony from her daughter and son-in-law.

[26] Finally, the credibility findings here cannot be described as microscopic as was the case in *Chen v Canada (Citizenship and Immigration)*, 2007 FC 270 (*Chen*). In *Chen*, the RAD denied a religious claim because the applicant could not identify Noah's Ark in the Bible (*Chen* at para 16). Here the RAD did not focus on one detail or one facet of religious knowledge or practice. Rather, the RAD considered her oral testimony and the documentary evidence but concluded that she was not credible because she was evasive in her testimony and there were highly material inconsistencies in her testimony. Simply put, her evidence did not support her alleged conversion.

[27] I conclude that the findings of the RAD on the religious conversion claim are reasonable.

(b) *Police Report*

[28] Ms. Bushra argues that the RAD erred in the assessment of the police report regarding attacks on her family. She argues that the RAD unreasonably discounted the police report because it did not state that she was Ahmadi, but she contends that it corroborates her statements about the problems resulting from her conversion.

[29] The RAD acknowledged that the RPD erred by not considering this evidence, so the RAD conducted its own assessment of the police report. However, the RAD concluded that the reason for which the report had been tendered—proof that Ms. Bushra converted to the Ahmadi faith—was not established by the police report.

[30] Although Ms. Bushra is correct that documents must be assessed for what they say and not for what they do not say (*Mahmud v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 8019 at para 11), here the RAD considered the police report but noted that it contradicted Ms. Bushra's other testimony and her BOC narrative. It was because of these inconsistencies that the RAD discounted the report.

[31] The RAD did not err in its treatment of the police report.

(2) Did the RAD err in its persecution analysis?

[32] Ms. Bushra argues that the RAD erred in its assessment of the possibility of persecution. The RAD accepted that her daughter married an Ahmadi man and converted to the Ahmadi faith. She argues that the RAD failed to consider the incidents that followed this marriage as evidence of future risk of persecution.

[33] The claim of Ms. Bushra under s. 96 of the *Immigration and Refugee Protection Act* requires a nexus to a Convention ground. The nexus here is to a social group, the group being her daughter and son-in-law. A family can constitute a social group under s. 96, however the relevant question is whether a claimant experiences persecution because of her status as a member of the family (*Sebok v Canada (Citizenship and Immigration)*, 2012 FC 1107 at para 10).

[34] The RAD considered the evidence of the attacks on her husband and son and the fatwa issued against the family. The RAD concluded that these events were not corroborated by any evidence even though evidence could have been provided. Ms. Bushra argues that she provided the necessary evidence but it was not properly considered by the RAD. However, this argument is not borne out by the findings of the RAD, which states:

[A]lthough there is documentary evidence on the record indicating that family members or people friendly with Ahmadis may experience some forms of persecution, this documentary evidence does not indicate that this is always the case. The RAD finds that in the particular circumstances of this claim, there is only a mere possibility that the Appellant would experience persecution because of her membership in a particular social group and perceived religious opinion.

[35] Ultimately, this conclusion is based on the RAD's assessment of the evidence. Ms. Bushra has not identified evidence that the RAD failed to consider. In considering the evidence, the RAD weighed it with the facts of the case, and ultimately applied the test for refugee protection in a reasonable manner. The onus was on Ms. Bushra "to supply evidence that supports their claim" (*Kovacs v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1473 at para 33).

[36] The RAD concluded that Ms. Bushra's membership in a particular social group, her family, would not cause her to face persecution on religious grounds. This analysis was done on the ground that the only claim Ms. Bushra could make was her risk of persecution because of her daughter and son-in-law's Ahmadi religion, which the RAD accepted as genuine.

[37] Finally, the weighing of evidence is squarely within the RAD's jurisdiction as this court cannot reweigh the evidence on judicial review (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 61).

[38] The RAD did not err in the persecution analysis.

JUDGMENT in IMM-501-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review of the Refugee Appeal Division decision dated January 22, 2018 is dismissed.
2. No question is certified.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-501-18

STYLE OF CAUSE: BUSHRA v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 24, 2018

JUDGMENT AND REASONS: MCDONALD J.

DATED: SEPTEMBER 07, 2018

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