

Federal Court



Cour fédérale

Date: 20190718

Docket: IMM-5355-18

Citation: 2019 FC 955

Ottawa, Ontario, July 18, 2019

PRESENT: Madam Justice Walker

BETWEEN:

**NUMAN MALIK
ANAM KHALID
MALIK ABDUL HADI
MALIK MUHAMMAD MAHAD
MALIK MUHAMMAD HUSSAIN**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants, Numan Malik, Anam Khalid, Malik Abdul Hadi, Malik Muhammad Mahad and Malik Muhammad Hussain, seek judicial review of a decision (Decision) of the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada. The RPD concluded that the Applicants are neither Convention refugees nor persons in need of protection

pursuant to sections 96 and 97, respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA). The application for judicial review is brought pursuant to subsection 72(1) of the IRPA.

[2] For the reasons that follow, the application is dismissed.

I. Background

[3] The Applicants are: Numan Malik (Principal Applicant), his wife, Anam, and their three children. The Principal Applicant, Anam, and their two eldest sons are citizens of Pakistan while their youngest son, Malik Muhammad, is a citizen of the United States. The Applicants belong to a traditional Malik clan in Gujranwala, Pakistan. The Principal Applicant alleges that, when he was sixteen, a marriage was arranged for him with his cousin, the daughter of his uncle and chief of the Malik clan. Plans for the marriage were put on hold when his uncle's family relocated to the United Arab Emirates. The Principal Applicant then met his current wife and they married on April 19, 2009.

[4] In 2011, the uncle returned to Pakistan and claimed that the Principal Applicant had disobeyed him as the chief of the clan and had dishonoured him by breaking the engagement to his daughter. The Applicants alleged that the uncle went to the home of the Principal Applicant's parents accompanied by several armed bodyguards and threatened to kill the Principal Applicant.

[5] On May 10, 2012, the Principal Applicant and his father were ordered before the chief of the clan and the clan's local Jirga (decision-making body). The Jirga ordered the Principal

Applicant excommunicated from the family with no rights to the family inheritance and his brother was ordered to marry the uncle's daughter. The marriage took place on May 25, 2012 but divorce ensued in March 2013.

[6] Subsequently, the Principal Applicant hired a lawyer to take legal action and reclaim his lost inheritance. Although the Applicants' claim before the RPD centred on their fear of violence by the uncle and his associates due to the broken engagement, the focus of the Applicants in this application is on their alleged fear of the uncle and his sons due to the Principal Applicant's insistence on reclaiming his inheritance.

[7] The Applicants' fear of persecution and violence in Pakistan derives from a number of alleged incidents in 2015 and 2016. On September 9, 2015, an unknown individual allegedly fired gunshots at the Principal Applicant while he was riding his motorcycle. The Principal Applicant was unharmed and states that he attempted to file a police report to no avail. On May 23, 2016, the Principal Applicant was driving with his wife and children when a speeding car collided with their motorcycle and they fell into a ditch. The police again refused to register a report of the attack.

[8] On December 9, 2015, the Principal Applicant and his family travelled to the United States but returned to Pakistan three months later.

[9] On November 30, 2016, the Principal Applicant and his family came to Canada and claimed refugee status based on their continued fear of violence at the hands of the Principal Applicant's uncle and his sons.

[10] The Applicants' refugee claims were heard by the RPD on August 23, 2018.

II. Decision under review

[11] The Decision is dated October 4, 2018. The RPD rejected the Applicants' claims pursuant to sections 96 and 97 of the IRPA, primarily on the basis of significant credibility concerns. The RPD stated:

[20] While the panel accepts that the principal claimant is embroiled in a bitter dispute with members of his family regarding his rightful share to ancestral property, leading to a lawsuit(s) involving several members of the Malik clan, the panel does not believe that the principal claimant fears for his life in Pakistan due to alleged threats following a broken engagement.

[12] The RPD addressed the Applicants' fear of violence from the uncle and his sons as a result of the broken engagement at length. The panel identified a series of credibility issues in the Principal Applicant's narrative:

- (1) The initial threat (2011): The Principal Applicant's description of the threat by his uncle in 2011 upon the uncle's return to Pakistan was evolving and inconsistent, leading the panel to conclude that his testimony undermined the credibility of his allegation that his uncle threatened to kill him or any member of his family;
- (2) The Principal Applicant's parents' continued residence in Pakistan: The fact that the Principal Applicant's parents continue to live in Pakistan unharmed also undermined the credibility of the allegation that the uncle had threatened to harm them;

- (3) Delay in departure from Pakistan: The five-year delay from the time of the uncle's return to Pakistan to the Applicants' departure from Pakistan led the panel to question whether the uncle had in fact threatened the Principal Applicant with death;
- (4) September 2015 and May 2016 motorcycle incidents: There was insufficient credible evidence as to the identity of the alleged attackers in the motorcycle accidents of September 2015 and May 2016 and, as a result, the involvement of the uncle in the incidents;
- (5) Effect of the 2012 Jirga: The panel stated that the broken engagement matter went before the Jirga in 2012. The Jirga resolved the dispute and ordered the Principal Applicant's brother to marry the uncle's daughter, which he did. Although they later divorced, it appeared that the divorce was at the request of the uncle's family. It was not credible that the uncle would continue to target the Principal Applicant after 2012;
- (6) Alleged move to Faisalabad: The panel asked the Principal Applicant how he and his wife were able to live in Pakistan safely from 2011 until 2016 if his uncle had threatened to kill him. The panel did not believe the Principal Applicant's story that he had left his home and moved to Faisalabad, Pakistan as the refugee claims filed by the Applicants made no mention of any residences other than those in Gurjanwala;
- (7) Telephone Calls: In a May 2016 police complaint, the Principal Applicant indicated that he had faced harassment through telephone calls. His testimony was vague in this regard, leading the panel to conclude that there was little indication that the uncle had continued to threaten him over the broken engagement after the matter was settled by the Jirga in 2012. Any subsequent telephone calls related to the conflict with his uncle over the inheritance lawsuit;
- (8) Travel to the United States: The Applicants travelled to the United States in December 2015. They remained in the United States for three months before returning to Pakistan. The panel drew an adverse inference from the Principal Applicant's lack of effort to obtain corroborative evidence to support his statements regarding why he did not file an application for asylum in the United States. The panel stated:

The failure to do so [to claim asylum in the US] undermines the credibility of the allegations put forth, specifically that an unknown person(s) fired shots at the principal claimant on September 9, 2015, and that he received numerous phone calls from his uncle between 2011 and 2015, threatening to kill him and his spouse because of a broken engagement.

[13] The RPD then considered the Applicants' alleged risks to their lives in Pakistan because of the ongoing inheritance dispute. The Principal Applicant claimed that his lawsuit angered his uncle who demanded that he withdraw the action.

[14] The panel accepted that the Principal Applicant is involved in an ongoing property dispute with his uncle and found, on a balance of probabilities, that he has been pressured to withdraw the lawsuit. The panel found, however, that the Applicants had no forward-facing risk in Pakistan. The RPD stated that it was not unreasonable to expect the Principal Applicant to withdraw his lawsuit in order to protect his life and the lives of his family members.

III. Issue

[15] The sole issue raised by the Applicants in this application is whether the RPD misunderstood the meaning of persecution in the context of section 96 of the IRPA. More specifically, the question before me is whether the RPD erred in concluding that it was not unreasonable to expect the Principal Applicant to withdraw his lawsuit thereby avoiding any risk of violence from his uncle.

IV. Standard of review

[16] The Applicants question whether the RPD erred in its finding that the Applicants had no forward-facing risk in Pakistan because the Applicant could reasonably be expected to forego his lawsuit. In my view, the RPD's finding was one of mixed law and fact and must be reviewed for

reasonableness (*Ozkose v Canada (Citizenship and Immigration)*, 2018 FC 372 at para 7; *Ndambi v Canada (Citizenship and Immigration)*, 2014 FC 117 at paras 14-15 (*Ndambi*)).

V. Analysis

Submissions of the Parties

[17] The Applicants argue that the RPD erred in accepting that they are at risk if they return to Pakistan as a result of the inheritance dispute but finding that the risk could be eliminated if the lawsuit were withdrawn. They take issue with the panel's statement that it was not unreasonable to expect that the Principal Applicant would withdraw his lawsuit in order to protect his family. The Applicants argue that the RPD misunderstood the meaning of persecution as the denial of their fundamental right to have the dispute decided in a fair and impartial legal system amounts to persecution. In support of their argument, the Applicants cite *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 (*Ward*). They also rely on Article 14 of the *International Covenant on Civil and Political Rights (Covenant)*, which states that governments must ensure that individuals have access to fair and public hearings by competent, independent and impartial tribunals.

[18] The Respondent submits that the determinative issue in this case was credibility. The Respondent emphasizes that the Applicants did not take issue with the RPD's credibility findings and that those findings were based on a number of omissions and inconsistencies in the Principal Applicant's evidence and were reasonable. The Respondent argues that the panel's statement that

the Principal Applicant was able to withdraw his inheritance was a reasonable observation and that the RPD made the statement in the context of numerous other findings that were determinative of the claim. The statement may have been unnecessary but it was not unreasonable. The Respondent relies on the decision of the Federal Court of Appeal (FCA) in *Sanchez v Canada (Citizenship and Immigration)*, 2007 FCA 99 (*Sanchez*) in which the Court held that refugee claimants who are able to make reasonable choices to avoid a risk of harm must be expected to pursue those options (*Sanchez* at para 16). The Respondent also cites decisions of this Court to argue that property rights or private, civil lawsuits are not grounds for seeking refugee protection (*Kenguruka v Canada (Citizenship and Immigration)*, 2014 FC 895 at para 1 (*Kenguruka*); *Ndambi* at para 15).

Analysis

[19] I find that the RPD made no reviewable error in concluding that the Applicants face no forward-facing risk in Pakistan and that it would not be unreasonable to expect the Principal Applicant to withdraw the lawsuit claiming his inheritance in order to protect the lives of his family. The panel's findings were reasonable on the evidence before it and consistent with the jurisprudence.

[20] Following its adverse credibility findings and conclusion that the Applicants did not fear persecution in Pakistan due to the Principal Applicant's broken engagement, the RPD reviewed the inheritance dispute between the Principal Applicant and his uncle and concluded:

[65] The panel accepts that there is an ongoing dispute regarding property, and finds on a balance of probabilities that the principal claimant's uncle and sons have pressured him to withdraw the lawsuit(s). However, the panel finds that the claimants have no forward-facing risk in Pakistan. If the claimants have any problems in Pakistan, the panel finds they are related to the ongoing property dispute. The principal claimant testified that his uncle wants him to withdraw the lawsuit. The panel does not find it unreasonable to expect that the principal claimant would withdraw his lawsuit in order to protect his life and the life of his family members.

[21] The Applicants argue that the RPD accepted that they face persecution in Pakistan due to the property dispute but I do not agree. The panel stated that the Applicants have "no forward-facing risk in Pakistan" and found that any potential problems in Pakistan were related to the ongoing inheritance lawsuit. The panel made no finding of persecution.

[22] The Applicants also argue that the RPD's reliance on a withdrawal of the lawsuit amounts to a denial of the Principal Applicant's right to have the dispute decided in a fair judicial system contrary to Article 14 of the *Covenant*. They argue that they must be able to exercise this fundamental right without fear of persecution.

[23] Article 14 of the *Covenant* provides as follows:

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit

at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

[24] I find that the Applicants' reliance on Article 14 is misplaced. The Article places obligations on a government to establish a fair and public criminal and civil justice system. It does not guarantee a right to access those courts without interference or threats from a private third-party. An individual's decision whether or not to pursue a civil matter by way of a lawsuit within the justice system is a private decision outside the ambit of Article 14.

[25] The lawsuit involves the Principal Applicant's claim to property. In *Kenguruka*, the applicant's refugee claim in Canada had been rejected by the RPD because his inheritance claim which had given rise to threats of violence did not constitute a basis for refugee protection pursuant to section 96 of the IRPA. Justice Harrington stated (at para 7):

[7] In light of the record, the panel did not act in an unreasonable manner when it decided that Mr. Kenguruka would not face persecution in Burundi if he abandoned his claim to the property that he inherited from his parents. ... If Mr. Kenguruka were arguing a right set out in the Convention and section 96, such as his right to freely practice his religion, he could not be forced to renounce his religion in order to avoid persecution.

[26] In *Ndambi*, Justice Roy concluded that a dispute about ownership rights to a property did not fall within section 96 of the IRPA, stating "section 96 of the Act is clear: a person is a refugee only when he or she is persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion" (*Ndambi* at para 16).

[27] In the present case, the RPD found that the Principal Applicant was being threatened by his uncle due to the lawsuit claiming his inheritance. It is not a dispute based on any of the grounds set out in section 96 of the IRPA.

[28] Further, in *Sanchez*, the FCA addressed the following certified question (at para 7):

Before seeking protection from another state, is a person obliged to make lifestyle or other employment changes which would offer protection from persecution or which could protect the life and safety of the claimant and, if so, what is the test for making such a determination?

[29] The Court addressed the issue of present or prospective risk in the context of a claim pursuant to section 97 of the IRPA and stated that “claimants who are able to make reasonable choices and thereby free themselves of a risk of harm must be expected to pursue those options” (*Sanchez* at para 16). The Court found that Mr. Sanchez had a reasonable alternative – that of giving up his side-business to avoid threats from the Fuerzas Armadas Revolucionarias de Columbia (FARC) in Columbia. The choice was reasonable as his primary occupation was as an environmental engineer.

[30] In the Decision, the RPD found that the Principal Applicant had been pressured to withdraw his inheritance lawsuit but that the Applicants had no forward-facing risk in Pakistan. The Applicants argue that the effective denial of their ability to access the Pakistani courts due to the uncle’s conduct amounts to persecution and is sufficient to ground their refugee claims. However, as stated above, the Applicants’ argument does not engage any of the grounds of persecution set forth in section 96 of the IRPA. The fact that their ability to pursue the lawsuit in

court has been compromised by threats from a private individual does not amount to a deprivation of their fundamental human rights. The RPD's statement that it is not unreasonable to expect the Principal Applicant to forego his civil claim in order to avoid any risk of harm in Pakistan echoes the conclusion of the FCA in *Sanchez*. He is not being required to compromise either who he is or a fundamental belief. The following statement by the Supreme Court of Canada in *Ward* (at page 739; and cited by the FCA in *Sanchez* at para 19) describes the distinction:

Assuming no issues of political opinion or the right to earn some basic living are involved, the claimant was targeted for what he was doing and not for what he was in an immutable or fundamental way.

(Emphasis in original)

VI. Conclusion

[31] The application is dismissed.

[32] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT in IMM-5355-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

“Elizabeth Walker”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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