

Federal Court



Cour fédérale

Date: 20190801

Docket: IMM-6263-18

Citation: 2019 FC 1033

Ottawa, Ontario, August 1, 2019

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

MUHAMMAD AZAM

Applicant

and

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

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision, dated December 6, 2018, in which the Immigration Division [ID] concluded that the Applicant is inadmissible to Canada on grounds of serious criminality.

II. Background

[2] The Applicant is a 38-year-old citizen of Pakistan who came to Canada on April 23, 2018, on a visitor visa, and who made a refugee claim to Canada on May 30, 2018, but was declared inadmissible on grounds of serious criminality. This finding was based on an arrest warrant in Pakistan and a Red Notice from Interpol, both of which were issued against the Applicant following a fight involving the Applicant in Pakistan on February 28, 2014.

[3] Different versions have been provided regarding the details of the fight in question, as well as of the events that provoked the situation as per the narrative. To illustrate the different points of view, below are three versions found in the Court file.

A. *The Applicant's original version*

[4] This version of events was provided by the Applicant on May 30, 2018, while he was detained by the Canadian authorities. During the interview, the Applicant recounted the events that took place on February 28, 2014. According to his version of the events, his brother and he lent money to a man called Anwar who did not repay them. The Applicant insisted on repayment of the money. To silence him, Anwar sent Akram with a group of armed men to the Applicant's home. They started firing their guns and the Applicant managed to disarm one of them; ran to the roof and shot at them. Although he did not kill any of them, he injured three or four men.

B. *The Applicant's revised version*

[5] This revised version was offered by the Applicant at the inadmissibility hearing on September 25, 2018. During his testimony, the Applicant maintained that a man called Akram came to his house, with six armed men, to discuss the financial issues. The assailants arrived at his home at 3:30 p.m. on February 28, 2018; they opened fire and assaulted him. Neighbours came, pleaded that they stop beating the Applicant, which put an end to the beating. The Applicant denied having disarmed one of the assailants or having shot at any of them. To explain his original testimony, the Applicant stated that he was merely confirming the content of the warrant, and that any confusion came from the post-traumatic stress syndrome which he had suffered following the fight. He informed the Minister's counsel that he had never received the warrant for his arrest.

C. *The official Pakistani government version*

[6] The Interpol Red Notice contains the following context for the arrest (see pages 47-48 of the Applicant's Record):

The Complainant Muhammad Tashar submitted a report before the Police Station Tatlay Aly that on 28-02-2014 accused persons Muhammad Azam alias Kala and Qasim sons of Abdul Ghafoor assaulted his uncle Akram Ali son of Hashmat Ali as both accused persons owe some money to Akram Ali. Akram Ali demanded his money but both accused attacked him and injured him badly.

As a result a case FIR No. 144/14 dated 01-03-2014 u/s 324/148/149/337Fii/337F5 Pakistan Penal Code PS Tatlayali District Gujranwala was registered against accused persons Muhammad Azam alias Kala and Qasim both sons of Abdul Ghafoor.

During the course of investigation accused person Muhammad Azam alias Kala son of Abdul Ghafoor, along-with other accused was duly identified by complainant and his witnesses, he is found guilty for commission of offence.

III. Decision under Review

[7] From the outset, the ID member admitted that information from Pakistan is not reliable. Ultimately, the ID decided to give more weight to the first version of the events as told by the Applicant. The ID member then compared the Pakistani crime of “qatl-i-amd” (see sections 299 and 324 of the *Pakistan Penal Code*) to the Canadian attempted murder crime. The ID member concluded that they were equivalent and that, based on the original version of the facts presented by the Applicant, there were reasonable grounds to believe that he is inadmissible on grounds of serious criminality pursuant to paragraph 36(1)(c) of the IRPA. The ID member then issued a deportation order.

IV. Positions of the Parties

A. *Position of the Applicant*

[8] The Applicant points to documentary evidence which he submitted, demonstrating that the Pakistani police is corrupted and the police can be bribed into filing false criminal charges. In his opinion, the evidence that he provided to the ID member revealed problems with the evidence in Pakistan which, according to him, led to the conclusion that the charges were fabricated, but, according to the Applicant, the ID member did not specify these documents. The Applicant asserts that the ID member “was very selective in the material used for his decision”.

[9] The Applicant further cites *Rihan v Canada (Citizenship and Immigration)*, 2010 FC 123, to demonstrate the importance of not relying solely on warrants to reach a decision. He submits that the ID member erred by not considering the circumstances in which the warrant was issued.

[10] The Applicant also contends that the ID member ought to have better justified his lack of credibility finding, as required by the Federal Court of Appeal in *Maldonado v Canada (Employment and Immigration)*, [1980] 2 FC 302 at para 5.

B. *Position of the Respondent*

[11] The Respondent contends that the ID member correctly determined that the “qatl-i-amd” is equivalent to the Canadian crime of attempted murder.

[12] According to the Respondent, the Applicant is asking for a re-weighing of the evidence. Considering that the original version of the events given by the Applicant was spontaneous and detailed, while the second was rehearsed and vague, it was reasonable for the ID member to give the original version more weight. He further highlights the fact that the ID member acknowledged that information stemming from the Pakistani authorities should be used with caution.

[13] The Respondent affirms that the evidence was sufficient for the ID to conclude that “there were reasonable grounds to believe that the Applicant committed attempted murder”.

V. Relevant Dispositions

[14] The following dispositions are relevant in this case.

Section 33 and paragraph 36(1)(c) of the IRPA:

Inadmissibility

Rules of interpretation

33 The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.

Serious criminality

36 (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for

(c) committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years.

Interdictions de territoire

Interprétation

33 Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de croire qu'ils sont survenus, surviennent ou peuvent survenir.

Grande criminalité

36 (1) Emportent interdiction de territoire pour grande criminalité les faits suivants :

c) commettre, à l'extérieur du Canada, une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans.

Sections 299 and 324 of the *Pakistan Penal Code*:

Of Offences Affecting Life

299. Definitions:

In this Chapter, unless there is anything repugnant in the subject or context:

- (a) "adult" means a person who has attained the age of eighteen years;
- (b) "arsh" means the compensation specified in this Chapter to be paid to the victim or his heirs under this Chapter;
- (c) "authorised medical officer" means a medical officer or a Medical board, howsoever designated, authorised by the Provincial Government;
- (d) "daman" means the compensation determined by the Court to be paid by the offender to the victim for causing hurt not liable to arsh;
- (e) "diyat" means the compensation specified in Section 323 payable to the heirs of the victim;
- (f) "Government" means the Provincial Government;
- (g) "ikrah-e-tam" means putting any person, his spouse or any of his blood relations within the prohibited degree of marriage in fear of instant death or instant, permanent impairing of any organ of the body or instant fear of being subjected to sodomy or ziha-bil-jabr;
- (h) "ikrah-e-naqis" means any form of duress which does not amount to ikrah-i-tam;
- (i) "minor" means a person who is not an adult;
- (j) "qatl" means causing death of a person;
- (k) "qisas" means punishment by causing similar hurt at the same part of the body of the convict as he has caused to the victim or by causing his death if he has committed qatl-iamd in exercise Of the right of the victim or a Wali;
- (l) "ta'zir" means punishment other than qisas, diyat, arsh , or daman; and
- (m) "wali" means a person entitled to claim qisas.

324 Whoever does any act with such intention or knowledge, and under such circumstances, that, if he by that act caused qatl, he would be guilty of qatl-i-amd, shall be punished with imprisonment for either description for a term which may extend to

ten years, and shall also be liable to fine, and, if hurt is caused to any person by such act, the offender shall, in addition to the imprisonment and fine as aforesaid, be liable to the punishment provided for the hurt caused:

Provided that where the punishment for the hurt is qisas which is not executable, the offender shall be liable to arsh and may also be punished with imprisonment of either description for a term which may extend to seven years.

Section 239 of the *Criminal Code*, RSC, 1985, c C-46:

Attempt to commit murder

239 (1) Every person who attempts by any means to commit murder is guilty of an indictable offence and liable

(a) if a restricted firearm or prohibited firearm is used in the commission of the offence or if any firearm is used in the commission of the offence and the offence is committed for the benefit of, at the direction of, or in association with, a criminal organization, to imprisonment for life and to a minimum punishment of imprisonment for a term of

(i) in the case of a first offence, five years, and

(ii) in the case of a second or subsequent offence, seven years;

(a.1) in any other case where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of

Tentative de meurtre

239 (1) Quiconque, par quelque moyen, tente de commettre un meurtre est coupable d'un acte criminel passible :

a) s'il y a usage d'une arme à feu à autorisation restreinte ou d'une arme à feu prohibée lors de la perpétration de l'infraction, ou s'il y a usage d'une arme à feu lors de la perpétration de l'infraction et que celle-ci est perpétrée au profit ou sous la direction d'une organisation criminelle ou en association avec elle, de l'emprisonnement à perpétuité, la peine minimale étant :

(i) de cinq ans, dans le cas d'une première infraction,

(ii) de sept ans, en cas de récidive;

a.1) dans les autres cas où il y a usage d'une arme à feu lors de la perpétration de l'infraction, de l'emprisonnement à perpétuité, la peine minimale étant de

four years; and

(b) in any other case, to imprisonment for life.

quatre ans;

b) dans tous les autres cas, de l'emprisonnement à perpétuité.

VI. Issues and Standard of Review

[15] The question that must be answered by the Court is whether the ID member erred in concluding that the Applicant is inadmissible on grounds of serious criminality.

[16] This is a question of mixed fact and law, therefore this court will apply the reasonableness standard of review (*Ching v Canada (Citizenship and Immigration)*, 2015 FC 860 at para 31).

VII. Analysis

[17] The ID did not err in concluding that the Applicant is inadmissible in respect of reasonable grounds to believe that the offence committed in Pakistan would constitute an offence under Canadian legislation as per paragraph 36(1)(c) of the IRPA.

[18] The first declaration of the Applicant before the Immigration Officer should be found more credible than that before the ID. Reference is made to *Ishaku v Canada (Citizenship and Immigration)*, 2011 FC 44, stating clearly that more weight should be given to a spontaneous declaration at a port of entry rather than subsequent explanations which become vague or contradict initial versions based on spontaneity.

[19] In the first version, an armed attack with shots fired at the Applicant took place. The Applicant did get into a fight as was first stated by him; and, as the Applicant stated he was able to disarm one assailant.

[20] Subsequently to having a gun in hand, he climbed to the roof of the house, shot at the attackers and did hit three or four of them. Although not hit by gunfire, the Applicant claimed to have been beaten, as he had first stated. There is reason to believe, from the evidence on file, that the Applicant shot and hit three or four of the assailants.

[21] The offence under section 324 of the *Pakistan Penal Code* and under subparagraph 239(1)(a.1) of the Canadian *Criminal Code* is similar in context.

[22] Mr. Azam was therefore considered inadmissible under subparagraph 36(1)(c) of the IRPA. Thus, a deportation order was issued.

[23] Although the Applicant disagrees with the Board for having given more weight to his initial version to the Canada Board Services Agency Officers than his later version to the Board. The Board is not seen, as per the evidence on file, to have ignored evidence but it gave more weight to the first version of events as recounted by the Applicant.

[24] The evidence is to the effect that firearms were used on the Applicant's property and that the Applicant did take matters into his own hands to fire and wound three or four of the attackers, all of whom were involved in a fire fight.

VIII. Conclusion

[25] Due to all of the above, the decision before the Court is considered reasonable under the circumstances; and, therefore, the judicial review is dismissed.

JUDGMENT in IMM-6268-18

THIS COURT'S JUDGMENT is that the application for judicial review be dismissed.

There is no serious question of general importance to be certified.

"Michel M.J. Shore"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: MUHAMMAD AZAM v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

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