

Date: 20060412

Docket: IMM-4745-05

Citation: 2006 FC 471

Ottawa, Ontario, April 12th, 2006

PRESENT: The Honourable Mr. Justice Kelen

BETWEEN:

**MUHAMMAD AHMAD CHAUDHRY
(a.k.a. CHAUDHRY MUHAMMAD AHMAD)**

Applicant

and

**THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Immigration and Refugee Board (the Board) dated July 21, 2005 which found that the applicant was not a Convention refugee or person in need of protection because:

1. he lacked credibility;
2. he failed to establish his identity as a person persecuted for political opinion; and
3. he had no subjective or objective fear of persecution in Pakistan.

FACTS

[2] The applicant was a 41 year-old citizen of Pakistan at the time of his hearing before the Board. In 1997, he became a member of the Pakistan Muslim League in a particular group called the Nawaz Group (PML(N)). He also claims to be instrumental in establishing the Alliance for Restoration of Democracy (ARD), a political association connected with the PML(N). The applicant resided in the district of Sialkot, where he claims to have assisted a PML(N) candidate during the 2002 election campaign, solicited many new members to the party, publicly condemned government practices at a protest on October 12, 2002, and served as vice-president of the ARD in Sialkot.

Assault and threats

[3] The applicant's evidence is that on May 4, 2004, his vehicle was stopped and he was assaulted by supporters of two members of the rival PML(Q): Ameer Hussain, then the Speaker of Pakistan's National Assembly; and Ajmal Cheema, then Minister of Industry in the Punjab. The applicant's assailants threatened to kill him if he did not abandon his political allegiance. The applicant's father is said to have attempted to make a First Information Report against Messrs. Hussain and Cheema, which the police refused to register by reason that there were no witnesses.

[4] Two days later, on May 6, 2004, Messrs. Hussain and Cheema, the Speaker and the Minister of Industry respectively, came to the applicant's house with bodyguards and guns drawn, threatening to kill him as an example to other PML(N) supporters unless he abandoned his political

allegiance within 14 days and ceased all attempts to register complaints against them. As a result of these incidents, Mr. Chaudhry states that he was forced to step down as District Coordinator for the ARD in Sialkot and fled to Canada. To document the threats against him, the applicant put before the Board:

1. two affidavits sworn by neighbours who witnessed the incidents; and
2. two letters from PML(N) and ADR senior executives that describe the applicant's high profile in the party and the threats made against him.

Flight to Canada

[5] Mr. Chaudhry was issued a valid passport from the Pakistani government in Lahore in May 2004. He fled Pakistan on May 10, 2004 and entered Canada on May 13, 2004 at Toronto's Pearson International Airport via the U.A.E. and U.K. using forged documents. The applicant immediately claimed refugee protection at the airport terminal.

Claim for refugee protection

[6] The applicant claimed a well-founded fear that he would be persecuted by violent elements of the PML(Q) because of his political support for, and high profile membership in, the PML(N). Mr. Chaudhry further claimed that his life would be at risk if he were returned to Pakistan because of the previous death threats made against him.

The decision under review

[7] The Board rejected the applicant's claim because he lacked credibility, failed to establish his identity as a person persecuted for political opinion or membership in the PML(N) or ARD, and had no subjective or objective fear of persecution in Pakistan. The applicant conceded that he had no fear of obtaining his passport from the Pakistani government, which the Board found inconsistent with a subjective fear of persecution by that same government. The panel concluded that there was no objective fear of persecution by reason that: (1) a letter from Adress Ahmed Bajwa indicated that the applicant's father was District Treasurer for the PML(N), who still resides at his home without fear of persecution; and (2) documentary evidence from May 5, 2004 indicates there have been no recent incidents of violence against the PML(N), which attended conferences on President Musharraf's foreign policy in 2003. The panel made its adverse credibility finding because:

- (a) the applicant's stated solicitation of 2000 new PML(N) party members in his district is inconsistent with his PIF, which makes no mention of that number;
- (b) a letter from Adress Ahmed Bajwa discloses that his father, mother and sister were also involved in the PML(N), which the applicant did not mention in his testimony;
- (c) whereas the letter from Khawaja Awais Mushtaq states that Mr. Chaudhry had to step down as District Coordinator for the ARD in Sialkot because of the assault and death threats in May 2004, the letter made no mention of the applicant's campaigning in 2002 and the letterhead was from the author's law office and not the PML(N) or ARD;
- (d) the applicant's testimony that his family was harassed by income tax authorities in connection with their business was omitted from his PIF;
- (e) the applicant's testimony that he publicly condemned the Musharraf government's practices at an October 1999 rally was omitted from his PIF;
- (f) the applicant gave no oral explanation of his PIF statement how PML(N) workers were threatened during the 2002 election; and

- (g) the applicant did not produce newspaper or medical reports substantiating the assault and threat incidents in May 2004.

ISSUES

[8] The sole issue raised on this application is whether the Board made a patently unreasonable credibility finding in respect of an issue material to the applicant's refugee claim.

STANDARD OF REVIEW

[9] Since the issue in this case is whether the Board erred as to the facts, the standard of review is patent unreasonableness. See *Malik v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1617 per Mr. Justice Pierre Blais at paragraph 7. To set aside the Board's decision as being patently unreasonable, the decision must be based on a finding of fact that is clearly wrong, and capricious or without regard to the evidence, as articulated by Justice Blais in *Malik* at paragraph 17:

¶ 17 To warrant the Court's intervention, the applicant had to fulfill three conditions: first, that the findings of fact had to be clearly erroneous, which is not the case for the reasons previously expressed; second, that the findings had to be capricious or without regard for the evidence, which is not the case either; and third, to be set aside, the decision itself had to be based on erroneous findings of fact.

ANALYSIS

[10] The Court found, and both parties at the hearing acknowledged, that the Board's reasons were difficult to comprehend and not clear. The panel made four patently unreasonable findings of fact, as follows.

(1) PML(N) membership card

[11] The Board referred to the applicant's PML(N) card issued in 1997 and questioned why he did not have a more recent one. The evidence is that the membership card has indefinite duration unless the person transfers their affiliation. From the reasons, it is not clear whether the Board is making an adverse finding because of the card. It is clear to the Court that the card was valid and, with other evidence, establishes his membership in the PML(N).

(2) Soliciting new PML(N) party members

[12] The Board drew an adverse inference from the applicant's failure to state in his PIF that, as of the date of his membership in the PML(N) in 1997, he solicited 2000 persons to join the party. This finding misstates the applicant's evidence and is patently unreasonable.

[13] In his PIF, Mr. Chaudhry stated:

As a result of my activities, the PML(N) became so popular that its membership increased manifold before the 1997 elections, which eventually was won by the PML(N).

In response to a question from the panel, the applicant stated that he solicited 2000 persons to join the party. In the Court's view, the important fact that the applicant solicited new members to the PML(N) was included in his PIF, which information was further explained to number at 2000 when he was questioned by the panel at his hearing.

(3) May 2004 assault and death threats

[14] The Board made a patently unreasonable adverse inference from the lack of newspaper articles, First Information Reports from the police, or medical reports documenting the applicant's assault and death threat in May 2004. The Board ignored the applicant's evidence that the police refused to register a First Information Report, that he was medically treated by his family, and that his neighbours witnessed the events which evidence they swore on affidavit.

[15] In support of this oral evidence, the applicant documented these incidents with letters from Idress Ahmed Bajwa, President PML(N) Sialkot District, and Khwaja Awais Mushtaq, Vice President ARD Sialkot District, respectively dated January 13 and 10, 2005. The letters confirm he was forced to flee the country. The affidavit sworn by neighbour Samson Walayat Masih on October 27, 2004 confirms that he witnessed the applicant's assault on May 4, 2004. The affidavit states in part:

- 3- That I am neighbour of Mr. Chaudhry. On May 4, 2004, when I was returning from my work at approximately 11.30 pm I saw some men beating a man on the street. I stopped as I became afraid the men beating the man carried guns. After they left him lying in the street injured and bruised. He could not move and I quickly helped him to get up with the help of some other men who also came out to help.

- 4- That we took him to his house where his family were shocked and horrified to see him such a state.
- 5- That he had received injuries and bruises on his face, arms and stomach.
- 6- That I was very shocked and terrorized after witnessing such a horrible incident.

[16] The affidavit sworn by neighbour Malik Arif Mahmood on October 26, 2004 confirms that he witnessed Messrs. Hussain and Cheema enter the applicant's house on May 6, 2004 with bodyguards who aimed their guns at him. The affidavit states in part:

- (2). That I am a citizen of Pakistan,
- (3). That I am a neighbour of Mr. Chaudhry. On May 6, 2004, I witnessed the entry of Ameer Hussain and Ajmal Cheema with their five body guards into Mr. Chaudhry's house at approximately 6 P.M. The body guards with heavily armed [*sic*], and the neighbours who witnessed their coming were terrified.
- (4). That I further witnessed from the roof of my house the pointing of guns by the body guards at Mr. Chaudhry, I became very afraid as I thought they were going to shoot him.
- (5). That I have know Mr. Chaudhry for many years and know that he is very politically active.
- (6). That I know Ameer Hussain and Ajmal Cheema as they are very well-known politicians of the area, and I did see them enter Mr. Chaudhry's house and talk to him loudly.

[17] The May 2004 assault and death threats perpetuated by alleged PMN(Q) supporters and leadership are central to Mr. Chaudhry's claim of persecution based on political affiliation. While it would be open to the Board to draw an adverse inference from the absence of police, medical and media reports surrounding the incidents, the panel was obliged to explain why it rejected the applicant's explanations, the two affidavits which are important, relevant and contradictory

evidence, and the letters from senior PML(N) officials. Instead, the Board ignored or failed to consider the applicant's evidence, and based its decision to reject Mr. Chaudhry's refugee claim on patently unreasonable findings of fact.

(4) Country of Origin documentation

[18] The Board concluded the National Documentation Package on Pakistan dated March 2, 2005 and the Country of Origin Research document PAK42531.E dated April 5, 2004 indicate there have been no recent incidents of violence against the PML(N), which attended conferences with President Musharraf on foreign policy in 2003. This finding misstates the evidence and is patently unreasonable.

[19] The evidence is that PML(N) members were arrested in Punjab in 2000. The Board misapprehended the applicant's place of residence to be Gujarat, not Sialkot. The district of Sialkot may lie within the Punjab province, where the arrests against PML(N) members was said to occur. It was necessary for the Board to satisfy itself that Punjab does not include Sialkot, which it did not do.

CONCLUSION

[20] While Mr. Chaudhry has not taken issue with some of the adverse inferences made by the Board, and while in assessing these remaining inferences I conclude that they are not assailable, I conclude that the Board based its decision that the applicant is not a Convention refugee on four

patently unreasonable findings of fact. Accordingly, the decision of the Board must be quashed and remitted to a different panel for redetermination.

[21] The parties did not propose a question of general importance for certification, and none is certified.

JUDGMENT

THIS COURT ORDERS that:

The application for judicial review is allowed, the Board's decision dated July 21, 2005 is set aside and the matter remitted to a differently constituted panel for redetermination.

“Michael A. Kelen”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-4745-05

STYLE OF CAUSE: MUHAMMAD AHMAD CHAUDHRY

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 4, 2006

**REASONS FOR JUDGMENT
AND JUDGMENT:** KELEN J.

DATED: APRIL 12, 2006

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