

Federal Court



Cour fédérale

Date: 20200602

Docket: IMM-5179-19

Citation: 2020 FC 654

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, June 2, 2020

PRESENT: The Honourable Associate Chief Justice Gagné

BETWEEN:

USMAN SULEMAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Usman Suleman, a Pakistani and Shia Muslim, is applying for judicial review of a decision rendered by the Refugee Appeal Division [RAD] that confirms the rejection of his refugee protection claim in Canada.

[2] Like the Refugee Protection Division [RPD], the RAD found that the applicant's account lacked credibility, mainly because he was unable to explain why he did not return to Pakistan when his visitor's visa expired on February 28, 2017, since he alleged only starting to fear for his life in mid-March 2017. The RAD also concluded that the applicant does not risk persecution in Pakistan simply because of his religion or ethnicity.

II. Facts

[3] The account that follows comes from the applicant's Basis of Claim Form and his testimony before the RPD.

[4] The applicant has a Bachelor of Arts and a Bachelor of Law from the University of the Punjab, issued in 1998 and 2003 respectively. He was discriminated against as a Shia Muslim in Pakistan, so he left for England in 2005 to improve his employment prospects as a lawyer. There he pursued various study programs, including an MBA, which he completed in 2010. He taught at AA Hamilton College in London from 2011 to 2014, then accepted a position in the United Arab Emirates (UAE) where he worked from 2014 to 2016.

[5] Following his father's retirement, the applicant agreed to return to Pakistan to succeed him as chairperson of the imambargah in his town, Jaranwala. He arrived in Pakistan on January 5, 2017, and took up the position of chairperson of the imambargah from January 6, 2017, until January 19, 2017, when he left Pakistan for the UAE. As chairperson, he held three internal meetings during his stay in Pakistan.

[6] As soon as he arrived in Pakistan, he opened a social assistance centre in collaboration with a Christian friend.

[7] On January 10, 2017, four or five volunteers from this centre distributed brochures promoting education for local girls.

[8] On the same day, the applicant and his friend were visited by moulvi Nazi-ul-Haq and members of Lashkar-e-Jhangvi (LeJ), a Sunni supremacist and jihadist militant organization, who threatened them and demanded that they stop promoting Western values. They reported the incident to the police, who did not follow up because of the identities of the perpetrators of the threat.

[9] The applicant left Pakistan on January 19, 2017, with a Canadian visitor's visa, which was valid from November 2016 to February 28, 2017. He had been planning this trip since October 2016 in order to meet with non-profit organizations that could work with him on his social and humanitarian assistance projects. He first went to the UAE, where he re-applied for a visitor's visa for his family members, which was refused. Alone, he left for Canada on February 16, 2017.

[10] However, the applicant did not leave Canada on February 28, 2017, which was the expiry date of his visitor's visa.

[11] During his stay in Canada, he learned about threats against him and the social assistance centre he had set up. A friend informed the applicant that he had been receiving anonymous threats by telephone since mid-March 2017. On April 10, 2017, the applicant's wife informed him that she had received an anonymous threatening telephone call, while on April 20, 2017, his father also received a similar threat. The leaders of the imambargah then organized a demonstration to protest against the inaction of the authorities in response to the threats made against the applicant and his family. On May 7, 2017, the applicant's wife told him that she was becoming increasingly fearful after she found a leaflet on her doorstep that was hateful toward the applicant and the Shia religion. On May 10, 2017, the social assistance centre was attacked, and the moulvi and LeJ have been occupying its offices since then.

[12] The applicant filed his claim for refugee protection on May 26, 2017, and his hearing before the RPD was scheduled for March 28, 2018. The applicant presented only photocopies of his documentary evidence and explained that according to the mail tracking system, the originals should arrive from Pakistan that same day. The RPD gave him until April 3, 2018, to file his originals, which was subsequently extended by five working days. The RPD still did not have them in hand when it rendered its decision on April 10, 2018.

III. Decision under review

[13] The RAD confirmed the RPD's decision, finding no error (1) in its assessment of the applicant's credibility, (2) in its assessment of the probative value to be given to the documentary evidence corroborating the applicant's allegations, or (3) in its analysis of the applicant's residual

profile regarding the possibility of persecution in Pakistan on the basis of his Shia faith and ethnicity.

(1) Assessment of applicant's credibility

[14] After listening to the recording of the oral hearing before the RPD, the RAD confirmed the RPD's description of the difficult exchange it had with the applicant as to why he did not leave Canada when his visitor's visa expired on February 28, 2017. The RAD noted that this portion of the oral hearing lasts approximately 10 minutes, during which the applicant is hesitant and takes long pauses before responding. The RAD also noted that the applicant eventually confesses that, as of February 28, 2017, he did not fear for his life or safety if he were to return to Pakistan. It is only in his submission to the RAD that he invokes the January 10, 2017 visit as a source of fear, in order to compensate for the RPD's negative findings.

[15] The RAD continued its analysis of the applicant's account and concluded that he has not sufficiently demonstrated that he set up a social assistance centre that could attract the attention and threats he alleges receiving after leaving Pakistan and after such a short stay in his country. The RAD also does not believe that the applicant held the position of chairperson in the imambargah for long enough to attract the attention of moulvi Nazir-ul-Haq and LeJ, particularly since his father held that position for twenty years without being bothered.

(2) Probative value of documentary evidence

[16] Regarding the submitted documentary evidence, the RAD noted the following:

- The affidavit of the applicant's wife contradicts his testimony about the absence of subjective fear as of February 28, 2017.
- The newspaper article reporting the events of May 10, 2017, is probably a forgery, since the information it contains could only have come from the applicant.
- The affidavit of the applicant's father, and the letters from the lawyer and local imam are not sufficient to validate the applicant's non-credible testimony.

[17] The RAD is of the view that the applicant did not link the May 10, 2017 attack on the social assistance centre to any risk to his life. First, because he was not in Pakistan at the time of the attack, but also because the reason he gave for staying in Canada after his visa expired is unrelated to this incident. The applicant's credibility is undermined by the fact that he remained in Canada after February 28, 2017, when none of the events that occurred between mid-March and mid-May, which are at the heart of his refugee protection claim, had taken place.

[18] Lastly, the RAD drew a negative inference from the fact that the originals of these documents, which were not filed with the RPD in a timely manner, were also not filed with the RAD.

(3) Applicant's residual profile

[19] The RAD also analyzed the general situation in Pakistan, particularly in the area where the applicant's family lives, and concluded that the applicant is not likely to be persecuted simply because of his ethnicity and religion if he returns to Pakistan. Taking into account the presence and influence of his family in the community and the fact that the only alleged discrimination

relates to his law practice, the RAD is of the view that this is not sufficient to conclude that he has suffered persecution in the past.

[20] The RAD noted that the applicant has returned to Pakistan several times in the past, including his two-week stay in January 2017, and that such behaviour is inconsistent with a subjective fear of persecution.

IV. Issues and standard of review

[21] This application for judicial review raises the following questions:

- A. *Did the RAD err in its analysis of the applicant's credibility?*
- B. *Did the RAD err in its analysis of the documentary evidence relating to the applicant's profile?*

[22] The applicable standard of review in findings of fact or of mixed fact and law, such as those drawn by the RAD in this case, is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at paras 16, 23).

[23] Therefore, the Court will only intervene to preserve the legality, rationality and fairness of the administrative process. The Court must, however, analyze both the justification and the conclusions reached and ask whether the decision, as a whole, is justified in relation to the factual and legal constraints that bear on it. The burden is on the party challenging the decision to show that it is unreasonable (*Vavilov*, at para 100).

V. Analysis

A. *Did the RAD err in its analysis of the applicant's credibility?*

[24] At the outset, it is important to recall that the Court must show considerable deference to the RAD's factual findings and its analysis of the applicant's credibility. The RAD, in turn, owed some deference to the findings of the RPD, which was able to analyze all of the applicant's testimony but also the ease with which that testimony was given (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93, at paras 69–70).

[25] I am of the opinion that the RPD and the RAD were correct to take into account the applicant's level of education and sophistication in the analysis of credibility.

[26] The applicant argues before the Court, as he did before the RAD, that the visit to the social assistance centre on January 10, 2017, was sufficient to justify his return to Pakistan on February 28, 2017, when his visitor's visa expired. It is true that the January 10, 2017 incident is mentioned in the applicant's Basis of Claim Form, but it also states that his visit to Canada was not related to any fears, but rather to meet with certain non-governmental organizations in anticipation of future collaboration. Therefore, the January 10, 2017 visit did not give rise to a fear that would justify the applicant migrating to claim refugee protection, nor could it justify the applicant not returning to his country when his visitor's visa expired.

[27] This is how the RAD described the exchange between the RPD and the applicant on this issue:

Having listened to the recording of the hearing, I confirm that the exchange as described by the RPD in its reasons is accurate.

Furthermore, I add that the exchange with respect to this issue lasted from 1:12:24 to 1:25:41, which is more than ten minutes for this one and only issue. At least two of the long pauses that the appellant took before answering the questions lasted one minute. Finally, as noted by the RPD in its reasons, the appellant acknowledged that he had no information that would allow him to make a decision not to return to Pakistan because his life was at risk.

[28] The argument raised by the applicant, who is now relying on the January 10, 2017 incident to explain his behaviour, is therefore unsupported by the evidence and was properly rejected by the RAD. It was also reasonable for the RAD, and the RPD before it, to conclude that this portion of the applicant's testimony seriously undermined his credibility.

[29] The applicant complains that the RAD gave too much weight to this portion of his testimony and did not give sufficient consideration to the rest of the evidence.

[30] Where the decision is arguable and internally coherent, it is not for the Court to substitute its own analysis of the evidence for that of the administrative decision maker or to give different weight to the various pieces of evidence.

[31] The RAD did not limit its analysis to the applicant's reason for not returning to Pakistan on February 28, 2017. The RAD made its own analysis of the events in Pakistan during the two weeks in January 2017 when the applicant was there, and concluded that his involvement in the social assistance centre and his imambargah was not sufficient to attract the threats he allegedly received. The RAD clearly explained why it reached this conclusion; his family has a significant

presence in the community, and his father, who was the chairperson of the imambargah for 20 years, has never received any threats or been persecuted.

[32] This is not, therefore, the only factor on which the RAD relied in dismissing the applicant's appeal. It is indeed unlikely that the applicant was targeted because of his alleged influence on the community when he had only recently returned to Pakistan and had not been involved in any public activity.

[33] Moreover, it was reasonable for the RAD to give little weight to the documentary evidence that the applicant filed. Not only did he never provide the originals of these documents without explanation, but this evidence also cannot make up for the applicant's deficient testimony before the RPD. The affidavit of the applicant's wife states that he did not return to Pakistan upon the expiration of his visa because he feared for his safety. This clearly contradicts the applicant's testimony that he cannot explain why he did not leave Canada when he should have done so. The affidavit of the applicant's father and the letters from the lawyer and the local imam are also of no help in this regard as they all relate to events that occurred after February 28, 2017. They are unable to, on their own, support the applicant's claim for refugee protection.

[34] It was reasonable for the RAD to conclude that the attack that allegedly took place at the social assistance centre in mid-May 2017 did not target the applicant, who had left the country on January 19, 2017, and that the article published on May 11, 2017, based on information that could only have come from the applicant, was probably a forgery.

[35] All of the justifications that the RAD provided are reasonable and internally coherent, so there is no justification for the Court's intervention.

B. *Did the RAD err in its analysis of the documentary evidence relating to the applicant's profile?*

[36] The applicant argues that the RAD failed to consider some of the documentary evidence on Pakistan in concluding that the applicant was not at risk simply because of his ethnicity and faith. He challenges the RAD's conclusion that attacks against Shiites are particularly concentrated in the province of Balochistan and refers the Court to section 2 of the Response to Information Request of January 9, 2014. It reads as follows:

Several sources indicate that there has been an increase in violent attacks against Shia by militant groups. Attacks against Shia reportedly occur in all regions of Pakistan. Several sources indicate that Shia are particularly targeted in Balochistan province, particularly in the city of Quetta.

According to the Hong Kong-based AHRC, approximately 33 percent of targeted killing of Shia in 2012 occurred in Balochistan. Sources also report high levels of violence against Shia in:

- the city of Karachi;
- the regions of Gilgit Balistan;
- Hangu;
- Parachinar;
- Dera Ismail Khan.

...

According to the editorial team of the South Asia Studies Project of MEMRI, the situation for Shia Muslims in Lahore and Multan is "extremely serious". The same source stated that there have been "numerous killings" of Shia in these cities and that "[l]ike elsewhere in Pakistan, Shia Muslims are being systematically targeted and shot dead by Sunni militants who do not consider

them as Muslims”. In a telephone interview with the Research Directorate, a representative from the Jinnah Institute stated that, while there is less violence against Shia in these areas by comparison to Quetta and Karachi, both Lahore and Multan are affected by “a new level of extremism in Punjab province”. He said that there have been violent attacks and targeted killings in both cities. He described Lahore as a “new flashpoint” for sectarian violence against Shia and noted an increase in the number of Shia being targeted there. The AHRC representative said that the situation in Lahore and Multan is “no different” than other areas of Pakistan in terms of the lack of safety and protection for Shia.

(Citations omitted.)

[37] The applicant admits that this is not the most recent documentary evidence but adds that the March 20, 2019 version cited by the respondent is to the same effect. The respondent refers the Court to the following passages:

1.2.2 Armed Groups

. . . LeJ was banned by the Pakistan Government in 2001 and was placed on the US terrorist list in 2003. Its underground violent activities continued, especially against Shias and members of the Hazara community in Quetta.

. . .

1.3.3 Sectarian-related violence

The number of sectarian-related violent incidents declined in 2017 compared to 2016 according to PIPS. The numbers decreased by 41% in 2017 compared to 2016. The number of people killed also decreased by about 29% in 2017. Most victims of sectarian-related violence were documented in Kurram Agency in the FATA, Quetta in Balochistan and Dera Ismael Khan in KP.

2.2.3 Balochistan

The majority of the people are Baloch, but the second largest group are Pashtun. The provincial capital Quetta is also the home of a large part of the Hazara community in Pakistan.

[38] Taking into account the applicant's profile, including his limited and local involvement in the activities in which he participated, I am of the opinion that it was reasonable for the RAD to conclude that the applicant did not face persecution in Pakistan on the basis of his faith and ethnicity and that he would not be at risk if he were to return to Pakistan. The RAD took into account the fact that the applicant's family has a strong presence in his community and that the documentary evidence cited by both sides confirms that although violence against Shia Muslims is present throughout the country, it is mostly concentrated in certain areas, not including the applicant's region. Discrimination is also targeted against Shia Hazaras, which does not fit the applicant's profile.

[39] I am therefore of the opinion that the applicant has failed to demonstrate that the RAD's assessment of his risk of persecution as a Shia Muslim was unreasonable. While it is true that the RAD did not doubt that the applicant was a Shia Muslim, it certainly questioned the extent and notoriety of his activities at his imambargah and at the social assistance centre. Having determined that the applicant's contribution as chairperson of the imambargah and founder of the centre was not sufficient to have attracted the alleged threats, it was open to the RAD to conclude that the evidence regarding the applicant's personal circumstances did not establish, on a balance of probabilities, that he would face a serious possibility of persecution because of his Shia faith.

VI. Conclusion

[40] For these reasons, the application for judicial review is dismissed.

[41] Neither party has submitted any questions of general importance for certification, and no such question arises in this case.

JUDGMENT in IMM-5179-19

THIS COURT'S JUDGMENT is as follows:

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

“Jocelyne Gagné”

Associate Chief Justice

Certified true translation
This 15th day of June 2020.

Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5179-19

STYLE OF CAUSE: USMAN SULEMAN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VIA TELECONFERENCE BETWEEN MONTRÉAL,
QUEBEC AND OTTAWA, ONTARIO

DATE OF HEARING: MAY 25, 2020

**REASONS FOR JUDGMENT
AND JUDGMENT:** GAGNÉ A.C.J.

DATED: JUNE 2, 2020

APPEARANCES:

Claude Whalen

FOR THE APPLICANT

Sonia Bédard
Steve Bell

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Claude Whalen
Montréal, Quebec

FOR THE APPLICANT

Attorney General of Canada
Montréal, Quebec

FOR THE RESPONDENT