

Federal Court



Cour fédérale

Date: 20221024

Docket: IMM-5806-19

Citation: 2022 FC 1446

Ottawa, Ontario, October 24, 2022

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

**SHABANA KOUSAR
MUHAMMAD NAZAM
MUHAMMAD USMAN (A MINOR)
SMMAVIAH NOOR (A MINOR)
HUSSNAIN UL HASSAN (A MINOR)**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Muhammad Nazam (Muhammad), his wife and three minor children are all citizens of Pakistan. They arrived in Canada on February 11, 2017 and claimed refugee protection.

[2] They now seek judicial review of the decision made by the Refugee Protection Division (RPD) on June 26, 2019 (Decision) finding they are neither Convention refugees nor persons in need of protection.

[3] This application is granted as the RPD erred in finding that the Applicants could not be found in Hyderabad.

II. **Background Facts**

[4] Muhammad, his mother and sister inherited land from his father but Muhammad's uncles illegally took possession of the land while he was working in Saudi Arabia. When Muhammad's brother-in-law could not resolve the issue, Muhammad sued his uncles.

[5] The brother-in-law violently confronted the uncles' family, which resulted in two cousins being shot and injured. Muhammad returned to Pakistan to seek a settlement. He asked elders to help settle the matter with a Panchayat, which is a local council meeting.

[6] The Panchayat decided Muhammad's side were the aggressors and should pay compensation.

[7] The compensation was declared to be that Muhammad's 11-year old daughter be given to one of the cousins, who was 15 years old. Muhammad refused and contacted the police but he did not have any written evidence so the police would not register the case. Muhammad was also

warned that if he did not agree, the community would terminate relations with his family, his home and land would be seized and they would harm him and his family.

[8] Muhammad returned to Saudi Arabia to find a solution. During that time members of the Panchayat harassed his wife and one member threatened to kidnap his daughter. To keep his family safe, Muhammad took them to Saudi Arabia.

[9] The Applicants applied for visas to the United States, intending to come to Canada as his wife's brother lives here. On November 16, 2017, the family arrived in Canada pursuant to the Safe Third Country Agreement.

III. **The Decision**

[10] The background facts set out above are drawn from the Decision.

[11] In dismissing the claims, the RPD found it determinative that the Applicants had an internal flight alternative (IFA) in Hyderabad.

[12] The RPD found Muhammad testified in a straightforward manner and there were no inconsistencies with the information in his Basis of Claim Form (BOC) or with the documentary evidence.

[13] Regarding internal flight alternative, the RPD determined that the Applicants could safely relocate to Hyderabad in Pakistan.

[14] Muhammad had testified that he and his family could be found in Hyderabad because he would be required to provide his national identity card to a landlord and the police. The RPD indicated it had reviewed the national documentation package (NDP) and there was no mention of that requirement.

IV. **Issue**

[15] The determinative issue is whether the IFA finding is reasonable.

V. **Standard of Review**

[16] The Supreme Court of Canada has established that when conducting judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*].

[17] A court applying the reasonableness standard does not ask what decision it would have made in place of that of the administrative decision maker. It does not attempt to ascertain the “range” of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the “correct” solution to the problem: *Vavilov* at para 83.

[18] The decision maker may assess and evaluate the evidence before it. Absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court

must refrain from “reweighing and reassessing the evidence considered by the decision maker”:
Vavilov at para 125.

VI. **Analysis**

[19] The RPD found as a fact that the NDP did not mention the requirement that tenants register with the police in Pakistan.

[20] This finding was critical because it went to the issue of the ability of the persecutors to locate the Applicants in another part of Pakistan.

[21] The NDP for Pakistan that was consulted by the RPD is found in the Certified Tribunal Record. It is dated March 29, 2019, which is three months before the date of the Decision.

[22] The NDP contains a Response to Information Request (RIR) that addresses the tenant registration systems to which Muhammad referred.

[23] RIR #PAK106026 states that once a rental agreement has been drafted and signed, copies of the National Identity Cards (NICs) for the tenant and the landlord are to be taken to the nearest police station as they need to be registered with the local police. In some, but not all areas, in addition to the NICs, two references to identify the tenant are needed and their NICs are needed.

[24] The RIR goes on to state that in Pakistan the landlord, the tenant or the manager, as the case may be, and the property dealer where the rented building is given through such company,

shall provide, in addition to the rental agreement and the NICs but also NICs for the two references and their names as well as particulars of the male members above the age of 14 years living or residing with the tenant:

- a. Attested copy of the rent agreement;
- b.
 - i. Attested copy of the Computerized National Identity Card of the tenant;
 - ii. Attested copy of the Computerized National Identity Card of the landlord;
- c. Name and copies of the National Identity Cards with contact number of two references who identify the tenant;
- d. Particulars of the male members above the age of 14 years living or residing with the tenant.

[25] This information, which is found in the NDP, supports Muhammad's statement that the RPD erred when it found that there was no mention of a requirement to provide his NIC to a landlord.

[26] Muhammad had also testified that the head of the Panchayat was a member of the Provincial Assembly and was very influential. The RPD made a negative credibility finding because the Applicants failed to produce evidence to substantiate Muhammad's testimony that the head of the Panchayat was influential.

[27] This finding was important with respect to whether there was any risk for the Applicants if they relocated to Hyderabad.

[28] The issue of whether corroborative evidence may be required was canvassed by Mr. Justice Norris in *Chen v Canada (Citizenship and Immigration)*, 2019 FC 162 at paragraph 28:

[28] There is no general requirement for corroboration and a panel errs if it makes an adverse credibility finding on the basis of the absence of corroborative evidence alone (*Ndjavera v Canada (Citizenship and Immigration)*, 2013 FC 452 at para 6). If there are valid reasons to question a claimant's truthfulness, the panel may also consider the claimant's failure to provide corroborative evidence, but only where the claimant could not give a reasonable explanation for the absence of such evidence (*Dundar v Canada (Citizenship and Immigration)*, 2007 FC 1026 at para 22, citing *Amarapala v Canada (Minister of Citizenship and Immigration)*, 2004 FC 12 at para 10).

[29] Having found that Muhammad testified in a straightforward manner, with no inconsistencies with the information in his Basis of Claim Form or with the documentary evidence, the RPD erred when it made an adverse credibility finding on the basis of a lack of corroboration of the influence of the head of the Panchayat.

VII. Conclusion

[30] Based on the foregoing, I find the RPD erred when it did not accurately address the tenant registration system in Pakistan, specifically the need for tenants to produce their NICs to the landlord and the police. That evidence shows that the Applicants could be found.

[31] I also find the RPD erred when, without stating a reason, it required corroboration of Muhammad's testimony regarding the influence of the head of the Panchayat, which testimony supports the risk to the Applicants.

[32] The application is granted and the Decision is set aside. This matter is to be returned for redetermination by a different panel of the RPD.

[33] No serious question of general importance arises on these facts.

JUDGMENT in IMM-5806-19

THIS COURT'S JUDGMENT is that:

1. The application is granted and the Decision is set aside. This matter is to be returned for redetermination by a different panel of the RPD.
2. No serious question of general importance arises on these facts.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5806-19

STYLE OF CAUSE: SHABANA KOUSAR, MUHAMMAD NAZAM,
MUHAMMAD USMAN (A MINOR), SMMAVIAH
NOOR (A MINOR), HUSSNAIN UL HASSAN (A
MINOR) v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: NOVEMBER 23, 2021

JUDGMENT AND REASONS: ELLIOTT J.

DATED: OCTOBER 24, 2022

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