

Federal Court



Cour fédérale

Date: 20221229

Docket: IMM-9039-21

Citation: 2022 FC 1800

Ottawa, Ontario, December 29, 2022

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

AIN FOOR KHAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a negative Pre-Removal Risk Assessment [PRRA] decision, dated May 8, 2020 [the Decision]. In the Decision, a Senior Immigration Officer [Officer] determined that the Applicant would not face a risk of persecution, be subject to

a risk of torture, or face a risk to life or risk of cruel and unusual treatment or punishment, if returned to Pakistan.

[2] As explained in greater detail below, this application is dismissed, because the Applicant's arguments do not undermine the reasonableness or procedural fairness of the Decision.

II. **Background**

[3] The Applicant is a citizen of Pakistan. In 2014, he left Pakistan and entered the United States, where he made a refugee claim that was refused in 2015. He entered Canada on April 11, 2016, and subsequently made a refugee claim here, claiming fear of the Tehrik-e-Taliban [TTP] if he returns to Pakistan due to his tribal affiliation and his anti-Taliban political opinion.

[4] The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB] rejected his claim on November 10, 2016. While it found the Applicant to be a credible witness on the central issues in his claim, it found that three internal flight alternatives [IFAs] existed in the Pakistani cities of Lahore, Hyderabad, and Multan.

[5] The Applicant appealed to the Refugee Appeal Division [RAD] of the IRB, which dismissed his appeal on April 26, 2017. The RAD accepted the Applicant's new evidence on appeal, but it nevertheless found that he provided insufficient persuasive evidence to support his claim that the TTP would have the motivation to seek him out, or the means to find him, in the IFA locations.

[6] On March 19, 2018, this Court dismissed the Applicant's application for leave and judicial review of the RAD decision. He was issued a PRRA notification on July 25, 2019, and he subsequently submitted a PRRA, the Decision in which is the subject of this application for judicial review.

III. Decision under Review

[7] In the Decision, the Officer noted that, pursuant to section 113(a) of the Immigration and Refugee Protection Act, SC 2001, c 27, only new evidence arising after the rejection of the Applicant's claim by the IRB, or that was not reasonably available or that the Applicant could not reasonably have been expected in the circumstances to present at the time of the rejection, would be considered.

[8] In his PRRA application, the Applicant submitted the following new evidence: a written statement, two letters from his wife, two letters purportedly from the TTP threatening the Applicant, transcripts of two videos purportedly showing the TTP threatening the Applicant, a news article, a letter from the Afghan Association of Ontario [AAO], and a letter from an individual with four photographs. The Officer reviewed the analyses and findings of the RPD and RAD, reviewed the new evidence, and also considered the available country condition documentation [CCD]. The Applicant does not challenge the Officer's findings with respect to several of the new pieces of evidence. The following paragraphs summarize the findings in relation to which the Applicant argues that the Officer erred.

[9] The Officer gave low probative value and weight to the two letters, allegedly from the TTP, in establishing the Applicant's forward-looking risk in Pakistan. The Officer noted that both letters contained a header that simply read "Tehrik Taliban Pakistan". Given the RPD's finding that the TTP lack a solitary hierarchical structure, the Officer did not find it reasonable to believe that a letter from the TTP to the Applicant would contain a generic header. Rather, the Officer found it would be likely that at least some regional or local information would be included. The Officer found this particularly so in light of how the TTP members identified themselves in the video transcripts, which were also analyzed by the Officer.

[10] The Officer further noted that the Applicant provided no information on how these letters were received. Particularly in light of the RPD's determination that the agents of persecution lacked the organizational and operational capacity to track the Applicant's movements across and outside Pakistan, the Officer found that it was reasonable to have expected the Applicant to provide some explanation as to how he obtained these letters.

[11] Turning to the video transcripts, the Officer again found that they had low probative value in establishing the Applicant's forward-looking risk in Pakistan and accordingly gave them little weight. Regarding the first transcript, the Officer noted that it contained no name or translator number. It included only a signature with a stamp that was too faded to read. The Officer noted that an individual from the AAO translated the second transcript, but that there was no indication that the individual was an accredited translator, as no translator number or other contact information for the individual was provided. Along with the lack of explanation as to why the Applicant did not use the same accredited translator who translated other letters

submitted into evidence, these factors caused the Officer to have concerns regarding the authenticity and reliability of the transcript translations.

[12] With respect to the CCD, the Officer noted that an updated IRB research report stated that the TTP had experienced severe internal divisions, particularly following the death of its leader in 2013. The Officer further noted that, while the report highlighted a number of incidents involving the TTP in Pakistan in 2019, only one incident occurred in one of the IFAs (Lahore). Based on that information, the Officer concluded that the RPD's findings remained applicable regarding the inability of the TTP to track and locate the Applicant across Pakistan and the low likelihood of him being harmed in one of the IFAs.

[13] In conclusion, the Officer found that the Applicant had provided insufficient new evidence to challenge the IRB's finding that viable IFAs existed for him.

IV. **Issues**

[14] In this judicial review, the Applicant challenges the Officer's assessments and findings with respect to: (a) the CCD, (b) the two TTP letters, and (c) the two video transcripts. The Applicant also argues that the Officer breached his procedural fairness rights when assessing the video transcripts.

[15] The standard of reasonableness applies to the Officer's assessment of the evidence. With respect to procedural fairness, while the standard of correctness is often described as applying,

the Court's analysis should focus on whether the procedure followed was fair, having regard to all the circumstances (see *Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14).

V. **Analysis**

[16] As explained in the Decision, the Officer's role in conducting the PRRA was to assess whether there was new evidence of facts that might have affected the outcome of the RPD hearing if that evidence had been presented to the RPD (see *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at para 13). The rejection of the Applicant's claim by the RPD and RAD was based on their determinations that the TTP would have neither the means to locate, nor the motivation to pursue, someone like the Applicant who did not occupy a high profile position. The Officer canvassed these findings and then considered whether the new evidence might alter those findings.

[17] In relation to the Applicants' arguments surrounding the TTP letters and video transcripts, the Respondent submits that, even if these documents had been given maximum weight, they do not contain any information capable of displacing the findings by the RPD and RAD as to the viability of the IFAs. These documents merely indicate the continuation of the Applicant's localized problems with the TTP. I find the Respondent's argument compelling.

[18] At the hearing of this application, the Applicant responded to this argument by submitting that the TTP letters and video transcript evidence should be analysed in the context of the Applicant's submission that the Officer erred by overlooking or misconstruing the CCD. The Applicant submits that the Officer ignored evidence in the CCD concerning the TTP's ability to

find and harm him in the IFAs. However, the effect of these submissions is that the outcome of this application for judicial review must turn on whether the Officer erred in assessing the CCD.

[19] If the Officer erred in analysing the CCD, then the Decision is unreasonable and must be set aside. If the Officer did not so err, I agree with the Respondent's position that the Applicant's arguments surrounding the TTP letter and video transcript evidence cannot undermine the reasonableness of the IFA analysis on which the Decision depends. I therefore turn to the Applicant's arguments related to the Officer's treatment of the CCD.

[20] First, the Applicant notes the Officer's finding that, according to an updated IRB research report, the TTP have experienced severe internal divisions, particularly following the death of its leader in 2013. It appears uncontroversial that the referenced IRB research report is a Response to Information Request dated January 14, 2020 [RIR]. The Applicant accepts that the Officer's finding accurately reflects information that the RIR attributes to a December 2018 article.

[21] However, the Applicant notes that the RIR also refers to a May 2019 report that a leader appointed in or following June 2018 has revitalized the TTP and appears to have unified the TTP factions under his command. The Applicant also notes that the RIR refers to the TTP as an alliance of militant groups or as an umbrella organization, with networks in all of Pakistan's provinces. The Applicant argues that that the Officer has ignored this evidence that contradicts the Officer's conclusion that the TTP was not capable of locating the Applicant in the IFAs.

[22] As the Applicant submits, the appropriate framework for analysing this argument is that explained in *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53, 1998 CanLII 8667 (FC). An administrative decision maker is not required to refer to every piece of evidence that is contrary to its finding. However, the more important the contradictory evidence that is not specifically mentioned in the decision, the more willing a Court may be to infer from silence on that evidence that it was overlooked (at paras 16-17).

[23] The importance of the evidence upon which the Applicant's argument relies must be assessed against the backdrop of the RPD and RAD decisions that form the context for the PRRA analysis. The RPD's decision describes the CCD as establishing that the TTP are an umbrella organization that unites pro-Taliban movements in Pakistan. The RAD arrives at similar conclusions in upholding the RPD's decision. The Officer ultimately concludes based on the current CCD that the RPD's findings, regarding the inability of the TTP to track and locate the Applicant across the country and the low likelihood of him being harmed in one of the identified IFAs, remain true.

[24] The RIR's description of the TTP as an alliance or umbrella organization, and its reference to the post-June 2018 leadership unifying TTP factions, appear consistent with the RPD's description of the TTP as an umbrella organization uniting pro-Taliban movements. I do not find an inconsistency on the basis of which the Court can infer that information in the RIR was ignored or misconstrued by the Officer in finding that the new CCD did not displace the RPD's findings.

[25] The Applicant also notes that the Officer refers to the RIR mentioning only one incident of TTP violence occurring in Lahore. The Applicant submits that the Officer ignored two other recent attacks in Lahore, as well as attacks elsewhere in Pakistan. Again, this argument does not support a finding of reviewable error. The Officer expressly recognizes that the RIR highlights a number of incidents involving the TTP in Pakistan in 2019. The fact that the Officer identifies only one of three attacks in Lahore does not undermine the Officer's reasoning so as to warrant intervention by the Court, particularly when Lahore is only one of three IFAs that were found to be viable.

[26] As explained earlier in these Reasons, in the absence of any reviewable error in the Officer's treatment of the CCD, the Applicant's arguments on the other issues raised in this application are not capable of undermining the reasonableness of the Decision. As such, this application for judicial review must be dismissed.

[27] Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-9039-21

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

No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9039-21

STYLE OF CAUSE: AIN FOOR KHAN V THE MINISTER OF
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PLACE OF HEARING: HEARD VIA TELECONFERENCE

DATE OF HEARING: DECEMBER 15, 2022

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APPEARANCES:

Maureen Silcoff FOR THE APPLICANT

Giancarlo Volpe FOR THE RESPONDENT

SOLICITORS OF RECORD:

Silcoff Shacter FOR THE APPLICANT
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario