

Federal Court



Cour fédérale

Date: 20230320

Docket: IMM-920-21

Citation: 2023 FC 377

Ottawa, Ontario, March 20, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

**MUHAMMAD ASHRAF
ANUM BATOOL
ANZAL BATOOL
TOURAB ALI
NAJAF ASHRAF**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Muhammad Ashraf, his wife Anum Batool, and their three children are citizens of Pakistan. They are Shi'a Muslims. They sought refugee protection in Canada on the basis of their fear of persecution based on their religion in Pakistan. The Refugee Protection Division ("RPD") of the Immigration and Refugee Board of Canada ("IRB") rejected the claims because

it found that Mr. Ashraf was not credible with respect to the core elements of his claim and, in any event, the applicants had a viable internal flight alternative (“IFA”) in Pakistan.

[2] The applicants appealed this decision to the Refugee Appeal Division (“RAD”) of the IRB. In a decision dated January 20, 2021, the RAD dismissed the appeal and confirmed the finding of the RPD that the applicants are not Convention refugees or persons in need of protection. The determinative issue for the RAD was Mr. Ashraf’s lack of credibility. The RAD found that, while the RPD had erred in certain respects, it correctly found that Mr. Ashraf failed to credibly establish that he had been targeted by Sunni extremists in Pakistan. Given this finding, the RAD did not find it necessary to address the issue of an IFA.

[3] The applicants now apply for judicial review of the RAD’s decision under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“*IRPA*”). They submit that the RAD fell into reviewable error in its credibility analysis and in declining to address the issue of an IFA. As I will explain, I do not agree. This application will, therefore, be dismissed.

[4] The parties agree, as do I, that the RAD’s decision should be reviewed on a reasonableness standard. Judicial review on this standard considers not only the outcome but also, where reasons are required (as is the case here), the justification for the result (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 29).

[5] A reasonable decision “is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). A decision that displays these qualities is entitled to deference from the reviewing court (*ibid.*). On the other hand, “where reasons are provided but they fail to provide a transparent and intelligible justification [. . .], the decision will be unreasonable” (*Vavilov* at para 136).

[6] When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances (*Vavilov* at para 125). At the same time, reasonableness review is not a rubber-stamping process; it remains a robust form of review (*Vavilov* at para 13). The reasonableness of a decision may be jeopardized where the decision maker “has fundamentally misapprehended or failed to account for the evidence before it” (*Vavilov* at para 126).

[7] The onus is on the applicants to demonstrate that the RAD’s decision is unreasonable. To set aside a decision on this basis, the reviewing court must be satisfied that “there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100).

[8] According to Mr. Ashraf, his problems stemmed from his role as president of a local Imam Bargah (a Shi’a religious organization). He had assumed this position in October 2014 following the death of his father, who had previously served in this role.

[9] Mr. Ashraf claimed that, in November 2018, he received a threatening anonymous phone call telling him to stop participating in Shi'a practices. In a second call, the caller identified himself as a member of the Lashkar-e-Jhangvi, a militant anti-Shi'a group active in Pakistan. The caller threatened to kill Mr. Ashraf and his family unless he paid the equivalent of \$20,000 CAD. Mr. Ashraf received another call at work telling him how to make the payment. When he responded that he could not pay what was being demanded, the caller warned Mr. Ashraf to be ready for "results" and hung up.

[10] According to Mr. Ashraf, as he was driving home from work that same day, two men on motorcycles fired gunshots at him. One of the shots hit his car but he was able to make his escape. Mr. Ashraf reported the incident to the police but nothing came of this. Eventually, after selling his businesses, in July 2019 Mr. Ashraf and his family made their way to the United States. From there they crossed irregularly into Canada and applied for refugee protection.

[11] As noted above, the RPD found that Mr. Ashraf lacked credibility on core elements of his claim. After conducting its own review of the record, the RAD did not agree with all of the RPD's findings but it did agree with the following:

- Mr. Ashraf's account of his role at the Imam Bargah is not credible. It was confusing, evolving, and self-contradictory. At most, Mr. Ashraf was the president of a mourning group (as a letter of support stated) and not of the entire Imam Bargah but even this had not been established with credible evidence given all the contradictions in the evidence.

Mr. Ashraf had embellished his profile within the Shi'a community for the purpose of his refugee claim.

- Mr. Ashraf claimed that he would not have been aware of any problems his father faced as president of the Imam Bargah because he was young at the time his father was president yet, according to his own account, he was 45 years old when he took over the position in 2014.
- Mr. Ashraf provided falsified receipts for repairs to his car following the alleged shooting incident. Even taken at face value, the receipts simply established that some sort of work had been done on the car. They did not corroborate the claim that the car had been damaged by gunfire. Further, it would have been reasonable to expect Mr. Ashraf (or someone) to have photographed the damage to the car (especially since the incident had been reported to the police) yet there were no photographs of the damage. In view of these deficiencies in the evidence, Mr. Ashraf had not credibly established that the shooting occurred, as alleged.
- None of the other supporting documents provided by the applicants overcome the foregoing credibility concerns. In fact, they only add to those concerns (for example, by providing dates for the shooting incident that are inconsistent with Mr. Ashraf's own narrative).

[12] The applicants have challenged the RAD's adverse credibility determinations but they have failed to demonstrate that any of them are unreasonable. For the most part, they have simply repeated the arguments they made on appeal in challenging the RPD's findings. I also

agree with the respondent that at best the applicants' submissions amount to disagreements with how the RAD weighed the evidence. It is not the role of this Court on judicial review to reweigh the evidence and come to a different conclusion than the RAD. Rather, as set out above, this Court's role is limited to assessing the reasonableness of the RAD's determinations. On the record before it, it was open to the RAD to draw the conclusions it did with respect to Mr. Ashraf's lack of credibility. The applicants have not established any basis on which this Court could interfere with those findings.

[13] The applicants also submit that it was unreasonable for the RAD to decline to address what they had contended on appeal was a flawed IFA analysis on the part of the RPD. I do not agree. Having concluded that the claims for protection failed because they were not supported by credible evidence, the question of whether the RPD had erred in its IFA analysis became moot. Consequently, there was no need to address that issue. The applicants' contention that their arguments against the IFA finding by the RPD have merit is, with respect, simply beside the point in view of the RAD's determinations.

[14] The applicants rely on *Canada (Citizenship and Immigration) v Kaler*, 2019 FC 883 at para 16, and *Iqbal v Canada (Citizenship and Immigration)*, 2020 FC 170 at para 38, to support their contention that it was unreasonable for the RAD to decline to address the IFA issue. In my view, unsurprisingly, neither decision stands for the proposition that it is unreasonable for the RAD to decline to address a moot issue.

[15] In *Kaler*, the RAD was found to have erred by allowing an appeal and granting refugee protection without having conducted a “full and complete analysis of all relevant issues.” In the present case, on the other hand, the issue of an IFA is simply irrelevant once the claim has been found not to be credible. There was therefore no need to consider it. In *Iqbal*, the Court observed in passing that, since the RPD had considered the IFA issue to be determinative, “it was only natural that the RAD addressed this issue,” even though the RAD found a different issue to be determinative of the appeal. The Court certainly did not state (or even imply) that it would have been unreasonable for the RAD to decline to address the IFA issue. In short, neither authority assists the applicants.

[16] For these reasons, the application for judicial review will be dismissed.

[17] The parties did not propose any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-920-21

THIS COURT'S JUDGMENT is that

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

"John Norris"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-920-21

STYLE OF CAUSE: MUHAMMAD ASHRAF ET AL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JUNE 14, 2022

JUDGMENT AND REASONS: NORRIS J.

DATED: MARCH 20, 2023

APPEARANCES:

Mazahir Walji FOR THE APPLICANTS

Rachel Beaupré FOR THE RESPONDENT

SOLICITORS OF RECORD:

Bukhari Law Professional Corporation FOR THE APPLICANTS
Mississauga, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario