**Date: 20071214**

**Docket: IMM-6691-06**

**Citation: 2007 FC 1324**

**Ottawa, Ontario, December 14, 2007**

**PRESENT: The Honourable Orville Frenette**

**BETWEEN:**

**SYED HASSAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant seeks judicial review of the Immigration and Refugee Board, Refugee Protection Division (RPD), rendered on November 22nd 2006, determining that the Applicant was not a convention refugee and not a person in need of protection.

## THE FACTS

[2] The Applicant is a 28 year old citizen of Pakistan, belonging to the Sunni religion, the faith of the majority citizens of that country. The Applicant declared that as a teenager, in 1996, he had a clandestine relationship with a woman, Fauzia Khan. When her father learned of this relationship in

1997, he found the couple in a car. He and other men kidnapped the Applicant and severely assaulted him, following which he was treated at a hospital. Fauzia was taken away to her family's village. Her father was the chief of his tribe and wields much power.

[3] The Applicant's family reported the assault to the police. In July 1997, the couple reunited and attempted to elope to Karachi. Her father found them and took Fauzia away. The Applicant has not seen Fauzia since 1998.

[4] The Applicant went to the United States of America (USA) to meet an American woman of Pakistan origin, which his parents wanted him to marry. He also went there to avoid danger. He married that woman in 1998 and they had two children; he divorced her in 2003.

[5] In 2002, his permanent residence status in the USA was removed because of a criminal conviction (to which he had pleaded guilty), for using counterfeit money and bad checks in a casino. He was also convicted of assaulting his wife. He was given a sentence comprising restitution and a two year probation period. The USA authorities began deportation proceedings against him.

[6] Before the probation period was complete he left the USA to return to Pakistan in 2003 with his ex-wife and children. A bench warrant was then issued in the USA.

[7] The above crime, if committed in Canada, would have justified a sentence of up to ten years of prison. He stated that in October 2003, he was attacked in Pakistan by Fauzia's father and his men.

[8] He came to Canada in January 2004, entering with a visitor's visa at the expiry of the visa period, i.e. three months, he applied for refugee status.

[9] In his Personal Information File (PIF), he omitted mentioning his criminal record, explaining at the hearing that he feared this would have caused a refusal of a permission to enter Canada. Since, he has remained in Canada.

**THE RPD DECISION OF NOVEMBER 22ND, 2006**

[10] The member, S. Randhawa, in a ten-page decision, summarized the facts presented to her, as follows:

i. She determined the Applicant's fear of returning to Pakistan was not substantiated by his actions and his return in 2003 to Pakistan with his ex-wife and children. In his Port of Entry (POE) statement, he did mention the alleged attacks of 2003. She found discrepancies in the dates of the alleged events, and the use of deception by the Applicant on many points. He said he did not mention them in the POE because he did not want to be deported.

ii. He did not mention his criminal record.

iii. He did not establish that he could not benefit from state protection in Pakistan.

iv. The documentation on Pakistan revealed that women are subject to discrimination in Pakistan and there are “honour killings”.

v. The member found his POE and PIF answers and explanations contradictory, inconsistent, uncorroborated and imprecise.

vi. The delay to claim political asylum was considered. The member found that the Applicant’s actions, an educated person, did not establish subjective fear.

vii. State Protection: The member found that the Applicant had not rebutted the presumption that Pakistan, a democratic country, could not protect its citizens. He was a member of the majority religion of the country and was able to obtain a visa using his Pakistan passport even though he claimed fear because of the events described before.

viii. Credibility and Plausibility: The member decided that the Applicant’s answers, omissions, discrepancies and implausibility, considering all of the evidence, rendered his version of the facts, unbelievable.

**THE ISSUES**

[11] a. Were the member’s findings of facts and credibility patently unreasonable?

b. Did the member fail to appropriately analyse the availability of state protection?

**THE STANDARD OF REVIEW**

[12] The expertise of the RPD division in assessing credibility and findings of fact, is well established, being the core of its jurisdiction and must be respected.

[13] The standard of review of such findings, is patent unreasonableness, see *Harb v. Canada (Minister of Citizenship and Immigration)*, 2003 FCA 39, [2003] F.C.J. No. 108, *Harusha v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 2004, [2007] F.C.J. No. 1438.

[14] To be patently unreasonable, such decisions must be based upon a "perverse, capricious or bad faith" examination of the evidence.

[15] The standard of review of findings of state protection was thoroughly reviewed in case law: see Justice Danièle Tremblay-Lamer in *Chaves v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 193, [2005] F.C.J. No. 232. After a careful analysis of the case law on the subject, she held that the appropriate standard to apply is reasonableness *simpliciter* and I agree with her conclusions.

**ANALYSIS OF SPECIFIC ISSUES**

**A. Were the member's findings of facts and credibility patently unreasonable?**

**I. The Applicant argues that the three plausibility findings of the decision are not reasonable.**

[16] He makes a very detailed assessment of the facts, to conclude that the member could not have reasonably conclude the implausibility of his version of the events.

[17] It is true perceived implausibility is a subjective exercise but when it is based on all of the evidence, including inconsistencies and contradictions, such as in the Applicant's testimony or PIF, it cannot be ignored. Here, the member did consider all of the evidence and her rulings on plausibility were based on the evidence.

**II. Over reliance on omissions and POE notes**

[18] The applicant claims the member relied excessively on omissions and contradictions in the PIF and her testimony. I do not agree since important facts or events such as the criminal record, were intentionally omitted as admitted.

[19] The Applicant is a university graduate, fluent in English, and must bear the consequences of his voluntary omissions and inconsistencies.

**III. Did the member ignore or misapprehend the new evidence in her findings on delay?**

[20] It is a fact that the Applicant only claimed refugee status either at the end or near the end of the three months when his visitor's visa expired.

[21] The member was entitled to base her findings on this fact, particularly considering the Applicant's education and because he had obtained opinions from various lawyers during his first three months in Canada. The Applicant also attacks the member's reasoning referring to his lack of fear as evidenced by his return to Pakistan.

[22] Both of these arguments, are based upon the member's interpretation of the facts which are within her domain and her conclusions are not patently unreasonable.

### IV. The undeclared criminal record

[23] The members drew a negative inference from the fact that the Applicant intentionally omitted to declare his criminal record in his PIF or POE. He explained in his testimony that he feared that if he had declared this fact, he would have been deported.

[24] There is no doubt that the member had the right to draw such a negative reference about the Applicant's credibility on this point.

[25] If the applicant omitted to declare negative facts which can adversely affect his status, it is a concrete element in determining credibility.

### V. Did the member ignore evidence in his state protection analysis?

[26] The member did refer to the documentation on Pakistan particularly concerning "honour killings" and she heard the testimony of the Applicant that two police officers had taken the report but had not pursued the matter. Yet the Applicant returned voluntarily to Pakistan in 2003 with his ex-wife and children; therefore she believed he did not appear to have any fear. The Applicant had the onus of establishing lack of state protection. To succeed he had to provide clear and convincing

proof of the state's inability to act, see: *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, [1993] S.C.J. No. 74.

[27] It is insufficient to simply claim that a government has not been effective in protection persons in particular situation. Police protection may be adequate even if not perfect: *Canada (Minister of Employment and Immigration) v. Villafranca*, [1992] F.C.J. No. 1189 (F.C.A.).

[28] In *Kadenko v. Canada (Solicitor General)*, 143 D.L.R. (4th) 532, the Federal Court of Appeal confirmed a decision stating that a refugee claimant must do more than show that he or she approached a member of the police force to claim and this was unsuccessful, see also *Ramirez c. Canada (Ministre de la Citoyenneté et de l'Immigration)*, 2007 CF 1191, [2007] A.C.F. No. 1536.

[29] In a country considered democratic having effective political and judicial systems, the failure of particular members of the police to furnish adequate protection is insufficient *per se* to establish a lack of state protection, see *Kadenko*, above.

## VI. Applicant's unused Canadian visitor's visa

[30] The Applicant assails the member's decision because she misinterpreted the facts and that she stated he did not mention that he had previously travelled to Canada because he had a Canadian visa. This was a factual error but it resulted from the Applicant's declaration that he had obtained a visitor's visa, but had not used it.

[31] In my opinion, such an inference could have easily been made since it is unusual for a visitor to obtain a visitor's visa, and then not to use it. I do not believe this error was more than an honest mistake.

**B. Did the member err in her assessment of all of the evidence?**

[32] As a matter of law, panel members are "masters in their own house", on the questions of findings of fact, credibility and on weight to be given to the evidence: Z*hou v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 1087 (F.C.A.). The member did not breach this rule in this case.

**CONCLUSION**

[33] The Applicant criticizes the decision basing himself on a microscopic examination of minute details of the evidence which ignoring the important overall picture. The basic principle to be applied here is not whether I agree with the decision but whether the member could rationally base her decision, on the established facts.

[34] I must conclude that she could interpret the evidence the way she did and therefore cannot find that the decision was patently unreasonable.

**JUDGMENT**

**THEREFOR, THIS COURT ORDERS AND ADJUDGES that** the application for judicial review be dismissed.

"Orville Frenette"
Deputy Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-6691-06 |
| **STYLE OF CAUSE:** | Syed Hassan<br>v.<br>The Minister of Citizenship and Immigration |
| **PLACE OF HEARING:** | Toronto, Ontario |
| **DATE OF HEARING:** | November 29th 2007 |
| **REASONS FOR JUDGMENT AND JUDGMENT BY :** | Deputy Judge Frenette |
| **DATED:** | December 14, 2007 |

**APPEARANCES:**

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| Mr. Ricky Tang | FOR THE RESPONDENT |

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