

Federal Court		Cour fédérale
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**Date: 20100602**

**Dockets: IMM-5437-09  
IMM-5439-09**

**Citation: 2010 FC 604**

**Toronto, Ontario, June 2, 2010**

**PRESENT: The Honourable Mr. Justice Campbell**

**BETWEEN:**

**USMAN ALI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The present Application concerns, as a citizen of Pakistan, the Applicant's claim for refugee protection on arrival in Canada in December 2003. In February 2007, the Refugee Protection Division (RPD) dismissed the claim. As a result, the Applicant applied for Humanitarian and

Compassionate (H & C) relief and pre-removal risk assessment (PRRA) relief with respect to his return to Pakistan. Under review in the present Applications are a negative H & C decision (IMM-5437-09) and a negative PRRA decision (IMM-5439-09).

[2] I find that both decisions under review are made in reviewable error. This result emanates from the following statement at page 5 of the PRRA decision:

The credibility of the applicant was thoroughly impugned by the RPD; and for the purposes of this PRRA application, he has simply restated his case. He has not addressed this issue. The risks identified by the applicant in his PRRA application are, in substance, the same as those heard and assessed by the RPD. A PRRA application is not an appeal of a negative RPD decision, nor is it intended to be an appeal of the denial of leave to seek judicial review. The decision of the RPD is final with respect to the issue of protection under section 96 or 97 of the IRPA subject only to new, different or additional risks that could not have been contemplated by the RPD.

[Emphasis added]

In my opinion, this statement is based on a fundamental misunderstanding of the RPD decision (see Tribunal Record, Vol. 4, pp. 638-643).

[3] In its decision, the RPD acknowledged that the Applicant's claim for protection was based on the religious ground of fear of persecution and risk as an Ahmadi Muslim in Pakistan, and on the political ground of fear of risk as a Western sympathizer in Pakistan. However, the RPD rejected the Applicant's claim for the essential reason that "he did not establish, on a balance of probabilities, the underlying facts of the central elements of his claim" (RPD Decision, Tribunal Record, p. 639). The RPD did not make a clear global negative credibility finding with respect to

the Applicant's evidence. As a result, I find that the statement in the PRRA decision that "the credibility of the applicant was thoroughly impugned by the RPD" is erroneous. Thus, the reviewable error made in the delivery of the PRRA decision is the limiting of consideration to only "new, different or additional risks". In conducting the PRRA, new evidence with respect to risks that existed at the time the RPD decision was rendered should have been considered. In particular, by the limiting, the current evidence with respect to the risk suffered by Western sympathizers in Pakistan was not properly considered.

[4] With respect to the H & C decision, since the results of the PRRA decision are an essential factor taken into consideration, and since the PRRA decision is made in reviewable error, I find that the H & C decision is also made in reviewable error.

**ORDER**

**THIS COURT ORDERS that** the decisions under review in IMM-5437-09 and IMM-5439-09 are set aside, and the matters are referred back for re-determination by a differently constituted panel.

There are no questions to certify.

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"Douglas R. Campbell"  
Judge

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-5437-09 & IMM-5439-09

**STYLE OF CAUSE:** USMAN ALI v. THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 1, 2010

**REASONS FOR ORDER  
AND ORDER:** CAMPBELL J.

**DATED:** JUNE 2, 2010

**APPEARANCES:**

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