

Federal Court



Cour fédérale

Date: 20110106

Docket: IMM-630-10

Citation: 2011 FC 10

Ottawa, Ontario, January 6, 2011

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

MUMTAZ BEGUM

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, R.S.C. 2001, C. 27 (Act) for judicial review of the decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated 23 December 2009 (Decision), which refused the Applicant's application to be deemed a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

BACKGROUND

[2] The Applicant is an elderly widow and a citizen of Pakistan. She travelled to Canada on a visitor's visa in 18 April 2006 and made a claim for refugee status on 27 December 2007. Her daughter, who is a Canadian citizen, has started a sponsorship application for her, which has yet to be decided.

[3] The claimant alleges that for the ten-month period before she came to Canada she was harassed by a neighbour, who had offered to purchase her house and land in Lahore for less than market value and whose offer she had refused. Moreover, the Applicant alleges, he was a known member of the banned Sunni Muslim extremist group Sipah-e-Sahaba (SSP). She did not report the harassment to the police because she says the Pakistani police discriminate against women. Prior to coming to Canada, she found a tenant for her house.

[4] The Applicant says she is afraid to return to her house in Lahore because, while she has been in Canada, the above-mentioned neighbour and the tenant have taken over the house and have threatened to kill her. She fears returning to Pakistan because, with the exception of one daughter who lives in Karachi, all of her children have gone abroad. She also has cancer, among other ailments, and she says she will not have access to adequate medical care in Pakistan. She also alleges that she has nowhere to live and no one to care for her.

[5] The Applicant was represented by an immigration consultant at the hearing before the RPD.

Her claim is based on two grounds. First, as a woman, and especially as a single and widowed woman, she claims she is severely discriminated against in Pakistan. Second, she fears being harmed or killed by the men occupying her house and by members of the SSP. The RPD found that she did not meet the definition of a Convention refugee under section 96 of the Act or of a person in need of protection under section 97 of the Act. This is the Decision under review.

DECISION UNDER REVIEW

[6] The RPD rejected the Applicant's claim for two main reasons: (a) she was not entirely credible with respect to why she cannot return to Pakistan; and (b) she failed to provide sufficient convincing evidence to demonstrate that she met the criteria under sections 96 and 97 of the Act.

Credibility

[7] The Decision says that the Applicant claimed in her Personal Information Form (PIF) that, before she left Pakistan, the neighbour who had offered to buy her house had begun harassing her. He and his friends threw garbage at her door, wrote religious slogans on her walls and congregated on the sidewalk in front of her house.

[8] At the hearing, however, the Applicant said that she had left Pakistan to visit her daughter, who was living in Canada and expecting a baby. The Applicant had rented her house in Pakistan to a man who, together with the neighbour, has taken over the house in her absence and is now

refusing to pay rent. If she returned to her house in Lahore, the men would kill her. She stated that these men were connected with the SSP but that the SSP had never bothered her personally.

[9] When asked why she had to leave Pakistan, she said that she was worried about what might happen to her because she is elderly and requires chemotherapy. She fears being alone and vulnerable to criminals. The RPD asked why she could not live with her daughter in Karachi. She replied that her daughter and grand-daughter now live with the grand-daughter's husband and his family. Both women work, so there is no one to care for her during the day. She does not want a hired caregiver because she fears being attacked by servants, as her daughter's life has twice been threatened by servants.

[10] The RPD concluded that, based on her oral evidence at the hearing, the Applicant's alleged fear of the SSP, as stated in the PIF, is not credible. She fears the men who have taken over her house, but the RPD found that these men were not members of the SSP.

Section 96

[11] In its analysis of section 96 of the Act, the RPD found that the Applicant had failed to establish a nexus or link between her circumstances and the test for Convention refugee status. Specifically, she does not have a well-founded fear of persecution based on her race, nationality, religion, political opinion or membership in a particular social group. What the claimant fears is criminal activity perpetrated either by the men who have control of her house or by those who might

wish to harm her should she return to Karachi to live in her grand-daughter's family home. Victims of crime cannot generally establish a nexus between their fear of persecution and one of the five Convention grounds.

Section 97

[12] The RPD then turned to section 97, which required this Applicant to show that, in Pakistan, she would be subjected personally to a risk to life or a risk of cruel and unusual punishment or to a danger of torture. Only in this way could she prove herself to be a person in need of protection.

[13] The RPD stated that a person in need of protection must demonstrate that the enumerated risks are present for her everywhere in the country. If an Internal Flight Alternative (IFA) exists in that country, the person must avail herself of that alternative before seeking safety in Canada.

[14] The RPD concluded that, on a balance of probabilities, there was no serious possibility of the Applicant being subject to the risks and dangers enumerated in section 97. She had an IFA. She could go safely to Karachi, where she could live with her grand-daughter's family in a familiar linguistic and cultural environment. There was no evidence that the men who controlled her house in Lahore would pursue her in another city. The Applicant's fear that she will be harmed by a servant while her daughter and grand-daughter are at work is mere speculation. Moreover, it is a generalized risk of harm; section 97 requires a personalized risk. Finally, the Applicant's fear that

she will not have access to adequate health care is not one of the considerations to be taken into account in a section 96 or section 97 claim.

[15] For these reasons, the RPD found that the Applicant was neither a Convention refugee nor a person in need of protection.

ISSUES

[16] The issues may be stated as follows:

- a. Whether the RPD failed to address the gender-based discrimination aspect of the Applicant's claim;
- b. Whether the RPD applied the wrong test when determining whether or not the Applicant had established a nexus to one of the Convention grounds;
- c. Whether the RPD incorrectly applied section 97, given the evidence concerning the availability of an IFA.

STATUTORY PROVISIONS

[17] The following provisions of the Act are applicable in these proceedings:

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race,

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être

religion, nationality, membership in a particular social group or political opinion,

persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

Personne à protéger

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection

Personne à protéger

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

STANDARD OF REVIEW

[18] The Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1

S.C.R. 190 held that a standard of review analysis need not be conducted in every instance. Instead,

where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[19] Whether the RPD incorrectly applied section 97 of the Act, given the evidence concerning the availability of an IFA, requires an application of the law to the facts. Therefore, it is an issue of mixed fact and law and, as such, attracts a standard of reasonableness. See *Dunsmuir*, above, at paragraph 51.

[20] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with “the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.” See *Dunsmuir*, above, at paragraph 47. Put another way, the Court should only intervene if the Decision was unreasonable in the sense that it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

[21] Whether the RPD failed to consider the discrimination aspect of the Applicant’s claim raises an issue of procedural fairness. This is reviewable on a standard of correctness. See *Sketchley v. Canada (Attorney General)*, 2005 FCA 404, [2005] F.C.J. No. 2056 at paragraph 46, and *Dunsmuir*, above, at paragraphs 126 and 129.

[22] Whether the RPD applied the correct test in determining whether or not the Applicant established a nexus to one of the Convention grounds attracts a standard of correctness. See *Golesorkhi v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 511 at paragraph 8.

ARGUMENTS

Applicant

RPD Failed to Assess Discrimination

[23] The Applicant submits that she meets the definition of a Convention refugee, first and foremost due to her membership in a particular social group: single women in Pakistan who have no male protector. As such, she is vulnerable to severe discrimination should she be removed to Pakistan.

[24] The Applicant argues that the RPD decided the Applicant's claim "without ever mentioning a single word" about the discrimination of women in Pakistan. In *Viafara Pastrana v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1526 at paragraph 6, Justice Eleanor Dawson, relying on *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 (*Ward*), stated: "the Supreme Court of Canada confirmed that the Board must consider all of the grounds for making a claim to refugee status, even if the grounds are not raised during a hearing by a claimant."

[25] In the instant case, there is no denying that the Applicant raised discrimination in her PIF. The Decision itself acknowledges that she raised the issue, and the documentary evidence supports

her evidence that women are subject not only to discrimination in their everyday lives but also in their dealings with the law and the authorities. Police are at times implicated in rape cases, and they often abuse and threaten female detainees. Especially vulnerable are single and/or widowed women living alone. The Applicant suggests that she is one such woman. Women count on a male protector for their safety.

[26] In light of this evidence, the Applicant submits that the RPD had a duty to assess the Applicant's risk of persecution based on severe discrimination against women in Pakistan. See *Abdulle v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1508 at paragraph 21; *Chowdhury v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1242. This fear is in addition to her fear of her menacing neighbour and tenant in Lahore, which the RPD did address.

[27] The Applicant submits that she fits the definition of a Convention refugee for another reason: she is a member of a particular social group, namely victims of crime. In fact, it is because of her status as a single widow without a male protector that she has become a victim of crime. The crime to which the Applicant refers is the harassment she has suffered at the hands of her neighbour and the subsequent illegal occupation of her house by the neighbour and the tenant.

[28] As Justice John O'Keefe recognized in *Racz v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 285 at paragraph 13, this Court has found that, in certain circumstances, victims of crime can be classified as Convention refugees:

13 A review of the officer's decision discloses that the officer appeared to rule out the applicant fitting within the definition of

convention refugee because his claim to be a convention refugee was based on his membership in a particular social group—Victims of crime. While it is true that the majority of the case law would support this conclusion there have been a number of decisions of this Court that have held that in certain circumstances members of the social group – Victims of crime can be classified as convention refugees.

Justice O’Keefe further commented at paragraph 14 that, in that case, the applicant was “entitled to have [this issue] considered by the officer” and “that failure to do so constitutes irreparable harm to the applicant.”

[29] Similarly, Justice Marshall Rothstein stated in *Pepa v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 834 (*Pepa*) at paragraph 9 that no principle of law prohibits a person from being both a victim of a private vendetta and a Convention refugee, provided the basis of the vendetta is the victim’s race or any other Convention ground.

[30] Moreover, the RPD recognized at paragraph 11 of the Decision that “[v]ictims of crime ... generally cannot establish a link between their fear of persecution and one of the five grounds in the [Convention] definition” (emphasis added).

[31] Relying on this jurisprudence, the Applicant argues that she is a victim of crime because of her gender and her social status as a single widow without a male protector, and that her membership in that particular social group makes her a Convention refugee. The RPD’s finding that the Applicant was merely a victim of crime does not prevent her from being a victim of persecution based on severe discrimination. The RPD’s analysis failed to take this jurisprudence into account.

RPD Applied the Wrong Test for Nexus

[32] When assessing whether the Applicant was a member of a “particular social group” as defined under section 96 of the Act, the RPD’s applied the wrong test. The correct approach is set out in *Zefi v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 636, which cites favourably the decision of Justice La Forest in *Ward*, above. The first step of the test asks if an issue of human rights is engaged, and the second asks if the persecution is caused by membership in a certain group. The Applicant asserts that the RPD failed to undertake the first step.

[33] Moreover, the RPD failed to consider the three categories of “particular social group” as it is used in section 96 of the Act. According to *Ward*, above, at paragraph 70, these include: (1) groups defined by an innate or unchangeable characteristic; (2) groups whose members voluntarily associate for reasons so fundamental to their human dignity that they should not be forced to forsake the association; and (3) groups associated by a former voluntary status, unalterable due to its historical permanence.

RPD Erred in Finding an IFA

[34] The Applicant argues that the RPD ignored evidence explaining why, as a single widow without a male protector, she could not relocate and live alone in Karachi. The documentary evidence sets out the difficulty such women have in finding accommodations as well as the constant discriminatory attitudes and practices they encounter in day-to-day life. This evidence was highly

relevant to the determination regarding an IFA. The Applicant relies on *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1425 (QL), where at paragraph 17 Justice John Evans of this Court states:

However, the more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact "without regard to the evidence": *Bains v. Canada (Minister of Employment and Immigration)* (1993) 63 F.T.R. 312 (F.C.T.D.).

The Respondent

RPD Did Not Fail to Assess Discrimination Claim

[35] In the Respondent's view, the transcript demonstrates that the Applicant fears being a single widow in Pakistan because, if she has no male protector and no one to care for her, she will face discrimination. However, according to the evidence, her claim is unfounded because she has an IFA. Were she to return to Karachi to live in the home of her grand-daughter, the grand-daughter's husband would provide the male protection she needs. Moreover, the family could hire a caregiver to look after her in the daytime when her daughter and grand-daughter are working. In ignoring this evidence, the Applicant has misconstrued the facts. The Applicant stated that she will not accept a hired caregiver, but that refusal is rooted in her fear that the caregiver will harm her. However, the RPD found that this fear is speculative. Moreover, the Applicant's fear of crime is a generalized fear that all people in Pakistan face. To qualify as a Convention refugee, however, the Applicant must show that the harm she faces is personalized. See *Prophète v. Canada (Minister of Citizenship and Immigration)*, 2009 FCA 31.

[36] The Respondent argues that the Applicant's allegation that she "meets the profile of a category of people who suffer persecution"—that is, widowed women in Pakistan—is "insufficient." The Applicant must adduce evidence that she faces this risk of persecution and, in this case, she has not. See *Ward*, above, at paragraphs 47 and 61.

[37] Section 96 serves a limiting function. As Justice Michel Beaudry observed in *Castro v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1282 at paragraph 25:

It is trite law that for an applicant to succeed on a refugee claim under section 96 of *IRPA*, the claimant cannot only show that they have suffered or will suffer persecution in their country of origin. This persecution must also be linked to one of the Convention grounds set out in the definition of refugee pursuant to subsection 2(1) of the Act. As explained in *Canada (Attorney General) v. Ward*, at paragraph 61:

... the drafters of the Convention limited the included bases for a well-founded fear of persecution to "race, religion, nationality, membership in a particular social group or political opinion". Although the delegates inserted the social group category in order to cover any possible lacuna left by the other four groups, this does not necessarily lead to the conclusion that any association bound by some common thread is included. If this were the case, the enumeration of these bases would have been superfluous; the definition of "refugee" could have been limited to individuals who have a well-founded fear of persecution without more. The drafters' decision to list these bases was intended to function as another built-in limitation to the obligations of signatory states....

The Applicant claims he has a well-founded fear of a group of individuals involved in money laundering on the basis of being a victim of crime. This does not fall under one of the enumerated categories of the Convention refugee definition and as such, the Board's decision in this regard is reasonable.

[38] The Applicant relies on *Viafara*, above, to argue that the RPD was obliged to consider her discrimination claim; however, that case is distinguishable. In *Viafara*, there was factual evidence to support the Applicant's well-founded fear of persecution. In the instant case, there is not.

[39] Similarly, the Applicant relies on *Racz*, above, to demonstrate that victims of crime can be classified as Convention refugees. That case, too, is distinguishable. It involved a motion for a stay of removal, which represents a much lower threshold as to what constitutes reviewable error.

Applicant Has an IFA

[40] The Respondent argues that, under section 97 of the Act, an applicant in need of protection must establish that the risk of harm extends to every part of their country of origin. If they can find protection anywhere in that country, they are expected to avail themselves of all reasonable options before seeking refuge in Canada. See *Morales v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 216 at paragraph 6.

[41] The RPD's finding that the Applicant would not be at risk of harm from her neighbour and her tenant if she were to move to Karachi was reasonable. The suggestion that a caregiver could be hired to care for her during the day in her grand-daughter's house also was reasonable.

ANALYSIS

[42] In counsel's submissions before the RPD he clearly asked that the Applicant's gender-based claim be considered. As well as referring to documentary evidence on discriminatory practices in Pakistan against women, counsel also highlighted the Applicant's personal situation:

Being a woman, being alone attracts threats, attracts attacks. Women alone cannot live in Pakistan according to the Refugee Protection Division index. Women alone are vulnerable in Pakistan according to the Refugee Protection Division index.

She does not have her husband, brothers or sons in Pakistan. According to the Refugee Protection Division index, male patronage are (*sic*) the basis of the mere existence of women in Pakistan. Without male family members, women in Pakistan are almost dysfunctional.

I submit Madam Chair, that this is a gender based claim. It does attract, I submit Madam Chair, section 96 as well as 97 of the *Immigration and Refugee Protection Act*. I submit that she should be accepted as a Convention refugee and/or person in need of protection.

[43] The Applicant came to Canada to visit her daughter who was going to have a baby. While in Canada she was diagnosed with cancer and has been receiving treatment. Naturally, now that she is sick, she does not want to go back to Pakistan, and she says that she fears living alone there because she is sick, elderly, and female.

[44] The Applicant's fears, and her desire to stay in Canada, are entirely understandable. But do these fears make her a Convention refugee? The only way that she can suggest she qualifies is by

virtue of the fact that, in Pakistan she would be a sick and elderly woman, living alone, and that similarly situated persons are discriminated against in Pakistan.

[45] So I accept that the RPD was asked to consider a gender-based claim and that the RPD was provided with the grounds for such a claim as they related to the Applicant's personal circumstances and to similarly situated persons. The Applicant is advancing in years, she is sick, she has no obvious male protector, and she is vulnerable. She also says that she fears her former neighbour and her tenant who have taken over her house and threatened her. Obviously, then, her ability to obtain protection in Pakistan should she return is at issue.

[46] In its Decision, the RPD found that the Applicant's fears concerning the SSP were not credible. This was a reasonable finding, given the evidence.

[47] The RPD's findings on nexus to a Convention ground is also based upon its conclusions that the Applicant had no subjective or objective fear of political persecution from the SSP because her fears of Ali Basit, her neighbour, and Javaid Akhtar, her tenant, were fears of criminal activity. The RPD also found that she feared generalized crime if she were to move to Karachi to live with her daughter and grand-daughter.

[48] It is possible that the RPD erred in so easily dismissing the Applicant's claim that she is a Convention refugee for the simple reason that the Applicant fears "generalized crime ... and, as

such, she has failed to establish a nexus or link to the definition of a Convention refugee on one of the five enumerated grounds”

[49] In *Dezameau v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 559, the RPD rejected the female Haitian applicant’s section 96 claim of gender-based persecution, having found that she had not been a victim of any attack based on being a woman and that, although there was violence against women in Haiti, the risk the applicant faced was not a risk based on her gender but rather a risk faced by all citizens due to the violence in that country.

[50] In that case, Justice Yvon Pinard held that the tribunal had erred in finding that a general risk of harm precluded the applicant’s claim of gender-based persecution. He further held that the tribunal erred in finding that rape was not a gender-related risk in Haiti or that rape was a general risk faced by all Haitians. Finally, the tribunal failed to conduct a proper inquiry into the applicant's claim as it did not consider the applicant's risk of rape due to her membership in a particular social group: women returning to Haiti from North America. At paragraphs 19, 23 and 29, Justice Pinard stated:

19 Since the applicant claimed that she feared that as a woman she would be targeted for rape in Haiti, the Board is expected to have considered the evidence with respect to her membership in a particular social group, namely women in Haiti or more specifically, Haitian women returning to Haiti from abroad. Failure to evaluate the evidence in this way constitutes a reviewable error: *Bastien v. Minister of Citizenship and Immigration*, 2008 FC 982. In *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, at paragraph 70, the Supreme Court of Canada explicitly recognized that gender can provide the basis for a “social group”.

[...]

23 In my opinion, the error of the Board was to use its finding of widespread risk of violence to rebut the assertion that there is a nexus between the applicant's social group and the risk of rape. Contrary to the respondent's submissions, a finding of generality does not prohibit a finding of persecution on the basis of one of the Convention grounds.

[...]

29 This is not to say that membership in a particular social group is sufficient to result in a finding of persecution. The evidence provided by the applicant must still satisfy the Board that there is a risk of harm that is sufficiently serious and whose occurrence is "more than a mere possibility".

[51] At paragraph 39, Justice Pinard went on to say that, following a determination that there is more than a mere possibility of harm occurring, the tribunal should consider the availability of state protection.

[52] According to *Dezameau* then, whether or not the Applicant would have been able to make out her section 96 of the Act is beside the point: "The Board is expected to have considered the evidence with respect to her membership in a particular social group."

[53] As the Applicant in the instant case argues at paragraph 5 of her Memorandum, there is documentary evidence to support her assertions that, as a member of her particular social group, she faces discrimination and may also have difficulty securing state protection against discrimination and/or persecution. Police are at times implicated in rape cases, and they often abuse and threaten female detainees. Single and/or widowed women living alone are especially vulnerable. Clearly, should she return to her house in Lahore, the Applicant will find herself within that social group. In

fact, she will be even more vulnerable than others in her group because she is sick. As the Applicant states, women count on a male protector for their safety.

[54] It is true that the RPD does not specifically characterize her claim as gender-based, but my reading of the Decision is that the RPD identified the Applicant's real fears, rejected that aspect of her claim that was based upon the criminal activities and threats of Ali Baset and Javaid Akhtar, and then dealt with her fears of being elderly, female and alone by concluding she has an IFA that would resolve those fears and that would also place her beyond the reach of Ali Basit and Javaid Akhtar. In my view, then, the RPD's failure to characterize and address the Applicant's claim specifically as a gender-based claim is not fatal to the Decision, provided the RPD's IFA analysis addressed her gender-based fears.

[55] The issue, then, is whether the RPD's answer to the Applicant's gender-based claim is subsumed in the RPD's IFA analysis and whether that analysis was reasonable.

[56] The RPD says in paragraph 11 of its Decision that the

panel finds that the claimant does not have a well-founded fear of persecution for any of the five grounds. Therefore, the panel will analyze the claim at hand within the framework of ss. 97(1)(b) of the *IRPA* and consider whether the claimant would be subjected personally to a risk to life, to a risk of cruel and unusual treatment or punishment or to a danger of torture, if she was to return to Pakistan.

[57] After saying this, the RPD then launches into its IFA analysis. At this point it seems clear that the RPD is considering an IFA only from the perspective of section 97 risk. At paragraph 14 of

the Decision, however, the RPD says that, with respect to the first prong of the IFA test set out in

Rasaratnam v. Canada (Minister of Employment and Immigration), [1992] 1 F.C. 706 (C.A.):

the panel finds that there is not a serious possibility of persecution, or risk to life, or to cruel and unusual punishment for the claimant if she were to return to Karachi, Pakistan. There is no evidence that Ali Basit or Javaid Akhtar would persecute the claimant or have the claimant persecuted if she were to move to Karachi. In fact, this is what the claimant alleges they want, for the claimant to leave her home to them.

[58] So there is some confusion here. Having ruled out a section 96 claim, and having said that its analysis will address paragraph 97(1)(b) of IRPA, the RPD then goes on to rule on IFA from the perspective of persecution and section 97 risks. I think it is clear from the Decision as a whole that the RPD regarded its IFA analysis as being applicable to any section 96 claim the Applicant might raise, even if it does not accept that she had established persecution.

[59] The RPD's findings on IFA seem to assume that all of the Applicant's problems will be solved if she moves to Karachi to live with her grand-daughter and her daughter. There was evidence that the grand-daughter has a husband and, if the full context of the transcript is taken into account, I think we can reasonably assume that he is a mature male because the grand-daughter appears to have lived in a house with her husband before her mother went to live with them and both women go out to work in an office all day.

[60] At the hearing, however, Applicant's counsel posed the following question to the Applicant and received the following answer:

Counsel: My question was, will your granddaughter's husband keep you in their house if you go back to Pakistan?

Claimant: Their house only has one bed. Other people sleep on the floor.

[61] It is never clarified by the RPD or Applicant's counsel whether the Applicant could reside at the grand-daughter's house and count on the protection of the husband. However, as the Federal Court of Appeal made clear in *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589 at paragraph 12, once a claimant is warned that an IFA will be raised, the onus is on the claimant to demonstrate that it would be unreasonable to require the claimant to move. The transcript shows that the Applicant does not wish to go to Karachi and that she has continuing fears (of servants, in particular) if she is taken into her grand-daughter's household, but she does not really substantiate these fears or demonstrate that it would be unreasonable to require her to go to Karachi and live with her family there.

[62] If the Applicant avails herself of the IFA in Karachi, she will be removed from her particular social group, in that she will no longer be alone without a male protector. She will reside with her grand-daughter and the grand-daughter's husband, and she will have a male protector. This is a solution that goes to the heart of her fear in returning to Pakistan. With a male protector, there is no serious possibility of the claimant being persecuted. True, she will still be elderly, sick and widowed, but she would be that if she remained here in Canada. Also, she would enjoy better medical care here, but subparagraph 97(1)(b)(iv) of the Act precludes claims based on inadequate health care in the country of origin.

[63] Although the Applicant believes that her safety will be at risk if she is left alone with servants during the day, the RPD found that this is mere speculation and a generalized risk.

[64] With respect to the viability of the IFA, the Decision dedicates five paragraphs (12-16) to this issue. It sets out the test from *Thirunavukkarasu* and applies it to the facts. First, it finds that there is no serious possibility of the applicant being persecuted in the proposed IFA; she would not face persecution at the hands of Ali Basit and Javaid Akhtar, either directly or indirectly, should she relocate to Karachi. She would not be persecuted as a member of her particular social group because she would not be alone and would have a male protector. Second, the RPD finds that it would be reasonable for the Applicant to live in Karachi: “She can safely fly there and live with her daughter and granddaughter ... and she would not face a linguistic or cultural change.”

[65] All in all, then, I do not think that the IFA analysis can be considered unreasonable. The fears and risks raised by the Applicant were fully addressed. Both her gender-based claim under section 96 and her section 97 claim –were based upon her fear of being an elderly and vulnerable single woman in Pakistan – were met by pointing out to her that she has a viable and reasonable IFA in Karachi.

[66] Whether the Applicant will actually go to Karachi is another issue. She is sick and undergoing treatment. We are dealing here with her section 96 and section 97 claims only. There are other avenues available to the Applicant if she wishes to remain in Canada.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. The application is dismissed.
2. There is no question for certification.

“James Russell”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-630-10

STYLE OF CAUSE: MUMTAZ BEGUM

Applicant

- and -

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 26, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** HON. MR. JUSTICE RUSSELL

DATED: January 6, 2011

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