Federal Court  Cour fédérale

Date: 20110118

Docket: IMM-4434-09

Citation: 2011 FC 51

Ottawa, Ontario, January 18, 2011

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

LAILA HAKIMI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant is a citizen of Afghanistan. Her sister and four of her sister's friends sponsored her, her husband, and their six children to come to Canada as members of the Convention refugees abroad class or country of asylum class.

[2] The applicant and her family fled from Afghanistan to Pakistan in 2001, shortly before the end of the Taliban regime. They have been living in Pakistan as refugee claimants without legal status.

[3] The private sponsorship undertaking was approved on January 8, 2007, and forwarded to the Canadian High Commission in Islamabad for processing. On June 24, 2009, an immigration officer interviewed the applicant and her family. Upon the conclusion of the interview they were informed that they did not meet the requirements of the applicable classes and that the application was denied.

[4] The applicant asks the Court to set aside that decision. For the reasons that follow, I find that the officer made no error of law and that the decision was not unreasonable. Therefore, this application must be dismissed.

[5] Section 147 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 defines the country of asylum class as follows:

147. A foreign national is a member of the country of asylum class if they have been determined by an officer to be in need of resettlement because	147. Appartient à la catégorie de personnes de pays d'accueil l'étranger considéré par un agent comme ayant besoin de se réinstaller en raison des circonstances suivantes :
(a) they are outside all of their countries of nationality and habitual residence; and	a) il se trouve hors de tout pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle;
(b) they have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in each of those countries.	b) une guerre civile, un conflit armé ou une violation massive des droits de la personne dans chacun des pays en cause ont eu et continuent d'avoir des conséquences graves et personnelles pour lui.

[6] In this case, the officer was not satisfied that "you and your family remain seriously and personally affected by the conflict in Afghanistan." Specifically, he found that:

> Your reasons for wanting to immigrate to Canada are linked to the lack of education and employment opportunities. They are not linked to a state of continuing to be seriously and personally affected by armed conflict, civil war or massive violation set of human rights.

[7] The applicant submits that she was denied natural justice because the officer failed to consider all of the evidence before him. The applicant asserts that the officer had formed the view that she did not meet the country of asylum class requirements prior to interviewing the applicant and her family, and then failed to properly consider all of the evidence or ask proper questions, which, it is submitted, would have led him to a contrary conclusion.

[8] The CAIPS notes of the officer indicate that following his review of the application he formed the view that: "REASONS FOR FLEEING WERE LINKED TO THE FACT THAT PA [Principal Applicant] AND SPOUSE WERE UNABLE TO FIND DECENT EMPLOYMENT AND THE LIMITED EDUCATIONAL OPPORTUNITIES FOR THEIR CHILDREN. REASONS FOR NOT WANTING TO RETURN APPEAR LINKED ONLY TO LIMITED EMPLOYMENT PROSPECTS AND EDUCATIONAL OPPORTUNITIES."

[9] I have reviewed the applicant's written application and must conclude that the officer's initial assessment of the information provided by the applicant was correct. In fact, at the hearing applicant's counsel conceded as much. Nonetheless, the applicant submits that there was evidence apart from the applicant's formal application and her statements made at the interview which supported her application. Specifically, the applicant relies upon a document issued by the United

Nations High Commissioner for Refugees in December 2007, *Eligibility Guidelines for Assessing the International Protection of Needs of Afghan Asylum-Seekers* and the UK Border Agency's *Country of Origin Information Report: Afghanistan.*

[10] The applicant submits that these documents provide guidance regarding the correct approach to analyzing asylum applications. The documents say that it is necessary to include a full picture of the asylum-seeker's background and personal circumstances, and that in 2008 and 2009 Afghanistan continued to be confronted by serious human rights challenges, in particular against women and girls.

[11] Contrary to the vigorous submissions of applicant's counsel, the record does not indicate that the officer misunderstood or misconstrued the evidence or made his decision based on erroneous findings of fact or in a perverse or capricious manner. Rather, he came to his decision on the basis of all of the evidence presented by the applicant and his decision was reasonable.

[12] The applicant says that she assumed that the officer would be familiar with present conditions in Afghanistan and that there was no need for her to describe the human rights abuses, the war, and the discrimination against women and girls in Afghanistan. She submits that if this was the gravamen of the decision, then he had a duty to specifically question her as to whether these were her concerns. I am unable to accept that submission. It is not a requirement in Canadian law that the officer make the specific inquiries that the applicant suggests he was under a duty to ask. As Justice Rothstein explained in *Paramanantham v Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 1237 (T.D.), at para. 3:

> The onus is on the applicants to establish their claim to Convention refugee status. It is not on the visa officer to canvass possible bases for such a claim in the absence of any indication by the applicants of any ground for seeking Convention refugee status in Canada. Applicants' counsel says that the visa officer should have known that Tamils from the north of Sri Lanka have been subjected to persecution there. However, if the applicants were subjected to persecution in the north of Sri Lanka because they were Tamils, or if they were of the view that they would experience such persecution for that reason, they would have said so in their application. There is no presumption of persecution.

[13] It would only be if the country conditions in Afghanistan were such that every person, or every female, was “seriously and personally affected by civil war, armed conflict or massive violations of human rights” that the applicant’s submission might be persuasive. Unfortunately for the applicant the documents she relies on do not establish that pervasive level of discrimination.

[14] The duty is upon an applicant to establish that he or she meets the conditions set out in the relevant legislation. An applicant cannot assume, as this applicant says she did, that the interview is *pro forma* and that the application will be approved. An applicant must present all of the evidence upon which he or she relies, and cannot complain when, as in this case, the decision is made based on the evidence presented.

[15] Neither party proposed a question for certification, and I find that there is no question to be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed and no question is certified.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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