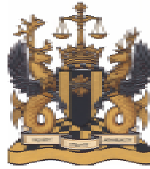
Federal Court  Cour fédérale

Date: 20111201

Docket: IMM-2034-11

Citation: 2011 FC 1395

Ottawa, Ontario, December 1, 2011

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

HASSAN SHAKIL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

<u>REASONS FOR JUDGMENT AND JUDGMENT</u>

[1] The applicant, Hassan Shakil, is a citizen of Pakistan. He seeks judicial review under section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”) of the decision made on February 22, 2010, by a Pre-Removal Risk Assessment (“PRRA”) officer, that there was insufficient evidence that the applicant would be at risk if returned to Pakistan.

[2] For the reasons that follow, the application is dismissed.

BACKGROUND

[3] Mr. Shakil is a Shia Muslim and a Mohajir, that is a member of the community that migrated from India to Pakistan following partition. In 1982, he moved to Bahrain for work. In 1994, while still in Bahrain, he joined the Haqiqi Mohajir Qaumi Movement ("MQM-H") as a local coordinator. The MQM-H is a splinter group which broke off from the main Mohajir movement, now known as the Muttahida Quami Mahaz or MQM-Altaf. He says that his participation attracted the attention of rival political and religious groups, including the MQM-Altaf, and that he received threats from Pakistan while he was in Bahrain.

[4] In September 1998, the applicant intending to migrate to the USA, went to Pakistan to sell his property. In Pakistan, he says that members of the MQM-Altaf searched for him at his father's house and that shots were fired into the door. He says the police refused to register his complaint about the incident. He travelled to the United States in October 1998.

[5] In 2003 the applicant moved to Canada due to changes in United States policy. He applied for refugee status. The applicant was deemed to be inadmissible due to his membership in the MQM-H as it was considered to be an organization that there are reasonable grounds to believe engages, has engaged or will engage in terrorism following a hearing before the Immigration Division in March 2009. During the hearing, the applicant testified that his work as a coordinator for MQM-H in Bahrain consisted of little more than arranging venues and food for meetings. He was

then deemed ineligible to claim refugee status as a person described in subsection 112 (3) of the IRPA.

[6] The applicant submitted a PRRA application in June 2009 and received a negative decision in August 2009. Judicial review of that decision was granted and the matter sent back for reconsideration: *Shakil v Canada (Minister of Citizenship & Immigration)*, 2010 FC 473. Justice Campbell found that the officer had failed to take into consideration a June 17, 2009 letter from one Arif Dawood, Coordinator of the Dawood Khursheed Memorial (International) Foundation ("the Dawood letter"), describing the situation in Karachi and stating, in particular, that no government or non-government organization would be able to provide security to Mr. Hassan in Pakistan "as the situation is quite volatile and challenging".

[7] Additional written representations were provided to the PRRA officer in June 2010. In his submissions, the applicant said he associated with the MQM-H to be protected from Sunni extremists. He submitted that he was at risk from both the MQM-A and the Sunni extremists notwithstanding that he did not play a high role in the MQM-H and that the risk factors affected the country at large.

DECISION UNDER REVIEW

[8] The officer found that the determinative issue was the presumption of state protection. The officer acknowledged that there was considerable sectarian violence in Pakistan and noted that "the government and private agencies are addressing the situation". The officer cited two documents: the United States Department of State, 2009 Human Rights Report for Pakistan; and the United

Kingdom Border Agency, Country of Origin Report for Pakistan dated January 17, 2011. The latter report contains several references to other reputable sources such as Human Rights Watch, Amnesty International, Jane's Information Group, and the Human Rights Commission of Pakistan. These documents summarized the poor human rights situation in Pakistan, the problem of police corruption, the government security measures in place and their ineffectiveness in certain area of the country, and the violence perpetrated against minorities (including Mohajirs and Shia Muslims).

[9] The officer also considered the Dawood letter and news reports from the Internet submitted by the applicant. The officer found that the letter had little probative value as the author did not provide any information to establish his expertise with respect to sectarian violence. The officer also found that the news reports, while emphasizing violence against MQM-H members, only referred to generalized violence and not personalized violence.

[10] The officer concluded that the applicant did not submit sufficient evidence to prove that he would still be at risk in Pakistan due to his membership in the MQM-H more than 12 years ago, or that he would be perceived to be a member after his lengthy absence from Pakistan. The officer acknowledged that the overall human rights in Pakistan was poor but concluded that the unfavourable conditions were faced by the population as a whole and were not directed at any one group. The officer concluded that the government's efforts were adequate if not perfect and that the applicant had failed to rebut the presumption of state protection.

ISSUE

[11] The sole issue is whether the officer erred in the determination that adequate state protection would be available to the applicant in Pakistan.

ANALYSIS

[12] The jurisprudence has established that the standard of review for issues of state protection is reasonableness: *Mendez v Canada (Minister of Citizenship & Immigration)*, 2008 FC 584. The standard of reasonableness is described at paragraph 47 of *New Brunswick (Board of Management) v Dunsmuir*, 2008 SCC 9:

> […] A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[13] The burden was on the applicant to adduce clear and convincing evidence to satisfy the officer, on a balance of probabilities, that adequate state protection would not likely be available to him if he was required to return to his country of origin (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at paras 48-51; *Hinzman v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171, at para 54; *Canada (Minister of Citizenship and Immigration) v Flores Carrillo*, 2008 FCA 94, at para 30 [*Carrillo*]). In this instance, the applicant failed to satisfy the officer that he had rebutted the presumption; a finding to which this Court must give considerable deference applying the reasonableness standard.

[14] The applicant submits that the evidence relied upon by the officer contradicts the finding that state protection would be available to him in Pakistan. The applicant does not contend that the

officer ignored the country documentation but argues that the finding that adequate protection would be available to him ignores the evidence of politically targeted violence in Pakistan. He contends that his past involvement in the MQM-H, known to his political rivals, would put him at risk. It is not argued that the officer failed, on this occasion, to take the Dawood letter into consideration.

[15] The respondent contends that the real basis for the decision was the lack of evidence of personalized risk. The risk he would face is of a generalized nature inherent to the conditions in Pakistan, and not because he engaged in political activities in another country more than 12 years previously.

[16] The applicant submits that the finding of state protection was determinative and it is immaterial that the officer may have made a finding that the applicant would not be at personalized risk because of the passage of time and the fact that his political activities took place outside of Pakistan.

[17] I agree with the applicant that there are questionable aspects to the officer's state protection findings. Many of the sources referred to by the officer state that the effectiveness of the security forces varies from reasonable to ineffective, that abuses are frequently unpunished, that there is rampant corruption in the police, that the police are ineffective at quelling sectarian and ethic violence and that the security situation is getting worse. The officer's assertions that "Pakistan is a democracy possessing political and judicial institutions capable of protection its citizens" and that

the country "is governed by the rule of law" are debatable in light of the challenges facing that country.

[18] Even if I were to conclude that the officer had erred in the assessment of the availability and adequacy of state protection in Pakistan, it is clear from the decision, read as a whole, that the officer found that the applicant would not face the personalized risks contemplated by s. 97 of the IRPA if returned to his country of origin. The officer stated his conclusions in this regard in the following terms at page 9 of his decision:

> While the applicant provided an account of his troubles because of his ties to MQM-H between 1994 and 1998, he has not provided sufficient evidence of his current ties or activities, if any, to the MQM-H. I do not find that the applicant has provided sufficient objective evidence to demonstrate that he would be targeted for his membership in the MQM-H that occurred 12 years ago or that he would be perceived to be a member after a 12 year absence from Pakistan. There is insufficient evidence before me to conclude that the applicant's former political affiliation will put him at risk of torture, risk to life, or risk of cruel and unusual treatment of punishment in Pakistan.

[19] The finding that state protection was available was a "secondary" or "subsidiary ground" for considering the applicant's claim for protection as it is characterized at paragraphs 14 and 15 of *Carillo*, above. The primary ground was whether, on the basis of an individualized consideration of the evidence, the applicant faced a present or prospective risk under one or more of the heads of risk set out in s. 97: *Prophète v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 31 at para 7.

[20] Here the evidence adduced by the applicant was that persons described as workers or leaders of the MQM-H continued to face a risk of injury and death as a result of the continuing sectarian violence in Pakistan. It was open to the officer to conclude that the applicant would no longer be at

risk of being targeted because of the passage of time or perceived to be a present member of the organization.

[21] The officer's finding that the applicant did not face such a risk fell within a range of acceptable outcomes defensible on the facts and the law and the reasons provided were transparent and intelligible. The decision is, therefore, reasonable applying the standard enunciated in *Dunsmuir*, above.

[22] No serious questions of general importance were proposed by the parties and none will be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. No questions are certified.

"Richard G. Mosley"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2034-11
STYLE OF CAUSE:	HASSAN SHAKIL and THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	October 31, 2011
REASONS FOR JUDGMENT AND JUDGMENT:	MOSLEY J.
DATED:	December 1, 2011

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