

Federal Court



Cour fédérale

Date: 20120322

Docket: IMM-4275-11

Citation: 2012 FC 352

Ottawa, Ontario, March 22, 2012

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

QADIR EMAL

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] On April 8, 2011, an Immigration Officer at the Canadian High Commission in Islamabad, Pakistan (the Officer), rejected the applicant's application for permanent residence under the humanitarian and compassionate (H&C) protected persons class. The Officer predicated her decision on the failure of the applicant to establish his identity together with concerns as to his credibility.

[2] The applicant contends that the Officer's decision was unreasonable, both in respect of identity and credibility. For the reasons that follow, the application is dismissed.

[3] As I find the decision with respect to identity to be sound the challenge to the credibility findings need not be addressed. If the applicant could not prove his identity on a balance of probabilities the Officer was not required to consider the claim any further: *Ghirmatsion v Canada (Minister of Citizenship and Immigration)*, 2011 FC 519, at para 64.

[4] The applicant stated that he was a citizen of Afghanistan. He alleged that his biological parents were killed in a bombing when he was very young; that he was raised by his adoptive family, although they never formally adopted him; and that he fled Afghanistan with his adoptive family in 1997, fearing the Taliban. The applicant's adoptive family came to Canada through private refugee sponsorship. In 2002, the applicant went to Iran with his biological brother, Mahmood. Both eventually returned to Pakistan and applied for permanent residence through private sponsorship. However, the applicant's brother Mahmood was killed in the floods in Pakistan in 2010. His adoptive brother Eshpoon, in conjunction with the Canadian Afghan Women's Organization, sought to sponsor his entry to Canada.

[5] The Officer interviewed the applicant on November 9, 2010. The Computer Assisted Immigration Processing System (CAIPS) notes of that interview reflect the Officer's concerns with respect to the applicant's identity:

- a. The applicant stated his whole family was Tajik, but the family in Canada had Pashtoon names.

- b. The applicant did not note in his application that his parents were not his biological parents.
- c. The applicant's family in Canada did not list the applicant and Mahmood as members of their family in their applications (the Officer only mentions the applications of the applicant's parents and sisters).
- d. The applicant had no identity documents.

[6] The Officer put these concerns to the applicant, as well as her observation that he was well-dressed for a market vendor. She recorded his response:

He states, why would they sponsor me if I wasn't their son?
Applicant says he likes to wear good clothing. Says he wants to build a good life for himself. Applicant says that police stop him but he gives them bribes.

[7] The Officer found that the applicant's responses did not allay her concerns and therefore, by letter dated April 8, 2011, rejected the application. The letter reproduced the concerns noted above with respect to identity along with other concerns with respect to his credibility.

Issue

[8] The applicant contends that the Officer ignored or misinterpreted the evidence regarding the applicant's identity and family composition, in particular the fact that he had been included in his brother Eshpoon's application for permanent residence in Canada.

[9] This is an accurate formulation of the precise issue joined before the Court, but it is situated in the larger context of the applicable standard of review as to whether the Officer's decision was reasonable.

Analysis

[10] While I have concerns regarding some of the Officer's credibility determinations, I agree with the respondent that the decision in respect of identity is reasonable and therefore the application must be dismissed. Parliament has established identity as a mandatory threshold requirement the onus of which lies on the applicant to establish. Section 11 and section 16 of the *Immigration and Refugee Protection Act, SC 2001, c 27 (IRPA)* provide:

Application before entering Canada

11. (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.

If sponsor does not meet requirements

(2) The officer may not issue a visa or other document to a foreign national whose sponsor does not meet the sponsorship requirements of this Act.

Obligation — answer truthfully

16. (1) A person who makes an

Visa et documents

11. (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.

Cas de la demande parrainée

(2) Ils ne peuvent être délivrés à l'étranger dont le répondant ne se conforme pas aux exigences applicables au parrainage.

Obligation du demandeur

16. (1) L'auteur d'une demande au titre

application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.	de la présente loi doit répondre véridiquement aux questions qui lui sont posées lors du contrôle, donner les renseignements et tous éléments de preuve pertinents et présenter les visa et documents requis.
Obligation — relevant evidence	Éléments de preuve
(2) In the case of a foreign national, (a) the relevant evidence referred to in subsection (1) includes photographic and fingerprint evidence; and (b) the foreign national must submit to a medical examination on request.	(2) S'agissant de l'étranger, les éléments de preuve pertinents visent notamment la photographie et la dactyloscopie et il est tenu de se soumettre, sur demande, à une visite médicale. Établissement de l'identité
Evidence relating to identity	(3) L'agent peut exiger ou obtenir du résident permanent ou de l'étranger qui fait l'objet d'une arrestation, d'une mise en détention, d'un contrôle ou d'une mesure de renvoi tous éléments, dont la photographie et la dactyloscopie, en vue d'établir son identité et vérifier s'il se conforme à la présente loi.
(3) An officer may require or obtain from a permanent resident or a foreign national who is arrested, detained or subject to a removal order, any evidence — photographic, fingerprint or otherwise — that may be used to establish their identity or compliance with this Act.	

[11] I turn to the three specific challenges to the decision with respect to identity.

[12] The Officer noted that the applicant presented no identity documents and concluded that it was not plausible for him to have no documents after living in Pakistan for many years, and having transited Iran. It was also open to the Officer to reject the explanation offered by the applicant when questioned on this point; namely that he bribes the police when asked for identity documents. This

conclusion was reasonably open to the Officer, as she is permitted to make findings of implausibility based on rationality and common sense.

[13] Second, the applicant submits there was in fact evidence of the applicant's identity before the Officer; his application, the letter of support from the Afghan Women's Organization and the application of his brother Eshpoon confirming his identity. In my view, however, the presence of these documents does not render the Officer's conclusion unreasonable. It was reasonable for the Officer to expect that, given the applicant's travel history from Afghanistan to Pakistan, then to Iran and back to Pakistan, he would at some point have acquired some identification. Thus, the conclusion based on the failure to establish his identity was reasonable and there is no basis for the Court to intervene: *Alakozai v Canada (Minister of Citizenship and Immigration)*, 2009 FC 266, at para 26. Moreover, the failure of both his parents and sisters to list him as their son and brother reasonably played a role in the Officer's decision. It must be remembered that the onus rests on the applicant to establish his identity.

[14] Third, issue is taken with the decision letter wherein the Officer stated that she reviewed the applications situated in the registry of the High Commission of "the persons you say are your parents and your siblings, and you are nowhere identified." The applicant contends this was only true for the applicant's adoptive parents and sisters; his brother Eshpoon did list the applicant in his application. Since all the applications, including Eshpoon's, were before the Officer, it was not open to her to refer only to the applications that confirmed her conclusion and ignore the one that contradicted it.

[15] I agree with the applicant that it was an error to consider only the four applications that failed to include the applicant and disregard the one application that did include him. However, given the Officer's reasonable finding that the applicant had failed to credibly explain his complete lack of identity documents the decision can be upheld on this finding alone, and therefore the error regarding Eshpoon's application does not affect the outcome.

[16] The application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review be and is hereby dismissed. No question for certification has been proposed and none arises.

"Donald J. Rennie"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4275-11

STYLE OF CAUSE: QADIR EMAL v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto

DATE OF HEARING: February 16, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** RENNIE J.

DATED: March 22, 2012

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