Cour fédérale  Federal Court

Date: 20120525

Docket: IMM-3614-11

Citation: 2012 FC 645

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, May 25, 2012

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

ZAHIDA MUNIR

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the panel), rendered on April 29, 2011, wherein the panel concluded that the applicant was neither a refugee within the meaning of the *United Nations Convention Relating to the Status of Refugees* nor a person in need of protection, as these terms are defined in sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

I. Facts

[2] The applicant was born on October 15, 1951 and is a Pakistani citizen. She is of the Ahmadiyya faith, as is her husband and four children.

[3] The applicant claimed to be an active member of an Ahmadi religious organization called Lajna, for which she allegedly acted as secretary in charge of education for a local Ahmadi women's organization. As part of her activities for this organization, she held monthly meetings at her home during which the women in attendance could watch the Friday sermon of their Khalifa, exiled in London, the sermon being broadcast via parabolic antenna. The applicant also taught the Ahmadi version of the Quran to some children in the neighbourhood.

[4] In July 2007, the imam of the local Sunni mosque, Molvi Maqsood Ali (Imam Ali), allegedly told his followers that the applicant was organizing Ahmadi religious activities at her home and teaching the Ahmadi version of the Quran to Sunni children. He allegedly issued a fatwa against her. The next day, some hooligans destroyed her parabolic antenna while she was away, and the police refused to intervene on the pretext that it was a religious problem.

[5] On September 15, 2007, the Imam allegedly ordered the applicant to end her religious activities, under threat of retaliation. The following Friday, some hooligans allegedly shouted anti-Ahmadi slogans outside her home, while she and three other women were watching the Khalifa's sermon.

[6] The same tactic was allegedly repeated in the weeks that followed, and the Imam himself allegedly protested in front of the applicant's home with several other coreligionists. The women watching the Khalifa's sermon at the applicant's home allegedly had to be escorted out by their husbands for their protection.

[7] After talking to her daughter, who lived in Canada, the applicant decided to leave Pakistan and come to Canada to seek refuge. She arrived in Canada on November 20, 2007, and claimed refugee status a few days later, i.e. on December 1, 2007.

II. Impugned decision

[8] The panel was convinced that the applicant's statements were false and that her story was a fabrication. The panel considered the applicant's responses during her testimony to be evasive and implausible.

[9] The panel noted that, even before the applicant arrived in Canada, Citizenship and Immigration Canada had been informed by her ex son-in-law, i.e. on February 24, 2006, that the applicant was planning to apply for a visitor visa for Canada and then to claim refugee status. The panel noted that the applicant had not applied for refugee protection during her first visit to Canada in 2006, but had in fact filed such an application when she returned in November 2007. The panel acknowledged that the failed marriage of the applicant's daughter and her ex son-in-law could have created animosity, but observed that the ex son-in-law's prediction came true.

[10] The panel emphasized that the applicant had not provided any evidence that Imam Ali existed. The applicant was evasive and confused when questioned about the location of the mosque where the imam preached, and was unable to name the location.

[11] The applicant did not mention any involvement in a religious organization on her initial Personal Information Form (PIF). It was in an amendment to her PIF in December 2008 that she first declared she had been the secretary in charge of education for a local Ahmadi women's organization. The panel noted that she was unable to provide the first name of the president who had allegedly appointed her to the position, the names of the people who oversee the organization, the names of the other members of the organization or the names of the women who were at her home on October 14, 2007. The panel added that the applicant did not seem to know anything about the positions in the organization, except that of president, treasurer and the position she held.

[12] The panel took into account the fact that the applicant's family continued to live in the house after the applicant left, and that her daughter had even left Canada to go and live there. Furthermore, the advertising obtained by the panel from the Internet, boosting the advantages of the residential development where the applicant's home is located, described an affluent neighbourhood in Lahore; it was unlikely that religious extremists could intimidate residents or damage properties there, particularly since the police station is located at the corner of the street where the applicant lived. Her family is well off: the applicant's husband is a retired major of the Pakistan Army and one of her sons is a major presently serving. Thus, the panel was of the opinion that if the applicant's allegations were true, she could have availed herself of State protection.

III. Issues

[13] This application is for judicial review first and foremost of the panel's assessment of the applicant's credibility and of the issue as to whether the panel's conclusion in that respect is reasonable. The applicant also claimed that the panel breached the principles of procedural fairness by relying on an advertising folder obtained from the Internet about which she was not informed until the day of the hearing and was not given an opportunity to file rebuttal evidence, as provided for in Rule 18 of the *Refugee Protection Division Rules*, SOR/2002-228 (the *Rules*). I will deal with these two arguments in the following paragraphs.

VI. Analysis

(A) *Procedural fairness*

[14] It is settled law that any issue raising principles of procedural fairness is subject to the correctness standard of review *(CUPE v Ontario (Labour Minister)*, 2003 SCC 29, [2003] 1 SCR 539; *Canada (Attorney General) v Sketchley*, 2005 FCA 404, at paragraph 53, 263 DLR (4th) 113).

[15] The applicant submitted that the panel had breached the principles of procedural fairness and Rule 18 of the *Rules* by using its specialized knowledge about the residential development where she lived, without conveying its source of information to her prior to the hearing and without giving her an opportunity to submit rebuttal evidence. In fact, the day of the hearing, the panel gave the applicant's counsel a copy of the advertising folder describing such development as a "residential paradise, a cultural heartland and a land of endless opportunities" and a "secure idyllic community". The panel referred to the folder in its decision to conclude that the applicant's account was implausible.

[16] I cannot accept the applicant's argument for several reasons. First, I note that Rule 18 of the *Rules* requires a panel intending to use information to notify the claimant of refugee protection thereof, but does not specify any time frame for such notification. The rule reads as follows:

18. Before using any information or opinion that is within its specialized knowledge, the Division must notify the claimant or protected person, and the Minister if the Minister is present at the hearing, and give them a chance to	**18.** Avant d'utiliser un renseignement ou une opinion qui est du ressort de sa spécialisation, la Section en avise le demandeur d'asile ou la personne protégée et le ministre — si celui-ci est présent à l'audience — et leur donne la possibilité de :
(*a*) make representations on the reliability and use of the information or opinion; and	*a*) faire des observations sur la fiabilité et l'utilisation du renseignement ou de l'opinion;
(*b*) give evidence in support of their representations.	*b*) fournir des éléments de preuve à l'appui de leurs observations.

[17] It therefore does not appear essential for a party to be informed, prior to the hearing, that the panel will rely on information within its specialized knowledge. What is important is that a party can adequately assert his or her point of view on that information. That, moreover, is what my colleague Justice Gauthier concluded (when she was a member of this Court) in *Mercado v Canada (Minister of Citizenship and Immigration)*, 2010 FC 289 at paragraphs 57-58, 371 FTR 1:

> 57. In his first memorandum, the applicant referred to Rule 18 which, he says, applies in this case. This rule states that, before using any information or opinion that is within its specialized knowledge, the Division must notify claimants and give them a chance to make representations on the reliability and use of the information or opinion and to give evidence in support of their representations.

> According to the applicant, this unidentified, unsigned document in a package of immigration documents involving the applicant and his family does not meet the requirements of Rule 18.
>
> [58] It is certainly clear that the applicant cannot argue that the RPD did not inform him at the hearing about its concerns, which included those described above in the note at paragraph 54.

[18] The panel granted the applicant's counsel fifteen minutes at the hearing so that she could consult her client about the aforementioned advertising folder. Following that consultation, neither counsel nor the applicant objected to the use of the folder. The applicant therefore cannot claim that she was not given an opportunity to make representations in respect of such folder, and her attempt to undermine the weight thereof before this Court by arguing that it is merely an advertising document embellishing reality comes very late.

[19] Even if one were to assume that the panel erred by relying on the advertising document, that factor was not a determining one in the panel's decision. A breach of Rule 18 of the *Rules*, alone, is not sufficient to set aside the panel's decision if the other grounds raised to conclude that the applicant's account was implausible and non credible stand on their own (see *Kabedi v Canada (Minister of Citizenship and Immigration)*, 2004 FC 442 at paragraph 14, 131 ACWS (3d) 313; *Lin v Canada (Minister of Citizenship and Immigration)*, 171 FTR 289 at paragraph 21 and 23, 90 ACWS (3d) 116 (1st inst.)).

(B) *Lack of credibility*

[20] The assessment of credibility falls within the expertise of the panel. It consequently requires application of the reasonableness standard (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraphs

47, 51 and 53, [2008] 1 SCR 190 (*Dunsmuir*)). More recently, the Supreme Court of Canada reconsidered the role of the courts in reviewing decisions. It took the opportunity to indicate that reviewing courts must show deference:

> 15. In assessing whether the decision is reasonable in light of the outcome and the reasons, courts must show "respect for the decision-making process of adjudicative bodies with regard to both the facts and the law" (*Dunsmuir*, at para. 48). This means that courts should not substitute their own reasons, but they may, if they find it necessary, look to the record for the purpose of assessing the reasonableness of the outcome.
>
> [16] Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, [1975] 1 S.C.R. 382, at p. 391). In other words, if the reasons allow the reviewing court to understand why the panel made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.
>
> [Emphasis added]
>
> *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708.

[21] The applicant submitted several arguments in an attempt to show that the decision rendered by the panel was unreasonable. After carefully examining the panel record and hearing transcript, I cannot concur with the applicant's arguments.

[22] The panel based itself on the vague and imprecise nature of the applicant's testimony. As previously mentioned, she had a great deal of difficulty stating the location of Imam Ali's mosque, even thought she had lived in the same neighbourhood since 1996, and the last name of the Lajna organization's president, the different positions within the organization, the names of the other members of the organization, and the names of the people who were at her home when Imam Ali allegedly protested in front of her house.

[23] The panel was also entitled to draw an adverse inference from the late amendment she made to her PIF indicating that she was secretary of the Lajna organization, especially since she did not justify her failure to provide such information on her initial PIF.

[24] It is erroneous to claim that the panel disregarded the discrimination and persecution suffered by the Ahmadis in Pakistan. The panel mentioned at the outset that the organization to which Imam Ali belongs is known for targeting and persecuting the Ahmadis, and admitted that the applicant may well have been targeted by the Imam (Reasons, at paragraphs 2 and 9). An attentive reading of the transcript reveals that the panel was familiar with the situation experienced by the Ahmadis in Pakistan.

[25] It was, however, the applicant's responsibility to establish a link between the general situation of the Ahmadis and her personal fear, which she did not succeed in doing. In accordance with Rule 7 of the *Rules*, it is the applicant's responsibility to prove the allegations contained in her account. However, she did not discharge that burden. Not only was her account vague, but she did

not produce any documentary evidence establishing that Imam Ali exists or that the incidents reported occurred.

[26] As this Court has mentioned, the panel can raise the absence of relevant documentary evidence if it finds contradictions or inconsistencies in an applicant's testimony (*Meija v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1091 (available on CanLII)). Similarly, the presumption of truth attached to testimony under oath does not prevent the panel from assessing the applicant's credibility:

> It is true that an applicant's testimony must be presumed true unless there are valid reasons for rebutting that presumption (*Maldonado v. The Minister of Employment and Immigration*, [1980] 2 F.C. 302 at page 305 (C.A.)). That being said, it was open to the panel to question the applicant to assess his credibility. The presumption of truthfulness does not exempt an applicant's evidence from the panel's assessment. In other words, an applicant will be given the benefit of the doubt only to the extent that the panel is satisfied with the applicant's credibility and has examined all of the evidence. In that respect, the *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* specifies the following:
>
> > 203. . . . it is hardly possible for a refugee to "prove" every part of his case and, indeed, if this were a requirement the majority of refugees would not be recognized. It is therefore frequently necessary to give the applicant the benefit of the doubt.
> >
> > 204. The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The

> applicant's statements must be coherent and plausible, and must not run counter to generally known facts.
>
> *Morales v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 1496 at paragraph 20 (available on CanLII).

[27] The applicant claimed that the panel had erred by giving more weight to her ex son-in-law's denunciation than to her testimony under oath. Yet, the panel acknowledged that the applicant had not claimed asylum in Canada on the first opportunity that arose, that is in May 2006, and it agreed that the failure of a marriage can create animosity. It noted that the ex son-in-law's prediction nonetheless came true, and that a denunciation based on the intention to harm, as claimed by the applicant, does not necessarily mean that the denunciation was based on false information. Once again, the panel did not rely solely on such denunciation to rule out the presumption of truth, but concluded that it was one indication among others tending to show that the applicant had fabricated her story.

[28] The applicant also claimed that the panel made errors in its assessment of the evidence. For example, the applicant maintains that the panel established an erroneous link between her social status and the impossibility that she could be a victim of persecution. She also claims that the panel made factual errors by assuming that all the members of her family should be subject to persecution, and that some members of her family still lived in the family home.

[29] However, an attentive reading of the panel's reasons reveals that the panel dealt with the social status and financial resources of the applicant's family, not to preclude the possibility that she

was a victim of persecution, but rather to question her claim that she could not obtain any protection from the authorities. The panel wrote the following to that effect:

> 17. In addition the panel also finds it implausible that the claimant could not receive some form of police protection. The area that the claimant lived in is a very prosperous area and the security is provided by the military. The claimant's husband is a retired Major in the military and one of her sons is an active Major stationed in Rawalpindi.
>
> Reasons, at para. 17

[30] Furthermore, I cannot concur with the applicant's claims that the panel made an error of fact by presuming that the other members of her family also had to be subject to persecution and that it was therefore implausible that they could continue living in the family home in Lahore. It is true that the applicant could be more targeted because of her activities, but the panel was certainly at liberty to believe that all members of her family were vulnerable because of their Ahmadiyya faith and that it was therefore implausible that the applicant had to flee while some other members of the family still lived there. It is also true that in the amendment she provided to her PIF, she declared that no member of her family had lived in the residence in Lahore since she left. Yet, during her testimony, she clearly stated that one of her sons and her daughter lived there sometimes (panel's record, pp. 435-437).

[31] Ultimately, the applicant did not challenge the imprecise and implausible factors raised by the panel, but rather expressed her disagreement with its conclusions. Yet, the panel is the judge of facts, and is in a better position than this Court to assess the applicant's credibility, because it was able to see her and to hear her. Its decision is well-reasoned and based on numerous grounds, and although the panel did not determine each and every element of evidence submitted by the

applicant, its decision is nonetheless not vitiated (*Akram v Canada (Minister of Citizenship and Immigration)*, 2004 FC 629 at paragraph 15, 130 ACWS (3d) 1004).

[32] The ultimate question is not so much to determine whether the Court would have rendered the same decision or accepted all the applicant's elements of evidence, but rather to determine whether the decision falls within "possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, cited above, at paragraph 47). In this case, there is no doubt that the decision of the panel is reasonable.

[33] For these reasons, the application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Yves de Montigny"
Judge

Certified true translation
Monica F. Chamberlain

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Michel Le Brun	FOR THE APPLICANT
Margarita Tzavelakos	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Michel Le Brun Montréal, Quebec	FOR THE APPLICANT
Myles J. Kirvan Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT