

Federal Court



Cour fédérale

Date: 20121025

Docket: IMM-3729-12

Citation: 2012 FC 1244

Ottawa, Ontario, October 25, 2012

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

GUL ANDAM RASULI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms Gul Andam Rasuli, a citizen of Afghanistan, applied for permanent residence at the Canadian High Commission in Pakistan claiming to be a member of the Convention refugee abroad class and the country of asylum class. An immigration officer interviewed Ms Rasuli and her husband, and concluded that she did not qualify under either category. He found that Ms Rasuli's

concerns arose from a property dispute in Afghanistan and, therefore, rejected her application.

[2] Ms Rasuli raises numerous grounds for quashing the officer's decision but, essentially, she argues that the officer ignored evidence supporting her application and rendered an unreasonable decision. She asks me to overturn the officer's decision and order another officer to reconsider her application. I agree that the officer overlooked relevant evidence, which led him to reach an unreasonable conclusion that Ms Rasuli's claim rested solely on a property dispute.

[3] The main issue, therefore, is whether the officer's decision was unreasonable.

II. Factual Background

[4] Ms Rasuli and her husband are ethnic Hazaras and Shi'a Muslims, originally from Kabul. In 1994, they fled Kabul with their children to avoid the Taliban. While they were living in a refugee camp in Baghlan province, some former neighbours, who had tried to force Mr Rasuli to sell them his house, attacked Mr Rasuli and killed his brother.

[5] In 1998, the Taliban captured the area, and threatened the Hazara population. At that point, the Rasuli family fled to Pakistan. In 2006, Ms Rasuli's sister, who lives in Canada along with her father and brother, sponsored her application for permanent residence. In 2011, an immigration officer interviewed Ms Rasuli and her husband in Pakistan.

III. The Officer's Decision

[6] The officer found that Ms Rasuli and her family faced a risk in Afghanistan that was the product of a property dispute. As such, their risk was not connected to any ground recognized in the Refugee Convention. Nor was it related to civil war, armed conflict or mass violations of human rights. Further, he found that conditions have improved in Afghanistan since the Rasuli family left. Therefore, Ms Rasuli did not fit within the refugee class, or the country of asylum class.

IV. Was the Officer's Decision Reasonable?

[7] In my view, it was not.

[8] Ms Rasuli presented evidence showing that:

- she feared racial and gender discrimination, as well as religious persecution in Afghanistan;
- the Taliban threatened, tortured and killed Hazaras; and
- the Taliban persecuted Shi'a Muslims.

[9] The officer made no reference to this evidence and apparently did not take it into account in determining Ms Rasuli's application. Yet, this evidence provided grounds on which Ms Rasuli might have been recognized as a refugee or a member of the country of asylum class.

[10] In my view, the officer's failure to consider this evidence, and his decision to concentrate solely on the evidence related to a property dispute, resulted in an unreasonable dismissal of Ms Rasuli's application. There was important evidence supporting her claim that the officer apparently declined to consider. As a consequence, his refusal of Ms Rasuli's application was not a defensible outcome based on the facts and the law.

V. Conclusion and Disposition

[11] The officer reached his decision without considering important evidence that supported Ms Rasuli's claim. Accordingly, the officer's conclusion cannot be justified in the circumstances; it was unreasonable. I must, therefore, allow this application for judicial review and order another officer to reconsider Ms Rasuli's application.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed. The matter is referred back to another officer for reconsideration;
2. No questions of general importance are stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3729-12

STYLE OF CAUSE: GUL ANDAM RASULI
v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: October 9, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: October 25, 2012

APPEARANCES:

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