

Federal Court



Cour fédérale

Date: 20130927

Docket: IMM-9590-12

Citation: 2013 FC 992

Ottawa, Ontario, September 27, 2013

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

TAJARAF HUSSAIN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review, pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, of a decision that the applicant was not a Convention refugee or a protected person.

Background

[2] Mr. Hussain was born in 1977 in Pakistan. He is a farmer with a grade eight education. He is a Sunni Muslim but formed close associations with the Ahmadi community. In early 2010, people

in his area started boycotting him socially for that reason, and then in March 2010 he began receiving threatening phone calls from the local Taliban and some other Sunni fanatics. He reported this to the police but they did nothing.

[3] On May 20, 2010, a mob of Sunni fanatics attacked his house, beat him up, and looted the house. He was warned not to associate with Ahmadis otherwise he would be killed. He reported this to the police as well but again they did nothing. On June 26, 2010, he was attacked by Sunni fanatics on the way home from work. He was injured and sought medical aid at a local clinic. He reported this too to the police but they still did nothing. From July to August 2010 he went into hiding at an Ahmadi friend's house. Then he thought perhaps the fanatics had forgotten about him and went back to his own area, but the threatening phone calls from the Taliban started up again. Fearing that he would be killed, he applied for a visitor visa to Canada. He did not fear to leave his pregnant wife and his daughter behind, because the Taliban do not attack women and children.

[4] On September 15, 2010, while he waited for the visa, the Taliban telephoned and said that they would cut off his head when they caught him on the road. He left Pakistan on September 24, 2010. His wife continues to receive threatening phone calls from the Taliban. She gave birth to their second child, a son, a week after he left Pakistan.

Impugned decision

[5] The Refugee Protection Division [RPD] found on August 23, 2012, that Mr. Hussain was not a Convention refugee. In the reasons for decision, the RPD panel member noted that the

determinative issues were credibility and whether there was an objective basis for the fear of persecution.

[6] The panel member observed that testimony given under oath is presumed to be true unless there is a valid reason to doubt its truthfulness. It also observed that a panel should be satisfied that a story is probably, and not just possibly, true. The member then noted that although the claimant was represented by counsel, and the Personal Information Form [PIF] instructs claimants to provide documentary evidence to establish their claims, he provided no persuasive documentation of his association with an Ahmadi group in Pakistan. He did not have receipts for the donations he claimed to have made to this group. The one affidavit he supplied was written by a cousin of his friend (and therefore an interested person), not by the group in Pakistan, and did not indicate that the writer was an Ahmadi or held any position entitling him to speak for Ahmadis. Post-hearing evidence was also provided by the Ahmadi group in Canada, not the one in Pakistan. Without documentary evidence, the RPD was not persuaded that the claimant was involved with the Ahmadi group in Pakistan and therefore did not believe that he was targeted on that basis.

[7] There was little or no persuasive documentary evidence to show that the claimant's wife and children had been targeted since his departure, although he claimed that threats to harm them were issued while he was still in Pakistan. He provided no persuasive documentary evidence to back his claim that Sunni Muslim fanatics and the Taliban do not target women and children. His explanation for coming out of hiding after two months, that he thought he had been forgotten, was not reasonable, and indicated a lack of subjective fear of persecution.

[8] The medical report provided did not indicate how he had sustained injuries. The RPD found that on a balance of probabilities the injuries were a result of common criminality.

[9] Based on the totality of the evidence, the RPD found that the claimant was not a credible witness in areas central and material to his claim. Since it had found that he lacked a subjective fear of persecution and since his claimed fear of persecution had no objective basis, there was less than a mere possibility that he would be persecuted if returned to Pakistan. Equally, he did not face a risk to his life or a risk of cruel and unusual treatment or punishment or a danger of being tortured.

Issues

[10] The applicant proposes the following four issues:

- a. Did the RPD make an unreasonable finding of fact in finding that the post-hearing documentary evidence was from the Ahmadi group in Canada as opposed to the one in Pakistan?
- b. Did the RPD make an unreasonable finding of fact in finding that the applicant failed to provide receipts for the donations he made to the Ahmadi community in Pakistan?
- c. Did the RPD make an unreasonable finding of fact in finding that the affidavit which the applicant provided did not indicate that the writer was a member of the Ahmadi community?
- d. Did the RPD err in law by failing to give any weight to the affidavit submitted by the applicant because it was written by his friend's cousin?

[11] I will summarise these as one issue: did the RPD make unreasonable findings of fact and of mixed fact and law?

Standard of review

[12] It was agreed by the parties that the standard of review for challenging findings of fact and mixed fact and law is one of reasonableness. See generally for instance *Hussaini v Canada (MCI)*, 2012 FC 239 at paras 11-14:

11 The Supreme Court of Canada has held in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*] that there are only two standards of review: correctness for questions of law and reasonableness involving questions of mixed fact and law and fact. The Supreme Court has also held that where the standard of review has been previously determined, a standard of review analysis need not be repeated: *Dunsmuir* at para 62.

12 Credibility findings are fact based. They are to be reviewed on a reasonableness standard and are entitled to a high degree of deference: *Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315 (FCA) at para 4.

13 Recently the Supreme Court of Canada has affirmed that a review of the adequacy of reasons must be done in the analysis of whether the decision as a whole, both the reasons and the result, is reasonable: *Newfoundland & Labrador Nurses Union v Newfoundland & Labrador (Treasury panel)*, 2011 SCC 62, 208 ACWS (3d) 435 at para 22.

14 Accordingly, the appropriate standard of review of whether the Officer's reasons with respect to credibility were adequate is reasonableness. Similarly, the appropriate standard of review of the Officer's reasons with respect to the question of Convention refugee status is also reasonableness.

Analysis

[13] The applicant argues that the RPD has made numerous findings of fact related to the applicant's credibility and the RPD's conclusion that the applicant failed to establish evidence of his

involvement in the Ahmadi community in Pakistan. He argues these findings were capriciously made and would either individually or cumulatively give rise to a reviewable error. I agree with this submission that errors have occurred stemming from the misapprehension of the evidence such that the decision must be set aside.

[14] Principally, the error relates to an admitted misapprehension of important documents as not originating from the financial secretary of the Ahmadi Mosque in Pakistan. The RPD rejected these documents, believing that they originated from Toronto, and this resulted in significant adverse credibility findings against the applicant.

[15] The RPD's failure to properly identify the source of these documents and the adverse consequences are described at paragraph 14 of its reasons, as follows

The post-hearing documentary evidence [a letter bearing the Mosque's letterhead] provided is from the Ahmadi group in Canada. That document also fails to mention anything about the claimant's involvement with the Ahmadi group in Pakistan. Without persuasive documentary evidence, the Panel is not persuaded to believe that the claimant was involved with the Ahmadi group in Pakistan and as a result the panel disbelieves that he was targeted by the Taliban group and the Sunni Moslem fanatics in Pakistan as alleged.

[Emphasis added]

[16] It is clear that the RPD relied heavily upon the supposed absence of documentary evidence from Pakistan supporting the applicant's involvement with the Ahmadi group. The applicant's apparent failure to establish that foundation led to the disbelief that he was being targeted, a point which was an essential causative fact underpinning his narrative.

[17] In addition, the RPD erred in law in failing to give any weight to an unsworn affidavit submitted by the applicant. The RPD's explanation is as follows at paragraph 13 of its reasons:

The panel does not give any weight to the affidavit from his friend's cousin since it is from a person having an interest in the outcome of the claimant's refugee claim. The claimant was instructed in question 31 in his PIF to produce documentary evidence to establish his claim. At the hearing he was represented by counsel and, as such, the panel expected to see documentary evidence from the Pakistani Ahmadi group to establish his involvement with the group.

[18] The RPD on this second occasion did not recognize that the "friend of the cousin" was the same financial secretary at the Mosque who had provided the evidence on financial contributions and the applicant's close relation to the Ahmadi community. As a result, the RPD once again misstated that the applicant had failed to provide corroborating evidence of his religious practices in Pakistan from someone residing there who could speak to this issue. There were other issues raised by the applicant with respect to the RPD's reasoning in paragraph 13 set out above, but it is unnecessary to consider them given the complete misapprehension concerning the affidavit's origin.

[19] For these reasons, the RPD's credibility assessment denying the applicant's claims of religious persecution was unreasonable and as it was central to its decision, I will allow the application for judicial review.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is granted.

“Peter Annis”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-9590-12

STYLE OF CAUSE: TAJARAF HUSSAIN v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: July 24, 2013

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

DATED: September 27, 2013

APPEARANCES:

Max Berger FOR THE APPLICANT

Alison Engel-Yan FOR THE RESPONDENT

SOLICITORS OF RECORD:

Berger, Max FOR THE APPLICANT
Professional Law Corporation
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario