Federal Court Cour fédérale

Date: 20130318

Docket: IMM-5835-12

Citation: 2013 FC 279

Ottawa, Ontario, March 18, 2013

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

AHMAD WALI WAZIRI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant, Mr. Ahmad Wali Waziri, a citizen of Afghanistan, left that country for Pakistan and then the United States over 20 years ago. He resided in the United States for most of this time, coming to Canada in 2011 only after his asylum claim was rejected. He then claimed protection in Canada alleging a risk because of (a) a relationship that he had with a woman before he left his home country; and (b) because of problems that he had with the Mujahadeen in Afghanistan.

[2] In a decision dated May 17, 2012, a panel of the Immigration and Refugee Board, Refugee Protection Division (the Board) determined that the Applicant was neither a Convention refugee pursuant to s. 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*) nor a person in need of protection pursuant to s. 97(1) of *IRPA*. Briefly stated, the Board rejected the Applicant's claim because there was "no persuasive, credible or trustworthy evidence" that the Applicant had been targeted in Afghanistan as he claimed.

[3] The Applicant seeks to have the Board's decision overturned on the basis that:

1. the Board erred by failing to give the Applicant the benefit of the presumption of his truthfulness; and

2. the Board erred by applying the wrong test for persecution under s. 96 of *IRPA*.

[4] The first issue is really an attack on the Board's credibility finding; this is reviewable on a standard of reasonableness. On this standard, the Board's decision will stand so long as "the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190).

[5] The second issue raised by the Applicant is reviewable on a standard of correctness.

[6] A key problem with the Applicant's claims is that he had absolutely no corroborating evidence to support his account. Documents that one would expect to see were not presented to

the Board. For example, the Applicant argues that the death of his father in Afghanistan demonstrated that the agents of persecution were still after him. However, he had not a single document relating to his father's death. The Applicant also did not provide any corroborating evidence about his relationship with a woman in Afghanistan and the woman's family members who allegedly posed a risk to him. Finally, although counsel at the hearing argued that the Applicant's medical injuries sustained from torture, as well as his depression, affected how he testified, no medical evidence was put forward.

[7] The Applicant also failed to provide the Board with any documentation related to his asylum claim in the United States or to a subsequent sponsorship application by a woman that he met and married (and then divorced) in the United States. The failure to produce these documents is, in my view, relevant. Their absence obviously raised a serious credibility concern for the Board. What was the Applicant trying to hide?

[8] Contrary to the Applicant's submissions, his testimony and evidence were not entirely clear and consistent. The Board noted that the Applicant's testimony was not straightforward; this is borne out in a reading of the transcript. The Applicant also failed to amend his Personal Information Form to reflect the death of his father, a key element in his claim for protection.

[9] In light of the lack of documentation, together with the unclear testimony of the Applicant, the Board's finding that the Applicant's story was not credible is reasonable.

[10] The second argument of the Applicant is that the Board's threshold for analyzing risk under s. 96 was too high. In support of this submission, the Applicant points to language in a number of places in the decision where the Board appears to require the Applicant to demonstrate persecution on a balance of probabilities. For example, in paragraph 7, the Board states that:

> I find that the claimant is not a Convention refugee because there is no credible or trustworthy evidence that [S]'s family will target him if he returns to Afghanistan.

[11] At paragraph 18, the Board states:

> The onus is on the claimant to show that he would be targeted by the agents of harm.

[12] And in paragraph 24, the Board concludes as follows:

> I find that there is no persuasive, credible or trustworthy evidence on which I can find that the claimant would be targeted if he returns to Afghanistan.

[13] In evaluating a claim under s. 96 of *IRPA*, the Board must address two questions:

1. Factual Issues: Did the applicant prove the alleged facts supporting the claim on a balance of probabilities?

2. Well-Founded Fear: Assuming that the alleged facts are true, on a balance of probabilities, do these facts establish more than a mere possibility of persecution?

(See, for example, *Adjei v Canada (Minister of Employment and Immigration)*, [1989] 2 FC 680 at 683, 57 DLR (4th) 153 (CA); *Ponniah v Canada (Minister of Employment and Immigration)* (1991), 132 NR 32 at paras 6-9, 13 Imm LR (2d) 241 (FCA).)

[14] In the isolated examples noted above, the Board uses language that suggests that an incorrect standard was applied. However, this ignores the reality of this decision.

[15] Under these particular circumstances, the Board did not err. The Board properly focused on its assessment of the Applicant's story, rather than the burden on the Applicant to demonstrate a well-founded fear. The Board found no credible evidence of risk. Hence, in the words of Justice Layden-Stevenson, it is "academic" to consider whether the Applicant established more than a mere possibility of persecution (*Brovina v Canada (Minister of Citizenship and Immigration)*, 2004 FC 635 at para 11, 254 FTR 244). The burden of proof was not engaged in this particular case; requiring the Board to state this explicitly would constitute an impermissibly close reading of the decision without regard for context (*Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 14-16, [2011] 3 SCR 708). Therefore, the appropriate legal threshold for s. 96 would make no difference to the Board's findings in this case.

[16] The application for judicial review will be dismissed. Neither party proposes a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is dismissed; and

2. No question of general importance is certified.

"Judith A. Snider"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5835-12
STYLE OF CAUSE:	AMHAD WALI WAZIRI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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