Federal Court  Cour fédérale

Date: 20140127

Docket: IMM-4565-13

Citation: 2014 FC 99

Vancouver, British Columbia, January 27, 2014

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

SHAKHAR BENEDICT GOMES AND FILOMINA SHEEMA GOMES

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Whatever label violence against religious or ethnic minorities takes, and no matter what it has been designated as, it is still violence which is perpetrated against those who are members of religious or ethnic minorities. To justify such violence is simply to make it appear acceptable; that is absurd in and of itself, not needing further comment except to say that such justification has been used throughout the ages to perpetrate violence against religious or ethnic minorities.

---

[2] This judgment is in response to an application for judicial review of a decision by an Officer of the Toronto Backlog Reduction Office of Citizenship and Immigration Canada [CIC], subsequent to a refusal of an application of the Applicants for permanent residence based on humanitarian and compassionate [H&C] grounds under section 25 of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [*IRPA*].

[3] The Applicants, citizens of Bangladesh, were refused refugee status by the Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB] in April of 2012. Leave for judicial review was also refused.

[4] The RPD decision did accept that the principal Applicant and his wife are Christians (a child was born to the couple in Canada). The RPD also accepted that attacks were occurring against Christians in their country of origin.

[5] This is a case onto itself (un cas d'espèce) based on the alleged hardships which face the couple on return to Bangladesh with their child, as per the objective evidence; and, in addition, to evidence in Canada both of a subjective nature and of a significant objective, support-evidence nature from the Christian community in Canada in which the principal Applicant works, as did the wife of the principal Applicant, and in addition to their all encompassing-life-activities demonstrated therein, the Court examined the file on the basis of all the evidence and applicable legislation in light of the Officer's determination on the basis of evidence on file. This Court had to determine whether the Officer's decision was reasonable in light of *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 (at para 47) and *Newfoundland and Labrador Nurses' Union v*

Newfoundland and Labrador (Treasury Board), 2011 SCC 62, [2011] 3 SCR 708 (para 47-48); thus, the Court had to decide whether the Applicants' challenge to the determination was valid.

[6] The determination of the Officer when read as it is, in light of the evidence, would simply have to be within an outcome by which to serve the purpose of showing whether the result falls within a range of possible acceptable outcomes.

[7] The Court came to the conclusion that the determination did not come within a range of possible outcomes on the basis of the legislation and on the evidence, when read in light of that legislation and the jurisprudence thereon.

[8] Section 25 of the *IRPA* has been amended by the provisions of the *Balanced Refugee and Reform Act*, SC 2010, c 8 [*BRRA*], as of June 2010; thereupon subsection 1.3 of the *BRRA* was introduced into section 25.

[9] Thus, in examining such a request of a foreign national, consideration may not be given to factors in the determination of a Refugee Convention application under sections 96 or 97 of the *IRPA*, but, rather, consideration must be given as related to "hardships" that affect the foreign national.

[10] The Officer does not appear to have given proper regard to the particular circumstances of hardship of this case, a case which is one unto itself; wherein under the specific documented

circumstances of affiliation with the Applicants' religious community, these circumstances of affiliation appear central and core to their inner and outer lives.

[11] Although it must be noted that the Officer did consider the child under all facets of the jurisprudence, and at the young age of the child, nothing more could be said except the potential upbringing of the child is not only in respect of an inner Christian life for the child as desired by the parents, but also an outer one in which the child lives.

[12] The specific evidence of support by the (all-embracing) Christian community in which the Applicants find themselves, within a seminary setting, is seminal to the case: a community in which the principal Applicant works and is occupied by his numerous volunteer activities. Thus, the Christian setting is one in which the Applicants occupy both their working and social activities, all within a Christian context. Central to that is the St. Augustine Seminary, the Bangladesh Catholic Association and the Dunston Church.

[13] As clearly stated in the U.S. Department of State Report, "2012 Country Reports on Human Rights Practices, Bangladesh, April 19, 2013": "Instances of societal violence against religious and ethnic minorities persisted, although many government and civil society leaders claimed these acts had political or economic motivations and should not be attributed only to religious beliefs or affiliations."

[14] Whatever label violence against religious or ethnic minorities takes, and no matter what it has been designated as, it is still violence which is perpetrated against those who are members of

religious or ethnic minorities. To justify such violence is simply to make it appear acceptable; that is absurd in and of itself, not needing further comment except to say that such justification has been used throughout the ages to perpetrate violence against religious or ethnic minorities. In the case of these specific Applicants, as a family whose essence is wholly encompassed in their Christian way of life, which designates the very essence of their raison d'être, living any other way but within that wholly Christian life, externally and internally, would appear to present grave peril to their intrinsic Christian way of life as a family.

[15] Therefore, this Court has decided to have the matter returned for determination anew (*de novo*) before a different Officer.

[16] Consideration is necessary due to the Applicants' uncontradicted objective, subjective and supporting documentary evidence; that specific evidence must be analyzed to determine whether unusual and underserved or disproportionate hardship, arising from the country conditions, would have direct impact on the Applicants' in view of their all-encompassing Christian life.

[17] For all of the above reasons, the Applicants' application for judicial review is granted and the matter is returned for determination anew (*de novo*) before a different Officer.

JUDGMENT

THIS COURT ORDERS that:

The Applicants' application for judicial review be granted and the matter be returned for determination anew (*de novo*) before a different Officer with no question of general importance for certification.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4565-13
STYLE OF CAUSE:	SHAKHAR BENEDICT GOMES AND FILOMINA SHEEMA GOMES v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	JANUARY 27, 2014
REASONS FOR JUDGMENT AND JUDGMENT:	SHORE J.
DATED:	JANUARY 27, 2014

APPEARANCES:

Victor Ing	FOR THE APPLICANTS
Jennifer Dagsvik	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Miller Thomson LLP Vancouver, British Columbia	FOR THE APPLICANTS
William F. Pentney Deputy Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT