

Federal Court



Cour fédérale

Date: 20140318

Docket: IMM-2178-13

Citation: 2014 FC 264

Calgary, Alberta, March 18, 2014

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

MUDDASSIR SHEIKH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Sheikh is asking the Court to set aside a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada that found that he was not a convention refugee or person in need of protection.

[2] The primary basis for this application is a challenge to the finding of the Board that Mr. Sheikh did not have a “well-founded fear of persecution” as required under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[3] The facts are not in dispute. Mr. Sheikh is a Sunni Muslim citizen of Pakistan. In 2009, he married Ameena James, a Christian Pakistani citizen. The marriage was carried out in secret and was conducted after Ms. James falsely converted to Islam for purposes of the marriage ceremony. This subterfuge was known by Mr. Sheikh and he participated in it in order to effect the marriage ceremony. The Applicant's friend, Naveed, helped him arrange the marriage ceremony, and four of Naveed's friends acted as witnesses. The couple's families are not aware of the marriage.

[4] Soon after the marriage, Mr. Sheikh came to Canada with his wife on a temporary work permit. Ms. James has a pending permanent residence application with the Saskatchewan Immigrant Nominee Program and has not filed a refugee claim. Mr. Sheikh made a refugee claim alleging that he is subject to risk of persecution from his family, friends, and religious extremists on account of his involvement in his wife's false conversion to Islam, and his marriage to a Christian woman.

[5] The Board determined that Mr. Sheikh was a credible witness and found his evidence of his wife's conversion to Islam and their secret marriage out of fear of their families' respective religious differences genuine. It was found that he is in an inter-religious marriage that was based on his wife being Muslim, which he and his wife fabricated, that lies at the heart of his fear of persecution. Nexus for purposes of section 96 of the *Act* was established.

[6] The Board concluded that given the "broad and petty use" of blasphemy laws in Pakistan, it is possible that Mr. Sheikh would face persecution for his knowledge of and role in his wife's

subterfuge in pretending to be Muslim; however, the Board went on to find that there was not a serious possibility of such persecution befalling him because it was unlikely (but not impossible) that these facts would become known in Pakistan.

[7] In short, the Board found that Mr. Sheikh has a subjective fear of being charged “under Pakistan’s blasphemy laws for his role in the false conversion of his wife.” It further found that there was no “serious possibility of such persecution befalling” him because it was unlikely that this would be disclosed by those who knew or by his family in Pakistan.

[8] Despite the able submissions of the Minister’s counsel, I am not convinced that the Board properly and reasonably examined the issue of the well-foundedness of Mr. Sheikh’s fear. I agree with counsel for the Applicant that the principles expressed by this Court in *Sadeghi v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1083 [*Sadeghi*] and *AB v Canada (Minister of Citizenship and Immigration)*, 2009 FC 325 [*AB*] apply.

[9] In *Sadeghi* the Iranian applicant claimed protection based on his fear of religious persecution as he had converted to Christianity while overseas. His claim was denied based on the Board’s assessment of his degree of commitment to Christianity. In quashing that decision, Justice Rouleau stated at para 18:

With respect, the panel is mistaken. The question is not whether the applicant is so deeply committed to Christianity that he would, if he were to return to Iran, practice that religion there at risk of receiving the attention of the authorities. Rather, the central issue to the well-foundedness of the applicant’s fear of persecution on religious grounds is the fact of his conversion to Christianity and the attitude of the Iranian government, the putative persecutor, should his conversion come to be known to the Iranian authorities. Indeed, the

consequences for the applicant, if his conversion to the Christian faith were known by the Iranian authorities, are very serious. The documentary evidence tendered at the hearing makes it very clear that apostasy is a serious crime in Iran and may be punishable by death. The CRDD panel utterly failed to address this question and does not seem even to have recognized that the problem existed in Iran. In my view, the panel clearly exaggerated the import of a few apparent implausibilities which it succeeded in detecting in the testimony of the applicant, and this caused it to forget the substance of the facts on which the applicant based his claim. Consequently, the panel erred in failing to ask itself a question that was crucial to the decision that it reached. (emphasis added)

[10] Justice Rouleau, correctly in my view, held that the real question to be asked when assessing whether that applicant's subjective fear was well-founded, is to ask what will happen if his conversion is discovered in Iran. It is not to ask whether it is likely that his conversion will be discovered.

[11] A similar result was reached by Justice Gibson in *AB* where the applicant had rejected Islam after leaving Iran. Justice Gibson held that the proper question was to ask what was the risk of persecution from the Government of Iran "should" it become aware of his rejection of Islam. Justice Gibson went on to explain that:

"Even assuming that an individual who has rejected Islam, if required to return to Iran, will remain discreetly silent on that rejection, I am satisfied that he or she may well remain at risk of persecution if the circumstances are such that his or her rejection of Islam might come to the attention of state authorities. That risk was simply not addressed by the Officer on the facts of this matter" (emphasis original).

[12] In both of these decisions, the Court properly says that in assessing the objective element of the applicant's subjective fear, one asks what objectively will happen if the situation becomes

known; one does not ask whether it is likely that the situation will become known. Contrary to the submissions of the Respondent, I am of the view that this inquiry fully accords with the decision of the Court of Appeal in *Adjei v Canada (Minister of Employment and Immigration)*, [1989] 2 FC 680 [*Adjei*], which I note was decided prior to both *Sadeghi* and *AB*.

[13] In *Adjei*, the Court of Appeal stated that the issue related “to the well-foundedness of any subjective fear, the so-called objective element, which requires that the refugee’s fear be evaluated objectively to determine if there is a valid basis for that fear.” In other words, is the subjective fear irrational because there is no valid basis for it?

[14] From this perspective, it is irrelevant how likely or unlikely it is that the facts on which the persecution is based, would become known to the agents of persecution. In fact, any analysis on the part of the Board on this question would largely be an exercise in speculation, absent a finding on the evidence that it would never become known. It is also easy to imagine situations where there may be grave consequences for people with certain immutable characteristics, but who may not be easily discovered (homosexuals in Uganda for example). Are those claimants any less entitled to protection because the Board speculates that there is a low probability of that characteristic being discovered? This Court has consistently said that such individuals are entitled to protection if they prove that their subjective fear of persecution is objectively affirmed by showing that persecution is a real risk if their identity becomes known.

[15] In this case, the fear of Mr. Sheikh is not that his conduct vis-à-vis his wife will become known, it is that if it becomes known, then he will be at risk of persecution. The Board accepted

that there is such a risk in Pakistan, but regrettably improperly assessed the likelihood that the feared persecution would be experienced. At the hearing, counsel for the Minister conceded that the Board found that Mr. Sheikh had good grounds to fear persecution if his conduct was discovered. To use the words of the Supreme Court in *Chan v Canada (Minister of Employment and Immigration)*, [1995] 3 SCR 593 at para 120, there was a determination “that there is more than a ‘mere possibility’ of persecution” and accordingly, the refugee claim ought to have been allowed.

[16] The Board’s decision is unreasonable and is quashed.

[17] No question was proposed for certification by either party.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is allowed, the decision is set aside and the Applicant's refugee claim is remitted back to a differently constituted Board for a decision in keeping with these Reasons.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2178-13

STYLE OF CAUSE: MUDDASSIR SHEIKH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: MARCH 17, 2014

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

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