Date: 20071221

Docket: IMM-711-07

Citation: 2007 FC 1354

Ottawa, Ontario, December 21, 2007

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

ZIA UDDIN AHMED JILANI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Jilani is a Pakistani citizen and was an active member of the political movement known by the acronym MQM-A. He arrived in Canada in January of 1997 and claimed refugee status. That was denied in January 1998 by the Refugee Determination Division but Mr. Jilani was granted a Temporary Resident Permit. For reasons unrelated to these proceedings, the permit was not renewed and an application was submitted for a Pre-removal Risk Assessment in March, 2006. Mr. Jilani seeks judicial review of the PRRA officer's negative decision dated January 3, 2007.

[2] The Refugee Determination Division concluded that Mr. Jilani was not a Convention refugee because political conditions had changed in the aftermath of an election in which the MQM-A had gained considerable support and had become part of the governing coalition. It also determined that he had an internal flight alternative in one of the areas of Karachi, his own city, where a large number of MQM-A supporters lived.

[3] The RDD did find Mr. Jilani's testimony credible, that he had been persecuted for his membership in the MQM-A and had been forced to live in what they termed 'semi-hiding'. His father and an older brother, also active with MQM-A, died of injuries suffered in jail in 1994. One of his brothers, another MQM-A member, also sought refugee status in Canada, while his remaining siblings and mother live in Karachi.

[4] The PRRA Officer found that the political situation in Sindh province and its capital Karachi is reasonably similar to that which existed in 1998. The MQM-A is aligned with the governing party and is not specifically targeted by the security forces in politically-motivated killings or harassment, although these do occur. She found that there existed an internal flight alternative within the city of Karachi, and that Mr. Jilani had not provided clear and convincing evidence to rebut the presumption of state protection.

ISSUES:

[5] The issues in this case are whether the PRRA Officer erred in her analysis of the existence of an IFA and in finding that state protection was available to the applicant.

ANALYSIS:

[6] In *Kim v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 437, [2005] F.C.J. No. 540, at paragraph 19, after applying the pragmatic and functional approach, I summarized my conclusions as to the standards of review of the decisions of PRRA officers as follows:

> Combining and balancing all of these factors, I conclude that in the judicial review of PRRA decisions the appropriate standard of review for questions of fact should generally be patent unreasonableness, for questions of mixed law and fact, reasonableness *simpliciter*, and for questions of law, correctness.

[7] With respect to questions relating to state protection, in *Chaves v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 193, [2005] F.C.J. No. 232, at paragraphs 9-11, Madam Justice Danièle Tremblay-Lamer held, after canvassing the case law, that the standard of review applicable is that of reasonableness *simpliciter*.

[8] I see no reason to apply different standards in the present proceedings.

[9] Mr. Jilani's refugee claim was heard under the previous *Immigration Act*, and thus his present section 97 claim was not analyzed as part of that determination. The applicant contended in his written submissions that the PRRA officer therefore erred in law by relying on the decision of the RDD as a baseline and failing to conduct a separate, in-depth analysis of his claim, as it was then, under section 97 of the *Immigration and Refugee Protection Act* S.C. 2001, c. 27 in 2002. The applicant cited *O.N. v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 246, [2003] F.C.J. No. 322 for this proposition.

[10] The case cited by the applicant is one of a handful of decisions which were published in the period directly after the enactment of the IRPA. The common factual basis of those cases was that the applicants had provided evidence only on the issue of Convention refugee status (under the old Act) but were being assessed under the new statute. It was held in those circumstances that they should be allowed to request a new assessment for which they could provide documentation for an assessment under section 97. These decisions are clearly distinguishable from this situation, where Mr. Jilani had provided materials for a section 97 assessment by the PRRA officer.

[11] The officer's analysis covered the present risks under both sections 96 and 97. To criticize the PRRA Officer for not carrying out a separate analysis under section 97 of IRPA of the situation as of the time of the 1998 RDD decision would place form over substance: *Pannu v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1666, [2004] F.C.J. No. 2024.

[12] The applicant contends that the PRRA Officer's finding that Karachi is a suitable IFA is patently unreasonable. He alleges that past persecution raises the presumption of future persecution. It was in Karachi that Mr. Jilani's persecution occurred and thus he argues that it cannot be an 'alternative': *Rasaratnam v. Canada (Minister of Employment and Immigration) (C.A.)*, [1992] 1 F.C. 706, [1991] F.C.J. No. 1256.

[13] This is an argument without merit in my view. Karachi is a very large city with many districts and the evidence clearly establishes that MQM-A has strongholds within a number of those districts in which members of the organization live and work safely. The concept of an internal flight alternative does not require that the safe haven be in another city or province of the state of

origin so long as it is truly an area in which the applicant can seek refuge from the persecution experienced in his home district.

[14] The applicant further submits that the officer's finding that state protection was available because MQM-A was now aligned with the ruling party is an error of law. He notes that this Court has held repeatedly that it is a reviewable error to equate willingness to protect with the ability to protect: *Avila v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 359, [2006] F.C.J. No. 439. He asserts that the government is not monolithic, and that members of MQM-A have continued to be subject to violence, torture and murder since their inclusion in the coalition.

[15] The officer noted that the documentary evidence provided by the applicant dealt primarily with the period of time from 2001 to 2003 when Pakistani security forces systemically committed serious human rights abuses against members of political opposition parties including the MQM-A. The officer recognized that there continued to be violence perpetrated by security forces but concluded that it was not specifically aimed at MQM-A members. That conclusion is borne out by the documentary evidence to which my attention was drawn during the hearing. The evidence indicates that MQM-A has become successfully integrated into the political life of the country. The practical effect of this is that the movement has control of some of the levers of power including influence over the security forces at the local and state levels. What remained of concern were sporadic incidents not unique to MQM-A and not comparable to the earlier situation in 2001-2002. Active steps had been taken to lower the level of violence. Thus there is both willingness and ability to protect, particularly in those districts which MQM-A controls. The officer's conclusion that state protection is available to the applicant was reasonable and based upon the evidence.

[16] The applicant's arguments appear essentially to be a general objection about the officer's weighing of the evidence about state protection. This Court has determined that it is an untenable position to require that a country be able to guarantee effective protection to all its citizens at all times. The correct legal test is that the applicant must show that he faces more than a mere possibility of risk in Pakistan: *Alfaro v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 92, [2005] F.C.J. No. 97. Mr. Jilani has failed to do this.

[17] Mr. Jilani did suffer serious persecution in Karachi in the early 1990s, and, as noted by the RDD in its decision almost ten years ago, his reluctance to return to the place in which he suffered so badly is understandable. That fact notwithstanding, the applicant has not shown that the PRRA officer's decision applied an incorrect legal test or was unreasonable in its outcome.

[18] I therefore dismiss the application. The parties proposed no serious questions of general application.

JUDGMENT

IT IS THE JUDGMENT OF THIS COURT that the application is dismissed. No certified questions are proposed.

"Richard G. Mosley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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