

CANADA / JUDGMENT

TB9-15347

COURT

Refugee Appeal Division

DECIDED

4 October 2020

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RAD File / Dossier de la SAR : TB9-15347 TB9-15348 Private Proceeding / Huis clos Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXXXXXX XXXX XXXX XXXX XXXX XXXX XXXX Personnes en cause Appeal considered / heard at Toronto, ON Appel instruit / entendu à Date of decision October 4, 2020 Date de la décision Panel L. Krajcovic Tribunal Counsel for the persons who are the subject of the appeal Muhammed N. Anwar Conseil des personnes en cause Designated representative N/A Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION OVERVIEW

- [1] XXXX XXXX (Principal Appellant) and XXXX XXXX XXXX XXXX XXXX XXXX (Associate Appellant) are citizens of Pakistan. They appeal a decision of the Refugee Protection Division (RPD) rejecting their claims.

DETERMINATION

- [2] I dismiss this appeal. The Appellants are neither Convention refugees nor persons in need of protection.

BACKGROUND

- [3] The Appellants' allegations are as follows. In 2017, the Appellants decided to rent out a part of their house in Pakistan as a source of income after their son, who resides in Canada, got sick and could no longer provide for them. They found a tenant with the help of a real estate agent. The Appellants used the advanced rent money to make repairs on the house before the tenant moved in. During this time, they learned the tenant may be a member of the Jammāt-ud-Dawwa, a terrorist organization. They tried to break the rental agreement but the tenant refused, following which they were threatened, harassed and their house was vandalized. Unable to get support from friends, neighbours or the police, the Appellants came to Canada to visit their son in the hope that the situation would be diffused. While in Canada, they learned that the tenant and his associates took possession of their house and threatened to kill the Appellants if they returned to the property. Fearing for their safety, they made a refugee claim.

- [4] The RPD found that the Appellants were generally credible, that there was no nexus to a Convention ground and that the Appellants had not rebutted the presumption of state protection.
- [5] The Appellants submit that the RPD erred in its finding that there was no nexus and in its analysis of state protection. The Appellants also submit that there is no viable Internal Flight Alternative.
- [6] I find that the determinative issue is forward-looking risk. As this was not part of the RPD reasons, notice of a new issue was provided and submissions were received and considered.¹ **ROLE OF THE REFUGEE APPEAL DIVISION (RAD)**
- [7] The RAD applies a standard of correctness for questions of fact, mixed fact and law, and law. I may defer to the RPD in assessing findings involving the credibility of oral testimony if I find that it had a meaningful advantage in the circumstances.² In this case, I find that the RPD did not have a meaningful advantage. **DOCUMENTS SUBMITTED IN RESPONSE TO MEMBER'S DIRECTIONS** The Appellants' statement is admitted
- [8] On March 9, 2020, the RAD sent notice of a new issue and requested submissions.³ The Appellants were asked whether they can relinquish their right to their property in Pakistan to avoid harm in the event of a return to Pakistan.
- [9] Submissions were received on March 19, 2020.⁴ The Appellants' statement describes the reasons why they cannot and will not relinquish their rights to the property.
- [10] As the Appellants' statement was provided in response to a request for submissions, I accept that they could not reasonably have been expected to have brought it to the RPD before the decision was rendered. I also accept that the statement is new, credible and relevant. Therefore, the Appellants' statement is admitted into evidence. **REQUEST TO SUBMIT ADDITIONAL DOCUMENTS** The Appellants' COVID-19 submissions are admitted
- [11] The Appellants make submissions regarding how they will be affected by the COVID-19 pandemic in Pakistan.⁵ The Appellants submit that, upon return to Pakistan, they face a risk to their lives from the virus due to their age and fragile health condition and inadequate health care systems. The Appellants submit that the COVID-19 pandemic has resulted in an increase in crime in Pakistan in addition to difficulties accessing justice and health care.
- [12] I find that the Appellants' submissions regarding the COVID-19 pandemic are allowable pursuant to Rule 29 of the RAD Rules. The Appellants' submissions are relevant to the risk to the Appellants and new in that there is no similar evidence or submissions on the record. The Appellants could not have reasonably provided such submissions with the Appeal Record as the pandemic arose after the filing of the Appellants' Record. After weighing all the relevant factors, I find that the Appellants' submissions regarding the COVID-19 pandemic are allowable pursuant to sub-Rule 29(4) of the RAD Rules.

- [13] The Appellants' submissions regarding the COVID-19 pandemic meet the requirements of subsection 110(4) of the Immigration and Refugee Protection Act (IRPA) as the pandemic arose after the RPD decision.
- [14] The Appellants' submissions regarding the COVID-19 pandemic meet the Singh/Raza criteria. As outlined above, the submissions are new and relevant. Further, I have no reason to doubt the credibility of their submissions and I accept them as credible.
- [15] As a result of the foregoing, I find that the Appellants' submissions regarding the COVID-19 pandemic are admissible and I admit them. ORAL HEARING
- [16] The Appellants do not request an oral hearing. The RAD may hold a hearing if, in its opinion, there is documentary evidence referred to in subsection 110(3) that raises a serious issue with respect to the credibility of the person who is the subject of the appeal, is central to the decision with respect to the refugee protection claim, and, if accepted, would justify allowing or rejecting the refugee protection claim.⁶
- [17] As the admissible new evidence does not raise a serious issue with respect to the credibility of the Appellants and would not justify allowing or rejecting the refugee protection claim, no hearing can be held in accordance with subsection 110(6) of the IRPA.

ANALYSIS

The RPD erred in finding that there was no nexus

- [18] The RPD found that, as the Appellants were victims of a crime, there was no nexus to a Convention ground. As a result, the RPD analysed the claim pursuant to subsection 97(1) of the IRPA.
- [19] The Appellants submit that the RPD erred in its finding that there was no nexus. The Appellants submit that the RPD failed to acknowledge and/or address the connections these criminals had with Jammat-ud-Dawwa, an Islamic militant organization. The Appellants submit that the RPD completely ignored an affidavit which corroborates the Appellants' claims regarding the connections between the tenant and Jammat-ud-Dawwa.
- [20] I accept the Appellants' submissions in part. I find that the RPD erred in its finding that there was no nexus. The Appellants' refusal to allow a tenant to occupy the property due to their political affiliation may cause the agent of harm to impute a political opinion. As a result, I will consider the claim pursuant to sections 96 and 97(1) of the IRPA.
- [21] However, I reject the Appellants' submission that the RPD failed to acknowledge the connections that the agent of persecution had with Jammat-ud-Dawwa. The RPD found the Appellants generally credible and there is no indication that the RPD did not accept that the tenant had connections to Jammat-ud-Dawwa. There is no forward-looking risk to the Appellants

- [22] For the reasons outlined below, I find that the Appellants do not face a serious possibility of persecution or, on a balance of probabilities, a risk to their lives, a risk of cruel and unusual treatment or punishment or a danger of torture upon return to Pakistan. I find that the Appellants can avoid harm from their agent of persecution by relinquishing their rights to their property.
- [23] As outlined above, the issue of forward-looking risk was not assessed by the RPD, so the RAD sent notice of a new issue and requested submissions regarding whether the Appellants can relinquish their right to their property in Pakistan to avoid harm in the event of a return to Pakistan.⁷
- [24] The Appellants submit that they cannot and will not relinquish their rights to the property for the following reasons: this has been their home for over XXXX years; it is their only residence and asset in Pakistan; they have a great emotional and sentimental association with this home; there is no where else they can live in Pakistan, since they will never give up their right to their home; their presence in Pakistan will put their lives at grave danger at the hands of the illegal occupiers; the Appellants are very old, frail and XXXX; the Associate Appellant is XXXX; and the Appellants are unable to fight for their property and failed to get assistance from police in the past, who are working with the illegal occupiers.
- [25] The Federal Court of Appeal has stated that "claimants who are able to make reasonable choices and thereby free themselves of a risk of harm must be expected to pursue those options."⁸
- [26] In Malik, the Federal Court stated: I find that the RPD made no reviewable error in concluding that the Applicants face no forward-facing risk in Pakistan and that it would not be unreasonable to expect the Principal Applicant to withdraw the lawsuit claiming his inheritance in order to protect the lives of his family. The panel's findings were reasonable on the evidence before it and consistent with the jurisprudence.⁹
- [27] In Kenguruka, the Federal Court stated: In light of the record, the panel did not act in an unreasonable manner when it decided that Mr. Kenguruka would not face persecution in Burundi if he abandoned his claim to the property that he inherited from his parents. ... If Mr. Kenguruka were arguing a right set out in the Convention and section 96, such as his right to freely practice his religion, he could not be forced to renounce his religion in order to avoid persecution.¹⁰
- [28] Despite their submissions that they are unwilling and unable to relinquish their rights to the property, I find it reasonable to expect the Appellants to do so in the circumstances. According to the Appellants' allegations, the tenant is affiliated with an Islamic militant organization and has threatened their lives. Although I recognize that relinquishing their right to the property will be difficult, I find, on a balance of probabilities, that doing so will avoid future risk to their lives.

- [29] I reject the submission that the mere presence of the Appellants in Pakistan would put their lives at risk by the tenant and his associates. I find, on a balance of probabilities, that the Appellants' lives would not be in danger if they were to return to Pakistan and relinquish their rights to the property. I find that the tenant's motivation to harm the Appellants would no longer exist if they were not to pursue reclaiming the property. As stated in the Appellants' Basis of Claim (BOC) narrative, the tenant "threatened that he would kill us if we ever tried to put our feet in his property."¹¹
- [30] While it is unfortunate that the Appellants have to relinquish their rights to their property in order to protect themselves, property rights are not a fundamental right. As stated by the Federal Court in Ndambi, "the Court gives deference to the RPD's finding that ownership rights do not constitute human rights."¹²
- [31] I acknowledge that this will result in some difficulty to the Appellants. The Appellants having to relinquish their rights to their property will be upsetting, considering its significance to them. However, such difficulties do not constitute a risk pursuant to sections 96 or 97(1) of the IRPA. The Appellants will have to seek alternate accommodation upon return to Pakistan, which may result in financial and other hardship. The COVID-19 pandemic may result in additional challenges in finding accommodation in Pakistan. However, I note that the Appellants' daughter lives in Lahore. At the hearing, the Principal Appellant testified that they have not involved their daughter in the property dispute but that she takes care of the Appellants. It is reasonable to expect that the Appellants' daughter would be a source of support for the Appellants in Pakistan.
- [32] Based on the foregoing, I find that the Appellants can relinquish their rights to the property in Pakistan in order to avoid harm from their agents of persecution. Risk related to COVID-19 pandemic There is no nexus to a Convention ground
- [33] I find that the risks raised by the Appellants related to the COVID-19 pandemic do not have a nexus to any of the grounds of protection. The Appellants do not argue that there is a nexus to a Convention ground. As a result, I will assess the risks related to the COVID-19 pandemic solely under section 97 of the IRPA. Risk to life due to inadequate health care system
- [34] The Appellants submit that, if returned to Pakistan, they face a risk to their lives from COVID-19 due to their age and fragile health condition and inadequate health care systems.
- [35] While I accept that their elderly age and health condition may increase their risk of dying if they were to contract COVID-19, this is a risk faced generally by others in their country. I find that the Appellants' allegations of inadequate health care falls under the health care exception described in subparagraph 97(1)(b)(iv) of the IRPA. As stated by the Federal Court of Appeal, the denial of medical care in the country of origin due to a scarcity of resources or if it chooses in good faith, for legitimate political and financial priority reasons, not to provide such care to its nationals, is not a risk that satisfies section 97.13 Risk due to increased crime and difficulties accessing justice

[36] The Appellants submit that the COVID-19 pandemic has resulted in an increase in crime and difficulties accessing justice in Pakistan.

[37] I find that the risks resulting from increased crime and difficulty accessing justice in Pakistan as a result of the COVID-19 pandemic are experienced by all who live in Pakistan. As such, I find this to be a generalized risk pursuant to subparagraph 97(1)(b)(ii) of the IRPA.

CONCLUSION

[38] I find that the Appellants do not face a serious possibility of persecution in Pakistan or, on a balance of probabilities, a risk to life, risk of cruel and unusual treatment or punishment or a danger of torture. I dismiss the appeal and confirm the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection. (signed) L. Krajcovic L. Krajcovic October 4, 2020 Date 1 Exhibit RAD-1, Member Directions, 9 March 2020; Exhibit P-3, Response to Member's Directions, received 19 March 2020. 2 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93 (CanLII), [2016] 4 FCR 157, paras. 70 and 103. 3 Exhibit RAD-1, Member Directions, 9 March 2020. 4 Exhibit P-3, Response to Member's Directions, received 19 March 2020. 5 Exhibit P-4, Appellants' Additional Submissions, received 13 July 2020. 6 Subsection 110(6), Immigration and Refugee Protection Act, S.C. 2001, c.27, as amended. 7 Exhibit RAD-1, Member Directions, 9 March 2020. 8 Sanchez v. Canada (Citizenship and Immigration), 2007 FCA 99, at para. 16. 9 Malik v. Canada (Citizenship and Immigration), 2019 FC 955, at para. 19. 10 Kenguruka v. Canada (Citizenship and Immigration), 2014 FC 895, at para. 7. 11 Exhibit RPD-1, RPD Record, Exhibit 8, p. 232. 12 Ndambi v. Canada (Citizenship and Immigration), 2014 FC 117, para. 15. 13 Covarrubias v. Canada (Minister of Citizenship and Immigration), 2006 FCA 365.

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