

CANADA / JUDGMENT

VB9-00613

COURT

Refugee Appeal Division

DECIDED

18 August 2020

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RAD File / Dossier de la SAR : VB9-00613

Private Proceeding / Huis clos

Reasons and decision ? Motifs et décision

Person who is the subject of the appeal

XXXX XXXX

Personne en cause

Appeal considered / heard at

Toronto, ON

Appel instruit / entendu à

Date of decision

August 18, 2020

Date de la décision

Panel

Madeleine Schwarz

Tribunal

Counsel for the person who is the subject of the appeal

Birjinder P. S. Mangat

Conseil de la personne 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 (Appellant), citizen of Pakistan, appeals a decision of the Refugee Protection Division (RPD) dated January 4, 2019 dismissing his claim for refugee protection.
- [2] The Appellant is a secular, liberal Muslim and a XXXX in the town of XXXX, Pakistan. He claims he has been targeted by religious extremists who are associated with Jamaat-ud-Dawa (JuD) and the banned Lashkar-e-Taiba (LeT) organizations because he confronted religious individuals from the Madrassa Riaz-ul-Islam in XXXX who came to his XXXX XXXX on a number of occasions.
- [3] The Appellant claims that since 2013, individuals from or associated to the Madrassa would come to his XXXX and threaten him for XXXX XXXX, which is against religious doctrine. One day they requested the Appellant to put JuD pamphlets on display in his XXXX, which he was against, as he has clients from a number of different religions. The Appellant alleges that these individuals also beat him and held a gun on him one day. He reported the individuals to the police, and claims the police leaked his report to the individuals. On XXXX XXXX, 2015, unknown individuals opened fire on his XXXX.
- [4] The Appellant relocated to Lahore, and was subsequently smuggled out of Pakistan on a fraudulent passport. He travelled to XXXX XXXX, then XXXX and then the United States (U.S.). He arrived in the U.S. on XXXX XXXX XXXX 2015 and made a refugee claim. He was released from detention and given work authorization pending a final outcome on his asylum claim. The Appellant abandoned his asylum claim and entered Canada on XXXX XXXX, 2017, fearing deportation from the U.S.
- [5] The Appellant claims the individuals who came to his XXXX, the JuD and LeT, continue to pursue him.
- [6] The RPD accepted his allegations and found, on a balance of probabilities, that the threats and attack were localized to his home area. The determinative issue before the RPD was the question of a viable internal flight alternative (IFA) in Pakistan, namely Lahore.
- [7] The Refugee Appeal Division (RAD) dismisses the appeal and finds the Appellant is neither a Convention refugee nor a person in need of protection and he has a viable IFA in Lahore, Pakistan.

NEW EVIDENCE

[8] The Appellant seeks to admit the following documents:

Letter from XXXX XXXX XXXX, Imam, XXXX XXXX XXXX XXXX XXXX, dated XXXX XXXX, 2019

[9] The letter from the Imam is dated XXXX XXXX, 2019, which is after the date of the RPD rejection. It notes that people belonging to Jamaat-ul-Dawa and the Madrassa Riaz continue to come to the mosque and ask about the Appellant's whereabouts. I admit the letter under subsection 110(4) of the Immigration and Refugee Protection Act² (IRPA). The letter provides an update regarding the Appellant's allegation that JuD and others continue to pursue him. I find this information was not reasonably available at the time of the rejection of the claim and that it could not reasonably have been expected in the circumstances to be brought before the RPD. As a result, it satisfies the parameters of subsection 110(4) of the IRPA.

[10] I also find that the evidence is new, sufficiently credible as it is purportedly from the Imam of the Appellant's mosque, who provided a letter for the RPD hearing. I also find it is relevant, as it relates to a central aspect of the Appellant's claim.³

Medical reports for brother

[11] The Appellant also seeks to admit documentation that relates to the medical condition of his brother, XXXX XXXX. The documents indicate the Appellant's brother has suffered from XXXX XXXX since childhood, he is unable to work and he relies on family members to support him. A number of laboratory reports and invoices are also included.⁴

[12] Pages 48 to 50 of the Appeal Record were unfortunately missing in the copy of the Appeal Record reviewed by the RAD. By letter dated July 30, 2020 to the Appellant's counsel, the RAD requested the Appellant to provide pages 48 to 50 again to the RAD by August 8, 2020.⁵ The RAD has not received a copy of the missing pages.

[13] I have carefully reviewed the medical documents submitted as proposed new evidence. Some are receipts or laboratory results dated prior to the rejection of the Appellant's claim. Some postdate the rejection of the Appellant's claim.

[14] I reject the admission of the medical reports of the brother. I find none of the documents are new, as the brother has suffered from XXXX XXXX since he was a child. This material could, therefore, have been provided prior to the rejection of the Appellant's claim. I further find that they are not relevant to a central aspect of the Appellant's appeal.

ANALYSIS

[15] The Appellant argues that the RPD made unreasonable credibility findings, erred in its analysis of a viable IFA, and erred by failing to conduct a section 97 analysis.

- [16] I have considered the RPD and the Appellant's Record, including the transcript provided by the Appellant. I have considered all of the Appellant's submissions made in this appeal.
- [17] I find that the RPD was correct in determining that the Appellant has a viable IFA in Lahore given the facts of this case. Because a refugee claim cannot succeed when a viable IFA exists, my analysis assumes, without deciding, that the Appellant's Basis of Claim (BOC), Narrative and testimony regarding the threats and attacks are, for the most part, credible. For reasons outlined below, I give little weight to some of the documentary evidence submitted by the Appellant.
- (i) Lahore is a viable IFA
- [18] In assessing whether a viable IFA exists, I am guided by decisions of the Federal Court of Appeal. If there is a safe haven for claimants in their own country, where they could live free from harm, they are expected to avail themselves of it, unless they can show it is objectively unreasonable or unduly harsh for them to do so.⁶ The IFA must be realistic, attainable and accessible.
- [19] The test to be applied in determining whether there is an IFA is two-pronged, and both prongs must be satisfied for a finding that a claimant has an IFA:
- a. The Board must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted or subject personally to a risk to their life or a risk of cruel and unusual treatment or punishment or to a danger of torture, in the part of the country to which it finds an IFA exists; and
 - b. Conditions in that part of the country must be such that it would not be unreasonable in all the circumstances, including those particular to the claimant, for the claimant to seek refuge there.⁷
- (ii) First prong of IFA analysis - The Appellant has failed to establish, on a balance of probabilities, that the agents of persecution have the motivation or means to pursue him outside of XXXX
- [20] The Appellant submits he would not be safe in Lahore or anywhere in Pakistan. He states that the individuals from the Madrassa school who came to his XXXX XXXX and threatened him are associated with the extremist JuD and the banned LeT organizations. He indicates that the two organizations are connected to Pakistani authorities and police, and they can use their resources to find him throughout Pakistan.⁸
- [21] I agree with the RPD that the Appellant has failed to establish, on a balance of probabilities, that the specific individuals from the Madrassa who attacked him in his XXXX in XXXX have the motivation or means to pursue him anywhere in Pakistan. Further, I find the Appellant has failed to establish, on a balance of probabilities, that JuD or LeT would be motivated to find the Appellant anywhere in Pakistan.

- [22] I find, on a balance of probabilities, that the threat to the Appellant by the individuals who attacked him, and his XXXX is localized and limited to XXXX. The events took place in XXXX. I find that the threat of persecution or harm to the Appellant is in XXXX, and not in other parts of Pakistan.
- [23] The Appellant submitted letters from his brother and from the person who took over his XXXX, along with an affidavit from a friend to demonstrate that unknown individuals are still looking for the Appellant and will harm him if he returns to XXXX. The brother's letter and the letter from the new owner of the XXXX indicate that people from the Madrassa are looking for the Appellant. The brother advises the Appellant to "never come back here".⁹ The new owner of the XXXX advises the Appellant that if he comes back, the individuals will find him.¹⁰ The Imam of the Appellant's local mosque notes that "people living in this area face problems" because of the JuD, and advises him not to come back.¹¹ The tone of these letters, and the fact that the authors are individuals who live in, and are writing from, XXXX, suggests that the authors are speaking about a potential risk to the Appellant if he returns to XXXX. They indicate no knowledge of what risk the Appellant might face if he returns to another part of Pakistan.
- [24] I find these letters indicate that it could be dangerous for the Appellant to return to XXXX. However, these letters offer no support for the Appellant's submission that any of the agents of persecution have the motivation and means to find him in Lahore.
- [25] I have also considered new evidence in the form of a letter from the Imam at the Appellant's mosque dated February 20, 2019, which indicates that the Appellant has been branded an infidel and advises him again to never come back here.¹² I note that the Imam indicates that wherever the Appellant goes in Pakistan, the agents of persecution will act in collusion with police and kill him. I find this statement is insufficient and fails to establish, on a balance of probabilities, that the agents of persecution could find him. I find the letter to be speculative on the part of the Imam with respect to the risk in Lahore. The Imam lives and preaches at a mosque in XXXX. His letter provides no detail for why he believes the Appellant could be found anywhere in Pakistan. I give this letter no weight with respect to the risk in Lahore.
- [26] The Appellant submits that the tenant registration in place in Pakistan prevents him from successfully relocating in another part of Pakistan because if he tries to relocate to Lahore, he will need to have his identification verified by the police in his home town of XXXX. The Appellant believes the police will leak the information to the people who attacked him and his XXXX.¹³ I agree with the RPD that the Appellant speculates that the individuals he fears would have the motivation to track him down.
- [27] I have considered the threat letter from LeT submitted by the Appellant which indicates "wherever and whenever you are found, we will not spare you."¹⁴ The RPD Record indicates that the Appellant's brother sent the Appellant a copy of the letter. There is no information on how the brother obtained the letter. There is no signature or indication regarding who is behind the letter, apart from it being on letterhead of the banned LeT.

- [28] I find no error in the RPD's finding that this type of letter could be easily produced by anyone. As a result, I have concerns about its authenticity. I find it fails to satisfy me that the JuD or LeT, or any other affiliates, would have the motivation to pursue the claimant throughout Pakistan. The onus is on the Appellant to demonstrate, on a balance of probabilities, that this letter is authentic, and there is a reasonable likelihood that either of the two significant extremist organizations would pursue him throughout Pakistan. Reviewing the letter, it appears to be handwritten, with some logos. It includes the words Lashkar-e-Taiba in English over a logo, which seems unlikely given that it is from a Taliban group. Given the lack of any indication on how the Appellant's brother received this unsigned letter, and my concerns about its authenticity, I find the threat letter lacks credibility and give the threat letter no weight.
- [29] I also find no error in the RPD's finding that the Appellant was not a public, outspoken activist confronting extremist religious doctrine, but rather a XXXX seeking to protect his XXXX. The evidence presented by the Appellant indicates that he confronted a number of individuals from the Madrassa school in his XXXX. There is no evidence that the Appellant was actively promoting secular living or was publicly outspoken against religious extremists. I find his confrontations with the individuals from the Madrassa confirms that there could be a risk to the Appellant in XXXX, but this does not indicate he faces a risk in Lahore.
- [30] I find the Appellant's testimony, BOC Narrative and supporting documentation do not provide sufficient, credible evidence that demonstrates, on a balance of probabilities, the individuals from the local Madrassa school in XXXX, or the JuD or the LeT organizations have the motivation and means to find him anywhere in Pakistan, including in Lahore.
- (iii) Second prong: Lahore is a reasonable IFA for the Appellant
- [31] After carrying out my independent assessment of the Appellant's particular circumstances, I agree with the RPD that it is objectively reasonable for the Appellant to relocate to Lahore.
- [32] The Australian Government Department of Foreign Affairs and Trade (DFAT) notes that internal relocation to another area of Pakistan is generally considered reasonable, but depends on the nature and origin of the threat and the particular circumstances of the individual:

Because of Pakistan's size and diversity, . . . : internal relocation offers a degree of anonymity and the opportunity for victims to seek refuge from non-state instigated discrimination or violence. In most cases, there are options available for members of most ethnic and religious minorities to be able to relocate to areas of relative safety elsewhere in Pakistan. In particular, many large urban centres are home to mixed ethnic and religious communities and offer greater opportunities for employment, access to services and a greater degree of state protection than other areas. In practice, internal relocation is most successful when these conditions exist, but is limited mostly by a lack of financial resources and in some cases due to debts owed to landowners or money lenders.¹⁵

- [33] As indicated above, I find that the threat or risk to the Appellant is localized in nature and origin, which suggests that relocation to another area of Pakistan is available for him.
- [34] The Appellant is a young man born in 1983. He is a Sunni Muslim and speaks Punjabi and Urdu. He does not have a high school education but became a XXXX XXXX and opened his own XXXX by around the age of 21. He was able to work in a XXXX in Texas while living with a brother and waiting for his asylum application to proceed. He appears to be an enterprising young man. He has financial support from his family in Pakistan and remains in contact with them. According to his BOC, he has a sister in Lahore.
- [35] Given the particular circumstances of the Appellant, I find relocation to Lahore is objectively reasonable for him. His work experience and his initiative in starting up his own XXXX, as well as his ability to find work in the U.S., bode well for him to be able to find employment. I do not see language or ethnicity as raising any concerns in a relocation for him. Finally, the Appellant has indicated that his family supported him financially to leave Pakistan, and financially in Canada. From the letters of support written by his brother and the financial support provided to him by his family to leave Pakistan and while in his journey, I find the Appellant will likely be able to continue to count on familial support.

CONCLUSION

- [36] I find the Appellant has a viable IFA in Lahore. I am satisfied that there is no serious possibility of the Appellant being persecuted or, on a balance of probabilities, subjected personally to a risk to his life or a risk of cruel and unusual treatment or punishment or to a danger of torture in Lahore, Pakistan.
- [37] I dismiss the appeal and confirm the decision of the RPD that the Appellant is neither a Convention refugee nor a person in need of protection, pursuant to paragraph 111(1)(a) of the IRPA.

(signed)

Madeleine Schwarz

Madeleine Schwarz

August 18, 2020

Date

1 Exhibit P-2, Appellant's Record, p. 52-53 [Imam's Letter].

2 Immigration and Refugee Protection Act (S.C. 2001, c. 27), as amended, at ss. 110(4).

3 Raza v. Canada (Citizenship and Immigration), 2007 FCA 385, as endorsed in Canada (Citizenship and Immigration) v. Singh, [2016] 4 FCR 230, 2016 FCA 96.

4 Exhibit P-2, Appellant's Record, pp. 54 - 68.

5 Exhibit RAD-1, Member's Directions, July 30, 2020.

6 Thirunavukkarasu v. Canada (Minister of Employment and Immigration), 1993 CanLII 3011 (FCA), [1994] 1 FC 589.

7 Rasaratnam v. Canada (Minister of Employment and Immigration), [1992] 1 F.C. 706 (C.A.).

8 Exhibit P-2, Appellant's Record, p. 37.

9 Exhibit RPD-1, RPD Record, Exhibit 4, p. 81.

10 Ibid., p. 90.

11 Ibid., p. 92.

12 Imam's Letter, supra, endnote 1, p. 52.

13 Exhibit P-2, Appellant's Record, p. 38, lines 27-30.

14 Exhibit RPD-1, RPD Record, Exhibit 5, p. 190.

15 Exhibit RPD-1, RPD Record, Exhibit 3, National Documentation Package (NDP) for Pakistan (30 April 2018), item 1.12.

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RAD.25.02 (January, 2020)

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Immigration and Refugee

Board of Canada

Refugee Appeal Division

Commission de l'immigration

et du statut de réfugié du Canada

Section d'appel des réfugiés

RAD.25.02 (January, 2020)

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