

CANADA / JUDGMENT

VB9-08323

COURT

Refugee Appeal Division

DECIDED

16 January 2020

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RAD File / Dossier de la SAR : VB9-08323 VB9-08324 / VB9-08325 / VB9-08326 Private Proceeding / Huis clos Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXX XXXX XXXXXXXXXX XXXX XXXXXXXXXX XXXX XXXXXXXXXX XXXX Personnes en cause Appeal considered / heard at Toronto, ON Appel instruit / entendu à Date of decision January 16, 2020 Date de la décision Panel J. Lourenço Tribunal Counsel for the persons who are the subject of the appeal Fatima Zaidi Conseil des personnes en cause Designated representative XXXX XXXX XXXX XXXX for XXXX XXXX Représentant(e) désigné(e) Counsel for the Minister N/ A Conseil du ministre REASONS FOR DECISION OVERVIEW

- [1] XXXX XXXX XXXX XXXX (Principal Appellant), XXXX XXXX, XXXX XXXX, and XXXX XXXX (Associate Appellants) are citizens of Pakistan. They appealed a decision of the Refugee Protection Division (RPD), dated October 10, 2019, rejecting their claims for refugee protection. The Appellants allege they face a risk to life stemming from a property dispute with the Principal Appellant's step mother about his inheritance. The determinative issue in this case for the RPD was the Appellants' forward-looking risk.
- [2] I agree with the RPD that the Appellants have not established that they would face a forward-looking risk to their lives. For the reasons that follow, the appeal is dismissed.

BACKGROUND

- [3] The Principal Appellant alleges that his father married his stepmother (A.N) in 1999 and that when his father passed away in 2012 without leaving a will, his stepmother demanded that he turn over his share of property to her. The Principal Appellant alleges that A.N threatened him and laid false complaints against him using her connections with corrupt officers. The Principal Appellant alleges that he sent the older children abroad to study and took shelter with relatives in different cities with his wife and younger son. The Principal Appellant and his wife travelled outside of Pakistan to a number of countries between 2012 and 2018, but allege they did not seek protection because the threats from A.N were not yet life threatening.

- [4] The Appellants allege that in XXXX 2018, A.N had people break into their home and vandalize it. After this incident, the Principal Appellant left to the USA and the remaining Appellants joined him. They then came to Canada and made their claims for protection.
- [5] Aside from the Principal Appellant's claim that A.N had him arrested, the RPD accepted the Appellants' allegations were credible. However, the RPD found that the Appellants would not have a forward-looking risk if they surrendered their property to A.N and therefore rejected their claims. ROLE OF THE REFUGEE APPEAL DIVISION
- [6] The Refugee Appeal Division (RAD) reviews decisions of the RPD on a standard of correctness after conducting an independent assessment of the evidence before it. The exception to this rule is where the RPD enjoys a meaningful advantage in the assessment and weighing of oral testimony heard, which in particular cases, attracts deference. Unless specifically stated below, I have applied a correctness standard.¹

ANALYSIS

Appellants' arguments

- [7] The Appellants' memorandum on appeal consists of many of the same arguments that were before the RPD. Additionally, the Appellants argue that the Principal Appellant forgot to mention his arrest in Pakistan due to stress and psychological hardship. They also argue that it was unreasonable for the RPD to require that the Appellants relinquish their claim to the properties in dispute. They further argue that A.N will not stop attempting to harm them even if they were to surrender the property as suggested by the RPD. New evidence
- [8] Section 110(4) of the IRPA² sets out that an Appellant may only present evidence that arose after the rejection of their claim, or that was not reasonably available, or that they could not reasonably have been expected in the circumstances to have presented at the time of the rejection. Where evidence meets the requirements of section 110(4), the RAD will then go on to consider the factors affirmed by the Federal Court of Appeal in Singh.³
- [9] The Appellants have submitted a First Instance Report (FIR) dated XXXX XXXX, 2013 as new evidence with their appeal. They argue that the Principal Appellant forgot to mention this arrest in his Basis of Claim (BOC) narrative and that due to this omission, the RPD did not believe he was arrested as he alleged. The Appellants argue that the omission was caused by the stress and harm the Principal Appellant suffered as a result of the events in Pakistan. The Appellants argue that they were unable to provide this evidence at the hearing but offer no further details as to what prevented them from doing so. They are seeking to have this document entered as it "will provide assurance that Mr.XXXX is not making up the incident."⁴ They also argue that this evidence is crucial in the assessment of their credibility and therefore an oral hearing should be held.

- [10] The RAD notes that Rule 3(3)(g) of the RAD Rules requires the Appellant's memorandum include among other things, full and detailed submissions regarding: * (iii) how any documentary evidence referred to in paragraph (e) meets the requirements of subsection 110(4) of the Act and how that evidence relates to the appellant⁵
- [11] The FIR clearly pre-dates the rejection the Appellants' claims and is an attempt to corroborate an allegation that the Principal Appellant made in his testimony before the RPD. The Appellant offers no real explanation as to why this affidavit was not presented to the RPD. There is nothing indicating why this document was not available to him prior to the rejection of the claim. Given that this FIR is directly related to the Appellant's allegations that A.N filed fraudulent reports about them to the police, I find it reasonable to expect that the Appellants would have presented this evidence to the RPD. As such, I find that this document does not meet the requirements set out in 110 (4) of the IRPA and it will not be admitted as new evidence. As there is no new evidence accepted on appeal, the RAD cannot hold an oral hearing. Determinative Issue: Section 97 analysis The Appellants have not established a forward-looking risk to life.
- [12] The RPD found that the evidence established a property dispute between the Appellants and A.N. The RPD generally accepted the Appellants' allegations occurred as alleged. The RPD did not accept the Principal Appellant's allegation that following a complaint made by A.N to the police he was arrested and detained. The RPD noted that this was not in the Appellants' BOCs and found this to be a major omission that impugned the credibility of that allegation.
- [13] The RPD noted that the Appellants conceded at their RPD hearing that there was no nexus in their case to a Convention ground. The issue was whether they had established, on a balance of probabilities, that they faced a risk to life in Pakistan. The RPD found that although there may have been some historic disagreements between the Appellants and A.N about them helping individuals in the community, the source of their conflict was clearly the dispute around property and inheritance.
- [14] The RPD asked the Adult Appellants if they would be willing and able to give up their claim to the disputed property in order to stop the threats against them. The Principal Appellant testified that he believed he should not have to give up his claim to the home in Karachi to his step mother as she was not his real mom and the property held sentimental value for him.⁶ His wife testified that they would suffer financially if they could no longer live rent free in that property and they would not be able to afford tuition for their children and other expenses. She testified that the Appellants did not have steady employment in Pakistan and had been living off their savings for the last few years.⁷
- [15] The RPD found that the Appellants could essentially avoid the threats to their safety by giving up their claim to the disputed properties. The RPD found that this would remove the motivation for A.N to continue to pursue them and therefore going forward, they would no longer face any risk. The RPD found that the Appellants' interest in pursuing this inheritance was not a fundamental freedom or guaranteed human right. The RPD noted that even taking

the Appellants at their word about who was entitled to what share of the property, they would not be able to claim the house in Karachi in its entirety and continue to reside there rent free. The RPD also noted that although no longer having a place to live for free may cause some financial hardship to the Appellants, there was nothing to suggest that they would be destitute. The RPD also noted that four of the Appellants' children were adults who could likely now also contribute financially to the family.

- [16] The Appellants argue that the RPD should have accepted the Principal Appellant's explanation for the omission of his arrest. The Appellants continue to argue that they should not have to give up their share of the inheritance or their interests in these properties. They cite the same financial and emotional considerations that were presented to the RPD. They also argue that the problems they face in Pakistan have moved beyond a land dispute. They argue that A.N is jealous and will continue to cause problems for them even if they gave up their share of the inheritance. As such, they argue that they face a risk to life in Pakistan.
- [17] Having independently reviewed the record, I agree with the conclusion of the RPD. I find that the RPD was correct in finding that the omission of the Principal Appellant's arrest from his BOC was a significant omission that impugned the credibility of that allegation. I also find that this is not central to the determination of the claim. It is essentially one incident in a sequence of allegations that A.N caused difficulties for the Appellants because she wanted them to relinquish their interest in the disputed properties.
- [18] I find that the Appellants can reasonably be expected to surrender their interests in the disputed properties. Firstly, I agree with the RPD that the record clearly establishes that the issue between the Appellants and A.N is based on the issue of who has claim to the properties of the Principal Appellant's father after his passing. The evidence in the record, including the FIR, the court documents and affidavits all point to this being the central issue and source of conflict. Therefore, I find that the RPD was correct in concluding that if the Appellants stopped pursuing this issue, then A.N would no longer be interested in them.
- [19] I also agree with the RPD that this interest is not a guaranteed right or fundamental freedom. The court has held 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 I find that the Appellants could make the reasonable choice to end their dispute with A.N and that this would free them from any future potential harm.
- [20] In considering the issue of whether these types of changes can include claimants could be required to stop pursuing inheritance claims, the court has held that it is reasonable to require that they do so. In Kenguruka, the Court held that the applicant's refugee claim that had been rejected by the RPD because his inheritance claim, which lead to threats of violence, did not constitute a basis for refugee protection. Justice Harrington stated (at para 7):

- [7] 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.⁹ This reasoning is echoed by Justice Walker in Malik¹⁰ where the Court held that it was reasonable for the RPD to conclude that the claimants could avoid a risk to life by no longer pursuing a lawsuit related to an inheritance dispute.
- [21] I find that these principles apply to the Appellants' claim as their conflict with A.N is based on their attempts to maintain control over property as part of an inheritance dispute. As such, I agree with the RPD that the Appellants can avoid a future risk to life by no longer pursuing their inheritance.

CONCLUSION

- [22] The RAD dismisses the appeal and confirms the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection, pursuant to section 111(1)(a) of the Immigration and Refugee Protection Act (IRPA).¹¹ (signed) "J. Lourenço" J. Lourenço January 16, 2020 Date 1 Canada (Citizenship and Immigration) v. Huruglica, [2016] 4 FCR 157, 2016 FCA 93, at para 103. 2 Immigration and Refugee Protection Act, S.C. 2001, c. 27, as amended. 3 Canada (Citizenship and Immigration) v. Singh, [2016] 4 FCR 230, 2016 FCA 96. 4 Exhibit P-2, Appellant's Record, Appellant's Memorandum, at p. 10. 5 Refugee Appeal Division Rules, SOR/2012-257, Immigration and Refugee Protection Act (IRPA). 6 RPD Recording Audio, at approximately 1:36:47. 7 RPD Recording Audio, at approximately 1:58:00. 8 Sanchez v Canada (Citizenship and Immigration), 2007 FCA 99 (CanLII), at para 16. 9 Kenguruka v Canada (Citizenship and Immigration), 2014 FC 895 (CanLII). 10 Malik v. Canada (Citizenship and Immigration), 2019 FC 955 (CanLII). 11 Immigration and Refugee Protection Act (IRPA), SC 2001, c 27, as amended, at ss. 111(1)(a).

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