

CANADA / JUDGMENT

Zaman v. Canada (Citizenship and Immigration)

2024 FC 1821

COURT

Federal Court

DECIDED

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Zaman v. Canada (Citizenship and Immigration) Court (s) Database Federal Court Decisions Date 2024-11-18 Neutral citation 2024 FC 1821 File numbers IMM-16337-23 Decision Content Date: 20241118 Docket: IMM-16337-23 Citation: 2024 FC 1821 Vancouver, British Columbia, November 18, 2024 PRESENT: Mr. Justice Diner BETWEEN: MUHAMMAD OMAR ZAMAN Applicant and MINISTER OF CITIZENSHIP AND IMMIGRATION Respondent JUDGMENT AND REASONS

- [1] The Applicant, Muhammad Omar Zaman, seeks judicial review, pursuant to section 72 of the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA], of a decision of the Refugee Appeal Division [RAD] confirming the determination of the Refugee Protection Division [RPD] that he is not a Convention Refugee under section 96 of the IRPA nor a person in need of protection under section 97. For the reasons that follow, I will dismiss this application for judicial review. I. Background [2] The Applicant is a 20-year old citizen of Pakistan. He claimed refugee protection in Canada based on allegations he would be at risk from religious extremists in Pakistan because his father is bisexual.
- [3] The RPD refused the Applicant's claim, while allowing the claims of his father, based on his sexuality, and his mother and sisters, based on the intersectionality of their gender returning to a country where they would face risks as single or unaccompanied women, along with their association with their husband and father for whom they had already been subjected to threats.
- [4] On appeal, the RAD confirmed the RPD's findings, and while agreeing that the RPD was correct, provided its own independent reasons for concurring with the first-level tribunal's outcome. That is to say, the RAD also concluded that the Applicant was not at risk from extremists in Pakistan as the son of a bisexual man due to his profile being different from that of his female family members: the Applicant is a male who had lived in Pakistan for a very short time to attend a few months of school, otherwise living most of his life in the United Arab Emirates [UAE]. The RAD found that he is not a member of either of the particular social groups which put his family members at further risks of persecution (i.e. women and/or members of the LGBTQ community), is distinct from them, and had not

faced any issues in his short time in Pakistan due to his father's bisexuality. II. Parties' Positions [5] The Applicant argues the RAD decision is unreasonable (per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99) because first, the RAD failed to properly engage with the evidence and submissions before it, and specifically evidence that those who support the LGBTQ and are allies of the community are vulnerable to attack, and second, the RAD unreasonably and erroneously focused on the lack of past persecution or any incidents that he faced, rendering a decision with insufficient reasons.

- [6] The Respondent, on the other hand, contends that the Decision was reasonable, lacking a nexus to any section 96 or 97 ground for a finding of risk, and that the Applicant failed to point to any relevant evidence to the contrary that was ignored by the RPD or the RAD. Furthermore, the Respondent agrees with the Applicant that past persecution is not determinative of a refugee claim and that the point of law relates to the forward-looking threat. However, the Respondent argues that this is not helpful to the Applicant as he has failed to establish either, and that the RPD and the RAD did not focus their analysis on the lack of past persecution but were merely stating the lack thereof in conducting their analysis. III. Analysis [7] On the first point, I note that the jurisprudence from this Court is clear that distinctions can be made amongst family members in their refugee claims and "the fact that one family member has been persecuted does not confer refugee status on all of the other members in that family" (which jurisprudence was summarized in *Theodore v Canada (Citizenship and Immigration)*, 2021 FC 651 at para 8 [Theodore]) and has been cited numerous times since, including in cases cited in paragraph 14 of these Reasons below).
- [8] Here, I note that the only information relating to the Applicant in the Basis of Claim [BOC] form was a brief mention of him in his father's BOC, which the Applicant attaches and relies on as his own. That one mention of the Applicant in his father's BOC states only that "[i]n June 2021, my son Muhammad Omar completed his schooling. In August 2021, he went to Islamabad for a 6-month software training course. However, he did not end up completing the program, as we told him to return to the UAE to assist my wife and two daughters." The balance of his father's BOC provides the story of his father, mother and sisters, with specific details and incidents about the problems they had. The Applicant's BOC, on the other hand – namely that of his father – is completely silent as to any risks the Applicant would face. The latter argued before me that he had made "common cause" with his father through family ties and the risks his father would face in Pakistan.
- [9] Turning to the case law aside from the Theodore line of jurisprudence, I note that *Salibian v Canada (Minister of Employment and Immigration)*, 1990 CanLII 7978 (FCA), [1990] 3 FC 250 at p. 259 [Silabian], and the jurisprudence that has relied on Silabian since its publication in 1990, has held that the treatment of similarly situated persons is often the best evidence that an individual faces a serious chance of persecution.

- [10] In this case, given the explanation provided by the tribunals, I find that there was nothing unreasonable in either the RAD's conclusions (or the decision of the RPD that it considered) that found there was a lack of evidence personal to the Applicant, as well as an absence of objective country condition evidence that suggested a son of a bisexual man who had obtained refugee status in Canada would be persecuted in Pakistan simply as the result of being closely related to, making common cause with, or being an ally to his father.
- [11] Compounding the lack of objective country condition evidence was the fact that the Applicant also failed to point to any personal issues he himself experienced that were persecutory in nature. Specifically, the Applicant pointed to only one situation where his sibling was threatened, when a cousin shouted at his sister for defending her father's orientation at a family gathering. The Applicant argued that had he been in the same situation, he would have also defended his father and would have been subject to the same harassment.
- [12] The RAD addressed this particular event and found that the father was the subject of the threats and that the situation had escalated only after the sister had made a scene, defending her father. The RAD found this was not directed at the Applicant and that there was no evidence to conclude the threats extended to him. Furthermore, the RAD indicated that this single threat, based on his sister's reaction to comments made about her father at a family gathering, did not sufficiently extend to the Applicant such that he would be considered at risk from his family. The RAD added that the Applicant was not the subject of any such threat or harassment during his short time in Pakistan.
- [13] In my view, it was thus open for the RAD to note that the Applicant has spent most of his life outside Pakistan, having lived in the UAE since 2011, without experiencing any issues relating to his father's orientation during the short time that he returned to his native country, namely for approximately five months between August and December 2021 when he went to attend his uncompleted software course, as mentioned in the Background section above.
- [14] As noted from the outset of my analysis, what goes for one family members does not necessarily go for all: this Court has previously held that in cases where membership in a family group is the basis for the claim, the claimant must establish a personal nexus with the alleged persecution (see, for instance *Ndegwa v Canada* (Minister of Citizenship and Immigration), 2006 FC 847 at para 9). In other words, indirect persecution is insufficient as sole ground to claim refugee status (see, for instance, *Pour-Shariati v Canada* (Minister of Employment and Immigration), 1994 CanLII 3542 (FC), [1995] 1 FC 767; *Tomov v Canada* (Minister of Citizenship and Immigration), 2005 FC 1527 at para 11; *Theodore* at para 8; *Toscano Rosales v Canada* (Citizenship and Immigration), 2024 FC 553 at para 66; *Vashist v Canada* (Citizenship and Immigration), 2024 FC 768 at para 5).

- [15] Similarly, on the second issue, I find no reviewable error with respect to the sufficiency of the RAD's reasons. Both boards (the RAD Decision under review, as well as the RPD previously) did exactly that, offering a transparent and rational chain of analysis as to why the Applicant is not at risk of being persecuted on the same ground as the rest of his family. First, the RPD was clear in its analysis that women form part of a social group that faces a real possibility of persecution in Pakistan, and that this formed a significant part of the risk faced by the female family members. The RPD noted that "the possibility of persecution as a member of a particular social group women by society at large far outweighs the possibility of persecution as a member of a particular social group family of a bisexual man by a member of the associate claimant's own family" (RPD Decision para 29).
- [16] The RAD then was responsive to all the arguments raised by the Applicant's previous counsel on appeal. Clearly, the RAD also considered the Applicant's profile in comparison to that of his family members:
- [10] The Appellant's sisters' and mother's claims were allowed, in part due to their familial relationship with the Appellant's bisexual father; however, his mother's and sisters' profiles are further compounded by their gender and the risk they would face in Pakistan as a result. While the Appellant shares this same familial relationship with his father as the rest of his family, his risk is not further compounded by the gender as his sisters and mother are. The Appellant has not provided sufficient evidence to support his allegations that as a male family member of a bisexual man, he would face a serious possibility of persecution. Thus intersectionality was critical to the analysis, and lacking for the Applicant, and the Reasons of both tribunals provided ample reasons for the rejection of the claim based on the evidence presented.
- [17] Based on the above, I am dismissing this application for judicial review. Having so decided, it is noted the Applicant had previous counsel at both prior tribunals, and the records had been set by the time current counsel inherited the file. Nonetheless, Applicant's counsel provided strong advocacy for her client despite the obstacles she faced with the evidence she inherited. JUDGMENT in IMM-16337-23 THIS COURT'S JUDGMENT is that: The application for judicial review is dismissed. There is no question to certify. No costs will issue. "Alan S. Diner" Judge FEDERAL COURT SOLICITORS OF RECORD DOCKET: IMM-16337-23 STYLE OF CAUSE: MUHAMMAD OMAR ZAMAN v MCI PLACE OF HEARING: toronto, ontario DATE OF HEARING: October 31, 2024 JUDGMENT AND REASONS: DINER J. DATED: November 18, 2024 APPEARANCES: Menal Al Fekih For The Applicant Lorne McClenaghan For The Respondent SOLICITORS OF RECORD: Mamann Sandaluk LLP Barristers and Solicitors Toronto, Ontario For The Applicant Attorney General of Canada Toronto, Ontario For The Respondent

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