Date: 20050623

Docket: IMM-9550-04

Citation: 2005 FC 893

Vancouver, British Columbia, Thursday, the 23rd day of June, 2005

Present: THE HONOURABLE MR. JUSTICE TEITELBAUM

BETWEEN:

MOHAMMAD LIAQAT

Applic
ant

- and -

THE MINISTER OF CITIZENSHIP

AND IMMIGRATION

Respond
ent

REASONS FOR ORDER AND ORDER

[1] This is an application under section 72(1) of the *Immigration and Refugee Protection Act,* S.C. 2001, c. 27 (IRPA) for judicial review, pursuant to section 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7, of a decision of a Pre-Removal Risk Assessment ("PRRA") Officer of the Canadian Border Services Agency (the "Officer"), dated June 28, 2004, that Mohammad Liaqat (the "Applicant") is neither a refugee nor a person in need of protection.

[2] The Applicant is a 55-year-old citizen of Pakistan who is suffering from mental illness. According to his submissions, he arrived in Canada in July 1999 with his then-wife, and his daughter followed soon afterward. The three of them made refugee claims. From the documents in the Tribunal Record, the claims appear to be connected to a violent robbery and threats that the family experienced in Pakistan from the Sipak/Shaha (SSP) because Mr. Liaqat is a Shia Muslim.

[3] The Applicant's submissions state that his mental health problems started after he was the victim of this robbery in April 1999. Prior to the Applicant's arrival in Canada, he had limited contact with mental health authorities in Pakistan in May 1999 and was given some medication for psychosis, paranoia and hallucinations.

[4] A year after his arrival, on July 13, 2000, the Applicant was involuntarily admitted to the University of British Columbia Hospital where he was diagnosed with schizophrenia and depression with psychotic features. He was discharged into the care of his family doctor in December 2000 after treatment.

[5] In the meantime, the Applicant had separated from his wife and his refugee claim was severed from hers and from the daughter's. In November 2000, the Applicant's claim was denied. In January 2001, the wife and daughter's claims were accepted and they were recognized as refugees.

[6] After the rejection of his claim, the Applicant lived as a transient, sleeping on a mattress in the woods near the Sikh temple in Vancouver, receiving food from the temple and doing odd jobs there. The Applicant was arrested for removal and detained, and submitted a PRRA application from detention on April 30, 2004. His condition deteriorated and he was involuntarily admitted to another hospital on May 14, 2004, where he was diagnosed with psychotic depression.

[7] A negative PRRA decision was made on June 28, 2004, which the Applicant received on November 11, 2004.

[8] As a result of the Applicant failing to appear for removal, the Applicant was arrested and remained in detention and/or supervised care for approximately six or seven months. Two detention hearings were held on April 16, 2004 and May 21, 2004, and the transcript from the hearings (pp. 414-420 and pp. 485-489 of the Tribunal Record) contains some additional pertinent information. It appears that a fingerprint match by the RCMP revealed that this is the Applicant's third attempt at claiming refugee status in Canada. He apparently tried to claim in Toronto in October 1991 under the name of Ali Liaqat, a claim that was refused in April 1993. Then he tried to claim in January 1994 under the name Liaqatullah Malik, but was apparently discovered in the double claim and removed from Canada in April 1994. Then he came back into Canada in July 1999 as Mohammed Liaqat and began this third claim.

APPLICANT'S SUBMISSIONS

[9] The Applicant originally made four arguments:

1) The Officer erred in law by failing to find the nexus to a Convention ground, despite the Applicant's membership in a particular social group, the mentally ill.

2) The Officer based the decision on an erroneous finding of fact in failing to consider the Applicant's lack of immediate family who can care for him in Pakistan.

3) The Officer breached procedural fairness by failing to disclose to the Applicant material taken off the internet which was relied upon in coming to a decision.

4) The Officer breached procedural fairness by failing to provide adequate reasons.

[10] At the commencement of the hearing, counsel for the Applicant informed the Court that the Applicant was abandoning the third and fourth issues.

Issue 1) The Officer erred in law by failing to find the nexus to a Convention ground, despite the Applicant's membership in a particular social group, the mentally ill.

[11] The Applicant cites *Zefi v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 636, which discusses how to approach an analysis of whether someone is a member of a particular social group under the Convention. The first step, as outlined in *Canada (Attorney-General) v. Ward*, [1993] 2 SCR 689, and *Chan v. Canada (Minister of Employment and Immigration)*, [1995] 3 SCR 593, is to determine that an issue of human rights or discrimination is engaged. The second step is to determine that the persecution is caused by membership in that group.

[12] The Applicant also cites *Ward, supra,* for its outline of three factors that can be used to identify a member of a particular social group: (1) innate or unchangeable characteristics of the group, (2) voluntary association with the group for reasons so fundamental to their human dignity that they should not be forced to forsake it, and (3) association with the group by a former voluntary status that has become unalterable due to its permanence through habit.

[13] The Applicant submits that the Applicant's mental illness is an innate and unchangeable characteristic. The Applicant adds that even though its severity may fluctuate with treatment, the psychotic depression is a fundamental underlying feature of the Applicant's psychological condition.

[14] The Applicant notes that the old Convention Refugee Determination Division (CRDD) had accepted that a person with a physical disability was a member of a particular social group subject to persecution in previous decisions, and that the United States INS has also found that an autistic child from Pakistan was subject to persecution on the basis of that condition. The Applicant goes on to state that "previous jurisprudence" found that people suffering from physical and mental disabilities are members of a particular social group, and there was no reason for the Officer to depart from these findings. (It is not clear if the Applicant is referring to the CRDD and US INS findings, or to actual case law that is not cited.)

Issue 2) The Officer based the decision on an erroneous finding of fact in failing to consider the Applicant's lack of immediate family who can care for him in Pakistan.

[15] The Applicant submits that the Officer based his findings of availability of treatment in Pakistan on the fact that the Applicant had received some limited medical help before his departure for Canada. The Applicant states that at that time he had the resources to pay for the medicine, which he no longer does, and family to support him, which he no longer does. The Applicant states that his remaining children in Pakistan - who I will discuss below - will be coming to Canada to join his estranged wife, and that he is alienated from his brothers owing to a "property dispute."

[16] The Applicant states that the documentary evidence shows it is only possible for the mentally ill in Pakistan to access treatment if they have resources and family support - otherwise, they are left to "the mercy of society in general and the State", a situation the Applicant describes as "dire."

[17] The Applicant adds that the documentary evidence before the Officer specifically showed that mental illness is widespread in Pakistan, that it is commonly believed to be caused by black magic or evil spirits, that "atrocities and brutalities" are committed by "quacks" in the name of treatment (including being given electroshock therapy by state doctors and/or being chained to shrines by faith healers), that this situation is not likely to change in the near future, that the mentally ill are discriminated against and experience stigma, and that there is a severe shortage of psychiatrists in Pakistan (only 300 for a population of 140 million).

[18] The Applicant also points to an e-mail from a leading Pakistani psychiatrist (p. 400, Tribunal Record) stating that those who are mentally ill and have no family resources often end up on the street. The Applicant submits that now that he is separated from his family in Canada, he has become homeless and destitute, and that he could hardly expect a better fate in Pakistan where there is no social safety net comparable to Canada's.

RESPONDENT'S SUBMISSIONS

[19] The Respondent makes three submissions.

1) The decision was reasonable based on all of the evidence.

The Respondent submits that the Officer carefully considered the Applicant's submissions, medical condition, personal circumstances and country conditions in Pakistan and, in particular, the treatment of the mentally ill there. The Respondent says the Officer's finding was that mentally ill persons *as* a particular social group would not face persecution in Pakistan - a shortage of facilities to treat patients does not mean a complete lack of availability and does not amount to persecution.

[20] The Respondent submits that there was insufficient "clear and convincing" evidence, as required by *Ward, supra,* to show that state protection for the mentally ill in Pakistan had broken down to the point where it could no longer be presumed, according to a standard more stringent than that of a balance of probabilities (*Ward, supra, Doka v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 449). The Respondent adds that the Applicant had, on his own evidence, already received medical treatment for his problems in Pakistan before coming to Canada.

[21] The Respondent does not deal with the arguments of the Applicant concerning lack of family support, stating that such evidence goes to humanitarian and compassionate considerations, which are not at issue here, rather than to proving the existence of persecution.

[22] The Respondent submits that the Applicant is trying to have the Officer's decision re-weighed, and it is well established that the Officer's findings are subject to a patent unreasonableness standard and cannot be re-weighed by the Court.

[23] The Respondent submits that the Officer considered all of the relevant circumstances, cited country conditions documents and determined that the Applicant's claims were not well-founded. The Respondent adds that the Applicant failed to provide any evidence or argument on the s. 97 portion of his claim, but the Officer dealt with s. 97 anyway, noting that the Applicant would be excluded from making a claim to be a person in need of protection under s. 97(1)(b)(iv). (This section of IRPA specifically states that the risk claimed cannot be due to a country's failure to provide adequate health or medical care.) The Respondent submits that all these findings were adequate and reasonable.

STANDARD OF REVIEW

[24] The standard of review for the decision of a PRRA officer does not appear to be a settled question, and this confusion is reflected in the submissions. The divergence in the PRRA jurisprudence was recently discussed by Blanchard J. in *Selliah v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 872 at para 16:

¶ 16 PRAA [sic] officers have a specialized expertise in risk assessment. Their findings are usually fact driven and, in my view, warrant considerable deference from a reviewing Court. There appears to be some debate in the jurisprudence as to whether the findings of PRRA officers are reviewable against a standard of reasonableness simpliciter or patent unreasonableness: See Sidhu v. Canada (MCI), [2004] F.C.J. No. 30,online: QL, 2004 FC 39, at para. 7, and Joseph v. Canada (MCI), [2004] F.C.J. No. 392, online: QL. I need not resolve this question on the facts of this case, since my conclusion is the same whichever standard is applied.

[25] This decision was upheld by the Federal Court of Appeal per Linden JA, 2005 FCA 160, although the standard of review comment was not specifically discussed therein.

[26] In this case, the question may be settled by looking at the nature of the issues.

[27] The issue of the lack of family can most likely be disposed of on grounds of factual accuracy, as my analysis will show, and the nexus between mental illness and a particular social group appears to be conceded by the Respondent.

[28] The remaining issue is that of state protection, which will be discussed under the section on "Lack of Nexus". Layden-Stevenson J. recently applied the pragmatic and functional approach and found that a state protection determination is subject to a standard of reasonableness *simpliciter* in *Chaves v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 193. This decision resolved a previous divergence in the jurisprudence on this point.

ANALYSIS

(i) Lack of Nexus

[29] The Respondent appears to concede that the Applicant is a member of a particular social group because of his mental illness and I am in agreement with the Respondent. The Respondent's argument is that the Officer took this into account and found no connection between membership in this group and treatment that would amount to persecution. While it is not at all clear from the text of the Officer's decision that this actually was the Officer's finding, the Officer's conclusions appear to be based on the weakness of the link to persecution rather than the membership issue.

[30] The Respondent equates medical treatment with state protection and argues that it must be assumed to exist, as per *Ward, supra,* in all cases save that of complete breakdown. The Applicant's counter-argument would appear to be that with such a small number of psychiatrists per person in Pakistan and with the forms of treatment that proliferate where they are not available, the Applicant would be subject to cruel and unusual treatment. The Applicant cites the documentary evidence as proof of this.

[31] The difficulty with assuming the existence of treatment for mental illness is that such treatment does not tend to be adequately developed even in western countries - as the Applicant has noted, he ended up on the street in Canada due to his mental health problems as well. The regular level of state protection against this contingency is, therefore, already very low across the board.

[32] While sending someone back to live an indigent life may or may not be considered cruel and unusual treatment, other methods of "curing" mental illness in Pakistan do bear some of those features - being chained up at the shrine (p. 372, Tribunal Record), discrimination and stigma (p. 374, Tribunal Record), "atrocities and brutalities" (p. 377, Tribunal Record), and punishment to drive out the "evil spirits" within (p. 393, Tribunal Record).

[33] An article from IRIN News in the documentary evidence states (at p. 372, Tribunal Record):

Although the shrine offers peace of mind in a country which has poor facilities for mental health care, there has been criticism of the way some people are left there, particularly those chained up. But local authorities claim they have no knowledge of this. I am not aware of this shrine, but if we hear that people are being treated badly or are being tortured we will release them immediately," the district coordination officer for Tatta, Mahmud Ahmad Khan, told IRIN in Tatta. He added that he acknowledged that it was a serious human rights issue.

Local religious leaders also frown on these practices. People should not be chained. This is against human dignity, and there is no need for this, religious scholar, Muhammad Tufayl Thattvi, told IRIN in Tatta. He added that in most cases relatives brought their loved ones in chains because they thought them to be a danger. "There is a tradition of bringing them with chains or handcuffs," he explained.

[34] The document goes on to mention that the state has made an effort to take over control of these shrines, although not all of them are state-run yet. Other documents show that the government is making a significant effort to improve the delivery of mental health services and societal attitudes towards the mentally ill (pp. 384-388 of the Tribunal Record provide some details of the government's initiatives). The government of Pakistan also passed new legislation relating to treatment of the mentally ill in 2001 (p. 390, Tribunal Record).

[35] The standard of review for this aspect of the decision is reasonableness. *Ward* also puts the burden to refute the presumption of state protection on the Applicant. In light of the Applicant's serious credibility problems, it is difficult for him to be convincing on any factual subject apart from his own mental health condition, which is independently verified by medical professionals in the Record. The country conditions evidence is therefore the determinative source of information.

[36] Even though some of the forms of treatment that are employed in some places in Pakistan might be considered as rather primitive, the Officer's decision correctly notes that efforts are being made to change them, and discusses the progress thus far. State protection is not expected to be perfect, as recently reiterated by Mactavish J. in *Varga v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 617:

¶ 11 As the Supreme Court noted in the Ward case previously cited, in order to demonstrate that state protection is not available, claimants have to do more than simply demonstrate that state protection is not perfect. That is, the fact that a government has not always succeeded in protecting people in the situation of a particular refugee claimant is not sufficient to establish that state protection is not available to the claimant in his or her home country. This is because no government can be expected to guarantee the safety of all of its citizens, all of the time: Canada (Minister of Employment and Immigration) v. Villafranca (1992), 99 D.L.R. (4th) 334 (F.C.A.).

¶ 12 Rather, claimants must provide clear and convincing proof that their state will not be able to protect them.

[37] With regard to the Applicant's arguments that his protection hinges on financial resources and family support, the Applicant would appear to have more family support in Pakistan than he claims (see section on "Lack of Family"). The Applicant would also appear to have medical connections in Pakistan. The original decision on his claim describes his position in Pakistan as follows at p. 551 of the Tribunal Record:

You are a well-known, well-established businessman, being a naturopathic pharmacist. You own the building in which the pharmacy you share with a partner is located.

[38] It also looks as though the Applicant was not just given medication in Pakistan, but also hospitalized - the Canadian doctor's notes in the Tribunal Record make reference at p. 366 to the hospitalization of the Applicant right after the burglary incident that apparently triggered his mental health problems, and to his continued treatment by the outpatient

department for a few weeks. Another set of doctor's notes makes reference to a hospitalization in Pakistan approximately eight years ago (p. 403 of the Tribunal Record). If these notes are accurate, then the Applicant has received the more conventional forms of treatment in Pakistan and is known to the mental health authorities there. (It should be noted that the Applicant's estranged wife states at p. 397 of the Tribunal Record that the husband was not hospitalized in Pakistan. She also states that the Applicant's uncle has sold his pharmacy.)

[39] The Applicant therefore appears to have sought and received the state protection of mental health treatment in Pakistan in the past, although to what extent is unclear.

[40] With regard to s. 97, the Respondent appears to be correct that the Applicant is precluded from claiming on the ground of lack of adequate medical care at home under s. 97(1)(b)(iv):

Person in need of protection	Personne à protéger
97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally	97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée_:
(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant_:
[...]	[...]
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

[41] Russell J. recently commented on the interpretation of this section in *Singh v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 288. He stated that the issue of whether or not applicants can access or afford the health care that is available is not relevant to a determination of its adequacy for the purposes of the s. 97 exclusion:

... A risk to life under section 97 should not include having to assess whether there is appropriate health and medical care available in the country in question. There are various reasons why health and medical care might be "inadequate." It might not be available at all, or it might not be available to a particular applicant because he or she is not in a position [page

334] to take advantage of it. If it is not within their reach, then it is not adequate to their needs. [1]

(ii) Lack of Family

[42] The Respondent does not make any submissions on this point except to note that availability of family support is a humanitarian and compassionate consideration, not an element of persecution.

[43] However, the Applicant's submissions can be refuted on another basis - they do not appear to be true. The Applicant's medical records provide details of three other children, aside from his daughter in Canada, who are still in Pakistan. These children, two of whom are now adults, are staying with relatives, pending potential travel to Canada under their mother's sponsorship. On pp. 121, 126 and 128 of the Applicant's submissions, copies of medical notes are provided which contain details on these children and their ages at the time the notes were taken.

[44] The Tribunal Record also contains documents substantiating the existence of these children. A document from the Canada Border Services Agency at p. 440 of the Tribunal Record lists the children left behind in Pakistan and their birth dates. Also, the original decision on the Applicant's refugee claim is included in the Tribunal Record, and it discusses his children at p. 548:

His only explanation for why he would leave his eldest son and heir and his minor children back in Pakistan was the agent could not get them out. Yet, within six months of his arrival in Canada in July 1999, his daughter Saidia arrived.

It refers to them again at p. 551:

Your eldest son continues to operate that business... your younger children remain in Sialkot with relatives, where you also own property and rent it out...

[45] It would seem that one of his children in Pakistan is currently 22-years-old, another is 20-years-old, and the third is 17-years-old. The only mention of these children in the Applicant's Memorandum is where he states that they will all soon be leaving for Canada, although they apparently have not yet done so, five years after their parents' departure and four years after their mother and sister were given refugee status here. The Applicant also states in his Memorandum that he is estranged from all his brothers and has no other close family, yet an "uncle" appears to have been willing to take in the Applicant's children while he went to Canada. The reasons given for not being able to rely on the care of these members of the immediate family seem vague at best.

[46] However, it should be noted that the Applicant's estranged wife states at p. 396-397 of the Tribunal Record that the uncle who originally took the children made them leave and they are now staying with her own cousin. She also states that she is planning to sponsor the remaining children as soon as she receives her permanent residency in Canada. She says she

will not sponsor her husband. So it may be the case that there will soon no longer be any family in Pakistan willing to look after the Applicant, even if that is not the current situation.

CONCLUSION

[47] While the Applicant does not appear to be "faking" his mental illness, there are significant amounts of fabrication associated with his several claims. Because of the difficulty of discerning reality from someone in his mental state, it is hard to tell to what degree his inconsistencies arise from confusion and to what degree he is simply trying to find a way to stay here to have his illness treated. However, in light of his previous refugee claims under different names and the inconsistency of his statements on various matters, there does not appear to be a basis for disturbing the Officer's findings of fact.

[48] The application for judicial review will be denied. Neither party had a question to submit for certification.

ORDER

The application for judicial review is denied.

(Sgd.) "Max M. Teitelbaum"

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-9550-04

STYLE OF CAUSE: MOHAMMAD LIAQAT

- and -

THE MINISTER OF CITIZENSHIP

AND IMMIGRATION

PLACE OF HEARING: Vancouver, BC

DATE OF HEARING: June 21, 2005

REASONS FOR ORDER AND ORDER: TEITELBAUM J.

DATED:	June 23, 2005

APPEARANCES:

Mr. Shane Molyneaux	FOR APPLICANT
Ms. Helen Park	FOR RESPONDENT

SOLICITORS OF RECORD:

Elgin, Cannon & Associates Vancouver, BC	FOR APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada	FOR RESPONDENT

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[1] at para 24