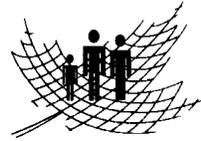


**IMMIGRATION AND REFUGEE BOARD
(REFUGEE DIVISION)**



**LA COMMISSION DE L'IMMIGRATION
ET DU STATUT DE RÉFUGIÉ
(SECTION DU STATUT DE RÉFUGIÉ)**

2002 CanLII 52720 (CA IRB)

VA1-01172
VA1-01173
VA1-01174
IN CAMERA
HUIS CLOS

CLAIMANT(S)

DEMANDEUR(S)

XXXXXXXXXXXXXXXXXX a.k.a. XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX a.k.a. XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX a.k.a. XXXXXXXXXXXXXXXX

DATE(S) OF HEARING

DATE(S) DE L'AUDITION

June 11, 2002
September 10, 2002
September 11, 2002

DATE OF DECISION

DATE DE LA DÉCISION

November 21, 2002

CORAM

CORAM

S.M. Beckow
Fred Hitchcock

FOR THE CLAIMANT(S)

POUR LE(S) DEMANDEUR(S)

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REFUGEE CLAIM OFFICER

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DESIGNATED REPRESENTATIVE

REPRÉSENTANT DÉSIGNÉ

XXXXXXXXXXXXXXXXXX a.k.a. XXXXXXXXXXXXXXXX
for
XXXXXXXXXXXXXXXXXX a.k.a. XXXXXXXXXXXXXXXX

MINISTER'S COUNSEL

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These are the reasons for the decision of the Convention Refugee Determination Division (CRDD) in the refugee claims of XXXXXXXXXXXXXXXXXXXX, a.k.a. XXXXXXXXXXXXXXXXXXXX (the "male claimant"), a 41-year-old citizen of Pakistan and his wife, XXXXXXXXXXXXXXXXXXXX, a.k.a. XXXXXXXXXXXXXXXXXXXX (the "female claimant"), a 30-year-old citizen of Pakistan, and their daughter, XXXXXXXXXXXXXXXXXXXX, a.k.a. XXXXXXXXXXXXXXXXXXXX (the "minor"), a 4-year-old citizen of the United States. The claimants arrived in Vancouver on 27 November 2000 and made refugee claims on 30 November 2000. The hearing into their claims was held pursuant to section 69.1 of the *Immigration Act*,¹ at Vancouver, B.C. on 11 June 2002 and resumed on 10 and 11 September 2002.

Since the hearing began while the former *Immigration Act* was in effect, the determination of this case is made pursuant to the provisions of that Act.

In determining whether the claimants are Convention refugees, the panel has considered all the evidence, including the claimants' Personal Information Forms (PIF),² oral testimony, the documentary evidence filed by counsel, the Refugee Claim Officer (RCO), and the Minister, counsel's and the Minister's submissions, the Refugee Claim Officer (RCO)'s observations, the *Gender Guidelines*,³ the *Immigration Act*, and relevant caselaw.

In order to analyze the joined claims with as much simplicity and clarity as possible, we have treated each separately below.

¹ As enacted by R.S.C. 1985 (4th Supp.), c.28, s.1.

² Exhibits 1.1, 1.2, 2.1, and 2.2.

³ IRB Chairperson's Guidelines on *Women Refugee Claimants Fearing Gender-Related Persecution*. Ottawa: IRB, 25 November 1996.

THE CLAIM OF XXXXXXXXXXXXX A.K.A. XXXXXXXXXXXXXXXX

ALLEGATIONS

The male claimant originally submitted a PIF⁴ that alleges that, as a PPP member, he fell afoul of the military government and so fled Pakistan. He recanted this PIF and blamed its contents on his former counsel, XXXXX, who he said made the PIF up.

In his second PIF, he alleged that the Sunni and Shia communities in his neighbourhood often fought. He himself was involved in a fight in which a Sunni man named XXXXX was killed as a result of three knife wounds. The knife belonged to XXXX and he had pulled it out to defend himself when the claimant, his older brother, and two other men became embroiled in a dispute with him.

He was detained while his case was tried in the Sessions Court of XXXX, where he was found not guilty in 1982. In 1986, this verdict was upheld by the High Court of XXXXX.

However, in 1988, the Supreme Court reversed the decisions of the two lower courts, found the claimant guilty of murder and sentenced him to life imprisonment. He was in Oman at the time and never returned to Pakistan.

Instead he migrated to Sweden and asked for refugee status there. He was refused. He then went to the United States and requested asylee [i.e., refugee] status there, this time as an Ahmadi. He was again refused as being not credible in his allegations.⁵ He next came to Canada and made a refugee claim.

⁴ Exhibit 1.1

⁵ Exhibit 12, U.S. I.N.S. *Special Agent's report on the claimant's status and the asylum claim in the United States*, dated 17 May 2002 and *Decision of the Immigration Judge*, U.S. Dept. of Justice, Immigration Court, Seattle, WA, dated 15 September 2002.

ISSUES

The issues in the claim were credibility, previous claim elsewhere, objective basis, state protection, prosecution vs. persecution, and Article 1F(b). The determinative issues were prosecution vs. persecution and Article 1F(b).

ANALYSIS

Article 1F(b)

Article 1F(b) of the *Convention Relating to the Status of Refugees* states:

The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:...

(b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee.

The Federal Court held in *Sivakumar* that "serious reasons for considering is something more than mere suspicion or conjecture, but something less than the balance of probabilities."⁶

In his submissions, counsel for the male claimant points to Lorne Waldman's statement in *Immigration Law and Practice* that "the *sine qua non* of any offence falling within the ambit of Art. 1F(b) is that the offence must be extraditable. Thus a person against whom Art. 1F(b) is applied must be a fugitive from justice, who is being sought for extradition as a result of the commission of a particularly serious crime."⁷ Counsel interprets Waldman's remark to mean that "Mr. XXXX cannot be excluded under 1f(b) [*sic*] because Pakistan is not seeking his return, and because there is no extradition treaty between Canada and Pakistan at present."

The U.N.H.C.R. *Handbook* states that the purpose of Article 1F(b) is to "protect the community of a receiving country from the danger of admitting a refugee who has committed

⁶ *Sivakumar v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 433 (C.A.)

⁷ Waldman, *Immigration Law and Practice*. Markham: Butterworths, 2002, para. 8.533.

a serious common crime."⁸ To thwart this intention by imposing on it the limitation that the country in which the crime was committed must be actively seeking the extradition of the claimant and that Canada must have an extradition treaty with that country makes no sense to the panel and is unsupported in the caselaw.

Counsel cites Mr. Justice Bastarache in *Pushpanathan* as stating that "it is quite clear that article 1F(b) is generally meant to prevent ordinary criminals extraditable by treaty from seeking refugee status [etc.]."⁹ We see nothing in this passage that suggests that Justice Bastarache was trying to limit the application of Article 1F(b) to cases where extradition was actually being sought and an extradition treaty was in place. The panel defers to the interpretation of Madame Justice Tremblay-Lamer in *Zrig* to the effect that:

[Justice Bastarache] provided a general indication of the nature of crimes which may be the subject of exclusion under section 1F(b). I do not think Bastarache J. intended to limit non-political crimes to those which were extraditable under a treaty, since such an approach would have the effect of excluding from section 1F(b) countries where no extradition treaty existed.¹⁰

In terms of the threshold for a serious crime, the panel feels no need to analyze the standard because the claimant has acknowledged being found guilty of murder and being sentenced to life imprisonment. The sentence of life imprisonment is an indisputable indication that what he has done is seen as a serious non-political crime by the Pakistani judicial authorities, as it would be by their Canadian counterparts.

What evidence is there that he has committed this offense? In Exhibit 21, tabs 26-28, the claimant has furnished the Board with three decisions of the Pakistan Court. The first is the decision of the Court of XXXXXXXX Judge, XXXXXXXXXX, dated XXXXX 1982. The second is the decision of the High Court of XXXXX, dated XXXXX 1986. The third is a decision of the Supreme Court of Pakistan (Appellate Jurisdiction), dated XXXXXXXX 1988.

⁸ U.N.H.C.R. *Handbook on Procedures and Criteria for Determining Refugee Status*. Geneva: January 1992, para. 151.

⁹ *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982; (1998), 43 Imm. L.R. (2d) 117 (S.C.C.).

The first decision exonerates the male claimant of any blame in connection with the murder of XXXXXXXXXX, alias XXXXX. The second decision upholds that decision on appeal. The third decision overturns the previous two, convicts the claimant under section 302/14 PPC, and sentences him to life imprisonment. The panel finds that the decision of the Supreme Court gives it serious grounds for considering that the claimant has committed a serious non-political crime.

However, the U.N.H.C.R. *Handbook* states:

In evaluating the nature of the crime presumed to have been committed, all the relevant factors--including any mitigating circumstances--must be taken into account.¹¹

The male claimant pleaded that there were mitigating circumstances in the form of a corrupted decision from the Pakistan Supreme Court. Set against the U.N.H.C.R. recommendation, is the Federal Court's cautionary reminder in *Satiacum*.

In the absence of exceptional circumstances established by the claimant, it seems to me that in a Convention refugee hearing, as in an extradition hearing, Canadian tribunals have to assume a fair and independent judicial process in the foreign country.¹²

Thus, the panel must be satisfied that "exceptional circumstances" exist if it is to accept the claimant's argument.

The claimant argued that the decision of the Supreme Court was influenced by a private meeting between the principal prosecution witness in the earlier trials, XXXXX, and the Chief Justice of the Supreme Court, Mr. Justice XXXXXXXXXXXXXXX. At this meeting, XXXXX allegedly prevailed upon the Chief Justice through family ties to bring down a corrupt decision. In addition, the claimant alleges that all five justices who sat in judgment on him were Sunni while he is Shia and that they too corrupted their decision.

¹⁰ *Zrig, Mohamed v. M.C.I.* (F.C.T.D., no. IMM-601-00), Tremblay-Lamer, September 24, 2001.

¹¹ *Supra*, footnote 8, para. 157.

¹² MacGuigan, J. in *Canada (Minister of Employment and Immigration) v. Satiacum* (1989), 99 N.R.

The grounds on which Chief Justice XXXXXX is alleged to have corrupted his judgement is an alleged tie between him and XXXX; namely, that they come from the same city and that XXXXXX father worked for XXXXXXXX father. The claimant's allegations stem from the opinions of his brother, XXXXXXXXXXXX, resident in Great Britain. He has no stronger evidence than that to support them.

Does the behaviour of the Court support these charges? Firstly, we note that the prosecution in the case sought the conviction of one of the co-defendants, XXXXXXXX. Were the five judges acting as Sunnis against Shias, we would expect XXXXXXXX earlier acquittal to have been overturned. But the five judges of the Supreme Court upheld his acquittal. Second, in finding three of the other co-defendants guilty, the Court sentenced them to time served, a sentence which does not indicate heavy-handedness arising from a religious bias.

Third, the panel notes that the Chief Justice, whom the claimant alleges is corrupt, did not write the decision overturning the earlier acquittals. Mr. Justice XXXXX did. Mr. Justice XXXXX is the son of Mr. XXXXXXXX, who, after Mr. XXXXX, is regarded as the chief source of inspiration behind the founding of Pakistan. The panel sees no reason why Mr. Justice XXXX, who has everything to lose and nothing to gain, would stain his record by agreeing to a corrupt judgment. The panel finds that the likelihood of the claimant's allegations of corruption being true is so remote that the allegations unto themselves do not constitute "exceptional circumstances," as laid down by Mr. Justice MacGuigan in *Satiacum*.

Another factor that influenced the panel at this juncture was the circumstances surrounding the death of XXXXX. The claimant has testified that, in the struggle to get the knife from XXXXXX, XXXXXX fell on the floor. The claimant does not know how he received his fatal injuries. The implication is that XXXXXX fell on his own knife. However, the autopsy as described in the judgment of the High Court of XXXXX in 1982,¹³ indicates that the victim suffered three separate knife wounds, two of which were serious enough to have caused death. XXXXXX falling on his knife might account for one wound, but not three. Three wounds

171 (F.C.A.).

¹³ Exhibit 21, Tab 27, lines 145-152.

suggest a definite intent to kill. In light of these circumstances, the panel finds that no travesty of justice is apparent as far as a determination of murder is concerned.

Nevertheless, because a negative decision of this tribunal would seriously impact the life of the male claimant and his family, the panel wished to err on the side of caution and give the claimant every opportunity to demonstrate through the provision of post-hearing evidence that "exceptional circumstances" may have existed, which might trigger Board intervention.

The panel offered the male claimant two additional weeks after the close of the hearing to find reliable evidence that raised the possibility that Pakistan's Supreme Court may have been corrupted in the period during which his trial took place. The claimant's report, Exhibit 34, was received by the Board on 26 September 2002.

In submitting his report, counsel stated in his covering letter that "after exhaustive research, we found that standard country documents could shed no light on this topic." Counsel has attached an anonymous report entitled "Violations of the Right to Justice," which relate to the Zia regime. Nothing in that report impugns the integrity of the Pakistan Supreme Court during the years 1985-86.

Counsel has turned for assistance to Dr. Syed Abidi, professor of Political Science, California State University, Fullerton, CA. The documents Dr. Abidi provided to the Board consist of a covering letter, Dr. Abidi's *curriculum vitae*, letters of reference, two newspaper articles, and an excerpt from Amnesty International's May 2001 document, *Pakistan: Insufficient Protection of Minorities*. The newspaper articles relate to the murder in Lahore's Kot Lakhpat jail by an alleged member of Sipah-e Sahaba of Yousaf Ali, a Pakistani Shia (Sufi mystic) convicted of blasphemy by the sessions court of Lahore.

Dr. Abidi's report does not shed light on the possible corruption of the Pakistan Supreme Court at the time when it heard the claimant's case and rendered its decision (1988). In his covering letter, he states:

Historically, Pakistan's judiciary has been influenced time and again by the military governments from top to bottom. Corruption and victimization have pervaded throughout [sic] the rank and file. Particularly, under martial [sic] law, in then mid '80s, the High Court judges were harassed by the sectarian extremists. As can be witnessed in the summarily passed judgement of the Supreme Court against Mr. XXXXX, the decision seems to have been influenced by such forces. The way the lower court(s) judgment(s) were overturned in a flash is rather unusual for the apex court and thus it smacks of some conspiracy. A senior judge of Lahore HC lost his life only because he decided not give [sic] in to the pressure of the extremists [sic] zealots.

The panel notes that Dr. Abidi's specialty is in media policy and election analysis. His degree is in political science, with concentration in comparative politics. Whatever his expertise in the areas in which he claims it, the panel does not accept that it extends to the offering of expert opinion on the Pakistan Supreme Court *circa* 1988.

Moreover, nothing Dr. Abidi has said in his covering letter or report persuades the panel that "exceptional circumstances" exist that justify the panel going behind the decision of the Pakistan Supreme Court which resulted in the claimant's conviction.

The claimant not having provided the panel with evidence which, in their view, impugns the decision of the Supreme Court, the panel finds that it has serious reasons to consider that he has committed a serious non-political crime outside Canada prior to his admission as a refugee claimant. In light of this finding, the panel determines that the claimant is subject to exclusion under Article 1F(b).

Prosecution vs. Persecution

The decision of the Pakistan Supreme Court and the claimant's testimony make it clear that he is fleeing imprisonment for life as a result of his conviction in 1986 for the murder of XXXXXX. The U.N.H.C.R. *Handbook* states:

Persecution must be distinguished from punishment for a common law offence. Persons fleeing from prosecution or punishment for such an

offence are not normally refugees. It should be recalled that a refugee is a victim--or potential victim--of injustice, not a fugitive from justice.¹⁴

The panel finds that the claimant has been convicted by the highest court of Pakistan for violating a law of general application against murder. The panel also finds that what the claimant fears is prosecution for that violation rather than persecution. The panel determines that the claimant has not satisfied the onus on himself to show that the law of general application against murder or its application was non-neutral.¹⁵ Further, the panel finds that the sentence of life imprisonment for murder is not disproportionate to the objective of the law or to the offence.¹⁶ The means by which the law is enforced is imprisonment. The claimant's testimony regarding his earlier experience of imprisonment in Class B facilities provided no evidence of brutal treatment.¹⁷ The panel has before it no objective evidence that would lead it to conclude that imprisonment in a Pakistani prison is by its very nature brutal. The panel's finding that the claimant is a fugitive from justice rather than a victim of injustice leads it to determine that the claimant is not a Convention refugee.

THE CLAIM OF XXXXXXXXXXXX

ALLEGATIONS

The female claimant recanted her original PIF,¹⁸ which she said that her former counsel, Mr. XXXXX, made up. Her amended PIF¹⁹ states that she was married to the male claimant on XXXXX 1994, in a proxy ceremony. She then went to live with her husband's relatives until she left for the United States.

¹⁴ *Handbook*, para. 56.

¹⁵ *Zolfagharkhani v. Canada (Minister of Employment and Immigration)* [1993], 3 F.C. 540; (1993), 20 Imm. L.R. (2d) 1 (C.A.).

¹⁶ *Cheung v. Canada (Minister of Employment and Immigration)*, [1993] 2 F.C. 314 (C.A.); (1993) 19 Imm. L.R. (2d) 81 (F.C.A.).

¹⁷ *Ibid.*

¹⁸ Exhibit 2.1.

¹⁹ Exhibit 2.2.

When she went out, Sunni and Wahabi people would talk about her. They would say that she had married an enemy of the Sunni and Wahabi people, a criminal and a killer. She would be tormented and harassed, sexually assaulted and threatened. Often her tormentors carried guns so she rarely went anywhere except by cab.

The sister of the murdered Wahabi man went to her parents after she was married and demanded that her father pay XXXXXX in U.S. dollars to compensate for the murder. Her father refused and the victim's sister said that her father would regret it.

It became difficult for her younger brothers to go out. When she visited her family, Sunni and Wahabi young men and teenagers in their area would also torment and harass her. Finally her parents and family moved to another neighbourhood, but kept their same phone number.

A few times people tried to get into her second-floor room at her relatives' home at night by climbing onto the balcony. The last time someone tried to force the door by inserting something metal. However she cried out and the person went away. She went and woke her brother-in-law and sister-in-law.

After that, her brother-in-law and his family moved to another part of Karachi to avoid the danger of increasing violence between different factions. After they moved, she decided it was safer to move back in with her parents again. This was a few months before she left Pakistan for the U.S.A.

At her parents' home, men sometimes phoned and asked for her and then harassed and abused her on the phone, insulting her and saying things about her husband. When she went to the mosque in her parents' old neighbourhood, Sunni and Wahabi young men would harass her. This carried on until she left Pakistan and journeyed to the U.S.A.

ISSUES

The issues in the female claimant's claim were credibility, previous claim elsewhere, objective basis, state protection, and Internal Flight Alternative (IFA). The determinative issue was credibility and Internal Flight Alternative.

ANALYSIS

Credibility

In assessing the credibility of the claimant, the panel is guided by the following principles established by the Federal Court. Unless it is rebutted, a claimant's sworn testimony is presumed to be true.²⁰ However, the Board is entitled to disbelieve that testimony and base its decision on that assessment provided it gives its reasons in clear and unmistakable terms.²¹ The Board is entitled to base its credibility assessment on such grounds as internal contradictions, inconsistencies, evasions,²² implausibility,²³ omissions,²⁴ rationality, and common sense.²⁵ Documentary evidence may be preferred to the claimant's testimony on the basis that the sources were reputable and independent and had no interest in the outcome of the particular claim.²⁶ In appropriate circumstances the claimant's testimony may be rebutted by the failure of the documentary evidence to mention what one would normally expect it to mention.²⁷ Finally, the burden of proof remains with the claimant.²⁸

²⁰ *Maldonado v. M.E.I.* [1980] 2 F.C. 302 (C.A.); 31 N.R. 34 (F.C.A.).

²¹ *Hilo v. M.E.I.* (1991), 15 Imm. L.R. (2d) 199 (F.C.A.); *Rajaratnam v. M.E.I.* (F.C.A., no. A-824-90), Stone, Mahoney, Linden, December 5, 1991; *Ayadi v. M.C.I.* (F.C.T.D., no. IMM-2508-96), Jerome, November 20, 1997.

²² *Giron v. M.E.I.* (1992), 143 N.R. 238 (F.C.A.) 152.

²³ *Ratnasingam v. M.C.I.* (F.C.T.D., no. IMM-3158-97), Blais, October 8, 1998.

²⁴ *Basseghi v. M.C.I.* (F.C.T.D., no. IMM-2227-94), Teitelbaum, December 6, 1994.

²⁵ *Shahamati v. M.E.I.* (F.C.A., no. A-388-92), Pratte, Hugessen, McDonald, March 24, 1994.

²⁶ *Mihelcic v. M.E.I.* (F.C.T.D., no. IMM-1010-94), Gibson, March 16, 1995.

²⁷ *Adu v. M.E.I.* (F.C.A., no. A-194-92), Hugessen, Strayer, Robertson, January 24, 1995. See also *Mama, Salissou v. M.E.I.* (F.C.T.D., no. A-1454-92), Teitelbaum, October 17, 1994.

²⁸ *Kante v. M.E.I.* (F.C.T.D., no. IMM-2585-93), Nadon, March 23, 1994.

The female claimant's answers to many questions were evasive. She had to be reminded on occasion to listen to the question and answer it. Her accounts of certain events were variable and she had no adequate explanation for the variance. The claimant ascribed responsibility to her family for making the decision to marry her to the male claimant, to her ex-counsel for the false story and fake documents the couple produced on their first Canadian claim package, and to her husband for the decisions to deceive American and Canadian immigration officials, hire an allegedly crooked consultant, and lie on their Canadian PIFs.

Regarding her protestations of innocence in the broad-based deceptions the couple have practised on American and Canadian immigration officials, the panel does not share her view. The claimant acknowledged that she gave false information to Canadian immigration officials before the couple retained Mr. XXXXX as counsel. Moreover, she acknowledged voluntarily signing a blank PIF and allowing Mr. XXXX to write their story. She also acknowledged not reading the story but simply reading the page that bore her signature. The Refugee Claim Officer (RCO) asked her if she knew there was false information on the PIF and she acknowledged that she did. The panel finds that the claimant's efforts to shift the blame for her first false Canadian claim onto XXXXX and her husband is an attempt to mask her own deceit. The panel finds the female claimant to be a willing partner in the attempt to deceive American and Canadian officials.

The RCO pointed out that, though the claimant testified that she hotly disagreed with her husband over the Ahmadi basis of their American claim, her disagreement came in XXXXX 1998. She did nothing to set matters straight although the claim did not go to an American judge for review until XXXX 2000. The claimant offered no explanation of her inaction.

The Minister's Representative also questioned the female claimant on these matters. During that questioning, the claimant said that, if she had disagreed with her husband, she would have been committing a crime according to her religion.²⁹ Given that the female claimant also testified to contesting her husband's decision to apply for American asylee status

²⁹ *Transcript*, 10 September 2002, page 35, lines 12-17.

on the basis of being Ahmadis, by confronting him with a loud "What is this bullshit?"³⁰ the panel finds that the claimant is misleading it on her alleged inability or unwillingness to confront her husband.

The female claimant testified that the couple did not decide to tell the truth about their claim until they received notice of the Minister's intent to participate in their hearing. The husband's alleged response was to ask Mr. XXXXXX to "You try to find out what they [i.e., the Minister] have."³¹ Mr. XXXXXX stated that American officials had made a fingerprint match with an American file. Only then did the couple decide to tell the truth.

The female claimant testified that she forced her husband to tell the truth. Counsel argued that "eventually, [the female claimant] reached her limits and insisted that the couple file a second Personal Information Form that reflected the truth."³² On the contrary, the panel finds that the claimant recanted her PIF only upon facing the prospect of being totally unmasked by Canadian immigration officials. Her credibility is not enhanced by this choice. She and her husband were caught in their lie and they decided that their danger was greater if they persisted in it than if they shifted the blame to Mr. XXXXXX and told the truth. Had the Minister not discovered the information about the basis of their unsuccessful American claim, based on the female claimant's evidence, the panel believes that the couple would have continued in their efforts to mislead the Board.

The level of attention that the claimant alleges she received from Sunnis and Wahabis strikes the panel as the level that the wife of a notorious criminal might receive. However, the panel is hard-pressed to believe that an event which happened in 1975 (nearly twenty years prior to her marriage) in which neighbourhood youth got into a scuffle with another boy and killed him would provide the foundation for the degree of harassment she claims. Given the tumultuous history of Pakistan in the last decade, the panel does not believe that the memory of this unpremeditated death in a scuffle would persist or inflame many. She especially states

³⁰ *Transcripts*, 11 June 2002, p. 34, line 10, and 10 September, 2002, p. 25, lines 18-26.

³¹ Transcript, 10 September 2002, p. 46,

³² Naomi Minwalla, *Written Submissions for Mrs. XXXX*, dated 14 October 2002.

that "Sunni and Wahabi young men and teenagers" in their area would torment and harass her, implying that it was on account of her husband's crime. Why would young Pakistanis care about something that would have happened before most of them were born? And why would their supposed ire extend to the absent killer's innocent wife? Why, when the killer's family had lived there all these years, would they not be included in that ire, if it existed at all? We find the allegations of popular interest in her husband's case to be fabrications put to the Board to provide a deceptive foundation for a refugee claim. We also find her allegations that that ire embraced her and only her to be improbable.

The claimant's amended PIF³³ states that:

A few times, people tried to get into my second floor room at my husband's relatives' home at night by climbing onto the balcony. The last time someone tried to force the door by inserting something metal. I cried out and the person went away. I went and woke my brother-in-law and sister-in-law.

However, in the hearing room, the claimant revealed that she had been hiding the fact that she had actually been raped by the people she was referring to in her PIF. She alleged that she had not previously told her husband. She then gave testimony at the hearing on 11 June 2002 on the subject and answered questions on it at the 10 September 2002 resumption.

The claimant's testimony on the number of times she was raped was variable, the number decreasing with each retelling. In the first version of her story, she could not specify whether she was raped three or four times.³⁴ When the panel returned to the topic during RCO questioning, she stated she was raped three times.³⁵ In the third retelling of the story, she said she was raped twice.³⁶ Asked for an explanation, the claimant alleged that her mind does not work when she describes the incidents. The panel finds that the claimant has contradicted herself on the number of times she has allegedly been raped.

³³ Exhibit 2.2.

³⁴ *Transcript*, 11 June 2002, pp. 25-6.

³⁵ *Ibid.*, p. 6, line 52 and p. 62, lines 4-16.

³⁶ *Transcript*, 10 September 2002, p. 50, line 14.

The claimant alleged that the first incident that occurred before the assailants successfully entered the house was an unsuccessful break-in attempt. The break-in was foiled by her screaming so loudly that the entire household came to her suite to find out what was happening.

These factors notwithstanding, the assailants subsequently broke into the house and, by the claimant's own admission, made much noise. On various occasions, they broke down her door, jimmied her lock, broke the latches, broke the window, and cut the iron grille. These events happened in the dead of night.

Yet the claimant stated that at no time did any of the ten people living in the house wake up. Apart from the noise of forced entry of the building, the men also allegedly raped the claimant on two to four occasions (depending on which version of her testimony one accepts). Yet the other members of the household did not hear any sounds accompanying the rapes, again in the dead of night. The panel finds it implausible that the noise of breaking glass, wood, and iron or the sounds accompanying the rapes would not have awakened residents.

The panel notes that the claimant's PIF and testimony conflicted on the description of this first episode, in which the attempt to enter her suite was unsuccessful. In her PIF she stated that:

... people tried to get onto my second floor room at my husband's relatives' home at night by climbing onto the balcony. The last time, someone tried to force the door by inserting something metal. *I cried out and the person went away. I went and woke my brother-in-law and sister-in-law.*³⁷ [Emphasis added.]

The panel questioned her on this episode and she then gave a different version of it. She said:

That was the first time when it happened, when I saw somebody trying to forcibly enter. *And then I started screaming and shouting and the people who were in the house, they came upstairs and that was the first time we talked about, they talked to me about [sic]. So everybody who was present at the house came and they all discussed that maybe there was*

³⁷ Exhibit 2.2, page 9.

somebody as a thief who is trying to enter and came in to steal.³⁸
[Emphasis added.]

Aside from the inherent conflict between the two accounts, her allegation that (1) she went downstairs and woke her in-laws or (2) that they came upstairs in response to her screaming is inconsistent with her later testimony that she could not discuss the assaults made upon her because the family would not understand. The family has already seen that a thief was attempting to enter her suite. It is already aware of one burglary attempt. In her later testimony that she could not discuss the subsequent break-ins because she feared retribution from her in-laws (in what her counsel has suggested might be an honour killing), she ignores the fact that the in-laws already knew that someone had attempted to break into her suite. The panel finds the claimant's testimony on these events to be inconsistent.

The panel finds it improbable that the female claimant would receive a phone call from XXXXX telling her what he planned to do to her without her running immediately home to her parents or seeking some other similar source of safety. Instead she remained in her suite, waiting for what she represented as a known outcome. Asked about it, she explained her dilemma by stating, "Being a woman, what can you do?" "Obviously I will give ... in."³⁹ The panel finds the claimant's alleged paralysis to be improbable.

The claimant alleges that XXXXX told her, if she protests the rapes, he would say that she was a prostitute having a love affair with them. The panel finds the idea of her yielding to these blandishments when XXXXX and XXXXX have left evidence of forced locks, broken windows, bent grilles, and the like too improbable to accept. The evidence of forced entry would belie XXXXX's claims that she yielded willingly to him. The panel finds the claimant's protestations of powerlessness to be improbable.

Having sat on numerous cases in which honour killings in Pakistan have been an element, the panel is very much familiar with the country documents relating to the peril of

³⁸ *Transcript*, 11 June 2002, p. 55, lines 14-19.

³⁹ *Ibid.*, p. 60, lines 31-2.

Pakistani Muslim women in that regard.⁴⁰ It recognizes that honour killings are often used to settle accounts, punish women, enforce patriarchy, hide misdeeds, and various other illicit reasons. It realizes the shame that accompanies sexual abuse among Muslim women in Pakistan. And it respects the *Gender Guidelines*' admonition that women, subject to sexual abuse, should not be examined microscopically.⁴¹ However, none of these strictures was intended to be applied to shelter a claimant who is manifestly deceiving the panel. The *Gender Guidelines* were never conceived to facilitate the hoodwinking of the Board. Yet we find that the claimant is using the issue to play upon the panel's sensitivities so as to deflect attention from the lack of credibility in her allegations.

The panel finds the claimant's descriptions of forced entry, assault, robbery, and rape to be so burdened with implausibilities and improbabilities, contradictions and inconsistencies that it regards the whole story as unreliable and untrustworthy.

The claimant testified that no other relatives were harassed after she left Pakistan. The panel finds it remarkable that the harassing phone calls to her family stopped the moment she left Pakistan.⁴² The panel finds it improbable that such predatory acts of Wahabi vengeance would be visited upon her alone, and on no other member of her husband's family.⁴³ Just as the panel finds it improbable that no in-law suffered harassment for XXXXXXXX murder at the time the female claimant did, so it finds it improbable that the desire for vengeance would not be transferred to another family member after she left.

The female claimant testified at the first hearing that Shia women were constantly harassed by Sunnis and Wahabis. And yet, when the panel asked her to give it examples, she could not name among her acquaintances anyone who was being harassed but herself. We note that, when it comes to definite events such as her wedding, no harassment marred it, even though she has claimed that knowledge of her husband's crime was widespread, even among youth.

⁴⁰ Exhibit 22.

⁴¹ *Supra*, footnote 3.

⁴² *Ibid.*, p. 35, lines 46-8.

⁴³ *Ibid.*, p. 18, lines 3-13.

When she discussed the situation of her two older sisters in Islamabad, the panel asked if they were harassed by Sunnis and Wahabis. She said "no, not at all."⁴⁴ Asked again if they were harassed by Sunnis or Wahabis, she replied that she "can't say about the women. On [a] political basis, the menfolks [*sic*] are."⁴⁵ When asked if she could go and live with her sisters, she replied that she could not, but not because of alleged violence, but because "according to traditions and customs, I have to be with my husband."⁴⁶ We find the claimant's original allegations that Shia women are constantly harassed to have been contradicted by her later testimony.

The claimant testified that she left Pakistan because she was harassed and sought to escape the harassment by joining her husband in the United States. Yet, in RCO questioning, she acknowledged that she would have left in any case to join her husband.⁴⁷ She accounted for the timing of her leaving by saying that she had been applying for visas and had been turned down two-three times. The panel believes that her long stay in Pakistan was attributable to her repeated, unsuccessful attempts to obtain an American visa and has nothing to do with alleged harassment by Sunnis and Wahabis.

The claimant produced photographs that she alleged were the sons of her maternal aunt, who were shot dead in Moltan. The panel has no idea whether or not the individuals depicted are indeed her cousins, but finds that the violent outburst in Moltan, while very unfortunate, does not translate into more than a mere possibility of serious harm to her own person. The men depicted were not specifically targeted and appear to be innocent victims. The claimant acknowledged, as much when she stated that there was "no special reason" that they were shot, but that "they were children going to school."⁴⁸ Moreover, she testified that the police arrested two Sipah-e-Sahaba men who confessed to the crime.⁴⁹ Furthermore, there is no reason

⁴⁴ *Ibid.*, p. 16, line 34.

⁴⁵ *Ibid.*, p. 16, line 38.

⁴⁶ *Ibid.*, p. 17, lines 14-5.

⁴⁷ *Ibid.*, p. 11, line 26.

⁴⁸ *Ibid.*, p. 22, lines 5-6.

⁴⁹ *Ibid.*, p. 22, lines 25-6.

why the claimant, were she to return to Pakistan, would return to Moltan, rather than Islamabad or Karachi. The panel notes that the claimant's aunt continues to live in Moltan.

Counsel for the female claimant has provided the Board with a psychological assessment from Dr. XXXX, based on two full days of interviews and testing. In the first four pages of the six-page report, Dr. XXXX repeats the claimant's story, which the panel has found to be unreliable and untrustworthy. On page 5, Dr. XXXXX discusses the results of the Psychological Screening Inventory, whose

... only elevation ... shows her to be feeling very alienated, not surprisingly given where she finds herself at this time. Given this elevation, [the claimant] is likely to be feeling anxious, experiencing difficulties relating to other people and feeling isolated, estranged, and lonely.

Her feelings of alienation, anxiety, and estrangement are as easily attributable to the situations associated with her refugee claim as they are to the unreliable circumstances she has narrated.

Dr. XXXX reports the results of the Impact of Event Scale, which assesses the characteristics of Post-Traumatic Stress Disorder. Its outcome demonstrated that the claimant had "a somewhat elevated trauma score with evidence of both intrusive memories and attempts to avoid them." In the last test, Dr. XXX states that the female claimant is "completely 'clean', without undue elevations or low scores on any scales."⁵⁰ Dr. XXXXX results do not add merit to the female claimant's allegations. In the panel's estimation, Dr. XXXXXXXX report supports its conclusion that the female claimant's narrative of multiple rapes is a concoction.

In sum, little of the female claimant's testimony survived questioning. Her story of multiple rapes we have found to be burdened with improbabilities, contradictions, and other difficulties. Her pleas of being innocent of the deception of Canadian and American immigration officials has been found to be untrue. Her allegations of the dangers she faces in Pakistan have been shown to be exaggerated and unreliable. We therefore find the female claimant's case to fail for a lack of credibility.

⁵⁰ Exhibit 24, Psychological Assessment of Dr. XXXXXXXX, p. 5.

THE CLAIM OF XXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXX, a.k.a. XXXXXXXXXXXX, is a citizen of the United States. To receive international protection, the claimant would have to establish that she is a Convention refugee in the country of her nationality. The parents have submitted to the Board what appears to be a valid birth certificate indicating that the minor was born in the State of California XXXXXX 1998⁵¹ and is therefore an American citizen. The parents have not brought a claim against the United States. They have not alleged that any other circumstances prevent her from receiving American protection. For its part, the panel does not see any valid reason why the minor could not expect to enjoy the protection of the United States.⁵²

⁵¹ Exhibit 4.4.

⁵² Article 1E was identified as an issue in relation to the minor, but is not applicable because it relates to "persons who might otherwise qualify for refugee status and who have been received in a country where they have been granted most of the rights normally enjoyed by nationals, but not formal citizenship." (UNHCR *Handbook*, p. 34.) The minor does not qualify for refugee status and she has formal citizenship in the United States.

DETERMINATION

In summary, the male claimant has been found to be excluded from the protection of Canada by reason of Article 1F(b) and not deserving of inclusion by virtue of facing prosecution rather than persecution. The female claimant has been found to be an untrustworthy and unreliable witness in the matter of her own claim and her claim to be not credible. The minor is an American citizen and has no well-founded fear of persecution in that country.

In light of these findings, the panel determines that XXXXXXXXXXXXXXXXXXXX, a.k.a. XXXXXXXXXXXXXXXXXXXX, XXXXXXXXXXXXXXXXXXXX, a.k.a. XXXXXXXXXXXXXXXXXXXX, and their daughter, XXXXXXXXXXXXXXXXXXXX, a.k.a. XXXXXXXXXXXXXXXXXXXX, are not Convention refugees, as defined in section 2(1) of the *Immigration Act*.

"S.M. Beckow"

S.M. Beckow

"Fred Hitchcock"

Fred Hitchcock

DATED at Vancouver, B.C., this 21st day of November, 2002.

KEYWORDS - REFUGEE DIVISION - EXCLUSION CLAUSES - ART. 1F(b) - SERIOUS NON-POLITICAL CRIME – MALE - FEMALE - NEGATIVE – PAKISTAN – USA