Federal Court  Cour fédérale

Date: 20150911

Docket: IMM-1414-15

Citation: 2015 FC 1069

Ottawa, Ontario, September 11, 2015

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

SANKAR KUMAR DEB,
PROTIMA SINGHA CHOUDHARY,
SHUVASHISH DEB

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, Mr. Sankar Kumar Deb, his wife Mrs. Protima Singha Choudhary and their son Mr. Shuvashish Deb, are citizens of Bangladesh. They challenge a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board confirming the

conclusion of the Refugee Protection Division [RPD] that they are neither Convention refugees nor persons in need of protection.

[1] The Deb family had sought refugee protection on the basis of their fear of persecution or harm in Bangladesh. They alleged that they were at risk in their home city of Habiganj because they are Hindus and have been targeted by two individuals associated to two political parties, the Bangladesh National Party [BNP] and the Jamaat-e-Islami Party [Jamaat]. These individuals had allegedly tried to dispossess them of their ancestral property for a fraction of its value and forced them to leave the country. They came to Canada in May 2014 and claimed refugee protection.

[2] The RPD and the RAD rejected the Deb family's claim as they found that their fear of persecution and allegations were not credible, and that they had a viable internal flight alternative [IFA] available to them in Dhaka, the capital of Bangladesh. The Deb family contend that the RAD's decision was unreasonable because it erred in concluding to the presence of a viable IFA. They seek judicial review of the RAD's decision and ask this Court to quash the decision and order another panel of the RAD to reconsider their appeal.

[3] Having considered the evidence before the RAD and the applicable law, I can find no basis for overturning the RAD's decision. The decision was responsive to the evidence and the outcome was defensible based on the facts and the law. Therefore, I must dismiss the Deb family's application for judicial review.

[4] The sole issue is whether the RAD erred in concluding to the presence of a viable IFA available to the Deb family in Dhaka.

II. Background

[5] The RAD's decision was issued on February 25, 2015. In its analysis of the merits of the RPD decision, the RAD reviewed the RPD's credibility findings and its finding related to the IFA.

[6] The RAD found that the RPD had made errors in regards to its assessment of the credibility of the Deb family, except on the Deb family's failure to report their problems to the police. The RAD concluded that the RPD's credibility analysis was not sufficient to reach a final conclusion on the Deb family's claim. However, it found that the RPD's decision relating to a viable IFA was determinative and dismissed the Deb family's appeal on that basis.

[7] The RPD had concluded that the Deb family did not establish that they would be at risk everywhere in Bangladesh and that it would be unreasonable to expect them to relocate in Dhaka and resume their lives there. The RAD rejected the Deb family's argument that by leaving their ancestral property, their fundamental human rights have been denied. Relying on *Kenguruka v Canada (Minister of Citizenship and Immigration)*, 2014 FC 895 [*Kenguruka*], the RAD concluded that a property rights claim cannot form the basis for a refugee claim under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[8] The RAD noted that, since the agents of harm are local non-state actors, it would make no sense for them to pursue the Deb family outside of the property area. Furthermore, Dhaka is a huge city, far from Habiganj, and there is less than a serious probability that the agents of persecution would have the resources or connections to pursue the Deb family there, even assuming that they had an interest in doing so. In addition, they would not be able to utilize state mechanisms to find the Deb family.

[9] The RAD further confirmed the RPD's findings that it would not be unreasonable for the Deb family, who admitted to being relatively wealthy within the Bangladesh context, to relocate to Dhaka and live there, even without their property in Habiganj.

III. Analysis: did the RAD err in concluding to the presence of a viable IFA in Dhaka?

[10] The Deb family submits that they have no intention of selling their ancestral property to BNP and Jamaat. Mr. Deb wants to make a trust with it for his son who suffers from Down's syndrome and autism, allowing him to live a comfortable life. Should the Deb family return to Bangladesh, they will fight to keep the property and return to Habiganj, where their agents of persecution would be able to locate them. The Deb family contend that the RAD did not take into consideration their personal circumstances when concluding that relocation to Dhaka would be a reasonable solution. Given the reduction in their wealth and the fact they have no family members in Dhaka to take care of their son as they grow older, relocation to Dhaka was unreasonable and unrealistic.

[11] I cannot agree with the arguments put forward by the Deb family.

[12] The determination of a viable IFA is a fact-driven analysis that is reviewable on the reasonableness standard (*Emezieke v Canada (Minister of Citizenship and Immigration),* 2014 FC 922 [*Emezieke*] at para 24; *Smirnova v Canada (Minister of Citizenship and Immigration),* 2013 FC 347 at para 19; *Alves Dias v Canada (Minister of Citizenship & Immigration),* 2012 FC 722 at para 11). In judicial review proceedings, the reasonableness standard requires that a decision be justifiable, intelligible and transparent, and fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[13] Having considered the RAD decision, the underlying RPD decision and the evidence, I am satisfied that the RAD's conclusion on the availability of an IFA in Dhaka was reasonable.

[14] The underlying principle to an IFA analysis is that international protection can only be provided if the country of origin cannot offer adequate protection throughout its territory to the person claiming refugee status. The onus rests upon the applicants to prove, on the balance of probabilities, that they risk a serious possibility of persecution throughout their entire country of origin (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)* (1993), FCJ No 1172 (FCA) [*Thirunavukkarasu*] at para 2; *Ranganathan v Canada (Minister of Citizenship and Immigration)* (2000), FCJ No 2118 (FCA) [*Ranganathan*] at para 13; *Emezieke* at para 28; *Nunez Mercado v Canada (Minister of Citizenship and Immigration),* 2011 FC 792 at para 12).

[15] The test for determining whether a viable IFA exists is two-pronged. First, the RAD must be satisfied on a balance of probabilities that there is no serious possibility that the applicants will be persecuted in the proposed IFA. Second, the conditions in the proposed IFA must be such that it is not unreasonable for the applicants to seek refuge there (*Thirunavukkarasu* at para 12; *Rasaratnam v Canada (Minister of Employment and Immigration)* (1991), FCJ No 1256 (FCA) at para 13; *Kohazi v Canada (Minister of Citizenship and Immigration)*, 2015 FC 705 at para 2; *Odurukwe v Canada (Minister of Citizenship and Immigration)*, 2015 FC 613 at para 19).

[16] Concerning the first prong of the test, the RAD concluded to an absence of a serious possibility of persecution in the proposed IFA, based on the following elements:

- Now that the Deb family had left the area, it would not be logical that their alleged persecutors would pursue them to purchase their property;
- By attempting to assault the Deb family in order to obtain their property, their alleged persecutors would put themselves in the situation where state protection would be involved;
- The alleged persecutors are only involved at the local level and would not have the resources and connections to pursue the Deb family in a city as huge and faraway as Dhaka.

[17] The RAD thus considered the specific circumstances of the Deb family and the fear they had identified. I am satisfied that, in light of the evidence, it was not unreasonable for the RAD to conclude that the Deb family had failed to show that their agents of persecution would still have an interest in pursuing them in Dhaka. This is not a situation like *Gamillo Vega v Canada (Minister of Citizenship and Immigration)*, 2013 FC 487 at para 21 where a decision-maker had

omitted to consider the particular risk feared by a claimant in an IFA analysis. The present case is more reminiscent of *Roy v Canada (Minister of Citizenship and Immigration)*, 2012 FC 434 at para 26, where Justice Bédard expressly considered why the applicant's agents of persecution (also BNP and Jamaat in that case) would not have an interest in pursuing the applicant throughout the country.

[18] It was also reasonably open for the RAD to conclude that a property rights claim is not a basis for a refugee claim. This principle has been clearly established by case law (*Kenguruka* at para 6*; Habonimana v Canada (Minister of Citizenship and Immigration),* 2014 FC 1172 at para 7; *Molefe v Canada (Minister of Citizenship and Immigration)*, 2015 FC 317 at para 35).

[19] The second prong of the test analyzes whether it would be reasonable for the Deb family, who admitted to being relatively wealthy within the Bangladesh context, to relocate to Dhaka. The RAD again looked at the personal situation of the Deb family and concluded that it would not be unreasonable for them to relocate there. Their agents of persecution are local non-state actors who have little, if any, interest and means in pursuing them. Even if they did have an interest, they would not be able to utilize state mechanisms to find the Deb family. Both the RPD decision and the RAD decision contain detailed references to evidence in that respect.

[20] Furthermore, concerns about dislocation and relocation, absence of relatives in the proposed IFA and humanitarian and compassionate considerations do not amount to conditions that would jeopardize one's life and safety (*Ranganathan* at para 15; *Thirunavukkarasu* at para 14). Such elements, whether taken alone or in conjunction with other factors, can only amount to

a risk of persecution if they establish that, as a result, a claimant's life or safety would be jeopardized. It was therefore reasonable for the RAD not to consider as sufficient considerations the fact that the Deb family does not have any family members in Dhaka, that taking care of their disabled son would be more difficult, and that the family's income might diminish substantially through the relocation in the IFA.

[21] In light of that, I agree with the RAD that the Deb family's arguments concerning hardship of a move to Dhaka do not meet the required threshold and do not demonstrate that seeking refuge there was unreasonable. Their life and safety are not jeopardized.

[22] The Deb family refers to *Cuevas v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1169 as to the danger existing in the proposed IFA. However, I am not persuaded that it applies here as the RAD had several grounds for its IFA finding with no evidence suggesting that the agents of persecution were still interested in the Deb family or had the means to pursue them in Dhaka.

[23] The RAD's conclusion with regard to the availability of a viable IFA was determinative for the Deb family's claim for protection (*Fedonin v Canada (Minister of Citizenship and Immigration)*, (1997), FCJ No 1684 (FC) at para 2; *Thaneswaran v Canada (Minister of Citizenship and Immigration)*, 2007 FC 189 at para 32). It was sufficient to reject their appeal.

IV. Conclusion

[24] The RAD's decision represented a reasonable outcome based on the law and the evidence. On a standard of reasonableness, it suffices if the decision subject to judicial review falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. Therefore, I must dismiss this application for judicial review.

[25] Neither party has proposed a question of general importance to certify. I agree there is none.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed, without costs;

2. No question of general importance is certified.

"Denis Gascon"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1414-15
STYLE OF CAUSE:	SANKAR KUMAR DEB, PROTIMA SINGHA CHOUDHARY, SHUVASHISH DEB v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	SEPTEMBER 2, 2015
JUDGMENT AND REASONS:	GASCON J.
DATED:	SEPTEMBER 11, 2015

APPEARANCES:

Ms. Nilufar Sadeghi	FOR THE APPLICANTS
Mr. Evan Liosis	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Allen & Associates Barristers and Solicitors Montréal, Quebec	FOR THE APPLICANTS
William F. Pentney Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT