Federal Court  Cour fédérale

Date: 20170829

Docket: IMM-729-17

Citation: 2017 FC 789

[ENGLISH TRANSLATION]

Ottawa, Ontario, August 29, 2017

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

AHMED KAISAR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Ahmed Kaisar, is a citizen of Bangladesh. He alleges that he is a progressive Muslim and received death threats from the Islamic group Jamaat-e-Islami [JeT] following a confrontation with an imam that occurred in September 2016 at a mosque in Sylhet, Bangladesh. That confrontation and its consequences led him to flee to Canada in

October 2016. When he arrived in Canada, he filed a claim for refugee protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] In a decision made in January 2017, the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada refused Mr. Kaisar's refugee claim on the grounds that his fear of persecution and allegations were not credible and that, in any event, he had a viable internal flight alternative [IFA] in Dhaka, the capital of Bangladesh. The RPD thus found that Mr. Kaisar was not a Convention refugee or a person in need of protection.

[3] Mr. Kaisar is now applying to the Court for judicial review of that decision. He submits that the RPD's decision is unreasonable in two regards. First, Mr. Kaisar submits that the RPD erred in finding that it was implausible for him to openly oppose the imam, as he alleges to have done. Second, he argues that the RPD incorrectly found that he had a viable IFA in Dhaka. The Minister of Citizenship and Immigration submits to the contrary that the RPD's decision is reasonable in all regards.

[4] To decide Mr. Kaisar's application, it is sufficient to determine whether it was unreasonable for the RPD to find that Mr. Kaisar had a viable IFA in Dhaka. For the reasons that follow, Mr. Kaisar's application for judicial review is dismissed. Having reviewed the evidence that was available to the RPD and the applicable law, I am not satisfied that the finding regarding the IFA does not fall within the range of possible, acceptable outcomes in the circumstances, or that there are grounds to warrant the Court's intervention. Furthermore, I see no indication that the RPD breached the principles of natural justice and of procedural fairness.

II. Background

A. *The facts*

[5] The material facts may be summarized as follows. Mr. Kaisar alleges that, when he arrived at the mosque in Sylhet, he confronted the imam in front of some twenty people after having heard him make extremist statements about the "Jihad" mission. The imam allegedly went on to state that all those opposed to Sharia law and the establishment of an Islamic state in Bangladesh would be killed.

[6] At the end of the prayer, Mr. Kaisar allegedly received a message from his spouse telling him that JeT militants armed with machetes had come to his home to kill him. The militants allegedly intimidated his spouse and called Mr. Kaisar's confrontation with the imam a [TRANSLATION] "crime against Islam". Mr. Kaisar was away from home at the time to celebrate the birthday of a friend's son.

[7] Mr. Kaisar states that, in response to the message, he fled to Dhaka the next day, after leaving his spouse and his children with his in-laws, who lived 65 kilometres from Sylhet. He apparently stayed with a friend in Dhaka until early October 2016, at which time, he left for the United States on the advice of his business associates, to continue on to Canada.

B. *Decision*

[8] In its decision, the RPD found that, even assuming the accuracy of the facts alleged by Mr. Kaisar, his confrontation with the imam and the visit from JeT emissaries, Mr. Kaisar had

the option of safely relocating to Dhaka. The RPD determined that Mr. Kaisar had failed to establish that he would be exposed to risk throughout Bangladesh or that it would be unreasonable to expect him to move to Dhaka to carry on his life.

[9] In its decision, the RPD carefully reviewed the documentary evidence submitted by Mr. Kaisar, which, according to him, showed that all progressive Muslims were at risk of being persecuted by the JeT anywhere in Bangladesh. The RPD was not convinced by that evidence on a balance of probabilities. The RPD noted that several news articles were repeated and referred to the same events. Moreover, according to the RPD, the documentary evidence referred to several different groups of people targeted by the JeT, but none corresponded to Mr. Kaisar's profile. According to the RPD, the evidence therefore did not demonstrate that a person like Mr. Kaisar, who had expressed his views against fundamentalist Islam on only one occasion, could attract the attention of the JeT (or other extremist groups) and lead it to search for Mr. Kaisar throughout Bangladesh. The RPD also found that Mr. Kaisar's allegations regarding the JeT's power and its ability to disseminate information about him over a large network, or the possibility that his accent or neighbours could be enough to identify him, were mere speculation.

[10] In short, the RPD was not convinced that, as a moderate Muslim, Mr. Kaisar could be personally at risk if he were to relocate to Dhaka, and it therefore would not be unreasonable for him to do so.

C. *Standard of review*

[11] It is settled law that findings regarding the existence of a viable IFA are the result of a

fact-based analysis and that the standard of review applicable to such findings is that of reasonableness (*Deb v Canada (Citizenship and Immigration)*, 2015 FC 1069 [*Deb*] at paragraph 13; *Emezieke v Canada (Citizenship and Immigration)*, 2014 FC 922 [*Emezieke*] at paragraph 24).

[12] Where the standard of reasonableness applies, the Court must show deference and refrain from substituting its own opinion for that of the administrative tribunal, provided that the decision is justified, transparent and intelligible, and that it falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at paragraph 47). The reasons for a decision are considered to be reasonable "if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*] at paragraph 16). Moreover, findings of fact command a high degree of judicial deference, given the administrative tribunal's role as the trier of facts (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59).

III. Analysis

[13] Mr. Kaisar argues that the RPD's analysis of the IFA is unreasonable and does not fall within the range of possible, acceptable outcomes, which are defensible in respect of the facts and law. In particular, he criticizes the RPD for ignoring his counsel's submissions regarding a recent decision by the Refugee Appeal Division [RAD] that raised doubts about the existence of an IFA in Dhaka under similar circumstances. Mr. Kaisar also cites the doctrine of legitimate

expectations and argues that the RPD apparently breached the rules of procedural fairness by changing opinion on the issue of the large pool of victims targeted by the JeT.

[14] I do not agree with the arguments put forth by Mr. Kaisar and his counsel, and I am instead of the opinion that, by proceeding as it did, the RPD did not commit any error that would justify the Court's intervention.

A. *The RPD did not err in its findings of fact regarding the existence of an IFA*

[15] As I stated in *Deb*, the underlying principle to an IFA analysis is that international protection can be provided only if the country of origin cannot offer adequate protection throughout its territory to the person claiming refugee status. The onus is on claimants to prove, on the balance of probabilities, that they face a serious risk of persecution throughout their country of origin (*Ranganathan v Canada (Minister of Citizenship and Immigration)* (2000), FCJ No. 2118 (FCA) [*Ranganathan*] at paragraph 13; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)* (1993), FCJ No. 1172 (FCA) [*Thirunavukkarasu*] at paragraph 2; *Emezieke* at paragraph 28).

[16] It is trite law that the test for determining whether a viable IFA exists is two-pronged (*Deb* at paragraph 16). First, the RPD had to be satisfied that Mr. Kaisar does not face the serious possibility of being persecuted in the part of the country where there is an IFA. Second, the conditions in the part of the country where an IFA exists must be such that it would not be unreasonable for Mr. Kaisar to seek refuge there (*Thirunavukkarasu* at paragraph 12; *Kohazi v Canada (Citizenship and Immigration),* 2015 FC 705, at paragraph 2). In its decision, the RPD

explicitly refers to this test, and no criticism can therefore be made regarding the legal test it selected for its analysis.

[17] Concerning the first prong of the test, the RPD determined that Mr. Kaisar did not face a serious possibility of persecution in Dhaka and that there was no actual and concrete evidence of a serious risk preventing him from relocating there. In particular, the RPD carefully and comprehensively analyzed the voluminous documentary evidence submitted by Mr. Kaisar to find that he did not belong to any of the numerous categories of people that could be targeted by the JeT. More specifically, in its decision, the RPD referred directly to and cited a wide range of documents establishing that the people targeted by the JeT were primarily activists, homosexuals, university professors and intellectuals, political bloggers, foreigners, religious minorities, musicians, journalists, witnesses for the prosecution or police officers. However, Mr. Kaisar's profile does not match any of those categories, as numerous as they are.

[18] Regarding the second prong of the test, the RPD had to analyze whether it would be reasonable for Mr. Kaisar to move to Dhaka. Once again, the RPD examined Mr. Kaisar's personal situation and found that it would not be unreasonable for him to relocate to the capital of Bangladesh. According to the RPD, the evidence did not support a finding that JeT persecutors were actors that had an interest in pursuing him. Moreover, Mr. Kaisar had previously lived in Dhaka.

[19] The RPD's findings regarding the existence of an IFA are essentially factual: they are based on substantial documentary evidence and are at the very heart of its expertise in

immigration and refugee protection. It is well established that the RPD has the benefit of the specialized knowledge of its members in assessing evidence relating to facts that are within its field of expertise (*El-Khatib v Canada (Citizenship and Immigration)*, 2016 FC 471 at paragraph 6). In such circumstances, the standard of reasonableness requires that the Court show great deference to the RPD's findings. The role of a reviewing court is not to reweigh the evidence on record or to substitute its own findings of fact for those of the RPD. It must instead consider the reasons as a whole, together with the record (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 [*Agraira*] at paragraph 53; *Dunsmuir* at paragraph 47) and simply determine whether the conclusions are irrational or arbitrary.

[20] Given the evidence that Mr. Kaisar apparently publicly confronted the imam only once, that he was not an activist and that he actually had the characteristics of a moderate Muslim, I am of the opinion that the RPD's findings are reasonable and certainly fall within a range of possible, acceptable outcomes under the circumstances. The RPD explicitly considered Mr. Kaisar's particular situation and analyzed all of his allegations and fears. In light of the evidence before it, it was open to the RPD to find that Mr. Kaisar had not demonstrated, on a balance of probabilities, that the persecutors would still want to pursue him in Dhaka. In its analysis of the IFA, the RPD explicitly examined the specific risk that Mr. Kaisar said he feared and determined that this risk was not present in Dhaka. The RPD correctly noted that, apart from the isolated incident in September 2016 at the mosque in Sylhet and the JeT's subsequent visit to his home, Mr. Kaisar had not encountered any problems when he was far from his home region.

[21] Mr. Kaisar submits that the RPD erred when it based its finding regarding the IFA on his profile, ignoring the evidence showing that people with a wide range of profiles risked facing persecution by the JeT in Bangladesh. I disagree. On the contrary, my review of the decision and the record convinces me that the RPD instead solidly based its findings regarding the IFA on a comprehensive and detailed review of the numerous profiles of people who have faced persecution. However, despite a broad spectrum of profiles, Mr. Kaisar's profile was simply not represented. In other words, Mr. Kaisar did not submit sufficient evidence regarding the adverse conditions that would endanger his life if he were to move to Dhaka, and he did not demonstrate that it would be objectively unreasonable to ask him to seek refuge in the capital of Bangladesh.

[22] The RPD may not have referred to some evidence as explicitly as Mr. Kaisar would have liked, but that is not a sufficient ground to warrant the Court's intervention. A judicial review is not a "line-by-line treasure hunt for error" (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd.*, 2013 SCC 34 at paragraph 54). The Court must examine the reasons by reading them "with a view to understanding, not to puzzling over every possible inconsistency, ambiguity or infelicity of expression" (*Canada (Minister of Citizenship and Immigration) v Ragupathy*, 2006 FCA 151 at paragraph 15). As the Supreme Court noted, "[r]easons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis" (*Newfoundland Nurses* at paragraph 16). An administrative tribunal is not required to make an explicit finding on each constituent element of its final conclusion.

[23] Moreover, there are no grounds to infer that the RPD might have overlooked material

evidence that squarely contradicted its findings. A tribunal is presumed to have considered all the evidence and is not required to refer to every element thereof (*Newfoundland Nurses* at paragraph 16; *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No. 598 (FCA) at paragraph 1). Failure to mention specific evidence does not mean that it was not considered or that all evidence was not examined (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 (FC), at paragraphs 16–17). It is only when an administrative tribunal is silent on evidence clearly pointing to the opposite conclusion that the Court can intervene and infer that the tribunal overlooked the contradictory evidence when making its finding of fact. That is not the case here.

[24] The arguments put forward by Mr. Kaisar simply express his disagreement with the RPD's assessment of the evidence regarding the IFA and ask the Court to prefer its own assessment and reading to those of the tribunal. However, that is not the Court's role in a judicial review (*Kanthasamy v Canada (Citizenship and Immigration)*, 2014 FCA 113 at paragraph 99). The reasons for the RPD's decision on the existence of a viable IFA have the qualities of justification, transparency and intelligibility and make it possible to determine that the conclusion falls within the range of possible, acceptable outcomes. Any reader can know exactly why the RPD determined that Mr. Kaisar had a viable IFA in Dhaka. There is no fatal flaw in its reasoning, and I consider the outcome to be reasonable in light of the applicable legal principles. There is therefore no reason for the Court to intervene.

[25] The RPD's finding regarding the existence of an IFA in Dhaka was determinative for Mr. Kaisar's refugee claim (*Thaneswaran v Canada (Citizenship and Immigration)*,

2007 FC 189 at paragraph 32), and it was sufficient to dismiss his entire claim (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1991] FCJ No. 1256 at paragraph 8). The onus was on Mr. Kaisar to establish that it was objectively unreasonable to ask him to seek refuge in Dhaka, the region identified as safe by the RPD. That is a heavy burden, and it required real and concrete evidence of adverse conditions that would jeopardize Mr. Kaisar's life and safety if he were to move to Dhaka (*Ranganathan* at paragraph 15). That demonstration was not made.

[26] At the hearing before this Court, Mr. Kaisar and his counsel argued at length that the RPD had erroneously failed to discuss precedents that had been submitted to it, particularly a RAD decision from July 2016 in which the RAD found that there was no viable IFA in Dhaka. Mr. Kaisar accuses the RPD of having failed to address that precedent explicitly and argues that the RPD was required to refer to it in its decision. I do not share Mr. Kaisar's opinion in this regard.

[27] For one, Mr. Kaisar cited that RAD decision because of its findings of fact on the lack of an IFA in Dhaka. However, a RAD decision in a different case with a distinct factual background cannot serve as a precedent that is binding on the RPD in the factual assessment it must conduct based on the evidence before it. Moreover, it is clear that the documentary evidence available to the RPD was different from the evidence on which the RAD had relied in the case cited by Mr. Kaisar. The relevance of a precedent diminishes the more the factual backgrounds differ. That is the case here. In my opinion, it is clear that the RAD's findings on which Mr. Kaisar

would have liked the RPD to rely were based on different facts and documentary evidence than what the RPD had before it in this case.

[28] It must also be noted that failing to refer to all arguments or precedents raised by the parties is not sufficient to impugn the reasonableness of a decision (*Newfoundland Nurses* at paragraph 16).

[29] To try to strengthen their position, Mr. Kaisar and his counsel spoke at length on the decisions in *Vilmond v Canada (Citizenship and Immigration)*, 2008 FC 926 [*Vilmond*] and *Csoka v Canada (Citizenship and Immigration)*, 2016 FC 1220 [*Csoka*] at paragraphs 25–26. With respect, I am of the opinion that Mr. Kaisar is mistaken as to the scope of those two decisions and that, in fact, they are not of much help to him.

[30] In *Vilmond*, the Court held that the administrative tribunal had clearly failed to examine the applicant's allegations and had simply not considered the issue of gender-based persecution, while that specific argument had been raised by counsel. In that case, the tribunal had thus ignored a fundamental argument that had been emphasized at the hearing. There had been a failure to mention the main element at the heart of the application. It did not concern a single precedent, as is the case here with the RAD decision. In Mr. Kaisar's case, it is also clear that the RPD examined his main argument and allegations that there was no viable IFA in Dhaka and that his profile meant that he could not escape JeT persecution. However, the RPD was not convinced by the evidence submitted in that regard.

[31] In *Csoka*, the RAD had resorted to documentary evidence that has been repeatedly discarded by the Court as unreliable proof of state protection. In fact, the RAD had repeated verbatim a passage that the Court had criticized and rejected in other decisions. It is in that very specific context that I stated in *Csoka* that the RAD had remained deaf to the issue, even though counsel had specifically elaborated on that point in his submissions. Once again, the situation is very different in Mr. Kaisar's case. The RPD scoured all of the evidence regarding the profiles of people subject to persecution in Bangladesh and considered the arguments put forth by Mr. Kaisar. The fact that it did not explicitly mention the RAD decision cited by Mr. Kaisar in support of his position is in no way akin to the situations in *Vilmond* or *Csoka*.

B. *The RPD did not breach the right to procedural fairness or any principle of natural justice*

[32] Lastly, Mr. Kaisar argues that the RPD allegedly infringed on his right to procedural fairness and breached the principles of fundamental justice and the doctrine of legitimate expectations. Mr. Kaisar and his counsel submit that they had relied on certain statements the RPD made at the hearing before the panel, which referred to the broad spectrum of profiles of people who could, in fact, face persecution in Bangladesh. They submit that the RPD's about-face in its decision fettered Mr. Kaisar's legitimate expectations in that regard.

[33] I do not share Mr. Kaisar's opinion regarding this other ground for judicial review.

[34] Mr. Kaisar is trying to give the doctrine of legitimate expectations a scope that it does not have (*Nshogoza v Canada (Citizenship and Immigration)*, 2015 FC 1211 at paragraphs 35–41).

The doctrine of legitimate expectations is one of the rules of procedural fairness. I agree that issues related to procedural fairness are reviewable on the stricter standard of correctness (*Mission Institution v Khela*, 2014 SCC 24 at paragraph 79). That means that, when these issues are raised, the Court must determine whether the process followed by the decision-maker satisfies the level of fairness required in light of all the circumstances (*Khosa* at paragraph 43).

[35] However, the doctrine of legitimate expectations does not create substantive rights and cannot hinder the discretion of the decision-maker responsible for applying the law (*Reference Re Canada Assistance Plan (B.C.)*, [1991] 2 SCR 525, at pages 557 and 558). It is part of the duty to act fairly and, for that reason, it offers only procedural protections (*Agraira* at paragraphs 94–97). The proposition that the doctrine of legitimate expectations cannot create substantive rights is also upheld in a large number of decisions (*Canada (Attorney General) v Mavi*, 2011 SCC 30 at paragraph 68; *Mount Sinai Hospital Center v Quebec (Minister of Health and Social Services)*, 2001 SCC 41 at paragraph 22).

[36] In this case, the RPD had apparently mentioned at the hearing before the panel that there was a relatively broad spectrum of people exposed to persecution by fundamentalist Muslims in Bangladesh. However, that does not mean that the RPD was required to find in favour of Mr. Kaisar and determine that his profile could be included in that broad spectrum. The doctrine of legitimate expectations does not guarantee a certain outcome; it simply protects a process. It is clear that, in its decision, the RPD did in fact consider the broad spectrum of people who are potential victims of persecution by the JeT. However, the fact of having referred to the very broad spectrum of people facing persecution did not deprive the RPD of its discretion to assess

the evidence on record and to determine whether or not Mr. Kaisar's particular profile matched any of the profiles included in that spectrum. Following a detailed analysis, the RPD found that it did not.

[37] The duty to act fairly (which includes the doctrine of legitimate expectations) does not concern the merit or content of a decision, but rather, the procedure followed. The nature and scope of that duty can vary depending on the attributes of the administrative tribunal and its enabling statute, but its requirements always refer to the procedure and not to the substantive rights to be determined by the tribunal. The RPD's decision does not breach any of the elements of procedural fairness. There is no evidence in this case of a breach by the decision-maker or that Mr. Kaisar was unable to be heard, nor is there any suspicion that he was treated unfairly.

[38] The fact that the factual conclusion reached by the RPD is not the one that Mr. Kaisar hoped to receive is in no way a breach of the doctrine of legitimate expectations.

IV. Conclusion

[39] For the foregoing reasons, Mr. Kaisar's application for judicial review is dismissed. According to the standard of reasonableness, the decision under judicial review must only be justified, transparent and intelligible and fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. That is the case here. Moreover, in every regard, the RPD satisfied the requirements of procedural fairness in its handling of Mr. Kaisar's claim. The RPD's decision therefore does not contain any error that would justify the Court's intervention.

[40] None of the parties raised any question of general importance to be certified. I agree that there is none in this case.

JUDGMENT in IMM-729-17

THIS COURT'S JUDGMENT is that:

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

2. No serious question of general importance is certified.

"Denis Gascon"
Judge

Certified true translation
This 13th day of December 2019

Lionbridge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-729-17
STYLE OF CAUSE:	AHMED KAISAR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTREAL, QUEBEC
DATE OF HEARING:	AUGUST 16, 2017
JUDGMENT AND REASONS:	GASCON J.
DATED:	AUGUST 29, 2017

APPEARANCES:

Alain Joffe	FOR THE APPLICANT
Pavol Janura	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Alain Joffe Counsel Montreal, Quebec	FOR THE APPLICANT
Deputy Attorney General of Canada Montreal, Quebec	FOR THE RESPONDENT