Date: 20190715

Docket: IMM-6141-18

Citation: 2019 FC 941

Ottawa, Ontario, July 15, 2019

PRESENT: Madam Justice Walker

BETWEEN:

K.M. Sarjil RAHMAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mr. K.M. Sarjil Rahman, is a citizen of Bangladesh. He seeks judicial review of the decision (Decision) of a senior immigration officer (Officer) at Citizenship and Immigration Canada to deny his application for a Pre-Removal Risk Assessment (PRRA). This application for judicial review is brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

[2] For the reasons that follow, the application will be allowed.

I. Background

[3] The Applicant was a well-established business man in Bangladesh who worked in a shipping company owned by his family. In January 2016, he and his mother, Ms Nilufar Azim, travelled to Canada. They claimed refugee status in Canada in March 2016, fearing threats from Muslim extremists due to articles published by Ms. Azim. They stated that the threats dated from 2014.

[4] Subsequently, the Applicant and Ms. Azim were informed that conditions had improved in Bangladesh and that they could safely return. On August 8, 2016, they withdrew their refugee claims and, on September 1, 2016, returned to Bangladesh.

[5] The Applicant submits that, upon returning to Bangladesh, he faced renewed threats due to his mother's writings. In his affidavit filed in support of his PRRA, the Applicant described an incident in November 2016 during which his car was stopped by four or five men who made negative comments about his mother and attempted to force him into their van. He was assisted by passersby and did not file a police report because he believed the police would be of no assistance. He also began receiving threatening phone calls but no demands were made of him and he ignored the calls.

[6] In April 2017, the Applicant attended political rallies for an awareness campaign against fundamentalist groups. Following one rally, he received a call from an unnamed individual who

had seen him at the rally and mentioned “something about dire consequences”. The Applicant also described an incident in May 2017, in which several men attacked his home. The men banged on the door and attempted to enter the house. They left a note for the Applicant demanding 20 lakhs (approx. $30,000 CDN) for them to leave him alone. The Applicant sent a security guard to the police station to file a report but the police refused to accept the complaint.

[7] The Applicant returned to Canada on May 18, 2017 and was detained on arrival. On June 15, 2017, a Direction to Report was issued to him for removal on June 22, 2017. The Applicant’s removal was stayed by this Court on June 29, 2017.

[8] The Applicant filed his PRRA application in August 2017.

II. Decision under review

[9] The Decision is dated August 24, 2018. The Officer found (1) that the Applicant had provided insufficient objective evidence to establish that he is at risk in Bangladesh from Muslim extremists; and (2) that the Applicant had not rebutted the presumption that state protection would be available to him should he return to Bangladesh. As a result, the Officer concluded that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97, respectively, of the IRPA.

[10] The Officer first addressed the documentary evidence filed by the Applicant. As the Officer’s treatment of this evidence is critical to this application, I have listed the evidence in

detail in the analysis section of this judgment. In summary, the evidence consisted primarily of letters from family members, friends and employees, certain witnesses to the events described by the Applicant, a Supreme Court judge in Bangladesh, and the chairman of the family business, who is also the Applicant's uncle. The Officer described the letters as follows:

> With the exception of the letter from the supreme court judge and the applicant's uncle and chairman of the family company, all of the letters/affidavits speak to the allegations raised in the applicant's own affidavit or to his mother's former circumstances. The letter from the uncle (chairman) does not mention anything about the applicant's or his mother's alleged problems. The uncle merely states that the applicant is a director in the company and that he will be taking leave from May to June 2017 to be in Canada and that he is financially sound. The letter from the supreme court judge speaks to the applicant's mother[']s background and conversion to Islam and her reputation as a writer on humanity, women's rights and social awareness which may have contributed to fundamentalist groups targeting her.

[11] The Officer concluded that the letters were subjective in nature and written by individuals who have a vested interest in assisting the Applicant. The Officer accorded the letters minimal probative value, stating that the letters "that speak of the applicant's circumstances appear merely as iterations of his own affidavit while the uncle's letter does not mention anything concerning the allegations raised by the applicant".

[12] The Officer also discussed the note (Note) left for the Applicant by the men who attempted to enter his home in May 2017. The Officer questioned why the translation of the Note was completed on August 16, 2017, well after the Applicant's arrival in Canada, and stated, "I have no explanation from the applicant why this allegedly important letter and translation came into his possession some three months after he left Bangladesh". The Officer also queried why

the Note would refer to speeches made by the Applicant against its author when the Applicant had not referred to such speeches in his own affidavit.

[13] The Officer then reviewed eight newspaper articles written by Ms. Azim and concluded that all of the articles were gently opinion-based and not overtly political. The Officer stated that the articles did not contain wording that could be considered likely to "fire any fundamentalist Muslim sensibilities".

[14] Finally, the Officer addressed the issue of state protection. The Officer stated that Bangladesh is a constitutional democracy capable of protecting its citizens. The Applicant's statements that he did not seek police protection because the police had failed to respond when Ms. Azim previously contacted them for assistance were insufficient to rebut the presumption of state protection (*Canada (Citizenship and Immigration) v Kadenko*, 143 DLR (4th) 532, 1996 CanLII 3981 (FCA)).

III. Issues

[15] The Applicant raises two related issues in this application:

1. Did the PRRA Officer err in discounting the Applicant's evidence as self-serving?
2. Did the PRRA Officer err by making negative, veiled credibility findings and failing to afford the Applicant an oral hearing?

[16] The Officer's assessment of the Applicant's documentary evidence is the determinative issue in this application. My analysis focusses on this issue and I address the second issue raised by the Applicant as a corollary to that analysis.

IV. Standard of review

[17] The standard of review of a decision of a PRRA officer is that of reasonableness, other than any review of the decision centering on issues of procedural fairness (*Yang v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 496 at para 14; *Korkmaz v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 1124 at para 9; *Raza v Canada (Citizenship and Immigration)*, 2006 FC 1385 at para 10; *Aladenika v Canada (Citizenship and Immigration)*, 2018 FC 528 at para 11). Considerable deference is owed to the factual determinations and risk assessments made by a PRRA officer. The Court will only interfere if the decision lacks justification, transparency, or intelligibility, and falls outside the range of possible, acceptable outcomes which are defensible on the particular facts of the case and in law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[18] The Applicant submits that the PRRA officer made a veiled credibility finding in respect of his evidence and should have convened an oral hearing in accordance with subsection 113(b) of the IRPA and section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (Regulations). Recent authority of this Court supports the conclusion that this issue involves a question of mixed fact and law and is governed by the standard of reasonableness, particularly if the extent to which the PRRA decision was based on a credibility determination is in question

(*Haji v Canada (Citizenship and Immigration)*, 2018 FC 474 at paras 6-10; *Boakye v Canada (Citizenship and Immigration)*, 2018 FC 831 at para 16).

V. Analysis

1. Did the PRRA Officer err in discounting the Applicant's evidence as self-serving?

Corroborative letters and affidavit filed by the Applicant

[19] The Applicant filed the following letters and affidavit (Letters) in corroboration of his narrative:

1. **Letter of Golam Mostafa** [Applicant's neighbour]: Mr. Mostafa witnessed the attack on the Applicant's apartment by an unknown group of men on May 14, 2017 and attempted to chase the men away.
2. **Letter of Yousuf** [local shopkeeper]: Yousuf witnessed the November 28, 2016 attack on the Applicant and his mother and called the police. As the police did not come, Yousuf approached the scene and the attackers fled.
3. **Letter of Aroma Dutta** [friend of Applicant's family]: Ms Dutta explains that she has known the Applicant since childhood. She speaks to the threats he has faced from Islamic extremists and the lack of support from law enforcement agencies in Bangladesh.
4. **Letter of Justice Ashish Ranjan Das** [friend of Ms. Azim]: Justice Das discusses Ms. Azim's biographical background and writings, stating that she has written on women's rights, humanity and social awareness, which has made her a target of Islamic extremists.
5. **Letter of Ms. Azim**: Ms. Azim discusses her writings and the threats received in response to her work, the November 28, 2016 incident, the May 14, 2017 incident, as well as the general climate in Bangladesh.
6. **Letter of Rajib Howlader** [Applicant's chauffeur]: Mr. Howlader witnessed the November 28, 2016 incident in which several armed men threatened the Applicant and his mother and attempted to take the Applicant with them.

7. **Letter of Abdul** [Applicant's domestic worker]: Abdul witnessed the May 14, 2017 incident in which the Applicant's home was attacked. He refused to let the attackers in and received the Note they slid under the door.

8. **Affidavit of Mazharul Haque Khandaker** [Applicant's second cousin/family member]: Mr. Khandaker discusses the Applicant's biographical information and Ms. Azim's writings, religious beliefs and problems she has faced as a result of her work. His opinion is that the Applicant is not safe in Bangladesh.

Parties' submissions

[20] The Applicant submits that the Officer erred in concluding that the Letters were self-serving and, therefore, not credible. He argues that the Officer dismissed the PRRA application on the basis that the Letters were written by individuals who had a vested interest in assisting the Applicant, despite the fact that certain of the Letters were written by witnesses to events central to his claim. The Applicant relies on recent jurisprudence in which this Court has held that a decision-maker errs when they dismiss evidence solely on the basis that it originated from relatives and/or friends of an applicant (*Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at para 44 (*Magonza*); *Tabatadze v Canada (Citizenship and Immigration)*, 2016 FC 24 at para 4).

[21] The Respondent submits that the Officer's analysis of the Letters was reasonable. The Respondent argues that this Court has stated that the assessment of the weight of evidence is separate from the assessment of credibility and that an Officer may find evidence credible but ultimately insufficient (*Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 at para 26 (*Ferguson*); *A.B. v Canada (Citizenship and Immigration)*, 2018 FC 953 at para 21). The Respondent states that the Officer analyzed each of the documents submitted by the Applicant

and gave them low probative value because they did not establish that the Applicant was at risk from Islamic groups in Bangladesh.

Analysis

[22] I find that the Officer unreasonably discounted the Applicant's Letters because they were submitted by self-interested parties. The Letters were the primary corroborative evidence filed by the Applicant. The Officer's failure to assess the substance of the Letters was a reviewable and determinative error. Although the Respondent argues that the Officer substantively analyzed the Applicant's evidence and found that it simply did not establish his risk in Bangladesh, this is not the case. First and foremost, the Officer gave the Letters minimal probative value because of their authorship:

> I find that all of the afore-mentioned documentation is subjective in nature and all of it is written by individuals, known to the applicant and who would have a vested interest in assisting his application. The letters from the applicant's employees, his neighbour and the shopkeeper would have no reason to write such if not at the behest of the applicant. As such, these letters are self-serving and have minimal probative value. Those that speak of the applicant's circumstances appear merely as iterations of his own affidavit while the uncle's letter does not mention anything concerning the allegations raised by the applicant.

[23] The Officer then reviewed the Note and the articles written by Ms. Azim and concluded:

> I find that I have been provided with insufficient objective evidence that the applicant is at risk in Bangladesh for the reasons alleged. While I do not disbelieve him I find that his evidence is only of a subjective nature which does not advance the present application.

[24] The reasoning is an example of an approach to evidence the Court has previously frowned on: a decision-maker dismissing evidence solely on the basis that it originated from relatives and/or friends, and in this case employees, of the Applicant.

[25] The observation of Justice Grammond in *Magonza* (at para 44) is directly on point:

> In the vast majority of cases, the family and friends of the applicant are the main, if not the only first-hand witnesses of past incidents of persecution. If their evidence is presumed to be unreliable from the outset, many real cases of persecution will be hard, if not impossible to prove. Thus, while decision-makers are allowed to take self-interest into account when assessing such statements, this Court has often held that it is a reviewable error to dismiss entirely such evidence for the sole reason that it is self-interested.

[26] The Respondent analyses each Letter in its Memorandum filed in this application and provides an explanation of why the Officer's conclusion of minimal probative value was reasonable. However, the Officer undertook no such analysis in the Decision, making only generalized statements that the evidence was "subjective" and "self-serving".

[27] As Justice Grammond stated in *Magonza* and Justice Zinn stated in *Ferguson*, a PRRA officer is permitted to take self-interest into account in assessing an applicant's documentary evidence. The issue of self-interest impacts the credibility of an author or affiant's statements and/or the weight an officer will attribute to the evidence. However, it is not sufficient for an officer to refer to the author of the evidence in question and state that the evidence has minimal probative value (or weight) because the author is a family member or friend.

[28] Self-interest is not a binary concept. The importance of an author's potential self-interest or bias as against the credibility and weight to be afforded their evidence will vary with such considerations as: the role the author played in the events recounted - were they a witness or did the applicant merely recount the events in question to the author; the relationship of the author to the applicant - is the author a close family member but, as a witness, nonetheless able to speak independently to the events; the content of the witness statement - does it merely parrot the applicant's evidence or does it have a degree of independence based on the author's own vantage point, and what was that vantage point; any inconsistencies between their statements and other objective evidence in the case, etc.

[29] A PRRA officer may first assess the probative value of evidence – what does the evidence state and does it establish or corroborate the material fact(s) in question (*Osikoya v Canada (Citizenship and Immigration)*, 2018 FC 720 (at para 51)) – and conclude that the evidence on its face is not materially supportive of the applicant's case and has little probative value. If so, there is no need to consider self-interest or credibility and the officer's analysis does not give rise to questions of veiled credibility findings.

[30] The Officer in this case did not assess the content of the Letters, nor did the Officer look closely at the various authors. The Officer's analysis was premised on the fact that the Letters were self-serving. Although the Officer's conclusion was stated in terms of the insufficiency of the evidence in the record, there was no reason given for why the evidence was insufficient other than its authorship.

[31] The Applicant also argues that the Officer's treatment of the Note was unreasonable as it focusses on the date of translation and appears to conflate the date the note was given to the Applicant in Bangladesh and the date it was translated after his arrival in Canada. I agree with the Applicant. The Officer's assessment of the Note is compromised by this error with the result that it is not possible to gauge whether the Officer properly considered its content. The Respondent argues that the Note was vague and made reference to activities the Applicant had omitted from his affidavit. These may be valid points but the Officer stated:

> I give this letter [the Note] no weight as the applicant claimed that his houseman gave him the note pushed under the door on the date of the alleged attempt to enter his home which he stated was on 14 May 2017. While the note is undated I note that the translation was completed on 16 August 2017 after the applicant came to Canada on 18 May 2017. I have no explanation from the applicant why this allegedly important letter and translation came into his possession some three months after he left Bangladesh.

[32] In my view, the Officer's treatment of the Note is not intelligible. The dates are easily explained and yet the Officer gave the document no weight because of this misunderstanding.

> *2. Did the PRRA Officer err by making negative, veiled credibility findings and failing to afford the Applicant an oral hearing?*

[33] As stated above, I will only deal briefly with this second issue which centres on the question of veiled credibility findings. It is clear from the foregoing analysis that the Officer's assessment of the Applicant's documentary evidence was flawed. The Officer did not consider the substantive content of that evidence. Similarly, there is little analysis in the Decision of the Applicant's other evidence and narrative. Although the Officer did not disbelieve the Applicant,

his evidence was found to be only of "a subjective nature which does not advance the present application". Whether this statement was a veiled credibility finding, a finding that the content of the evidence did not establish the Applicant's risk in Bangladesh, or a failure to engage with the evidence is not apparent. The analysis lacks transparency, intelligibility and justification.

[34] On redetermination of this matter, another PRRA officer will be required to substantively assess the Applicant's affidavit and oral evidence, together with the documentary evidence filed in support of the PRRA application. The officer must consider the content of the evidence, identify any issues of self-interest and credibility, and determine whether an oral hearing is required pursuant to subsection 113(b) of the IRPA and section 167 of the Regulations.

VI. Conclusion

[35] The application is allowed.

[36] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT in IMM-6141-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.

2. No question of general importance is certified.

"Elizabeth Walker"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Richard Wazana	FOR THE APPLICANT
Jocelyn Espejo-Clarke	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Wazanalaw Barrister and Solicitor Toronto, Ontario	FOR THE DEFENDANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENTS