

Federal Court



Cour fédérale

Date: 20210316

Docket: IMM-7870-19

Citation: 2021 FC 230

Ottawa, Ontario, March 16, 2021

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

**MOHD ABDUL ALIM
AYESHA BEGUM
ABDUL AYMAN FAHIM
JANNATH ASHIA LIZA**

Applicants

and

**THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Principal Applicant, Mohd Abdul Alim, his wife, Ayesha Begum and their two minor children, Abdul Ayman Fahim and Jannath Ashia Liza, are all citizens of Bangladesh. Mr. Alim reports that he is a businessperson who has resisted attempts at extortion by the leader of

the local branch of the Awami League, the ruling political party in Bangladesh. He states that his resistance to the extortion attempts has created the perception that he does not support the Awami League and that the circumstances have resulted in threats, harassment, and assault targeting him, his business interests, and his family.

[2] The Refugee Protection Division [RPD] denied the Applicants' refugee claim, finding Mr. Alim's narrative was not credible and that, in any event, the Applicants had an internal flight alternative [IFA] in Dhaka. On December 10, 2019, the Refugee Appeal Division [RAD] concluded that the RPD had erred in much of its assessment and treatment of the Applicants' evidence but found that Dhaka did provide the Applicants with an IFA. The RAD therefore confirmed the RPD's conclusions that the Applicants are neither convention refugees nor persons in need of protection.

[3] Pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27, the Applicants seek judicial review of the RAD decision on the basis that it was tainted by errors in its assessment and treatment of the Applicants' evidence.

[4] For the reasons that follow, the Application is granted.

II. Decision under Review

[5] Overall, the RAD found the Applicants narrative in respect of the events reported prior to their departure from Bangladesh was credible. On this basis, the RAD found the Applicants faced a serious possibility of persecution in their local community. In reaching this conclusion,

the RAD reversed many of the RPD's negative credibility findings. However, the RAD agreed with the RPD's treatment of reported incidents of harassment by the local agent of persecution after the Applicants had arrived in Canada.

[6] In an amendment to his basis of claim form [BOC] Mr. Alim reports that after the Applicants had left Bangladesh, his brother was approached by the leader of the local branch of the Awami League. The leader of the local branch demanded to know when Mr. Alim would return. The leader also demanded that the brother tell Mr. Alim to send money from Canada. The amended BOC further states that the brother was beaten for not providing money to the local Awami League leader.

[7] Mr. Alim's brother subsequently provided an affidavit in support of the Applicants' claim. That affidavit corroborated an incident that occurred prior to the Applicants having fled Bangladesh, but was silent as to the incidents of harassment and abuse the brother experienced after the Applicants had arrived in Canada, as reported in the amended BOC. The RPD found that the omission of these incidents undermined Mr. Alim's credibility in respect of reported ongoing efforts to locate him. The RAD agreed, drew a negative credibility inference, and concluded the events of continued harassment as set out in the amended BOC did not occur. The RAD then relied upon this finding to conclude, as part of its IFA analysis, that the evidence did not support a finding that the agent of persecution was motivated to locate Mr. Alim once he left his local community.

[8] In considering the first prong of the two-prong IFA test, the RAD found that the leader of the Awami League in his local community had not demonstrated an ongoing motivation to find Mr. Alim once he had left the local community. The RAD also relied upon documentary evidence showing a high degree of competition within the Awami League for resources, competition that had generated intra-party violence. In this context the RAD states that “Mr. [Alim] is a resource for extorted funds and given the context of this competition between [Awami League] factions over resources, I find, on a balance of probabilities, that [the agent of persecution] would not be likely to pursue Mr. [Alim] in Dhaka because that could foreseeably create conflict with local [Awami League] leaders in Dhaka.” The RAD found that the Applicants would not face a serious possibility of persecution in the IFA, Dhaka.

[9] In considering the second prong of the IFA test the RAD noted Mr. Alim’s resourcefulness, prior connections to Dhaka and the potential for support from family and social security programs in concluding it would not be unreasonable for the Applicants to relocate to Dhaka.

III. Issues and Standard of Review

[10] The Application raises two issues:

- A. Did the RAD reasonably make a negative credibility finding on the basis that the events set out in Mr. Alim’s amended BOC were not corroborated by his brother’s affidavit?

- B. Did the RAD reasonably conclude that the Applicants would not face a serious possibility of persecution in Dhaka?

[11] The RAD's credibility findings and IFA determination are reviewable against a standard of reasonableness (*Keqaj v Canada (Minister of Citizenship and Immigration)*, 2020 FC 563 at paras 13-15; *Elusme v Canada (Minister of Citizenship and Immigration)*, 2020 FC 225 at paras 9-14). A decision will be reasonable if it "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]).

IV. Analysis

- A. *The RAD erred in making a negative credibility finding on the basis of a lack of corroboration*

[12] The Applicants argue that the RAD erred in drawing a negative inference about Mr. Alim's credibility on the basis that his brother's affidavit did not address circumstances the RAD felt it ought to have addressed. The Applicants rely on *Mahmud v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 8019 (FC), which stands for the principle that evidence must be considered on the basis of what it says, not what it does not say (see also *Arslan v Canada (Minister of Citizenship and Immigration)*, 2013 FC 252; *PUA v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1146 at paras 31-32; *Sivaraja v Canada (Minister of Citizenship and Immigration)*, 2015 FC 732 at para 36).

[13] In addressing the amended BOC detailing ongoing efforts to locate and extort Mr. Alim after he had left Bangladesh the RAD concluded Mr. Alim was not credible. This because his brother, who had been present for and had directly experienced the events, omitted any discussion of them from his affidavit. The RAD drew a negative credibility inference from this omission and concluded that, on a balance of probabilities, the events described in the amended BOC did not occur.

[14] I am of the view that the RAD's negative credibility finding is unreasonable. As noted by Justice Sebastien Grammond in *Adeleye v Canada (Minister of Citizenship and Immigration)*, 2020 FC 640 [*Adeleye*], a negative credibility finding cannot be based on partial corroboration alone:

[9] The prohibition on discounting evidence for what it does not say arises in the context of the assessment of credibility. It is impermissible to disbelieve one witness's evidence simply because another witness corroborated only part of that evidence and remained silent as to another part: *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at paragraphs 48–52 [*Magonza*]. In such a situation, there is no contradiction affecting credibility. At most, the issue is simply a lack of corroboration. [Emphasis added]

[15] A failure to corroborate, in and of itself, does not raise an issue of credibility. However, a failure to corroborate may still be relevant. As detailed in *Adeleye*, a failure to corroborate may raise a sufficiency issue:

[10] This prohibition, however, does not detract from the general requirement that there be sufficient evidence to ground a finding of a well-founded fear of persecution. Insufficiency should not be confused with a lack of credibility: *Magonza*, at paragraphs 32–35; *Olusola v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 46 at paragraphs 17–18. I discussed the concept of sufficiency of the evidence in *Azzam v Canada (Citizenship and Immigration)*, 2019 FC 549 [*Azzam*]. I noted that

“[a] mere conclusory statement offered in evidence will often be insufficient” (at paragraph 31) and that evidence may be insufficient “where it does not contain enough detail to persuade the decision-maker of the existence of the facts necessary to trigger the application of a legal rule” (at paragraph 33). [Emphasis added]

[16] In this instance, it may well have been open to the RAD to conclude that the amended BOC statement was insufficient to show that the events it disclosed actually occurred. Had the RAD concluded the evidence was insufficient the result may well have been the same. However, in *Vavilov*, the Supreme Court clarified that “an otherwise reasonable outcome...cannot stand if it was reached on an improper basis” (at para 86). As recognized in *Adeleye*, the distinction between sufficiency and credibility is neither superficial nor peripheral:

[11] One might be forgiven for thinking that there is no meaningful difference between insufficiency and lack of credibility. In this regard, counsel for the applicants argued that a conclusion that the applicants have brought insufficient evidence practically means that the Court does not believe them. Even though both situations may lead to the rejection of the claim, there is nonetheless a significant distinction. As counsel for the Minister noted, the applicants may well have a sincere belief in the power and influence of the agent of persecution. Without sufficient evidence, however, a decision-maker is unable to ascertain that this belief is objectively grounded. Thus, a conclusion of insufficiency is logically distinct from a negative credibility finding. [Emphasis added]

[17] The RAD’s error in assessing the evidence also undermines the reasonableness of the RAD’s IFA analysis, which I will now address.

B. *The RAD unreasonably concluded that the Applicants would not face a serious possibility of persecution in Dhaka*

[18] In addressing the risk of persecution in Dhaka, the RAD's analysis is limited to the risk posed by the Awami League leader in the Applicants' former community. This undermines the RAD's analysis for two reasons.

[19] First, as I have already concluded, the RAD erred in its treatment of the evidence relating to ongoing efforts to locate and extort Mr. Alim. The RAD unreasonably made a negative credibility finding based on a lack of corroboration. The RAD's reliance on that unreasonable determination undermines the reasonableness of the IFA analysis.

[20] Second, the RAD's IFA analysis is internally incoherent. The RAD supports its conclusion that Mr. Alim's identified agent of persecution would not pursue the Applicants in Dhaka on the basis that Mr. Alim is "a resource for extorted funds." The RAD, citing the documentary evidence, notes that competition between Awami League factions over resources results in intra-party violence; that the violence includes the extortion of business owners; and that Mr. Alim would be viewed as a resource for extorted funds by different Awami League factions. The RAD concludes that the Awami League leader in Mr. Alim's former community would not pursue Mr. Alim in Dhaka and thereby risk creating conflict with local leaders.

[21] The RAD's analysis only considers the risk posed by the Awami League leader in Mr. Alim's former community. The analysis does not then consider the risk posed to the Applicants by other Awami League factions in Dhaka. In effect, the RAD appears to conclude the

Applicants do not face a serious risk of persecution in Dhaka from the identified agent of persecution due, at least in part, to the risk of persecution posed by other Awami League factions located in Dhaka, a risk the Applicants raised in their submissions to the RAD.

[22] This undermines the coherence and transparency of the IFA analysis, rendering the decision unreasonable (*Vavilov* at paras 101-104).

V. Conclusion

[23] The Application is granted. The parties have not identified a serious question of general importance for certification and none arises.

JUDGMENT IN IMM-7870-19

THIS COURT'S JUDGMENT is that:

1. The Application is granted;
2. The matter is returned for redetermination by a different decision maker; and
3. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7870-19

STYLE OF CAUSE: MOHD ABDUL ALIM, AYESHA BEGUM, ABDUL
AYMAN FAHIM, JANNATH ASHIA LIZA v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

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