

Federal Court



Cour fédérale

**Date: 20220202**

**Docket: IMM-1061-21**

**Citation: 2022 FC 117**

**Ottawa, Ontario, February 2, 2022**

**PRESENT: Mr. Justice Sébastien Grammond**

**BETWEEN:**

**SHLA UDDIN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Mr. Uddin brings this application for review of the decision by the Refugee Appeal Division [RAD], which found him not to be a Convention refugee because of the existence of an internal flight alternative [IFA] in his home country of Bangladesh. I am dismissing his application, as the RAD reasonably rejected new evidence that Mr. Uddin put forward and did not make any reviewable error in finding that Mr. Uddin would not be exposed to any risk if he were to move to the IFA.

I. Background

[2] Mr. Uddin alleges that he faces a serious risk of persecution by the Awami League, a political party in Bangladesh, particularly one of its members [the agent of persecution], due to the political involvement of his late father in a rival political party, the Jatiya Party. Mr. Uddin asserts that the Awami League and the agent of persecution target him because of his imputed political opinion and his membership in the particular social group of his family. Since 2011, Mr. Uddin's family has experienced assaults and threats; in 2016 his father was murdered, purportedly by the agent of persecution and other persons associated with the Awami League.

[3] The Refugee Protection Division [RPD] rejected Mr. Uddin's claim for refugee protection because it determined that an IFA existed for him in the city of Sylhet. The RPD found that, on a balance of probabilities, Mr. Uddin did not face a serious threat of persecution in Sylhet, and that it was objectively reasonable for Mr. Uddin to relocate there. The RPD was not convinced that the agent of persecution had enough status within the Awami League to have a reach that extended as far as Sylhet.

[4] The RPD drew a negative credibility finding against Mr. Uddin as a result of his submission of two newspaper articles covering his father's death, which the RPD determined to be fraudulent. The RPD noted that these articles contained the same pictures as another newspaper submitted into evidence and had the same URL address. The RPD found it incredible that a weekly newspaper would have learned of the death of Mr. Uddin's father around 11:00PM

and been able to report on it the next morning. This negative credibility finding did not factor into the RPD's IFA analysis.

[5] Mr. Uddin appealed the RPD decision before the RAD, asserting that the RPD had erred in its treatment of the evidence before it and reached an incorrect conclusion regarding the existence of an IFA. Mr. Uddin requested to submit numerous pieces of new evidence related to an attack allegedly sustained by his brother on December 30, 2018, as well as an affidavit from himself [the first affidavit] explaining his evidentiary omissions before the RPD and responding to the RPD's finding. After the submission of his record, Mr. Uddin submitted a Rule 29 application to file a further affidavit. This affidavit [the second affidavit] was admitted by the RAD and elaborated on the content of the first affidavit.

[6] The RAD upheld the RPD's finding regarding the existence of an IFA. The RAD accepted that Mr. Uddin has a well-founded fear of the agent of persecution in his home district, but did not accept that this risk extended to Sylhet. Mr. Uddin's risks were found to be personal, not political, and therefore not extending to other regions of Bangladesh. The RAD affirmed the RPD's finding that the agent of persecution did not have enough sway within the Awami League to harness its resources outside of Mr. Uddin's home district. The RAD did not accept that Mr. Uddin faced a threat from other members of the Awami League, besides the agent of persecution.

II. Analysis

A. *Admissibility of new evidence*

[7] The first issue before me is whether the RAD's rejection of Mr. Uddin's new evidence was reasonable. The RAD may only accept new evidence that (1) arose after the RPD decision; or (2) was not reasonably available at the time of the decision; or (3) the applicant could not reasonably have been expected to bring before the RAD in the circumstances. If the new evidence meets one of those criteria, the RAD accepts it: subsection 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. The RAD then must apply the *Raza/Singh* framework to determine if the proposed evidence is new, credible, and relevant: *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96, [2016] 4 FCR 230 [*Singh*]; *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385.

[8] The RAD assessed Mr. Uddin's proposed new evidence under this framework and determined that Mr. Uddin's new explanation regarding the newspaper articles and the evidence of an attack against his brother were not credible, and therefore not admissible. The RAD also noted that the documents supporting the account of an attack against his brother could have reasonably been brought to the RPD.

(1) Implausibility finding regarding newspaper article

[9] Some of Mr. Uddin's new evidence sought to rebut the RAD's conclusions regarding the fraudulent newspaper articles. He explained that he was not aware that the newspaper articles

were fraudulent, as they were supplied by the agent of persecution. The RAD did not find this explanation to be plausible because it did not believe that the agent of persecution would circulate fake newspaper articles, which implicated himself in the murder of Mr. Uddin's father; the RAD further noted that the story contained in the fake newspaper articles was essentially the same story as Mr. Uddin recounted. Mr. Uddin has not put forward any argument that convinces me that the RAD's conclusion was unreasonable in the circumstances. It is within the RAD's mandate to assess the credibility of a claimant's story.

(2) Attack on Mr. Uddin's brother

[10] The RAD found Mr. Uddin's assertion that his brother was assaulted on December 30, 2018 not to be credible. First, the affidavit of Mr. Uddin's brother was found not to be credible because it repeated Mr. Uddin's explanation for submitting fake newspaper articles, an explanation which had already been found to lack credibility. Second, the timing of the attack against the brother was found to be too coincidental, as it was not disclosed until after the rejection of Mr. Uddin's claim for refugee protection. Third, given the pre-existing negative credibility findings arising from Mr. Uddin's attempts to file other fabricated evidence, the RAD concluded on a balance of probabilities that the other pieces of new evidence were also fabricated.

[11] It is reasonable for the RAD to conclude that the documents which Mr. Uddin sought to submit in support of his account of his brother's attack are not credible. Where the applicant has filed false evidence once, it is reasonable to infer that he did it twice: *Towolawi v. Canada (Citizenship and Immigration)*, 2020 FC 245 at paragraph 33.

[12] The RAD also rejected this evidence because it could have reasonably be brought to the attention of the RPD before the latter rendered its decision. Mr. Uddin argues that the RAD should have been more flexible and should have accepted his explanation for the delay. While Mr. Uddin disagrees with the RAD, he fails to show that this aspect of the RAD's decision is unreasonable.

(3) No hearing or notice required

[13] Mr. Uddin argues that the RAD should have granted him the oral hearing he requested or, in the alternative, provided him notice if it had new credibility concerns arising from the new evidence he sought to submit. He argues that the RAD's conclusions regarding the new evidence do, in fact, constitute new credibility findings.

[14] I disagree with Mr. Uddin. Situations where the RAD declines to admit evidence it finds not credible must not be confused with those where the RAD impugns the claimant's credibility for reasons not already canvassed by the RPD. In the former situation, according to *Singh*, assessing the credibility of the new evidence is a condition precedent to its admission. Making this assessment, which is required in every case, does not trigger a duty to give notice. Even where the new evidence is tendered to overcome the RPD's negative conclusions regarding the claimant's overall credibility, the RAD does not raise a "new issue" merely by finding the new evidence not credible. Thus, even though the RAD is required to give notice when it intends to raise a new issue, assessing the credibility of new evidence does not trigger this duty.

[15] In this particular case, the RAD did not raise any new issue regarding Mr. Uddin's overall credibility. It merely rejected new evidence because it lacked credibility. More precisely, it found Mr. Uddin's explanations regarding the newspapers articles to be implausible.

Implausibility is a category of credibility finding: *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at paragraph 26; *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at paragraph 19. This finding pertained to the proposed new evidence, not to Mr. Uddin's overall credibility as assessed by the RPD. Thus, the RAD did not need to give notice.

[16] Moreover, subsection 110(6) of the Act provides that the RAD may hold a hearing where new evidence is admitted and satisfies certain conditions. If no new evidence is admitted under subsections 110(3) and (4), then the conditions for holding a hearing cannot be met. Here, the RAD reasonably refused to admit new evidence regarding the newspaper articles and the attack on Mr. Uddin's brother. Therefore, these issues cannot be the basis of a request for a hearing. The only new evidence admitted was Mr. Uddin's second affidavit, which contained explanations for the delay in submitting evidence of the attack on his brother. This clearly does not meet the criteria of subsection 110(6), and the RAD reasonably refused to hold a hearing.

#### B. *IFA analysis*

[17] The RAD's conclusions regarding the IFA available to Mr. Uddin are reasonable. Mr. Uddin submits that the RAD's finding that the agent of persecution lacks the resources to pursue him was made without regard to the evidence of the agent of persecution's role as the former head of the League's youth wing and the leadership positions in the party held by his family members.

[18] The basic point made by the RAD is that the agent of persecution does not have a national reach across Bangladesh, and Mr. Uddin does not have a sufficiently high political profile to make him a target of the entire apparatus of the Awami League. The RAD did not overlook evidence to the contrary. Its conclusions are based on the evidence put before it related to the political connections of the agent of persecution. There was no evidence before the RAD to support the conclusion that Mr. Uddin faces a risk from the entire apparatus of the Awami League, not merely from the agent of persecution.

[19] Although the agent of persecution located Mr. Uddin once in Dhaka in 2013 while he was outside his home district and assaulted him at his father's place of business, the RAD affirmed the RPD's conclusion that the location of this attack at his father's business made him easily identifiable in that case. The agent of persecution was not able to locate Mr. Uddin at his Dhaka residence. The ability of the agent of persecution to locate Mr. Uddin in that instance would not be true in the IFA, and it does not evidence a national reach by the agent of persecution.

[20] Mr. Uddin also argues that the RAD failed to consider evidence of the agent of persecution's profile within the Awami League, in particular the fact that the agent of persecution is a former president of the League's youth wing in Comilla district. I note, however, that Mr. Uddin did not raise these issues before the RAD and cannot fault the RAD for not directly addressing them. Moreover, the agent of persecution's links with the Awami League, including the leadership positions held by his family members, all relate to Comilla district and do not tend to show that Mr. Uddin would be at risk in the proposed IFA.



[21] Lastly, Mr. Uddin argues that the RAD misapprehended the basis of his claim as being personal rather than political. He argues that he was targeted by the Awami League because they perceived him to be a political opponent on the basis of the political involvement of his family, which amounts to a political opinion imputed against him. I do not agree that the RAD made such a mistake. The RAD clearly understood that the persecution of Mr. Uddin's father had a political basis. In contrast, it noted that Mr. Uddin is not himself politically involved and was only attacked when at his father's business. There is nothing unreasonable in the RAD's finding that because of his profile, Mr. Uddin would not be persecuted by the Awami League.

### III. Conclusion

[22] For these reasons, Mr. Uddin's application for judicial review is dismissed.

**JUDGMENT in IMM-1061-21**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. No question is certified.

"Sébastien Grammond"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1061-21

**STYLE OF CAUSE:** SHLA UDDIN v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** DECEMBER 13, 2021

**JUDGMENT AND REASONS:** GRAMMOND J.

**DATED:** FEBRUARY 2, 2022

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