Federal Court  Cour fédérale

Date: 20230113

Docket: IMM-6299-21

Citation: 2023 FC 56

Toronto, Ontario, January 13, 2023

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

RAKTIM BARUA
BOBY BARUA
AARON RAKTIM BARUA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of an August 31, 2021 decision [Decision] of the Refugee Appeal Division [RAD], confirming a decision by the Refugee Protection Division [RPD] that the Applicants are neither Convention refugees nor persons in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The RAD agreed with the RPD that the Applicants have a viable internal flight alternative [IFA] in Dhaka, Bangladesh.

[2] For the reasons that follow, I am of the view that the RAD erred in its analysis of the first prong of the IFA test by failing to fully consider the alleged risk to the Applicants and as such, the application should be allowed.

I. Background

[3] The Applicants are a family from Chittagong, Bangladesh. Raktim Barua [Principal Applicant] is the husband of Boby Barus [Associate Applicant] and father of their minor child, Aaron Raktim Barua. The Applicants claim a fear of persecution in Bangladesh from the Islamist political party, Jamaat-e-Islami [JI]. The Principal Applicant claims that the JI has been extorting money in the form of forced donations from the Applicants since their wedding in 2011, and from his parents and siblings since the 1990s, because they are Buddhists who are perceived to be well-off. The Associate Applicant also fears being sexually assaulted after an incident in 2017 where she was pulled out of a rickshaw by three men who allegedly tried to molest and kidnap her.

[4] In September 2018, the Applicants entered Canada and in December 2018, filed a claim for refugee protection.

[5] On January 27, 2021, the RPD rejected the Applicants' claim. The RPD found, *inter alia*, that there was no nexus to the Convention grounds pursuant to section 96 of the IRPA as they were unpersuaded that the Applicants' religion was the cause of their persecution. The RPD found there was a viable IFA in Dhaka.

[6] The Applicants appealed the RPD's decision to the RAD. On August 31, 2021, the RAD issued the Decision in which it confirmed the availability of a viable IFA in Dhaka and dismissed the Applicants' appeal.

[7] The RAD concluded that the Applicants only faced harm in their hometown of Chittagong, Bangladesh when they associated with the Principal Applicant's parents and there was no serious possibility of persecution or risk of harm in Dhaka, as the evidence did not establish that the JI had the motivation to pursue the Applicants throughout Bangladesh and in Dhaka. The RAD was satisfied that it was reasonable for the Applicants to relocate to Dhaka based on the Applicants' specific circumstances and the objective evidence in the National Documentation Package [NDP]. The RAD declined to address the Applicants' challenge to the RPD's finding that they did not establish a nexus to one of the Convention refugee grounds, as it was of the view that the question of a viable IFA was integral to both the definition of a Convention refugee and of a person in need of protection.

II. Issues and Standard of Review

[8] The Applicants raise the following issues in this application:

A. Did the RAD err in declining to make a decision with respect to nexus?

B. Was the RAD's finding of an IFA reasonable?

[9] The standard of review is reasonableness. None of the situations that would rebut the presumption that all administrative decisions are reviewable on a standard of reasonableness are

present in this case: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 16-17.

[10] A reasonable decision is "based on an internally coherent and rational chain of analysis" that is "justified in relation to the facts and law that constrain the decision maker": *Vavilov* at paras 85-86; *Canada Post Corp v Canadian Union of Postal Workers,* 2019 SCC 67 at paras 2, 31. A decision will be reasonable if when read as a whole and taking into account the administrative setting, it bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at paras 91-95, 99-100.

III. Analysis

[11] The Applicants argue that a nexus analysis is relevant to the determination of an IFA because the RAD must determine what kind of risk the Applicants could face in the proposed IFA. The Applicants allege that by omitting the nexus analysis, the RAD did not consider that the Applicants were being targeted on the basis of their religion and the Associate Applicant on the basis of her gender.

[12] The Applicants rely on *Ghunu v Canada (Citizenship and Immigration)*, 2022 FC 1289 [*Ghunu*], another case dealing with a Bangladeshi national that suffered threats, violence, and extortion from the JI. The Applicants argue that this case is an authority for the proposition that bypassing the nexus analysis may result in an incomplete assessment of the risks relating to the

various factors set out in section 96 and in the Convention. The Court provided the following analysis at paragraphs 21-22 of *Ghunu*:

> [21] While I accept the RAD may move straight to an assessment of IFA, I do not agree it may assess an IFA without considering nexus in terms of its section 96 analysis. While it may be more convenient to bypass a nexus analysis, to do so may result in an incomplete assessment of the risks posed relating to the various factors set out section 96 and in the Convention.
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> [22] Notably, despite the nexus issue being central to the Applicant's submissions, I was provided with no jurisprudence allowing the RAD to proceed without assessing nexus, nor am I persuaded to make such a precedent given the stakes are high in cases like this. I am not persuaded the RAD may properly assess either persecution, or the absence of persecution, under section 96 without an examination of the nexus involved. Without a nexus assessment, the reviewing Court is unable to determine what risks were assessed, and therefore is unable to determine if the risk of persecution on an *IRPA* or Convention ground was reasonably assessed.

[13] The Respondent asserts that where the claimant has a viable IFA, there is no well-founded fear of persecution in the country of origin (*Kanagaratnam v Canada (Minister of Employment and Immigration)*, [1996] FCJ No 75 (CA)) and accordingly the test for refugee protection cannot be satisfied. Thus, a separate nexus analysis is not necessary. The Respondent cites two cases where Nigerian claimants were found to have viable IFAs and accordingly it was irrelevant whether they had a well-founded fear of persecution in their home region: *Unegbu v Canada (Citizenship and Immigration)*, 2021 FC 179 at para 2; *Kazeem v Canada (Citizenship and Immigration)*, 2020 FC 185 at paras 23-38.

[14] As argued by the Applicants, the jurisprudence establishes that in general, the RAD may move directly to an IFA analysis provided that the RAD has regard to the claimant's particular situation and the evidence in determining whether an applicant has a viable IFA. Thus, in my

view, the omission of a nexus analysis is only a reviewable error insofar as it results in an incomplete IFA analysis.

[15] In this case, the Applicants assert that the RAD ignored evidence relating to JI's resources, presence, and ideology, which permits extreme violence against non-Islamic religious groups, including Buddhists. They assert that the Principal Applicant is a target of JI not just because he is wealthy, but because he is a Buddhist who is wealthy and that the RAD did not consider documentary evidence that targeted attacks against Buddhists have risen. They assert that by not dealing with the nexus issue, the RAD did not engage with the political/religious extremist nature of JI and how a fanatical religious extremist organization may be motivated to pursue the Applicants in Dhaka. The Applicants further assert that the RAD mischaracterized the asserted risk to the Associate Applicant and accordingly failed to consider a nexus analysis relating to gender-based persecution and violence.

[16] The Respondent asserts that, unlike in *Ghunu*, the RAD correctly identified the agents of persecution and understood the nature of the risk to the Applicants. However, the RAD found that the evidence did not support a finding that there would be motivation to seek out the Applicants outside of Chittagong, but instead that the problems with the JI related to the longstanding extortion of the Principal Applicant's family.

[17] I agree with the Respondent that in this case, unlike in *Ghunu*, the RAD understood that the Applicants were being targeted for both ideological reasons (*i.e.*, because of their religion) and financial gain (*i.e.*, because of their wealth). However, in my view, the RAD

mischaracterized certain key evidence and in doing so failed to fully consider the alleged risk to the Applicants.

[18] While I agree it was reasonable for the RAD to find that the Principal Applicant was targeted because he was perceived to be a wealthy Buddhist, I agree with the Applicants that the evidence does not support a view that the Principal Applicant was only being targeted in association with his family because of their wealth. Rather, he was also targeted because of his own personal wealth that he had acquired from living abroad.

[19] As set out in the evidence from the Principal Applicant's brother, when the JI approached the Principal Applicant's brother in 2020, they were targeting the Principal Applicant. The JI indicated they were aware that the last time the Principal Applicant came to Bangladesh, in 2018, he escaped to Dhaka. While they did not pursue him in Dhaka at that time, two years later they continued to extort money from the Principal Applicant's family because of the Principal Applicant's wealth and profile and to threaten an attack on the Principal Applicant if the money was not paid.

[20] Similarly, the evidence from the Associate Applicant's sister relating to the attack on the Associate Applicant in 2017 indicated that the perpetrators attacked and attempted to kidnap the Associate Applicant because of her association with the Principal Applicant.

[21] In my view, the RAD mischaracterized the evidence and as such, I am not satisfied that the RAD fully considered the motivations of the JI as it related to the Principal Applicant's circumstances.

[22] On this basis, it is my view that the judicial review should be allowed, the decision set aside and the matter remitted to a different panel member of the RAD for redetermination.

[23] There was no question for certification proposed by the parties and I agree that none arises in this case.

JUDGMENT IN IMM-6299-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed, the decision of the Refugee Appeal Division is set aside, and the matter is remitted to a different panel member of the Refugee Appeal Division for redetermination.

2. No question of general importance is certified.

"Angela Furlanetto"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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