

Federal Court



Cour fédérale

Date: 20230417

Docket: IMM-5598-21

Citation: 2023 FC 557

Ottawa, Ontario, April 17, 2023

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

ABDUR RAHMAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of a decision of the Refugee Appeal Division [RAD], dated July 26, 2021 [Decision]. The RAD confirmed the decision of the Refugee Protection Division [RPD], finding the Applicant is not a Convention refugee or person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] For the reasons that follow, I find that the RAD erred in failing to consider fully the Applicant's alleged risk. I will therefore allow the application for judicial review.

II. **Background**

[3] The Applicant is a citizen of Bangladesh, though he has never been there. He was born and raised in the Kingdom of Saudi Arabia (KSA). His immigration status in KSA was dependent on his father's employment.

[4] The Applicant alleges that as he reached 21 years of age, he could no longer reside in, or return to, KSA as his father's dependant. Preparing for this moment, the Applicant's father travelled to Bangladesh in August 2017 to attempt to re-establish their lives there. However, upon arrival, the Applicant's father was met with threats and extortion by cadres associated with the Awami League, the current ruling party of Bangladesh.

[5] The Applicant claims that his father was kidnapped and beaten for ransom because of his perceived wealth and status as a "foreigner". After paying part of that ransom, the Applicant's father fled and returned to KSA.

[6] The Applicant fears he will face the same circumstances as his father did. He also fears persecution due to his religious practices as a Sanafi Muslim.

[7] The Applicant left KSA and arrived in the United States on July 3, 2019 by way of a student visa, with the intention of crossing the Canadian border and seeking refugee protection. He arrived in Canada on July 8, 2019, where he initiated his claim for refugee protection.

[8] The RPD denied the Applicant's claim based on credibility, nexus, and a finding of a viable Internal Flight Alternative (IFA) in Dhaka, Bangladesh.

[9] The Applicant appealed that decision to the RAD.

III. Issues and Standard of Review

[10] The Applicant argues that the Decision is unreasonable and raises two issues: 1) the RAD fettered its discretion by refusing to meaningfully grapple with the Applicant's arguments on appeal and, 2) the RAD erred in its IFA analysis by failing to consider the Applicant's complete risk profile.

[11] The parties agree, as do I, that the appropriate standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov].

[12] On a reasonableness review, the Court considers the reasons provided to determine if they are based on an internally coherent and rational chain of analysis and are justified in relation to the facts and the law that constrain the decision maker. The reasonableness standard requires that a reviewing court defer to such a decision: *Vavilov* at para 85.

IV. Analysis

[13] My decision to allow this application turns on the RAD's IFA analysis under the first prong, which in my view lacks both justification and transparency.

[14] The Applicant's claim for refugee protection was based on several risk profiles. He testified that he fears a) being targeted for extortion by cadres associated with the Awami League who also kidnapped his father for ransom; b) being forcibly recruited into youth gangs and, c) religious persecution as a Sanafi Sunni Muslim.

[15] In the Decision, the RAD states that it presumed that the Applicant's allegations were true in conducting its IFA analysis. However, under the first prong, the RAD concluded there is no evidence to establish a risk to the Applicant's life in Dhaka, and "agreed" with the RPD, that the Applicant's claims about risk from those who extorted his father were speculative.

[16] However, in examining the complete record before the Court, it appears the RPD never actually found that the Applicant's fear with respect to those who extorted his father to be speculative. In fact, the RPD did not engage in an assessment of that risk at all, stating the following reasons: "the claimant's allegations are almost entirely dependent on the alleged experiences of his father during a 2017 visit to Bangladesh. His father was not at the hearing, and thus I was unable to test the credibility of the allegations. I informed the claimant so and I did not receive any counter arguments or submissions."

[17] The Applicant submits and I agree that the only risk the RPD found to be speculative was the Applicant's fear of being forcibly recruited into a youth gang because of his accent. This finding did not extend to the Applicant's fear of the risk of the Awami League, which the RPD explicitly refused to consider. On appeal to the RAD, the Applicant argued that the RPD's refusal to consider the risk and evidence he submitted constituted a breach of procedural fairness.

[18] The Respondent asserts that the RAD presumed that the Applicant's allegations were true in conducting its IFA analysis. However, the Respondent also seems to acknowledge that the RAD limited its IFA analysis to the Applicant's residual risk profile submitting it was under no obligation to base its IFA analysis on an "uncorroborated and unsubstantiated fear".

[19] The problem with the Respondent's submission is that the Applicant's fear was not uncorroborated or unsubstantiated. The Applicant submitted for instance, a hospital report documenting his father's extensive injuries after an alleged attack by Awami League cadres, a sworn statement from his uncle, a letter from his father, and hotel receipts. The RPD was silent with respect to this evidence, stating only that it was unable to test the credibility of the allegations relating to the Applicant's father because he was not present at the hearing. The RAD in its reasons, offers no indication for why it too rejected this evidence, or whether it considered it at all.

[20] This misapprehension of the RPD's findings resulted in the RAD narrowing the Applicant's risk profile in assessing the viability of an IFA, without meaningfully explaining its basis for doing so. I agree with the Applicant that this error is determinative because both the

RPD's analysis and the RAD's analysis failed to assess his risk from the Awami League in the IFA.

[21] As mentioned above, the RAD also failed to account for the evidence put forward by the Applicant in support of this risk, including a hospital report documenting extensive injuries after the alleged attack on his father, and numerous letters, including a sworn statement from the Applicant's uncle.

[22] A decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account, such that the reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it: *Vavilov* at para 126.

[23] Here, it appears the RAD significantly erred in two respects. They both fundamentally misapprehended the RPD's reasons and failed to account for the evidence actually before them. Applying *Vavilov* as set out in the foregoing paragraph, this renders the Decision unreasonable.

V. **Conclusion**

[24] For all the foregoing reasons, this application is granted.

[25] The decision is set aside and the matter will be returned to the Refugee Appeal Division for redetermination by a different member.

[26] The parties have not identified a question of general importance for certification, and none arise on these facts.

JUDGMENT in IMM-5598-21

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is allowed.
2. The Decision is set aside and this matter is to be returned to the Refugee Appeal Division for redetermination by a different member.
3. There is no serious question of general importance to certify.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5598-21

STYLE OF CAUSE: ABDUR RAHMAN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: SEPTEMBER 8, 2022

JUDGMENT AND REASONS: ELLIOTT J.

DATED: APRIL 17, 2023

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