

Federal Court



Cour fédérale

**Date: 20230509**

**Docket: IMM-9685-21**

**Citation: 2023 FC 660**

**Toronto, Ontario, May 9, 2023**

**PRESENT: Justice Andrew D. Little**

**BETWEEN:**

**MD SADMAN SAUMIK**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] In this application for judicial review, the applicant challenged a decision of the Refugee Appeal Division (the “RAD”) dated November 25, 2022, made under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the “IRPA”).

[2] The RAD dismissed the applicant’s appeal from a decision of the Refugee Protection Division (the “RPD”). The RAD concluded that the RPD did not err in finding that the applicant

is neither a Convention refugee under *IRPA* section 96, nor a person in need of protection under subsection 97(1).

[3] The RAD found that the determinative issue was credibility. The applicant's position is that the RAD made reviewable errors in its decision. He argued that the decision should be set aside as unreasonable, applying the principles described in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653. He also raised an argument about procedural fairness.

[4] For the reasons that follow, the application is dismissed.

#### **I. Background to this Application**

[5] The applicant is a citizen of Bangladesh. The applicant is a member of the Liberal Democratic Party in Bangladesh. His claim for *IRPA* protection was based a fear of harm because of his political opinion. He fears the Bangladesh Chhatra League (BCL) and the police. The BCL is the student wing of the Awami League, which is the ruling political party in Bangladesh.

[6] In July 2017, the applicant claimed that he and other student members of the Liberal Democratic Party organized an event that was disrupted by members of the BCL. Some BCL members physically assaulted him. When he went to the police station the following day, he was informed that members of the BCL had already made a complaint against him, alleging that he

had attacked their members. The applicant believed that the police and the BCL were conspiring to make a false case against him.

[7] Later in 2017, the applicant claimed BCL members again attacked him for having gone to the police about the previous incident.

[8] The applicant claimed that in January 2018, about three months after the second attack, the police laid a false charge against him. In February 2018, the police attempted to arrest him on multiple occasions at his college and home. The applicant moved to a different part of Bangladesh to live with a close friend of his father, but the police and local members of the BCL came looking for him there as well.

[9] On June 22, 2018, the applicant entered Canada on a student visa. It expired in June 2019 and the applicant remained in Canada without status.

[10] On December 13, 2019, the applicant made a claim for refugee protection.

[11] In his Basis of Claim (“BOC”), the applicant claimed that since his arrival, his father informed him that the police have come to their home.

## **II. Analysis**

[12] The standard of review for the RAD’s decision is reasonableness. Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision has the attributes

of transparency, intelligibility and justification: *Vavilov*, at paras 12-13 and 15. The starting point is the reasons provided by the decision maker, which are read holistically and contextually, and in conjunction with the record that was before the decision maker. A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Vavilov*, esp. at paras 85, 91-97, 103, 105-106 and 194; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, [2019] 4 SCR 900, at paras 2, 28-33, 61.

**A. *Did the RAD make a reviewable error in its credibility analysis?***

[13] The RAD agreed with the RPD that the applicant's credibility was undermined by inconsistencies between his BOC narrative and his testimony, inconsistencies within his testimony at the RPD hearing and discrepancies in the applicant's documentary evidence.

[14] The central inconsistencies related to the applicant's evidence about his attempts to file a complaint with the police relating to the initial incident involving assault.

[15] The applicant's BOC narrative advised that a group of BCL members "abused" him and others, including by grabbing his shirt and slapping his face. They threatened to kill him. He decided to go to the police station to make a complaint but the BCL threatened him over the phone. He ignored the threat and went to the station to complain. There, a police officer told him the police had received a verbal complaint that he had beaten BCL members. The applicant was shocked and told the police officer that he had never attacked the BCL students, but rather that they had attacked, vandalized, looted and abused him. The applicant realized that the police and the BCL were conspiring together to make a false case against him.

[16] The BOC made no mention that the applicant filed a complaint with the police, or that a notation of his complaint had been made in the police “general diary”.

[17] Both the RAD and the RPD found that at the RPD hearing, the applicant initially testified that the day after the assault occurred, he went to the police station to file a complaint and the police told him they could not help him because they had already received a complaint against him. It was “no use complaining to the police”. However, the applicant testified that the police accepted his complaint and “after that” told him that a verbal complaint have been made against him.

[18] The applicant’s evidence also included a letter of complaint (which he described as his “general diary”) to show that he had in fact filed a complaint with the police that day. The RAD found that the RPD did not err in giving little weight to his letter of complaint because the applicant could not explain how the document was obtained and why it was on police letterhead.

[19] In his submissions on this application, the applicant contended that both the RAD and the RPD fundamentally misunderstood his evidence and that his testimony was consistent. At the hearing, the applicant also took the position that the RPD confused him with multiple questions and his answers reflected that confusion.

[20] In my view, there is no basis to set aside the RAD’s decision. Having reviewed the sections of the RPD transcript to which the applicant referred, I find that the omission in the BOC and the inconsistencies in the applicant’s testimony provided an evidentiary basis for the

RAD's conclusions on credibility. There is no basis for the Court to intervene on the RAD's findings related to the "general diary" (the complaint letter). It was open to the RAD to find that the applicant did not explain why his complaint letter addressed to the "Officer-in-charge" at the police station was on letterhead of the "Kotowali Police Station". The applicant has not persuaded me that the RAD fundamentally misapprehended, misunderstood or ignored any material evidence, or that the evidence constrained the RAD to reach a different conclusion than it did: *Vavilov*, at paras 125-126.

[21] The applicant argued that the RPD did not give him an opportunity to explain the inconsistencies identified by the RPD and RAD, which was procedurally unfair. However, as the respondent submitted and the transcript confirmed, the RPD did provide him with an opportunity to explain, by asking him how he was able to file a complaint if he was told there was already a complaint against him. The applicant answered that the police accepted his "general diary", which did not address the inconsistency and itself raised issues related to that document.

[22] In any event, the applicant did not raise this argument concerning procedural fairness until the present judicial review application, despite being represented by legal counsel at both the RPD hearing and the RAD. The applicant did not explain why the argument was not made to the RAD. It was too late to raise it for the first time in this Court: *Pacific Northwest Raptors Ltd v Canada (Attorney General)*, 2022 FCA 76, at paras 36-37 (and the cases cited there); *Alexander v Canada (Citizenship and Immigration)*, 2023 FC 438, at para 21; *Akhtar v Canada (Citizenship and Immigration)*, 2022 FC 989, at para 72.

[23] The applicant has not identified any reviewable error in the RAD's credibility analysis.

**B. *Did the RAD Make Any Other Alleged Reviewable Errors?***

[24] The applicant's written submissions raised a number of other arguments, which can be addressed summarily.

[25] First, the applicant argued that the RAD based a conclusion on conjecture because it referred to a non-existent document when it doubted that an arrest warrant tendered by the applicant was genuine. He noted that the template arrest warrant in the Bangladesh National Documentation Package was in Bengali and did not have a page 12. The applicant made the same argument to the RAD, which reviewed the record and held that there was a page 12 and that it was the final page of the translated model arrest warrant form. The applicant did not raise this point at the hearing in this Court. There are no grounds to conclude that the RAD made a reviewable error.

[26] Second, the applicant argued that there was no basis in logic for the RAD to expect that the applicant would be aware of certain charges that were allegedly made against him falsely. He argued that it was unreasonable to expect him to explain logically the illegal actions of authorities (citing *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776, at para 13).

[27] There is no merit in this submission. The RAD stated that it was

not reasonable that, having retained a lawyer because of these charges, [the applicant] would not discuss how to address these

with the lawyer or even attempt to ascertain *what allegations regarding explosives and treason had been brought against him.*

[Original emphasis.]

[28] The RAD found it unreasonable that, in the almost four years since the arrest warrant was issued, the applicant had just one conversation with his lawyer and did not take any steps to deploy his counsel in Bangladesh to determine what particular charges had been brought against him or to determine his legal position.

[29] The premise of the applicant's argument was that the RAD required him to explain the actions of authorities in charging him with the offences. However, that is not the case; the RAD's concern was why the applicant himself did not know anything about the charges, despite their seriousness, the passage of four years' time and his retainer of a criminal lawyer in Bangladesh. In addition, the RAD did not accept the applicant's argument that he was no longer in Bangladesh when the charges were brought against him and the warrant was served. The RAD found that the applicant was in Bangladesh as of the date of the arrest warrant, and his BOC claimed that he sought refuge elsewhere in Bangladesh because of the arrest warrant and subsequent attempts of the police to arrest him.

[30] Lastly, the applicant's written submissions seemed to take issue with the RAD's and the RPD's reliance on his delay in claiming refugee status. The applicant submitted that the the RAD did not clearly articulate how much it relied on that delay when assessing his credibility and that delay should not adversely affect credibility or subjective fear.



[31] This Court has repeatedly held that while delay is not determinative, it may be an important factor in assessing credibility and subjective fear: see e.g., *Reyes v. Canada (Citizenship and Immigration)*, 2023 FC 110, at para 11; *Labana v Canada (Citizenship and Immigration)*, 2022 FC 414, at para 19; *Zeah v Canada (Citizenship and Immigration)*, 2020 FC 711, at para 61; *Zhou v Canada (Citizenship and Immigration)*, 2020 FC 676, at para 24. The applicant claimed refugee status approximately six months after his student visa expired and approximately 18 months after he arrived in Canada. The RAD found that the applicant testified that he began discussing how to claim protected status in Canada with a knowledgeable friend in July 2019 but decided to wait a further five months before claiming *IRPA* protection. The RAD concluded that this evidence was indicative of a lack of subjective fear of persecution. I see no reviewable error in the RAD's analysis.

### **III. Conclusion**

[32] For these reasons, the application will be dismissed.

[33] Neither party raised an issue to be certified for appeal and none arises.

**JUDGMENT IN IMM-9685-21**

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

1. The application is dismissed.
2. No question is certified for appeal under paragraph 74(d) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"

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Judge

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

**DOCKET:** IMM-9685-21

**STYLE OF CAUSE:** MD SADMAN SAUMIK v MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 19, 2023

**REASONS FOR JUDGMENT  
AND JUDGMENT:** A.D. LITTLE J.

**DATED:** MAY 9, 2023

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