

Federal Court



Cour fédérale

Date: 20240502

Docket: IMM-1338-23

Citation: 2024 FC 678

Ottawa, Ontario, May 2, 2024

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

YOUNUS KHAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicant is a citizen of Bangladesh who claims to fear returning to that country because of his affiliation with the opposition Bangladesh National Party [BNP]. He seeks judicial review of a fourth Pre-Removal Risk Assessment [PRRA], the previous three PRRA decisions either having been overturned on consent of the parties, or quashed by this court.

[2] For the reasons that follow, I will grant this application for judicial review, as I find key aspects of the PRRA decision to be unreasonable.

II. BACKGROUND

[3] The Applicant was not the only BNP supporter in his family. His mother was an active and senior member of the party. On account of his own activities with the BNP and his association with his mother, the Applicant claims to have been beaten by police, assaulted, and threatened by state and non-state actors linked to the ruling Awami League [AL] party. In April 2013, the Applicant and his mother were attacked by AL thugs and they fled to a friend's home in Gazipur. After they fled, their home was surrounded by the Rapid Action Battalion [RAB] and broken into by unknown persons. They fled Bangladesh for the United States in October 2013. Soon after, in January 2014, the Applicant and his mother entered Canada and initiated refugee claims.

[4] The Applicant claims that he and his mother received inaccurate advice, missed a deadline, and their claims for protection were deemed abandoned by the Immigration and Refugee Board [IRB]. The Applicant and his mother sought judicial review of the IRB's abandonment decision, which was denied.

A. *First PRRA*

[5] The Applicant first applied for a PRRA in May 2016. Because he had not had an oral hearing before the IRB, the Applicant requested an oral hearing if credibility was an issue. The PRRA was rejected in November 2016, without a hearing being held.

[6] The Applicant sought judicial review of this decision, which was settled on consent of the Respondent in March 2017, and the matter was remitted to a new PRRA officer for reconsideration.

B. *Second PRRA*

[7] The Applicant made further submissions in support of the redetermination of his PRRA, and reiterated his request for an oral hearing. In February 2018, however, a second PRRA officer rejected his application, once again, without having conducted an oral hearing. This court granted the Applicant's judicial review of this decision. The Court found that the second PRRA officer had made a veiled credibility finding, and consequently erred in failing to conduct a hearing. The Court remitted the matter to be re-determined by a different officer who "should conduct an oral hearing": *Khan v Canada (Citizenship and Immigration)*, 2019 FC 534 at para 39.

C. *Third PRRA*

[8] In January 2020, the Applicant's PRRA was rejected for a third time. In direct contravention of the Court's judgment, the officer who rendered the redetermination once again failed to conduct an oral hearing. In September 2020, the Respondent consented, once more, to the redetermination of the PRRA.

D. *Fourth PRRA*

[9] In reconsidering the Applicant's application for a fourth time, an officer conducted a hearing on November 24, 2022. The PRRA was then rejected on December 16, 2022. This is the decision currently before me on judicial review.

III. Decision Under Review

[10] In rejecting the Applicant's latest PRRA, the officer accepted that both he and his mother were involved with the BNP while he was in Bangladesh. The Officer further accepted that the "ruling AL government and its supporters have continued to suppress critics, BNP leaders, activists and those perceived to be allied with the opposition."

[11] Despite these findings, the officer concluded that there was insufficient evidence to indicate that the Applicant "fits the profile or could be perceived to fit the profile of those individuals who could be targeted in Bangladesh." As such, the officer found there to be insufficient information to find, on a balance of probabilities, that the Applicant would be subject to risk pursuant to ss. 96 or 97 of the *Immigration and Refugee Protection Act [IRPA]* if returned to Bangladesh.

[12] The officer found the Applicant's answers to questions about his (and his brother's) risk in Bangladesh owing to his mother's political profile to be vague.

[13] In addition, the officer found a contradiction in the Applicant's testimony related to the raid at his home after he and his mother had left for Gazipur. At one point in his testimony before

the officer, the Applicant is alleged to have said that he did not know the identity of those who broke into his home. He later stated that two individuals allegedly brought the RAB to his house. Earlier, in the Applicant's Basis of Claim form that had been submitted to the IRB, the Applicant stated that it was the RAB and police who visited his house while he was in Gazipur.

[14] The officer also found that, due to the Applicant's low-level support of the BNP and his limited involvement with the party since being in Canada, he would not re-engage with the BNP upon his return.

[15] In rejecting the PRRA, the officer further observed that the Applicant was able to live in Gazipur without threats, and that he was able to safely exit Bangladesh when he left in 2013. These factors contributed to the officer's conclusion that the Applicant does not have a forward-facing risk of harm if he were to return to Bangladesh.

IV. ISSUES

[16] The Applicant raises the following issues on judicial review:

1. Whether the officer's decision is illogical in its assessment of the Applicant's profile.
2. Whether the PRRA officer erred in comparing the Applicant's situation to that of his brother.
3. Whether the officer erred in suggesting that the Applicant could reside in Gazipur.
4. Whether the officer erred in their assessment of exit controls in Bangladesh and the Applicant's ability to exit the country.
5. Whether the officer breached the duty of fairness in impugning the Applicant's testimony, while failing to make an audio-recording or transcript of the PRRA hearing.

V. Standard of Review

[17] The parties agree that issues 1-4 above are to be assessed on the standard of reasonableness, as articulated by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov].

[18] Unlike issues 1-4, the alleged breach of procedural fairness is to be reviewed on a standard approximating the correctness standard: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43. That is to say, no deference is owed to the PRRA officer on the question of whether or not it was procedurally unfair to impugn the Applicant's credibility on the basis of hearing testimony that was not recorded.

VI. Analysis

[19] I find the first of the above issues to be determinative of this application for judicial review. More specifically, I find that the PRRA officer's acknowledgment of the Applicant's political profile, and his finding that the Applicant failed to establish a risk pursuant to sections 96 or 97 of the *IRPA*, reveal an incoherent chain of analysis which renders the decision unreasonable. As such, I need not consider the remaining issues.

[20] As noted above, the PRRA officer accepted that the Applicant "was involved with the BNP whilst in Bangladesh." While this finding is not inaccurate, it fails to capture the nature of the Applicant's involvement with any specificity. Before the officer was a letter from the BNP, which stated in part:

This is to certify that Yunus (sic) Khan ... is a root level leader of BNP. He was the Secretary of Organization of our committee. He has been selected as an organizing secretary. Being a party leader he used to involved (sic) in several activities of the party.

[21] I reference this evidence not to reweigh it, which is not the function of courts on judicial review, but because it was essential that the officer accurately assess the Applicant's political profile in order to reasonably assess the risk to which he may be subjected. This is particularly important because the documentary evidence that was before the officer draws distinctions between mere supporters of the BNP and active members and agents of the organization.

[22] On the question of the treatment of BNP supporters and the Applicant's profile within the BNP, the officer stated:

I note counsel's submissions of the AL government's treatment of BNP and other opposition groups are consistent with country information. The ruling AL government and its supporters have continued to suppress critics, BNP leaders, activists and those perceived to be allied with the opposition. However, I have insufficient evidence to indicate that the applicant fits the profile or could be perceived to fit the profile of those individuals who could be targeted in Bangladesh.

[23] There are several problems with the above findings. First, the acknowledgment that the ruling AL continues to "suppress" political opponents lacks the specificity, clarity, and intelligibility required in the context of a PRRA decision. In applying sections 96 and 97 of the *IRPA*, PRRA officers are required to assess whether applicants face the risks enumerated under those provisions, namely whether they face a risk of persecution, a risk to life, to cruel or unusual treatment or punishment, or a risk of torture.

[24] It may be that the officer used the term “suppress” to suggest or imply that the AL’s mistreatment of opponents is something less serious than the forms of mistreatment articulated in sections 96 or 97 of the *IRPA*. Conversely, it may be that the officer used the term as a synonym for persecution, but believed that the Applicant lacked a sufficient profile to attract mistreatment. This ambiguity in the officer’s reasons is problematic in its own right, but for reasons that I will elaborate on below, I find that either of the above interpretations is unreasonable.

[25] First, the documentary evidence before the officer clearly establishes that BNP supporters, and particularly those such as the Applicant, who have held official positions in the party, may be subjected to unlawful arrest, abuse, torture, disappearance, and extra-judicial killings. In light of this evidence, none of which was cited or referred to by the officer, it was insufficient and distorting to simply state that the state continues to suppress the opposition.

[26] Second, it was unreasonable for the officer to conclude that the Applicant lacks the profile or the perceived profile of those individuals who could be targeted in Bangladesh. This is because: i) the evidence before the officer suggested that the Applicant had a higher-level profile within the BNP than acknowledged; and ii) the documentary evidence contains numerous references to the arrest, detention, and mistreatment of thousands of opposition supporters, particularly during election campaigns in Bangladesh. The officer did not have to blindly accept that the Applicant would face similar mistreatment on return to Bangladesh, but it was imperative to acknowledge this evidence in determining his PRRA application.

[27] On this point, another aspect of the PRRA decision warrants mention. As required, the officer engaged in a forward-looking assessment of the risk faced by the Applicant. In finding

that the Applicant lacked such a risk, the officer suggested that the Applicant no longer wished to participate in political activity. This was based on the fact that the Applicant has not been very active in the BNP since being in Canada and on his testimony in which he indicated that he “does not want to be involved in politics anymore.” Both of these findings are unreasonable.

[28] First, the testimony of the Applicant was that he *had* been involved in the BNP in an “on and off” way since his arrival in Canada. According to the officer, the Applicant indicated that he had been very busy with work, so he could not allocate time to be more fully involved. Put another way, the Applicant’s testimony was that he *has* been involved in the BNP since coming to Canada, to the extent that he is able, but that his work obligations have made this difficult. Given this testimony, I see no logical basis on which to infer that the Applicant would not wish to re-engage in political activity were he to return to Bangladesh.

[29] Second, context is crucial to the Applicant’s statement that he does not want to be involved in politics anymore. Read in light of the Applicant’s entire statement, as noted by the officer, it is clear that the Applicant stated that he does not want to be involved in politics *because* of the threats and violence associated with his past involvement and would anticipate with any future involvement.

[30] It should go without saying that refraining from legitimate political activity because of the fear of persecutory treatment can not ground a finding that an individual lacks a forward-looking fear of persecution. In this case, the important assessment was not whether the Applicant *would* engage in political activity on return to Bangladesh, but *why* he would not engage in such activity. As Justice Barnes noted in *Pimental Colmenares v Canada (Minister of Citizenship and*

Immigration), 2006 FC 749 at para 14: “the law does not require a victim of politically motivated persecution to necessarily abandon his commitment to political activism in order to live safely.”

[31] The unreasonableness of this aspect of the PRRA’s reasons goes to the core of the outcome. This being the case, the decision cannot stand.

VII. Conclusion and Directions

[32] For the foregoing reasons, this application for judicial review will be granted.

[33] The redetermination of this matter will lead to the Applicant’s fifth PRRA decision. Several of the previous decisions were coloured by easily avoidable errors on the part of the Minister. With this in mind, I believe this is an appropriate case to provide the following directions on remittal:

1. Given that the previous PRRA officer accepted the Applicant’s evidence in relation to his involvement in the BNP, this aspect of his profile—namely his previous role as a “root level leader” of the BNP—need not be reconsidered unless there are new reasons to doubt its veracity.
2. Should credibility in any aspect of the application remain at issue, a new oral hearing shall be conducted.

JUDGMENT in IMM-1338-23

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is granted and the matter is remitted to a different officer for re-consideration with the following directions:
 - a) Given that the previous PRRA officer accepted the Applicant’s evidence in relation to his involvement in the BNP, this aspect of his profile—namely his previous role as a “root level leader” of the BNP—need not be reconsidered unless there are new reasons to doubt its veracity.
 - b) Should credibility in any aspect of the application remain at issue, a new oral hearing shall be conducted.
2. No question is certified for appeal.

"Angus G. Grant"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1338-23

STYLE OF CAUSE: YOUNUS KHAN v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

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