Federal Court  Cour fédérale

Date: 20250110

Docket: IMM-7336-23

Citation: 2025 FC 53

Ottawa, Ontario, January 10, 2024

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

YASMIN AKHTER
MOHAMMED NAZIMUDDIN AHMED
SALWA NAZIM
WASEQ NAZIM
NUZHAT NAZIM
by their litigation guardian
Yasmin Akhter

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS AND JUDGMENT

[1] Ms. Yasmin Akhter (the "Principal Applicant"), her husband Mohammed Nazimuddin Ahmed, their adult children Salwa Nazim and Waseq Nazim, and their minor child Nuzhat Nazim (collectively "the Applicants") seek judicial review of the decision of the Immigration

and Refugee Board, Refugee Appeal Division (the "RAD"), dismissing their appeal from a decision of the Immigration and Refugee Board, Refugee Protection Division (the "RPD"), rejecting their application for refugee protection.

[2] The Applicants are citizens of Bangladesh. They lived in Saudi Arabia for many years. They claim a fear of the KanKata Salem and its "goons", defined by the RAD as the "agents of harm", who first approached the Principal Applicant upon her return to Bangladesh in November 2018 and demanded money from her. The Applicants claim that the agents of harm are associated with the Awami League.

[3] The Applicants allege that they suffered further acts of harassment in the following months. These included a burglary of their home in Bangladesh while they were back in Saudi Arabia and the killing of the Principal Applicant's brother-in-law. As well, an arrest warrant was issued against the Principal Applicant and her husband.

[4] The RPD found that the Applicants' claim lacked a nexus to a Convention ground and also, that there is an internal flight alternative ("IFA") available to them in Bangladesh. The RPD characterized the actions against the Principal Applicant as amounting to extortion.

[5] The RAD confirmed the findings of the RPD and dismissed the Applicants' appeal.

[6] The Applicants now argue that the RAD breached their right to procedural fairness by failing to hold a hearing of their appeal. They also submit that the RAD erred in finding a lack of

nexus to a Convention refugee ground and ignored evidence, thereby reaching an unreasonable decision.

[7] The Minister of Citizenship and Immigration (the "Respondent") submits that there was no breach of procedural fairness resulting from the lack of an oral hearing. The availability of an oral hearing will depend on credibility issues raised in proposed new evidence. In this case, the RAD accepted the proposed new evidence, but found that it did not raise credibility concerns.

[8] The Respondent also argues that the RAD provided clear reasons why it doubted the validity of the arrest warrant.

[9] Otherwise, the Respondent submits that the RAD reasonably found the lack of a nexus to a Convention refugee ground.

[10] The Respondent further submits that the RAD provided clear reasons explaining why it doubted the validity of the arrest warrant and the Applicants do not squarely challenge those findings.

[11] The Respondent argues that, overall, the finding of an IFA is reasonable, in light of the evidence considered by the RAD.

[12] Any issue of procedural fairness is reviewable on the standard of correctness; see the decision in *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339.

[13] The merits of the decision are reviewable on the standard of reasonableness, following the decision of the Supreme Court of Canada in *Canada (Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653.

[14] In considering reasonableness, the Court is to ask if the decision under review "bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision"; see Vavilov, supra, at paragraph 99.

[15] I will first address the issue of a breach of procedural fairness.

[16] I agree with the submissions of the Respondent on this issue. Subsection 110(6) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act") addresses the availability of an oral hearing when new evidence is accepted by the Rad, as follows:

110 (6) The Refugee Appeal Division may hold a hearing if, in its opinion, there is documentary evidence referred to in subsection (3)	**110 (6)** La section peut tenir une audience si elle estime qu'il existe des éléments de preuve documentaire visés au paragraphe (3) qui, à la fois :
(a) that raises a serious issue with respect to the credibility of the person who is the subject of the appeal;	**a)** soulèvent une question importante en ce qui concerne la crédibilité de la personne en cause;
(b) that is central to the decision with respect to the refugee protection claim; and	**b)** sont essentiels pour la prise de la décision relative à la demande d'asile;
(c) that, if accepted, would justify allowing or rejecting the refugee protection claim	**c)** à supposer qu'ils soient admis, justifieraient que la demande d'asile soit accordée ou refusée, selon le cas.

[17] The Act provides for an oral hearing in limited circumstances. The RAD holds a discretion whether to grant an oral hearing and the paragraphs of subsection 110(6) identify elements to be considered when deciding to exercise that discretion.

[18] The RAD accepted the new evidence presented by the Applicants. However, it found that this new evidence did not raise issues of credibility and concluded that "an oral hearing is not required".

[19] I see no reviewable error in the conclusion of the RAD and find that the Applicants suffered no breach of procedural fairness as the result of the disposition of their appeal without an oral hearing.

[20] I also agree with the position of the Respondent about the alleged error of the RAD in finding no nexus between the Applicants' claim and Convention refugee grounds. I refer to section 96 of the Act which provides as follows:

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	**96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail	**a)** soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de

themself of the protection of each of those countries; or	la protection de chacun de ces pays;
(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	**b)** soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

[21] In light of the evidence in the Certified Tribunal Record, it was reasonable for the RAD to confirm the initial finding of the RPD that the Applicants' claim is based on extortion, a criminal undertaking, and not one of the grounds for Convention refugee status that is identified in the Act.

[22] The dispositive issue in this application is the RAD's finding about the availability of an IFA for the Applicants in Dhaka. As noted by Justice Near in *Calderon v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 263 at paragraphs 10 and 11, the IFA finding is determinative.

[23] The test for an IFA was set out by the Federal Court of Appeal in Rasaratnam v. Canada (Minister of Employment and Immigration), [1992] 1 F.C. 706 at 710-711 (F.C.A.). The test is two-part and provides as follows:

- First, the Board must be satisfied that there is no serious possibility of a claimant being persecuted in the IFA.

- Second, it must be objectively reasonable to expect a claimant to seek safety in a different part of the country before seeking protection in Canada.

[24] In order to show that an IFA is unreasonable, an applicant must show that conditions in the proposed IFA would jeopardize their life and safety in travelling or relocating to that IFA; see Thirunavukkarasu v. Canada (Minister of Employment and Immigration), [1994] 1 F.C. 589 at 596-598 (F.C.A.).

[25] As noted above, the test for an IFA has two components. In this case, only the first part of the test is relevant, that there is no serious possibility of the Applicants' being persecuted in the IFA, since the Applicants do not challenge the RAD's finding that relocation to Dhaka would be reasonable.

[26] So, the question is whether the RAD "reasonably" found that the Applicants would not face a serious possibility of persecution in the IFA location.

[27] In my opinion, the arguments of the Applicants on this issue are not persuasive. The Applicants seem to base their arguments upon disagreement with related findings of the RAD, for example that the Applicants were not in danger due to their political opinions or gender.

[28] I am satisfied that the decision of the RAD meets the applicable legal test of "reasonableness", it is "transparent, intelligible and justified". There is not basis for judicial intervention and the application for judicial review will be dismissed. There is no question for certification.

JUDGMENT IN IMM-7336-23

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question for certification.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7336-23
STYLE OF CAUSE:	YASMIN AKHTER et al V.MCI
PLACE OF HEARING:	HALIFAX, NOVA SCOTIA
DATE OF HEARING:	JULY 11, 2024
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