Date: 201000628

Docket: IMM-5356-08

Citation: 2010 FC 703

Ottawa, Ontario, June 28, 2010

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

RAHELA HAQUE
SHAHIDUL HAQUE
RAFIA HAQUE

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION and
THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

O'KEEFE J.

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), for judicial review of a decision of a Canadian Border Services Agency (CBSA) officer (the officer), dated October 1, 2008, which determined that the

applicants would not be subject to risk of persecution, danger of torture, risk to life or risk of cruel and unusual treatment or punishment if returned to Bangladesh.

[2] The applicants request an order setting aside the officer's decision and referring the matter back to a different pre-removal risk assessment (PRRA) officer for redetermination with such directions as the Court considers appropriate.

Background

[3] The applicants are Rahela Haque (the principal applicant), her husband, Shahidul Haque and their daughter, Rafia Haque (the minor applicant). They are citizens of Bangladesh. The minor applicant was born in the United States and is a U.S. citizen. The principal applicant originally left Bangladesh in 2002 to live in the United States. In 2003, she returned to Bangladesh to marry and in 2004, brought her husband back with her to the U.S. where they lived until coming to Canada in 2005.

[4] The applicants claimed refugee protection in Canada on an alleged fear of persecution as a result of an imputed political opinion and membership in a particular social group, namely, the principal applicant's family.

[5] In 2001, the principal applicant's father was appointed to a high position within the Bangladesh Awami League (AL). After the Bangladesh National Party (BNP) won the 2001

elections, the government started to take revenge against its opponents. In December, the principal applicant's father was abducted by activists. He returned home the following day and told the family that he had promised to pay his captors a large sum of money in exchange for his release. He then obtained visitor visas to the U.S. for his family and they left Bangladesh in March of 2002.

[6] On December 5, 2007, the applicants' claim was rejected by the Refugee Protection Division of the Immigration and Refugee Board (the Board). Based on the evidence before it, the Board found that the central elements of the principal applicant's story were not credible. The Board also found that the re-availment of the principal applicant in 2003 and her long sojourn in the U.S. combined with an absence of an asylum claim showed a lack of subjective fear. The Board also found that the principal applicant's fear was not well-founded given the new government in Bangladesh and the absence of any political affiliation on the part of the principal applicant. The Board finally found that the male applicant was not a forthright witness and was not credible.

[7] On March 31, 2008, the applicants' leave application (Court file IMM-5404-07) challenging the negative Board decision was dismissed by this Court. Next, the applicants sought a PRRA.

The Officer's Decision

[8] The officer did not consider all of the evidence submitted in support of the PRRA, excluding documents that predated the Board decision because the applicants did not provide any explanation as to why the documents could not have been presented there.

[9] The officer used the Board decision as a starting point. The Board had thoroughly impugned the applicants' credibility, yet the applicants had simply restated their case. The officer noted that the purpose of a PRRA is not to reargue the facts that were before the Board, but only to consider new evidence not contemplated by the Board.

[10] As one piece of new evidence, the applicants had submitted a letter from their lawyer in Bangladesh which indicated that the applicants' immediate family had been visited by plain-clothed police officers looking for the applicants. The lawyer stated that he checked records at the police station and found no case against the applicants. The lawyer also mentioned that the male applicant was a childhood friend of a now-imprisoned politician and speculated that the visit could have been in that regard. The officer afforded little probative value to the letter due to its speculative nature and the lack of corroboration by objective evidence.

[11] Another piece of new evidence was a copy of a letter from an AL official, indicating that both the principal and male applicants were active members of the AL and that the applicants would very likely face persecution if they returned. The officer similarly afforded this letter little probative value. The letter did not indicate who the potential agents of persecution were, nor were the allegations supported by any objective evidence. Finally, it was noted by the officer that while the letter came from an AL official, he did not indicate experiencing any incidents of harassment or threats of harm as a result of his political opinions.

[12] The officer also considered the applicants' submissions on country conditions, but noted that they had not linked this evidence to their personalized risks. In other words, they had not provided sufficient evidence to support that their profile in Bangladesh was similar to those persons currently described as at risk in the country documents. The evidence did not support that the applicants had ever been involved in political activities. At the Board hearing, it had been established that several of the principal applicant's other siblings were living in Bangladesh without problems.

[13] The officer concluded that there was less than a mere possibility that the applicants would face persecution should they return to Bangladesh.

Issues

[14] Since the parties agree that the appropriate standard of review is reasonableness, the only issue before the Court is whether the officer's decision was reasonable.

Applicants' Written Submissions

[15] The applicants submit that the decision of the officer was unreasonable and in support of this contention, point to four errors they allege the officer made.

[16] First, the applicants assert that the officer failed to consider that the principal applicant's father, who was held by the Board to be a refugee, was a similarly situated individual such that his own experiences ought to have been enough to establish the possibility of persecution.

[17] Second, the applicants submit that the officer erred in failing to address the applicants' mental health and psychological reports. The applicants assert that they have suffered and continue to suffer mental health consequences as a result of the persecutory acts against the principal applicant's father.

[18] Third, the applicants submit that the officer erred by engaging in a selective review of the country documentation. The documentation demonstrated human rights abuses, weak institutions and disregard for rule of law in Bangladesh, yet even though the principal applicant was the daughter of an outspoken opposition member, the officer failed to consider whether his enemies might attribute his political views to her. The principal applicant notes that her father's younger children were accepted with his refugee claim, despite their lack of political opinion.

[19] Finally, the officer erred by failing to consider the best interests of the minor applicant. It is in the best interests of the minor applicant not to expose her parents to a risk of harm.

Respondents' Written Submissions

[20] The respondents submit that the officer's decision was reasonable and that the applicants' essential complaints are against the weight given to the evidence.

[21] Contrary to the applicants' assertions, the claim of persecution as a result of family membership was squarely addressed and rejected by the Board. Similarly, the applicants' assertions regarding mental health consequences as a result of persecutory acts against the principal applicant's father are without merit. The applicants' credibility was impugned by the Board which rejected their assertions that they faced risk based on their family connection. Despite this, it was clear that the officer understood that the risk alleged was based on the circumstances of the principal applicant's father.

[22] The psychological report was properly rejected by the officer on the grounds that it had been addressed by the Board and was not new evidence.

[23] The respondents finally submit that the officer made no error with respect to the minor applicant's interests. PRRA officers are not under an obligation to consider the best interests of the child and in any case, the minor applicant's claim was based on the risk facing her parents and did not include any individual evidence.

Analysis and Decision

The Applicants' Burden

[24] Referring to the content of the reasonableness standard in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, [2008] S.C.J. No. 9 (QL), the Supreme Court stated:

> 47 Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[25] Thus, under *Dunsmuir*, the reasonableness of a decision denying a PRRA application will only be interfered with by reviewing courts in two situations:

1. Where there exists no reasonable line of analysis that could have lead to the officer's conclusion; or

2. Where the conclusion does not fall within the range of possible, acceptable outcomes.

[26] In attempting to establish that one of the above tests has been met, an applicant may, as a first step, point to a perceived error or misconstruction in the written reasons provided by the officer. However, the written reasons of immigration officers are not required to be perfect and need not withstand microscopic legal scrutiny (see *Boulis v. Canada (Minister of Manpower and Immigration)*, [1974] S.C.R. 875). An error or omission in the drafting of the written reasons is only indicative of a real error.

[27] However, even the existence of a real error, omission or misconstruction will not discharge the burden before the applicants. In other words, an error alone cannot be a reviewable error. Some errors may directly impugn the very merits of a decision, while other errors may be of little consequence. The above quoted paragraph from the decision in *Dunsmuir* requires courts to inquire "into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes." The applicants must ultimately establish that one of the above tests is met before the reviewing court will interfere.

[28] I now turn to the perceived errors which the applicants assert render the officer's decision unreasonable.

Was the principal applicant's father a similarly situated individual?

[29] The well-established refugee law principle of an applicant's ability to rely on the persecution of similarly situated individuals was well stated in *Fi v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1125, [2007] 3 F.C.R. 400:

> 14 That being said, it is trite law that persecution under section 96 of IRPA can be established by examining the treatment of similarly situated individuals and that the claimant does not have to show that he has himself been persecuted in the past or would himself be persecuted in the future. In the context of claims derived from situations of generalized oppression, the issue is not whether the claimant is more at risk than anyone else in his country, but rather whether the broadly based harassment or abuse is sufficiently serious to substantiate a claim to refugee status. If persons like the applicant may face serious harm for which the state is accountable, and if that risk is grounded in their civil or political status, then he is properly considered to be a Convention refugee (*Salibian v. Canada (Minister of Employment and Immigration)*, [1990] 3 F.C. 250 at 259 (F.C.A.); *Ali v. Canada (Minister of Citizenship and Immigration)* (1999), 235 N.R. 316.
>
> (My emphasis)

[30] The applicants in the present case provided evidence that their claim for protection was related to the principal applicant's father and submit that he was a similarly situated individual whose refugee claim was accepted by the Board.

[31] While it appears that the officer understood fully the extent of the principal applicant's reliance on the persecution of her father, the officer did not consider that her father was a similarly situated individual. Indeed, the Board had confirmed the significant difference between the

respective situations. None of the applicants alleged to have the same political opinions or affiliations as the principal applicant's father which was the basis of his refugee claim. The Board affirmed:

> Both claimants have had no political affiliation or activities. Their fear is based on the fear held by the principal claimant's father, who had submitted a refugee claim in Canada that was accepted.

[32] The applicants did not submit any new evidence to refute this finding of the Board. Therefore, the officer was bound to accept it (see *Saadatkhani v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 614, [2006] F.C.J. No. 769 (QL)).

[33] While the applicants may disagree with the officer's factual conclusion on this issue, there was no necessary component of analysis missing in the officer's reasons. Nor have the applicants demonstrated that the conclusion was made in a perverse or capricious way or without regard to the evidence. Consequently, this Court cannot find an error with respect to this issue.

Did the officer err by failing to address the applicants' mental health and the psychological report?

[34] In submissions before the officer, the male applicant made reference to trauma and the major psychological problem for the applicants and appended the report of a psychologist as evidence. The officer did not make any reference to this submission or the report in the officer's decision letter.

[35] In the circumstances, I cannot accept that the omission amounted to a reviewable error. It is trite that PRRA officers are assumed to have reviewed all of the evidence and are not required to discuss every piece of evidence before them in their written reasons (see *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, 157 F.T.R. 35, [1998] F.C.J. No. 1425 (F.C.T.D.) (QL)).

[36] Moreover, it appears that the omission was intentional and also quite justified. The officer expressed that all of the evidence had been reviewed. In accordance with subsection 113(a) of the Act, the officer correctly noted at the beginning of the decision that evidence which pre-dated the Board decision would not be considered in the absence of an explanation as to why it had not been brought to the Board hearing.

[37] The psychological report dated April 18, 2007 did predate the Board decision. The report had in fact been before the Board, which elected not to afford any weight to it or the applicants' testimony regarding mental health (certified tribunal record page 218).

[38] It is well established that PRRA assessments are not appeals or reconsiderations of Board decisions. They are only an assessment of the effect which new evidence may have had on the Board decision in question. Factual and credibility conclusions made by the Board are not to be revisited or reargued (see *Yousef v. Canada (Minister of Citizenship and Immigration),* 2006 FC 864, [2006] F.C.J. No. 1101 (QL) at paragraphs 20 to 21, *Kaybaki v. Canada (Solicitor General of Canada)*, 2004 FC 32, [2004] F.C.J. No. 27 (QL) at paragraph 11 to 13, *Mooketsi v. Canada*

(Minister of Citizenship and Immigration), 2008 FC 1401, [2008] F.C.J. No. 1814 (QL) at paragraphs 10 and 11).

[39] Since the applicants presented no new evidence to call into question the conclusions made by the Board, there was no duty to mention the matter.

[40] It also bears noting that many of the submissions made to the officer appear to have been made in contemplation of a humanitarian and compassionate grounds application.

<u>Did the officer err by engaging in a selective review of the country documentation?</u>

[41] The applicants assert that the officer misapprehended the country documentation and failed to consider that the political violence discussed therein meant that there might be a serious risk to the principal applicant as the daughter of an outspoken critic of government.

[42] Upon a review of the decision, I find no merit to the applicants' assertion. The officer clearly understood that the applicants' claim revolved around the principal applicant's father's experiences and political activities. That being the case, it was intelligible that the officer's discussion of the country conditions focused on politically-based violence in Bangladesh. This type of selective review is required and is rational and denotes to the applicants that the officer understood the relevance of the country documentation. Indeed, the review of the tumultuous political situation in Bangladesh took up the bulk of the officer's written reasons. The applicants

make no allegation that the officer omitted any significant chunk of information or any aspect of the country documentation highly relevant to the applicants' claim. There is no reason then to interfere in the officer's informed conclusion, which reads as follows:

> The submissions do not recount any new material evidence of a significant change in country conditions since the applicants were before the RPD. I find that the documents relate to conditions faced by the general population, or describe specific events or conditions faced by persons not similarly situated to the applicants. The principal and male applicants have not been in Bangladesh since January 2004 and March 2004 respectively. The evidence before me does not support that the applicants have been involved in political activities in Bangladesh. I find it objectively unreasonable that, after the passage of over four years, combined with the political changes that have occurred in Bangladesh, political opponents of the principal applicant's father are seeking the applicants. I recognize that the applicants fear for their safety, however the current political situation in Bangladesh is a condition faced by the general population, and the evidence before me does not support that the applicants face a personalized risk in their home country as a result.

The applicants thus have not demonstrated any error in this portion of the decision.

<u>Did the officer err by failing to consider the best interests of the minor applicant?</u>

[43] Outside of the sections where consideration of the best interest of the child is specifically mandated, there is no general duty for immigration officers to undertake any such analysis (see generally *Maskini v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 826, [2008] F.C.J. No. 1039).

[44] In *Varga v. Canada (Minister of Citizenship and Immigration)*, 2006 FCA 394, [2007] 4 F.C.R. 3, 277 D.L.R. (4th) 762, Mr. Justice Evans, writing for the Court, determined that PRRA officers in particular, are not required as a matter of law, to consider interests of a Canadian born child. He made the following points in his reasons:

1. A broad ranging consideration of children's interests is not contemplated by ss. 96, 97, 112 and 113 of the Act (The refugee and PRRA provisions). That exercise is properly conducted under s. 25(1) applications to remain in Canada on H&C grounds (paragraphs 7 to 10).

2. Although the same officer may sometimes make a PRAA and determine an H&C application, the two decision-making processes should be neither confused, nor duplicated (paragraph 12).

3. Neither the Charter nor the *Convention on the Rights of the Child* requires that the interests of affected children be considered under every provision of IRPA (paragraph 13).

[45] The jurisprudence therefore establishes that there is no duty at law for PRRA officers to consider the best interests of a child affected by the departure. However, the present case differs in the sense that the child in question is one of the applicants. She was not born in Canada and would be just as subject to a removal order as her parents. Risks of persecution specific to her cannot then be left unconsidered.

[46] If the applicants had raised any risks specific to the minor applicant which constituted new evidence under subsection 113(a) of the Act, the officer would have been under a duty to consider such evidence. The applicants did not. The risk to the minor applicant was based entirely on the

alleged risk to the principal and male applicants. Without any evidence of any new and different risk facing the minor applicant, there cannot be any error in failing to consider the best interests of the child.

[47] The applicants have the burden of demonstrating that the decision was unreasonable. In attempting to establish unreasonableness, they have pointed to four errors in the decision. I have reviewed each and found that none of the alleged errors are made out. It is unnecessary to continue to the second stage and determine whether the decision on the whole is unreasonable. As a result, the applicants have failed to discharge their burden and I must dismiss their application.

[48] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

JUDGMENT

[49] **IT IS ORDERED that** the application for judicial review is dismissed.

"John A. O'Keefe"
Judge

ANNEX

Relevant Statutory Provisions

The *Immigration and Refugee Protection Act*, S.C. 2001, c. 27

112.(1) A person in Canada, other than a person referred to in subsection 115(1), may, in accordance with the regulations, apply to the Minister for protection if they are subject to a removal order that is in force or are named in a certificate described in subsection 77(1).	112.(1) La personne se trouvant au Canada et qui n'est pas visée au paragraphe 115(1) peut, conformément aux règlements, demander la protection au ministre si elle est visée par une mesure de renvoi ayant pris effet ou nommée au certificat visé au paragraphe 77(1).
(2) Despite subsection (1), a person may not apply for protection if	(2) Elle n'est pas admise à demander la protection dans les cas suivants :
(a) they are the subject of an authority to proceed issued under section 15 of the Extradition Act;	a) elle est visée par un arrêté introductif d'instance pris au titre de l'article 15 de la Loi sur l'extradition;
(b) they have made a claim to refugee protection that has been determined under paragraph 101(1)(e) to be ineligible;	b) sa demande d'asile a été jugée irrecevable au titre de l'alinéa 101(1)e);
(c) in the case of a person who has not left Canada since the application for protection was rejected, the prescribed period has not expired; or	c) si elle n'a pas quitté le Canada après le rejet de sa demande de protection, le délai prévu par règlement n'a pas expiré;
(d) in the case of a person who has left Canada since the removal order came into force, less than six months have passed since they left Canada after their claim to refugee protection was determined to be ineligible, abandoned,	d) dans le cas contraire, six mois ne se sont pas écoulés depuis son départ consécutif soit au rejet de sa demande d'asile ou de protection, soit à un prononcé d'irrecevabilité, de désistement ou de retrait de sa demande d'asile.

withdrawn or rejected, or their application for protection was rejected.	
(3) Refugee protection may not result from an application for protection if the person	(3) L'asile ne peut être conféré au demandeur dans les cas suivants :
(a) is determined to be inadmissible on grounds of security, violating human or international rights or organized criminality;	a) il est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux ou criminalité organisée;
(b) is determined to be inadmissible on grounds of serious criminality with respect to a conviction in Canada punished by a term of imprisonment of at least two years or with respect to a conviction outside Canada for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years;	b) il est interdit de territoire pour grande criminalité pour déclaration de culpabilité au Canada punie par un emprisonnement d'au moins deux ans ou pour toute déclaration de culpabilité à l'extérieur du Canada pour une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;
(c) made a claim to refugee protection that was rejected on the basis of section F of Article 1 of the Refugee Convention; or (d) is named in a certificate referred to in subsection 77(1).	c) il a été débouté de sa demande d'asile au titre de la section F de l'article premier de la Convention sur les réfugiés; d) il est nommé au certificat visé au paragraphe 77(1).
113. Consideration of an application for protection shall be as follows:	113. Il est disposé de la demande comme il suit :
(a) an applicant whose claim to refugee protection has been rejected may present only new	a) le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus

evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;

depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;

(b) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;

b) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;

(c) in the case of an applicant not described in subsection 112(3), consideration shall be on the basis of sections 96 to 98;

c) s'agissant du demandeur non visé au paragraphe 112(3), sur la base des articles 96 à 98;

(d) in the case of an applicant described in subsection 112(3), consideration shall be on the basis of the factors set out in section 97 and

d) s'agissant du demandeur visé au paragraphe 112(3), sur la base des éléments mentionnés à l'article 97 et, d'autre part :

(i) in the case of an applicant for protection who is inadmissible on grounds of serious criminality, whether they are a danger to the public in Canada, or

(i) soit du fait que le demandeur interdit de territoire pour grande criminalité constitue un danger pour le public au Canada,

(ii) in the case of any other applicant, whether the application should be refused because of the nature and severity of acts committed by the applicant or because of the danger that the applicant constitutes to the security of Canada.

(ii) soit, dans le cas de tout autre demandeur, du fait que la demande devrait être rejetée en raison de la nature et de la gravité de ses actes passés ou du danger qu'il constitue pour la sécurité du Canada.

FEDERAL COURT

SOLICITORS OF RECORD

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