

Federal Court



Cour fédérale

**Date: 20110408**

**Docket: IMM-4545-10**

**Citation: 2011 FC 440**

**Ottawa, Ontario, April 8, 2011**

**PRESENT: The Honourable Mr. Justice Blanchard**

**BETWEEN:**

**MOHAMMED JAMAL UDDIN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The Applicant, Mr. Mohammed Jamal Uddin, applies for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated July 16, 2010, wherein he was found not to be a Convention Refugee or a person in need of protection.

**Factual Background**

[2] The Applicant is a 29 year old citizen of Bangladesh. He arrived in Canada on July 21, 2008 and applied for refugee protection on August 13, 2008.

[3] The Applicant first became politically active with the Awami League (AL) when he attended college in Chittagong. In 2002, he became the publicity coordinator of AL for his region and held this position until after his graduation from college. This involved issuing invitations to party meetings and events in the area of North Patenga.

[4] In January 2005, he began working as a deck-hand on commercial vessels although he retained his position as publicity coordinator for the AL. He had an assistant who could fulfill his tasks while he was away.

[5] In November 2007, the Applicant returned to Chittagong at a time of much political violence. The country was under a care-taker government and the AL began to identify and name individuals who were against their “war for freedom” in various parts of Bangladesh. The Applicant was appointed leader of the group charged with this task within his region and claims that the group compiled lists of these individuals for the purpose of identifying them and gathered signatures on petitions to exclude them from government and bring them to justice.

[6] As a result of the Applicant’s activities as group leader, members of the other parties (the Jamaat, Razakars, Islamic Chhatra and the Bangladesh National Party – BNP) became very upset and threatened the Applicant warning him to withdraw from his work, which he did not do.

[7] On December 2007, the Applicant was attacked and beaten by five men while walking home and they also threatened to kill him if he continued to live in Bangladesh. His injuries resulted

in him being hospitalized for seven or eight days. As a result of the attack, the Applicant's father filed a complaint with the police.

[8] On February 21, 2008, the Applicant was attacked again by three men who beat him up with sticks and injured his left knee. The men fled when a car approached the scene. Following the attacks, the Applicant's father arranged employment for the Applicant on a ship leaving for Canada. The Applicant left Bangladesh on March 2008 and arrived in Canada on July 21, 2008.

[9] The Applicant claims that he was being persecuted by Islamic groups that are members of the opposite political party by reason of his political opinion. He claims that he is the main target for these members as he compiled a list against them.

[10] In December 2008, the AL formed the government in Bangladesh.

#### The Board's decision

[11] The Board denied the Applicant's claim. It found that his fear of persecution from the opposing political party members is not based on objective and trustworthy evidence. Accordingly, it found that there was no serious possibility of persecution from the Islamic groups or opposing political party members should the Applicant return to Bangladesh. It also found that sufficient police protection was available to him in Bangladesh since his own political party was now in power.

[12] The Board found contradictions and inconsistencies in the Applicant's testimony and listed examples of these in its reasons. It acknowledged that certain inconsistencies in the Applicant's evidence were minor, but nevertheless found, on the totality of the evidence, that the Applicant was not credible.

[13] The Board concluded that the Applicant had not provided clear and convincing evidence that if he were to return to Bangladesh, police protection would not be forthcoming considering that his own political party was in power.

[14] In rendering its decision, the Board considered the National Documentation Package on Bangladesh as well as the International Crisis Group Report dated December 2009. Based on its review of the country documentation, the Board made a number of findings which recognized the problems with the Police in Bangladesh but nevertheless concluded that state protection was available to the Applicant and consequently dismissed his application. .

#### Issues

[15] The following two issues are raised in this judicial review:

- (a) Did the Board err in finding that the Applicant was not credible?
  
- (b) Did the Board err in finding that state protection was available to the Applicant, should he return to Bangladesh?

Standard of review

[16] The first issue concerns a question of fact. The second issue concerning the availability of state protection is a question of mixed fact and law. The applicable standard of review for both issues is reasonableness which concerns mostly the existence of justification, transparency and intelligibility within the decision-making process. The decision must also fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. See: *Dunsmuir v. New Brunswick*, 2008 SCC 9 at paragraph 47; and *Hinzman v. Canada (MCI)* 2007 FCA 171, at paragraph 38.

Analysis

*Did the Board err in its findings that the Applicant was not credible?*

[17] The Applicant submits that the Board's overall assessment of the claimant's credibility was not reasonable because the Member engaged in a microscopic examination of issues peripheral to the claim and ignored evidence that supported the plausibility of his account.

[18] The Respondent submits that the Board was entitled to decide adversely with respect to the Applicant's credibility on the basis of inconsistencies and contradictions in the Applicant's story. The Respondent argues that the Board's credibility and plausibility findings are reasonable. They were clearly made and the Board provided detailed reasons for its findings.

[19] I summarize below the Board's reasons for impugning the Applicant's credibility:

- (a) The Applicant testified that he tried to live in other two towns of Bhola and Noakhali after the incident of February 21, 2008, and he felt he was followed by his persecutors even in these towns while he was walking to the market. In his Personal Information Form (PIF), the Applicant had indicated that he was in hiding and did not leave the house. When asked why he did not mention the market incident in his Personal Information Form, he initially said it was a mistake. He then explained that he was trying to say in his PIF that he was in hiding and could not go to the office. He further explained that the word “hiding” in Bengali can mean “outside the home”. The Board did not find the answers credible.
- (b) When asked why he felt he was being followed by the Shibir group (the youth wing of the BNP), he explained that he could recognize them from their beards and caps, but that they did not talk to him “because he was on their list and there was fear for his life.” The Board found that explanation vague.
- (c) The Applicant alleged he was attacked on December 27, 2007 and on February 21, 2008, by the members of the opposite political party because he believed he was the main target of these members for compiling a list against them. The Board noted that a list of 600 individuals accused of war crimes had been published by “Bangladesh Muktijudda Sangsad”. There was no evidence in the country documentation that such a list was compiled by the AL.

- (d) When asked to produce newspaper articles in support of his alleged attacks, he stated that he was unable to obtain them. He did not ask his party to obtain the media reports because he did not wish to tell them he was in Canada for fear of putting his family at risk. Yet, he asked his father to obtain a letter from the Chairperson of AL for his region in support of his claim. When asked why this would not put him at risk, the Applicant responded that he simply told them he was abroad, not that he was in Canada. The Board found the response to be nonsensical.
- (e) He then stated that he had requested help from party members to obtain newspaper articles, and that they did not have time to do so. Yet, he claimed to be a high profile member of the AL, and as such should have been assured of their assistance to obtain the documents notwithstanding their busy schedules. The Board found the Applicant's explanation unconvincing.
- (f) After the December 27, 2007 incident, the Applicant stated that the Police came to see him at the hospital and indicated they would investigate. The Applicant never followed up with the Police, explaining that his father had filed the report and he didn't know the people who attacked him.
- (g) The Board questioned the authenticity of the police report filed by his father after the first attack and the letter in support of his association with the AL from the chairman of the AL by reason of the similar language used in both documents and on the basis

of documentary evidence that fraudulent documents are easily obtained in Bangladesh.

[20] The Applicant argues that the Board erred in making its plausibility and credibility findings. He contends that his credibility and plausibility of his testimony should have been assessed in the context of his country's conditions and other documentary evidence available. It is argued that the Board engaged in a microscopic examination of issues peripheral to the claim and ignored evidence that supported the plausibility of his story. In particular, the Applicant argues that he never stated that he was high profile member of the AL; he stated that he was with the youth wing and had a high profile within his neighbourhood. Yet, he claimed to be "the main target" of his alleged persecutors for compiling a list against them on behalf of the AL. This claim by the Applicant is inconsistent with his allegation of not having a high profile within the AL. In my view the Board's finding that the Applicant had a high profile within the AL is plausible and supported in the evidence. The evidence supports the Board's finding.

[21] The Applicant also challenges the Board's finding that there is no documentary evidence that the AL compiled a list of war criminals. He points to the 2009 UK Home Office Report, which shows that such lists were being compiled in Bangladesh and that the AL had committed to bringing war criminals to justice. The report deals with a manifesto issued by the AL for the December 2008 general elections, wherein the AL committed bringing war criminals to justice. There is also mention of a subsequent resolution adopted by Parliament requesting the new government to take immediate action to bring war criminals to trial. The report does not mention anything about members or groups within the AL preparing a list of war criminals.



[22] I find that the Board's plausibility and credibility findings central to the Applicant's claim for refugee protection, as they relate to the alleged attacks, the circumstances after the alleged attacks, and his request for state protection. The Board acknowledges that certain inconsistencies in the Applicant's evidence were minor, but based its credibility finding on the totality of the evidence. Upon considering the records before the Court and the submissions of the parties, I am satisfied that the Board's credibility and plausibility findings do not result from a microscopic examination of issues that are peripheral to the claim. It was open to the Board to conclude on the totality of the evidence that the Applicant is not credible on the basis of inconsistencies and implausibilities in his evidence. I am satisfied that the inferences drawn by the Board are reasonable and that the reasons for its findings are set out in clear and unmistakable terms.

*Did the Board err in finding that state protection was available to the Applicant, should he return to Bangladesh?*

[23] The Board found that the Applicant's fear of persecution from the opposing political party members is not based on objective and trustworthy evidence. Consequently, my above determination concerning the Board's credibility findings is determinative of this application. I will nevertheless address the second issue raised.

[24] The Applicant argues that the Board failed to undertake a proper analysis of the situation in Bangladesh and that the Member ignored clear and convincing evidence that rebutted the presumption of state protection.

[25] The applicable principles relating to state protection are the following:

- (a) The test as to whether a state is unable to protect a national is bipartite: (1) the claimant must subjectively fear persecution; and (2) this fear must be well-founded in an objective sense. The claimant need not literally approach the state unless it is objectively unreasonable for him or her not to have sought the protection of the home authorities; *Canada (AG) v. Ward* [1993] 2 S.C.R. 689, at p. 691
- (b) The claimant must provide clear and convincing confirmation of a state's inability to protect absent an admission by the national's state of its inability to protect that national. Except in situations of complete breakdown of the state apparatus, it should be assumed that the state is capable of protecting a claimant; *Canada (AG) v. Ward* [1993] 2 S.C.R. 689, at p. 692
- (c) A claimant who alleges that the state offers ineffective or inadequate protection bears an evidentiary and legal onus to convince the tribunal; *Carrillo v. Canada (MCI)* 2008 FCA 94 at para 18
- (d) In order to determine whether a refugee protection claimant has discharged his burden of proof, the Board must undertake a proper analysis of the situation in the country and the particular reasons why the protection claimant submits that he is "unable or, because of that risk, unwilling to avail [himself] of the protection" of his country of nationality or habitual residence; *Avila v. Canada (MCI)* 2006 FC 359, at para 27
- (e) No state which professes democratic values or asserts its respect for human rights can guarantee the protection of each of its nationals at all times. Therefore, it will not suffice for the applicant to show that his government was not always able to protect persons in his position (*Villafranca, supra*, at paragraph 7). Nonetheless, though government protection does not have to be perfect, some protection must exist at the minimum level which does not have to be determined by the Court. The Board may in the circumstances determined that the protection provided by the state is adequate, with references to standards defined in international instruments, and what the citizens of a democratic country may legitimately expect in such cases.[...] Each case is *sui generis*. *Avila v. Canada (MCI)* 2006 FC 359, at para 28

[26] Here, the Board found that state protection would be reasonably forthcoming should the Applicant return to Bangladesh. The Applicant argues that the Board ignored clear and convincing evidence that rebutted the presumption of state protection. I disagree. In its reasons, at paragraphs 23 and 24, the Board specifically addressed the Applicant's evidence and accepted that "under

recent governments” the police were ineffective and reluctant to investigate persons affiliated with the ruling party. It also found, based on the documentary evidence that Bangladesh is a functioning democracy and the government took steps to address police corruption in order to create a more responsive police force. The Board acknowledged that state protection is not perfect, “not available at all times”, but found that this did not negate that there are measures put in place the government to address the issues of corruption and discipline within the police force. The Board further found that the current police laws gave broad powers to the government which the current government, has used over police force to intimidate opposition and line pockets of its own party members. Since the Applicant’s party currently forms the government, the Board concluded that state protection would be forthcoming in the circumstances.

[27] I am satisfied that the Board’s finding on state protection is reasonable. Its reasons, when read as a whole, take into account the unique characteristics of power of the state and particular circumstances of the Applicant and the alleged persecutor in relation to the capability and willingness of the state to protect on a forward looking basis. I am satisfied that the Board had regard to the evidence before it, including the documentation on country conditions, in coming to its decision. The decision is justified, transparent and intelligible within the decision-making process. It falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

Conclusion

[28] For the above reasons, the application for judicial review of the Board's July 16, 2010 decision, wherein the Applicant was found not to be a Convention Refugee or a person in need of protection, will be dismissed.

[29] The parties have had the opportunity to raise a serious question of general importance as contemplated by paragraph 74(d) of *the Immigration and Refugee Protection Act*, S.C. 2001, c 27, and have not done so. I am satisfied that no serious question of general importance arises on this record. I do not propose to certify a question.

**ORDER**

**THIS COURT ORDERS that:**

1. The application for judicial review of the Board's July 16, 2010 decision, wherein the Applicant was found not to be a Convention Refugee or a person in need of protection, is dismissed.
2. No serious question of general importance is certified.

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"Edmond P. Blanchard"

Judge

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

**DOCKET:** IMM-4545-10

**STYLE OF CAUSE:** Mohammed Jamal Uddin v. MCI

**PLACE OF HEARING:** Vancouver, B.C.

**DATE OF HEARING:** February 15, 2011

**REASONS FOR ORDER  
AND ORDER:** Blanchard J.

**DATED:** April 8, 2011

**APPEARANCES:**

Ms. Judith Boer  
Vancouver, B.C. FOR THE APPLICANT

Mr. Edward Burnet  
Vancouver, B.C. FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Elgin, Cannon & Associates  
Vancouver B.C. FOR THE APPLICANT

Myles J. Kirvan  
Deputy Attorney General of Canada FOR THE RESPONDENT