

Federal Court



Cour fédérale

Date: 20140502

Docket: IMM-5194-13

Citation: 2014 FC 415

Ottawa, Ontario, May 2, 2014

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

MD AL KAYSER IQBAL

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

I. Introduction

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision rendered on May 27, 2013 by Edward Aronoff of the Refugee Protection Division [the RPD] finding that the Applicant is

neither a refugee within the meaning of section 96 of the IRPA nor a person in need of protection under subsection 97(1) of the IRPA.

II. Facts

[2] The Applicant is a citizen of Bangladesh who fled his home country on March 11, 2010 and claimed refugee protection on March 26, 2010.

[3] The hearing before the RPD was held on April 9, 2013. At the hearing, the Applicant made the following allegations and based his claims on his political opinion and his membership in a particular social group, as he became an active member of the Bangladesh Nationalist Party [the BNP] in 2004, at the age of 18 years. Between 2004 and 2010, he has taken part in a series of activities and events as a member of the BNP, first while the BNP was in power (up to 2006), then through a caretaker government (from 2006 to 2008), as well as during the coming to power of the then opposition party, the Awami League [the AL] (from 2008 to his departure from Bangladesh in 2010). The Applicant argued that he was targeted, detained and tortured by goons of the AL and that the police provided no assistance when he reached out for help. After the goons came to his house, in his absence, vowing to kill him, the Applicant hid in his friend's house until he was able to leave Bangladesh in March 2010. The Applicant claimed being a refugee under section 96 of the IRPA because he has a well-founded fear of being persecuted by the AL government currently in place on the basis of his political opinion.

III. Decision under review

[4] The RPD was satisfied as to the identity of the Applicant but nonetheless rejected his claims finding that he lacked credibility and plausibility regarding determinative issues and because an internal flight alternative [IFA] was available to him in his home country.

[5] The RPD first analyzed the issue of exclusion for reasons of complicity under article 1F(c) of the Convention raised by the Minister of Public Safety and Emergency Preparedness. The RPD ultimately found that the Applicant was not complicit of the crimes possibly committed by the BNP mainly because the Applicant held within the organization a low-ranking position. The RPD inferred from the Applicant's position that he had no knowledge of or involvement in any acts perpetrated by his party that are contrary to the principles and purposes of the United Nations.

[6] Then, the RPD held that the Applicant did not have a well-founded fear of persecution as it was not plausible that his life was being threatened and not that of the president or of the general secretary of the BNP. Also, he was not able to explain why the police would be seeking to arrest him specifically. The RPD also rejected several exhibits, considering them to be speculation or fraudulently obtained. In the end, the RPD was of the opinion that the Applicant's evidence regarding his alleged well-founded fear of persecution was a fabrication.

[7] The RPD also concluded that the Applicant could avail himself of an IFA in his home country. According to documentary evidence, people who were politically active at a very local

level would only be at risk in their own region, and considering the particular circumstances of the Applicant, it was held that it would not be objectively unreasonable or unduly harsh to expect him to move elsewhere in Bangladesh prior to claiming refugee status in Canada.

[8] The RPD held that, on a balance of probabilities, there was no reasonable chance or serious possibility that the Applicant would be persecuted, or that, on a balance of probabilities, more likely than not, the claimant would not be personally subjected to a risk to his life or to a risk of cruel and unusual treatment or punishment, should he return to Bangladesh.

IV. Applicant's submissions

[9] The Applicant claims that the RPD's decision is unreasonable and he takes issue with both findings (the Applicant's lack of credibility and the existence of a viable IFA).

[10] With respect to his credibility, the Applicant submits that the RPD erred in assessing his testimony and the evidence. Particularly, the Applicant argues that he was never questioned on the issue of why the authorities in his home country were seeking him out and not the president or the general secretary of the BNP. As he was not given an opportunity to explain, it was unreasonable for the RPD to conclude that his explanations were insufficient. In addition, the Applicant claims that he has testified on multiple occasions as to why the police would try to arrest him for creating agitation and unrest, and his testimony was in line with the content of his Personal Information Form. His testimony is presumed truthful and the RPD should have explained why it did not consider it credible in this regard. The RPD also failed to take into

consideration certain documentary evidence from the National Documentary Package as it concerns the extremely broad powers the Bangladesh authorities have under the country's *Special Powers Act*. Also, it was unreasonable for the RPD to reject evidence submitted by the Applicant as fraudulent simply based on the fact that according to documentary evidence some court and police documents emanating from this country are fraudulent. Also, the RPD should have given justification for rejection of uncontradicted statements.

[11] As it concerns the existence of an IFA, the Applicant claims that as soon as he would move, the authorities would perform a background verification on him and he would be brought to justice. Moreover, it is important for him to pursue his political activities and he claims that it is unreasonable for him to be prevented from doing so.

V. Respondent's submissions

[12] The Respondent claims that the RPD's decision is reasonable. The RPD's findings with respect to the Applicant's credibility fall within its expertise. On the issue of the testimony, the RPD found that the Applicant's political implication was on the low end of the spectrum and its findings were based *inter alia* on rationality and common sense. As for the evidence, the RPD was entitled to base its rejection on the fact that according to documentary evidence certain documents can be fraudulently obtained because it had already concluded that other evidence and the Applicant himself were not credible. More specifically, regarding the documentary evidence in the National Documentary Package related to the authorities' powers in Bangladesh,

given that the RPD did not believe that the Applicant was being sought for by the authorities for political reasons, there was no reason for it to consult such documentary evidence.

[13] Lastly, the Applicant was questioned regarding the possibility of moving elsewhere in Bangladesh and he claimed that this would require money and possibly entail difficulties in finding a job. This is pure speculation, and the Applicant did not prove that the authorities would be looking for him should he prevail himself of an existing IFA. And as for the Applicant's argument that he wishes to pursue his political activities, the Respondent submits that it was he, the Applicant himself, who decided to move to Canada and he has failed to prove that he has continued his activities from here.

VI. Issues

[14] This application for judicial review raises two issues to be dealt with by this Court:

1. Did the RPD err when it concluded that a viable IFA was available to the Applicant in Bangladesh?
2. Did the RPD err when it concluded that the Applicant was not credible?

VII. Standard of review

[15] The RPD's credibility findings and the appreciation of the evidence are to be reviewed under the standard of reasonableness (*Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (FCA) at para 4, 160 NR 315, see also *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]). The same standard is applicable to RPD's IFA determinations (*Dunsmuir*, above, at para 47).

VIII. Analysis

[16] For the reasons outlined below, the RPD's decision is reasonable overall and does not warrant the intervention of this Court. The finding regarding the possible IFA in Bangladesh is reasonable and, notwithstanding the somewhat weaker finding with respect to credibility, it settles the entire judicial review application.

1. Did the RPD err when it concluded that a viable IFA was available to the Applicant in Bangladesh?

[17] A two-step test has been established by the Federal Court of Appeal to determine whether an IFA exists or not. First, the RPD must be satisfied, on a balance of probabilities, that there is no serious possibility of the Applicant being persecuted in the proposed IFA, and second, the conditions in that part of the country must be such that it would not be unreasonable, in all the circumstances, for the Applicant to seek refuge there (see *Rasaratnam v Canada (Minister of Employment and Immigration)* (1991), 140 NR 138, 31 ACWS (3d) 139 (FCA);

Thirunavukkarasu v Canada (Minister of Employment and Immigration) (1993), 22 Imm LR (2d) 241, 109 DLR (4th) 682 (FCA)).

[18] This Court is satisfied that the RPD undertook an adequate analysis of the IFA. Based on a review of the documentary evidence, the RPD considered that the Applicant, who was politically active only at a very low level, more specifically in the Sutarpara Union, would only be at risk in this particular union and that he could be expected to seek refuge elsewhere in the country. It also considered that in all circumstances it was not unreasonable for him to move. Indeed, the Applicant is young and has no dependents. The Applicant had the burden of establishing that it was objectively unreasonable to request from him that he seeks refuge in another part of the country, and the “objectively unreasonable” standard is very high and requires the proof of adverse conditions which would jeopardize the life and safety of the Applicant in relocating to a safe area. The record shows that political activists in Bangladesh were generally able to relocate internally away from the area where they are at risk (see Tribunal’s Record, at page 14). What is more, the evidence of such conditions had to be actual and concrete (*Ranganathan v Canada (Minister of Citizenship and Immigration)* (2000), 11 Imm LR (3d) 142 at para 15, 266 NR 380 (FCA)).

[19] The Applicant argues that if he were to go back, he would have the right to participate politically and, consequently, that he would be seriously at risk. The problem with this argument is that the Applicant decided to leave his country rather than to relocate elsewhere and be actively involved. Furthermore, the Applicant has not filed any evidence to support this argument or any evidence to show that he has remained politically involved while in Canada.

Therefore, this argument has to be rejected. As a result, the Applicant, who did not produce any sufficient evidence in support of his claims, failed to satisfy this Court that the proposed IFA is unreasonable and that the RPD committed an error in this regard which warrants the intervention of this Court.

[20] Considering that an IFA is available to the Applicant, he cannot be considered a refugee or a person in need of protection and, by way of consequence, his claim was reasonably dismissed.

2. Did the RPD err when it concluded that the Applicant was not credible?

[21] As indicated above, the first issue settles the entire judicial review application; however, I will briefly address the RPD's credibility finding to the sake of completeness.

[22] The RPD rejected the Applicant's credibility based on a number of findings. One of them is that the Applicant could not explain why he would be sought for by the authorities when the president and the general secretary of the BNP were not. The Applicant claims that he was never given an opportunity to address this issue. However, the Applicant was in fact questioned extensively on this issue before the RPD. After talking about the Applicant's allegations that the authorities were looking for him, the presiding member of the RPD hearing asked "So why is the President still alive? [...] So why are they [the president and general secretary] still carrying on their lives normally?" (See hearing transcript, Certified Tribunal Record, at pages 264-265.) The Applicant simply did not provide an answer that satisfied the RPD.

[23] Another finding which led to the RPD rejecting the Applicant's credibility is that he could not explain why the police would try to arrest him for creating agitation and unrest. However, I find that the Applicant did produce sufficient evidence to explain why he could be considered as creating agitation and unrest. In fact, he explained on several occasions that he protested and inspired others to do so and that he expressly spoke out against a family member of a member of the AL government in power.

[24] Thus, the assessment of Applicant's credibility is not as clear as the RPD likes to suggest. And, for that reason, I find that the RPD should have taken a closer look at the pieces of evidence before rejecting them on the basis that they are fraudulent. In this case, simply relying on documentary evidence to the effect that official documents can be fraudulently obtained in Bangladesh does not suffice. On this issue, this Court previously held as follows in *Cheema v Canada (Minister of Citizenship and Immigration)*, 2004 FC 224 at paras 7 and 8, [2004] FCJ No 255:

[7] The documents may well be forgeries, however evidence of widespread forgery in a country is not, by itself, sufficient to reject foreign documents as forgeries. As the Respondent noted evidence of widespread forgery merely demonstrates that false documentation could be available to the Applicant.

[8] In *Halili v. Canada (Minister of Citizenship and Immigration)*, [2002] F.C.J. No. 1335 Heneghan J. observed at paragraphs 4-5:

The applicant argues, among other things, that the Board erred in law by rejecting an official document in the absence of evidence to support its conclusions as to its invalidity. The applicant here relies on the decision in *Ramalingam v. Canada (Minister of Citizenship and*

Immigration), [1998] F.C.J. No. 10, (January 8, 1998), Doc. IMM-1298-97 (Fed.T.D.) where the Court said at paragraph 6, as follows:

In this instance, the Board challenged the validity of the birth certificate without adducing any evidence in support of its contention and, clearly, the matter of foreign documents is not an area where the Board can claim particular knowledge. That, in my view, constitutes a reviewable error on the part of the Board.

In the present case, the Board purported to rely on evidence that the forging of official documents was widespread in Albania. Although there is a footnote referring to such evidence in the reasons, the Tribunal record does not contain any evidence in support of this conclusion by the Board. Furthermore, the record discloses no evidence that the Board has particular knowledge or expertise in the validity of documents emanating from Albania

[25] Consequently, the RPD's finding regarding the credibility of the documentation could have been better explained. That being said, when considering the decision as a whole, and more specifically the finding that the Applicant was a low-level member of the BNP and the finding related to the fact that the Applicant would be a target whereas the president and general secretary are not despite remaining active, these two findings suffice to give the decision on the issue of the credibility a passing mark on reasonableness. In any event, as seen above, the IFA finding is wholly reasonable.

[26] The parties were invited to submit questions for certification, but none were proposed.

ORDER

THIS COURT ORDERS that this application for judicial review is dismissed. No question is certified.

“Simon Noël”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5194-13

STYLE OF CAUSE: MD AL KAYSER IQBAL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTREAL, QUEBEC

DATE OF HEARING: APRIL 28, 2014

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

DATED: MAY 2, 2014

APPEARANCES:

Nilufar Sadeghi FOR THE APPLICANT

Simone Truong FOR THE RESPONDENT

SOLICITORS OF RECORD:

Allen & Associates FOR THE APPLICANT
Montreal, Quebec

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of
Canada