

Federal Court



Cour fédérale

**Date: 20160830**

**Docket: IMM-4376-15**

**Citation: 2016 FC 984**

**Ottawa, Ontario, August 30, 2016**

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

**BETWEEN:**

**S.A.R. AND Z.I.S.**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This application for judicial review concerns a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) by which the Applicants' claims to refugee protection were dismissed on credibility grounds.

[2] The principal Applicant (identified as S.A.R. and referred to in these reasons as the Applicant), and her minor child (Z.I.S.) claimed protection on the basis of allegations of marital

abuse and an associated threat that the child was the subject of a kidnapping threat at the hands of the child's father.

[3] At the heart of the Applicants' risk narrative were allegations of several threats and violent attacks directed at the Applicant and her parents, motivated by her ex-husband's desire to secure de facto custody of the child. The reliability of that evidence was central to the Board's decision. This application challenges the reasonableness of the Board's adverse credibility determination leading to the rejection of the protection claims.

I. Background

[4] The Applicants are citizens of Bangladesh. They entered Canada in October 2014, having spent the previous four months in the United States with temporary visa status.

[5] The Applicant testified that, notwithstanding her ex-husband's formal consent on divorce to her having sole custody of the child, he and his parents immediately launched a terror campaign to gain custody of the child. This campaign allegedly included a ransacking of the family home by hired "goons", a roadside attack and attempted kidnapping by 10 to 12 men where the windows of the Applicant's father's car were broken out and the Applicant violently assaulted and, finally, a second ransacking and firebombing of the family home and an assault on the Applicant's mother.

[6] The Applicant claimed that all of these events were reported to the police by the Applicant's father but ignored. Indeed, the Applicant stated that the police advised her father to surrender custody of the child to her ex-husband.

[7] The Board rejected the Applicant's allegations on credibility grounds. In particular, the Board found it unlikely that the Applicant's ex-husband would formally consent to a grant of sole custody in favour of the Applicant on a divorce and yet, on the same day, orchestrate a violent confrontation at the family home with a view to obtaining de facto custody of the child.

[8] The Board also found it unlikely that, after the first attack, the Applicant would flee Bangladesh with the child to the United States, only to re-avail six months later without having made a refugee claim in the United States. It is also of some significance to the re-availment concern that when the Applicant returned to Bangladesh she claimed to be living in constant fear and in hiding with the child.

[9] According to the Applicant her fears were almost immediately realized upon return to Bangladesh with a series of violent assaults and threats, including the firebombing of the family home. Notwithstanding those asserted events and the Applicant's and the child's possession of United States visas, they did not leave Bangladesh for almost two more months. It was a particular concern to the Board that the Applicant failed to produce any objective evidence of the attacks, most notably in the form of photographs of the home. The Board dealt with this issue in the following way:

[24] ... While it is odd even for a country like Bangladesh that the police would not show up to investigate regardless of the motive

after a bomb was thrown at their house, it is even more concerning that the claimant's parents did not take pictures or gather other proofs of the ransacking and bombing of the house to show the police. The claimant's explanation is that "nobody was in a position to take pictures." The panel is not satisfied with the claimant's explanation. Keeping in mind the presumption of truthfulness, the panel has some doubts as to the credibility of the claimant's allegations. The panel is of the opinion that evidence of the break in and bombing of the parent's house is central and material to the claimant's claim. Where a claimant's story is found to be implausible or otherwise lacking in credibility, a lack of documentary corroboration or a lack of effort to obtain the documentation can be a valid consideration for purposes of assessing her credibility. Since the onus is on the claimant to prove her claim, the failure to produce any documentary evidence, not merely pictures, to prove what happened to her parent's house on two occasions, raises serious doubts in the panel's mind.

[10] The Board also gave little to no credence to four letters submitted in corroboration of the Applicant's evidence. That evidence was discounted on the following basis:

[25] Furthermore the claimant's credibility was put to the test by her own supporting documents which contradict her testimony. The claimant provided a letter from her uncle in Bangladesh who testified that the claimant and her son stayed at his house after the divorce for fear of reprisal from her in-laws, and that his brother's house was ransacked and cocktail bombs were thrown outside his house. He also mentioned that the claimant and her son left for the US on October 2<sup>nd</sup> 2013 and he learned that now they were in Canada. The uncle seems to mix facts and do not mention that the claimant stayed at his house in April 2014. The claimant also provided a letter from her father which contradicts his brother's testimony. The claimant's father testified that he took his daughter twice to his brother; once for two days after the divorce, and again in April 2014 after the kidnapping attempt. The claimant's explanation is that her uncle is uneducated and that he wrote about as much as he understood. The panel does not accept the claimant's explanation as reasonable and gives no weight to the uncle's letter. Based on the credibility concerns raised above and vested interest, the panel also gives little weight to the claimant's father's testimony. The rest of the letters are from her uncle in Canada, and her father's chauffeur. Consequently, they do not come from a neutral or impartial source. In light of the previously made negative credibility finding, and the subjective source of the

mentioned correspondence, the panel finds these letters to have little probative value and therefore assigns little weight to this evidence.

## II. Analysis

[11] The Applicant challenges the Board's credibility findings on two grounds. First, she contends that, in expressing reservations about the likelihood of the described events, the Board was, in effect, making unreasonable plausibility findings. She also argues that the Board acted unreasonably in rejecting the tendered corroborative correspondence after having made its adverse credibility assessment. She argues that the correct approach is to weight the corroborative evidence in an over-arching credibility assessment and not in after-the-fact isolation. The Applicant also maintains that it was a reviewable error and unreasonable for the Board to reject the corroborating evidence based only on the supposed subjectivity of its sources (i.e. from family).

[12] Inasmuch as these issues are all evidence-based and related to credibility, the applicable standard of review is reasonableness: see *Uyucu v Canada (Minister of Citizenship and Immigration)* 2015 FC 404 at para 21, [2015] FCJ No 393.

[13] Notwithstanding counsel's forceful arguments, I am not satisfied that the Board's decision reflects any reviewable error. Indeed, all of the Board's concerns about the Applicant's credibility were reasonable and justified.

[14] I do not agree that in rejecting the Applicant's version of events the Board was making a plausibility finding or was otherwise insensitive to prevailing cultural norms. Nowhere does the Board say that the Applicant's story was implausible in the sense that it was outside the realm of human experience or inconsistent with the expected norms of human behaviour. What the Board did find was that the Applicant's story was improbable based on a practical, common-sense view. The Applicant was unable to explain the inconsistency between her ex-husband's agreement to waive custody in return for the avoidance of financial support and the immediate launch of a campaign of terror to undermine the agreed settlement. The Board is entitled to bring common sense to issues of this sort and to make appropriate balance of probability determinations. That was all the Board did here.

[15] The Board's credibility finding was also amply supported by the evidence of re-availment. It was inexplicable that the Applicant elected to return to Bangladesh in the circumstances she described. She made no attempt to seek refugee protection or to extend her United States visa. It was eminently reasonable on this evidence for the Board to find that the Applicant lacked a subjective fear. As I noted in *Garcia v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1346, [2011] FCJ No 1645 at para 8, "[a]bsent compelling reasons, people do not abandon safe havens to return to places where their personal safety is in jeopardy". I would add that people do not leave places of safety in the expectation that, on a return home, they will be required to live in hiding and without the benefit of state protection. This conduct defies common sense and it was a major and appropriate consideration in the Board's credibility assessment.

[16] The Applicant's failure to produce photographs of the supposed ransacking and firebombing of the family home or the reported damage to the Applicant's father's motor vehicle was equally disconcerting. Other objective evidence in proof of injuries sustained by the Applicant and her mother was also lacking. On the occasion of the alleged roadside assault the Applicant declared that "[t]he men kicked me all over my body." This was the culminating event leading to the Applicant's final departure and one would reasonably expect photographic or medical verification. None was forthcoming. The Board was entitled to expect to see readily available objective corroborative evidence and to draw an adverse credibility inference when it was not produced. On this point I subscribe to the view expressed by Justice Simon Fothergill in *Uyucu*, above, at para 25 that "corroborating evidence may be required when there are reasons to doubt a claimant's credibility." That was exactly how the Board treated this issue and it did not err in its approach.

[17] I do not agree with counsel for the Applicant that there is a strict order in which the Board must approach the assessment of corroborating evidence of the sort tendered here. I agree that objective and verifiable corroboration cannot be summarily rejected based on a claimant's lack of credibility. That type of evidence must be considered within the context of the overall credibility analysis. The correspondence tendered here by the Applicant was, however, of a different sort. It was simply a recitation of the events the Applicant had described and which the Board, for sound reasons, rejected. The bare repetition of the Applicant's narrative did nothing to rehabilitate her credibility, particularly in the face of the inconsistency the Board identified in the third party reports. Given the substantial evidentiary overlap, it was open to the Board to

evaluate the reliability of the corroborative correspondence from both the Applicant's father and her Bangladeshi uncle in light of the significant inconsistency in those two versions.

[18] The Board's treatment of the Canadian uncle's letter was not unreasonable given that he was not privy to the events that formed the basis of the Applicant's claim. That evidence was hearsay and substantially dependent on the Applicant's credibility. It was, therefore, not an error for the Board to attribute "little probative value" to that evidence. Finally, having rejected the father's declaration it was not unreasonable to assign "little weight" to the report offered by his chauffeur. It is of some additional significance that the chauffeur's report makes no mention of an alleged kidnapping attempt. That was, of course, the supposed motivation for the roadside attack and the failure to mention it is surprising if not suspicious.

[19] To sum up, an illogical story does not gain strength by third party repetition.

[20] For the foregoing reasons this application is dismissed. Neither party proposed a certified question and no issue of general importance arises on this record.



**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application is dismissed.

"R.L. Barnes"

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Judge

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

**DOCKET:** IMM-4376-15

**STYLE OF CAUSE:** S.A.R. AND Z.I.S. v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** AUGUST 23, 2016

**JUDGMENT AND REASONS:** BARNES J.

**DATED:** AUGUST 30, 2016

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