

Federal Court



Cour fédérale

**Date: 20190321**

**Docket: IMM-3034-18**

**Citation: 2019 FC 356**

**Ottawa, Ontario, March 21, 2019**

**PRESENT: THE CHIEF JUSTICE**

**BETWEEN:**

**THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Applicant**

**and**

**SAHARA BEGUM**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] This Application concerns a decision by the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada to dismiss an application brought by the Minister to vacate a prior decision by the RPD. In its prior decision, the RPD granted refugee protection to Ms. Begum.

[2] The Minister's application to vacate was based on misrepresentations allegedly made by Ms. Begum.

[3] The Minister requests this Court to set aside the RPD's dismissal of the application to vacate and to remit that matter to a differently constituted panel. In support of his request, the Minister submits that the RPD's analysis was unreasonable for the following two reasons:

- i. It was inconsistent and therefore illogical and unintelligible; and
- ii. It relied on evidence that was not before the initial RPD panel, in concluding that there remained sufficient evidence, untainted by the misrepresentations, to justify Ms. Begum's refugee claim.

[4] I agree. For the following reasons, this Application will be granted.

## **II. Background**

[5] Ms. Begum is a citizen of Bangladesh. She was granted refugee status in this country in 2000, based on a fear of harm at the hands of her allegedly abusive husband, Mr. Munirul Islam, who she claimed was looking for her and continued to threaten her from Bangladesh. It appears that she received her positive decision orally, before receiving confirmation in a written decision dated February 20, 2001 [the Initial Decision].

[6] In 2002, the Minister learned that Ms. Begum's husband was living with her in Montreal, under the false name of Murad Choudhury. In February 2003, immigration enforcement officers went to her home while she was absent and found a man who identified himself by the latter name.

[7] As late as 2009, Ms. Begum denied that Murad Choudhury was in fact Munirul Islam, her husband. However, at the outset of the hearing on the Minister's application to vacate, she admitted that Murad Choudhury and Munirul Islam were the same person. Nevertheless, she maintained that she did not live with him. She claimed that Fareed, a young man with whom she was living to share the costs of her apartment, had given Mr. Islam the key to the apartment without telling her and that she had never seen Mr. Islam in the apartment.

### **III. The Decision Under Review**

[8] In the course of its decision to reject the Minister's application to vacate [the Decision], the RPD found that Ms. Begum had obtained refugee protection by misrepresenting and withholding material facts. Based on major contradictions and inconsistencies in her testimony, the RPD further found that she was neither credible nor coherent.

[9] Among other things, the RPD found that Ms. Begum and Mr. Islam were in fact living together in Montreal in 2002 and had fraudulently alleged that they were estranged, to secure their respective asylum claims. In addition, the RPD determined that if in fact Ms. Begum had

left her home in 1999 to escape violence at the hands of Mr. Islam, they would not have been living together in 2002.

[10] However, later in its Decision, the RPD stated: “The fact that the evidence shows that [Ms. Begum and her husband] were living together in Montreal did not mean that she was not a victim of conjugal violence in her country.” (Emphasis added.)

[11] The RPD proceeded to find that there was “clear evidence that [Ms. Begum] was the victim of conjugal violence when she claimed asylum in Canada in 1999, though she withheld important information regarding her relation with Mr. Islam and she may have exaggerated the facts of her story.” The RPD also noted that the Initial Decision had identified the great difficulty women face seeking protection in Bangladesh “due to the police’s negative attitude and corruption, as well as the reluctance of the majority of women [...] to report such a [*sic*] violence.” (Emphasis added.)

[12] Based on the foregoing, the RPD concluded that there was sufficient evidence remaining that was untainted by Ms. Begum’s misrepresentations and withholding of information, to establish a serious possibility that she was physically and mentally persecuted by Mr. Islam in 1999, when she claimed refugee protection in this country.

#### IV. Relevant Legislation

[13] The legislation that is relevant for the purposes of this Application is set forth in s. 109 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act], which provides as follows:

##### **Applications to Vacate**

###### *Vacation of refugee protection*

109(1) The Refugee Protection Division may, on application by the Minister, vacate a decision to allow a claim for refugee protection, if it finds that the decision was obtained as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter.

###### *Rejection of application*

(2) The Refugee Protection Division may reject the application if it is satisfied that other sufficient evidence was considered at the time of the first determination to justify refugee protection.

###### *Allowance of application*

(3) If the application is allowed, the claim of the person is deemed to be rejected and the decision that led to the conferral of refugee protection is nullified.

##### **Annulation par la Section de la protection des réfugiés**

###### *Demande d'annulation*

109 (1) La Section de la protection des réfugiés peut, sur demande du ministre, annuler la décision ayant accueilli la demande d'asile résultant, directement ou indirectement, de présentations erronées sur un fait important quant à un objet pertinent, ou de réticence sur ce fait.

###### *Rejet de la demande*

(2) Elle peut rejeter la demande si elle estime qu'il reste suffisamment d'éléments de preuve, parmi ceux pris en compte lors de la décision initiale, pour justifier l'asile.

###### *Effet de la décision*

(3) La décision portant annulation est assimilée au rejet de la demande d'asile, la décision initiale étant dès lors nulle.

**V. Issues**

[14] In essence, the two issues raised by the Minister are as follows:

- i. Was it unreasonable for the RPD to conclude that there was sufficient untainted evidence remaining from the initial hearing to support a positive determination on her refugee claim?
- ii. Did the RPD base its Decision on evidence that was not before the original panel, and if so, did that render the Decision unreasonable?

**VI. Standard of Review**

[15] It is common ground between the parties that the two issues raised by the Minister are reviewable on a standard of reasonableness: *Canada (Public Safety and Emergency Preparedness) v Norouzi*, 2015 FC 1396, at para 29.

[16] In assessing whether a decision is reasonable, the focus of the Court is generally upon whether the decision is appropriately intelligible, transparent and justified. In this regard, the Court's task is to assess whether it is able to understand why the decision was made and to ascertain whether the decision falls "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47 [*Dunsmuir*]; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, at para 16.

**VII. Analysis**

A. *Was it unreasonable for the RPD to conclude that there was sufficient untainted evidence remaining from the initial hearing to support a positive determination on her refugee claim?*

[17] The Minister submits that the RPD's conclusion on this issue is inconsistent, illogical, unintelligible and therefore unreasonable. I agree.

[18] The Minister's position with respect to this issue is based largely on the inconsistency between the findings made by the RPD at paragraphs 50 and 59 of its Decision, respectively. In those passages of its Decision, the RPD stated as follows:

[50] If the Respondent was being persecuted and mistreated by Mr. Islam since their first year of marriage, 1977 as she claimed; that she filed for divorce because of the alleged abuses in 1997 and left her home in 1999 to escape the violence from Mr. Islam, they would not have been living together in Montreal in 2002, because it was based on her fear of Mr. Islam that she had claimed asylum in Canada in 1999.

[...]

[59] The Respondent testified that she suffered abuses at the hands of Mr. Islam. But even if the Tribunal found that her story contained several contradictions and she may have exaggerated; it still found that there was sufficient evidence remaining to establish a serious possibility that she was physically and mentally persecuted by Mr. Islam when she claimed asylum in Canada in 1999. The fact that the evidence shows that they were living together in Montreal did not mean that she was not a victim of conjugal violence in her country.

(Emphasis added.)

[19] I agree with the Minister's position that the inconsistency between the findings made at paragraphs 50 and 59, respectively, is so significant as to render the Decision unintelligible.

[20] At paragraph 50, the RPD appeared to clearly reject Ms. Begum's allegation that she had been persecuted and mistreated by Mr. Islam. It did so based on its finding that they were living together in 2002. However, at paragraph 59, it contradicted itself when it stated that the fact the couple was living together in Montreal did not mean that Ms. Begum was not a victim of *conjugal* violence in her country. Given the importance of the latter finding to the RPD's ultimate decision to reject the Minister's application to vacate, I consider that this inconsistency renders the Decision unreasonable. My conclusion on this point is reinforced by the fact that, at paragraph 48 of the Decision, the RPD found that the couple "tried fraudulently to allege that they were estranged to secure their separate asylum claims" (emphasis added).

[21] This is a sufficient basis upon which to grant this Application. However, for the benefit of the panel that will deal with this matter on redetermination, I will proceed to address some of the other submissions made by the parties.

[22] The RPD's ultimate conclusion that sufficient evidence, untainted by Ms. Begum's misrepresentations and withholding of facts, remained to justify its Initial Decision to grant her refugee protection appears to have been based on two findings. The Minister asserts that it was unreasonable for the RPD to reach that ultimate conclusion based on those two findings.

[23] I agree.



[24] The first of those findings was made at paragraph 60 of the Decision, where the RPD stated as follows:

[60] According to the evidence, Mr. Choudhury's asylum claim was rejected and the Canadian authorities have not been aware of his whereabouts since 2009. [Ms. Begum] testified that she had been divorced from Mr. Islam since 2001 and provided a copy of the affidavit of her divorce. The fact that she divorced Mr. Islam in May 2001, less than two years after she arrived in Canada, can certainly infer that there were serious problems in her marriage contemporaneous with her 1999 asylum claim as she alleged. (Emphasis added.)

[25] The second finding that the RPD relied upon in reaching its ultimate conclusion was set forth in paragraph 61 of the Decision, where the RPD stated that the Initial Decision had stated the following:

[...] The situation of women despite serious efforts deployed by the Government [of Bangladesh] in order to ensure better protection for women, they still have great difficulty seeking protection due to the police attitude and corruption and as well the reluctance of the majority of women and their families to report such violence. (Emphasis added.)

[26] I pause to observe that the foregoing passage was not in fact a quote from the Initial Decision, but rather a paraphrasing of the penultimate passage in the Initial Decision. In any event, the violence in question was violence at the hands of "their husbands." In essence, the Initial Decision found that victims of domestic violence in Bangladesh could not avail themselves of adequate state protection.

[27] Based on the two findings described at paragraphs 24 and 25 above, the RPD concluded that there was "clear evidence that [Ms. Begum] was the victim of conjugal violence when she

claimed asylum in 1999, though she withheld important information regarding her relation with Mr. Islam and she may have exaggerated the facts of her story.”

[28] I agree with the Minister that this conclusion was unreasonable. In brief, it was unreasonable for the RPD to conclude, based on the two findings described at paragraphs 24 and 25 above, that Ms. Begum had established “a serious possibility that she was physically and mentally persecuted by Mr. Islam when she claimed asylum in Canada in 1999” and that she had a well-founded fear of future persecution in Bangladesh at that time.

[29] The fact that there may have been serious problems in their marriage is not, by itself, evidence that Ms. Begum *was* the victim of *conjugal* violence, as found by the RPD. Moreover, the fact that victims of *conjugal* violence in Bangladesh may not be able to avail themselves of adequate state protection is not, by itself, evidence that *Ms. Begum* may not be able to avail herself of such protection. The RPD must first find that there was sufficient evidence, untainted by Ms. Begum’s misrepresentations and omissions, to demonstrate that *she* faced a serious possibility of a forward-looking risk of *conjugal* violence. There was no reference to any such evidence in the Decision.

[30] More importantly, the fact that Ms. Begum divorced Mr. Islam, together with the fact that victims of *conjugal* violence in Bangladesh may not be able to avail themselves of adequate state protection, is certainly not “clear evidence that [Ms. Begum] was the victim of *conjugal* violence when she claimed asylum in 1999,” as the RPD concluded at paragraph 62 of its Decision.

[31] In my view, that conclusion was not sufficiently or even rationally supported by the two facts identified by the RPD. Stated differently, the reasoning offered by the RPD to support its conclusion was not sufficiently intelligible or justified to fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law: *Dunsmuir*, above.

[32] Ms. Begum maintains that there was indeed sufficient evidence before the RPD in 2001, untainted by her misrepresentations and withholding of facts, to provide a basis for the RPD's Decision. However, apart from the evidence discussed above, the only additional evidence identified by Ms. Begum related to her alleged rape in 1976, her alleged treatment by Mr. Islam and his family (which was tainted by her misrepresentations) and country documentation pertaining to "the situation of women in Bangladesh, particularly concerning domestic violence and state protection in such cases" (emphasis added). For the same reasons that I have provided above, this evidence did not provide a reasonable basis for the RPD's (2018) conclusion that there was sufficient remaining evidence from its initial hearing to grant Ms. Begum refugee protection in 2001.

[33] Ms. Begum attempts to buttress her case by noting that she claimed refugee protection as a member of a particular social group, namely, women victims of *domestic* violence in Bangladesh. However, this does not assist her, as she has not identified any untainted evidence that *she* either was a victim of such violence in Bangladesh, or that *she* faced a serious possibility of such violence, should she be required to return to that country. Indeed, the narrative she provided in support of her refugee claim in 1999 was entirely based on her fear of violence at the

hands of her husband, rather than a fear of harm at the hands of others in her home country. It was that fear which was the sole focus of the RPD's Initial Decision.

B. *Did the RPD base the Decision on evidence that was not before the original panel, and if so, did that render the Decision unreasonable?*

[34] The Minister submits that in reaching the Decision, the RPD relied on evidence – a divorce certificate – that post-dated the Initial Decision. In this regard, the Minister acknowledges that evidence post-dating the Initial Decision may be considered for the purposes of determining whether that decision was obtained as a result of misrepresentations or the withholding of material facts, as contemplated by subs. 109(1) of the Act. However, the Minister maintains that such evidence may not be considered for the purposes of determining, under subs. 109(2) of the Act, whether sufficient evidence to justify refugee protection, untainted by the misrepresentation(s) etc., was available at the time of the initial hearing.

[35] In response, Ms. Begum submits that the RPD simply considered the divorce certificate for two purposes at the subs. 109(1) stage of its assessment: First, in dealing with the Minister's position that the marriage documents submitted in connection with the initial hearing were fraudulent; and second, in concluding that evidence before the initial panel pertaining to pending divorce proceedings remained untainted.

[36] I disagree.

[37] By way of initial observation, it bears underscoring that the RPD's analysis fell well short of the standard that was required: *Canada (Minister of Citizenship and Immigration) v Wahab*, 2006 FC 1554, at paras 29-31 and 43 [*Wahab*]. Most importantly, the RPD failed to conclude the assessment contemplated under s. 109(1) of the Act by clearly stating what evidence from its initial hearing was tainted by the misrepresentations or withholding of material facts, and what evidence remained for the purposes of the assessment that it was required to conduct under subs. 109(2).

[38] The evidence with respect to Ms. Begum's divorce from Mr. Islam was briefly discussed at paragraphs 57 and 60 of the RPD's Decision. In the former paragraph, the RPD simply observed that Ms. Begum had submitted a divorce certificate as evidence, and that the divorce and marriage certificates provided by her allegedly former husband had been found to be fraudulent. At paragraph 60, which is quoted in full at paragraph 24 above, the RPD inferred from the alleged divorce "that there were serious problems in [Ms. Begum's] marriage contemporaneous with her 1999 asylum claim as she alleged."

[39] Although it is difficult to ascertain precisely when the RPD turned to the subs. 109(2) stage of its assessment, it would appear that it was in fact conducting that part of its assessment by the time it reached paragraph 60 of its Decision. Indeed, the contents of the few subsequent paragraphs that remained in the Decision support this interpretation.

[40] On this reading of the Decision, the RPD erred by considering the evidence of Ms. Begum's alleged divorce from Mr. Islam, at the subs. 109(2) stage of its assessment. At that

stage of the RPD's analysis, it cannot consider new evidence produced during an application to vacate a prior decision to grant refugee protection: *Wahab*, above, at para 29(e); *Canada (Public Safety and Emergency Preparedness) v Gunasingam*, 2008 FC 181, at para 16. Given the significant role that this appears to have played in the RPD's overall Decision, this error rendered the Decision unreasonable.

[41] In any event, the RPD's analysis is so unclear, in terms of whether the evidence of the alleged divorce was considered at the subs. 109(1) stage of the analysis or the subs. 109(2) stage of the analysis, as to be insufficiently justified, transparent and intelligible. This is a further reason why the Decision is unreasonable.

[42] I will simply add in passing that the Decision did not address an important discrepancy in respect of the divorce certificate discussed above. In brief, the certificate provided by Ms. Begum was issued in Bangladesh, whereas the evidence of a pending divorce that was before the RPD in 2001 was in respect of a proceeding in Canada.

## **VIII. Conclusion**

[43] For the reasons set forth above, I conclude that the Decision was unreasonable on three separate grounds. First, the inconsistency between the findings made at paragraphs 50 and 59 of the Decision, respectively, is so significant as to render the Decision unintelligible. Second, it was unreasonable for the RPD to conclude, based on the two findings described at paragraphs 24 and 25 above, that Ms. Begum had established "a serious possibility that she was physically and mentally persecuted by Mr. Islam when she claimed asylum in Canada in 1999" and that she had

a well-founded fear of future persecution in Bangladesh at that time. Third, the Decision was unreasonable because the RPD either erred in considering, at the subs. 109(2) stage of its analysis, the evidence of Ms. Begum's alleged divorce in May 2001; or its Decision was too unclear as to the stage of its analysis at which it considered that evidence.

[44] Accordingly, the Decision will be set aside and remitted to another panel of the RPD for reconsideration. At the end of the hearing of this application, counsel to each of the parties stated that the facts and issues raised by this application do not give rise to a serious question of general importance, as contemplated by paragraph 74(d) of the Act. I agree. Therefore, no question for appeal will be certified.

**JUDGMENT in IMM-3034-18**

**THIS COURT'S JUDGMENT** is that:

1. This application is granted.
2. There is no serious question of general importance to be certified pursuant to paragraph 74(d) of the Act.

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"Paul S. Crampton"  
Chief Justice



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

**DOCKET:** IMM-3034-18

**STYLE OF CAUSE:** MINISTER OF PUBLIC SAFETY AND EMERGENCY  
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