Federal Court  Cour fédérale

Date: 20200127

Docket: IMM-2484-19

Citation: 2020 FC 138

Ottawa, Ontario, January 27, 2020

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

MD MASUDUR RAHMAN
JAHANARA BEGUM
MUNSIF RAHMAN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Case

[1] The Applicants are seeking the judicial review of a Refugee Appeal Division [RAD] decision dated March 28, 2019, that ruled that the Applicants are neither Convention refugees under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], nor persons in need of protection under section 97 of the IRPA.

[2] The RAD determined that the Applicants' claim for refugee protection was insufficiently established, and that the Applicants have a viable Internal Flight Alternative [IFA]. In the present application for judicial review, the Applicants argue that (i) the RAD's conclusions on credibility are based on unreasonable findings of plausibility, that evidence has been ignored, and that the wrong burden of proof has been applied, and (ii) that these credibility findings led the RAD to an erroneous analysis on the availability of an IFA.

[3] For the reasons that follow, I conclude that the RAD's decision was not unreasonable. I, therefore, dismiss the application for judicial review.

II. Facts and Proceedings

[4] The Applicants are citizens of Bangladesh. They are a family composed of the following members: MD Masudur Rahman [the Principal Applicant], his wife, Jahanara Begum [the Female Applicant], their son and daughter. The Principal Applicant is a businessperson in the IT sector.

[5] In fall 2016, the Principal Applicant, his wife, and child applied for a visa to visit his wife's family in Canada during the Christmas season. The visa application was accepted.

[6] On January 11, 2017, the Principal Applicant's wife and daughter were kidnapped and held for ransom in Dhaka, Bangladesh. The kidnappers demanded 1 million takas (Can$15,000). The Principal Applicant then received a threatening letter and two threatening phone calls the same day. The ransom was paid that evening, and his wife and daughter were released. On the

next day, the Principal Applicant filed a complaint, entered in the General Diary of a local police station.

[7] The Principal Applicant believes that the kidnappers were members of the police or security forces. While the Principal Applicant reported the kidnapping to the police, no action was taken.

[8] Following the incident, the Applicants made plans to leave Bangladesh. On January 17, 2017, the Applicants booked their flights. On January 26, 2017, the Principal Applicant received U.S. visas for the family. On the same day, the Applicants obtained new passports and gathered money for travel. The Applicants left Bangladesh on February 21, 2017.

[9] After arriving in Canada, the Applicants filed their basis of claim [BOC] forms on April 9, 2017. The Applicants recounted the kidnapping incident and stated that they feared that they "will continue to be targeted by the kidnappers" or "physical[ly] harmed" or killed by the kidnappers. The Applicants filed the balance of their claims for refugee protection in May 2017.

[10] On June 27, 2017, the Applicants amended their narratives to mention a threatening incident in Bangladesh. It would seem that in May 2017, while the Applicants were in Canada, an unidentified man approached the Principal Applicant's sister-in-law in Dhaka and asked her about the whereabouts of her family. During this incident, the sister-in-law also saw three other men in a van.

[11] At the RPD hearing, the Applicants stated that they believed, since they were able to pay the ransom, the kidnappers would target them in the future for extortion.

[12] The RPD dismissed the Applicants' claims for refugee protection.

[13] First, the RPD determined that the Applicants had not established that they faced the possibility of persecution for a Convention ground pursuant to section 96 of the IRPA. The RPD further found that the Applicants had not established that they would personally be subject to the risks set out in section 97 of the IRPA because the Applicants had access to a viable IFA that protected them from the agents of persecution.

[14] In its analysis, the RPD accepted as credible the Applicants' evidence with respect to the kidnapping incident and the ransom payment, however, the RPD did not believe the inference that the Applicants were making that the agents of persecution were members of the Bengali security forces rather than mere common criminals. As a result, while the RPD concluded that although the Applicants might face a risk to their lives or a risk of cruel or unusual treatment, it applied the two-prong IFA test and concluded that the Applicants had a viable IFA in Chittagong, Bangladesh.

[15] The Applicants appealed the RPD decision to the RAD.

III. Decision Under Review

[16] Before the RAD, the Applicants sought to enter a letter from the Principal Applicant's friend dated July 24, 2018, and a letter from the Principal Applicant's sister-in-law dated July 24, 2018, into evidence. The RAD refused to accept the new evidence because they merely contained information that was reasonably available for presentation before the RPD prior to the rejection of the claim. As such, the request for an oral hearing before the RAD was also denied. The Applicants have not challenged that decision before me.

[17] On March 28, 2019, the RAD dismissed the appeal. The RAD confirmed the decision of the RPD as regards section 96 of the IRPA and concluded that the Applicants had not established a nexus between the events they had described and the refugee protection grounds.

[18] As to whether they are persons in need of protection pursuant to section 97 of the IRPA, the RAD concluded that there was insufficient probative evidence to find that the kidnappers were members of the police or the security forces, and on this basis, confirmed that there existed a viable IFA in Chittagong.

IV. Issues

[19] The case at bar raises two issues:

(1) Did the RAD commit a reviewable error in its finding as to the likely identity of the kidnappers?

(2) If in the affirmative, did the error taint the RAD's analysis of the IFA?

V. Standard of Review

[20] In *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the Supreme Court recognized that reasonableness is the presumptive standard of review of the merits of an administrative decision. This presumption can be rebutted in the presence of (1) a clear legislative intention to prescribe a different standard of review, or (2) the types of questions in which the rule of law requires the application of the standard of correctness, such as constitutional question, questions of law of central importance to the legal system, and questions regarding the jurisdictional boundaries between administrative bodies (*Vavilov* at paras 33-64).

[21] The Applicants argue that the RAD's factual findings are reviewable on the standard of reasonableness, while the RAD's decision as regards the applicable standard of proof is reviewable on the standard of correctness because it relates to a general legal question that lies outside of the statutory expertise of the RAD.

[22] I disagree for two reasons. First, the RAD's treatment of the burden of proof issue does not engage with the type of rare circumstances that warrant correctness review. The RAD's choice of burden of proof falls within the scope of its delegated authority and is unlikely to produce ripple effects outside of the RAD context (*Vavilov* at paras 58-62). Second, the Applicants' framing of the issues relies on a contrived distinction between the RAD's factual findings and the manner in which the RAD arrived at those findings. Such a distinction is inconsistent with the *Vavilov* approach that urges reviewing courts to evaluate the decision-maker's chain of analysis leading to the outcome and the outcome itself, and ask whether the decision is acceptable (*Vavilov* at paras 83, 85).

[23] Consequently, the RAD decision must be examined according to a reasonableness standard (*Vavilov* at paras 73-143). The mere fact that a decision is "of wider public concern" does not automatically imply correctness review (*Vavilov* at para 61).

VI. Discussion

A. *Did the RAD commit a reviewable error in its finding as to the likely identity of the kidnappers?*

[24] The Applicants submit that the primary issue in this case is the RAD's credibility findings. As a preliminary matter, I should make it clear that I do not agree with the Applicants that this case turns on credibility. They submit that credibility findings are critical to the RAD's subsequent analysis of the nexus between the persecution alleged faced by the Applicants and the Convention ground under section 96 of the IRPA.

[25] For my part, I do not believe that credibility enters into the equation in this case.

[26] There is a distinction between the notion of credibility and that of probative value. Probative value "has to do with the capacity of the evidence to establish the fact of which it is offered in proof" (*R v MT*, 2012 ONCA 511 (CanLII) at para 43).

[27] As Justice Grammond explained in *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 [*Magonza*]), the notion of credibility refers to the level of "trust" that is placed on a source of information, while the notion of probative value refers to the "strength" of the

"inferences" (at paras 16-26). It is important to distinguish these concepts because "the criteria used to assess credibility and probative value are fundamentally different" (*Magonza* at para 24).

[28] As confirmed by both parties, the identity of the kidnappers was the central issue in the RAD's decision. The RAD stated that it "finds that the principal claimant and his wife generally testified in a credible manner." However, the RAD added:

> While the panel finds that these claimants were in general credible, this does not mean that the panel accepts any of the inferences that the claimants may have drawn from this experience in Bangladesh. For instance, as discussed below, the panel finds that that claimants has [s*ic*] proven on a balance of probabilities that members of the security forces were involved with the kidnapping.

[29] Although they could not identify the kidnappers, the Applicants argued that there was evidence from which they could reasonably infer that the kidnapping had been conducted by members of the police or security forces in Bangladesh.

[30] The RAD determined that the Applicants had simply failed to establish the identity of the kidnappers on the balance of probabilities. In addition, the RAD also found implausible the assertion of the Applicants that they would go to the police if they also believed that the police or security forces were behind the kidnapping.

[31] In its decision, the RAD did not impugn the credibility of the Applicants as to the reality of the kidnapping, nor as regards any evidence put forward by the Applicants as to the identity of the kidnappers. As was the case with the RPD, the RAD found that the alleged link between the description of the kidnappers and their *modus operandi*, on the one hand, and the fact that the

kidnappers were members of the police or security forces, on the other hand, was mere speculation on the part of the Applicants.

[32] I do not see this as an issue of credibility, but rather an issue of the probative value or sufficiency of evidence, *i.e*., whether the evidence supports, or not, on the balance of probabilities, the inferences the Applicants wish to draw from such evidence.

[33] As to the issue of the implausibility of the Applicants going to the police to report the incident, it only would have become a credibility issue if the RPD and the RAD had not accepted that the Principal Applicant actually went to the police to file a report on the kidnapping. As I will explain below, I am rather unclear as to what the RPD and the RAD actually determined on this issue.

(1) The RAD's finding regarding the evidence pertaining to the identification of the kidnappers

[34] As a general principle, triers of fact are in a better position to draw inferences from the evidence than a reviewing court (*Giron v Canada (Minister of Employment and Immigration)* (1992), FCJ No 481 (FCA)).

[35] The Applicants argued that there was clear evidence from which it could be reasonably inferred that the kidnapping was conducted by members of the police or security forces in Bangladesh, namely:

- the kidnappers had crew cuts;

- the van involved in the kidnapping did not have a licence plate;
- the kidnappers had a calm, worry free demeanour;
- the Applicant's received two phone calls from a number listed as "00000"; and
- the documentary evidence on file providing evidence of kidnappings conducted by security forces in Bangladesh.

[36] The Applicants submit that the RAD rejected, without valid reason, the Principal Applicant's testimony that the Bengali security forces were involved in kidnapping his wife and daughter. According to the Applicants, it is the RAD's determination on the identity of kidnappers, and not the inference drawn by the Applicants, which is merely speculative, as it ignores corroborative documentary evidence on the widespread belief that Bengali security forces carry out kidnappings for ransom in Bangladesh.

[37] The Applicants submit that the ease with which the RAD cast aside the evidence shows that it applied a higher standard of proof than that of the balance of probabilities, a standard tantamount to proof beyond a reasonable doubt.

[38] The Respondent submits that the Applicants failed to establish that the agents of persecution were police officers or members of the security forces, plain and simple. The Respondent also asserts that the Applicants have not shown that the RAD applied an incorrect standard of proof or that any of the RAD's findings were unreasonable.

[39] What is clear is that the Applicants could not identify in any positive fashion the identity of the assailants, nor show that they were, in fact, members of the police or security forces. They sought to infer those conclusions from other elements of proof.

[40] After reviewing the record, the RAD confirmed the RPD's determination that the Applicants failed to establish that the kidnappers were police officers or members of the security forces. In making this determination, the RAD reviewed each element of the Applicants' claim.

(a) *Kidnappers' haircuts*

[41] First, regarding the kidnappers' haircuts, the RAD "agrees with the RPD that there is no corroborating evidence on the record to indicate that Bangladeshi police or security forces wear their hair in any particular style or cut" [emphasis added.]

[42] The Applicants argue that, by requiring corroborating evidence, the RAD was actually imposing a criminal standard of evidence, that of beyond a reasonable doubt, upon the Applicant.

[43] I agree that the RAD should not impose a more onerous burden of proof on an applicant than what the law requires *(Alam v Canada (Minister of Citizenship and Immigration)*, 2005 FC 4 at paras 5-11 [*Alam*]). However, this is not what the RAD has done. The RAD was simply stating a fact that there was no corroborating evidence regarding the inference that the Applicants were asking it to make. There is nothing in the record to suggest that the RAD refused to make this inference solely on account of the paucity of independent corroborating evidence on this

issue, nor that they did not accept the documentary evidence that provides examples of Bengali security forces carrying out kidnappings for ransom.

[44] I see nothing unreasonable in that determination of the RAD.

(b) *Absence of a licence plate*

[45] Second, the RAD agreed with the RPD as to the absence of a licence on the van, and stated that "[i]n regard to the lack of a licence plate on the van used by the kidnappers, the RAD also agrees with the RPD that this did not mean that it was a vehicle belonging to police or security force members." The RAD stated that it was not aware of any country condition documentary evidence regarding the lack of a licence plate being associated with a vehicle belonging to police or security forces. As such, it refused to accept the inference propounded by the Applicants.

[46] Again, I see nothing unreasonable about that finding.

(c) *Kidnappers' demeanour*

[47] Third, the RAD also concluded that it was speculative to infer from the kidnappers' demeanour that they were agents of the state. It stated as follows:

> The RAD has considered the Appellants' allegations that the kidnappers appeared calm, indicating that they were members of the police or security forces. The RAD finds that conclusion to be very speculative as there are many reasons why individuals can appear calm, in any given situation.

[48] This determination is not unreasonable, especially considering the inherent difficulties or "hallmark flaws" involved in inferring someone's mental state or status in society from one's attitude or demeanour in conducting a criminal activity (*R v White*, 2011 SCC 13 at para 75; Sidney N. Lederman, Alan W. Bryant and Michelle K. Fuerst in Sopinka, Lederman & Bryant: *The Law of Evidence in Canada*, 5th ed (Toronto: LexisNexis Canada, 2018) at 2.33-2.35).

(d) *00000" Phone Number*

[49] Fourth, the RAD did not see a link between the "00000" phone number identification and agents of the state. It stated at paragraph 21 of its decision:

> In regard to the kidnappers' telephone number only containing five zeros, the RAD notes that the Appellants have provided no country condition documentary evidence to support their allegation that this sort of phone number could not be used by ordinary citizens. It is unclear how the Appellants would know or how they would have acquired this information. The RAD agrees with the RPD that the telephone number only showing five zeros indicates that the telephone number was somehow being masked, but not that it was being done by the police or security forces.

[50] Considering the absence of evidence regarding the use of masked telephone identification numbers by police or security forces, or that this type of telephone identification could not be used by normal citizens, it is not unreasonable to conclude that a masked number does not establish, on the balance of probabilities, that the kidnappers were agents of the state.

(e) *Documentary Evidence*

[51] Fifth, the RAD summarized the RPD's determination on the documentary evidence of kidnappings conducted by security forces in Bangladesh. As regards the National Documentation Package for Bangladesh, the RPD stated at paragraph 15:

> The RPD considered the documentary evidence stating that security forces in Bangladesh engage in kidnapping and noted that it is stated there is an alarming rise in the number of cases of enforced disappearances in the country, some involving law enforcement. The RPD found, however, that it was not only the security forces that were involved in kidnappings in Bangladesh and that there was no persuasive evidence before the RPD indicating that the security forces were involved in the kidnapping of the associate Appellant and her daughter.

[52] The documentary evidence confirms that the police, security forces and other groups in Bangladesh often engage in kidnapping and extortion. Many of the kidnappings involve children and business people.

[53] The RAD did not mention this evidence anywhere else in its decision, despite the fact that the Applicants brought up this documentary evidence on appeal before the RAD.

[54] The Applicants argue that while the RAD may come to a conclusion similar to that of the RPD, the RAD's reasons to dismiss this evidence should have been elucidated in its decision. In fact, they argue that the failure to analyze this evidence is unreasonable because it ignores important cultural circumstances that shed light on the country conditions that inform the Applicants' asylum claims (*Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 (CanLII) at paras 7-9 [*Valtchev*]; *Gonzalez v Canada (Minister of Citizenship and*

Immigration), [1999] FCJ No 805 (TD); *Henin v Canada (Minister of Citizenship and Immigration)*, 2005 FC 766 at para 20).

[55] I do not agree with the Applicants. Indeed, the RAD did not specifically refer to the documentary evidence other than reproduce the findings of the RPD; however, the RAD did not make a finding that was inconsistent with such documentation. Neither the RAD, nor the RPD, contested the fact that security forces in Bangladesh, at times, engage in kidnapping for ransom. What the RAD declined to do, however, was to make a finding that such documentation was sufficient to justify the inference that the Applicants were propounding, *i.e.*, that the kidnappers were members of the police or security forces.

[56] As to the consideration of the evidence as a whole, the Applicants argue that the RAD applied the wrong standard of proof, and by raising doubts as to whether the kidnappers were members of the police or security forces in the face of the Applicants' evidence, the RAD was imposing a requirement of "beyond a reasonable doubt" as the standard of proof. As the RAD applied the wrong test to the assessment of their evidence, the decision must be set aside and the matter returned to the RAD for redetermination (*Ramanathy v Canada (Minister of Citizenship and Immigration)*, 2014 FC 511).

[57] It is clear that individuals seeking refugee protection have the burden of establishing facts on which they rely according to the civil standard of proof, that of the balance of probability. As regards the risk of persecution, all that is required under section 96 of the IRPA is that an applicant proves that there is a "reasonable chance," "more than a mere possibility" or "good

grounds for believing" that they will face persecution (*Alam* at para 8; *Cortez v Canada (Minister of Employment and Immigration)* (1993), FCJ No 882 (TD) [*Cortez*]; *Yip v Canada (Minister of Employment and Immigration)* (1993), 70 FTR 175 (TD).

[58] However, I cannot see where the RAD has, in fact, followed such a higher standard.

[59] The Applicants submit that there was no evidence to counter the assertion of the Applicants that the assailants were members of the police or security forces, and thus the benefit of the doubt must go to the Applicants. They cite the decision of this Court in *Cortez* as supporting that proposition.

[60] *Cortez* stands for the proposition that where a person seeking refugee protection (in that case under section 96 of the IRPA) claims to have been assaulted and threatened by members of the police, the decision of the Refugee Board not to accept that assertion on the identity of the assailants must be predicated on more than a mere doubt on its part.

[61] In *Cortez*, the claimant asserted that he had been beaten and received death threats from agents of the Chilean police. The Refugee Board stated that the documentary evidence confirmed acts of mistreatment and torture on the part of the Chilean police; however, most of the victims were members of armed opposition groups. The claimant was not a member of an armed opposition group. The Board, therefore, expressed doubts that the claimant's assailants were members of the police.

[62] In that case, the documentation did not specifically exclude the group of which the claimant was a member from being targeted by the police, and the Court found that mere expressions of doubt by the Board, without a finding on the issue of the identity of the assailants, placed an unreasonable burden on the claimant to provide proof on this issue beyond a reasonable doubt.

[63] In the instant case, the RAD did not express doubt, although it could have. However, the fact that they addressed the issue of the identification of the kidnappers in terms of sufficiency of evidence rather than simply expressing doubt as to the identity is a distinction without a difference.

[64] More importantly, I believe, it is not clear whether, in *Cortez,* the claimant asserted that his assailants were members of the police because he positively identified them as such, or whether, as is the case here, he was simply drawing an inference from other extrinsic, credible evidence.

[65] Mister Justice Noël in *Cortez* makes it clear that, in these circumstances, the Applicants' testimony must be taken as credible; and it was in this case. All of the evidence submitted by the Applicants, whether as regards the incident of the kidnapping, the demeanour and physical appearance of the kidnappers, and the manner in which they operated, were all accepted by the RAD.

[66] Where the RAD parted ways with the Applicants was when the time came to make the inference, from the evidence, that the kidnappers were, in fact, members of the police or security forces. It may well be that other decision-makers might have accepted that inference, but I cannot say that, in not making that leap between the evidence and the inference that the Applicants were trying to make, the RAD acted in a way that was unreasonable.

[67] The Applicants cite the *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of the Refugees* (HCR/IP/4/Eng/REV.1/Reedited, Geneva, January 1992, UNHCR 1979). Paragraphs 196 and 197 states:

> 196. It is a general legal principle that the burden of proof lies on the person submitting a claim. Often, however, an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents. Thus, while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application. Even such independent research may not, however, always be successful and there may also be statements that are not susceptible of proof. In such cases, if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt.
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> 197. The requirement of evidence should thus not be too strictly applied in view of the difficulty of proof inherent in the special situation in which an applicant for refugee status finds himself. Allowance for such possible lack of evidence does not, however, mean that unsupported statements must necessarily be accepted as true if they are inconsistent with the general account put forward by the applicant.
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> [Emphasis added.]

[68] I accept that, barring good reasons to the contrary, applicants are to be given the benefit of the doubt as regards the evidence. However, there is a difference between evidence based upon the direct knowledge of an applicant, and inferences that an applicant seeks to draw from such evidence. There is a general presumption that the refugee claimant's allegations are true unless there are reasons to doubt their truthfulness (*Maldonado v Canada (Minister of Employment and Immigration)* (1979), [1980] 2 FC 302 (FCA)).

[69] However, this presumption pertains to credibility (*i.e.*, truthfulness), not probative value. As Mister Justice Grammond explains in *Magonza*, the rules relating to credibility and probative value are different. It is for that reason that courts may believe the truthfulness of the claimant's claims or testimony, yet determine that the claimant failed to provide sufficient evidence to support the inferences he or she seeks to draw from the evidence.

(f) *Was the RAD's implausibility finding reasonable*

[70] I conclude that the determination of implausibility on the part of the RAD was unreasonable; however, that is not determinative of the key issue in this matter.

[71] As a general rule, a reviewing court should decline to intervene with respect to plausibility determinations, provided that the determination is supported by the evidence and does not ignore relevant pieces of evidence (*Ismaeli v Canada (Minister of Citizenship and Immigration)*, [1995] FCJ No 573; *Vavilov* at para 83).

[72] In *Valtchev*, Mister Justice Muldoon stated at paragraphs 7 and 8:

> [7] A tribunal may make adverse findings of credibility based on the implausibility of an applicant's story provided the inferences drawn can be reasonably said to exist. However, plausibility findings should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant. A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu. [see L. Waldman, *Immigration Law and Practice* (Markham, ON: Butterworths, 1992) at 8.22]
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> [8] In *Leung* v. *M.E.I.* (1994), 81 F.T.R. 303 (T.D.), Associate Chief Justice Jerome stated at page 307:
>
> > [14] . . . Nevertheless, the Board is under a very clear duty to justify its credibility findings with specific and clear reference to the evidence.
> >
> > [15] This duty becomes particularly important in cases such as this one where the Board has based its non-credibility finding on perceived "implausibilities" in the claimants' stories rather than on internal inconsistencies and contradictions in their narratives or their demeanour while testifying. Findings of implausibility are inherently subjective assessments which are largely dependant on the individual Board member's perceptions of what constitutes rational behaviour. The appropriateness of a particular finding can therefore only be assessed if the Board's decision clearly identifies all of the facts which form the basis for their conclusions. The Board will therefore err when it fails to refer to relevant evidence which could potentially refute their conclusions of implausibility. . .
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> [Emphasis added.]

[73] According to the Applicants, the RAD’s credibility finding rests on its belief that it was implausible for the Principal Applicant to have made a police complaint under the circumstances.

They argue that this implausibility determination is too cursory and ignores the Applicants' explanation that the delay in seeking police help resulted from their belief that the police were involved in the kidnapping incident. The Applicants also argue that the RAD did not consider a letter written by the Principal Applicant's friend that corroborates this explanation.

[74] The Respondent submits that the Applicant's 'implausibility' argument does not raise an arguable issue because the RAD's determination stems from common sense. To the Respondent, it is common sense that one would not file a police complaint following the wife and daughter's release if the kidnappers warned against doing so if the Principal Applicant believed that the police were responsible for the kidnapping.

[75] This issue only becomes one of credibility if one is to read the decisions of the RPD and the RAD as not having accepted that the Principal Applicant actually went, as he stated he did, to the police station on the day following the kidnapping to file a report on the incident.

[76] The evidence is that Principal Applicant received the ransom note at 5:00 pm on January 11, 2017. The ransom amount was paid by 8:00 pm that evening, and his family was freed. The Principal Applicant did not go to the police upon receiving the ransom note, but waited until the next day, after his family was freed, to go to the police.

[77] As to why he did not contact the police immediately upon receiving the ransom note, the Principal Applicant stated in his BOC that "the police in Bangladesh tend to be inept and corrupt."

[78] When asked why he went to the police the next day, the Principal Applicant replied that "he went to get protection, to escape from this abduction in the future," consistently with the BOC which mentions that the Principal Applicant filed the police report the next day because he hoped this would "help with protection if the kidnappers were to target us again in the future."

[79] It is unclear from its decision whether the RPD actually accepted, or not, the fact that the Principal Applicant actually went to the police to report the incident. After repeating the Principal Applicant's comments that the police tend to be inept and corrupt, the RPD stated at paragraph 36 of its decision:

> [w]hen he went to the police, the principal claimant's view of the police had not changed. Hence, it is illogical that he went to the police just one (1) day after the incident. If he or his family members were to be targeted in the future, he would have to interact with the same "inept and corrupt" police force who he previously believed could not provide him or his family with protection.
>
> [Emphasis added.]

[80] According to this comment, one would opine that the RPD did not believe that the Principal Applicant actually went to the police station.

[81] However, at paragraph 38, the RPD stated that:

> [t]he panel finds on a balance of probabilities that if the principal claimant truly believed that the kidnappers were members of the security forces, he would not have lodged a complaint with the police. The panel finds that the credibility of this allegation that the kidnappers were members of the security forces is seriously undermined by the principal claimant's willingness to approach the police and lodge a complaint.
>
> [Emphasis added.]

[82] According to this paragraph of the RPD's decision, one would opine that the RPD accepted that the Principal Applicant went to the police to file a report, but found that such action further strengthened the RPD's earlier finding that the kidnappers were not members of the police or security forces.

[83] The findings of both the RPD and RAD decisions are unclear on the issue of whether the Principal Applicant actually went to the police station to file a report of the kidnapping.

[84] At paragraph 22 of its decision, the RAD stated:

> [t]he RAD has considered that the principal Appellant made a police complaint at a time when he believed that the people involved in the kidnapping were policemen or members of a security force. The RAD agrees with the RPD that it does not appear plausible that he would do this, given his allegation that the police are inept and corrupt and that he was warned by the kidnappers not to go to the police. However, the RAD's treatment of the evidence is incomplete.
>
> [Emphasis added.]

[85] If I am to read the decision of the RAD as meaning that it did not accept that the Principal Applicant actually went to the police, then what am I supposed to make of the General Diary (police report) entry? The RPD seems to accept the General Diary entry without further comment, and the RAD states that "[t]he principal Appellant did request that a general diary entry be made."

[86] The General Diary is direct evidence that the Principal Applicant actually went to the police station on the day following the kidnapping. Although it would be open to the RAD to not

give the document any weight, or question its authenticity, given that the documents directly contradict a finding of fact as to the attendance of the Principal Applicant at the police station, the RAD would have had to address that document directly.

[87] The absence of a discussion of relevant evidence may lead to an inference that the evidence was overlooked. The RAD's assertion that it has considered all the evidence before it, is not sufficient to prevent this inference from being drawn, especially given the importance of the friend's letter to the Applicants' explanation for the delay (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at para 27).

[88] If, on the other hand, the decisions of the RPD and the RAD are to be read as accepting that the visit to the police station did take place, and that the decision on the part of the Principal Applicant to go to the police to file a police report tends to support the theory that, on the balance of probabilities, the kidnappers were not members of the police or security forces, then the RAD did not consider a piece of evidence which supports the explanation given by the Principal Applicant. The Principal Applicant's friend's letter provides an explanation for (1) the delay in seeking police help prior to securing the release of his family members, and (2) the reason for going to the police to file a report the next day.

[89] In a translated version of the letter, the friend explains that the Principal Applicant did not want to seek police help while his wife and daughter were still being held captive:

> I asked Masud [the Principal Applicant] to take the help of the police. Masud told me that, the kidnappers seem to be very dangerous, they knew everything about Masud, he did not want to take any risk with his wife and daughter. The kidnappers were

> dangerous, Masud told me, otherwise, they would not have called him or sent him the letter at home. They would have called him on his cell. They even hide the caller ID of the phone they used. [. . .]
>
> On 12.01.2017 I went again to Masud's house and could get to know that, he had filed a general diary, as per the advice of the police. In Masud's opinion, he thought that, as his wife and daughter were at home and safe, now he should inform the incident (the kidnapping incident) to the police.

[90] The RAD did not impugn the credibility of the friend's letter, and did not explain its omission to address the explanation contained in the letter.

[91] For my part, I find it equally plausible that the Principal Applicant would choose not to involve the police prior to securing the release of his family because, as he stated, "the police in Bangladesh tend to be inept and corrupt." One could reasonably come to the conclusion that he did not want to get the police involved for fear that they may do something to put his family at further risk, or even worse, look to profit from the calamity.

[92] As to why he went to the police the day after the kidnapping, I can certainly see as plausible the explanation given by the Principal Applicant, that he was looking to "get protection, to escape from this abduction in the future." It is not always easy to predict how one may react to adversity, let alone trying to understand the reaction of others.

[93] It seems to me that following such a traumatic experience as to the kidnapping of one's spouse and child, there are two options: one can keep quiet, not report the incident, and hope that one's family will not become vulnerable to being preyed upon in the future, or one can seek to show that acts of this kind will not be left unanswered.

[94] There is often much wisdom when dealing with tyranny, in exposing it to the light of day so as to show your assailants that you are not afraid, with the hope that they seek out easier prey. The Principal Applicant's testimony seems consistent with this type of reaction following the kidnapping of his wife and daughter.

[95] In summary, as explained in *Valtchev*, implausibility findings should be made only in the clearest of cases. This was not one of them.

[96] All this is to say that I agree with the Applicants. However, one may interpret the decisions of the RPD and the RAD as to whether the Principal Applicant actually did go to the police to file a report, the finding of implausibility was not reasonable.

[97] That said, and although I agree with the Applicants that the finding of implausibility on the part of the RAD to be unreasonable, I also find that the plausibility finding, in and of itself, is not determinative as to the finding, by the RAD, that the Applicants had not met their burden of proof on the key issue.

[98] There is nothing in the RAD's decision to suggest that it saw the presence of the Principal Applicant at the police station as being more determinative than its review of the remaining evidence. After reviewing the decision of the RPD, and making its own assessment, the RAD simply concluded by stating that "[h]aving considered all of the evidence in the record, the RAD finds that there is insufficient probative evidence to find on a balance of probabilities that the

individuals who kidnapped the associate Appellant and her daughter were members of police or security forces."

[99] I cannot see how the presence of the Principal Applicant at the police station to file a report goes to prove, or disprove, what both parties have confirmed as being the key issue, *to wit*, whether the kidnappers were members of the police or security forces in Bangladesh.

[100] Under the circumstances, the Applicants have not convinced me that the decision of the RAD is unreasonable (*Vavilov* at para 100).

(2) In the affirmative, did the error taint the RAD's analysis of the IFA?

[101] Both parties agree that if I were to find that the decision of the RAD on the identity of the kidnappers was reasonable, then so was its decision as regards the availability of an IFA option. Hence, I need not discuss that part of the RAD's decision.

VII. Conclusion

[102] I conclude that there is nothing unreasonable regarding the final decision of the RAD. The present application for judicial review shall, therefore, be dismissed.

JUDGMENT for IMM-2484-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Peter G. Pamel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2484-19
STYLE OF CAUSE:	MD MASUDUR RAHMAN, JAHANARA BEGUM, MUNSIF RAHMAN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	DECEMBER 9, 2019
JUDGMENT AND REASONS:	PAMEL J.
DATED:	JANUARY 27, 2020

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