Federal Court  Cour fédérale

Date: 20220411

Docket: IMM-5841-20

Citation: 2022 FC 516

Toronto, Ontario, April 11, 2022

PRESENT: Justice Andrew D. Little

BETWEEN:

MOHAMMED FAYSAL RAHMAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, Mr Rahman, claimed refugee protection in Canada because he feared prosecution or a risk to his life in Bangladesh at the hands of an extreme Islamist fundamental group. However, he had already claimed asylum in the United States and therefore could not seek refugee protection in Canada. He therefore applied for a Pre-Removal Risk Assessment ("PRRA").

[2] In this application, Mr Rahman seeks to set aside the decision by a Senior Immigration Officer, dated March 26, 2020, refusing his PRRA application. The officer concluded that the applicant would not be subjected to a risk of persecution, danger of torture, risk to life or risk of cruel and unusual treatment or punishment under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the *"IRPA"*).

[3] For the reasons below, the application is dismissed.

I. Facts and Events Leading to this Application

[4] The applicant is a citizen of Bangladesh. He is approximately 23 years old. He grew up in Dhaka in a Muslim family described as "fairly secular, progressive and liberal in their personal views". His father is a prominent businessperson. The applicant is a locally famous disc jockey who played at weddings and social gatherings when he lived in Bangladesh.

[5] Mr Rahman claimed that when he was in grade 8, he participated in a school play about the Bangladesh Liberation War that caused him to be targeted by the Islami Chhatra Shibir ("ICS"), the student wing of an illegal Islamist political party that engaged in war crimes during the war. A member of the ICS insisted that he either joined them, cease his progressive activities, or be killed. One classmate obtained the applicant's phone number and began to threaten and harass him over the phone. The threats and harassment related to his work as a DJ and his participation in drama performances. He switched schools but the targeting and harassment continued.

[6] On October 20, 2014, the applicant received an anonymous threatening phone call in which he was told to cease his DJ activities. His father decided to report the incident to the police on the following day. However, that evening, following a DJ performance at a wedding, two motorcycles forced the applicant's car to stop. The motorcyclists vandalized the car, pulled the applicant from the vehicle and beat him.

[7] The police attended the scene of this incident, but the perpetrators were able to flee without being apprehended. The applicant was briefly hospitalized.

[8] The applicant did not file a police report about this attack. His father decided not to pursue the matter with the police for fear that it would antagonize the ICS. Instead, his father decided to send the applicant to the United States where he would be safe. At age 16, the applicant therefore travelled to the United States on October 28, 2014. He attended high school in the United States and, in approximately December 2016, upon reaching the age of majority, he made an application for asylum.

[9] While Mr Rahman was in the United States, his family began to receive threats from the ICS.

[10] On November 10, 2014, Mr Rahman's father filed a report with the police concerning constant telephone threats from ICS and his fear that ICS would harm his family.

[11] On March 8, 2015, and again on August 15, 2019, the ICS attacked Mr Rahman's father. In both cases, his father refused to provide Mr Rahman's address to ICS and was threatened or attacked. In both cases, a police report was filed. However, the police were of no assistance.

[12] After the latter attack, Mr Rahman's family moved from Dhaka to Chittagong for their safety. The family did not file any police reports in Chittagong.

[13] Three years after requesting asylum in the United States, Mr Rahman became very concerned that his claim had not been resolved. Fearful of remaining in the United States without any protection, he entered Canada on September 3, 2019 in order to seek refugee protection.

[14] Due to the Safe Third Country Agreement between Canada and the United States, Mr Rahman was unable to apply for refugee protection and therefore filed an application for a PRRA. He attended an interview on February 3, 2020.

II. The Decision under Review

[15] By letter dated March 26, 2020, and reasons the same day, the officer denied the applicant's PRRA application. The officer made a number of findings. A key issue was state protection.

[16] The officer found that the primary risk faced by the applicant was from ICS.

[17] The officer considered the applicant's evidence about the school drama. The officer concluded that there was insufficient evidence that the drama actually took place, based on the lack of information the applicant was able to provide himself about the drama and a lack of additional evidence.

[18] Although the officer found that the applicant was attacked on October 20, 2014, the officer also found Mr Rahman's evidence about his classmates —allegedly members of ICS—to be contradictory and implausible.

[19] Mr Rahman testified that his family filed a total of three police reports about the threatening calls to him and his father. The officer stated that Mr Rahman's evidence was that the police never followed up on these incidents because they themselves were scared of the ICS. The applicant did not know if his father ever attempted to escalate the issue beyond filing a police report. The officer found this explanation to be unreasonable; the officer stated that it "was a defining moment in the applicant's life, and the applicant was able to provide details and copies of three police reports. If his father did escalate the issue, the applicant would be aware …" The officer concluded that neither the applicant nor his family sought police redress beyond filing the police reports.

[20] With respect to state protection, the officer quoted from *Ward* for the requirement to show "clear and convincing confirmation of a state's inability to protect": *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, at p. 724. The officer found that a local failure to provide protection cannot be assumed to be a lack of state protection overall. Instead, "these local experiences must be widespread and show clear and convincing evidence the state is unable or unwilling to provide this protection". Because the applicant had only shown evidence of local protection in the city of Dhaka, the officer considered country condition evidence to analyse the availability of state protection.

[21] The officer referred to the country condition evidence provided by the applicant. The officer noted that the latest article was from 2016 and that based on the officer's independent country condition research, "the security situation ha[d] changed since then". The officer referred to two newspaper articles from 2018 about arrests of ICS members and to an excerpt from a 2016 report prepared by the United Kingdom Home Office. The Home Office report stated that the police and the criminal justice systems were "functioning" and that the police were "present throughout the country and do respond to criminal activity". The officer also referred briefly to a report from the United States Department of State entitled "Bangladesh 2018 Human Rights Report".

[22] With respect to the evidence about the applicant, the officer found:

- The applicant was required to make a deliberate effort to address his concerns through state protection. Although the applicant did submit three police reports, he did not appear to follow up on those reports or make a considered effort to try and resolve the issues using local means. In addition, his father did not attempt to use the police apparatus in Chittagong to resolve the issues.
- Documentary evidence showed that while police protection in Bangladesh is not perfect, the "state has effective control over police and military services, there [was] evidence that [the state] can and will use those services to find and persecute [sic: prosecute] ICS members both after the incidents take place, and pre-emptively". The officer found that there was a "wealth of information" that contradicted the applicant's submission that ICS was able to engage in violence with impunity throughout the country.

- The onus was on the applicant to provide clear and convincing evidence that a lack of state protection existed in Bangladesh. The applicant had not provided sufficient evidence to do so.
- Since 2016, Bangladesh had stepped up its police actions against ICS. The state had made mass arrests and attempted to disrupt the organization.
- Neither the applicant nor his father had attempted to seek higher redress when issuing complaints to the police and his father did not attempt to contact police in the new city he moved to. The onus was on the applicant to prove that he had exhausted all avenues of redress or that it would be unreasonable to do so.
- Given Bangladesh's actions towards ICS in recent years and taking into consideration all of the evidence, the officer found that there was no clear and convincing evidence that state protection did not exist.

[23] The officer therefore found that the applicant was not a Convention refugee under *IRPA* section 96, nor a person in need of protection under section 97. The officer denied the PRRA application.

III. Standard of Review

[24] The standard of review of the officer's decision is reasonableness, as described in *Vavilov v Canada (Citizenship and Immigration)*, 2019 SCC 65. Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov*, at paras 12-13 and 15.

[25] The starting point is the reasons provided by the decision maker: *Vavilov*, at para 84. The reviewing court must read the reasons holistically and contextually, and in conjunction with the record that was before the decision maker: *Vavilov*, at paras 91-96, 97, and 103; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, at paras 28-33.

[26] The Court's review considers both the reasoning process and the outcome: *Vavilov*, at paras 83 and 86. A reasonable decision is one that is based on an internally coherent and a rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker: *Vavilov*, esp. at paras 85, 99, 101, 105-106 and 194; *Entertainment Software Association v Society of Composers, Authors and Music Publishers of Canada*, 2020 FCA 100, at paras 24-35.

IV. Analysis

[27] In this Court, the applicant took the following positions to challenge the reasonableness of the officer's state protection analysis:

a) the officer erred in finding that Bangladesh did not fall at the very low end of the democracy spectrum;

b) the officer erroneously focused on the existence of state protection and the willingness of the state to provide protection, rather than the actual ability of Bangladesh to do so; and

c) the officer erred in finding that the applicant's efforts to obtain police protection were insufficient to rebut the presumption of state protection.

[28] The applicant referred to country condition evidence filed with his PRRA application to support the position that Bangladesh was at the "very low end of the democracy spectrum", which implied a lower burden on the applicant to rebut the presumption of state protection. The applicant specifically submitted that recent elections were not free and fair; security forces engaged in abuse with impunity and the government took few measures to investigate and prosecute cases against them; and violence committed by student and youth wings of political parties was a known problem. The applicant contended that the judiciary in Bangladesh lacked independence and suffered from corruption and political interference. He further submitted that while there is a functioning criminal justice system in Bangladesh, the effectiveness of the police was undermined by a lack of basic resources, inefficiency and corruption; and that despite measures to improve the police force and its service, there remained a culture of corruption and security forces committed serious abuses with impunity. The applicant referred to *Sow v Canada (Citizenship and Immigration)*, 2011 FC 646.

[29] The applicant submitted that the salient issues for state protection were the quality and actual operational effectiveness of democratic institutions in a state (including the judiciary and the police), not the mere existence of those institutions or their willingness to provide protection (citing *Gilvaja v Canada (Citizenship and Immigration)*, 2009 FC 598, at para 39; *Garcia v Canada (Minister of Citizenship and Immigration)*, 2007 FC 79, [2007] 4 FCR 385, at para 13). The applicant maintained that the officer's decision lacked justification and transparency because the officer failed to consider the quality or operational effectiveness of the institutions, ignored the objective country condition evidence and provided no reasons for reaching conclusions contrary to that evidence.

[30] The applicant also submitted that he and his family had made sufficient efforts to pursue state protection, including by filing police reports.

[31] The respondent disagreed. The respondent submitted that the applicant had not met his onus to demonstrate that Bangladesh was unable or unwilling to offer protection. The respondent noted that the officer found that Bangladesh is a democracy and is not a failed state.

[32] The respondent submitted that the test for state protection is adequacy, not effectiveness and that the evidence required to rebut the presumption must be probative, relevant, reliable and convincing to satisfy the officer, on a balance of probabilities, that the state protection was inadequate (citing *Ward* and *Flores Carrillo v Canada*, 2008 FCA 94, [2008] 4 FCR 636 and other cases). The respondent submitted that the officer applied the proper test but the applicant failed to provide clear and convincing evidence to establish that state protection would not be available. In addition, according to the respondent, the officer reasonably assessed the country condition evidence submitted by the applicant.

A. ***Did the officer err with respect to Bangladesh's status as a democracy?***

[33] The applicant's first position was that the officer erred in assessing the place of Bangladesh on the spectrum of democracies and should have concluded that it was at the low end of the spectrum. If correct, the applicant's position was that either the presumption in *Ward* that state protection was available did not apply, or the evidence in fact rebutted the presumption.

[34] The applicant's submissions were premised on persuading this Court to come to its own independent conclusion about whether, on the evidence, Bangladesh is in fact a democracy and if so, where it lands on the spectrum of weak and strong democracies. In my view, that approach does not reflect the Court's role on judicial review. The Court does not assess the evidence independently, come to its own conclusions and then measure its views against that of the officer's. Instead, the applicant bears the onus to show either that the officer's decision did not respect the legal constraints bearing on the decision or did not abide by the factual constraints because it fundamentally misapprehended or failed to account for material evidence: see *Vavilov*, at paras 125-126; *Canada (Attorney General) v Best Buy Canada Ltd*, 2021 FCA 161, at paras 122-123; *Federal Courts Act*, RSC 1985, c F-7, paragraphs 18.1(4)(*c*) and (*d*).

[35] In this case, the officer recognized and quoted from the Supreme Court's decision in *Ward* with respect to state protection and the onus on the applicant. The officer proceeded to consider whether the evidence rebutted the presumption of state protection. The applicant has not shown that, in these respects, the officer erred in law.

[36] The applicant submitted to the officer that the presumption of state protection should not even apply to Bangladesh. The officer expressly disagreed and explained why. The applicant's submissions in this Court do not persuade me that the officer fundamentally misapprehended the country condition evidence, failed to account for material evidence in the record, or reached a conclusion not open to the officer on the record. The applicant's submissions seek to reweigh the country condition evidence and reach a different conclusion, which I am not permitted to do.

[37] The applicant's first submission therefore cannot succeed.

B. ***Did the officer err by failing to consider protection at an operational level?***

[38] The applicant's second submission was that the officer erred by focusing on the existence of state protection mechanisms and the state's willingness to provide protection, without considering the state's ability to provide effective protection on an operational level. The applicant's position was that the officer failed to consider the quality of the institutions in Bangladesh and ignored evidence. The respondent argued that in law, the issue was the adequacy of state protection, not its effectiveness.

[39] This Court's decisions establish that the adequacy of state protection is assessed on the basis of the "operational" adequacy of the protection, not merely the state's efforts: see *Giraldo v Canada (Citizenship and Immigration)*, 2020 FC 1052, at para 14 (and the cases cited there); *Moya v Canada (Citizenship and Immigration)*, 2016 FC 315, [2016] 4 FCR 113, at paras 73, 78 and 80. The state's efforts are relevant, but are neither determinative nor sufficient. Any state efforts must have actually translated into adequate state protection at the operational level: see *Moya* and the cases cited by Justice Kane at para 73, and the discussion and the cases cited in *Cervenakova v Canada (Citizenship and Immigration)*, 2021 FC 477, at para 26. However, the fact that the results at the operational level are not always successful will not rebut the presumption of state protection: *Giraldo*, at para 14. For example, this Court has held that individual policing failures are not determinative of the inadequacy of state protection: *AB v Canada (Citizenship and Immigration)*, 2018 FC 237, at para 19; *Mekhashishvili v Canada (Citizenship and Immigration)*, 2021 FC 65, at paras 29-30. (In the same two cases, the Court

held that some police action in an individual case does not prove the adequacy of state protection.)

[40] In *Flores Carrillo*, Létourneau JA described the quality of the evidence that must be adduced by a claimant to rebut the presumption of state protection:

> [30] […] The evidence must not only be reliable and probative, it must also have sufficient probative value to meet the applicable standard of proof. The evidence will have sufficient probative value if it convinces the trier of fact that the state protection is inadequate. In other words, a claimant seeking to rebut the presumption of state protection must adduce relevant, reliable and convincing evidence which satisfies the trier of fact on a balance of probabilities that the state protection is inadequate.
>
> [Emphasis added.]

See also paragraph 38.

[41] In *Moya*, Justice Kane found that the RAD had extensively analyzed the evidence demonstrating action to address domestic violence both in legislation and at the operational level: at para 78. The RAD's thorough analysis highlighted several specific operational measures for domestic violence victims: at para 80.

[42] By contrast, in *Joseph v Canada (Citizenship and Immigration)*, 2013 FC 561, cited by the applicant, Justice O'Keefe found that the officer did not refer to the adequacy of state protection. It was "therefore difficult to infer that the officer applied the proper test on this essential issue" (at para 36). In addition, the officer focused on the existence of a statute, rather

than actual protection of victims and whether the statute actually resulted in improved protection to an adequate level: *Joseph*, at paras 35 and 37-38.

[43] In my view, the officer's analysis did not contain a reviewable error. The officer found that the reported attacks by ICS were unfortunate, but in themselves did not show a lack of state protection, because the state cannot be expected to stop all crime. Before the officer, the applicant provided three country condition articles and three 2016 news articles describing ICS attacks. The officer found that the articles were out of date and that the security situation had changed since 2016 articles. The officer referred to three later articles, one from 2018 showing a "large pre-emptive targeting" of ICS members, another from 2018 detailing "larger mass arrests" of ICS members and a third showing efforts by the police to crack down on ICS.

[44] The officer further held:

- election irregularities in Bangladesh in 2018 did not alone rebut the presumption of state protection;
- that a 2016 UK Home Office report stated that the police and the criminal justice systems were functioning, that there were established legal rules and procedures and, despite some weaknesses in infrastructure, the police were present throughout the country and did respond to criminal activity;
- a 2018 United States Department of State report found that civilian authorities maintained effective control over the security forces;
- documentary evidence showed that while police protection in Bangladesh was not perfect, the state had effective control over police and military services. There

was evidence that they can and will use those services to find and prosecute ICS members both after incidents take place and pre-emptively;

- the officer disagreed with the submission that ICS was able to engage in violence with impunity throughout the country; and
- since 2016, Bangladesh had stepped up its police actions against ICS and had made mass arrests and attempted to disrupt the organization.

[45] While the officer's analysis of operational efficacy was not as strong or thorough as the one described by Justice Kane in *Moya*, the evidence in the record also appears to have been much less comprehensive than in *Moya*. Here, the applicant has not shown that the officer erred in law or did not consider the evidence relied upon by the applicant to rebut the presumption. Given Bangladesh's "actions towards ICS in recent years", the officer found that the applicant's rebuttal evidence that state protection did not exist was not "clear and convincing". In other words, the applicant's evidence was insufficient to rebut the presumption of state protection. Considering the burden described in *Flores Carrillo,* the applicant's submissions have not persuaded me that it was not open to the officer to reach this conclusion on the record.

[46] I conclude that the officer did not make a reviewable error on this issue.

C. ***Did the officer err with respect to the applicant's efforts to obtain police protection?***

[47] The applicant contended that the officer erred by finding that his efforts to obtain police protection were insufficient to rebut the presumption of state protection, citing *Mahmood v Canada (Citizenship and Immigration)*, 2016 FC 328.

[48] I find no reviewable error in the officer's reasoning. In *Mahmood*, Justice Phelan found several reasons to set aside the officer's PRRA decision, including that the officer's state protection analysis concentrated on efforts by government to protect, not on the effectiveness of those efforts. As the applicant noted, one factor in setting aside the decision in *Mahmood* was that the applicant there had engaged the function of state protection in filing a police report which was not acted upon: *Mahmood*, at para 13. In this case, the officer accepted that the applicant's father filed three police reports but also found that neither the applicant nor his father followed up or sought police redress beyond filing the reports. When the family was forced to move to Chittagong and received threatening calls, they did not file police reports.

[49] The officer may have overstated the burden on the applicant in part, by stating that the applicant had to "[exhaust] all avenues of redress" in Bangladesh or that it would have been unreasonable to do so, in order to show that the state could not offer protection. The requirement was to show that he either exhausted all objectively reasonable avenues to obtain state protection or that it would have been objectively unreasonable for him to have done so: *Arango v Canada (Citizenship and Immigration)*, 2021 FC 1016, at para 14, citing *Hinzman v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171, at paras 46 and 57. However, it has also been held that the more democratic the country, the more the claimant must do to exhaust the avenues: *Ademi v Canada (Citizenship and Immigration)*, 2021 FC 366, at para 29, citing *Hinzman*, at para 46 and *Canada (Minister of Citizenship and Immigration) v Kadenko*, [1996] FCJ No 1376 (CA). The Court of Appeal in *Hinzman* addressed the United States as a "developed democracy" and the officer's findings in this case suggest that Bangladesh is not. It may have been excessive

to state, in part, that the burden on the applicant was to "[exhaust] all avenues of redress" in Bangladesh.

[50] Did this partial overstatement of the burden on the applicant render the officer's overall decision unreasonable under *Vavilov* principles? In my view, it does not. Given the rest of the officer's analysis on the sufficiency and credibility of the applicant's evidence and the rest of the analysis on state protection, the error was not so fundamental as to vitiate the entire decision. The officer also did not impose an unreasonable burden in practical terms – he identified additional, straightforward and non-theoretical steps that the applicant's father could have taken with the police, i.e., a simple follow up on any of the three police reports.

[51] In the context of what the officer was doing – determining whether the applicant's evidence rebutted the presumption of state protection – I find insufficient grounds to disturb the officer's overall reasoning on state protection or the decision as a whole.

V. Conclusion

[52] The application is therefore dismissed. Neither party proposed a question for certification and I find none.

JUDGMENT in IMM-5841-20

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No question is certified under paragraph 74(*d*) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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