

Federal Court



Cour fédérale

**Date: 20220413**

**Docket: IMM-993-21**

**Citation: 2022 FC 534**

**Ottawa, Ontario, April 13, 2022**

**PRESENT: Madam Justice McDonald**

**BETWEEN:**

**MD ABDULLA AL MAMUN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant seeks review of the decision dated January 7, 2021, refusing his application for permanent resident status on humanitarian and compassionate (H&C) grounds.

[2] For the reasons that follow, this judicial review is granted as the Officer adopted an unreasonable approach to the consideration of the Applicant's supporting evidence.

I. Background

[3] The Applicant is a citizen of Bangladesh who arrived in Canada in 2012 as a temporary foreign worker. He submitted a refugee claim in 2014, claiming to have been tortured in Bangladesh by the Awami League (AL) after they won the election in 2008. His refugee claim was refused by the Refugee Protection Division (RPD) and the Refugee Appeal Division (RAD). Leave for judicial review to the Federal Court was denied.

[4] The Applicant submitted an H&C application on June 19, 2019. The H&C grounds relied upon by the Applicant were his establishment in Canada, the adverse country conditions in Bangladesh, and mental health considerations.

II. H&C Decision

[5] The Officer considered the Applicant's establishment in Canada, including his employment and volunteer work but found this was not "significant to such an extent that the applicant would be faced with hardship in applying for permanent residence from outside of Canada". The Officer also concluded that the Applicant would be able to find employment in Bangladesh, given his previous work experience.

[6] In considering support letters from the Applicant's friends in Canada, the Officer found there was insufficient evidence that the relationships could not be maintained from outside of Canada, or that the relationships were "characterized by a degree of significant mutual

interdependency". The Officer acknowledge the Applicant had been in Canada for 8 years, but weighed this against his 25 years in Bangladesh, and extensive family network there.

[7] With respect to adverse country conditions, the Applicant argued he would face hardship as a result of his political affiliation and past support for the Bangladesh Nationalist Party (BNP), and his father's past political involvement. However, the Officer found these arguments were the same as those made before the RPD, and that one of the determinative issues in the rejection of his refugee claim was credibility. The Officer also noted that although the Applicant submitted documents in support of his application, some of the same documents were also before the RPD, and did not overcome the RPD's credibility concerns. The Officer noted that although they were not bound by the RPD finding, the RPD is an expert-decision making body.

[8] The Applicant submitted new evidence in support of his H&C application including two Affidavits from the Applicant's family's lawyer in Bangladesh, which spoke to country conditions. The Affidavits state the Applicant's father was assassinated, that police were looking for the Applicant, and that the Applicant's mother and brother were being attacked by local goons. The Officer held that the author of the Affidavits did not have first-hand knowledge of the events, and that there was insufficient corroborating evidence that the Applicant was being sought, such as a recent arrest warrant or summons.

[9] The Officer also considered a letter from the Applicant's sister, two Affidavits from his mother, and an Affidavit from his childhood friend, but concluded that this evidence was vague, and lacking any supporting corroborating evidence. The Officer found the Applicant's mother

and childhood friend were not objective sources as they had a “vested interest” in the outcome of the decision.

[10] While the Officer accepted that conditions in Bangladesh are “far from ideal” and “supporters of opposition parties faced arbitrary charges and arrests in Bangladesh”, the Officer found that because the Applicant was not a high-ranking member of any political organization, he would not be of interest to the AL, especially given his absence from Bangladesh for 8 years.

[11] Finally, with respect to the Applicant’s mental health, the Officer found there was insufficient medical evidence that the Applicant could not receive treatment in Bangladesh, or that the Applicant had been receiving treatment in Canada.

### III. Issue and Standard of Review

[12] The Applicant challenges the reasonableness of the H&C decision on multiple grounds including the treatment of the evidence, the establishment analysis, and the mental health considerations. However, in my view, the Officer’s treatment of the evidence is dispositive of this judicial review. I, therefore, decline to address the other grounds raised by the Applicant.

[13] The parties agree that the applicable standard of review is reasonableness. As stated in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 99, “A reviewing court must develop an understanding of the decision maker’s reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness —

justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision...”.

IV. Analysis

A. *Officer's Treatment of the Evidence*

[14] The Applicant argues the Officer was unreasonable in dismissing the Applicant's evidence including Affidavits and letters submitted in support of his application. The Applicant filed the following evidence in support of his H&C application:

- His own Affidavit stating that his father was the President of a local BNP, was killed by the AL as a result of his involvement with the BNP party, and that his family in Bangladesh are targeted by the AL and have been in hiding;
- Two Affidavits from his mother stating her late husband was the President of the local BNP, stating she was attacked by the AL, is staying at a cousin's house out of fear, and that the AL are continuing to search for the Applicant;
- Medical evidence corroborating injuries suffered by the Applicant's mother;
- An Affidavit from a childhood friend, stating the Applicant's father was the President of the local BNP and was killed as a result of this position, and that the police and AL members are seeking the Applicant; and
- Two Affidavits from the family's lawyer, stating the Applicant's mother was attacked, that the Applicant's father was assassinated because he was the leader of the BNP, that local law enforcement is harassing the family, and that the police are still searching for the Applicant.

[15] The Officer discounted the mother's and friend's Affidavits based on the fact that they had a "vested interest" in the outcome. With respect to the mother's Affidavit, the Officer wrote:

The deponent also states that on the 28th of November 2020 she and her younger son Arif went to their home to collect documents and were attacked by Awami terrorists and injured with sticks. Along with this affidavit, medical documentation pertaining to injuries sustained by the applicant's mother and prescriptions prescribed to his brother have been included. I find that the above noted documentation does not objectively identify who the applicant's mother or brother were injured by. I note there is insufficient evidence before me demonstrating how the applicant's mother sustained her injuries as the doctor's note does not reflect this. I note there is insufficient corroborating evidence that they were attacked by individuals associated with the Awami party. [...] I do not find the applicant's mother to be an objective source of information as she has a vested interest in the outcome of this application.

[16] The Officer applied the same vested-interested reasoning to dismiss the Affidavit from the Applicant's childhood friend.

[17] This approach of dismissing evidence from family and friends was specifically addressed by Justice Ahmed in *Nagarasa v Canada (Citizenship and Immigration)*, 2018 FC 313

[*Nagarasa*] where he states at paragraphs 24 and 25:

As stated above, the Officer also dismissed the letter authored by the Applicant's mother, dispensing with it in two sentences:

While the applicant provided letter (*sic*) from his mother to support his statement, as previously stated, I find that the evidence is subjective as she has a vested interest in the outcome of the application. As the evidence comes from a source close to the applicant, I find that it has a low probative value and I have, therefore, assigned little weight to it.

[Emphasis added]

[PRRA Decision, p. 9]

This approach is simply wrong. This Court has repeatedly held that any letter written in support of an applicant could be characterized as self-serving, and evidence is not to be attributed little weight on this basis alone: *Mata Diaz v. Canada (Citizenship and Immigration)*, 2010 FC 319 at para. 37; *Singh v Canada (Citizenship and Immigration)*, 2015 FC 1210 at para 12; *Varon v Canada (Citizenship and Immigration)*, 2015 FC 356 at para. 37.

Relatedly, the Officer fails to explain exactly why the mother's letter is self-serving and how this impacted the Officer's analysis. What exactly is the Applicant's mother's "vested interest" in the outcome of the decision? Is it possible that the "vested interest" is that her son's life is at risk should he return to Sri Lanka, and it is for this precise reason that she hopes he may remain in Canada? That is what is stated on the face of the mother's letter, but is dismissed for unknown reasons by the Officer. I think that in the normal course of things, a mother typically would wish that her child could return home to be closer to her, reinforcing the bond between parent and child. [...] In any event, the Officer's dismissal of the Applicant's mother's letter exclusively on the basis of an alleged "vested interest" is a reviewable error that must be corrected on redetermination. [Emphasis in original]

[18] The Officer here fell into the same error and provided no justifiable reason as to why the Affidavits were unreliable. After dismissing the Affidavit evidence, the Officer concludes that "there is insufficient objective evidence before me that the applicant has a profile which would bring him to the interests of the AL members or activists." However, the Affidavit evidence confirmed that the Applicant's father was the President of the BNP, that he was assassinated as a result of his involvement with the BNP, and that his family has been continuously targeted as a result of this association. The Officer does not state that he does not accept these events took place, but rather, simply fails to engage with this evidence and explain why this connection is not sufficient. As a result, the decision lacks transparency and justification.

[19] Further the Officer did not treat the sworn evidence with the presumption of truthfulness required (*Kim v Canada (Citizenship and Immigration)*, 2020 FC 581 [*Kim*], at para 56, citing *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302).

[20] The Officer's dismissal of the mother's Affidavits impacts his consideration of other evidence. Dr. Asish Dey provided a medical note corroborating her injuries, described as "[p]hysical abuse, injuries to right eye and knee, External & internal bleeding". This evidence is dismissed by the Officer on the grounds that it does not objectively identify who committed the assault. However, this analysis fails to assess the evidence for the purpose for which it was offered. The medical evidence was not offered to identify the assailant; rather it was offered to confirm that she sustained injuries. However, as the Officer had already found the mother's evidence to be tainted, the Officer treated the medical evidence in the same manner.

[21] Finally, the Officer's dismissal of the two Affidavits from the family's lawyer is unreasonable. The Officer dismissed these Affidavits as the lawyer did not identify the sources used to confirm that police are searching for the Applicant, and there was no direct evidence – such as an arrest warrant – to confirm the allegation. This Court has previously held that requiring corroborating documents to support statements in a sworn affidavit – in the absence of a pre-existing reason to doubt – would reverse the presumption of truthfulness afforded to affidavit evidence outlined in *Maldonado (Senadheerage v Canada (Citizenship and Immigration))*, 2020 FC 968 at para 27).



[22] The Officer's approach to the evidence led to an overall conclusion that there is "insufficient objective evidence", that the Applicant is being sought, or that there would be any hardship on the Applicant in returning to Bangladesh. In my view, this conclusion is arrived at based upon an approach to the evidence that is not justified, transparent or intelligible. The decision is, therefore, unreasonable.

[23] This judicial review is granted and the matter is remitted for redetermination by another Officer. There is no question for certification.

**JUDGMENT IN IMM-993-21**

**THIS COURT'S JUDGMENT is that** this judicial review is granted and the matter is remitted for redetermination by another Officer. There is no question for certification

"Ann Marie McDonald"

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Judge

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

**DOCKET:** IMM-993-21

**STYLE OF CAUSE:** MD ABDULLA AL MAMUN v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** FEBRUARY 24, 2022

**JUDGMENT AND REASONS:** MCDONALD J.

**DATED:** APRIL 13, 2022

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