

Federal Court



Cour fédérale

Date: 20220727

Docket: IMM-1837-18

Citation: 2022 FC 1127

Ottawa, Ontario, July 27, 2022

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

**KHODEZA BAGUM
LAMIA TASNIM ANANNA
ISHFAK BIN KHIOUM**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Khodeza Bagum (PA) and her two minor children (MAs) are citizens of Bangladesh who seek judicial review of a Refugee Protection Division (RPD) decision dated March 20, 2018, rejecting their claims for refugee protection (the Decision).

[2] The central basis for their claim is the membership and political activities of the husband of the PA, Johirul Khioum, (JK) and their persecution by the Awami League (AL) after it was elected to power in Bangladesh.

[3] For the reasons that follow, this application is granted as the RPD failed to consider all of the evidence before making a determination about the credibility of the claims of the PA and the MAs.

II. **Background Facts**

[4] JK, the PA and the MAs entered Canada on January 7, 2016 from the United States as Safe Third Country Agreement exempt claimants. JK was the principal claimant in his family's application for refugee protection. The original Basis of Claim (BOC) narrative submitted for each of the four refugee claimants consisted of a detailed narrative from JK documenting his involvement in the Bangladesh Nationalist Party (BNP).

A. *The ID hearing*

[5] On September 21, 2017, a hearing was convened before the Immigration Division (ID) to determine whether JK was inadmissible to Canada in accordance with section 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the *IRPA*). During the ID hearing, JK testified that he ceased to be a member of the BNP on June 25, 1997. This claim contradicted the extensive information submitted in support of his claim for refugee protection. Based on the totality of evidence, including four hours of oral testimony, the ID Member determined that it

was more likely than not that he began his involvement in the BNP in 1988 and continued to be a member in absentia.

[6] In arriving at that determination, the following reasons were relied upon by the ID:

Extensive details in the information you provided with respect to your refugee claim satisfy me that you joined the BNP Party in 1988 and most likely continue to be a member of that party.

The information I refer to, as I say, is substantial and provides very specific information with respect to your ongoing, continued involvement with the BNP. Nowhere in all the information you provided with respect to your claim did you suggest that you at any time ceased to be a member of the BNP.

I, therefore, accept the information you initially provided with respect to your membership, your ongoing membership in the BNP.

[7] After the hearing, JK's refugee claim was terminated and a Deportation Order was issued on October 25, 2017.

III. The Decision

[8] The PA proceeded with the refugee claim based on the persecution that she and her children would face because of her husband's political activities as a member of the BNP. The PA also submitted an amendment to her original BOC form and narrative. This included reference specifically to the persecution that the Applicants and their family members faced in Bangladesh throughout 2015.

[9] Prior to the RPD hearing, the PA advised the panel in writing of her position that the ID's findings of fact regarding JK's membership in the BNP was binding on the Panel.

[10] The RPD began by noting the complete story alleging the basis of the claim by the Applicants was found in the narrative of JK and the PA's amended BOC narratives. The RPD found that the amended narratives largely relied on events that allegedly occurred after JK left Bangladesh on April 3, 2015.

[11] The RPD found the determinative issues were identity and credibility.

[12] Regarding identity, the RPD accepted on a balance of probabilities that the PA and MAs are citizens of Bangladesh based on the certified true copies on file of passports identifying them as nationals of Bangladesh.

[13] Regarding credibility, the RPD first noted the presumption that evidence given under oath is presumed to be truthful unless there are valid reasons to doubt its veracity. The RPD then found there were several reasons to doubt the truthfulness of both the PA's testimony and the allegations she put forward. The RPD also had "numerous credibility concerns" regarding allegations made by JK in his BOC narrative that were not explained to the satisfaction of the Panel.

[14] The RPD noted that JK provided testimony in the admissibility hearing that was contradictory to the narrative provided in his BOC. The RPD also had "serious concerns" arising from the PA not calling JK as a witness, even though he was present at the hearing, to address the Panel's concerns about the contradictory evidence. From that, the RPD drew a negative

inference as it found JK's sworn testimony before the ID specifically and significantly contradicted the information in his BOC narrative.

[15] The Board drew negative inferences from the PA's inability to provide essential details concerning her husband's political activities and her reluctance to call her husband as a witness at the hearing. Having found that the central allegation that the husband continues to be a member of the BNP and is a person of interest to the political opposition in Bangladesh not credible, the Panel concluded that the PA and her children were not harassed and threatened before or after her husband's departure and are not of interest to anyone in Bangladesh.

IV. **Issues and Standard of Review**

[16] The Applicant identifies four issues including what is the standard of review and whether the Panel erred in its treatment of the Applicant's evidence. I find these two issues are sufficient to resolve this application and it is not necessary to review the other two issues.

[17] The Respondent put forward no issues and took the position that the standard of review is reasonableness.

[18] I agree that reasonableness is the standard of review.

[19] The Supreme Court of Canada has established that when conducting judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice

and/or the duty of procedural fairness, the presumptive standard of review is reasonableness:

Canada (Minister of Citizenship and Immigration) v Vavilov, 2015 SCC 65 [*Vavilov*] at para 23.

[20] A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker. The reasonableness standard requires that a reviewing court defer to such a decision: *Vavilov* at para 85.

V. Analysis

[21] As stated at the outset, I find the determinative issue in this application is the failure of the RPD to consider all of the evidence before making a determination about the credibility of the claims of the PA and the MAs.

[22] The record shows the following corroborative evidence was submitted in support of the Applicants' refugee claim:

1. Letter from Khairul Ahsan, the brother of the PA's husband: A's Record at 222.
2. General Diary, Feni Model Police Station documenting a complaint from the PA's husband's mother regarding an attack on July 31, 2017.
3. Letter from Shadat Hossain Sohag, a friend of the PA's husband, and his ID.
4. Letter from Nurul Amin, the brother of the PA confirming the car attack on February 23, 2015 and detailing attacks on his business on May 16, 2016 and August 27, 2017 asking for the PA's husband's whereabouts.
5. Letter dated January 5, 2016, from Ruhul Kkabar Rizvi, Joint Secretary General of the BNP, certifying that the JK is a "member of the convening committee of Dhaka city south and participating in anti government movement for the restoration of Democracy".

6. An article dated February 26, 2015 from the Daily Shadhin Sangbad stating, “Johirul Khioum who is the member of the convening committee of BNP Dhaka City South has been attacked by the Criminals on the Feb. 23, 2015 at 3pm on his way to a shopping mall along with his family near at Ideal School and College.”
7. An article dated March 15, 2015 from the Daily Shadhin Sangbad stating, “The criminal has burnt the village house of Johirul khioum at dharmopur under Feni district. Mr. khioum (sic) is the member of the convening committee of BNP Dhaka City south. Few days back they also attacked on kLhioum’s (sic) family when they were going to a shopping Mall at Bansree and run away. He is now recovered after getting treatment from a local hospital”.

[23] The RPD assigned all of the documents, with the exception of the BNP letter, little weight on the basis that “the probative value of these documents is substantially undermined by the fact that the central allegations put forth have been found not credible.”

[24] Significantly, “in light of the finding that Johirul Khioum ceased to be politically active after June 25, 1997”, the RPD assigned no weight to the BNP letter that states the PA’s husband is a member of the BNP as of January 5, 2016.

[25] Corroborative evidence must be examined independently of concerns about the Applicant’s credibility before it is rejected. Otherwise, the corroborative evidence is not believed simply because the Applicants are not believed: *He v Canada (Minister of Citizenship and Immigration)*, 2019 FC 2 at para 25; *Yu v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1138 at paras 31-37.

[26] As Justice Rennie explained while a member of this Court, this methodology amounts to an inversion of the reasoning process: *Chen v Canada ((Minister of Citizenship and Immigration)*, 2013 FC 311 at para 20.

[27] I find the Panel erred by failing to reasonably consider the corroborative evidence before making a determination about the credibility of the Applicants' claims.

[28] For the foregoing reasons, I find the Decision is unreasonable. It is set aside, to be returned to a different panel for redetermination.

JUDGMENT IN IMM-1837-18

THIS COURT'S JUDGMENT is that

1. The application is granted and the Decision is set aside. This matter is remitted to a differently constituted panel of the Refugee Protection Division for redetermination.
2. There is no serious question of general importance for consideration.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1837-18

STYLE OF CAUSE: KHODEZA BAGUM, LAMIA TASNIM ANANNA,
ISHFAK BIN KHIOUM v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE

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