

Federal Court



Cour fédérale

Date: 20220819

Docket: IMM-3736-21

Citation: 2022 FC 1213

Ottawa, Ontario, August 19, 2022

PRESENT: Madam Justice McDonald

BETWEEN:

MEHEDI HASAN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision of the Refugee Appeal Division (RAD), dated May 6, 2021, finding that the Applicant is not a Convention Refugee nor a person in need of protection.

[2] For the reasons that follow, this judicial review is granted.

I. Background

[3] The Applicant is a citizen of Bangladesh and a member of the Jatiya Party. His refugee claim was based on a fear of persecution from the ruling Awami League and the police because of his political activities in opposition to the Awami League.

[4] While attending university, the Applicant was a member of the student wing of the Awami League and was involved in political rallies. After completing university, he says that he grew concerned about the Awami League activities and tactics and became interested in a democratic political party.

[5] In August 2016, he joined an opposition party, the Jatiya Party, and in November 2016, he became an Organizing Secretary of the Bahubal Jatiya Party.

[6] The Applicant claims that after joining the Jatiya Party, he was attacked by members of the Awami League. He claims to have reported the attacks to the police but the police took no action. The attacks were serious enough that he needed medical treatment.

[7] In March 2017, the Applicant was informed by a police officer that a secret meeting had taken place between police and local Awami League members and there was a plan to have him killed. The police officer told the Applicant he looked like his son, and this is why he shared the information.

[8] The Applicant left Bangladesh in July 2017.

A. *RAD Decision Under Review*

[9] The determinative issue for the RAD was credibility.

[10] The RAD found the Applicant was not credible because his descriptions of how he became a member of the Chhatra League (the student wing of the Awami League) and the Jatiya Party were inconsistent with the processes outlined in the objective evidence in the National Documentation Package (NDP).

[11] The Applicant testified he paid a membership fee of 10 taka to join the Chhatra League, but the documentary evidence states members do not pay fees. When this contradiction was raised, the Applicant explained that political parties do not follow official rules. The RAD determined this was not credible.

[12] The RAD also found the Applicant's description as to how he joined the Jatiya Party was inconsistent with the documentary evidence. The Applicant testified there was no specific procedure to become a member of the Party, and that the membership form was optional. The RAD noted that the documentary evidence indicated membership involves completing a form and paying a subscription fee.

[13] The RAD also found the Applicant provided inconsistent evidence about the structure of the Jatiya Party, and his role. The Applicant said that he was the only organizing secretary in the

Bahubal Upazila unit, while the letter from the President of the Party stated the Applicant is “one of the Organizing Secretaries of Bangladesh Jatiya Party Bahubal Upazila unit”.

[14] The RAD held that the evidence from Jahirul Haque (Jharu Mia), a lawyer in Bangladesh, and the hospital records showing the Applicant was physically assaulted in January 2017 were not sufficient to resolve the credibility concerns.

[15] On the lawyer’s letter, the RAD stated: “[s]ince the lawyer expressly states in his letter that he did not receive disclosure from the police, his belief that the Appellant may be arrested, without some evidentiary basis to support his view, does not establish that the Appellant faces a serious possibility of persecution from police because of his political opinion”.

[16] With respect to the medical evidence, the RAD stated: “[w]hile the report indicates ‘H/O Physical assault,’ there is no indication that the Appellant reported the attack as being related to his political involvement”.

B. *Preliminary Issue*

[17] As a preliminary issue, the Respondent argues the Affidavit sworn by the Applicant in support of this application should be given no weight as it is in English, and the Applicant testified at the Refugee Protection Division (RPD) hearing with the assistance of an interpreter.

[18] In response, the Applicant notes that his Basis of Claim form was filled out in English and he indicated on the form that he understood English. Further, he spoke English at the RPD

hearing, and also used an interpreter. He confirmed in his oral testimony that he can understand English, and in fact, the RPD noted his improved English skills in their decision.

[19] In these circumstances, there is no basis to disregard the Applicant's Affidavit on the grounds of his limited English skills.

II. Issue and Standard of Review

[20] The sole issue is whether the decision of the RAD is reasonable.

[21] In reviewing a decision on a reasonableness standard, the 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” (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99).

III. Analysis

[22] The Applicant argues the RAD made unreasonable credibility findings, engaged in a microscopic assessment of the evidence, and disregarded evidence in relation to his political activities which is the core of his claim for protection.

A. *Chhatra League*

[23] The Applicant testified that he paid a membership to join the Chhatra League. The RAD found this was not credible as the information in the NDP states that members do not pay fees.

The passage relied on by the RAD states as follows:

The Chhatra League is the student wing of the AL founded in 1948 and is active on college and university campuses. [...] Members do not pay fees. The Dhaka Tribune has noted that, in recent years, the Chhatra League's image has been tarnished because of its leaders and activists getting involved in violence, extortion and other criminal activities. [Footnotes omitted.]

[24] The RAD preferred this information and rejected the Applicant's explanation that political parties do not necessarily follow official Party rules and are often corrupt. The RAD found this was not a reasonable explanation for the inconsistency between the NDP claim of no membership fees and his evidence of having paid a membership fee.

[25] The RAD's reliance on the allegedly official practice of the Chhatra League is based upon a single sentence in the NDP report. Furthermore, the footnote cited in support of the passage relied upon by the RAD does not, in fact, relate to the statement made.

[26] Here, the RAD relied upon a single unsupported passage in the NDP report – which passage also confirms that leaders of the Awami League are involved in extortion and criminal activity – as a basis to conclude that the Applicant's explanation was unreasonable. In effect, the RAD disbelieves the Applicant, in favour of information which outwardly acknowledges the Party engages in criminal activity.

[27] In my view, this is an unreasonable treatment of evidence by the RAD. It is unreasonable for the RAD to assume that the Awami League, who are acknowledged to be involved in criminal activity, would be honest in the reporting of the information relied upon by the RAD (*Venegas Beltran v Canada (Citizenship and Immigration)*, 2011 FC 1475 at paras 7-8).

B. *Jatiya Party*

[28] The RAD found that the process the Applicant described that he followed to join the Jatiya Party to be inconsistent with the information in the NDP report.

[29] The Applicant testified that there was no specific procedure to become a member of the Jatiya Party, and that the membership form was optional. The RAD pointed to the NDP report evidence that states becoming a member requires “filling a membership form and paying a subscription fee”.

[30] The NDP report relied upon by the RAD was from 2014 and focused on the national representatives of the Jatiya Party rather than local offices. The authors of the report acknowledged that “[d]ata collection from political parties was not easy”. The authors acknowledged that collecting information was a challenge, and the fact that the report was from two years before the Applicant joined the Jatiya Party, calls into question the reasonableness of the RAD in relying so heavily upon this report to make a negative credibility finding against the Applicant. In fact, the RAD gave more credence to statements in the report than the authors themselves were prepared to do so.

[31] On the structure of the Jatiya Party, the Applicant explained in his testimony that he was not the only organizing secretary, but was “practically” the only one because many of the others had left the country or were inactive.

[32] In considering this issue, the RAD refers to the letter from the President of the Jatiya Party. The letter confirms the Applicant is a member of the Party and that he is one of the Organizing Secretaries of a small administrative unit. However, the RAD rejects the letter on the grounds it is worded in the “present tense” and, thus, did not resolve the inconsistencies in the Applicant’s evidence on the number of organizing secretaries in the past. The RAD, otherwise, does not engage with the information contained in the letter.

[33] In my view, the RAD’s dismissal of this evidence is neither intelligible nor justifiable. The letter is direct evidence from the President of the Jatiya Party confirming the Applicant is a member of the Party and an Organizing Secretary of the Party. The RAD dismissed the letter because it was worded in the present tense. In doing so, the RAD engaged in an over-vigilant or microscopic analysis of this evidence and identified irrelevant or peripheral details so as to characterize the evidence in a manner that supports its negative credibility finding (*Attakora v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 444 (FCA) at para 9).

C. *Supporting Documentary Evidence*

[34] The RAD also dismissed the documentary evidence on the basis that it did not resolve the contradictions in the evidence or independently establish the Applicant’s claim.

[35] The RAD dismissed a letter from the hospital regarding injuries suffered by the Applicant because it did not state that the injuries arose from a political attack. 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 he sustained injuries which is consistent with his evidence that he was attacked by members of the Awami League.

[36] As I noted in *Al Mamun v Canada (Citizenship and Immigration)*, 2022 FC 534 at para 20, it is unreasonable for the RAD to expect information that would be in a police report to be in a medical report and, then, to dismiss the evidence on that basis.

[37] Similarly, the RAD dismissed the letter from the lawyer. The Applicant argues the fact that police did not give his lawyer the information he requested – as they were “instructed by superior authority not to reveal any information regarding Mehedi Hasan” – supports his fear of being persecuted arrested.

[38] Again, the RAD failed to assess the other information in the letter which indicates that the police were instructed not to provide any information on the Applicant. This corroborates the Applicant’s narrative that police were plotting against him. In failing to address this piece of evidence, the decision lacks justification and transparency.

[39] Although I accept that these pieces of evidence alone may not be sufficient to establish the Applicant’s claim, the RAD, nonetheless, has an obligation to approach each piece of the evidence reasonably.

IV. Conclusion

[40] In my view, the RAD's treatment of the evidence to support its credibility findings is not justified, transparent, or intelligible. The decision is, therefore, unreasonable.

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

JUDGMENT IN IMM-3736-21

THIS COURT'S JUDGMENT is that:

1. This judicial review is granted and the matter is remitted for redetermination by another Officer; and
2. There is no question for certification.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3736-21

STYLE OF CAUSE: MEHEDI HASAN v THE MINISTER OF
CITIZENSHIP
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PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JUNE 8, 2022

JUDGMENT AND REASONS: MCDONALD J.

DATED: AUGUST 19, 2022

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