

Federal Court



Cour fédérale

Date: 20221121

Docket: IMM-6413-20

Citation: 2022 FC 1585

Ottawa, Ontario, November 21, 2022

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

SIFUL ISLAM

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Under review is a decision of the Refugee Appeal Division [RAD] confirming the decision of the Refugee Protection Division [RPD] that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] Mr. Siful Islam is a 43 year old citizen of Bangladesh. He alleged in his Basis of Claim [BOC] form that he became involved in largely unorganized charitable and social work in his hometown of Narayanganj around 2012. His work included collecting donations of clothing, books, and money for poor and orphaned youth; planting trees; providing weekly evening seminars teaching life skills to poor students; and working to protect young people from local criminal activities.

[3] On April 13, 2013, the Applicant witnessed three men attacking a tenth-grade girl and intervened to help her. He was beaten and sustained a scar on his arm. The three men were known criminals in the community who worked for a powerful gangster named Nurhossain. The Applicant complained to the local police but the police refused to take his report because the attackers were affiliated with the Awami League, the ruling party in Bangladesh since 2009.

[4] The following day, three men attacked the Applicant outside his home and threatened to kill him if he did not stop his social work, which they said was interfering with their ability to control power. The Applicant was hit with a gun, leaving a scar on his chin. When the Applicant started shouting for help, the three men fled after one of them fired blanks into the air. The Applicant obtained medical treatment and hid at his sister's home for a few days. The attackers returned to the Applicant's home during this time and threatened his mother to disclose his whereabouts. The Applicant's mother then also fled to hide with the Applicant in his sister's home.

[5] From his sister's home, the Applicant fled to Dhaka and stayed with a friend for a few days, before making his way to Chittagong and staying with an uncle for about a week. The Applicant ceased his social work and, fearing for his life, fled to the USA in February 2014. He did not claim refugee protection because he had a visa. He married a US citizen in July 2014 and applied for a green card in July 2015, which was refused in July 2017. The Applicant appealed the refusal and extended his work visa but while the appeal was pending, he and his spouse went through divorce proceedings and the spouse withdrew the green card application. The Applicant's visa expired in October 2018 and he came to Canada and claimed refugee status on March 20, 2019.

[6] The RPD refused the Applicant's claim in oral reasons delivered January 10, 2020. The determinative issue was credibility. The RPD found the Applicant's testimony regarding his charitable/social work was evolving. While the RPD found the Applicant had been attacked, based on his medical evidence, it determined this attack was not due to his social work and was not at the behest of the government. The RPD found there were discrepancies in the Applicant's testimony regarding the criminals being agents of the Awami League.

[7] The RAD upheld the RPD's determination that the Applicant is not a Convention refugee or a person in need of protection.

[8] The RAD accepted that the Awami League uses illegal means to intimidate or persecute political opponents. Although the RAD had a number of concerns regarding the Applicant's

credibility, a key finding was that the men who attacked him had no “clear association” with the Awami League, other than as criminals for hire:

I find, on a balance, that the alleged persecutors are opportunist criminals. While I accept that they may be for hire by the AL, the BNP or any other party with money and influence, I see no evidence which would establish, on a balance, that the AL has any interest in the Appellant’s activities.

[9] Before the RAD, the Applicant sought to admit new evidence consisting of two letters of support and two posters with photographs purportedly showing one of the agents of persecution participating in Awami League activities.

[10] The RAD refused to admit one of the support letters, but did admit the second support letter and the two posters. The RAD found the posters were unreliable, as their translated versions contained captions indicating the person in the photograph is one of the Applicant’s agents of persecution, and no such caption appears on the untranslated versions. The RAD noted the absence of written submissions that could explain the discrepancy, found the translations were misleading, and gave the posters no weight.

[11] Had the RAD given the posters weight, its finding that the Awami League was not persecuting the Applicant because of his activities becomes questionable.

[12] I find that this decision is unreasonable because of the RAD’s failure to engage with the evidence in the record. Specifically, the RAD’s reasons do not address the Applicant’s testimony that he was targeted because his social work detracted from the popularity of the Awami League. The RAD also did not address the objective evidence indicating the Awami

League restricts the operations of non-governmental organizations and individuals engaged in charitable work.

[13] In particular, I agree with the Applicant that it was unreasonable for the RAD to assign no weight to the posters based on the presence of a single caption on the translated version that was not present in the original. The delegate's badge on the translation of the second poster identifies the person in the poster as one of the Applicant's agents of persecution and as a member of an Awami League group as late as 2020.

[14] In *Mohamed v Canada (Minister of Citizenship and Immigration)*, 2022 FC 637, this Court found that it was not reasonable for an officer to reject a translated version of a police report because of discrepancies in the dates arising from the differences between the Ethiopian and Gregorian calendars and that the applicant was owed an opportunity to respond to this concern. It was found unreasonable to question the accuracy of the entire translation based on a single discrepancy, especially when the outcome of the application may have been different had it been given weight.

[15] In my view, the present case is analogous. The RAD does not question the certification of the translation or address any of its contents, despite finding it admissible as new evidence on appeal. The caption at issue does not provide any information that was not already present in the translated second poster – namely, the name of one of the men who assaulted the Applicant, who is identified as General Secretary of the Awami Motor Driver League. This evidence ties one of the Applicant's attackers to the Awami League in 2020 and undermines the RAD's conclusion

that the agent of persecution was unconnected with the Awami League beyond being a criminal for hire.

[16] It is possible that even giving the posters weight, the same result may have been reached; however, the RAD's treatment of the posters renders the decision unreliable and unreasonable.

[17] The Respondent asked that the style of cause be amended to name the Minister of Citizenship and Immigration as the proper Respondent.

[18] No question was posed for certification.

JUDGMENT in IMM-6413-20

THIS COURT'S JUDGMENT is that the style of cause is amended with immediate effect to name the Minister of Citizenship and Immigration as the Respondent, this application is allowed and the appeal remitted to a different member of the Refugee Appeal Division, and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6413-20

STYLE OF CAUSE: SIFUL ISLAM v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: OCTOBER 27, 2022

JUDGMENT AND REASONS: ZINN J.

DATED: NOVEMBER 21, 2022

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