

Federal Court



Cour fédérale

Date: 20231012

Docket: IMM-3103-22

Citation: 2023 FC 1359

Ottawa, Ontario, October 12, 2023

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

BURHAN UDDIN SHIKDER MASUD

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Burhan Uddin Shikder Masud, made a refugee claim in Canada based on his fear of the Awami League, Jubo League, the Rapid Action Battalion, and the police in Bangladesh. His refugee claim was dismissed because the Refugee Protection Division [RPD] found his allegations to not be credible. Mr. Masud appealed to the Refugee Appeal Division [RAD]. On appeal, he attempted to file new evidence and challenged the RPD's credibility

findings. The RAD did not accept the new evidence, confirmed the RPD's negative credibility determinations, and dismissed the appeal.

[2] Mr. Masud makes a number of arguments on judicial review challenging the RAD's dismissal of his appeal. These challenges can be grouped into three categories: i) fairness of the RAD's request to view original documents; ii) challenges to the RAD's decision to not admit new evidence and to not hold an oral hearing; and iii) challenges to the RAD's credibility findings.

[3] Mr. Masud has not satisfied me that the RAD's process was unfair or that its substantive findings on the new evidence and credibility are unreasonable. Based on the reasons below, I dismiss the application for judicial review.

II. Standard of Review

[4] In assessing Mr. Masud's breach of fairness allegations, I will consider whether the RAD's procedure was fair in all the circumstances (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54). With respect to Mr. Masud's other arguments relating to the merits, I will review the RAD's findings on a reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 10). The Supreme Court of Canada in *Vavilov* described a reasonable decision as "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" (*Vavilov* at para 85). Administrative decision-makers must ensure

that their exercise of public power is “justified, intelligible and transparent, not in the abstract, but to the individuals subject to it” (*Vavilov* at para 95).

III. Background

A. *Refugee Claim*

[5] Mr. Masud is a citizen of Bangladesh. He alleges that his parents were involved in organizing rallies against the Bangladeshi government in December 2016 through his mother’s non-governmental organization (“NGO”). In January 2018, Mr. Masud alleges that the local Awami League filed false allegations against his parents, accusing them of supporting the Bangladesh National Party (“BNP”) and engaging in anti-government activities. Mr. Masud says he was attacked in July 2018 after his father refused to pay the Awami League the money they demanded.

[6] The following month, Mr. Masud came to Canada on a student visa. After he arrived in Canada, he alleges that his parents continued to receive threats, his father was kidnapped, and members of the Jubo League made false allegations against him. Mr. Masud also claims that the police summoned his mother and questioned her about Mr. Masud’s contact information.

[7] Mr. Masud made a refugee claim in March 2019. His refugee claim was heard on December 17, 2020, by videoconference. Following the hearing, the RPD asked to view the originals of the police and court documents and asked for further submissions and/or evidence because of its concerns that the stamps on these documents were computer generated. Mr. Masud

provided the originals to the RPD and filed further evidence and submissions on this issue. The RPD dismissed the claim in June 2021, finding the police and court records to be fraudulent and ultimately concluding that Mr. Masud's allegations are not credible.

B. *RAD Appeal*

[8] In June 2021, Mr. Masud filed an appeal of the RPD's dismissal to the RAD. Mr. Masud's counsel made several requests for additional time to file new evidence and legal submissions on appeal. The RAD granted these requests. Like the RPD, the RAD requested to view the originals of some documents that had been initially filed at the RPD, as well as originals of the new evidence filed at the RAD. As I will explain below, Mr. Masud did not provide the originals of these documents prior to the RAD rendering its decision on the appeal.

[9] The RAD dismissed the appeal on March 21, 2022. It did not admit the new evidence primarily because of credibility concerns. The RAD found credibility to be the determinative issue in the appeal. Like the RPD, the RAD found that Mr. Masud had submitted fraudulent documents that were central to his claim, and did not find the other corroborative evidence in the record sufficient to overcome these credibility issues.

IV. Analysis

A. *RAD Request to View Originals*

[10] Mr. Masud argues that the manner in which the RAD dealt with its request to view original documents was unfair. He makes two arguments. First, he says that the RAD ought to

have dealt with his response, despite it being late, because it was delivered before the RAD sent out its final decision. Second, he argues that the RAD's request and specifically its references to pages in the RPD Record were unclear and therefore he did not know the case to meet. I do not find the RAD acted unfairly on either of these grounds. Mr. Masud has not shown that the RAD waiting to receive the original documents would have made any difference to the decision it reached; nor has he shown, given the nature of the request and the history of these proceedings, that he did not know the case to meet.

[11] The RAD asked Mr. Masud to provide originals of a number of documents previously provided to the RPD as well as some documents provided as new evidence to the RAD. The RAD's initial request referred to "documents submitted to the RPD, found at pages 283-296, 305-306 of the RPD Record; and documents submitted to the RAD as new evidence, found at pages 32, 35-80, 106-107, and 109-116 of the Appellant record". A day before the deadline, Mr. Masud's counsel responded asking for an extension to locate the documents, explaining that he did not have the requested RPD documents because those had been submitted to the RPD by mail and he had no electronic copy. Mr. Masud's counsel also noted that the documents filed at the RAD were available electronically.

[12] The RAD responded by clarifying that it was seeking "original paper documents of the above listed materials". The RAD also directed: "Please request the original documents from the Appellant as they were provided to the RPD by the Appellant and must have been returned to him. They may be provided via regular mail/courier or dropped off at the Registry". The RAD

granted Mr. Masud an extension until March 14, 2022, to submit the documents and noted that it would not consider any further request for an extension.

[13] On March 22, 2022, eight days after the RAD's deadline had passed, Mr. Masud's counsel wrote two letters to the RAD. The first letter asked for a further extension, citing "overriding family circumstances". The second letter, dated the same day, noted that "upon an onerous and thorough search of our storage we located Mr. Masud's documents today". Counsel went on to note that he was confused by the RAD's request relating to the RPD Record because the page numbers referenced by the RAD seemed to be in reference to an internal record that did not correspond to the size of the record in counsel's possession.

[14] The key issue is that Mr. Masud has not shown how a different result could have been reached had the RAD waited to receive the original documents prior to rendering its decision. There is one reference to original documents in the RAD's decision. The RAD notes that having not viewed the original documents itself, it would defer to the RPD's determination that the stamps on the police and court documents were computer-generated.

[15] Critically, Mr. Masud is not taking issue with the RPD's or the RAD's finding that these documents had computer-generated stamps. At the RAD, Mr. Masud accepts that the stamps are computer-generated and argues the error lies in the RAD drawing a negative inference because the stamp was computer-generated. Ultimately, Mr. Masud has not explained how the decision could have been different if the RAD had viewed the original documents. In these circumstances, no breach of procedural fairness has been established (*Mobil Oil Canada Ltd. v. Canada-*

Newfoundland Offshore Petroleum Board, 1994 CanLII 114 (SCC), [1994] 1 S.C.R. 202 at 228-229).

[16] Further, I also note that I cannot accept that Mr. Masud did not know the case to be met given the history of the proceedings and the wording of the RAD's request. Following the RPD hearing, the RPD asked to view the originals of the police and court records. After examining the documents, the RPD explained their concern that the stamps appeared computer-generated and asked for further submissions and/or evidence on this issue. Mr. Masud responded to this request with a further affidavit and an email from his then-lawyer in Bangladesh.

[17] The documents that the RAD requested were the same ones that had been previously requested of him by the RPD. In addition to the page references, in its second request, the RAD specifically directed Mr. Masud's counsel to request the documents from his client, who, it noted, would have had the originals returned to him from the RPD. It should not have come as a surprise to Mr. Masud's counsel that the RAD wanted to view these documents in their original format given the RPD's findings on this issue relied on having viewed these documents as originals. In these circumstances, given the history of the proceedings and the wording of the RAD's requests, I do not find that Mr. Masud did not know the case to be met.

B. *Challenge to New Evidence Determination*

[18] Mr. Masud argues that the RAD erred in not admitting his new evidence because of credibility concerns. He makes three arguments on this issue. First, the RAD should have only focused on the explicit criteria for the admission of new evidence set out in 110(4) of the

Immigration and Refugee Protection Act, SC 2001, c 27 [*IRPA*], and not credibility concerns.

Second, if the RAD was going to assess the credibility of the new evidence, an oral hearing should have been held. Third, the RAD's determinations on the credibility of the new evidence were unreasonable.

[19] The first issue raised by Mr. Masud has already been settled by the jurisprudence. I am bound by the decision of the Federal Court of Appeal in *Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96 [*Singh*]. The Court of Appeal in *Singh* found that it was reasonable for the RAD in evaluating whether it should admit new evidence to consider, in addition to the explicit criteria in section 110(4) of the *IRPA*, implicit criteria including the credibility of the new evidence (*Singh* at paras 38-49). Mr. Masud argues that it was strange for the RAD to consider the credibility of the new evidence given that the new evidence met the statutory criteria for admission set out in section 110(4) of the *IRPA*. This approach is not unusual, however, as it was endorsed by the Federal Court of Appeal in *Singh*, and since then has been repeatedly applied by the RAD and upheld as reasonable by this Court.

[20] Second, Mr. Masud argues the RAD should have held an oral hearing to assess either his general credibility or the credibility of the new evidence. Mr. Masud's argument is premised on his view that the RAD is not limited to only holding an oral hearing where new evidence has been admitted at the RAD. This position is inconsistent with the Federal Court of Appeal's decision in *Singh* where the Court held at para 51 that:

the basic rule is that the RAD “must proceed without a hearing, on the basis of the record of the proceedings of the Refugee Protection Division” (subsection 110(3)). The new evidence must meet the admissibility criteria set out in subsection 110(4), and a new

hearing can be held only if the new evidence fulfils the conditions set out in subsection 110(6).

[21] This position is also inconsistent with numerous decisions of this Court, including *AB v Canada (Citizenship and Immigration)*, 2020 FC 61 at para 17. Mr. Masud has not explained why this jurisprudence should not apply to the circumstances of his case.

[22] I also note that Mr. Masud has made these arguments generally and did not explain what specific credibility issues the RAD raised that could not have been anticipated. This is particularly relevant in this case, where much of the new evidence filed related to documents with the same content as filed at the RPD except for being recertified.

[23] With respect to the merits of the credibility assessment itself, Mr. Masud takes issue with the RAD's review of the arrest warrants. The RAD found it not credible that Mr. Masud would have been able to obtain copies of the arrest warrant for his father and himself. The RAD based this finding on its reading of the country condition evidence and specifically that fugitives would not be able to obtain a copy of an arrest warrant. Mr. Masud argued that there was other evidence in the record indicating that there was a court procedure to be followed before an individual is declared a "fugitive" and one is not cast as a fugitive simply because one had fled. The RAD also noted a number of inconsistencies between the sample arrest warrant in the National Documentation Package and Mr. Masud's evidence. Some of these inconsistencies, including that the warrant did not include an officer's signature or the name and rank of the person to execute it, were not addressed by Mr. Masud on judicial review. I find that it was open to the RAD to read the country condition and personal evidence in the manner it did and that this

reading was supported by the record. I do not find that there are sufficiently serious shortcomings in the RAD's interpretation of this evidence that would require a redetermination.

C. *Other Credibility Findings*

[24] Mr. Masud also challenged the RAD's treatment of the medical discharge certificate. I note that the RAD held that this evidence would not have been sufficient to overcome its credibility concerns as it only established that Mr. Masud had an injury on a particular day. This is a determinative finding by the RAD that has not been challenged on judicial review.

[25] Mr. Masud also challenged the RAD's finding that a negative inference could be drawn based on the lack of evidence from Mr. Masud's mother. The RAD, like the RPD, considered Mr. Masud's explanation when this concern was raised at the RPD hearing. Mr. Masud explained that his mother is distressed, did not want her to recount the events and was "more like a housewife". The RAD found Mr. Masud's explanation for the absence of this evidence not credible given his mother's assistance with gathering evidence on his behalf and her work at an NGO. Other than disagreeing with the RAD's conclusion, Mr. Masud has not raised any sufficiently serious shortcomings in the RAD's analysis. I see no basis to disturb the RAD's determination on this issue.

D. *Certified Questions*

[26] Mr. Masud's counsel provided three proposed questions for certification on the day of the judicial review. I advised counsel that this was not in accordance with the Court's *Consolidated*

Practice Guidelines for Citizenship, Immigration and Refugee Protection Proceedings that provides a party intending to propose a certified question notify opposing counsel at least five days prior to the hearing. I did, however, agree to receive written submissions on the proposed questions after the hearing so that the Respondent would have time to consult and respond.

[27] Mr. Masud proposes three questions for certification:

1. In an appeal before the RAD where new evidence are not admitted, whether the RAD has the jurisdiction and is required to hold an oral hearing under 110(6) of the *IRPA* because the tribunal intends to raise new credibility issues which were not raised by the RPD during the refugee hearing and the RAD's new concerns are related to any evidence from the record of the proceedings that are central to the appeal?
2. Whether the RAD is obligated to comply with the rules of natural justice i.e. principle of procedural fairness and is required to convoke a *voir dire* hearing if the tribunal wishes to raise and assess the credibility of the new or fresh evidence tendered during an appeal as part of the RAD's assessment of admissibility?
3. What is the minimum procedural fairness an appellant before the RAD is owed when the tribunal decides to raise new credibility issues with regards to determining the admissibility of the new or fresh evidence at the appeal?

[28] The Federal Court of Appeal has confirmed that in order to be certified, a question must be a serious question that (a) is dispositive of the appeal; (b) transcends the interests of the parties; and (c) raises an issue of broad significance or general importance (*Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at para 46).

[29] The proposed questions have very similar wording to the three questions recently considered by Justice Turley in *Hossain v Canada (Citizenship and Immigration)*, 2023 FC 1255. I agree with Justice Turley that questions 1 and 2 raise issues that have already been settled in the Federal Court of Appeal's decision in *Singh*. Question 3 is overly broad, is highly fact-dependent, and would not be dispositive of the appeal.

JUDGMENT in IMM-3103-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and
2. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3103-22

STYLE OF CAUSE: BURHAN UDDIN SHIKDER MASUD v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

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