

Federal Court



Cour fédérale

Date: 20240715

Docket: IMM-7962-23

Citation: 2024 FC 1107

Ottawa, Ontario, July 15, 2024

PRESENT: The Honourable Madam Justice Blackhawk

BETWEEN:

**KABIR AHMMED KHAN
AMENA BEGUM**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of a decision by the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada dated June 1, 2023, refusing their claim for refugee protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] (Decision).

[2] The Applicants submit that the decision is unreasonable, specifically that a) the RAD erroneously excluded new evidence relevant to their claim and b) the RAD's conclusion that they

had a viable internal flight alternative (IFA) is not reasonable, when viewed in light of their particular situation.

[3] For the reasons that follow, the application for judicial review is dismissed. I find the RAD's Decision is reasonable.

II. Background

[4] The Applicants, Kabir Ahmmed Khan and his wife Amena Begum are citizens of Bangladesh who lived in Feni.

[5] The Applicants travelled to Canada in December 2019, to escape the fundamentalist group Harakat-ul Jihad Islami (HUJI), who objected to the Applicants' work with orphaned girls. In addition, the Applicants claim that a candidate of the Awami League (AL), Nizam Hazari—the elected Member of Parliament for the Feni region, was extorting them for money and threatening violence. Mr. Hazari was involved in drug and alcohol smuggling activity to support the AL and the Applicants openly opposed this activity. They claimed refugee protection in February 2020.

[6] The Refugee Protection Division (RPD) rejected their claim on February 9, 2023, on the basis that the Applicants had a safe and reasonable IFA in Dhaka.

[7] The RAD dismissed the Applicants' appeal on June 1, 2023.

[8] The RAD determined an oral hearing was not necessary for the Applicants' appeal.

[9] The RAD found that the RPD erred in failing to make a finding that the Applicants' claim engages a nexus to Convention refugee. However, the RAD agreed with the RPD that there was

an IFA in Dhaka. The RAD found that the Applicants did not provide sufficient evidence to meet the first prong of the test to establish that the agents of persecution have the means to locate the Applicants in the IFA. Further, on the second prong of the test, the RAD determined that the Applicants had not discharged their onus of establishing that relocation to the IFA would result in undue hardship.

III. Issues and Standard of Review

[10] There are two issues in this judicial review:

- A. Did the RAD unreasonably fail to accept the new evidence submitted pursuant to subsection 110(4) of the *IRPA*?
- B. Was the RAD's conclusion that the Applicants have an IFA in Dhaka reasonable?

[11] The standard of review applicable to the judicial review of a RAD decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 25, 86).

[12] Reasonableness review is a deferential standard, and requires an evaluation of the administrative decision to determine if the decision is transparent, intelligible, and justified (Vavilov at paras 12–15, 95). The starting point for a reasonableness review is the reasons for decision. Pursuant to the Vavilov framework, 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” (Vavilov at para 85).

[13] To intervene on an application for judicial review, the Court must find an error in the decision that is central or significant to render the decision unreasonable (Vavilov at para 100).

IV. Analysis

A. *Did the RAD unreasonably fail to accept the new evidence submitted pursuant to subsection 110(4) of the IRPA?*

[14] In support of their appeal to the RAD, the Applicants submitted four pieces of new evidence:

- A letter from their son, Iftekhar Ahmad Khan, dated March 30, 2023;
- A letter from their daughter, Ismat Ara Begum, dated March 28, 2023;
- An article, “2 Hu-JI-B members held in city” by www.unb.com.db, dated February 13, 2023; and
- A Canadian Medical Association Psychiatry Profile dated December 2019.

[15] The RAD accepted the evidence of the news article, finding that the evidence met the exceptions for new evidence pursuant to subsection 110(4) of the *IRPA* as it provided new information relevant following the RPD decision (*Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 38). However, the RAD did not permit other new evidence as that evidence raised credibility issues or was reasonably available and could have been included in the application before the RPD.

[16] Specifically, the RAD found that the letters met the exception pursuant to subsection 110(4) of the *IRPA*, in that the letters referenced incidents that allegedly occurred after the RPD rejection of the claim on February 9, 2023. However, the RAD found that the letters contained information that was contradictory to evidence before the RPD, namely the ongoing threats to members of their family in-country, and the references to alleged incidents of contact by the agents of persecution, the timing of which was highly suspect.

[17] In my view, it was reasonable for the RAD to reject the new evidence, specifically the letters from the Applicants' children setting out threats that allegedly occurred following the RPD decision, after the RPD noted that there was no evidence of ongoing threats to the Applicants' children who remained in-country. Having reviewed the RAD Decision, in my view the RAD's concerns about the timing of this new evidence is reasonable and is consistent with other decisions of this Court. In *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385, the Federal Court of Appeal noted that the credibility of evidence may be reasonably assessed taking into consideration "its source and the circumstances in which it came into existence," at paras 13–15 (see also: *Malik v Canada (Citizenship and Immigration)*, 2022 FC 1097 [*Malik*] at paras 24–27 and *Idugboe v Canada (Citizenship and Immigration)*, 2020 FC 334 at para 25).

[18] Further, as noted in *Malik* at paragraph 27, "credibility determinations lie within the heartland of the RPD's and RAD's discretion and are not to be overturned unless they are perverse, capricious or made with out regard to the evidence." In my opinion, the RAD reasonably excluded this evidence.

[19] Finally, the Psychiatry Profile from the Canadian Medical Association was rejected by the RAD as new evidence because it is a public document from 2019, and would have been available for the RPD to consider. The RAD did not find the evidence that compared per capita numbers of psychiatrists in Canada compared to Bangladesh relevant. The Applicants did not explain why this evidence was not included in the package of information before the RPD.

[20] In my opinion, the RAD's findings in this regard are reasonable. The RAD has no discretion to admit new evidence on appeal that does not satisfy subsection 110(4) of the *IRPA*. The Psychiatric Profile document is evidence that was reasonably available and could have been

submitted to the RPD before their decision. Accordingly, the RAD rightly did not accept this new evidence.

B. *Was the RAD's conclusion that the Applicants have an IFA in Dhaka reasonable?*

[21] The well established two-prong test for assessing an IFA was set out by the Federal Court of Appeal in *Rasaratnam v Canada (Minister of Employment and Immigration) (CA)*, [1992] 1 FC 706 (FCA), 1991 CanLII 13517.

[22] An IFA is a place in an applicant's country where they would not be at risk, and therefore it would not be unreasonable for the applicant to relocate to, rather than seeking protection in another country. Where there is a viable IFA, a claimant is not entitled to protection from another country (*Bhuiyan v Canada (Citizenship and Immigration)*, 2024 FC 351 [*Bhuiyan*] at paras 5–6).

[23] The first prong of the test requires applicants to prove there is a serious possibility of persecution in the IFA (*Bhuiyan* at paras 5–7). At this stage of the analysis the agent of persecution's means and motive to locate the applicant in the IFA are considered (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 996 at para 8; *Adeleye v Canada (Citizenship and Immigration)*, 2022 FC 81 at para 21).

[24] The second prong of the test requires the applicants to prove that they could not reasonably seek refuge in the IFA location, when considering their particular circumstances (*Bhuiyan* at paras 6–7).

[25] To succeed in establishing that a proposed IFA is not reasonable, an applicant must persuade the RAD that at least one prong of the test is not made out (*AB v Canada (Citizenship*

and Immigration), 2021 FC 90 [AB] at para 39, citing *Aigbe v Canada (Citizenship and Immigration)*, 2020 FC 895 at para 9).

[26] To establish that an IFA is not reasonable, applicants are required to meet a very high threshold. In other words, they need “actual and concrete evidence proving that that are conditions that would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area” (AB at para 40, citing *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (FCA), 2000 CanLII 16789 at para 15).

[27] The Applicants allege that the RAD’s conclusions are based on the erroneous rejection of the new evidence submitted. As noted earlier, in my view the RAD’s rejection of the new evidence submitted was reasonable.

[28] In my opinion, the RAD applied the appropriate legal tests and considerations in its analysis. The RAD reasonably concluded that the HUJI did not have the means nor motivation to locate the Applicants in Dhaka. The RAD also reasonably concluded that there was no reliable evidence that the Applicants face a continuing threat in Dhaka from the AL and/or Nizam Hazari. Finally, the RAD reasonably considered the evidence of available mental health supports and care in Dhaka before reaching its conclusion on the viability of the IFA.

[29] With respect, I agree with the Respondents that the Applicants are inviting this Court to prefer their opinion to that of the RAD. This is not the proper role of a reviewing court (*Fatoye v Canada (Citizenship and Immigration)*, 2020 FC 456 at para 42).

V. Conclusion

[30] In this case, the RAD reasonably found that the Applicants did not satisfy the test for new evidence, with respect to the two letters and the Psychiatric Profile, as set out at subsection 110(4) of the *IRPA*. Therefore, the RAD reasonably did not consider this new evidence.

[31] While the Applicants do not agree with the RAD's assessment concerning the viability of the IFA, a holistic review of the RAD Decision, coupled with the record, illustrates that the RAD conducted a complete and detailed assessment of the admissible evidence and the conclusions reached are reasonable. In other words, the Decision is justified, transparent, and intelligible, and there is no reviewable error to justify the Court's intervention.

[32] The parties did not propose a question for certification and I agree that none arises.

JUDGMENT in IMM-7962-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified.

“Julie Blackhawk”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7962-23

STYLE OF CAUSE: KABIR AHMMED KHAN ET AL. v THE
MINISTER OF CITIZENSHIP AND
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PLACE OF HEARING: TORONTO, ONTARIO

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