

Federal Court



Cour fédérale

**Date: 20240725**

**Docket: IMM-3991-23**

**Citation: 2024 FC 1175**

**Toronto, Ontario, July 25, 2024**

**PRESENT: Madam Justice Whyte Nowak**

**BETWEEN:**

**ARMAN MATUBBER**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Arman Matubber [the Applicant] seeks judicial review of a decision of the Refugee Appeal Division [RAD] upholding a decision of the Refugee Protection Division [RPD] which rejected the Applicant's claim that he is a Convention refugee and a person in need of protection, pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27

[IRPA]. The RPD refused the Applicant's claim on the basis that a viable Internal Flight Alternative was available in Chittagong, another city in Bangladesh [the IFA].

[2] The Applicant submits that the RAD's decision is unreasonable for failing to properly consider his risk of continued persecution and harm in the IFA.

[3] For the reasons that follow, I find that the Applicant has not satisfied his burden of showing that the RAD's decision is unreasonable. Accordingly, this application for judicial review is dismissed.

## II. Legal Principles

[4] The test to determine if an IFA is viable in the claimant's country is set out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706. The test involves a two-prong analysis that demonstrates that a claimant in the IFA (1) will not be subject to a serious possibility of persecution nor to a risk of harm under section 96 and section 97 of the *IRPA* in the proposed IFA location [the First Prong]; and (2) it would not be objectively unreasonable for them to seek refuge there, taking into account all the circumstances [the Second Prong] [collectively, the IFA test].

[5] Once an IFA is proposed, the claimant has the burden of proof to establish that: (1) on a balance of probabilities, there is a serious possibility of being persecuted in the IFA or that he would be personally subject to a risk to life or cruel and unusual treatment or punishment or

danger of torture in the proposed IFA; and (2) it is objectively unreasonable or unduly harsh, in all circumstances, for the claimant to move to the proposed IFA.

[6] A viable IFA negates a claim for refugee protection under both section 96 and 97 of the *IRPA* since a Convention refugee and a person in need of protection must be found to face the identified risk in every part of their country of origin.

### III. Background Facts

[7] The Applicant was born in Madaripur, Bangladesh. He alleges that he fears persecution at the hands of the Bangladesh ruling party, the Awami League, because he supported a Member of Parliament candidate of the National Unity Front [the Opposition Candidate] against the Awami League candidate who was ultimately announced as the winner of the election.

#### A. *The Alleged Persecution of the Applicant*

[8] The Applicant describes four incidents that took place from December 2018 to October 2019 leading him to fear persecution by the Awami League.

[9] The first incident occurred on December 24, 2018 when the Applicant began campaign work in support of the Opposition Candidate. The Applicant was distributing flyers with four other members of the campaign team when members of the Awami League attacked him.

[10] The second incident occurred on December 30, 2018, when the Applicant went to the polling booth as a first-time voter. He says his vote was intercepted by someone at the polling station who told him to leave the room.

[11] According to the Applicant, the third incident took place on January 15, 2019, when the Applicant was attacked by men on motorbikes while on his way home by foot. Following this incident, the Applicant's parents sent him to live with relatives in another city. He returned home in April 2019.

[12] The final incident occurred on October 10, 2019 when the Applicant's residence was raided by a team of the Rapid Action Battalion [RAB] who support the Awami League. The Applicant was not at the residence as he had fled after being warned about the raid in advance. The Applicant's father was home during this raid.

[13] The Applicant's father arranged for the Applicant's departure to Canada through an agent. The Applicant arrived in Canada on January 17, 2020, where he claimed refugee protection eight months later.

B. *The Applicant's Amended Basis of Claim*

[14] On the morning of the RPD hearing in October 2022, the Applicant disclosed an amended Basis of Claim [BOC] which included affidavits from the following five individuals:

- **Minhaz Miah** (neighbour and friend) – this affidavit seeks to confirm that: (i) the Applicant became involved in political activities in 2018 and was attacked by Awami League

gangsters; and (ii) the RAB and Special Branch of the police looked for the Applicant before and after he left Bangladesh.

- **Milton Baidya** (the Local Opposition Candidate) - this affidavit seeks to confirm that the Applicant: (i) worked on his campaign as a volunteer in December; and (ii) was attacked by Awami League thugs on December 24, 2018 when he was distributing flyers.
- **Tipu Sultan Matubber** (the Applicant's relative) – the affiant seeks to confirm that the Applicant stayed with him from January-April 2019).
- **Badal Hossain Howlader** (a sub inspector of police) – the affiant identifies himself as the friend of the Applicant's father who tipped the family off about the October 2019 raid by RAB. The affiant explains that since he is a government employee, he cannot divulge other details.
- **Belaet Sheikh** (the Applicant's friend) - this affidavit was submitted on the morning of the RPD hearing in September 2022 and states that the police had ceased looking for the Applicant after he left Bangladesh, but for “whatever reason” they started looking for him again “in recent months” in his neighbourhood.
- **Masud Mattuber and Anna Begum** (the Applicant's parents) – these affiants seek to confirm: (i) the Applicant was attacked in December 2018 and January 2019; (ii) the Applicant went into hiding on “several occasions” including January-April 2019; and (iii) the RAB raid on their house in October 2019.

C. *The RPD Decision*

[15] On October 12, 2022, the RPD refused the Applicant's claim, finding on a balance of probabilities that both prongs of the IFA test were met and the Applicant has a viable IFA. The key findings of the RPD were that: (1) the alleged October 2019 raid by the RAB did not take place (thus eliminating the RAB as one of the agents of persecution); and (2) the Awami League

had no influence beyond the Applicant's hometown and had no motivation to pursue the Applicant in the IFA.

D. *The RAD Decision*

[16] On March 13, 2023, the RAD confirmed the decision of the RPD [the RAD Decision].

[17] The RAD Decision was based on three findings: (1) the Applicant does not fit the profile of those who are generally the objects of pursuit by the Awami League; (2) the Applicant failed to establish that he was being pursued as he did not show evidence, outside of his feelings and belief, that there was a direct approach made to him by the Awami League in his hometown; and (3) even if it was established that the Awami League was interested in the Applicant, the Applicant failed to establish that the Awami League had remained interested in the Applicant four years later and was therefore motivated to extend their reach to the IFA.

[18] As the Applicant did not challenge the RPD's finding that the IFA was not unreasonable, the RPD's Decision was upheld.

[19] On April 24, 2023, the Applicant filed an application for leave and judicial review of the RAD Decision.

IV. Issues and Standard of Review

[20] The sole issue raised by the Applicant is whether the RAD erred in its IFA assessment under the First Prong of the IFA Test by finding that the Awami League lacked the motivation to pursue the Applicant in the IFA.

[21] I agree with the parties that the applicable standard of review of the RAD's Decision is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17 and 23-25 [*Vavilov*]).

[22] The role of the Court in a reasonableness review is to holistically and contextually examine the administrative decision maker's reasoning and the outcome to determine whether the decision is "based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at paras 97 and 85). An applicant must be able to point to shortcomings or flaws in the decision that are sufficiently central or significant as opposed to those which are better characterized as superficial or peripheral to the merits of the decision (*Vavilov* at para 99). In conducting its analysis, the Court must not engage in the reweighing or reassessment of the evidence (*Vavilov* at paras 95 and 125).

V. Analysis

[23] The Applicant has raised the following errors in respect of the RAD's analysis of the First Prong of the IFA Test: (i) the RAD erred in its assessment of the national document package [NDP]; (ii) the RAD erred in its assessment of the affidavits filed by the Applicant to

support his contention that he faced a threat of persecution in the IFA; and (iii) the RAD failed to engage in a forward-looking risk assessment.

[24] I address each in turn, noting however that the RAD's assessment of the affidavit evidence and the NDP evidence were not determinative issues. Despite finding that the Applicant failed to establish that he was being pursued by the Awami League, the RAD still turned its mind to whether, even if it were assumed that the Awami League had demonstrated an interest in the Applicant in his hometown, the Applicant had established that the Awami League would be motivated to extend its reach nationally to the IFA, four years later after the Applicant's isolated past political activity.

A. *No error in the RAD's assessment of the NDP*

[25] The RAD reviewed the NDP and considered that the Applicant does not fit the profile of those who are generally pursued by the Awami League, which includes mostly "opposition party leaders, activists and members, critics, dissidents, intellectuals, academics, journalists and artists" based on their criticism of the Awami League.

[26] I agree with the Respondent that it was open to the RAD to find that mere support for opposition leaders does not fit in any of these categories. The RAD's reasoning that the Applicant's involvement with the opposition party was short-lived and involved an isolated activity makes it distinguishable from the portion of the NDP that the Applicant relies on. The Applicant was not part of a political party, student protest, nor did he ever participate in a large, organized protest against the government. In any event, it is important to emphasize that the



NDP does not provide objective support for the Applicant's subjective fear that the Awami League is motivated to extend its pursuit of the Applicant to the IFA after the passage of so many years.

B. *No error in the RAD's assessment of the affidavit evidence*

[27] The Applicant does not argue that the RAD misapprehended or ignored the affidavit evidence, rather he argues that the RAD failed to assess the evidence "reasonably and in good faith." I do not agree. The weighing of the probative value of evidence is within the expertise of the RPD and the RAD, and the Applicant's mere disagreement with the RAD's findings does not warrant this Court's intervention (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 1558 at para 28). Moreover, even if the RAD had accepted the affidavit evidence, it simply confirms the RAB's interest in the Applicant in his hometown.

C. *No error in the assessment of the Applicant's risk of persecution in the IFA*

[28] The Applicant submits that the RAD erred in failing to assess the Applicant's forward-looking risk. To be clear, the burden on this issue lay with the Applicant and the only evidence that comes close to addressing the Applicant's future risk in the IFA, was the Applicant's statement on the day of the hearing that he continues to support the opposition party and does not support the Awami League. Even if the Court were to accept the Applicant's argument that the objective country evidence supports a finding that the RAB and Special Police forces are politicized agents of the Awami League and therefore have national reach, this establishes the

*means* but not the *motivation* to pursue the Applicant to the IFA. The Applicant must prove both (*Saliu v Canada (Citizenship and Immigration)*, 2021 FC 167 at para 46).

VI. Conclusion

[29] I find it was reasonable for the RAD to conclude that the Applicant failed to establish that the Awami League is motivated to extend its reach beyond his hometown to the IFA; accordingly, the Applicant has not demonstrated that the RAD made a reviewable error warranting this Court's intervention and this application is dismissed.

[30] The parties have not identified a question of general importance and none arises.

**JUDGMENT in IMM-3991-23**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. There is no question of general importance for certification.

"Allyson Whyte Nowak"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3991-23

**STYLE OF CAUSE:** ARMAN MATUBBER v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY WAY OF ZOOM VIDEOCONFERENCE

**DATE OF HEARING:** JULY 24, 2024

**JUDGMENT AND REASONS:** WHYTE NOWAK J.

**DATED:** JULY 25, 2024

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