IMM-850-97

BETWEEN:

FEROZ ADEEL KAZI,

Applicant,

- and -

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION,

Respondent.

REASONS FOR ORDER

PINARD J.

The applicant seeks judicial review of a decision of the Convention Refugee Determination Division (the CRDD) dated February 13, 1997, in which the Refugee Division determined he was not a Convention refugee as defined in subsection 2(1) of the *Immigration Act* (the Act).

The CRDD found the applicant to be credible but determined that because of changed circumstances in Bangladesh the applicant's fear of persecution is no longer well founded. The reasons for this determination are found in the following excerpts from the CRDD's reasons:

> In June, 1996, the Awami League won an overwhelming victory in the general elections in Bangladesh and formed the government there. The claimant, by virtue of his being a member of the BCL, is also a member of the Awami League, its parent body. . . .
>
> Notably, the principal agent of the claimant's persecution is the BNP goons. These are the ones who drove him from his country out of fear for his life. The capacity of the BNP goons to drive fear into the minds of their rivals stemmed, mainly, from the observation that the BNP government was unwilling to curb their violent excesses and acts of criminal abuse; evidently because such activities secured its political interests.
>
> [. . .]
>
> It is useful to be reminded, here, that the basis of the claimant's fear of persecution is that the BNP government was unwilling - not necessarily unable - to assure his protection from BNP goons. Certainly, he cannot reasonably make the same charge regarding the government of his own party. Moreover, exhibits adduced in evidence at the hearing show, that the Awami League government has declared its intention to stamp out the inappropriate or illegal use of political influence . . ., has taken steps to curb terrorism . . ., has

> established working alliances with other rival parties . . .; and, that the police is intervening in a politically impartial way to suppress violent encounters . . . - sporadic or gratuitous incidents not withstanding [*sic*].

> Almost as a second thought, the claimant attempted to justify his fear of returning to Bangladesh, by referring to the claim that he had been critical of the armed cadres within his own group. He would suggest that there is some lasting anger towards him, that would deny him the protection of his party and its government. The panel has observed from the claimant's own testimony, that he had merely been rebuked, but was not harmed in any way over this matter. Notably, he had continued his membership in the group, and had involved himself in its political activities much beyond the time when this incident occurred.

With respect to the specific issue of "changed circumstances", the leading case is the Federal Court of Appeal decision in *Yusuf v. M.E.I.* (1995), 179 N.R. 11. In that case, the Court of Appeal clarified the law in this area in holding that the assessment of whether there are "changed circumstances" in a country is a factual, rather than a legal determination. The key consideration is whether the changes in the political situation are effective and durable, as opposed to merely transitory, and what, if any bearing, these changes have on the claimant's specific situation. As stated by Hugessen, J.A., at page 12:

> We would add that the issue of so-called "changed circumstances" seems to be in danger of being elevated, wrongly in our view, into a question of law when it is, at bottom, simply one of fact. A change in the political situation in a claimant's country of origin is only relevant if it may help in determining whether or not there is, at the date of the hearing, a reasonable and objectively foreseeable possibility that the claimant will be persecuted in the event of return there. That is an issue for factual determination and there is no separate legal "test" by which any alleged change in circumstances must be measured. The use of words such as "meaningful", "effective" or "durable" is only helpful if one keeps clearly in mind that the only question, and therefore the only test, is that derived from the definition of Convention Refugee in s. 2 of the Act: does the claimant now have a well-founded fear of persecution? Since there was in this case evidence to support the Board's negative finding on this issue, we would not intervene.

In the present case, the Board found that there were "changed circumstances" in Bangladesh which were sufficient to support a finding that the applicant no longer had a well-founded fear of persecution in that country. The Board found that there was evidence to show that the Awami League government had declared its intention to stamp out the illegal use of political influence, had taken steps to curb terrorism, and had taken other measures which allowed the Board to conclude that the applicant could obtain protection from the authorities in the event that goons from rival political parties sought to antagonize him. The Board also found that the applicant would not be at risk from his own party as a result of his criticism of the violent activities of the armed cadres of the BCL, because he had maintained his membership and had continued his activities with that party long after the occurrence of this incident.

In light of the evidence, I cannot conclude that the finding by the Board was perverse, capricious or so unreasonable as to warrant the intervention of this Court. While this Court might have drawn a different conclusion with respect to the durability and effectiveness of the political changes in Bangladesh, it is not the role of this Court to substitute its own interpretation of the evidence for that of the Board. In my opinion, there was evidence in the file to support the Board's conclusion that there were "changes which have occurred in the political environment of Bangladesh . . . [which] are sufficiently meaningful and effective in nature that the claimant's fear of living in his homeland could no longer be well-founded". Consequently, there is no basis for interfering with the Board's decision on this ground.

The applicant also challenges the Board's decision on the ground that the Board committed a reviewable error by failing to consider subsection 2(3) of the Act. Subsection 2(3) is included in the Act to address situations where, despite "changed circumstances" in a claimant's country of origin, he or she may nonetheless be recognized as a Convention refugee if the past persecution the claimant suffered was of such an appalling nature that he or she should not be forced to return to that country. The relevant provisions read as follows:

2. (2) A person ceases to be a Convention refugee when

[. . .]

(*e*) the reasons for the person's fear of persecution in the country that the person left, or outside of which the person remained, cease to exist.

(3) A person does not cease to be a Convention refugee by virtue of paragraph 2(*e*) if the person establishes that there are compelling reasons arising out of any previous persecution for refusing to avail himself of the protection of the country that the person left, or outside of which the person remained, by reason of fear of persecution.

In *Canada v. Obstoj*, [1992] 2 F.C. 739, the Federal Court of Appeal determined that the circumstances contemplated by subsection 2(3) of the Act, while only applicable to a "tiny minority" of refugee claimants, nonetheless forms part of the overall determination of whether a person qualifies as a Convention refugee as defined in the Act.

In the present case, it is clear that the applicant did not specifically raise subsection 2(3) at the hearing. Nowhere in the transcript is any mention made of this provision. The applicant nonetheless seeks to argue that the Board erred in law by failing to consider subsection 2(3), on the grounds that his counsel addressed the issues arising from subsection 2(3) in his submissions before

the Board, even if he did not directly mention the article itself. In my opinion, the applicant's argument may be dealt with without necessarily deciding whether a claimant has to specifically refer to subsection 2(3). In addition to the failure of the applicant to raise subsection 2(3), it is my opinion, having read the transcript, that the issue of "compelling reasons arising out of any previous persecution" cannot be said to be made out on the facts and submissions presented to the Board. More specifically, it has not been shown that the applicant is suffering "continuing psychological after-effects of the previous persecution" (see *Arguello-Garcia v. M.E.I.* (1993), 70 F.T.R. 1 (F.C.T.D.); and *Shahid v. M.C.I.* (1995), 89 F.T.R. 106, at page 111 (F.C.T.D.)). Accordingly, the Board committed no error by failing to address subsection 2(3) of the Act in its reasons.

For the foregoing reasons, the application for judicial review is dismissed.

Given the circumstances, this is not a matter for certification pursuant to subsection 18(1) of the *Federal Court Immigration Rules, 1993*.

OTTAWA, Ontario
August 15, 1997

JUDGE