

Date: 20070703

Docket: IMM-4634-06

Citation: 2007 FC 689

Ottawa, Ontario, July 3, 2007

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

**KBM ABDUR RAHMAN, NASRIN RAHMAN,
NOURIN RAHMAN, REDUANUR RAHMAN
and RAIHANUR RAHMAN**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] K.B.M. Abdur Rahman (the Principal Applicant), his wife Nasrin Rahman and their three minor children Reduanur, Raihanur and Nourin seek refugee protection in Canada based on the Principal Applicant's alleged fear of persecution by reason of his political opinion, as an organizer of the Bangladesh Nationalist Party (BNP). All of the Applicants, except for Nourin who is a citizen of the United States, are citizens of Bangladesh. In a decision dated August 7, 2006, a panel of the Refugee Protection Division of the Immigration and Refugee Board (the Board) determined that the Applicants were not Convention refugees or persons in need of protection pursuant to sections 96

and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (*IRPA*). The Board concluded that the Applicants were not credible.

[2] The Applicants ask this Court to overturn the Board's decision. They submit that the Board erred:

1. by failing to consider whether “compelling reasons”, as contemplated by s. 108(4) of the *IRPA*, apply; and
2. by failing to have regard to the evidence.

[3] As I can see no error in the Board's decision, I will dismiss this application for judicial review.

[4] At the commencement of the oral hearing of this application, counsel for the Applicants indicated that he was not prepared to proceed with oral arguments. With the agreement of counsel for both parties, this Court ordered that the matter be dealt with on the basis of written submissions. Although the Applicants were afforded the opportunity to make further written submissions, no further submissions were made. Accordingly, this matter was decided on the basis of the written representations made by the parties.

[5] With respect to the alleged failure of the Board to consider “compelling reasons”, the Applicants have misunderstood the statutory scheme embodied in s. 108 of *IRPA*. In *Canada*

(Minister of Employment and Immigration) v. Obstoj, [1992] 2 F.C. 739 (F.C.A.), 93 D.L.R. (4th) 144, the Federal Court of Appeal dealt with subsections 2(2) and 2(3) of the old *Immigration Act* (now section 108 of *IRPA*). The Federal Court of Appeal stated the following with regards to the application of subsections 2(2) and 2(3) at para. 5:

By its terms this provision can only apply to a person “who was determined...to be a Convention refugee”, that is to say after there has been an initial recognition of refugee status by the Refugee Division; it logically cannot come into play at the credible basis hearing which necessarily must be prior to any such recognition.

[6] Simply stated, s. 108(4) can only apply where there has been a determination that, but for changed country conditions, the claimants would have been found to be persons in need of protection. Since, in this case, the Board did not believe the Applicants’ claims of past persecution in Bangladesh, s. 108(4) cannot apply.

[7] The second alleged error is with respect to the credibility finding. This finding is reviewable on a standard of patent unreasonableness, meaning that it can only be overturned where the Board has made its findings perversely and capriciously or without regard to the evidence.

[8] In my view, there is no reviewable error. It is clear from the decision that the Board did not accept the Applicants’ evidence that they were at risk in Bangladesh from internecine strife within the BNP for the cogent reason that, when asked, the Principal Applicant and his wife failed to identify this as a threat they faced in Bangladesh. On the evidence before it, the finding of lack of credibility is supported by the evidence.

[9] There is one error apparent on the face of the decision. In its decision, the Board found that the letter from the president of the Fulgazi Feni BNP Committee was dated June 10, 2006. A review of the hearing transcript shows that the Board accepted, at the beginning of the hearing, that the letter was dated April 10, 2006. However, this is not a material error, given that the Board did not accept the Principal Applicant's and his wife's evidence that they feared the BNP.

[10] For these reasons, the application for judicial review will be dismissed.

ORDER

THIS COURT ORDERS that:

1. The application is dismissed; and
2. No question of general importance is certified.

“Judith A. Snider”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-4634-06

STYLE OF CAUSE: KBM ABDUR RAHMAN ET AL v. THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 13, 2007

**REASONS FOR ORDER
AND ORDER:** Snider J.

DATED: July 3, 2007

APPEARANCES:

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