Date: 20071221

Docket: IMM-2243-07

Citation: 2007 FC 1350

BETWEEN:

SHAKIL ALI,
FARRUBA CHOWDHURY

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT

Pinard J.

[1] This is an application for judicial review of the Refugee Protection Division's (the "Board") determination that the applicants were not "Convention refugees" or "persons in need of protection" as defined in sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[2] The applicants are husband and wife, both citizens of Bangladesh. Farruba Chowdhury based her application on that of her husband. The applicants came to Canada from the United States and made their refugee application at the border, on January 25, 2006.

[3] Shakil Ali (the "applicant") claims that he faces persecution in Bangladesh on the basis of his political activities.

[4] The Board released its decision on May 3, 2007. It determined that the applicants were not refugees or persons in need of protection, based on its determination that the applicant's amendment to his Personal Information Form ("PIF") "completely destroyed his credibility." The amendment indicated that the applicant's father informed the applicant in February 2007 that the police had been to see him, looking for the applicant, in 2002, and that the Joint Forces, formerly the Coalition Government in Bangladesh, had been looking for the applicant more recently, in 2007. The Board did not accept the applicant's explanation that he had not been able to include the new information earlier because he had only found out about it from his father after his PIF had been submitted.

[5] Furthermore, the Board also found it implausible that, in 2002, the members of the coalition would be so interested in the applicant as to make false accusations against him, in light of the little political activity he had been involved in while in Bangladesh, the animosity still existing between the two parties at the party level, and the fact that he had left the country two years earlier.

[6] Because the Board did not believe the applicant's allegations, it also decided to give no probative value to the documents filed by the applicant in support of his claim, including letters

from his lawyer in Bangladesh, from the General Secretary and the President of the Awami League in his district, and from his father. According to the Board, these documents "could easily have been obtained fraudulently as indicated in the documentary evidence."

[7] It is clear that the Board has complete jurisdiction over credibility assessments, including determinations with regard to plausibility. Courts are not to interfere in the Board's conclusions on the matter of credibility unless they are patently unreasonable, that is, not supported by the evidence or made without taking account of all of the evidence (see *Aguebor v. Canada (M.E.I.)* (1993), 160 N.R. 315, [1993] F.C.J. No. 732 (C.A.) (QL), *Zhou v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 70, [2006] F.C.J. No. 173 (T.D.) (QL) and *Traore v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 1256, [2003] F.C.J. No. 1585 (T.D.) (QL)).

[8] In this case, the Board found the applicant not to be credible after he modified his PIF immediately before the hearing to indicate that he was sought by the police and the Joint Forces in Bangladesh. I note that, contrary to the applicant's submission, it does not appear as if the Board understood the amendment to mean that he no longer feared members of Jamaat-e-Islam. Rather, the Board found the applicant's explanation, that he had only found out that he was sought by authorities in Bangladesh because his father had not wanted to worry him, to be implausible, on the basis of three inferences:

(a) The applicant had left Bangladesh for the United States to claim asylum, and the information could have been helpful to that claim

[9] The applicant points out that the Board was incorrect when it asserted that he had gone to the U.S. with the intention of claiming asylum. In fact, his PIF clearly states that he only decided to

claim asylum after the death of Bangladesh Chatra League ("BCL") activists in July 2000, which occurred after his arrival in the U.S. Furthermore, even though information that the police were looking for him in 2002 would have been helpful to his asylum claim, the applicant had already decided by that time to apply for a green card instead. I find that the Board's determination on this issue was patently unreasonable.

(b) When the applicant's green card was denied in the United States, the applicant's father would have given the applicant the information in order to prevent him from returning to Bangladesh

[10] As the applicant points out, there was no indication that the applicant was planning to return to Bangladesh even when his green card was denied in the U.S. Even though the applicant apparently was unaware that he was being sought by the police and the Joint Forces, he came to Canada and claimed refugee status immediately. In my opinion, the Board's finding on this issue was patently unreasonable.

(c) The applicant's father would have wanted to give the applicant the information for his refugee claim in Canada

[11] The applicant points out that there is no evidence as to when his father knew of his arrival in Canada. Furthermore, according to the applicant, the nature of the documents sent by his father as well as the information contained in them demonstrate that these letters did not exist prior to the applicant's arrival in Canada.

[12] The letter from the applicant's lawyer in Bangladesh is dated February 2, 2007, and the letter from his father is dated February 5, 2007. Both letters state that the Joint Forces were searching for the applicant as of January 2007. The Board, in its reasons, does not take account of

the fact that the confirmation of the Joint Forces' interest in January 2007 could very well have changed the applicant's father's assessment of what information his son should have, nor did it give any consideration to the Joint Forces raid at all. Therefore, I would find the Board's determination on this issue to be patently unreasonable as well.

[13] Finally, the Board also determined that it "makes no sense" that the members of the Coalition Government would be interested in the applicant two years after he had left the country, "because he allegedly gave a few speeches when he found himself in Bangladesh," especially considering the animosity that still existed at the party level. The applicant submits that there is no evidence to support this finding. I agree. While this finding may have been supportable in light of a reasonable negative credibility finding, it cannot stand up on its own. According to the applicant, his political activity extends beyond giving a few speeches. In his PIF, he explains that he became General Secretary of BCL in 1989, and organized a number of rallies and programs. When he returned to Bangladesh in 1994, the applicant became active once more in the Awami League, and was active during the 1996 election campaign. In 1999 he was elected General Secretary of the local Awami League branch. There is nothing in the documentary evidence to indicate that the parties are not able to work together to combat what they see as a shared enemy. Furthermore, the documentary evidence does indicate that local Awami League leaders have been targeted by the Joint Forces. I find the Board's analysis on this issue to also be patently unreasonable.

[14] These patently unreasonable determinations and analysis made by the Board are sufficient, in my view, to warrant the intervention of this Court. Accordingly, the application for judicial

review is allowed and the matter is sent back to a differently constituted panel of the Board for new determination.

"Yvon Pinard"
Judge

Ottawa, Ontario
December 21, 2007

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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