

**Date: 20080208**

**Docket: IMM-6397-05**

**Citation: 2008 FC 169**

**Ottawa, Ontario, this 8<sup>th</sup> day of February, 2008**

**PRESENT: The Honourable Barry Strayer, Deputy Judge**

**BETWEEN:**

**HUBERT PETER GOMES, GEETA GLORIA GOMES  
LIRA MARIA GOMES, FLORA ADRIANA GOMES**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**INTRODUCTION**

[1] This is an application for judicial review of a decision of the Immigration and Refugee Board (Refugee Protection Division) (Board) of September 30, 2005, rejecting the claims to refugee status and section 97 protection of the Applicants.

**FACTS**

[2] The Principal Applicant, Hubert Peter Gomes and his spouse, Geeta Gloria Gomes are citizens of Bangladesh. Their two children, Lira and Flora, were born in Bermuda but are also citizens of Bangladesh. The parents assert that they are Christians and the Board does not seem to question that fact. They have lived outside of Bangladesh at various times since 1991, when the husband left to work in Saudi Arabia. He was there for two years and then returned to Bangladesh. He left Bangladesh in 1995 to work in Bahrain for 2.5 years before returning to Bangladesh in 1997. That same year, he went to Bermuda and worked there for seven years and it appears that his wife was there with him, at least part of the time. He says that he returned to Bangladesh twice, once for five weeks in 2000 and once for two months in 2004. On each occasion, he was attacked by “Jamat and BNP goons” (these being apparently political groupings who consider Christians to be their political opponents). In each case he was beaten (on the second occasion “mercilessly”) and threatened. According to his wife, in 2000 their home was invaded by the same or similar people searching for her husband who threatened her and her husband and she had received other threats from them in 2004. Both husband and wife said that they had made reports to the police of these incidents but the police had done nothing. They continued to live in Bermuda until March, 2005 when they came to Canada on visitors’ visas to be present at the baptism of the son of a friend. They planned to continue on to Bangladesh for a holiday after their visit to Canada. However, the husband says that a few days after their arrival he phoned his mother in Bangladesh and she reported to him that she had received threats against him and that he and his family ought not to return. On March 31, 2005 they all made a claim for refugee protection in Canada.

[3] The Board, after hearing evidence, rejected these claims on the grounds that the claimants were not credible and that they had failed to establish subjective fear of serious harm or persecution should they return to Bangladesh.

### **ANALYSIS**

[4] At the outset of the hearing the Applicants withdrew their arguments based on alleged unfairness in the Board having questioned the Applicants first.

[5] It appears to me that the issues are essentially of credibility and of facts, and that with respect to both the proper standard of review is patent unreasonability: *Harb v. Canada* 2003 FCA 39 at para. 14; *Sinan v. Canada* 2004 FC 87, paras. 8, 11.

[6] Having considered carefully the criticisms of the Board decision made by counsel for the Applicants, some of which criticisms are not without validity, I am unable to say that the Board's conclusion is patently unreasonable on these issues.

[7] I believe that some of the Board's reasons for finding the Applicants lacked credibility are rather far fetched. The Board points to certain inconsistencies between the oral evidence and their personal information forms. For example, the Principal Applicant testified that a friend was with him who also experienced the February, 2000 attack, and they both made reports to the police. His friend was not mentioned in the personal information form nor was the fact that his friend had also

made a complaint to the police. The male claimant had an explanation for this which was, in my view, plausible. The Board was sceptical about the fact that both husband and wife stated that they had made reports to the police of these incidents but could not produce a copy of the police report as they were given none. The Board found it suspicious that the husband and wife in their respective “Schedule I, Background Information form” gave the names of the persons they feared in Bangladesh but did not do so in their Personal Information forms. The Board thought is suspicious that the claimants “delayed” from March 17, 2005 to March 31, 2005 while in Canada before filing a refugee claim. (They were lawfully in Canada and were in no danger of being removed at that time, and according to the Applicants, they did not decide to make refugee claims until a few days after their arrival when the husband spoke to his mother). Also, the Board noted that the Applicants had obtained from the Bangladesh consulate in New York in 1999 a renewal of their Bangladesh passports and obviously thought this detracted from their claims. It is unclear to me why this brought into question the Applicants’ claim to lack of state protection: this passport event took place a year before the Principal Applicant suffered any attack in Bangladesh; and the Applicants do not complain of persecution by their state but rather by the failure of their state to protect them and this is completely consistent with the state issuing them new passports in 1999 in New York.

[8] It appears to me that all of these suspicions were of doubtful weight and if I were judging the matter I might well have come up with a different conclusion in respect of these issues.

[9] Looking at the remainder of the evidence before the Board, however, it appears to me that there were strong reasons for doubting that the Applicants had established a subjective fear of return

to Bangladesh: in spite of the husband and wife having experienced threats and, in the case of the husband, physical assaults in Bangladesh in 2000 and 2004, they were, in March of 2005, actually planning to go to Bangladesh after their sojourn in Canada. It is true that they assert that the husband, after their arrival in Canada, phoned his mother who reported to him recent threats made against him. But these threats were very similar to those injuries and threats which he had already experienced in 2000 and 2004, and in spite of which he and his family were planning to holiday in Bangladesh in 2005. The Board also found implausible, and I think reasonably so, that the Applicants would be such targets of political or religious opponents in Bangladesh, considering that they had only spent a total of three months in Bangladesh in the last eight years. Looking at the decision as a whole, then, I am unable to say that it is patently unreasonable. That is, it was not made perversely or without regard to the material before the Board.

### **DISPOSITION**

[10] I will therefore dismiss the application for judicial review. Counsel had no suggested questions for certification and none will be certified.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that**

1. The application for judicial review of the Immigration Refugee Board (Refugee Protection Division) of September 30, 2005 be dismissed.

\_\_\_\_\_  
"Barry Strayer"  
Deputy Judge

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

**DOCKET:** IMM-6397-05

**STYLE OF CAUSE:** **HUBERT PETER GOMES, GEETA GLORIA GOMES  
LIRA MARIA GOMES, FLORA ADRIANA GOMES**

**and**

**MINISTER OF CITIZENSHIP AND IMMIGRATION**

**PLACE OF HEARING:** Toronto

**DATE OF HEARING:** January 30, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT:** STRAYER, J.

**DATED:** February 8, 2008

**APPEARANCES:**

Ms. Krassina Kostadonov  
Ms. Amy Lambiris

FOR THE APPLICANTS  
FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Waldman & Associates  
Barristers and Solicitors  
John H. Sims, Q.C.  
Deputy Attorney General of Canada

FOR THE APPLICANTS  
FOR THE RESPONDENT