

Date: 20081117

Docket: IMM-1203-08

Citation: 2008 FC 1269

Ottawa, Ontario, this 17th day of November 2008

Present: The Honourable Mr. Justice Pinard

BETWEEN:

**ASHIQ AL ISLAM, NAHID ISLAM,
MASIHA ISLAM, FARISA ISLAM**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the decision of a Pre-Removal Risk Assessment (PRRA) officer dated January 28, 2008, which rejected the applicants' application for protection under subsection 112(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act").

[2] The principal applicant, Ashiq al Islam, is *Bihari*. The *Biharis* are Urdu-speaking Muslims who fled to East Pakistan at the time of Partition and were stranded there after Bangladesh's independence in 1971. They are at odds with the Bangla-speaking majority of that country, after siding with Pakistan during the nine-month conflict.

[3] The principal applicant arrived in the United States from Bangladesh on December 24, 2002. The female applicant, Nahid Islam, is his wife; she arrived in the United States on June 24, 2002. On June 22, 2003, they landed in Canada with the minor twins who were born in the United States, and made an application for refugee status the same day.

[4] The principal applicant fears returning to Bangladesh because of the hostility of his parents-in-law, who are deeply opposed to their daughter's marriage to a *Bihari*; and, more generally, because of the terrible treatment of *Biharis*.

[5] The Refugee Protection Division (the "RPD") assessed the applicants' claims on April 26, 2006 and September 28, 2006. At the hearing, the female applicant based her claim on that of her husband, who was also appointed the designated representative of both minor claimants against the United States. Their claims were rejected on March 23, 2007. An application for leave for judicial review was denied on August 10, 2007 by Justice Heneghan. The applicants subsequently applied for a PRRA, but were denied. It is this decision that is the subject of the present review.

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[6] The principal applicant's claim is two-pronged. It is based on (1) a well-founded fear of persecution by his influential in-laws who oppose his marriage to their daughter, and (2) the dire treatment of *Biharis* by the Bangladeshi State and people.

[7] On the first point, most of the RPD's decision was based on adverse credibility findings. The principal applicant argues that the PRRA officer was not entitled to rely on these findings but had a duty to provide a hearing, if she had concerns about credibility. I cannot agree.

[8] A pre-removal risk assessment is ordinarily made on the basis of written submissions (see section 113 of the Act; subsection 161(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the "Regulations"), and *Alvarez v. Solicitor General of Canada*, 2005 FC 143). An oral hearing is only required when the factors listed in section 167 of the Regulations are met. In this case, an oral hearing was not needed to determine the credibility of any new evidence that was not before the RPD. Consequently, the PRRA officer did not err in not granting the applicant a hearing (*Jaouadi v. Minister of Public Safety and Emergency Preparedness*, 2006 FC 1549).

[9] On the second point, the principal applicant provided evidence which, in part, could and should have been adduced before the RPD. In that regard, counsel for the respondent is correct when she states, at paragraph 20 of her written submissions:

. . . contrary to the Applicants' implication in their Memorandum of Argument, the PRRA officer did not take issue with the principle Applicant's ethnicity as a Bihari. Rather, she was of the opinion that the mistreatment of the *Biharis* in Bangladesh was an issue that had already been put before the RPD. As such, this claim and the evidence in support of it were subject to ss. 113(a) of the *Immigration and Refugee Protection Act* . . .

[10] She also correctly points out at paragraph 24 of her memorandum that the “PRRA is not an appeal of the RPD decision”; accordingly, it “is not the duty of the PRRA officer to consider evidence that could have been put to the RPD but was not” (see *Jaouadi, supra*, at paragraph 26; *Alvarez, supra*, at paragraph 6; *Raza et al. v. The Minister of Citizenship and Immigration et al.*, 370 N.R. 344, 2007 FCA 385; and *Yousef v. Minister of Citizenship and Immigration*, 296 F.T.R. 182, 2006 FC 864, at paragraph 21).

[11] As for the rest of the evidence which was accepted by the PRRA officer as new evidence, the latter writes, in her decision:

The new evidence submitted by the applicant does not sufficiently address these inconsistencies, such that the applicant rebuts the finding of the RPD on the same risk situation. The 19 page hand written submission summarizes the applicants’ risk, and provides a history of events. The letter does not rebut the specific credibility findings made by the board, by explaining why these inconsistencies existed.

With reference to the documentary evidence, I find that the applicant did not indicate how the documentary evidence relates to him and his personal risk situation. Also, the documentary evidence does not address the specific inconsistencies sighted [*sic*] by the RPD in its decision. While the documents provide information that relates to the country conditions in Bangladesh, they do not sufficiently rebut the numerous inconsistencies sighted [*sic*] by the board in its decision.

[12] Upon reviewing the evidence, I am not satisfied that the assessment of the facts made by the PRRA officer is unreasonable. In such circumstances, it is not incumbent upon this Court to substitute its own assessment to that made by the PRRA officer.

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[13] For all the above reasons, the application for judicial review is dismissed.

JUDGMENT

The application for judicial review of the decision of a Pre-Removal Risk Assessment officer dated January 28, 2008, which rejected the applicants' application for protection under subsection 112(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, is dismissed.

“Yvon Pinard”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-1203-08

STYLE OF CAUSE: ASHIQ AL ISLAM, NAHID ISLAM, MASIHA ISLAM,
FARISA ISLAM v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 15, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** Pinard J.

DATED: November 17, 2008

APPEARANCES:

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