

Cour fédérale



Federal Court

Date: 20111109

Docket: IMM-2278-11

Citation: 2011 FC 1289

Toronto, Ontario, November 9, 2011

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

MUSTAFA UDDIN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant is an adult male citizen of Bangladesh. He came to Canada and sought refugee protection in January 2001. That claim was denied in 2003. In December 2010, the Applicant submitted a request for a pre-removal risk assessment (PRRA). That request was denied in a written decision dated February 25, 2011. This is a judicial review of that decision. For the reasons that follow, I am allowing this judicial review and sending the matter back for redetermination by a different Officer who shall hold a hearing.

[2] The essential issue in this matter is whether the PRRA Officer should have convoked a hearing. I very recently reviewed the law in this respect in my decision in *Rajagopal v Canada (MCI)*, 2011 FC 1277. I will not repeat that analysis, which I adopt in these Reasons.

[3] The Court is concerned about decisions of PRRA Officers in which there is an endeavour to avoid the use of the word “credibility” in the hopes of avoiding a hearing. The intent of IRPA, its *Regulations* and attendant jurisprudence is clear; if credibility is an issue central to the matter before the Board and likely to lead to a result unfavourable to the applicant, a hearing should be held. It is not for a PRRA Officer to finesse these requirements by endeavouring to couch what are, in reality, credibility concerns, in language suggesting lack of evidence or contradictory evidence.

[4] Here, the central issue was claim by the Applicant, recently arising, that he had been sought out in Bangladesh by militants by reason of his supposed affiliation with a particular political group. Upon learning that the Applicant was in Canada, the militants beat the son and left with a warning that they would do the same to the Applicant if he were to return to Bangladesh. That was the sworn evidence before the Officer.

[5] To back up the sworn evidence, photographs of the son after the beating, a local Bangladesh newspaper report substantiating the Applicant’s evidence, and a letter from the Applicant’s sister substantiating the evidence were produced. The PRRA Officer expressed certain doubts about this material. In other words, the Officer was attacking the Applicant’s credibility. That is what a hearing is supposed to be for.

[6] The matter is returned for redetermination before a different Officer, with a hearing.

Counsel did not request certification, and I agree.

JUDGMENT

FOR THE REASONS PROVIDED:

THIS COURT'S JUDGMENT is that:

1. The application is allowed;
2. The matter is sent back for redetermination by a different Officer, who shall hold a hearing;
3. No question is certified; and
4. No Order as to costs.

“Roger T. Hughes”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-2278-11

STYLE OF CAUSE: MUSTAFA UDDIN v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 8, 2011

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

DATED: November 9, 2011

APPEARANCES:

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