

Federal Court



Cour fédérale

**Date: 20120518**

**Docket: IMM-6270-11**

**Citation: 2012 FC 607**

**Ottawa, Ontario, May 18, 2012**

**PRESENT: The Honourable Mr. Justice Boivin**

**BETWEEN:**

**TINKU BARUA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] for judicial review of the decision rendered by the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated August 18, 2011, which refused the applicant's claim to be deemed a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

[2] The applicant seeks an order setting aside the decision and remitting the matter for redetermination by a differently constituted panel of the Board.

Factual Background

[3] Mr. Tinku Barua (the applicant) is a citizen of Bangladesh who seeks protection in Canada as he fears persecution at the hands of Islamic terrorists supported by the Bangladesh Nationalist Party (BNP).

[4] The applicant lived in Jobra, a relatively small city north of the large metropolis of Chittagong.

[5] The applicant alleges that, as a Buddhist, he has been targeted by Islamic terrorists who seek to eradicate the existence of minorities in Bangladesh.

[6] In response to the discrimination and persecution of Bangladesh's religious minorities, the applicant decided to join the Jobra Sugata Vihar (Temple) committee in June of 2004. The applicant began speaking out against the Islamic terrorists and condemning their actions.

[7] The applicant alleges that he witnessed Islamic terrorist attacks on his temple in March and July of 2006.

[8] In July of 2006, the applicant was threatened by a gang of "Jamat terrorists" as he was returning home from his workplace.

[9] In November of 2006, the applicant, along with a group of Buddhist youths, was attacked by “Jamat terrorists” and their “BNP allies” during a religious event. When the applicant responded to his attackers, they pushed him to the floor, kicked and threatened him.

[10] On January 11, 2007, the military-backed caretaker government took power from the BNP. Though the applicant was hopeful that the new government would bring political change, on May 11, 2007, the applicant’s temple was attacked again during a religious ceremony. The applicant confronted the attackers and was subsequently beaten along with two of his friends.

[11] The applicant explains that he was then identified as a target by the “Jamat terrorists”. On June 17, 2007, the applicant was attacked again by a gang of “Jamat terrorists” on his way to the temple. This pattern of attacks continued.

[12] In October of 2007, the applicant witnessed an attack at the wedding ceremony of one of his friends. The applicant alleges that he was particularly identified and targeted. The applicant was forced to escape to a friend’s place.

[13] After being informed that the Islamic terrorists had raided his home in search of him, the applicant fled to Chittagong. The applicant subsequently moved to Dhaka, where he resided with his cousin for one month. The applicant then left Bangladesh in November of 2007 and escaped to Canada, where he filed a refugee claim in December of 2007.

[14] The Board heard the applicant’s refugee claim on June 13, 2011.

### Decision under Review

[15] In its decision, the Board concluded that the applicant was not a Convention refugee or a person in need of protection under the Act. The Board noted that it had concerns about the credibility of the applicant and commented about the availability of state protection and decided on the possible Internal Flight Alternative (IFA) in Bangladesh.

### Issue

[16] The Court finds that this case raised the following issue: were the Board's conclusions reasonable?

### Statutory Provisions

[17] The following provisions of the *Immigration and Refugee Protection Act* are applicable in these proceedings:

REFUGEE PROTECTION,  
CONVENTION REFUGEES AND  
PERSONS IN NEED OF  
PROTECTION

Convention refugee

**96.** A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that

NOTIONS D'ASILE, DE REFUGIE  
ET DE PERSONNE A PROTEGER

Définition de « réfugié »

**96.** A qualité de réfugié au sens de la Convention – le réfugié – la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette

fear, unwilling to avail themselves of the protection of each of those countries; or  
*(b)* not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

crainte, ne veut se réclamer de la protection de chacun de ces pays;  
*b)* soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

Personne à protéger

**97.** (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally  
*(a)* to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or  
*(b)* to a risk to their life or to a risk of cruel and unusual treatment or punishment if

**97.** (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :  
*a)* soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;  
*b)* soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,  
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,  
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,  
(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,  
(iii) la menace ou le risque ne résulte pas de sanctions légitimes – sauf celles infligées au mépris des normes internationales – et

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	inhérents à celles-ci ou occasionnés par elles, (iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.
Person in need of protection	Personne à protéger
(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.	(2) A également qualifié de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

### Standard of Review

[18] The Court reminds that it is trite law that the Board's findings with respect to credibility and on the existence of an Internal Flight Alternative (IFA) are to be reviewed according to the standard of reasonableness: *Esquivel v Canada (Minister of Citizenship and Immigration)*, 2009 FC 468 at para 13, [2009] FCJ No 563; *Mejia v Canada (Minister of Citizenship and Immigration)* 2009 FC 354, [2009] FCJ No 438. Consequently, according to the applicable case law, the Court will only intervene if it finds that the Board's decision was unreasonable in that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190).

### Analysis

[19] The Court recalls that in its decision the Board provided its concerns with the applicant's credibility but the Board chose not to offer clear conclusions with regard to the issue of availability

of state protection in Bangladesh. Rather, the Board found that the question of the IFA was the determinative issue.

[20] After a review of the documentary materials and the applicant's testimony, the Court is in agreement with the arguments submitted by the respondent and finds that the Board's conclusions were reasonable.

[21] With respect to the credibility issue, the Board outlined its concerns with regards to the credibility of the applicant:

- While the Board observed that the applicant was clear and consistent on the details of his Personal Information Form (PIF), it concluded that he was vague and lacked knowledge about other facts. Specifically, the Board noted that he lacked knowledge about dates not included in his PIF, as well as the specifics as to where his attackers (the "Jamat terrorists") lived and worked, as they had been targeting him repeatedly since 2006.
- The Board commented that there was a plausibility issue related to the attacks on the temple. The Board found it surprising that though the temple had been attacked repeatedly, in May of 2007 there was still no security provided. The Board found it surprising that the claimant had simply happened to be at the temple at the time when the "Jamat terrorists" were attacking. As well, the Board found it implausible that after the temple had been attacked and damaged again, there was still no effort to seek state aid.
- The Board did accept the applicant's explanation for this lack of security. The applicant explained that the police are of no help and that they do not provide security to minority people. The Board concluded that this explanation was not consistent with the documentation, which indicates that the government does routinely post law enforcement personnel at religious festivals and events that may be targets for extremists. Also, the Board noted that the National Documentation Package does not indicate that minorities avoid making police complaints.

[22] The Court finds that the Board's negative decision regarding the applicant's credibility was reasonable. The Board's findings were properly made and were supported by numerous examples

from the evidence. For instance and contrary to the applicant's allegations, the documentary evidence clearly demonstrates that minorities in Bangladesh complain to the police (P-15, P-31, P-35, P-39 and P-40). The Court reminds that the Board has a broad discretion when assessing documentary evidence and it is entitled to give some documents more weight than others. The Board was also entitled to rely on the documentary evidence in preference to the testimony provided by the applicant. It seems that the applicant is asking the Court to reweigh the evidence. However, in the circumstances, the Court cannot substitute its own opinion for that of the Board.

[23] Concerning the issue of the existence of an IFA which is central to the case at bar, the Court is also of the view that the Board's decision on the IFA was reasonable. Once the issue of an IFA is raised, the burden rests upon the applicant to establish that an IFA does not exist or that it is unreasonable for the applicant to avail himself of the potential IFA. The threshold is a very high one.

[24] More particularly, the Board correctly applied the principles established in the cases of *Thirunavukkarasu v Canada (Minister of Employment and Immigration) (CA)*, [1994] 1 FC 589, [1993] FCJ No 1172 and *Rasaratnam v Canada (Minister of Employment and Immigration) (CA)*, [1992] 1 FC 706, [1991] FCJ No 1256. The Board was clearly satisfied that there was no serious possibility that the applicant would be persecuted in Dhaka (the proposed IFA) and that it would not be unreasonable for him to seek refuge there (Tribunal Record, pp. 254-257). In the present case, and based on the evidence, the applicant was unable to demonstrate that the proposed IFA was unreasonable and that he would face persecution if he were to return there.



[25] Although the applicant submits that the Board ignored certain pieces of evidence in its determination of the reasonableness of the IFA, the Court recalls the principle that the Board is assumed to have weighed and considered all the evidence that was before it, unless the contrary was shown (*Florea v Canada (Minister of Employment and Immigration)* (FCA), [1993] FCJ No 598, [1993] ACF no 598). After reviewing the evidence, the Court cannot accept the applicant's arguments. Moreover, though the applicant asserts that the Board was required to consider the effective capacity of the state to provide protection and its will to act in light of the cases of *Molnar v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1081, [2002] FCJ No 1425 [*Molnar*]; *Mohacsi v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 429, [2003] FCJ No 586 [*Mohacsi*], the Court reminds that this is not a consideration in the determination of the existence of an IFA but rather that of the availability of state protection, which is not under scrutiny under the circumstances.

[26] In light of the cases of *Osuna v Canada (Minister of Citizenship and Immigration)*, 2011 FC 588, [2011] FCJ No 743; *Lopez v Canada Minister of Citizenship and Immigration*, 2010 FC 990, [2010] FCJ No 1352; and *Estrella v Canada (Minister of Citizenship and Immigration)*, 2008 FC 633, [2008] FCJ No 806, it is widely accepted that the existence of an IFA is determinative and such a finding is sufficient to dismiss a refugee claim.

[27] Finally, at hearing before this Court, the applicant urged the Court to apply the *Barua v. Canada (Minister of Citizenship and Immigration)*, 2012 FC 59, [2012] FCJ No 70, and attempted to draw parallels. However, the applicant's arguments fall short and cannot apply to the case at bar. Indeed, in *Barua*, above, the issue of an IFA was not analyzed, and furthermore, the applicant was

found to be credible in that case. The decision was purely about the Board's error in its analysis of the change in country conditions in Bangladesh.

[28] For all of these reasons, the Court finds that the Board's decision falls within a "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, para 47). As such, the application for judicial review will be dismissed.

[29] The parties have not proposed any question for certification and none arises.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

1. The application is dismissed;
2. There is no question for certification.

“Richard Boivin”

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Judge

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

**DOCKET:** IMM-6270-11

**STYLE OF CAUSE:** TINKU BARUA v MCI

**PLACE OF HEARING:** Montréal, Quebec

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**REASONS FOR JUDGMENT:** BOIVIN J.

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