

Federal Court



Cour fédérale

**Date: 20120529**

**Docket: IMM-6532-11**

**Citation: 2012 FC 658**

**Ottawa, Ontario, May 29, 2012**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**SHAMSUL KABIR TALUKDER**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Mr. Shamsul Kabir Talukder (the “Applicant”) seeks judicial review of the decision of the Immigration and Refugee Board, Refugee Protection Division (the “Board”), made on August 15, 2011. In that decision the Board determined that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the “Act”).

[2] The Applicant is a citizen of Bangladesh. He fears a group of assailants who extorted, assaulted and kidnapped him. In his Personal Information Form (“PIF”) attached to and forming part of his application for protection, the Applicant indicated that he was basing his claim for protection upon membership in a particular social group and political opinion.

[3] The Board identified the determinative issues as nexus and credibility. It found that the Applicant was a victim of crime and that there was no nexus between his prayer for protection and Convention refugee grounds. It also made negative credibility findings particularly with respect to certain documents that had been submitted by the Applicant. Since the Applicant had failed to establish a nexus to a Convention refugee ground, the only issue arising in this application for judicial review is whether the Board erred in determining that the Applicant is not a person in need of protection within the scope of subsection 97(1) of the Act.

[4] The issue in this application is fact-based, that is requiring the Board to assess the evidence submitted. Accordingly, the decision is subject to review on the standard of reasonableness; see *Velazquez v Canada (Minister of Citizenship and Immigration)*, 2011 FC 775 at para 14.

[5] The Board noted some contradictions and omissions in the documentary evidence submitted by the Applicant. These documents consisted of letters from officials of the Bangladesh Nationalist Party (the “BNP”), a medical note and a newspaper article. The Board noted that the letters from the BNP did not mention the fact that the Applicant had been kidnapped and in the Board’s opinion, that event should have been mentioned.

[6] Similarly, the medical note was tendered to corroborate the beating that took place on November 21, 2006 but it did not mention the beating; it referred only to a wound on the forehead.

[7] The Board found that the newspaper article was a forgery that was submitted only to bolster his claim.

[8] In addition to rejecting these documents, the Board found that the Applicant's failure to say in his PIF that he became unconscious as a result of the assault on November 21, 2006 undermined his credibility.

[9] During the hearing the Applicant testified that the kidnappers had photographed him during the abduction and threatened to distribute the photos throughout the country. He said this meant that he could not hide anywhere in the country. The PIF was silent about the photograph. The Board rejected the Applicant's explanation for its omission, the explanation being that he was stressed and under pressure when he completed his PIF.

[10] In my opinion the Board's treatment of the letters from the BNP was unreasonable. The Board said the following at para 23 of its Reasons:

The claimant's testimony and his PIF make it clear that the MP was aware of the claimant's problems. If the letter submitted by this MP, in order to corroborate the claimant's allegations, makes no mention of his problem with rival political parties, or of his extortionists, the same is true for the other two letter [sic] submitted.

[11] The letter from the Commissioner Ward does refer to the Applicant's problems with members of other political parties. The Board erred in its assessment of this letter.

[12] Likewise, the Board unreasonably concluded that the medical note was unreliable because it did not mention that the injury was the result of a beating. I agree with the Applicant's argument that the doctor did not witness the beating and there was no justification for diminishing the value of the note.

[13] It is unnecessary for me to address the other arguments raised by the Applicant. The application for judicial review is allowed, the decision is set aside and the matter remitted to a differently constituted Panel for re-determination. There is no question for certification arising.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is allowed, the decision is set aside and the matter remitted to a differently constituted Panel for re-determination.

There is no question for certification arising.

“E. Heneghan”

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Judge

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

**DOCKET:** IMM-6532-11

**STYLE OF CAUSE:** SHAMSUL KABIR TALUKDER v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** May 1, 2012

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

**DATED:** May 29, 2012

**APPEARANCES:**

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