

Federal Court



Cour fédérale

Date: 20141104

Docket: IMM-4349-13

Citation: 2014 FC 1046

Toronto, Ontario, November 4, 2014

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

BURNARD BIPUL ROZARIO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

ORDER AND REASONS

[1] The Applicant, a citizen of Bangladesh, claims refugee protection in Canada as a Christian because of subjective and objective fear that, should he be required to return to Bangladesh, he will suffer more than a mere possibility of persecution under s. 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27, or probable risk under s. 97 from Muslim extremists.

[2] The present Application concerns the May 31, 2013 rejection of the Applicant's claim by the Refugee Protection Division of the Immigration and Refugee Board (RPD) on the critical nexus issue of the Applicant's subjective faith-based fear. To maintain his subjective fear, the Applicant relied upon cogent evidence before the RPD that Christians suffer persecution in Bangladesh. With respect to his experience with this reality, the RPD summarized the Applicant's PIF as follows:

[2] [...] The claimant is a Roman Catholic and alleges that as a Christian in a predominantly Muslim country he grew up facing discrimination and persecution. In April 2005, he was able to get a temporary work permit for Bermuda which he renewed periodically. The claimant returned to Bangladesh every December to celebrate Christmas with his family. In January 2007, he married and in September 2009 his wife gave birth to their daughter. His wife and daughter continued to live in Bangladesh.

[3] The claimant returned to Bangladesh to visit his family in August 2010. One day, on his way home from church, he was stopped by five men whom he recognized as Muslim. He alleged that he had been a victim of extortion by one of these men the previous year, named Helal. They identified themselves as being members of the Jamaat-i-Islami (JI), a religious extremist group. These men began to use derogatory terms and warned the claimant that they would be visiting him later that evening. The claimant alleges that they also berated him for promoting Christianity and denigrating Islam.

[3] With respect to the Applicant's evidence of subjective fear given at the hearing of his Application, the RPD made findings of fact in the following paragraphs of the decision:

[21] The claimant testified that he returned to Bangladesh annually and attended church when he was back in Bangladesh. He also testified that he frequently had these impromptu discussions after listening to the sermon and attending services. The claimant testified that on 22 August 2010, one of the men that stopped him on his way home was Helal, someone who had successfully extorted money from the claimant on his previous visit home in December 2009. At that time, Helal did not accuse the claimant of preaching or denigrating Islam, he only demanded money. The

claimant further testified that everyone in the area knew Helal to be an extortionist and miscreant.

[22] The claimant was stopped by these five men and they issued a veiled threat, stating they would see the claimant later that night. The claimant took that to mean there are going to ask for more money. Based on his testimony, I find on a balance of probabilities that Helal and his friends were only interested in extorting more money from the claimant.

[23] The claimant testified that after the threat on the street he did not seek advice or counsel from his leaders in his community or his priest. It would be reasonable to expect that if the claimant was fearful of being harmed because of his faith he would have sought advice or help from his priest. As a result, I find the claimant was not credible when he states that he was afraid of being harmed because of his faith.

[Emphasis added]

[4] As to why he did not seek out a priest, the Applicant testified under questioning by the RPD as follows:

Q. Did you speak to anyone?

A. I discussed it with my mother when I went back home.

Q. What did you discuss?

A. I told her about these five people who had surrounded me and threatened me.

Q. Did you seek advice or help from anyone?

A. No, I did not seek anybody's help at that time.

Q. Why not?

A. By then it was evening and I was scared to come out of the house and I thought that I would make a complaint or tell somebody at a later time.

Q. You didn't seek the advice of a leader from your community?

A. No.

Q. Did you think about talking to your priest about what to do?

A. Our priest does not want to get involved in these kind of things.

Q. So, the priest of the Roman Catholic Church does not want to get involved when one of his parishioners is being threatened by extortionists and extremists?

A. Yes, because the Christians are in minority and there have been incidences when churches were attacked, even burned. So, the — everybody is scared.

(Tribunal Record, pp. 343-344)

[5] I have three findings to make about the RPD's decision-making. First, the speculative opinion expressed as to Helal's personal motivation cannot be extracted and considered independently from the full context of what took place on the street: the extortion, with anti-Christian condemnation, of a known Christian by five Muslim men who are members of a religious extremist group. And second, there is no evidence to support the implausibility finding in paragraph 23. To the contrary, the Applicant gave direct, clear, and supported evidence as to why he did not seek advice from a priest: priests have suffered by getting involved (see Tribunal Record, p. 222). The Applicant's evidence was rejected with incredulity by the RPD on the basis of nothing more than the RPD's speculative personal belief about what was expected of the Applicant.

[6] The implausibility finding made in paragraph 23 of the decision does not conform with the existing law for the making of implausibility findings as stated in *Vodics v Canada (Minister of Citizenship and Immigration)*, 2005 FC 783 at paragraphs 10 and 11:

With respect to making negative credibility findings in general, and implausibility findings in particular, Justice Muldoon in *Valtchev v Canada (MCI)*, 2001 FCT 776 [at paragraphs 6 and 7]:

The tribunal adverts to the principle from *Maldonado v. M.E.I.*, [1980] 2 F.C 302 (C.A.) at 305, that when a refugee claimant swears to the truth of certain allegations, a presumption is created that those allegations are true unless there are reasons to doubt their truthfulness. But the tribunal does not apply the Maldonado principle to this applicant, and repeatedly disregards his testimony, holding that much of it appears to it to be implausible. Additionally, the tribunal often substitutes its own version of events without evidence to support its conclusions.

A tribunal may make adverse findings of credibility based on the implausibility of an applicant's story provided the inferences drawn can be reasonably said to exist. However, plausibility findings should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant. A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu. [see L. Waldman, *Immigration Law and Practice* (Markham, ON: Butterworths, 1992) at 8.22]

[Emphasis in the original]

It is not difficult to understand that, to be fair to a person who swears to tell the truth, concrete reasons supported by cogent evidence must exist before the person is disbelieved. Let us be clear. To say that someone is not credible is to say that they are lying. Therefore, to be fair, a decision-maker must be able to articulate why he or she is suspicious of the sworn testimony, and, unless this can be done, suspicion cannot be applied in reaching a conclusion. The benefit of any unsupported doubt must go to the person giving the evidence.

[7] Therefore, in the present case, from evidence on the record, the RPD was required to: first, clearly find what might reasonably be expected of a Christian in Bangladesh who suffered an incident of religious persecution and extortion by extremist Muslim men; and, then, make findings of fact about the response that was made by the Applicant to the incident experienced; and, finally, conclude whether the response conforms with what might be reasonably expected. In the present case this process of critical analysis was not followed. On this basis I find that the RPD's implausibility finding is unsupported speculation, and, therefore, the decision under review is not defensible on the law and the facts.

[8] As a result I find that the decision under review is made in reviewable error that renders it unreasonable.

ORDER

THIS COURT ORDERS that:

The decision under review is set aside and the matter is referred back for redetermination by a differently constituted panel.

There is no question to certify.

"Douglas R. Campbell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4349-13

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