

Federal Court



Cour fédérale

**Date: 20141124**

**Docket: IMM-1585-14**

**Citation: 2014 FC 1118**

**Ottawa, Ontario, November 24, 2014**

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

**BETWEEN:**

**BARUA BABLA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[...] The recognition and acknowledgement of the details of an individual or individuals' background, especially in an immigration or refugee case, are essential. The circumstances, situations and events within a narrative must not be overlooked, otherwise, a travesty to justice could be the consequence. For jurisprudence to be valid, the narrative must be the prime source from which legal analysis begins and ends, or else, it is a theoretical, abstract exercise divorced from reality. Each individual before the law must be acknowledged for his or her narrative, otherwise, the very integrity of a legal system is in jeopardy.

*(Junusmin v Canada (Minister of Citizenship and Immigration),*  
2009 FC 673 at para 1).

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision of the Refugee Protection Division [RPD] dated December 29, 2013, wherein it was determined that the Applicant is not a Convention refugee nor a person of need of protection according to sections 96 and 97 of the IRPA.

## II. Background

[2] The Applicant is a 37-year old Bangladeshi of the Buddhist faith, a minority religious group in Bangladesh. In his *Personal Information Form*, dated October 24, 2012, the Applicant alleges that he is a prominent and active member of the Buddhist community. In 2010 and 2011, the Applicant became General Secretary of the Prajnabangsha Bidarshan Babna Centre, as well as Publicity Secretary of the Bauddha Triratna Maitry Sangha, in Boalkhali, Chittagong. He claims that he is targeted by Muslim fundamentalist groups and political parties, based on his religion and for his involvement in the Buddhist community.

[3] The Applicant claims to have been, on several occasions, the victim of targeted attacks by members of the Awami League, both at his domicile and at the Buddhist temple he attends, in addition to having been targeted through intimidation, death threats, looting, and extortion at his store. The Applicant claims that the police have been either irresponsible or of little assistance to his complains.

[4] As a result, the Applicant fled to Dhaka and his wife fled to her parents' home. With the help of an agent, the Applicant fled Bangladesh on August 24, 2012 and entered Canada that same day. The Applicant claimed refugee protection on September 30, 2012. The Applicant claims that after his arrival in Canada, on September 29, 2012, nineteen Buddhist temples and one hundred and fifty family homes were burnt down and looted over the course of three days in Bangladesh.

### III. Decision

[5] In the impugned decision, the RPD finds that the Applicant failed both to establish a serious possibility of persecution or that he would personally be subjected to a danger of torture or face a risk to life or a risk of cruel and unusual treatment or punishment upon return to Bangladesh.

[6] The RPD states that "in the absence of corroborating evidence that is objective and probative", the claimant is "not a credible as a witness and is not credible in his personal statements" and that the claimant "has not provided sufficient evidence that he was the subject of serious discrimination or attacks in Bangladesh for being Buddhist or for his activities there" (RPD's decision, at para 30).

[7] Furthermore, the RPD finds that the Applicant has not refuted the presumption of state protection (RPD's decision, at paras 36-41).

IV. Issues

[8] The issues on which this application turns are the following:

- a) Do the circumstances justify a granting of an extension of time?
- b) Did the RPD err in rejecting the Applicant's claim based on a lack of credibility and lack of state protection?

V. Analysis

A. *Applicant's request for an extension of time to file the notice of application*

[9] The Applicant argues that the basis of his request for an extension of time before the Court is his former immigration consultant's failure to properly advise him regarding his recourses; however, when the Applicant learned of his former counsel's error, he promptly hired new counsel and file the application to the Court on March 13, 2014.

[10] The Court finds that the Applicant demonstrated the required continuing intention to pursue an application and deems his explanations for the delay to be reasonable (*Canada (Attorney General) v Hennelly*, [1995] FCJ 1183 (CAF) at para 3). In consideration of *Muhammed v Canada (Minister of Citizenship and Immigration)*, 2003 FC 828 and *Mathon v Canada (Minister of Employment and Immigration)*, [1988] FCJ 707, the Applicant has acted diligently. Furthermore, no prejudice to the Respondent seems to arise from the delay. Therefore, the Court exercises its judicial discretion in allowing the requested extension of time.

B. *The RPD's findings of lack of credibility and adequate state protection*

[11] The Applicant supports the view that the RPD erred in its assessment of the Applicant's credibility and failed to adequately consider the documentary evidence demonstrating the lack of state protection for Buddhist minorities in Bangladesh.

[12] In support of his claim, the Applicant submitted before the RPD two original sealed letters from Buddhist organizations in Boalkhali, Chittagong. The first letter, dated December 18, 2012, originates from the President of the Bauddha Triratna Maitry Sangha, Mr. Prashanta Barua. The letter testifies that the Applicant is targeted by various political parties, and that he has been the victim of targeted attacks, which forced the Applicant to leave Bangladesh, out of fear for his life (Tribunal record, at p 71).

[13] The second letter, dated November 28, 2012, originates from the President of the Prajnabangsha Vipassana Meditation Centre, Mr. Prajnananda Mohasthabir. In this letter, it is stated that the Applicant has been the victim of humiliation, threats and harassment at various times by Awami League, BNP, Jamaati Islami and Muslim fundamentalist members. The letter also recounts the attacks during the religious gathering of July 5, 2012, during which a group of Islamic fundamentalists entered the temple, attacked the crowd, vandalized and looted the temple. The letter further notes that the Applicant had been injured, among others, from this attack. Furthermore, the letter corroborates the attacks and death threats perpetrated against the Applicant at his home on July 12, 2012. The letter further indicates that on September 30, 2012, the perpetrators entered the Prajnabangsha Vipassana Meditation Centre in search of the

Applicant. Failing to find him, they set fire to the Centre and broke the furniture, fixtures and ancient Buddhist statues. Finally, the letter states that the government and police do not play an effective role in providing for the security of minorities (Tribunal record, at p 73).

[14] The RPD committed an error in failing to consider the evidentiary value of the two letters supporting the Applicant's claim. The letters directly corroborate determinative elements forming the basis of the Applicant's subjective and objective fear of persecution. The RPD, which had relied on fax-transmitted copies of the letters instead of the originals, rejected both letters based on a finding that they lacked contact details (RPD's decision, at paras 33 and 34), although this information was found at the bottom of the original letters.

[15] The Court notes that the Applicant's leadership in the Buddhist community, to which the two letters filed in support of his claim testify, should have been canvassed by the RPD, as it is this very level of involvement by the Applicant in his community which puts him at risk. In its decision, the RPD was nonetheless satisfied that the Applicant's Buddhist family members "are not persecuted or treated in a way to be considered serious discrimination in Bangladesh" (RPD's decision, at para 31). This further supports the Applicant's allegations of a well-founded fear of persecution by way of his particular religious and social status in the Buddhist community.

[16] The documentary evidence relied upon by the Board offered evidence of continuing violence against Buddhist minorities in Southern Bangladesh and demonstrates that the state's failure to protect religious minorities, outweighing the observations that the Bangladeshi

government has been critical of the attacks, and at times responsive in arresting individuals linked to attacks perpetrated against these minority groups.

[17] The violence targeting Buddhist minorities in Southern Bangladesh has also been reported in the U.S. *Country Reports on Human Rights Practices for 2012*:

On September 29 and 30, communal attacks occurred against more than 100 Buddhist homes, temples, and monasteries in the Cox's Bazar district. The prime minister and home minister strongly condemned the violence and pledged to find the perpetrators. By October 11, police had arrested 284 persons in connection with the violence. On November 8, the MHA released the report of its official investigative body on the attacks, which stated that the violence was planned at least 10 days in advance, implicated 205 persons, and cited local law enforcement's failure to act promptly and swiftly. The report blamed then superintendent of police of Cox's Bazar Selim Md Jahangir and then officer in charge of the Ramu police station AK Nazibul Islam for failing to take appropriate measures and for neglecting their official duties. Both officers were withdrawn from their duty stations and assigned elsewhere.

[18] Furthermore, the U.S. *International Religious Freedom Annual Report 2012* – Bangladesh – supports the finding that religious minorities in Bangladesh who are victims of discrimination have little political recourse:

There were reports of societal abuses and discrimination based on religious affiliation, belief or practice. There were scattered attacks on members of minority religious and ethnic groups, most notably against Buddhists in Ramu in September and October. Most attacks consisted of arson and looting of religious sites and homes. Because many members of minority religious groups also had low economic and social status, they were often seen as having little political recourse. Members of Hindu, Christian, Buddhist, and Ahmadiyya Muslim minority groups experience harassment and sometimes violence from the Sunni Muslim majority population. The government and many civil society leaders stated that violence against members of minority religious groups normally had

political or economic dimensions, and could not be attributed solely to religious belief or affiliation.

[...]

Societal groups at times incited violence against or harassment of members of minority religious groups. The most common type of abuse was arson and looting of religious sites and homes.

[...]

Buddhists in Ramu, Cox's Bazar, and neighboring cities experiences communal violence on September 29 and 30. After rumors spread that a local Buddhist youth posted anti-Islamic photos on Facebook, thousands of protesters burned and vandalized Buddhist homes and temples. Local police called in supplementary security forces to quell the violence, but attackers had already set fire to at least 15 Buddhist temples and 100 homes. The Home Ministry increased law enforcement presence around neighboring Buddhist sites. Violence spread in the following days to Patiya, Chittagong, where two Buddhist monasteries and one Hindu temple were burned, and to Ukhiya and Teknaf Cox's Bazar, where two monasteries and five homes were burned. The prime minister, home minister, and foreign minister all immediately issued strong statements condemning the violence and reaffirming the tolerant, secular, multi-religious nature of the country. The prime minister travelled to Ramu to convey the extent of her concern.

(Applicant's record, at pp 35 and 37).

[19] As stated clearly by Justice Luc Martineau in *Mohacsi v Canada (Minister of Citizenship and Immigration)* 2003 FCT 429:

[56] [...] The existence of anti-discrimination provisions in itself is not proof that state protection is available in practice: "Ability of a state to protect must be seen to comprehend not only the existence of an effective legislative and procedural framework but the capacity and the will to effectively implement that framework" (*Elcock v. Canada (Minister of Citizenship and Immigration)* (1999), 175 F.T.R. 116 at 121). [...] Unfortunately, there are still doubts concerning the effectiveness of the means taken by the government to reach this goal. Therefore, a "reality check" with the claimants' own experiences appears necessary in all cases.

VI. Conclusion

[20] In light of the above reasons, the matter is to be returned to the RPD to be heard anew by a differently constituted panel.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review be allowed;
2. There is no question of general importance to be certified.

"Michel M.J. Shore"

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Judge

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

**DOCKET:** IMM-1585-14

**STYLE OF CAUSE:** BARUA BABLA v THE MINISTER OF CITIZENSHIP  
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