

Federal Court



Cour fédérale

Date: 20150220

Docket: IMM-6246-13

Citation: 2015 FC 226

Toronto, Ontario, February 20, 2015

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

**AHAD ISLAM; MISHEL AKTHER; ZARA
ISLAM; SHAAN ISLAM**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is a judicial review [JR] of a decision of the Refugee Protection Division [RPD, Board] of the Immigration and Refugee Board [IRB] pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] pertaining to the Islam family,

consisting of the primary claimant, Ahad Islam [PC], his spouse, and their two children [collectively, the Applicants].

[2] At the RPD hearing on July 30, 2013 [Hearing], the Applicants presented claims of persecution and prospective torture or risk based on an affiliation with the Ahmadiyya or Kadiani religion [Ahmadiyya], a minority Islamic sect in Bangladesh. In its decision of August 21, 2013 [Decision], the RPD refused the Applicants' refugee protection claim as failing to satisfy sections 96 and 97(1) of *IRPA*.

[3] The RPD rejected the claim based on unproven identity and credibility. For the reasons that follow, I find the Decision unreasonable. In light of overlooked and misapprehended evidence, the matter will be remitted to the RPD for reconsideration.

II. Background

[4] The Board refused the claim on the basis of identity, and did not comment on the substance of the alleged fear of persecution. The context of the claim is nonetheless useful in situating this case, as based on the following facts asserted by the Applicants.

[5] The PC was born in March, 1963, and his spouse in February, 1973, both in Brahmanbaria, Bangladesh. Their children were born in 1997 and 2001, respectively. The record contains four Bangladeshi birth certificates [BCs] confirming the birthdates provided.

[6] In December 2009, the family started practising the Ahmadiyya faith. The PC states that in March 2010 he was approached by followers of Jamaat-i-Islami [JI group], who belong to the Sunni majority. The PC alleges that the JI group demanded money from him, so he reported this incident to law enforcement; however, the police were Sunni and refused to act on the information. As a result, the PC paid the JI group from June 2010 to November 2010.

[7] By December 2010, the PC was unable to make further payment. The Applicants claim that the JI group attended the Applicants' home and threatened to kidnap their eldest child if payment was not provided by Monday, December 20, 2010. On Saturday, December 18, 2010, the Applicants fled to a relative's home in Tanker Par, Bangladesh. The family then moved to Dhaka, where the PC obtained employment as a Project Coordinator at Angan Housing Limited. The record includes an identification card [Work ID] bearing the PC's photo, name, work title, birth date, blood group type and signature, as well as a letter from the Managing Director confirming his employment from January 1, 2011 to October 31, 2011 [Work Letter]. The Work Letter reports that the PC was a good employee but lost his job on October 31, 2011 because of religious tensions.

[8] During that time period, the Applicants state their children attended Holy Flower Model College in Dhaka. The evidentiary record contains two letters from the school's principal, confirming the childrens' names, birth dates, grades, and attendance from January 1 to November 2, 2011 [School Letters]. The record also provides two school identification cards [School IDs] bearing the childrens' photos, names, class information, parental information,

home address and phone number, school contact and the principal's signature, which is markedly similar to the signature on the School Letters.

[9] The PC alleges that in Dhaka, the JI group again attempted to extort money. The PC was assaulted, and the Applicants' home was ransacked. On October 28, 2011, the PC attempted to file a police report. As in Barhamanbaria, the Dhaka police were Sunni and refused to help. The family thereafter paid twenty lakh Taka (approximately \$29,000 CAD) to a refugee smuggler who aided in their travel to Toronto, where they requested Refugee protection on November 15, 2011 [Entry Date].

[10] The Applicants appear to have continued their involvement with the Ahmadiyya religion in Canada. The record contains eleven Ahmadiyya donation receipts, dated May 3, 2013 to July 19, 2013, all bearing the PC's name; a letter from the Vice-President of Ahmadiyya Canada confirming each family member's name and birth date; and four Ahmadiyya Canada identification cards [collectively, Canadian Ahmadiyya Documents].

III. Decision Under Review

[11] The RPD found the determinative issue to be identity, including credibility surrounding this issue. In concluding that the Applicants had failed to establish Bangladeshi citizenship, the RPD considered Rule 11 of the *Refugee Protection Division Rules*, SOR/2012-256 [RPD Rules], which states:

11. The claimant must provide
acceptable documents

11. Le demandeur d'asile
transmet des documents

establishing their identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they did not provide the documents and what steps they took to obtain them.

[emphasis added]

acceptables qui permettent d'établir son identité et les autres éléments de sa demande d'asile. S'il ne peut le faire, il en donne la raison et indique quelles mesures il a prises pour se procurer de tels documents.

[soulignement ajouté]

[12] The RPD found it problematic that the Applicants had not tendered additional identity documents between the Entry Date and the Hearing. The RPD found that the Applicants' Bengali language is widely spoken in other jurisdictions, and the mere fact they speak Bengali does not prove identity. Upon examination of the BCs, the RPD noted discrepancies, and concluded the adults' BCs were fraudulent. In making this determination, the RPD referenced an IRB report dated September 20, 2010 [IRB Paper], articulating the prevalence of fraudulent documents in Bangladesh (Certified Tribunal Record [CTR], pp. 170-174).

[13] On the basis of these identity findings, the RPD drew a negative inference on the overall credibility of the Applicants, and rejected the claim without consideration of their alleged persecution and fear. In other words, the RPD dismissed all the family members' claims without consideration on their merits.

[14] Specifically, the Board described the BCs as the only primary documents before the RPD. The Board found discrepancies in the adults' BCs, both relating to issues on their face (e.g. spelling errors, sequential registration numbers, different addresses, approval by a sanitation worker rather than a more competent authority) and surrounding circumstances (e.g.

issuance despite lack of supporting documentation, receipt only three weeks prior to Entry Date, IRB Paper finding that fraudulent documentation is prevalent in Bangladesh).

IV. Issue

[15] The determinative issue in this case is whether the Board came to a reasonable conclusion with respect to the identities of the Applicants.

V. Relevant Legislation

[16] Section 106 of *IRPA* states:

106. The Refugee Protection Division must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation.

[emphasis added]

106. La Section de la protection des réfugiés prend en compte, s’agissant de crédibilité, le fait que, n’étant pas muni de papiers d’identité acceptables, le demandeur ne peut raisonnablement en justifier la raison et n’a pas pris les mesures voulues pour s’en procurer.

[soulignement ajouté]

VI. Standard of Review

[17] In the case at bar, the applicable standard of review is reasonableness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 52-54, 58 [*Khosa*]; *Wang v Canada (Minister of Citizenship & Immigration)*, 2011 FC 969 at para 22).

VII. Parties' Positions

[18] The Applicants contend the RPD erred by failing to consider the authenticity of the childrens' BCs before rejecting the claim based solely on the inauthenticity of the adults' BCs. They also dispute the basis upon which the Board arrived at its findings regarding the adult BCs.

[19] In reply, the Respondent relies on *Noha v Canada (Minister of Citizenship and Immigration)*, 2009 FC 683, to argue that severely damaged credibility in relation to a false document may result in overall credibility damage. The Respondent also relies on *Diarra v Canada (Minister of Citizenship and Immigration)*, 2014 FC 123 [*Diarra*] to submit that it was reasonable for the RPD to make a general negative credibility finding after deeming the adults' BCs fraudulent. Accordingly, the Respondent asks this Court to find that the Decision falls within the range of possible and acceptable outcomes.

VIII. Analysis

[20] For the reasons that follow, I agree with the Applicants, and find the Decision to be unreasonable.

A. *Overlooked Identity Evidence*

[21] The Decision failed to address various key Bangladeshi identity documents presented by the Applicants, including the children's BCs, School Letters, School IDs, and the PC's Work Letter and Work ID [collectively, Other Identity Documents].

[22] Rule 11 of the RPD Rules and Section 106 of *IRPA*, read together, require claimants to provide “acceptable documents” in support of their claims. At the Hearing, counsel indicated that the Bangladeshi identity documents included school documentation (CTR, p. 238). As the IRB Paper states, “Information from schools (on the students) are a more reliable way to confirm identity as the students parents names are generally included in this information.” (CTR, p. 171)

[23] At the Hearing, the PC introduced and testified to the authenticity of the Other Identity Documents and the Canadian Ahmadiyya Documents (See CTR, pp. 237-245, 249-252, 255-256). These documents, however, were not substantively addressed in the Decision. A question thus arises as to what, if any, consideration the Board gave to these documents.

[24] The Respondent aptly observes that the task of this Court is not to reweigh the evidence. The Respondent cites case law, including *Diarra*, to suggest the Other Identity Documents and the Canadian Ahmadiyya Documents should be deemed secondary or tertiary identity documents. While the classification of a document as being primary or secondary in nature may assist the Board in the determination of the weight to be given to it, excessive reliance should not be placed such a classification. The purpose of assessing the identification documents is to establish the Applicants’ identity. In this assessment, the RPD must independently consider all of the submitted documents, in light of the objective evidence put before it (*Kabongo v Canada (Citizenship and Immigration)*, 2013 FC 1086 at para 21).

[25] The Respondent uses *Diarra* as support for its submission that it was reasonable for the Board not to refer specifically to other documents after finding the adults' BCs fraudulent. As Justice Shore stated:

[22] This Court has found on numerous occasions that the issue of identity is at the very core of the RPD's expertise; thus, the Court needs to caution itself not to simply second-guess the RPD. As stated by Justice Mary Gleason in *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319:

[48] ...In my view, provided that there is some evidence to support the Board's identity-related conclusions, provided the RPD offers some reasons for its conclusions (that are not clearly specious) and provided there is no glaring inconsistency between the Board's decision and the weight of the evidence in the record, the RPD's determination on identity warrants deference and will fall within the purview of a reasonable decision. In other words, if these factors pertain, the determination cannot be said to have been made in a perverse or capricious manner or without regard to the evidence.

...

[28] Lastly, in respect to the Applicant's school certificate and his mother's death certificate, the Court does not agree with the Applicant that the RPD ignored these documents.

[29] In its reasons, the RPD expressly stated that the school certificate was a tertiary document that could not reliably be linked to the Applicant (at para 12). It lacked features linking it to the Applicant and did not authenticate his nationality by any means.

[emphasis in original of *Diarra*]

[26] The facts in this case differ from *Diarra*, because independent country evidence (the IRB Paper) states that school information from Bangladesh provides a reliable means of identity confirmation (CTR, p. 171). While the RPD in *Diarra* expressly referred to the contentious identity documents in its decision, in this case, no reference was made to various

key identity documents: although the Board referred briefly to the children's BCs, it did not consider them in any meaningful way.

[27] I find these facts to bear a greater similarity to those described in *Kabongo*. In that case, the RPD had also rejected the claim on the basis of identity and credibility. Justice de Montigny found that while the RPD had deemed some of the Applicant's identity documents fraudulent, namely a birth certificate, university transcript and letter, and arrest warrant, the Board had made no authenticity findings regarding other secondary identification - namely a voter card and driver's licence. The Court granted the application on the basis that both documents pointed to identity legitimacy.

[28] Likewise, in similarity to Justice de Montigny's finding of overlooked identity documentation, in this case, the children's school documents were presented to the Board – documents which according to the country documentary evidence are reliable identity documents in Bangladesh. These school IDs and school letters, which included parental information that appeared to be consistent with their identity documents, were not mentioned or given any weight in the Decision. It is trite law that the more relevant the evidence, the more important it is for the decision maker to address it in its reasons, especially if it directly contradicts the Board's findings (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 at para 17). As Justice Evans held:

[17] ...the agency's burden of explanation increases with the relevance of the evidence in question to the disputed facts. Thus, a blanket statement that the agency has considered all the evidence will not suffice when the evidence omitted from any discussion in the reasons appears squarely to contradict the agency's finding of

fact. Moreover, when the agency refers in some detail to evidence supporting its finding, but is silent on evidence pointing to the opposite conclusion, it may be easier to infer that the agency overlooked the contradictory evidence when making its finding of fact.

See also *Ozdemir v Canada (Minister of Citizenship & Immigration)*, 2001 FCA 331 at para 9.

[29] Accordingly, this Court finds the Board erred in this case in failing to address in its decision relevant and seemingly key credible identity documentation. Such a defect renders the Decision unreasonable, and the case should be remitted to a differently constituted panel of the Board for re-determination.

B. *Other issues raised by the Applicant*

[30] While the error above is dispositive of the case, there were certainly other troubling elements of the decision, including:

- i. the Board's finding that the PC should have obtained Bangladeshi identity documentation from diplomatic officials in Canada. Even if this was possible, it remains to be determined whether it is reasonable to request such an action from someone claiming refuge from that country;
- ii. the Board made negative findings with respect to the authenticity of the BCs, based on the fact that: they were issued within a month of the family leaving Bangladesh; the childrens' were issued in different places; the parents' had sequential registration

numbers; and, signatories of the adult BCs were suspect. However, the record reveals that there may have been plausible explanations to each of these “credibility” findings; and

- iii. the Board member’s response to the offer from Applicant’s counsel to have the identity documents sent for expert verification, to which he responded that said verification would delay the proceedings, and his role (at the RPD) would be reassigned before the verification came back.

[31] While I find each of these three elements of the decision problematic, all of which were raised by Applicant’s counsel, there is no need to rule on them given my conclusion on the first issue, which warrants reconsideration by the Board. No questions for certification were raised by the parties.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The judicial review is granted and the case remitted to a differently constituted panel for reconsideration in accordance with these reasons.
2. There is no question of general importance to certify.

"Alan S. Diner"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6246-13

STYLE OF CAUSE: AHAD ISLAM; MISHEL AKTHER; ZARA ISLAM;
SHAAN ISLAM v. THE MINISTER OF CITIZENSHIP
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