

Federal Court



Cour fédérale

Date: 20160318

Docket: IMM-2975-15

Citation: 2016 FC 328

Ottawa, Ontario, March 18, 2016

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

RUBYATH MAHMOOD

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] A senior immigration officer [Officer] denied the Applicant's Pre-Removal Risk Assessment [PRRA] application [Decision] by concluding that the Applicant faced no serious possibility of persecution and no risk of torture, death or cruel and unusual treatment or punishment. The Applicant applies for judicial review of this Decision.

II. Background

[2] The Applicant was born in Bangladesh in 1976 and raised in the United States. He was convicted of an indictable drug-related offence in the U.S. in March 2005. Having served his sentence, he was deported to Bangladesh in September 2012.

[3] The Applicant claimed that while he was in Bangladesh, he was attacked several times by Muslim fundamentalists. He complained to police but received no response.

[4] In December 2013, the Applicant came to Canada. His refugee claim was not heard and he was to be deported as he was reported to be inadmissible due to serious criminality outside of Canada. His application for leave to judicially review the deportation order was denied.

[5] The Applicant's PRRA application was denied in May 2015. The Officer analysed the evidence submitted and relied particularly on the most current U.S. DOS Report. The Officer refused to consider humanitarian and compassionate considerations. The Officer accepted the Applicant as an atheist and that as such, he faced a greater risk than otherwise.

[6] The Officer held that there was insufficient evidence that the Applicant would suffer at the hands of Islamic extremists and others. The Officer rejected various pieces of documentary evidence including a photograph of the Applicant allegedly being attacked.

[7] The Officer concluded that state protection was available despite evidence of corruption, arbitrary arrests and trafficking. Finally, the Officer found that the Applicant faced only a generalized risk.

The Decision noted that there was no oral hearing because credibility was not an issue.

[8] The issues in the case are the reasonableness of the risk assessment and the reasonableness of the state protection finding.

III. Analysis

[9] Although neither party made submissions on the standard of review, as held in *Morales v Canada (Citizenship and Immigration)*, 2013 FC 557, it is reasonableness in respect of both issues.

[10] The Officer, having noted that credibility was not an issue, went on to make findings that implicitly rejected the Applicant's version of events. It is no answer to assert that the determinative issue was sufficiency of the answer rather than an adverse credibility finding. An applicant is presumed to be telling the truth and the Officer does not refer to any evidence which rebuts that presumption.

[11] In reaching his conclusion, the Officer ignored evidence of individual risk. The Officer made no mention of either a police report or a doctor's report, both of which are corroborative of the Applicant's narrative and are critical pieces of evidence in the context of this case.

[12] In finding “insufficiency”, the Officer must explain why key corroborative evidence is not “sufficient”. Not only is there no explanation, there is no mention of the evidence. Likewise, there is no explanation for or basis advanced supporting the conclusion that the Applicant was not shown in a photograph corroborating that the Applicant was beaten.

[13] The Decision is further inquired because the state protection analysis, which recognized the low level of state protection, concentrated on efforts by government to protect, not on the effectiveness of those efforts. The Applicant engaged the function of state protection in filing a police report which was not acted upon.

IV. Conclusion

[14] The Decision is not reasonable for these reasons. The judicial review will be granted, the Decision quashed and the matter remitted back to a different officer.

[15] There is no question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted, the Decision is quashed and the matter is remitted back to a different officer.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2975-15

STYLE OF CAUSE: RUBYATH MAHMOOD v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 28, 2016

JUDGMENT AND REASONS: PHELAN J.

DATED: MARCH 18, 2016

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