

Federal Court



Cour fédérale

Date: 20180919

Docket: IMM-1575-18

Citation: 2018 FC 934

Toronto, Ontario, September 19, 2018

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

NAZNIN CHOWDHURY

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The present application concerns a citizen of Bangladesh who claims a s. 96 and s. 97 risk should she be required to return to Bangladesh.

[2] By a decision dated June 9, 2017, the Refugee Protection Division (RPD) found that on a balance of probabilities the Applicant would face persecution should she return to her home city

in Bangladesh. However, the RPD found that the city of Chittagong in Bangladesh was a safe and reasonable Internal Flight Alternative (IFA).

[3] In a decision dated March 5, 2018, the Refugee Appeal Division (RAD) upheld the RPD's decision.

[4] Before the RAD, the Applicant argued that she would not be safe to return to the whole of the country of Bangladesh. This argument is based on the uncontested fact that the Applicant's agent of persecution, the Awami League, is a political party that operates country-wide.

[5] In support of her argument, the Applicant tendered new evidence before the RAD, including a letter from her lawyer. This letter expresses that the Applicant and her family would be at risk in Bangladesh and urges her not to return with her daughter.

[6] The RAD did not accept the letter as new evidence for the following reasons:

The letter submitted bears the seal of the Advocate and Notary Public, Bangladesh and indicates that the letter had been authenticated. There is no affidavit or documents included to authenticate the identity of the person who wrote the letter. Given this lack of documentation, the RAD does not find the letter probative.

In addition, although the letter postdates the RPD decision of June 9, 2017, the RAD finds that it is not probative or relevant according to subsection 110(6). The determinative issue in this claim, as will be outlined below, is an Internal Flight Alternative (IFA). No information or documentation was given in this letter to deal with the issue of a safe IFA in Chittagong. The RAD will not accept this letter as new evidence.

(RAD Decision, paras. 23-24)

[7] Counsel for the Applicant argues that the contents of the letter are of critical importance because they support the Applicant's argument that because the Awami League operates through the whole of Bangladesh, the Applicant would not be safe in any part of the country, which is her legal burden to meet.

[8] Counsel also argues that there is ample evidence on the face of the letter in question to prove the maker's identity.

[9] I agree with Counsel for the Applicant's arguments with respect to the letter and find that the RAD had no reason to reject the letter, save for an apparent unfounded suspicion.

[10] As a result, I find that the RAD's decision was rendered in reviewable error and is therefore unreasonable.

JUDGMENT in IMM-1575-18

THIS COURT'S JUDGMENT is that the decision under review is set aside and the matter is referred back for redetermination by a different decision-maker.

There is no question to certify.

"Douglas R. Campbell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1575-18

STYLE OF CAUSE: NAZNIN CHOWDHURY v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 19, 2018

JUDGMENT AND REASONS: CAMPBELL J.

DATED: SEPTEMBER 19, 2018

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