

Federal Court



Cour fédérale

Date: 20190118

Docket: IMM-1752-18

Citation: 2019 FC 71

Ottawa, Ontario, January 18, 2019

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

**MANOB RAHMAN
KANIZ FATIMA
AYAAN RAHMAN**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Manob Rahman and his wife, Ms. Kaniz Fatima, arrived in Canada from the United States with their son, Ayaan Rahman, on July 23, 2015. Upon arrival, they claimed refugee protection based upon Mr. Rahman's alleged fear of the Jamaat-e-Islami Bangladesh, an Islamic political party in Bangladesh, and affiliated groups.

[2] In a decision dated March 8, 2018, the Refugee Protection Division [RPD] of the Immigration and Refugee Board rejected their claims, with identity and credibility being the determinative issues. They have now applied under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [IRPA], for judicial review of the RPD's decision. They ask the Court to set aside the decision and return the matter for redetermination by a different member of the RPD.

I. The RPD's Decision

[3] Before the RPD, Mr. Ramon claimed that the Jamaat-e-Islami Bangladesh and affiliated groups attacked him and his family because he had written blogs which were critical of these extremist groups, and also because he had sheltered his sister, a Muslim woman married to a Hindu man, before she and her husband left Bangladesh.

[4] Mr. Rahman provided the RPD with three blog articles which he claimed to have published on his website: www.powerbymanob.com. The first article discussed war criminals and named alleged war criminals. The second criticized religious bigots. The third discussed the tragic circumstances when a crane fell on worshipers while they were performing haj, killing more than a hundred persons and injuring others. The RPD found Mr. Rahman did not own the website and had not written the articles, and that even if he had written the blogs, it was unclear from looking at them how anyone would be able to identify him as the author.

[5] When asked how the extremists discovered he was the blogger when his name and photograph were not on the website, Mr. Rahman responded that "their hand is very long" and

they likely had individuals who were IT experts who could determine his identity, and that his website had been hacked twice and some of his posts deleted. The RPD did not accept this explanation.

[6] Mr. Rahman testified that he began blogging near the end of 2009 or in 2010, and was always critical of extremist groups, yet he did not have any problems until 2015. The RPD referenced documentary evidence which showed that bloggers had been attacked and harassed as early as 2013, and found that Mr. Rahman's explanation of not blogging about extremist groups earlier in his career as a blogger did not explain why he was not harassed before 2015. The RPD found Mr. Rahman did not fit the profile of those targeted by Muslim fanatics, that he was not a blogger or activist, and that he was not of interest to Muslim fanatics because of blogs he allegedly wrote.

[7] The RPD did not believe that the reason Mr. Rahman presented only blogs from 2015 was because those were the ones that led to the threats he received. For the RPD, the discrepancy in his testimony as to when he started blogging undermined his credibility. The RPD wrote:

[23] ... when asked when the website was created the principal claimant stated it was "probably" in January 2015. However, the claimant testified that he began writing and publishing blogs near the end of 2009 or 2010 and when asked earlier in his testimony where he published his blogs the principal claimant stated they were published on his website, www.powerbymanob.com.

[24] The principal claimant's explanation for the discrepancy was that he created two websites prior to www.powerbymanob.com, and that the blogs before 2015 were published on those websites. The principal claimant further stated that some of his blogs were published in magazines. The principal claimant testified that he created the first website (www.songarm.com) in 2010. The claimant was unable to produce corroborative documentation because this website was allegedly hacked. The principal claimant

testified that he created a second website (www.nirobutchon.com) in 2012. He also was unable to corroborate this with documentation, explaining that the hosting of that website was not renewed.

[8] The RPD found discrepancies about the alleged snatching of Mr. Rahman's son. When questioned about the April 14, 2015 attack, Mr. Rahman testified that no attempt to "snatch" his son occurred on that day as his son was with his in-laws. When the RPD read his Basis of Claim [BOC] statement to him, pointing out that he had in fact amended his BOC narrative to state that there was an attempt to "snatch" his son on April 14, 2015, Mr. Rahman said it had happened on April 28th and then later amended his testimony again, stating that it had happened on July 6th at night. The RPD noted further confusion in Mr. Rahman's testimony as he then testified about a phone call received after June 28, 2015, in which an unknown person threatened to take away his son.

[9] When the RPD asked about previous threatening phone calls Mr. Rahman allegedly received, the RPD found his story evolved and his testimony confusing. Mr. Rahman stated he had received threats in January 2015, and then went on to testify that he was threatened several times, but only once or twice was he told his son would be kidnapped and a demand for money made. When the RPD tried to ascertain when the kidnapping threats occurred, Mr. Rahman said it was around February 2015 and after June 28, 2015.

[10] The RPD asked why Mr. Rahman did not include the attempted abduction in February 2015 and the phone calls requesting a ransom in his BOC. Mr. Rahman testified that he had

mentioned it but due to language barriers it was not expressed in this manner. The RPD did not accept this explanation.

[11] The RPD noted that a newspaper article mentioned these kidnapping attempts but gave this evidence little weight as Mr. Rahman had provided the information in the article to the journalist. When the RPD asked Mr. Rahman to describe in detail the kidnapping attempt for ransom written about in the newspaper article, he provided a convoluted story about how a maid had left with his son for two to three hours. The RPD found that Mr. Rahman's story did "not have the ring of truth and evolved each time contradictions were put to him."

[12] Mr. Rahman testified that, because he wrote blog posts which displeased religious bigots, he and his wife were attacked on April 14, 2015, when attending a Bengali New Year celebration. According to Mr. Rahman, as they were being beaten, the assailants threatened to kill him if he continued to write blogs criticizing Muslim fanatics. Although the BOC form only mentioned that his wife's clothes were ripped apart, Mr. Rahman testified at the RPD hearing that the assailants "touched her private parts." The RPD rejected Mr. Rahman's explanation that this omission from the BOC was due to a language barrier and drew a negative credibility inference.

[13] Mr. Rahman also testified that he was attacked or threatened several more times: he claimed he and his wife were attacked on June 28, 2015 and told if he did not remove the blogs about fundamentalists, he would be killed, and also told that he had helped his sister escape from Bangladesh. He said he had received a threatening phone call from unknown Muslim fanatics on

June 29, 2015, who referred to his sister. And he claimed that on July 6, 2015 he and his family were attacked, and their home was damaged, and that the attackers had said his sister was married to a “Malaun” which he described as a derogatory word used in reference to Hindus.

[14] The RPD confronted Mr. Rahman with the fact he had not mentioned in his BOC form that he was attacked by Muslim fanatics on any of these dates because he helped his sister. Mr. Rahman responded by stating that the Muslim fanatics had mentioned his sister and he had mentioned this at the beginning of his narrative. The RPD found Mr. Rahman’s explanation for this discrepancy between his oral and written evidence unsatisfactory, and that it detracted from his credibility.

[15] The RPD accepted that Mr. Rahman had been diagnosed with post-traumatic stress disorder, but it assigned little weight to the psychologist’s report containing the diagnosis since: it was not persuasive evidence of his current condition; the assessment had lasted only two hours and been conducted over two years ago; and there was no documentation corroborative of further efforts to seek assistance. Although Mr. Rahman’s wife had testified that her husband was forgetful and had problems expressing himself, the RPD was not persuaded that this impacted his ability to give testimony at the hearing, noting that he was able to write a detailed narrative after coming to Canada despite suffering post-traumatic stress disorder.

[16] The RPD concluded its reasons by stating that the allegations put forth were not credible, and that it did not believe Mr. Rahman was a blogger in Bangladesh and that he and his family

members were targeted by Muslim fanatics for that reason, or because he had assisted his sister and her Hindu husband to leave Bangladesh.

II. Analysis

[17] This application for judicial review raises one over-arching issue: was the RPD's decision reasonable?

A. *Standard of Review*

[18] The standard of review for credibility findings by the RPD is that of reasonableness with considerable deference owed to the advantageous position of the trier of fact (*Cambara v Canada (Citizenship and Immigration)*, 2017 FC 1019 at para 13, 286 ACWS (3d) 531; *Aguebor v (Canada) Minister of Employment and Immigration*, [1993] FCJ No 732 at para 4, 160 NR 315 (CA)).

[19] The reasonableness standard tasks the Court with reviewing an administrative decision for “the existence of justification, transparency and intelligibility within the decision-making process” and determining “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190). Those criteria are met if “the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes” (*Newfoundland and*

Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board), 2011 SCC 62 at para 16, [2011] 3 SCR 708).

B. *The Parties' Submissions*

[20] The Applicants assert that it was incumbent upon the RPD to request proof of Mr. Rahman's ownership of the domain name since this evidence would have affected its decision. In the Applicants' view, the RPD unreasonably analyzed the evidence connected to the website, analysing it for what it did not say versus what it did say. According to the Applicants, the RPD's finding that the blog did not include Mr. Rahman's photograph or full name does not mean he could not be identified by the Muslim fanatics. The Applicants say the RPD unreasonably discounted Mr. Rahman's testimony since he had not provided blogs pre-dating 2015.

[21] According to the Applicants, evidence such as the newspaper article, medical reports and letters to the police, must be weighed on its own and not dismissed only because Mr. Rahman's testimony was not credible. The Applicants say the RPD unreasonably diminished the psychologist's report due to its age. In the Applicants' view, this report clearly shows that Mr. Rahman has difficulty concentrating and making decisions, and while he concedes that he stumbled over his testimony in terms of certain dates and sequence of events, this must be viewed in the context of his poor mental state and the stress of the hearing room.

[22] The Applicants further say that, even though Mr. Rahman did not mention in his BOC that his wife was sexually assaulted during the April 14, 2015 attack, he stated this more

explicitly in his testimony, and this does not mean he is not credible. In the Applicants' view, the RPD unreasonably parsed his testimony about this attack and did not consider cultural and gender sensitivities around issues of sexual violence. According to the Applicants, Mr. Rahman's testimony built upon his BOC which clearly mentioned that his wife was assaulted and hints at sexual impropriety by mentioning that her clothes were torn.

[23] In the Applicants' view, it was unreasonable for the RPD to find Mr. Rahman not credible as to whether Muslim fanatics had confronted him and made references to his sister since he could not remember specific dates and did not mention this in his BOC. As for the RPD's finding that this was not mentioned in his BOC, the Applicants say this is factually incorrect, citing lines 18-19 of Mr. Rahman's narrative: "I was already visible to these Moslem fanatics due to the aid I gave to my sister and how I facilitated her departure from Bangladesh to Canada." According to the Applicants, a BOC form provides a basic outline of the claim and testimony is allowed and meant to elaborate upon the BOC.

[24] The Respondent says the Applicants have the responsibility of proving the facts upon which they rely, and it was not the responsibility of the RPD to advise the Applicants that they must provide corroborative documentary evidence in respect of Mr. Rahman's ownership of the website. In the Respondent's view, it was reasonable for the RPD to find an insufficient factual basis that Mr. Rahman owned powerbymanob.com.

[25] According to the Respondent, a general finding of lack of credibility can affect all relevant evidence submitted by an applicant, including documentary evidence, and ultimately

cause a claim to be rejected. The Respondent notes that a recounting of events to a psychologist does not make those events more credible. In the Respondent's view, it was reasonable for the RPD to note that the psychologist's report was two years old and that Mr. Rahman was capable of writing a detailed narrative and completing his BOC despite having post-traumatic stress disorder.

[26] The Respondent maintains that Mr. Rahman could have simply described his wife's assault on paper as he did in the hearing since there is a qualitative difference between being physically assaulted and sexually assaulted. In the Respondent's view, the message was not consistent between his BOC and his oral testimony, and due to this inconsistency, it was not unreasonable for the RPD to draw a negative credibility inference.

C. *The RPD's Decision is Reasonable*

[27] I agree with the Respondent that the Applicants had the responsibility of proving the facts upon which they rely, and that it was not the RPD's responsibility to advise them that they must provide corroborative documentary evidence in respect of Mr. Rahman's ownership of the website. In the absence of any documentary evidence to corroborate Mr. Rahman's testimony that he owned powerbymanob.com, it was reasonable for the RPD to find an insufficient factual basis for his claim of ownership.

[28] I also agree with the Respondent that a general finding of lack of credibility can affect all relevant evidence submitted by an applicant, including documentary evidence, and ultimately cause a claim to be rejected (see: *Nijjer v Canada (Citizenship & Immigration)*, 2009 FC 1259 at

para 26, 184 ACWS (3d) 196; *Yasik v Canada (Citizenship and Immigration)*, 2014 FC 760 at para 55, 242 ACWS (3d) 917; and *Zhu v Canada (Citizenship and Immigration)*, 2013 FC 1139 at para 49, 442 FTR 237).

[29] It is true that the psychologist's report states that Mr. Rahman has difficulty concentrating and making decisions. The report does not, however, suggest that he was or would be unable to provide credible testimony at a hearing. It was not unreasonable for the RPD to assign this report little weight as it did not speak to Mr. Rahman's mental state at the time of the hearing.

[30] The RPD's credibility findings in this case were reasonable and should be afforded deference by the Court. There is no ground for the Court's intervention.

III. Conclusion

[31] The RPD's reasons for rejecting the Applicants' claims for refugee protection are intelligible, transparent, and justifiable, and its decision falls within a range of possible, acceptable outcomes defensible in respect of the facts and law. The Applicants' application for judicial review is therefore dismissed.

[32] Neither party proposed a serious question of general importance to be certified under paragraph 74(d) of the *IRPA*; so, no such question is certified.

[33] The Respondent has been incorrectly named in the Notice of Application as the Minister of Immigration, Refugees and Citizenship. According to the federal Registry of Applied Titles,

the applied title for the Department of Citizenship and Immigration is Immigration, Refugees and Citizenship Canada. The correct Respondent to this application for judicial review is the Minister of Citizenship and Immigration by virtue of subsection 4(1) of the *IRPA*. Accordingly, the style of cause will be amended, with immediate effect, to name the Minister of Citizenship and Immigration as the Respondent in lieu of the Minister of Immigration, Refugees and Citizenship.

JUDGMENT in IMM-1752-18

THIS COURT'S JUDGMENT is that: the application for judicial review is dismissed; no serious question of general importance is certified; and the style of cause is amended, with immediate effect, to name the Minister of Citizenship and Immigration as the Respondent in lieu of the Minister of Immigration, Refugees and Citizenship.

"Keith M. Boswell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1752-18

STYLE OF CAUSE: MANOB RAHMAN, KANIZ FATIMA, AYAAN
RAHMAN v THE MINISTER OF CITIZENSHIP AND
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