

Federal Court



Cour fédérale

Date: 20210125

Docket: IMM-932-20

Citation: 2021 FC 76

Ottawa, Ontario, January 25, 2021

PRESENT: Madam Justice Walker

BETWEEN:

**MR ABDULLAH
MD AHAD SIDDIK
MOSAMMATH MOYMUN NEHAR RUPI
MUSAMMATH RAZIA BEGUM
MOHAMMED KHALIK HASAN
AYSHA SIDDIKA SADIA
MOHD RAZZAK ABDULLAH**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants seek judicial review of a January 16, 2020 decision of the Refugee Appeal Division (RAD) confirming the refusal of their refugee claims pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The RAD agreed with the

Refugee Protection Division (RPD) that the Applicants have viable internal flight alternatives (IFAs) in Dhaka, Khulna and Chittagong, Bangladesh.

[2] For the reasons that follow, the application will be dismissed. The RAD comprehensively engaged with the Applicants' submissions and evidence. The panel accepted that the Applicants had established they were subject to extortion in their town of Sylhet in Bangladesh but found that they had not established, on a balance of probabilities, the motivation of their agents of persecution to pursue them across Bangladesh. The RAD explained its conclusion logically and coherently.

I. Context

[3] The Applicants are citizens of Bangladesh. They are members of one extended family: Mr. Abdullah, his wife and their minor son, and the family of Mr. Abdullah's adult son, Mr. Siddik, his wife and their two minor children.

[4] Mr. Abdullah and his family lived in Dubai for many years, returning to Sylhet periodically. They state that, during their visits to Bangladesh between 2006 and 2017, the local Imam and Jamaat leader in Sylhet, Halim Uddin, harassed and extorted money from them due to their perceived wealth. The Applicants sought but did not receive police protection and state they were subject to extortion by the police.

[5] In early 2017, while at home in Sylhet, Mr. Siddik claims that he was subject to an extortion demand by Mr. Uddin and was later beaten because he was unable to pay the amount demanded. He and his family then fled to Dubai to join Mr. Abdullah's family.

[6] The Applicants had earlier learned that Mr. Abdullah's work visa in Dubai would not be renewed. They left Dubai and travelled to the United States. The Applicants arrived in Canada on September 15, 2017. A family member who remains in Sylhet provided an affidavit in which she stated that Mr. Uddin and his men had returned to the Applicants' home looking for Mr. Siddik a number of times since the family's 2017 departure, most recently on March 1, 2019.

[7] The RPD rejected the Applicants' claim on May 8, 2019, concluding that they had viable IFAs in Dhaka, Khulna and Chittagong. The RPD accepted that the Applicants had faced extortion at the hands of Mr. Uddin during their return visits to Sylhet but found that they had not satisfied either prong of the test for an IFA established in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) (*Rasaratnam*).

II. The RAD Decision

[8] The RAD agreed that Mr. Uddin had subjected the Applicants to extortion in Sylhet but confirmed the RPD's finding that they have IFAs in Dhaka, Khulna and Chittagong and dismissed the appeal.

[9] The RAD found that the Applicants do not face a serious possibility of persecution in any of the IFA locations because they had not established that either Mr. Uddin or the larger Jamaat network was motivated to pursue them across Bangladesh. The panel acknowledged the Applicants' arguments that Mr. Uddin was motivated by money and revenge and that he would be able to track them due to the requirement that they register with the police as tenants in certain cities in Bangladesh. The RAD concluded, however, that the Applicants had not established that

Mr. Uddin would spend resources to search for the family when there are sources of funds closer at hand.

[10] With regards to potential pursuit by the Jamaat, the RAD agreed the organization is well-connected but stated that its ability to make use of police networks due to such connections did not mean the Jamaat would choose to do so. Noting that the Jamaat is motivated primarily by religious extremism, the panel stated that the Applicants had no profile that would cause the Jamaat to take particular interest in them.

[11] Finally, the RAD considered the Applicants' argument that, as expatriates returning from Dubai, they would be perceived as wealthy, particularly in light of their ownership of a large house and land. The panel agreed that their perceived wealth may make the Applicants targets for opportunistic extortionists but found that such a perception does not mean that extortionists would pursue and harm them elsewhere in Bangladesh.

[12] The Applicants did not dispute the RPD's findings on the second prong of the *Rasaratnam* test before the RAD. Nevertheless, the RAD stated that it had conducted its own review of the evidence and agreed with the RPD that the Applicants had not demonstrated with sufficient evidence that it would be unduly harsh or unreasonable for them to relocate to any of the IFA locations.

III. Issues and Standard of Review

[13] The sole issue in this application is whether the RAD erred in concluding that the Applicants have an IFA in any one of three cities in Bangladesh. The RAD's IFA determination is subject to review by this Court for reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10 (*Vavilov*)). None of the situations identified by the Supreme Court of Canada in *Vavilov* for departing from the presumptive standard of review apply in this case.

[14] The majority in *Vavilov* set out guidance for reviewing courts in the application of the reasonableness standard, emphasizing the importance of the decision maker's reasoning process and the outcome for the person affected by the decision (*Vavilov* at para 83). The Supreme Court stated that the hallmark of a reasonable decision is "an internally coherent and rational chain of analysis" that is justified in relation to the facts and law that constrain the decision maker (*Vavilov* at para 85; *Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67 at para 31).

IV. Analysis

[15] The concept of an IFA is integral to the definition of a Convention refugee. A claimant must be a refugee from a country, not from a particular region of a country. There is no dispute between the parties regarding the two-prong *Rasaratnam* test for determining a viable IFA:

1. The RAD must first be satisfied on a balance of probabilities that there is no serious possibility of the applicant(s) being persecuted in the proposed IFA; and
2. Conditions in the part of the country proposed as an IFA must be such that it would not be unreasonable, in all the circumstances including those particular to the applicant(s), to seek refuge there.

First prong of the IFA test

[16] The Applicants' primary challenge to the RAD's decision (Decision) targets the first prong of the test. They emphasize that their evidence of extortion in Sylhet, Mr. Uddin's continued search for Mr. Siddik, and the requirement to provide tenant information to the police in Bangladesh was found credible. The Applicants argue that this finding, coupled with significant police corruption in Bangladesh, renders the RAD's conclusion of a viable IFA in Dhaka, Khulna or Chittagong unreasonable.

[17] I do not find the Applicants' argument persuasive. The RAD's conclusion regarding the first prong of the *Rasaratnam* test was premised on its finding that neither Mr. Uddin nor the Jamaat was motivated to expend resources, whether monetary or connections, to track the Applicants through Bangladesh. The fact that the Applicants' agents of persecution may be able to locate them in other cities in Bangladesh does not negate the RAD's finding that they would not have the motivation to do so (*Essel v Canada (Citizenship and Immigration)*, 2020 FC 1025 at para 13). The RAD comprehensively and logically explained the reasons for its adverse motivation finding and I find no reviewable error in the panel's conclusion.

[18] The Applicants submit that the RAD erred in stating that the fact the Jamaat party is well-connected "does not necessarily mean that its members will make use of police and other networks in all instances, even if they were provided information through the tenant registration process in Dhaka". The Applicants state that the RAD improperly imposed an unduly elevated standard of proof in requiring them to demonstrate the Jamaat's lack of motivation "in all instances".

[19] The Applicants focus on a single phrase in the Decision in making their submission but an administrative decision must be read holistically and contextually (*Vavilov* at para 97; *Akinkunmi v Canada (Citizenship and Immigration)*, 2020 FC 742 at para 16). Throughout the Decision, the RAD emphasized that the Applicants were required to establish the facts underlying their claim on a balance of probabilities. More specifically, in drawing its evidentiary conclusions, the panel stated repeatedly that the Applicants had provided insufficient evidence to establish that Mr. Uddin or the Jamaat would be interested in pursuing them in the proposed IFAs “on a balance of probabilities”. The RAD’s use of the phrase “in all instances” simply conveyed the fact that the mere existence of the ability to track someone does not mean the ability will necessarily be exercised in the absence of motivation. I find the RAD made no error in its assessment of the lack of motivation of the Jamaat to pursue the Applicants elsewhere in Bangladesh.

Second prong of the IFA test

[20] The RAD stated in the Decision that the Applicants did not challenge the RPD’s finding that it would not be unreasonable for them to relocate to any one of the identified IFAs. I have reviewed the Applicants’ submissions to the RAD and confirm that they make no reference to the second prong of the *Rasaratnam* test. The Applicants have not disputed the RAD’s statement other than to note in their written submissions that counsel made observations to the RAD that it would be unreasonable for them to relocate within Bangladesh. The Applicants now argue that the RAD was nonetheless required to consider all the facts and evidence before it.

[21] I am not persuaded that the Applicants have identified a basis for the Court's intervention because: (1) they have led no evidence to suggest that they raised this issue before the RAD; and (2) the RAD is not required to address potential issues that the appellants before it did not raise (Rule 3(3)(g) of the *Refugee Appeal Division Rules*, SOR/2012-257; *Kanawati v Canada (Citizenship and Immigration)*, 2020 FC 12 at paras 23-24). The RAD was required to consider the errors raised by the Applicants and did so in the Decision.

[22] I note also the RAD's statement that it had reviewed the RPD's findings and agreed with the RPD's conclusion regarding the second prong of the IFA test. The RAD's statement was based on its own review of the evidence. The Applicants challenge the RAD's brief confirmation of the RPD's conclusion, stating that: they know no one outside of Sylhet; it would be difficult to find employment or lodging for a large family in the IFA cities; and they would again be perceived as wealthy upon their return to Bangladesh from Canada.

[23] I find that the Applicants' submissions regarding the difficulties they may encounter in relocating to one of the IFA cities do not identify a reviewable error. The Applicants have identified no evidence and have made no submission that would suggest they had met the demanding requirement for unreasonableness that is the hallmark of the second prong of the *Rasaratnam* test (*Ohwofasa v Canada (Citizenship and Immigration)*, 2020 FC 266 at para 20, citing *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (CA) and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA)).

V. Conclusion

[24] The application is dismissed.

[25] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT IN IMM-932-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

"Elizabeth Walker"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-932-20

STYLE OF CAUSE: MR ABDULLAH, MD AHAD SIDDIK,
MOSAMMATH MOYMUH NEHAR RUPI,
MUSAMMATH RAZIA BEGUM, MOHAMMED
KHALIK HASAN, AYSHA SIDDIKA SADIA, MOHD
RAZZAK ABDULLAH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE FROM
MONTRÉAL, QUEBEC AND OTTAWA, ONTARIO

DATE OF HEARING: DECEMBER 10, 2020

JUDGMENT AND REASONS: WALKER J.

DATED: JANUARY 25, 2021

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