

Federal Court



Cour fédérale

**Date: 20230117**

**Docket: IMM-6770-21**

**Citation: 2023 FC 72**

**Ottawa, Ontario, January 17, 2023**

**PRESENT: Madam Justice Pallotta**

**BETWEEN:**

**HUSSAIN AHMED**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicant, Hussain Ahmed, is a citizen of Bangladesh who seeks judicial review of the September 17, 2021 decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board. The RAD dismissed Mr. Ahmed's appeal and confirmed the Refugee Protection Division's (RPD) determination that he is not a Convention refugee or a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] Mr. Ahmed fears persecution based on his political opinion. He alleges he was targeted by the Bangladesh Chhatra League (BCL), the student wing of the ruling Awami League party, because of his membership in the Liberal Democratic Party (LDP) and his position as the LDP's religious affairs secretary for the Sylhet region. Credibility was the determinative issue before the RPD and the RAD.

[3] Mr. Ahmed argues that the RAD's decision is unreasonable because the foundation for its negative credibility findings—that Mr. Ahmed's sworn testimony and corroborative documents were inconsistent with objective country condition evidence in the National Documentation Package (NDP) for Bangladesh—is unsustainable. Also, while both the RPD's and the RAD's decisions turned on negative credibility findings, Mr. Ahmed submits that the RAD's analysis based on NDP information was substantially different from the RPD's analysis. Mr. Ahmed argues the RAD violated procedural fairness principles by failing to provide notice to him and an opportunity to respond to its new concerns.

[4] The reasonableness of the RAD's decision is reviewed according to the guidance set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

Reasonableness is a deferential but robust standard of review: *Vavilov* at paras 12-13, 75 and 85. In applying the reasonableness standard, the reviewing court determines whether the decision bears the hallmarks of reasonableness—justification, transparency, and intelligibility: *Vavilov* at para 99. A reasonable decision is based on an internally coherent and rational chain of analysis and it is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at

para 85. The party challenging the decision bears the onus of demonstrating that it is unreasonable: *Vavilov* at para 100.

[5] Allegations of procedural unfairness are reviewed on a standard that is akin to correctness: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific Railway*]. The duty of procedural fairness is “eminently variable”, inherently flexible, and context-specific: *Vavilov* at para 77, citing *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at paras 22-23 [*Baker*], among other cases. An applicant must have had a meaningful opportunity to present their case and to have it fully and fairly considered: *Baker* at para 32. The central question is whether the procedure was fair, having regard to all of the circumstances: *Canadian Pacific Railway* at para 54.

[6] The RPD’s and the RAD’s key concerns and findings on credibility, as summarized below, provide the context for Mr. Ahmed’s arguments on judicial review.

[7] The RPD raised multiple credibility concerns with Mr. Ahmed’s testimony and supporting documents. Taken together, these concerns led the RPD to find Mr. Ahmed’s claim was not credible. With respect to Mr. Ahmed’s testimony, the RPD found it unlikely that the BCL would have been able to locate him soon after he fled to Chittagong, as Mr. Ahmed had alleged, and unlikely that he would have continued reporting assaults to the police even after the police refused to protect him and threatened him about his continued involvement in protests. The RPD also disbelieved Mr. Ahmed’s reasons for the delay in seeking refugee protection in Canada. With respect to the supporting documents, the RPD was concerned that Mr. Ahmed’s

LDP membership card, allegedly issued in 2016, and three membership payment receipts dated 2015, 2016, and 2017, were “in such physically excellent condition given their age and usage”. The RPD was also concerned about an arrest warrant. The police allegedly delivered the warrant to Mr. Ahmed’s parents’ new home even though it was addressed to their previous home. The RPD drew negative inferences about the credibility of Mr. Ahmed’s claim based on each of these concerns with his testimony and documents.

[8] The RPD stated there was “significant evidence” in support of Mr. Ahmed’s claim. The RPD noted Mr. Ahmed’s testimony about politics in Bangladesh, the LDP, his role as the religious affairs secretary for the Sylhet region, and the various events and functions he attended in his capacity as an LDP member and leader. The RPD also noted a number of supporting documents, including: Mr. Ahmed’s LDP membership application form; an LDP register of party members and executives in the Sylhet region naming Mr. Ahmed as religious affairs secretary; a newspaper article from the Sylhet Daily News reporting that Mr. Ahmed had been assaulted on November 20, 2017, and a hospital discharge record dated November 20, 2017; a letter from a Bangladeshi lawyer Mr. Ahmed and his mother consulted on December 10, 2017; and a letter from Mr. Ahmed’s mother.

[9] While the RPD found no reason for undermining the credibility or authenticity of the supporting documents and testimony “on their face”, the RPD stated this evidence must be viewed in the context of the negative inferences it had drawn. In this regard, the RPD noted that the supporting documents could have been fabricated to support a false refugee claim, and their probative value was limited. The RPD acknowledged the presumption that a refugee claimant’s

testimony is truthful unless there is reason to believe otherwise, and found there was reason to believe that Mr. Ahmed had not been truthful. The RPD found the credibility concerns were not minor or microscopic issues, but rather involved key parts of Mr. Ahmed's narrative and key documents he submitted in support of his claim. The RPD concluded that Mr. Ahmed's claim must fail because he had not credibly established the events that led him to flee Bangladesh, and that he would be at risk upon return.

[10] On appeal to the RAD, Mr. Ahmed alleged that all of the RPD's negative credibility findings were made in error. With respect to the documentary evidence specifically, Mr. Ahmed alleged that the RPD erred by making improper findings, including unsupported implausibility findings, about the authenticity of the membership card, payment receipts, and arrest warrant. He also argued the RPD erred by affording limited probative value to corroborating documents without making an express finding that they are not authentic: *Oranye v Canada (Minister of Citizenship and Immigration)*, 2018 FC 39 [*Oranye*]. Mr. Ahmed alleged the RPD had conflated the credibility of his testimony with the genuineness of the documents, and relied on an improper inference that all documents lacked credibility because of concerns with some of them, without assessing the supporting documents on the merits. He urged the RAD to find that he is a Convention refugee on the basis of his political opinion, in view of the evidence showing he was politically active, had experienced persecution, and faced arrest in Bangladesh.

[11] The RAD's decision does not expressly state whether it agreed with Mr. Ahmed's arguments that the RPD had erred; however the RAD conducted an independent review of the

documents, and gave different reasons than the RPD for concluding that Mr. Ahmed's claim is not credible.

[12] The RAD found that Mr. Ahmed was not credible with respect to his membership in the LDP, which undermined his overall credibility since membership in the LDP was central to his claim. In this regard, the RAD made an explicit finding that Mr. Ahmed had submitted two fraudulent documents to establish that he was a member of the LDP—his membership card, and the list of LDP party members and executives for the Sylhet region. The RAD found there were significant inconsistencies between these documents and the objective evidence in the NDP for Bangladesh, specifically Item 4.13, a Response to Information Request titled *The Liberal Democratic Party (LDP), including structure, leaders, activities; membership cards and confirmation letters, and activities; treatment of members by authorities* (2014-April 2016). The RAD made the following findings:

- i. the NDP expressly notes that “LDP members do not receive membership cards” and that prospective members “will be informed by telephone of the acceptance of the membership; the party has no funds to facilitate other processes for accepting or confirming membership”;
- ii. the document listing the executive council for Sylhet, which refers to Mr. Ahmed as the religious affairs secretary, is not credible because it contains a significant irregularity on its face by referring to a “twenty-seven (21) [sic] member committee”, and because both numbers are inconsistent with the NDP, which explains that the LDP is organized “with each district committee consisting of 101 members”;

- iii. Mr. Ahmed's evidence that he joined the LDP in January 2015 at the Sylhet District LDP as a primary member, and was promoted to religious affairs secretary of the same unit in May 2016, is also inconsistent with the NDP because prospective LDP members have to be over the age of 18, which is specifically verified on the membership application form, and Mr. Ahmed would have been 16 years old when he allegedly joined the LDP and 17 years old when he was promoted to religious affairs secretary;
- iv. the balance of the documentary evidence does not help to resolve the credibility concerns or independently establish Mr. Ahmed's claim because: (i) the receipts from the LDP only indicate that Mr. Ahmed donated to the party and do not refer to him as a member; (ii) the arrest warrant, the hospital report and the lawyer's letter do not refer to Mr. Ahmed as a member of the LDP; (iii) the newspaper article and the affidavit from Mr. Ahmed's mother refer to him as a member of the LDP, but do not help to resolve the fact that he could not have joined the party as a minor;
- v. it was unnecessary to address the RPD's additional credibility findings because the above concerns fully rebut the presumption of truthfulness and "are not adequately addressed or rebutted by his explanations or the documentary evidence."

[13] Mr. Ahmed submits the RAD's findings are unreasonable. He states the RAD misapprehended the information in the NDP and "cherry-picked" excerpts from Item 4.13 without considering the entire document, or the limitations of the information contained therein.

Mr. Ahmed submits that Item 4.13 of the NDP uses qualifying words, and speaks in terms of generalities and probabilities. It does not express certainty as to the organizational structure or membership requirements of the LDP, stating that the party belongs to one man and “what he says goes”. Mr. Ahmed states the RAD ignored qualifying words, for example, that the party “probably” does not have membership cards.

[14] The respondent submits it was reasonable for the RAD, as a finder of fact, to consider and weigh how the NDP indicates the LDP was “probably” run, and the RAD reasonably weighed the objective NDP evidence against Mr. Ahmed’s evidence. The respondent states that Mr. Ahmed is effectively asking the Court to reweigh the evidence.

[15] I agree with Mr. Ahmed that the RAD’s decision is unreasonable.

[16] First, the RAD erred by relying on select information in Item 4.13 of the NDP that was not so clear and cogent as to ground the findings that Mr. Ahmed’s membership card and list are fraudulent, or that Mr. Ahmed could not have been an LDP member at the age of 16. The RAD relied on the information in Item 4.13 of the NDP about membership cards, the number of LDP members, and age requirements for membership without acknowledging qualifications of the information, and without addressing contrary information in the same document.

[17] The information in NDP Item 4.13 regarding membership cards was derived from three sources—a professor of South Asian studies at the University of Oslo, a senior researcher with the Christian Michelsen Institute, and a PhD candidate at the University of Ottawa’s School of



International Development and Global Studies. Only the PhD candidate expressed the seemingly unqualified opinion that “LDP members do not receive membership cards”, and Item 4.13 does not state the basis for this opinion:

The Professor indicated that political parties in Bangladesh do not follow registration formalities and do not issue membership cards, fees or lists, and that in the source’s opinion, “the LDP is probably no exception” (Professor 18 April 2016). According to the Senior Researcher, the party “probably” does not have membership fees, formal membership registration, or membership cards (Senior Researcher 15 April 2016). The PhD candidate also stated that LDP members do not receive membership cards (PhD Candidate 19 April 2016). However, the same source indicated that the party does issue receipts for financial contributions, the central committee also issues approval letters to each district committee, reportedly listing the names of members (*ibid.*). Corroborating and further information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

[18] The RAD also relied on information from the PhD candidate about the overall structure of the LDP being a national central committee of 42 members and district committees in 35 of the 64 districts in Bangladesh, with each district committee consisting of 101 members. Item 4.13 of the NDP does not provide the number of LDP members for the Sylhet district specifically, and other information in Item 4.13 indicates that although the LDP may have a formal organizational structure or an elaborate structure “on paper”, that is not necessarily the reality. According to the professor and the senior researcher, it is difficult to get a sense of the size of the LDP, and the number of members is probably very negligible.

[19] With respect to Mr. Ahmed’s age when he joined the LDP, NDP Item 4.13 does not expressly state that the LDP party will not accept members under the age of 18. Rather, the RAD relied on information in NDP Item 4.13 that a membership application form available on

the LDP's website requires prospective members to declare that they are over the age of 18. Item 4.13 also states, as noted above, that political parties in Bangladesh do not follow registration formalities and "probably" do not have formal membership registration. It further states, based on information provided by the president of the LDP, that potential members can join the party in different ways—via Facebook, or the website, or by visiting the LDP office—and that membership is available to all Bangladeshi citizens who have adequate educational qualifications and acceptability among people in their area, and no criminal or corruption case against them.

[20] Mr. Ahmed was not confronted with the alleged inconsistencies between information in NDP Item 4.13 and his own documents and testimony during the RPD hearing, and the record that was before the RAD does not include evidence from him about whether the information in NDP Item 4.13 was, in fact, inconsistent with his documents and testimony. Mr. Ahmed was not questioned about the LDP's practices in respect of membership cards, the number of LDP members on district committees, or how he was able to join the party and become religious affairs secretary for the Sylhet district before attaining 18 years of age. Fraud is a serious finding that must be grounded in the evidence: *Oranye* at para 24. In my view, the information the RAD relied on from the NDP was not so clear and cogent as to ground a finding of fraud, particularly when the record did not include evidence from Mr. Ahmed on these points.

[21] Second, the RAD used the three negative findings based on alleged inconsistencies with information in the NDP to discount or disregard all of Mr. Ahmed's testimony and documentary

evidence. As this Court stated in *Li v Canada (Citizenship and Immigration)* 2019 FC 307 at paragraph 18:

...[A]dverse overall credibility findings alone are not sufficient grounds for rejecting potentially corroborative evidence. Such evidence must be examined independently of concerns about the claimant's credibility before it can be rejected (*Yu v Canada (Citizenship and Immigration)*, 2015 FC 1138 at paras 31-37; *Lu v Canada (Citizenship and Immigration)*, 2016 FC 846 at paras 33-35; and *Ren* at para 27). Otherwise, the decision maker risks reasoning in a way that begs the very question at issue: the corroborative evidence is not believed simply because the claimant is not believed (*Sterling v Canada (Citizenship and Immigration)*, 2016 FC 329 at para 12). Moreover, as Justice Rennie (as he then was) stated in *Chen*: "It is impermissible to reach a conclusion based on certain evidence and dismiss the remaining evidence as inconsistent with that conclusion" (at para 20).

[22] The RAD's findings on these points are the basis for concluding that Mr. Ahmed's claim is not credible. Consequently, the RAD's errors amount to a sufficiently serious shortcoming to warrant setting aside the RAD's decision.

[23] Although it is unnecessary to address Mr. Ahmed's procedural fairness argument in view of my finding on reasonableness, I will address it briefly

[24] Mr. Ahmed argues it is a basic principle of procedural fairness that a party should have the opportunity to respond to new issues and concerns that will have a bearing on a decision affecting them: *Ching v Canada (Citizenship and Immigration)*, 2015 FC 725 at para 74. While Mr. Ahmed acknowledges that credibility was the central issue before the RPD and the RAD, he states he could not have known the RAD would rely on an interpretation of information found in 1 out of 125 items contained within the NDP for Bangladesh to conclude that his claim lacked

credibility. He submits this issue did not arise before the RPD, and was not raised in his appeal to the RAD. Mr. Ahmed argues that the basis for the RAD's decision was substantially different from the basis for the RPD's decision, and he should not be expected to anticipate every possible way that his evidence may be found not credible—even ways that did not occur to the RPD. Mr. Ahmed states he should have been given the opportunity to present arguments to the RAD regarding the limitations of the information in the NDP.

[25] The respondent contends this Court has previously considered and rejected a similar argument in *Bebri v Canada (Minister of Citizenship and Immigration)*, 2018 FC 726 at para 16 [*Bebri*]. Where the RAD raises and considers issues that are linked to the RPD's findings or a party's submissions, the RAD is entitled to independently assess the evidence or make credibility findings: *Ibid*; see also *Zhang v Canada (Minister of Citizenship and Immigration)*, 2019 FC 870 at para 13 [*Zhang*]; *Lopez Santos v Canada (Minister of Citizenship and Immigration)*, 2021 FC 1281 at para 45.

[26] I am not persuaded that Mr. Ahmed has established a breach of procedural fairness. Mr. Ahmed did not adduce new evidence on appeal or request an oral hearing before the RAD. Where a hearing before the RAD is not warranted, the RAD may decide an appeal on the basis of the materials provided, “without further notice to the appellant and to the Minister”: Rule 7 of the *Refugee Appeal Division Rules*, SOR/2012-257. The RAD is entitled to independently assess the evidence or make credibility findings when the issues raised and considered by the RAD are linked to the parties' submissions or the RPD's findings: *Zhang* at para 13; *Bebri* at para 16. In

such a situation, the RAD's findings are reviewed under the deferential standard of reasonableness.

[27] There is an exception to this general rule when procedural fairness requires the RAD to give notice that it has raised a new issue, and provide an opportunity for submissions: *Kwakwa v Canada (Citizenship and Immigration)*, 2016 FC 600. New issues are “legally and factually distinct from the grounds of appeal raised by the parties and cannot reasonably be said to stem from the issues as framed by the parties”: *R v Mian*, 2014 SCC 54 at para 30 [*Mian*] (citations omitted). Issues that are rooted in or are components of an existing issue are not “new issues”: *Mian* at para 33.

[28] I do not accept Mr. Ahmed's argument that he could not have expected the RAD to focus on Item 4.13 in particular, out of 125 items in the NDP for Bangladesh. I agree with the respondent that this “needle in the haystack” argument is without merit. While there are numerous items in the NDP for Bangladesh, they are organized by topic. There are 14 items listed under the heading “4. Political Activities and Organizations”. Of these, the RAD relied on a document that clearly relates to the LDP, and further, it is the only document listed under this heading that clearly relates to the LDP based on its title alone.

[29] Mr. Ahmed also argues that the basis for the RAD's decision was substantially different from the basis for the RPD's decision, and he should not be expected to anticipate every possible way that his evidence may be found not credible. However, Mr. Ahmed specifically raised issues with the RPD's credibility findings, and his arguments to the RAD included challenges to

the RPD's findings about his LDP membership and membership card. One specific argument was that the RPD erred by affording limited probative value to corroborating documents without expressly finding that they are not authentic. In my view, the RAD did not raise issues that were legally and factually distinct from Mr. Ahmed's grounds of appeal. The RAD's findings stem from the issues he raised.

[30] If the RAD had invited Mr. Ahmed to provide submissions, any such submissions may have affected the reasonableness of the RAD's decision. This is because a guiding principle for reasonableness review is that the reviewing Court must consider the tribunal's reasons contextually, and the relevant context includes the submissions made by the parties: *Vavilov* at para 94. However, a breach of procedural fairness is a separate basis for judicial intervention, and would warrant setting aside the RAD's decision even if it had been reasonable. In my view, the RAD's error in this case was one of reasonableness and Mr. Ahmed has not persuaded me that the RAD was required, as a matter of procedural fairness, to provide notice of a new issue and an opportunity for him to respond.

[31] In conclusion, as Mr. Ahmed has established that the RAD's decision is unreasonable, this application is allowed.

[32] Neither party proposed a question for certification. I find there is no question to certify.

**JUDGMENT in IMM-6770-21**

**THIS COURT'S JUDGMENT is that:**

1. This application for judicial review is allowed.
2. The RAD's decision is set aside and the matter shall be redetermined by a different RAD panel.
3. There is no question to certify.

"Christine M. Pallotta"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-6770-21

**STYLE OF CAUSE:** HUSSAIN AHMED v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY WAY OF VIDEOCONFERENCE

**DATE OF HEARING:** OCTOBER 6, 2022

**JUDGMENT AND REASONS:** PALLOTTA J.

**DATED:** JANUARY 17, 2023

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