

Federal Court



Cour fédérale

Date: 20230908

Docket: IMM-3538-22

Citation: 2023 FC 1221

Ottawa, Ontario, September 8, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

FARIA JABIN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Faria Jabin, seeks judicial review of a decision of the Refugee Appeal Division (“RAD”) dated March 29, 2022, confirming the determination of the Refugee Protection Division (“RPD”) that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection*

Act, SC 2001, c 27 (“*IRPA*”). The RAD found the determinative issue to be the Applicant’s credibility.

[2] The Applicant submits that the RAD unreasonably drew negative credibility findings from microscopic inconsistencies in the Applicant’s narrative and rendered a decision without due regard to the Applicant’s evidence.

[3] For the reasons that follow, I find that the RAD’s decision is reasonable. This application for judicial review is dismissed.

II. Facts

A. *The Applicant*

[4] The Applicant is a 24-year-old citizen of Bangladesh. Her parents and two sisters reside in Muradnagar, in the Comilla District of Bangladesh.

[5] The Applicant completed her secondary school education in 2016 and began studying at Green University in Dhaka in 2017. In December 2018, the Applicant obtained a study permit to continue her education at Vancouver Island University in British Columbia, Canada. She arrived in Canada on December 27, 2018, and secured a residence in Nanaimo, British Columbia with other students. During her time in Nanaimo, the Applicant met her boyfriend online, who was a student at Seneca College in Toronto.

[6] The Applicant claims that on June 25, 2019, she received a letter from her father instructing her to return to Bangladesh to marry a family friend, Nazrul Islam (Mr. "Islam"). Mr. Islam was 60 years old at the time, and had three wives and six children. The letter informed the Applicant that Mr. Islam had paid for the Applicant's studies and would continue to do so in exchange for her hand in marriage. The Applicant claims that the letter distressed her significantly.

[7] On July 30, 2019, the Applicant received another letter from her father, which explained that he could not bear the cost of her education. It stated that if she did not agree to the marriage, he would break off all ties with her and Mr. Islam would harass her family. The Applicant claims that she fainted upon reading the letter. Her boyfriend and friends encouraged her to travel to Toronto, where there is a large Bengali community. In July 2019, the Applicant moved to live with two friends in Toronto and sought the advice of a community member.

[8] On August 20, 2019, the Applicant allegedly received another letter from her father, informing her that Mr. Islam and several other men had attacked their home in Bangladesh, beat her father, and expelled her mother and sisters from the home. The Applicant claims that her mother and sisters stayed at her grandfather's house, while Mr. Islam placed her father in a local jail by generating false accusations against him. She claims that Mr. Islam took her father's land, demanded 20 million Bangladeshi Taka in payment, and threatened to kill her father if this amount was not paid. The Applicant alleges that if she returns to Bangladesh, she will either be forced to marry Mr. Islam or will be jailed under false accusations.

B. *RPD Decision*

[9] In a decision dated August 23, 2021, the RPD found that the Applicant is neither a Convention refugee nor a person in need of protection under sections 96 or 97(1) of *IRPA*, on the basis that her claims lack credibility.

[10] The RPD noted, at the outset, that its assessment of the Applicant's claim was guided by the *Chairperson's Guideline 4* on proceedings involving women refugee claimants, who face unique barriers to establishing their claims as credible and trustworthy. The RPD noted that in light of this guidance and context, the Applicant's claim contained significant inconsistencies and omissions such that her overall claim lacks credibility.

[11] The RPD found significant inconsistencies between the Applicant's Basis of Claim ("BOC") form and her corroborative evidence. The RPD noted that while the Applicant's BOC form stated that on August 20, 2019, her father wrote her a letter to inform her that Mr. Islam and his men had attacked their house in Bangladesh, the letter disclosed on August 8, 2021, does not mention a specific attack on the house as detailed. The Applicant testified that the attacks occurred after the letter was sent. The RPD did not find this explanation to be a reasonable explanation, thereby drawing a negative credibility finding.

[12] When asked how she found out this attack on the house occurred if it was not explicitly in her father's letter from August 20, 2019, the Applicant testified that her sister informed her via Facebook messages and over the phone, and that she was willing to disclose a copy of these

messages. When asked when she found out about the alleged attack, the Applicant responded that she learned about it through her sister in March 2020, despite the fact that her BOC form included information about the attack but was signed February 2020. The RPD noted that the Applicant's testimony then evolved to say that her sister did not inform her of the attack over Facebook messages, but over the phone. The RPD ultimately drew a negative credibility finding from the Applicant's internally inconsistent testimony and evidence.

[13] The RPD further found that the Applicant did not update the BOC form about her father's release from prison. The RPD noted that the Applicant's BOC form stated that the Applicant's father was in prison, but that the Applicant testified that her father was released from jail after six months and passed away in July 2021. When questioned about this discrepancy, the Applicant testified that she did not know she needed to update the BOC form. The RPD did not accept this as a reasonable explanation, noting that the Applicant was represented by counsel and affirmed that her BOC form was complete, true, and correct. The RPD accepted that the Applicant's father passed away in July 2021 as she testified, but found that the Applicant had not credibly established that his fatal heart attack was the consequence of being threatened by Mr. Islam, as she alleged. Based on the Applicant's inconsistent evidence and evolving testimony, the RPD found that the presumption of truth was rebutted and that the alleged imprisonment of her father by Mr. Islam and subsequent confrontation by Mr. Islam did not occur.

[14] The RPD found that the Applicant failed to credibly establish Mr. Islam's power or political profile. The RPD noted the Applicant's testimony that Mr. Islam is powerful because he is a politician in the Awami League ("AL"), a major political party in Bangladesh. She

claimed that she was unaware that she had to mention this in her BOC narrative or that she needed to provide documentary evidence corroborating her claims that Mr. Islam is a powerful politician. The RPD found the Applicant's responses about Mr. Islam's role in the AL to be vague and evasive, and drew a negative credibility inference from her inability to provide further information about his political connections, the omission in her BOC form about his alleged role in the AL, and the lack of objective evidence about Mr. Islam as a powerful politician.

[15] Lastly, the RPD found that the three letters from the Applicant's father do not overcome the credibility issues in her claim. The RPD found that the letter dated August 20, 2019, does not mention the alleged attack on their family's home and is inconsistent with the Applicant's BOC form, therefore attracting no weight in establishing her claim. The RPD further noted that, regarding the letters dated June 25, 2019 and July 16, 2019, the Applicant testified that she lost the envelopes for these letters during her move from Nanaimo, BC to Toronto, Ontario. The RPD found that it had no way to confirm the source of these letters. The RPD concluded that these three letters from the Applicant's father are insufficient to compensate for the numerous and serious credibility concerns in the Applicant's claim.

[16] For these reasons, the RPD found that the Applicant lacks credibility, and she is therefore neither a Convention refugee nor a person in need of protection.

C. *Decision under Review*

[17] In a decision dated March 29, 2022, the RAD dismissed the appeal and upheld the RPD's decision.

[18] The RAD found that the RPD correctly drew a negative credibility finding from the inconsistent testimony and evidence regarding the alleged attack on the Applicant's family home. The RAD noted that the Applicant's BOC form stated that she learned of this attack in a letter from her father dated August 20, 2019, but found that this letter does not explicitly mention this attack. On appeal, the Applicant submitted that there is no such inconsistency, and that the alleged attack occurred after her father's letter was sent to her. The RAD disagreed with the Applicant's explanation, and found that the BOC form clearly indicates that she was informed of the attack on August 20, 2019, through her father's letter and the BOC form is considered sworn testimony, not simply a summary of events.

[19] The RAD further found that the RPD correctly drew a negative credibility finding from the inconsistencies regarding the Applicant's phone conversation with her sister, during which she allegedly learned of the attacks against her father in March 2020. There were two inconsistencies surrounding this evidence: 1) that the Applicant initially testified that she learned this from her sister via Facebook messages and could provide copies of these messages, but later stated that she had a phone conversation; and 2) that the Applicant learned of the attack from her sister in March 2020, although the BOC form was dated February 2020.

[20] The RAD noted the Applicant's submission on appeal, in which she stated that the inconsistency regarding her conversation with her sister is a minor one. The RAD disagreed and found that the Applicant clearly testified that she learned about the incident through Facebook messages and agreed to provide copies of said messages, before evolving her testimony and stating that she communicated with her sister over the phone. The RAD found that the Applicant

did not provide a sufficient explanation for the discrepancies regarding when and how she learned of the attack against her father and the RPD's negative credibility finding was correct.

[21] The RAD agreed with the RPD's finding that the Applicant failed to establish Mr. Islam's political profile. At the RPD hearing, the Applicant testified that Mr. Islam was a powerful politician, but the RPD drew a negative credibility inference from the omission of this central information from the Applicant's BOC form and the failure to provide corroborative evidence to that effect, without a reasonable explanation. The RAD found that while there is a presumption of truthfulness for all refugee claims, this presumption is rebuttable where there is a reason to doubt the claim's truthfulness. The RAD concluded that considering the evidence, Mr. Islam is not a powerful politician as the Applicant alleged and the RPD's finding was correct.

[22] Lastly, the RAD found that the RPD correctly gave little evidentiary weight to the remaining evidence, namely the three letters from the Applicant's father. On appeal, the Applicant submitted that it was unreasonable for the RPD to conclude that the letters were unreliable on the basis that she did not provide their envelopes. The RAD disagreed and found that regardless of whether the envelopes were misplaced, there is no information to establish the source of these letters or demonstrate that they were sent from the Applicant's father in Bangladesh to the Applicant in Canada. The RAD agreed with the RPD's finding that these letters are insufficient to overcome the numerous negative credibility findings in the claim.

[23] The RAD ultimately dismissed the Applicant's appeal of the RPD decision on the basis that her claim lacks credibility.

III. Issue and Standard of Review

[24] The sole issue in this application is whether the RAD's decision is reasonable.

[25] The standard of review is not disputed. The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) (“*Vavilov*”). I agree.

[26] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[27] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than

superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

IV. Analysis

[28] The Applicant submits that the RAD unreasonably based its negative credibility findings on minor inconsistencies in the Applicant’s claim, and erroneously granted little weight to the remaining evidence. I disagree. In my view, the RAD’s decision is transparent, intelligible and justified (*Vavilov* at para 15).

[29] The Applicant submits that the RAD erroneously drew negative credibility findings from minor inconsistencies or omissions in the Applicant’s claim. The Applicant submits that counter to the RAD’s finding that there is a material inconsistency between the Applicant’s BOC form and her evidence regarding the attack on her family home, the attacks had not occurred at the time the letter was sent to her and the letter therefore does not include mention of it. The Applicant further submits that the discrepancy between her initial statement that she learned of the attack against her father in March 2020 and her BOC form that was signed February 2020 amounted to a minor inconsistency, and was therefore insufficient to ground a negative credibility finding. The Applicant submits that her central claim is that she would be subject to forced marriage upon her return to Bangladesh and fears persecution by Mr. Islam. The Applicant contends that the RAD does not doubt this central claim.

[30] The Applicant further submits that the RAD unreasonably granted little or no weight to the three letters from her father that were proffered as evidence, on the insufficient basis that she

did not provide envelopes. The Applicant reiterates that the presumption of truthfulness of her evidence applies unless there is sufficient reason to doubt its voracity.

[31] The Respondent maintains that the RAD's decision is reasonable in light of the facts and evidence, and that the Applicant has failed to raise a reviewable error to warrant this Court's intervention. The Respondent submits that the RAD made reasonable and justified credibility findings on the basis of inconsistencies and omissions that are central to the Applicant's claim, namely the Applicant's statement that she learned of the attack on her family home in her father's August 20, 2019 letter, which did not contain the alleged information. The Respondent notes that negative credibility findings are reasonable where an applicant's BOC form conflicts with other pieces of evidence. The Respondent further notes that simply because the applicant provides an explanation for an inconsistency, does not mean the RAD is obligated to accept this as sufficient (*Moshood v Canada (Citizenship and Immigration)*, 2016 FC 504 at para 16).

[32] The Respondent submits that the RAD also made reasonable credibility findings on the basis of the Applicant's inconsistent evidence regarding how and when she learned about the attack against her father, which the Respondent notes is primarily connected to her allegation of risk facing her upon return to Bangladesh. The Respondent contends that the Applicant's evolving testimony about when and how her sister informed her of this attack constitutes a significant inconsistency and is therefore a reasonable ground upon which to draw a negative credibility finding. The Respondent notes that the Applicant's submissions regarding the RAD's credibility findings seek to reassess the evidence before the RAD, which is not this Court's role on reasonableness review.

[33] The Respondent submits that the RAD did not err in drawing a negative credibility finding from the Applicant's inability to establish Mr. Islam's power or political profile. The Respondent contends that the RAD reasonably found that the Applicant provided no evidence to substantiate Mr. Islam's political role the in AL, merely providing the vague statement that she knew of his powerful profile from local people. The Respondent notes this Court's finding that where corroborative evidence is reasonably expected and where there is no reasonable explanation for the lack thereof, this can provide a reasonable basis for a negative credibility finding (*Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 ("*Lawani*") at para 25).

[34] The Respondent lastly submits that the RAD reasonably found the three letters from the Applicant's father to be insufficient to overcome the credibility findings. The Respondent notes that the RAD justified this conclusion on the reasonable basis that the letters do not demonstrate when or how they were delivered, or their source. For the Respondent, the RAD's inability to establish their provenance is a reasonable basis for granting little weight to the letters in establishing the Applicant's claim, particularly in light of the numerous credibility concerns.

[35] I agree with the Respondent. In my view, the RAD's negative credibility findings and assessment of the Applicant's remaining evidence bear the hallmarks of reasonableness. I first note that the Applicant provided brief written submissions that largely reiterate her submissions before the RAD, which the RAD explicitly considered. Many of these submissions now seek that this Court reweigh the Applicant's evidence, which is not this Court's role on reasonableness review (*Vavilov* at para 125).

[36] In so doing, the Applicant's submissions also propose that the RAD ought to have accepted her inconsistent and vague evidence as credible and sufficient to establish her claim. However, the RAD's reasons demonstrate a thorough review of this evidence and a transparent explanation of the inconsistencies in the Applicant's claim, why these inconsistencies are material and significant to the claim's core, and why the remaining evidence does not contain sufficient corroborative information to compensate for these inconsistencies and omissions. It is open to the RAD to find that the inconsistencies in the Applicant's narrative are central to the Applicant's allegations of risk in Bangladesh and undermine the credibility of her claim.

[37] The Applicant's submission regarding the RAD's treatment of the three letters from her father does not account for the broader context affecting the reliability of these letters as evidence. The RAD clearly explained that in light of the numerous credibility concerns already noted about the Applicant's claim, and the inconsistency between the Applicant's BOC form and the letter dated August 20, 2019, the letters alone are insufficient to outweigh the negative credibility findings, *particularly* without information as to their provenance. This is a rational line of reasoning that is adequately justified in the RAD's reasons.

[38] The RAD reasonably drew a negative credibility inference from the Applicant's failure to provide any information or evidence regarding Mr. Islam's political profile, which is the foundation of her claim that she would be at risk of persecution at the hands of Mr. Islam if returned to Bangladesh. In light of this Court's decision in *Lawani*, it is open to the RAD to draw a negative credibility finding from the lack of corroborative evidence or efforts to obtain such evidence, where it can be reasonably expected and where the Applicant has not provided a

reasonable explanation for failing to provide it (at para 25). I agree with the Respondent that given the centrality of this element of the Applicant's claim, it was reasonable for the RAD to expect some corroborative evidence pointing to Mr. Islam's power or his role in the AL, as the Applicant alleged. The Applicant provided only vague statements about how she knew that Mr. Islam is a powerful politician in the AL and the RAD reasonably found this to be insufficient.

[39] For these reasons, the Applicant has failed to raise a reviewable error in the RAD's decision to warrant this Court's intervention. The RAD's reasons are mindful and responsive to the Applicant's evidence and the jurisprudence and the decision is therefore reasonable.

V. Conclusion

[40] This application for judicial review is dismissed. The RAD's decision is transparent, intelligible and justified, in light of the Applicant's evidence (*Vavilov* at para 15). No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-3538-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question to certify.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3538-22

STYLE OF CAUSE: FARIA JABIN v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 1, 2023

JUDGMENT AND REASONS: AHMED J.

DATED: SEPTEMBER 8, 2023

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