Federal Court Cour fédérale

Date: 20230920

Docket: IMM-4789-22

Citation: 2023 FC 1255

Ottawa, Ontario, September 20, 2023

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

JOBAYED HOSSAIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] The Applicant, a citizen of Bangladesh, seeks judicial review of a Refugee Appeal Division [RAD] decision concluding that he was neither a Convention refugee nor a person in need of protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] The Applicant sought to tender new evidence before the RAD under subsection 110(4) of the *IRPA*. For the most part, the RAD refused to admit the evidence, finding that it was "too fortuitous to be credible" and lacked probative value. With respect to the new evidence it did admit, the RAD declined to hold an oral hearing because the evidence did not meet the three statutory requirements in subsection 110(6) of the *IRPA*.

[3] On the merits, the RAD concluded that there was insufficient credible evidence to support the Applicant's claim of a well-founded fear of persecution. The Applicant's testimony was too vague, unreliable, and inconsistent on a number of significant issues relevant to his claim, and the documentary evidence was not sufficient to address the flaws in the evidence.

[4] The Applicant challenges the RAD's determination that the new evidence was largely inadmissible, alleging that the RAD misapplied the statutory criteria and breached procedural fairness in failing to hold a *voir dire* hearing to determine admissibility. He further asserts that the RAD erred in failing to hold an oral hearing on the merits after admitting some of the new evidence under subsection 110(4). In addition, he challenges the reasonableness of the RAD's credibility determination on a number of grounds.

[5] For the reasons that follow, I find no errors in the RAD's interpretation and application of subsections 110(4) and (6) of the *IRPA* and no breach of procedural fairness. The RAD's adverse credibility finding, based on an accumulation of inconsistencies and contradictions in the Applicant's evidence, was entirely reasonable. This application is dismissed.

II. **Background**

A. *The Applicant's refugee claim*

[6] The Applicant arrived in Canada in April 2018 on a student visa. In November 2018, he made a claim for refugee protection based on his political views. The Applicant claims a fear of persecution from the Jubo League [JL], the youth wing of the Awami League – the ruling political party in Bangladesh, as well as the Bangladesh army.

[7] According to the Applicant, he joined the Liberal Democratic Party [LDP] in January 2017, after his father, a chef for the Bangladesh Rifles [BDR], was unjustly imprisoned in 2016 for refusing to divulge information about a 2009 incident where some members of the BDR killed members of the army.

[8] As a member of the LDP, the Applicant claims he attended meetings, recruited youth, and organized and spoke at a conference on May 1, 2017. He further claims that on May 15, 2017, members of the JL attacked him at his home. He was hospitalized and his mother made a complaint to the police, but they failed to take any action.

[9] Following two more alleged incidents with members of the JL – one in June 2017 when they threatened the Applicant's mother and sister and another in July 2017 when the Applicant was beaten and required hospitalization – the Applicant travelled from Dhaka to Sylhet.

[10] The Applicant claims that on October 14, 2017, members of the JL went to his residence in Sylhet, but he was not there.

[11] Following that incident, the Applicant moved to Chittagong and stayed with a friend, Riad Hossain, who was a journalist. According to the Applicant, his friend published an article about the Applicant's father on October 30, 2017 that referred to the Applicant by name. The next day, the army came looking for him, and he fled to Comilla.

[12] The Applicant claims that his father called him from prison to advise him to leave Bangladesh because the army was looking for him.

B. *The RAD's decision*

(1) Admission of new evidence

[13] The Applicant sought to adduce seven documents as new evidence before the RAD: (i) an affidavit of Riad Hossain dated December 17, 2021; (ii) a statement from Kabir Hossain, a journalist, dated November 17, 2021; (iii) a blog written by Kabir Hossain dated December 5, 2021 about an interview with the Applicant; (iv) a report filed at Hazaribagh Police Station dated December 6, 2021; (v) a First Information Report dated December 7, 2021; (vi) a copy of the blog written by Kabir Hossain as submitted to court; and (vii) an arrest warrant issued December 13, 2021: RAD's Reasons for Decision dated April 29, 2022 [RAD's Reasons], at para 14. The Applicant also sought to file his own affidavits dated November 13, 2021 and March 3, 2022.

[14] The RAD admitted the Applicant's affidavits and the affidavit of Riad Hossain under subsection 110(4) of the *IRPA*. It declined, however, to hold a hearing on the merits pursuant to section 110(6) because this new evidence did not satisfy the three statutory requirements. The RAD concluded that the evidence: (i) did not raise a serious issue with the Applicant's

credibility; (ii) was not central to its decision; and (iii) was not sufficient to justify allowing or rejecting the claim: RAD's Reasons, at para 30.

[15] The RAD refused to admit the new evidence relating to Kabir Hossain's December 2021 blog of his November 2021 interview of the Applicant and the documents concerning the police complaint and arrest warrant (listed as (ii)-(vii) in paragraph 13 above), finding that they were not credible and had insufficient probative value. Relying on this Court's jurisprudence, the RAD concluded the both the timing and content of this new evidence was "suspiciously convenient" such that it was "too fortuitous to be credible": RAD's Reasons, at paras 21-27.

[16] Based on the timing of events, the RAD determined that the Applicant had participated in the interview so that he could create evidence for his RAD appeal to demonstrate forward-facing risk:

> [22] In his affidavit, submitted with the Appeal Record of November 2021, the Appellant indicates that he would provide court documents relating to him and his father. Specifically, he will provide a court order for him. However, he did not do so. Instead, he provided evidence about the blog and police documents. The timing of the interview that led to the blog is important. In his affidavit of March 2022, the Appellant acknowledges that he did an interview with the journalist in November 2021. In other words, he did an interview after the Appeal Record was submitted and instead of providing the court documents for his father and a court order for him, he provided this evidence instead.

[17] Significantly, the RAD stated that, even if it had admitted this new evidence, the evidence would not have altered its conclusion that the Applicant had failed to establish a future-looking risk of harm. This is because there was a considerable gap of four years between the time he left Bangladesh and a forward-looking risk: RAD's Reasons, at para 64.

(2) Numerous adverse credibility findings

[18] In making its credibility determination, the RAD conducted an independent assessment of the evidence and arguments, including reviewing transcripts of the Refugee Protection Division [RPD] hearing. Based on its thorough review, the RAD concluded that the Applicant's "testimony was too vague and contradictory on numerous central issues to be credible": RAD's Reasons, at para 34.

[19] The RAD made the following credibility findings:

> (i) The vagueness of the Applicant's answers about key issues, such as LDP policies, was inconsistent with the level of participation he claimed to have within the LDP in attending meetings, recruiting youth and organizing a conference: RAD's Reasons, at paras 35-38.
>
> (ii) Given the Applicant's alleged involvement as an organizer of the May 2017 LDP conference, it was reasonable to expect that he would be more knowledgeable about the speakers and topics: RAD's Reasons, at paras 42-43.
>
> (iii) The overall confusion and inconsistency in the evidence regarding various addresses weighs against the Applicant's credibility: RAD's Reasons, at paras 39-42, 53-54.
>
> (iv) There was insufficient probative evidence to show that it is likely that the Applicant was attacked because of his political activities: RAD's Reasons, at para 44.
>
> (v) The Applicant's evidence about speaking to two human rights groups was vague and unreliable. Further, the failure to mention these two meetings in his narrative was "an important and material omission": RAD's Reasons, at para 45.
>
> (vi) There was insufficient credible evidence about an October 2017 article that mentioned the Applicant. Absent credible evidence, it is unlikely that the army went to his friend's house in Chittagong because of the article: RAD's Reasons, at paras 49-50.

> (vii) Vague accounts about events that occurred after the Applicant left are insufficient to ground a future-looking risk of persecution: RAD's Reasons, at para 51.
>
> (viii) The LDP letter is not credible because the address for the LDP is the same as the Applicant's, and the letter does not contain information about significant events such as the May 2017 conference: RAD's Reasons, at paras 39-40, 42, 53.
>
> (ix) Inconsistent evidence about the Applicant's escape from Comilla: RAD's Reasons, at para 57.
>
> (x) Given the prison conditions in Bangladesh, it is unlikely that the Applicant's father would have had access to a telephone while in prison and able to warn the Applicant about the authorities seeking him: RAD's Reasons, at paras 58-61.

[20] Based on the cumulative effect of the foregoing credibility concerns, the RAD held there was insufficient credible evidence to ground the Applicant's claim. It concluded that "it is unlikely that the events described by the Appellant occurred" and "it is not likely that there is a future-looking risk of harm": RAD's Reasons, at para 62.

(3) No forward-facing risk

[21] The RAD rejected the Applicant's argument that the RPD erred in failing to assess his fear of persecution based on his family membership. It concluded that there was a considerable gap in time between the time the Applicant left Bangladesh and a forward-looking risk. It noted that his last action was the newspaper article published in 2017 and that he had left the country in April 2018, over four years ago: RAD's Reasons, at paras 63-64.

[22] The RAD further determined that the evidence about ongoing threats from the agents of persecution was not credible: RAD's Reasons, at para 64. In particular, it found that the evidence

was vague and insufficient to ground a forward-looking risk of persecution: RAD's Reasons at para 51. Nonetheless, the RAD concluded that even if the allegations were credible, the significant lapse in time since he left Bangladesh weighs against the likelihood that he has a well-founded fear of persecution: RAD's Reasons, at para 64.

III. **Issues and Standard of Review**

[23] The Applicant states the issues for determination as follows:

> A. Whether the RAD breached the Applicant's right to procedural fairness by raising a new issue on appeal without giving him an opportunity to respond;
>
> B. Whether the RAD breached the Applicant's right to procedural fairness by failing to hold an oral hearing in light of the fresh evidence;
>
> C. Whether the RAD breached the Applicant's right to procedural fairness by failing to conduct a separate assessment under section 96 of the *IRPA*; and
>
> D. Whether the RAD's decision was reasonable.

[24] I do not agree with the Applicant that the majority of the issues he raises are ones of procedural fairness. Rather, the substance of the majority of the Applicant's arguments are reviewable on the standard of reasonableness. In my view, the issues for the Court's determination are more appropriately framed as follows:

> A. Whether the RAD erred in refusing to admit new evidence under subsection 110(4) of the *IRPA*, and in particular:
>
> > (1) Did the RAD misinterpret the requirements for admitting new evidence under subsection 110(4)?
> >
> > (2) Was it unfair for the RAD not to hold a hearing to determine the admissibility of the evidence?

B. Whether the RAD erred in declining to convene an oral hearing under subsection 110(6) of the *IRPA* after admitting new evidence.

C. Whether the RAD's decision was reasonable, and in particular:

(1) Did the RAD err in questioning the authenticity of documentary evidence?

(2) Did the RAD require corroborating evidence?

(3) Did the RAD err in concluding there was insufficient credible evidence to support the Applicant's claim of a well-founded fear of persecution?

[25] Issue A(2) is a question of procedural fairness – whether the process followed by the RAD in making its determination about the admissibility of new evidence was fair: *Mohamed* v *Canada (Citizenship and Immigration)*, 2020 FC 1145 at para 9 [*Mohamed*]; *Homauoni v Canada (Citizenship and Immigration)*, 2021 FC 1403 at para 17 [*Homauoni*].

[26] Allegations of breaches of procedural fairness are reviewable on a standard akin to correctness: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific*]. The reviewing court must assess whether the procedure followed by the decision-maker was fair and just in the circumstances: Canadian Pacific at para 54; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35.

[27] Issues A(1) and B concern the RAD's interpretation and application of subsections 110(4) and (6) of the *IRPA*. These questions are reviewable on the standard of reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 25 [*Vavilov*]; *Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96 at paras 23, 29, 74 [*Singh* (*2016*)];

Mohamed at para 8; *Homauoni*, at para 16; *Abdulai v Canada (Citizenship and Immigration)*, 2022 FC 173 at para 22; *Akinyemi-Oguntunde v Canada (Citizenship and Immigration)*, 2020 FC 666 at para 15.

[28] The reasonableness standard is also applicable to issues C (1)-(3) which concern the RAD's credibility findings and overall assessment of the evidence: *Vavilov* at paras 125-126; *Urbieta v Canada (Citizenship and Immigration)*, 2022 FC 815 at para 14*; Fageir v Canada (Citizenship and Immigration)*, 2021 FC 966 at para 29; *Tran v Canada (Citizenship and Immigration)*, 2021 FC 721 at para 35; *Azenabor v Canada (Citizenship and Immigration)*, 2020 FC 1160 at para 6.

[29] As enunciated by the Supreme Court in *Vavilov*, 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. To withstand scrutiny, a decision must exhibit "the hallmarks of reasonableness – justification, transparency and intelligibility": *Vavilov* at para 99.

IV. **Analysis**

A. *The RAD did not err in refusing to admit new evidence under subsection 110(4)*

[30] The Applicant challenges the RAD's refusal to admit the new evidence relating to the December 2021 blog and the Applicant's arrest documents (as described in paragraph 13 above) under subsection 110(4) of the *IRPA*. He argues that the RAD: (i) misapplied the statutory

criteria in finding the evidence inadmissible; and (ii) breached procedural fairness in failing to hold a *voir dire* hearing to determine the admissibility of this evidence.

[31] I do not agree that the RAD erred in either regard. Before considering these issues, it is necessary to set out the statutory scheme.

[32] The general rule is that the RAD must proceed without a hearing based on the record before the RPD: *IRPA*, s 110(3).

[33] The exception to this rule is found in subsection 110(4) of the *IRPA* that provides the RAD may admit new evidence in limited circumstances:

> On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.

[34] In addition to these statutory requirements, the RAD must consider the relevant factors of newness, relevance and credibility as set out in *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 [*Raza*]: *Singh* (*2016*) at paras 38-49.

[35] Where the RAD admits new evidence under subsection 110(4), it may exercise its discretion to hold an oral hearing where the evidence: (i) raises a serious issue with respect to the appellant's credibility; (ii) is central to the decision; and (iii) if accepted, would justify allowing or rejecting the refugee claim: *IRPA*, s 110(6). All three requirements must be met for the RAD to convene an oral hearing: *Singh* (*2016*) at paras 48, 51, 71.

(1) The RAD did not err in interpreting and applying subsection 110(4)

[36] The Applicant argues that the RAD misinterpreted subsection 110(4) by assessing the credibility of the new evidence in determining its admissibility. He asserts that this “added a new criterion” to subsection 110(4) that “is not contemplated by the IRPA or mentioned anywhere in the jurisprudence”: Applicant’s Memorandum of Fact and Law [Applicant’s Memorandum], at paras 23, 26.

[37] The Applicant’s argument is meritless. There is clear jurisprudential support for the RAD’s approach. As already discussed, in *Singh* (*2016*), the Federal Court of Appeal held that, in addition to the express statutory conditions in subsection 110(4), the RAD must consider the implied conditions of admissibility that are set out in *Raza*, including credibility, relevance, and newness: *Singh* (*2016*) at paras 38-49.

[38] Applying the relevant criteria, the RAD concluded that the evidence relating to the December 2021 blog written by Kabir Hossain and the Applicant’s arrest documents were not admissible because they were “too fortuitous to be credible” and lacked probative value. The RAD found that the timing and content of the documents were “suspiciously convenient”:

> After the Appellant had indicated to the RAD that there would be further evidence, there is contact between the journalist and the Appellant, and the journalist wrote a blog that assists the Appellant’s appeal. This timing is suspiciously convenient.
>
> Also, the content of the evidence is suspiciously convenient. When the Appellant could not acquire the promised documentary evidence regarding the father’s case and a court order for him, he participated in an interview so that a blog could be written. Then the police sought him.
>
> RAD’s Reasons, at paras 25-26.

[39] The RAD's approach is in line with this Court's jurisprudence that evidence can reasonably be regarded as dubious based on the suspicious timing of events: *Jiang v Canada (Citizenship and Immigration)*, 2021 FC 572 at para 44; *Idugboe v Canada (Citizenship and Immigration)*, 2020 FC 334 at paras 21-25; *Elmi v Canada (Citizenship and Immigration)*, 2020 FC 296 at paras 32-36; *Meng v Canada (Citizenship and Immigration)*, 2015 FC 365 at para 22.

(2) It was not unfair to determine admissibility under subsection 110(4) without holding an oral hearing

[40] The Applicant alleges that the RAD should have held a *voir dire* hearing to determine the admissibility of the new evidence before rejecting it as lacking credibility. There is no statutory basis for the RAD convening an oral hearing to determine the admissibility of evidence.

[41] The RAD can only hold an oral hearing once new evidence is admitted under subsection 110(4) and the evidence meets the statutory criteria for a hearing under subsection 110(6): *Singh (2016)* at paras 48, 51, 71; *Gunasinghe v Canada (Citizenship and Immigration)*, 2023 FC 400 at para 33; *Rehman v Canada (Citizenship and Immigration)*, 2022 FC 783 at para 44 [*Rehman*]; *Mohamed* at paras 19-22.

[42] As explained by Justice Ahmed in *AB v Canada (Citizenship and Immigration)*, 2020 FC 61 [*AB*]:

> [17] In view of the jurisprudence, the Applicants have advanced a misconstrued conception of the application of subsections 110(4) and 110(6) of the IRPA. The RAD is not required to hold an oral hearing to assess the <u>credibility of new evidence</u> – it is when otherwise credible and admitted evidence raises a serious issue with respect to the general credibility of the applicant that the determination of an oral hearing becomes relevant. A “credibility

> finding" on the admissibility of new evidence is not equivalent to a credibility assessment on the Applicants. [Emphasis in *AB*]

[43] This Court has determined that it is not procedurally unfair for the RAD to refuse to admit new evidence based on its lack of credibility without holding an oral hearing, or without providing notice of its concerns about the new evidence: *Rehman* at paras 45-49; *Marquez Obando v Canada (Citizenship and Immigration),* 2022 FC 441 at paras 25-28; *Mohamed* at paras 10-23.

[44] In concluding that the RAD did not breach its obligations under section 110 of the *IRPA* or the duty of procedural fairness in not conducting an oral hearing before determining the evidence did not meet the requirements of subsection 110(4), Justice McHaffie held as follows in *Mohamed*:

> [22] …. However, even if the duty of fairness would require an oral hearing in these circumstances, which I need not decide, any common law duty must yield to statutory provisions governing a tribunal's procedures, absent a constitutional challenge: *Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2001 SCC 52, [2001] 2 S.C.R. 781, at paragraph 22. Subsection 110(6) is the only statutory provision that permits the RAD to hold an oral hearing. Subsection 110(3) provides that the RAD must otherwise proceed without a hearing. This statutory requirement ousts any common law procedural fairness requirements that might otherwise apply. As was the case in *Singh (2016)*, no constitutional challenge to the appeal regime set out in section 110 of the IRPA has been raised in this case: *Singh (2016)*, at paragraphs 61-63.

[45] Similarly, no constitutional challenge to section 110 of the *IRPA* has been raised in this case. The RAD did not err in failing to hold an oral hearing before determining the new evidence was not credible and, thus, inadmissible under subsection 110(4) of the *IRPA*.

[46] In any event, this issue is ultimately purely academic because the RAD held that even if it had admitted this evidence, it would not have changed its conclusion that the lapse of time weighs against the likelihood of a future-looking risk of persecution: RAD's Reasons, at para 64.

B. *The RAD did not err in declining to hold a hearing under subsection 110(6) after admitting new evidence*

[47] The Applicant argues that the RAD erred in refusing to hold an oral hearing under subsection 110(6) in relation to the new evidence it admitted (the affidavit of Riad Hossain). He alleges that had a hearing been convened, he "could have provided a reasonable explanation with respect to the address of Mr. Hossain, which was discrepant from the Applicant's testimony": Applicant's Memorandum, at para 33.

[48] As determined by the Federal Court of Appeal, "holding a hearing is not automatic simply because new evidence is admitted": *Singh (2016)* at para 71. The new evidence must still meet the three requirements set out in subsection 110(6), namely that it: (i) raises a serious issue with respect to the appellant's credibility; (ii) is central to the decision; and (iii) if accepted, would justify allowing or rejecting the refugee claim: *Singh* (*2016*) at paras 48, 51.

[49] The Applicant fails to address all three requirements. The Applicant only addresses credibility – alleging that the RAD relied on the evidence to impeach his credibility because of the discrepancy between his testimony and Riad Hossein's address: Applicant's Memorandum, at para 35. While the RAD admitted Riad Hossain's affidavit, it determined the evidence had "minimal probative value": RAD's Reasons, at para 20. In that light, I do not agree that the RAD

used the evidence to impeach the Applicant's credibility. Rather, the evidence failed to overcome the concerns cited by the RPD.

[50] In order to satisfy the second and third requirements, it was incumbent on the Applicant to establish that the evidence of Riad Hossain is "central and determinative documentary evidence": *Mohamed* at para 12.

[51] In *Singh (2016)*, the Federal Court of Appeal explained the onus on a claimant to satisfy the three requirements in the following terms:

> [71] However, as mentioned above, holding a hearing is not automatic simply because new evidence is admitted before the RAD. This new evidence must still meet the three criteria set out in subsection 110(6) of the IRPA. In this case, there was not even an attempt to show how the diploma was determinative in establishing the respondent's credibility and how it would make up for the various shortcomings that the RPD identified in his testimony and that were confirmed by the RAD. It should be recalled that the RPD found that the respondent's narrative was deficient in several respects: he contradicted himself about precisely when his father had had a heart attack; neither his allegations of torture nor his father's purported medical condition are corroborated by the medical evidence; he presented as evidence fraudulent and altered documents; and he took no steps to obtain probative, acceptable documents with which to establish his identity. In light of all these factors, it is far from a given that the diploma would be essential in deciding the respondent's refugee protection claim and would warrant allowing this claim. [Emphasis added.]

[52] Similarly, in this case, the RPD and the RAD dismissed the Applicant's refugee claim based on the cumulative effect of numerous credibility findings. It cannot be said that the concern raised by the RPD and the RAD about Riad Hossain's address was "determinative" of the Applicant's credibility.

[53] In declining to hold a hearing concerning the new documents it admitted into evidence, the RAD reasonably applied the three statutory requirements. It concluded that the documents (i) did not raise a serious issue with the Applicant's credibility as it already existed; (ii) were not central to the decision, but rather one of many considerations; and (iii) were insufficient to justify allowing or rejecting the claim as they only provide some detail: RAD's Reasons, at para 30.

C. *The RAD's decision was reasonable*

[54] The determinative issue before both the RPD and the RAD was credibility. While the RAD upheld the RPD's findings, it undertook a comprehensive and thorough review of the evidence to make an independent assessment concerning the Applicant's credibility: RAD's Reasons, at paras 31-69.

[55] Significant deference is owed to the RAD with respect to the assessment of credibility: *Aldaher v Canada (Citizenship and Immigration)*, 2021 FC 1375 at para 23; *Sary v Canada (Citizenship and Immigration)*, 2016 FC 178 at para 23 [*Sary*]; *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319 at para 22; *Lawal v Canada (Citizenship and Immigration)*, 2010 FC 558 at para 11. As explained by Justice Gascon, "credibility issues are one of the RAD's core competencies": *Sary* at para 23.

[56] The Applicant's focus on the RAD's individual credibility findings is flawed. The established jurisprudence makes clear that the RAD is not obliged to consider inconsistencies, contradictions, and omissions in isolation. Rather, it may rely on their accumulation in making adverse credibility findings: *Hirimuthugoda v Canada (Citizenship and Immigration)*, 2021 FC

784 at para 11; *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 22; *Sary* at para 19; *Quintero Cienfuegos v Canada (Citizenship and Immigration)*, 2009 FC 1262 at para 1.

[57] This is precisely what the RAD did in this case – it based its credibility determination on an overall assessment of the evidence:

> [62] When I consider the cumulative effect of these credibility concerns on central issues, I find that they are sufficient to find that it is unlikely that the events described by the Appellant occurred. The credibility issues are sufficient in and of themselves to find that it is not likely that there is a future-looking risk of harm.

(1) The RAD did not err in questioning the authenticity of the LPD letter

[58] The Applicant makes two distinct arguments about the RAD's treatment of the LDP letter. First, he argues that the RAD should have given the Applicant an opportunity to respond to its concerns about the authenticity of the LDP letter because it was a new issue. Second, he asserts that the RAD erred in failing to apply the presumption of regularity. I do not accept either argument.

(a) *Credibility and authenticity of the LDP letter not a new issue*

[59] The RAD's finding does not constitute a new issue because the authenticity and credibility of the LDP letter was a live issue before the RPD: RPD's Reasons for Decision dated July 20, 2021 [RPD's Reasons], at paras 27-29.

[60] The RPD considered the letter, but assigned no weight to it because the address on the letterhead was the same address as the Applicant's personal address. The RPD specifically questioned the Applicant about this issue, but did not accept his answers as credible, finding that

his responses "were evolving in order to resolve the issue that was put before him": RPD Reasons for Decision, at para 28. The RPD was also unable to determine the provenance of the letter without the author's identity documentation, despite asking the Applicant for this information. The RPD noted that the National Documentation Package for Bangladesh did not list the author as an executive member of the LDP: RPD's Reasons, at para 29.

[61] The RAD based its finding that the LDP letter was not credible, and likely not authentic, on the issues with the addresses that the RPD had already identified. The RAD further found that the letter did not refer to significant information, such as the May 2017 conference that the Applicant had allegedly organized: RAD's Reasons, at paras 39-42, 53. In the circumstances, it is simply erroneous to characterize the authenticity and credibility of the LDP letter as a "new issue" that the RAD was required to raise with the Applicant.

(b) *LDP Letter is not a state document*

[62] I do not accept the Applicant's argument that the LDP letter, purportedly authored by an official of the opposition political party in Bangladesh, should be presumed to be authentic, unless there is evidence to rebut its validity.

[63] This Court's jurisprudence makes clear that the presumption of authenticity applies to state documents issued by a competent public authority: *Liu v Canada (Minister of Citizenship and Immigration)*, 2020 FC 576 at para 85 [*Liu*]; *Jele v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 24 at para 40; *Adesida v Canada (Citizenship and Immigration)*, 2016 FC 256 at para 19; *Chen v Canada (Citizenship and Immigration)*, 2015 FC 1133, at para 10; *Manka*

v Canada (Citizenship and Immigration), 2007 FC 522 at para 8; *Sukhjinder v Canada (Minister of Citizenship and Immigration)*, 2006 FC 756 at para 17.

[64] As explained by Justice Norris in *Liu*, the presumption is grounded in the principle of comity:

> [85] This principle is simply an extension, as a matter of comity, of the presumption of regularity – i.e. "omnia praesumuntur rite et solemn-iter esse acta donec probetur in contrarium" or "all things are presumed to have been done rightly and with due formality unless it is proved to the contrary" – to the acts of foreign states: see Ramalingam v Canada (Minister of Citizenship and Immigration), 1998 CanLII 7241at para 5 (FC).

[65] The RAD did not err in failing to apply the presumption of authenticity to the LDP letter.

(2) The RAD did not require corroborating evidence

[66] The Applicant mischaracterizes the RAD's decision in arguing that it "required corroborating evidence" about the LDP conference in May 2017 and the October 2017 article. On both issues, the RAD determined that there was insufficient credible evidence and noted that corroborative evidence would have "been of assistance": RAD's Reasons, at paras 43, 49.

[67] Further, the cases relied on by the Applicant are distinguishable. In those cases, the RAD had found that the absence of any corroborating documents undermined the claimant's allegations: *Khamdamov v Canada (Citizenship and Immigration)*, 2016 FC 1148 at paras 11, 16; *Amarapala v Canada (Minister of Citizenship and Immigration)*, 2004 FC 12 at paras 3, 11 [*Amarapala*]. Here, the RAD did not rely on a lack of corroboration to doubt the Applicant's credibility.

[68] With respect to the LDP conference in May 2017, the RAD concluded that there was insufficient credible evidence that the Applicant had been an organizer. The RAD found it reasonable to expect that, as an organizer, the Applicant would know general details, such as the names of speakers and some information about the topics. When asked about the topics, the Applicant's answer was very vague, stating that they were about government "wrong doings" without providing further detail. The RAD noted that corroborative evidence, such as a poster, "may have been able to help clarify the issue": RAD's Reasons, at para 43.

[69] The RAD also noted that the LDP letter did not mention the conference. It made clear, however, that it was not drawing a negative inference regarding the Applicant's credibility from the absence of this evidence, but stated that "corroborative evidence would have been of assistance": RAD's Reasons at para 43.

[70] The RAD further determined that the evidence about an article published in October 2017 mentioning the Applicant was inconsistent. When asked about the article, the Applicant said only one newspaper had published the article, but his narrative referred to more than one newspaper using his name. In addition, there were issues with the journalist's identity cards. The RAD concluded that "corroborative evidence that could have provided more detail and supported the existence of the article would have been of assistance": RAD's Reasons, at para 49.

(3) Lack of credible evidence to support Applicant's well-founded fear of persecution

[71] I do not accept the Applicant's argument that the RAD failed to assess whether he had established a well-founded fear of persecution under section 96 of the *IRPA*. After a thorough

review of the evidence, the RAD concluded that there was insufficient credible evidence to support the Applicant's claim: RAD's Reasons, at paras 33, 62, 66-69. The evidence was too vague and inconsistent on many relevant issues that it was "unlikely that the events described by the Appellant occurred": RAD's Reasons, at para 62.

[72] The onus is on a claimant to establish a credible claim: *Gamalathge Don v Canada (Citizenship and Immigration)*, 2022 FC 1086 at para 16; *Amarapala* at para 12. I accept the RAD's conclusion that the Applicant failed to discharge his burden of providing sufficient credible evidence to support his refugee claim:

> [69] The Appellant has been given ample opportunity to provide sufficient credible evidence that the narrative he described occurred; he has failed to do so. He was provided with a hearing that stretched over two sessions and an appeal to the RAD. There has been sufficient opportunity to provide probative evidence. As he has not done so, I find that he is not a Convention refugee nor is he a person in need of protection.

[73] While the RAD determined the evidence about ongoing threats was not credible, the RAD went on to say that, even if those allegations were deemed credible, the significant gap in time between the Appellant's activities and a future-looking risk of harm weighs against the likelihood that he has a well-founded fear of persecution: RAD's Reasons, at para 64.

[74] In arguing that he has a well-founded fear of persecution as a "member of a BDR family", the Applicant relies on the new evidence the RAD rejected as inadmissible: Applicant's Memorandum, at para 52. Further, he asserts that he provided "sufficient evidence to prove a nexus": Applicant's Memorandum, at paras 58, 62. In essence, the Applicant is asking this Court

to reassess the admissibility and sufficiency of the evidence tendered before the RPD and the RAD. As emphasized by the Supreme Court, "the reviewing court must refrain from reweighing and reassessing the evidence considered by the decision-maker": *Vavilov* at para 125.

V. **Conclusion**

[75] The RAD did not misinterpret and misapply subsections 110(4) and 110(6) of the *IRPA*. It reasonably refused to admit new evidence under subsection 110(4) based on a lack of credibility. Further, the RAD did not breach procedural fairness in failing to hold an oral hearing before determining the new evidence was inadmissible. The RAD also reasonably declined to convene an oral hearing under subsection 110(6) because the new evidence it did admit failed to satisfy the three statutory requirements.

[76] I find no reviewable error in the RAD's assessment that there was insufficient credible evidence to support a well-founded fear of persecution. The RAD's decision exhibits the required attributes of transparency, justifiability, and intelligibility.

VI. **Proposed Certified Questions**

[77] The Applicant proposes three questions for certification:

> (i) Does the RAD possess the jurisdiction, as well as the obligation, to conduct an oral hearing pursuant to section 110(6) of the when the tribunal intends to introduce new credibility-related concerns not raised during the initial refugee hearing by the RPD, and said concerns are directly pertinent to evidence present in the record of proceedings central to the appeal?
>
> (ii) Is the RAD legally obligated to uphold the principles of procedural fairness and natural justice, including the necessity to

> conduct a *voir dire* hearing, when the tribunal aims to evaluate the credibility of new or fresh evidence submitted during an appeal as part of its assessment of the evidence's admissibility?
>
> (iii) What is the foundational threshold of procedural fairness that an appellant is entitled to in proceedings before the RAD, particularly when the tribunal chooses to incorporate non-statutory considerations as mentioned in Raza and Singh to introduce novel credibility related concerns while evaluating the admissibility of recently presented evidence during the appeal?

[78] As a preliminary matter, I note that the Applicant did not comply with the Court's *Consolidated Practice Guidelines for Citizenship, Immigration, and Refugee Protection Proceedings* dated June 29, 2023 [*Guidelines*]. Paragraph 36 of the *Guidelines* provides that when a party intends to propose a certified question, opposing counsel must be notified at least five days prior to the hearing, with a view to reaching a consensus regarding the language of the proposed question(s). The Applicant provided the proposed questions to the Court and counsel for the Respondent on Friday, August 25, 2023 – three days before the scheduled hearing.

[79] The Respondent took the position that the Applicant had ample time to propose certified questions in accordance with the *Guidelines*. Counsel for the Applicant explained that the failure to comply with the *Guidelines* arose because the hearing had originally been set down for August 31, 2023. On that basis, he had the date diarized for the proposal of certified questions as August 25, 2023. Since notice was not given in accordance with the *Guidelines*, I provided the Respondent the opportunity to file written submissions addressing the proposed certified questions.

[80] Despite the Applicant's failure to comply with the *Guidelines*, I have decided to consider the proposed questions.

[81] A certified question must be dispositive of the appeal, transcend the interests of the parties, and raise an issue of broad significance or general importance: *Canada (Immigration and Citizenship) v Laing*, 2021 FCA 194 at para 11; *Lewis v Canada*, 2017 FCA 130 at para 36 [*Lewis*]. For a question to be of general importance, it cannot have been previously settled by decided jurisprudence. The Federal Court of Appeal has emphasized that "all properly certified questions lack decided binding authority": *Lewis* at para 39.

[82] Furthermore, an issue that need not be decided cannot properly ground a certified question: *Lai v Canada (Public Safety and Emergency Preparedness)*, 2015 FCA 21 at para 10. A question that is in the nature of a reference or whose answer turns on the specific facts of the case is not properly certified: *Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at paras 46, 47; *Mudrak v Canada (Citizenship and Immigration)*, 2016 FCA 178 at paras 15, 35; *Lewis* at para 36.

[83] In my view, the proposed questions do not meet the criteria for certification.

[84] Questions 1 and 2 raise issues that are settled by the jurisprudence. Both questions concern the interpretation and application of subsection 110(6) of the *IRPA* and the circumstances in which the RAD may hold an oral hearing. As addressed above, this issue was settled by the Federal Court of Appeal in *Singh* (*2016*) and has been consistently applied by this Court.

[85] The RAD can only convene an oral hearing if there is new evidence under the combined effect of subsections 110(3), 110(4), and 110(6) of the *IRPA*: *Singh* (*2016*) at para 51.

[86] In addition, Question 2 does not raise “a serious question that is dispositive of the appeal”. The RAD held that, even if the documents about the blog and the police complaint had been admitted into evidence, it would not have altered its finding that there was no forward-looking risk of harm given the significant lapse of time since the Applicant left Bangladesh. As a result, whether the RAD breached procedural fairness in failing to hold a *voir dire* hearing is purely academic. It would not have changed the outcome.

[87] Questions 2 and 3 are not proper questions for certification because they do not transcend the interests of the parties. The requirements of procedural fairness are fact-specific: *Vavilov* at para 77; *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC) at paras 21-28 [*Baker*].

[88] In addition, Question 3 should not be certified as it raises an issue that is settled. The scope and specific content of the duty of procedural fairness is to be determined in accordance with the Supreme Court’s reasoning in *Baker*.

[89] Accordingly, I decline to certify any of the proposed questions.

JUDGMENT in IMM-4789-22

THIS COURT'S JUDGMENT is that :

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Anne M. Turley"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4789-22
STYLE OF CAUSE:	JOBAYED HOSSAIN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	AUGUST 28, 2023
REASONS FOR JUDGMENT AND JUDGMENT:	TURLEY J.
DATED:	SEPTEMBER 20, 2023

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