

Federal Court



Cour fédérale

Date: 20231204

Docket: IMM-11740-22

Citation: 2023 FC 1621

Ottawa, Ontario, December 4, 2023

PRESENT: Madam Justice Azmudeh

BETWEEN:

MOHSIN HOSSAIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Under section 72(1) of the Immigration and Refugee Protection Act [IRPA], the Applicant, Mohsin Hossain [the “Applicant”], is seeking a judicial review of the rejection of his refugee protection appeal by the Refugee Appeal Division [“RAD”] of the Immigration and Refugee Board of Canada [“IRB”]. The judicial review is dismissed for the following reasons.

I. Overview

[2] The Applicant alleges to be a citizen of Bangladesh who was born on March 17, 1989. His claim at the Refugee Protection Division [“RPD”] was denied because the member was not

satisfied that he had established his identity. The RAD dismissed his appeal and confirmed the decision of finding that the Applicant had failed to establish his identity and that his credibility, as it related to the question of identity, had been seriously undermined by significant discrepancies in his testimony and documentary evidence.

[3] Identity in refugee determination is a threshold issue, meaning that it is a crucial legal question that must be satisfied before other legal considerations can be examined.

II. Issues and Standard of Review

[4] The parties submit, and I agree with them, that the standard of review in this case is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII), [2019] 4 SCR 653 [*Vavilov*]).

III. Legal Framework

[5] Section 106 of IRPA and RPD Rule 11 are the relevant legal references for identity:

Immigration and Refugee Protection Act, S.C. 2001, c. 27

Credibility

106 The Refugee Protection Division must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation.

[6] Rule 11 puts the onus on the refugee claimant to provide sufficient credible evidence to establish their identity and that if they do not have them, to provide a reasonable explanation.

Claimants must establish the material facts of their claim, including on the question of identity, on the balance of probabilities:

Refugee Protection Division Rules, SOR/2012-256

Documents

11 The claimant must provide acceptable documents establishing their identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they did not provide the documents and what steps they took to obtain them.

[7] This Court has also consistently held that identity is the cornerstone of the Canadian immigration regime (*Bah v Canada (Citizenship and Immigration)*, 2016 FC 373, at para. 7; see also *Canada (Minister of Citizenship and Immigration) v Singh*, 2004 FC 1634, at para. 38; *Canada (Citizenship and Immigration) v X*, 2010 FC 1095, 375 FTR 204, at para. 23). As Justice LeBlanc stated in *Canada (PSEP) v Gebreworld*, 2018 FC 374 at para. 21, “this is the case because a number of important factors in implementing this regime, such as admissibility in Canada, evaluating the need for protection, assessing the risk to public safety in Canada or the propensity to accept or reject the controls required by the Act, depend upon it.”

IV. Analysis

Was it reasonable for the RAD to conclude that the Applicant had not established his identity?

[8] On reviewing all the evidence, including the RPD record, the conclusions of the RAD about the various discrepancies it found on the Applicant’s identification documents can be summarized as follows:

- The RAD considered and analysed the documents the Applicant had provided. These included the Applicant's birth certificate, issued on December 11, 2014, the photocopy of a front page of a passport issued through an agent in 2013, a photocopy of the front page of a 2018 passport that remains with the Bangladeshi government and was not released to the Applicant's father, and various affidavits to support his purported identity.
- The RAD engaged with the Applicant's explanations, including on the fact that he was unsure of where and how his identity documents were obtained. The RAD mentioned that throughout his testimony, the Applicant identified that his birth certificate, 2013, and 2018 passports were acquired by his father using an agent. The Applicant left Bangladesh in 2007, has never returned to Bangladesh and had since lost his passport.
- The RAD accepted the Applicant's allegation that he did not have a Bangladeshi National Identity Card (NIC) due to leaving the country as a minor. The RAD commented on the requirement of a NIC to obtain a passport and the Applicant's unsatisfactory explanation for how he obtained a passport without a birth certificate issued to him in 2013, a NIC and while being outside the country.
- The RAD engaged with the discrepancies in the registration numbers on the Applicant's birth certificate and how it was cross-referenced on the photocopy of the passport(s) with a different and contradictory registration number. The RAD found this discrepancy, together with the other circumstances of the file to be materials. This included the absence of original passports, the fact that they were issued by an agent and taken out of the country without the Applicant.

- The RAD found that the Applicant was unable to explain how the agent was able to acquire documents without his attendance in Bangladesh and the provision of biometrics.
- Given the discrepancies on the birth certificate and the availability of only partial copies of passports and the lack of a clear explanation, RAD found that the birth certificate presented was, on a balance of probabilities insufficient to establish the Applicant's identity.

[9] Ultimately, having considered the record before it, which included the RPD transcript and decision, the parties' written and oral submissions, as well as the applicable law, the RAD concluded that the Applicant had failed to persuade them that they had established their identity.

[10] At the hearing, the Applicant argued that what made the decision unreasonable was the RAD's disregard for the particular context of the Applicant's circumstances and the situation in Bangladesh, namely the prevalence of agents in facilitating to obtain documents.

[11] For the situation in Bangladesh, the Applicant relied on Tab 3.17 of the National Documentation Package before the RAD (Country information Note. Bangladesh: Documentation. Version 2.0 United Kingdom, Home Office. March 2020): "It is common for Bangladeshis to acquire documents through an agent, or 'middleman' ". The Applicant conceded that this process may be subject to fraud, but argued that because it is prevalent, the RAD should not have faulted the Applicant for engaging an agent.

[12] In fact, the RAD discusses from paragraph 21 to 28 of its reasons as to how the explanation that the Applicant obtained the passport through an agent remains unacceptable to overcome the serious issues of identity. I do not agree with the Applicant's characterization that a

practice subject to fraud is a reasonable explanation to overcome the absence of sufficient credible evidence. The relevant context before the RAD member was not the prevalence of agents in Bangladesh, but the fact that the Applicant's own belief was that his documents may have been improperly obtained through such unofficial channels. On the record before the RAD, there was only one identity document, a birth certificate, and even then, it had a registration number that was different from what was cross-referenced to it in the photocopies of passports the Applicant was relying on. There was no other credible documents to overcome these problems. The RAD member details all of this in her reasoning. It is not the function of this Court to reweigh the evidence on judicial review.

[13] The Applicant argued that given the Applicant's particular circumstances, he could not have been expected to have better documents in his possession or be expected to know how documents were obtained in his absence. The RAD took his personal circumstances into account, including his mental state and found that it did not offer a satisfactory explanation for the gaps and contradictions in the Applicant's evidence on identity. In fact, in paragraph 43 of its decision, the RAD accepted that his memory and testimony are impacted by both his medical diagnosis and his prescribed medications. It however concluded that this did not mitigate the circumstances where the Applicant simply did not know how documents came to be or satisfactorily explain the inconsistencies in how an agent obtained documents contrary to the established processes identified in the objective evidence. I find the RAD's analysis to be reasonable.

[14] I am guided by the comments of Justice Norris on the issue of identity in *Yusuf Adan v Canada (Citizenship and Immigration)*, 2022 FC 1383:

[55] Together, section 11 of the Rules and section 106 of the IRPA place the onus on a claimant to provide acceptable documentation establishing their identity. Obviously, to be able to provide such documentation, the claimant must be in possession of it. If a claimant does not possess acceptable documentation establishing identity, they must provide a reasonable explanation for why this is the case or demonstrate that reasonable steps were taken to obtain such documentation. This is a heavy burden: see *Su* at para 4; *Malambu v Canada (Citizenship and Immigration)*, 2015 FC 763 at para 41; and *Tesfagaber v Canada (Citizenship and Immigration)*, 2018 FC 988 at para 28.

[15] I am further guided by the comments of Justice Lafrenière on questions of identity and the RAD's expertise: "Questions of identity of a claimant are within the RAD's expertise and the Court should give it significant deference. The Court will only interfere if the decision under review lacks justification, transparency or intelligibility, and falls outside the range of possible, acceptable outcomes which are defensible on the particular facts of the case and in law" (*Kagere v Canada (Citizenship and Immigration)*, 2019 FC 910, at para. 11).

[16] I agree with the Respondent's argument that the Applicant's claim was not dismissed on minor facets, but based on major discrepancies in relation to his identity evidence—and particularly in relation to his passports. As stated by Justice Nadon in *Elazi v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 14891 (FC), paras 16-18, this in itself was sufficient to dispose of the Applicant's claim:

... in my opinion there can be no doubt that the Refugee Division's conclusion regarding the proof of identity submitted by the plaintiff is in no way unreasonable. In my opinion, this conclusion suffices to dispose of the application for judicial review. Not only was the evidence submitted by the plaintiff regarding his identity insufficient, several aspects of this evidence were such that the plaintiff's credibility was undermined. I take this opportunity to add that it is entirely reasonable for the Refugee Division to attach great importance to a claimant's passport...

[17] Having considered both parties arguments, and the record before the RAD, I have not been persuaded that the RAD committed a reviewable error in its analysis of the Applicant's identity documents. As stated above, the RAD is owed significant deference on this issue. Given the evidence in the present matter, in particular the presence of only one document, namely the birth certificate that contained a registration number that did not match the reference on the photocopies of passports, the fact that they were improperly obtained in a manner different than those expected officially, and the RAD's detailed consideration of each document, I do not find there are grounds to intervene. Ultimately, I find the arguments submitted by the Applicant to be impermissible requests to reweigh the evidence considered by the RAD, which is not the function of this Court on judicial review (*Vavilov*, at para. 125).

V. Conclusion

[18] For the foregoing reasons, I conclude that the RAD decision meets the standard of reasonableness set out in *Vavilov*. This application for judicial review is therefore dismissed.

[19] No serious question of general importance for certification was proposed by the parties, and I agree that no such question arises.

JUDGMENT IN IMM-11740-22

THIS COURT'S JUDGMENT is that

1. The Application for Judicial Review is dismissed.

2. There is no question to be certified.

"Negar Azmudeh"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-11740-22

STYLE OF CAUSE: MOHSIN HOSSAIN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: NOVEMBER 29, 2023

**REASONS FOR JUDGMENT
AND JUDGMENT:** AZMUDEH J.

DATED: DECEMBER 4, 2023

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