

Federal Court



Cour fédérale

Date: 20231213

Docket: IMM-8994-21

Citation: 2023 FC 1683

Ottawa, Ontario, December 13, 2023

PRESENT: The Honourable Madam Justice Tsimberis

BETWEEN:

ZEENAT ENAM AND ENAM AHMED

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Zeenat Enam (Principal Applicant) and Enam Ahmed (Associate Applicant), seek judicial review of a decision of the Refugee Appeal Division [RAD] dated November 15, 2021 [Decision]. The RAD confirmed the decision of the Refugee Protection Division [RPD] that the Applicants are neither *Convention* refugees nor persons in need of protection because the Applicants' claim was a property rights claim with no nexus to a *Convention*

ground and there was no forward-looking risk to the Applicants' lives once the property was relinquished.

[2] For the reasons that follow, this application for judicial review is dismissed.

II. **Factual Background**

[3] The Principal Applicant (aged 56) and her spouse, the Associate Applicant (aged 62), are citizens of Bangladesh. They fear a "notorious gangster" and leader of the Jubo League – the Student Wing of Bangladesh's ruling political party, the Awami League – who wants the Principal Applicant and her siblings' properties in Dhaka that they inherited from their late mother. In 1991, the Applicants had moved to Kuwait for the Associate Applicant's work, but returned in September 2019 to Bangladesh to sell these properties.

[4] In 2013, the Applicants started experiencing problems when the gangster tried to forcefully take possession of properties owned by the Principal Applicant's brother, who refused to give up the properties and was shot to death after filing a lawsuit against the gangster. In 2017, one of the Principal Applicant's sisters was also murdered after refusing to give up her properties.

[5] In March 2018, the Principal Applicant learned from her other sister that the gangster demanded that the remaining family members' properties be legally transferred to him on threat of death. In October 2019, the gangster was arrested but the people who work for him continue to pursue the properties and occupy one of the Principal Applicant's offices.

[6] On October 12, 2019, five men attended the Principal Applicant's home while she was alone, demanding the properties and money for the gangster's legal expenses. They left after she gave them jewelry, but the next day, the Associate Applicant was kidnapped and was not released until October 16, 2019, after the Principal Applicant paid his ransom.

[7] On October 21, 2019, the Principal Applicant was approached and received death threats. Several days later, a friend of the Associate Applicant received a phone call threatening him with death if he continued to shelter the Applicants.

[8] On October 28, 2019, the Applicants left Bangladesh and arrived in Canada. On November 1, 2019, they claimed refugee protection.

[9] On February 25, 2021, the RPD rejected the Applicants' refugee claim. The RPD found the Applicants' claim was a property rights claim and, as a result, there was no nexus to a *Convention* ground under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The RPD also found the Applicants were not persons in need of protection pursuant to subsection 97(1) of the *IRPA* since there was no forward-looking risk to the Applicants' lives once the Principal Applicant gave up her properties.

[10] The Applicants appealed the RPD's decision to the RAD, but their appeal was dismissed. It is the RAD's Decision that is the subject of this application for judicial review.

III. Decision under Review

[11] The RAD agreed with the RPD, indicating “the evidence does not support the argument that the agents of harm “would continue their attacks” even if the Appellants relinquish their property rights”, noting the Principal Applicant’s testimony before the RPD was that there would be “no problem” if she relinquished her property rights to end the dispute.

[12] The RAD cited this Court’s holding that refugee claimants that are able to make reasonable choices and thereby free themselves of a risk of harm must be expected to pursue those options (*Sanchez v Canada (Citizenship and Immigration)*, 2007 FCA 99 at para 16 [*Sanchez*]; *Malik v Canada (Citizenship and Immigration)*, 2019 FC 955 at para 30 [*Malik*]).

[13] The RAD further noted that the requirement to make reasonable choices to avoid persecution or a risk of harm does not apply where the choice would involve a deprivation of fundamental human rights, such as the right to earn a basic living (*Singh v Canada (Citizenship and Immigration)*, 2021 FC 595 at paras 16-17 [*Singh*]; *Malik* at para 30; *Sanchez* at para 19, citing *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at para 739). The RAD found this was not the case here, as the evidence did not demonstrate that the Applicants were dependent on the property to earn a basis income. Firstly, the RAD noted that, according to the Applicants’ Basis of Claim (“BOC”), the Associate Applicant had been working as a sales manager of a general trading company in Kuwait since 1991, which was a “good job” and that the Applicants claimed to be “doing well”. Secondly, the RAD noted the Principal Applicant’s testimony that the rental money was used to fund the children’s post-secondary education in Canada and that

the Applicants' two children began attending university in Manitoba in 2013 and 2016 respectively.

[14] The RAD noted the threats and kidnapping in 2019 by the agents of harm demanding money but, based on the Applicants' testimony before the RPD, found that these incidents were related to the attempts to obtain the Principal Applicant's properties. The RAD concluded the evidence did not support the Applicants' suggestion that the incidents were unrelated to the property dispute and did not establish more than a mere possibility of forward-looking risk to the Applicants in Bangladesh if they relinquished their property rights.

IV. **Issue**

[15] The Applicants frame the issue as:

- A. *Did the RAD err in considering the evidence toward its conclusion that the Applicants could have availed themselves by relinquishing their property rights?*

[16] The sole issue in this application for judicial review is whether the RAD's Decision is reasonable. I will address the alleged error raised by the Applicants when considering the reasonableness of the RAD's Decision.

V. **Standard of Review**

[17] The Applicants submit, and there was no disagreement by the Respondent, that the RAD's Decision is reviewable on a reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10 [*Vavilov*]).

VI. Analysis

[18] The RAD reasonably concluded that the Applicants' property rights are not a basis for their refugee claim. The RAD came to this conclusion by relying on the Federal Court of Appeal in *Sanchez* that "claimants who are able to make reasonable choices and thereby free themselves of a risk of harm must be expected to pursue those options". Several cases of this Court support the RAD's conclusion that relinquishing property rights is a reasonable choice and that a property rights claim cannot form the basis of a refugee claim under s. 96 of *IRPA* – i.e., they do not establish a nexus to a *Convention* ground (*Kenguruka v Canada (Citizenship and Immigration)*, 2014 FC 895 at paras 1, 7; *Habonimana v Canada (Citizenship and Immigration)*, 2014 FC 1172, at paras 1, 7; *Molefe v Canada (Citizenship and Immigration)*, 2015 FC 317 at para 35; *Deb v Canada (Citizenship and Immigration)*, 2015 FC 1069 at paras 2, 8, 19).

[19] The Applicants argue that the RAD erred by ignoring portions of their testimony regarding: 1) the forward-looking risk the Applicants face in Bangladesh even if they relinquish their property rights; and 2) their ability to earn a basic income if they relinquish their property rights.

- (1) *Testimony relevant to forward-looking risk faced by Applicants even if property rights relinquished*

[20] The Applicants submit the RAD ignored a portion of the Associate Applicant's testimony indicating the agents of persecution would still pursue them to get rid of any evidence that the properties were taken by force. The Applicants submit the RAD only considered the Principal Applicant's testimony before the RPD that indicated the Applicants' agents of persecution would

not pursue them if the Principal Applicant relinquished her property rights. They rely on this Court's decision in *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) [*Cepeda-Gutierrez*] at paragraph 17:

[17] However, the more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact "without regard to the evidence": *Bains v. Canada (Minister of Employment and Immigration)* (1993), 63 F.T.R. 312 (F.C.T.D.). In other words, the agency's burden of explanation increases with the relevance of the evidence in question to the disputed facts. Thus, a blanket statement that the agency has considered all the evidence will not suffice when the evidence omitted from any discussion in the reasons appears squarely to contradict the agency's finding of fact. Moreover, when the agency refers in some detail to evidence supporting its finding, but is silent on evidence pointing to the opposite conclusion, it may be easier to infer that the agency overlooked the contradictory evidence when making its finding of fact.

[21] The testimony that was allegedly ignored is the Associate Applicant's testimony before the RPD that the Applicants will continue to be at risk even if they give up their properties, reproduced below:

“Member: No, no, if you wife gave up her rights and her ownership of the land, if she were to give it to them, if she said, here take it, I don't want the land anymore, just let me be would that keep you safe?

Mr. Ahmed: Probably they'll kill me if we write it down to them.

M: And your wife as well?

A: I don't think they will leave my wife alive.

M: Why?

A: They don't want to keep any clue that they took it by force.”

“M: So you said the Awami League is after you because of your land, correct?”

Mrs. Enam: Yeah.

M: They want your land.

E: Yeah.

M. So if you gave them the land what reason would they have to come after you?

E: Sir again they will try to kill us, kill me, because they don't want to keep any, they take property by force.”

[22] In response, the Respondent reproduced the passage of the RPD hearing transcript that immediately follows the testimony quoted by the Applicants:

Enam: They will kill my wife.

Member: Why?

Zeena: [UNINTELLIGIBLE].

Enam: They don't want to keep any clue that they took it by force.

Member: No, no, my question is she willingly gave them the land, if she willingly told them here's a legal document I will sign it off, you can keep the land, what reason would the AwamiLeague gangs have to come after your wife?

Zeenat: [UNINTELLIGIBLE].

Counsel: Can you stop and then your husband needs to answer.

Enam: They are very [UNINTELLIGIBLE].

Member: Ok go ahead.

Enam: Sorry I cannot answer this question.

Member: OK let me ask the principal claimant then. If you gave up your land and transferred the land over to the AwamiLeague, what reason would they have to come after you?

Zeenat: Sir can you repeat.

Member: So you said AwamiLeague is after you because of your land, correct?

Zeenat: Yeah.

Member: They want your land.

Zeenat: Yeah.

Member: So if you gave them the land what reason would they have to come after you?

Zeenat: Sir again they will try to kill us, kill me, because they don't want to keep any, they take property by force.

Member: I understand that they took the property by force. I'm saying if you were to give it to them legally, here's my land. I'm willingly giving it to you, why would they try to kill you after that?

Zeenat: No problem.

Member: Pardon me?

Counsel: Go ahead.

Zeenat: Sorry sir can you repeat.

Member: I said if you were to legally give up your land, to transfer your land to the gangs or to the AwamiLeague and tell them here, I'm giving it to you willingly, legally, you can have all the rights, I don't want anything to do with this land, I just don't want any more trouble, why would they still come after you after that?

Zeenat: Then they will be no problem.

Member: So if you give up your land you won't have any more problems anymore, correct?

Zeenat: Yes sir.

[23] When read together, the full passages of the RPD transcript reveal that the Associate Applicant testified that the agents of persecution would still want to kill the Applicants even if they relinquished their property rights. When pressed by the RPD member however, the

Associate Applicant was unable to articulate why the agents of persecution would want to harm the Principal Applicant if she willingly transferred legal title of the land to them. The RPD then directed this unanswered question to the Principal Applicant, who indicated there would be “no problem” if she legally transferred her properties to the agents of persecution. The RPD’s consideration did not ignore the testimony relied upon by the Applicants’, they noted that the testimony they did specifically reference contradicted the Applicants’ previous statement as the Associate Applicant indicated he could not answer the question when directly asked what would happen if the land was given to the agents of persecution. Based on the contradictory testimony of the Principal Applicant, to whom land belongs to and who lost two siblings to the associated violence, it was reasonable for the RAD to find that they would not be at risk if she relinquished her property rights.

[24] The Applicants’ submissions before the RAD alleging this continued risk after relinquishing property rights before the RAD included the following paragraph:

In finding that the appellants could have given up their land to the AL, the panel ignored the overwhelming evidence that not only doing so would not be reasonable in the circumstances, but also that there was a high risk that the AL would continue their attacks on the appellants despite such an effort. The panel heard the appellants’ testimony that the land in question is altogether worth 10 million Canadian dollars, and that the appellants along with Mrs. Enam’s remaining siblings rely on this property to fund their and their children’s livelihood. We do not understand how the panel could have found that the appellants could have simply given up the land when he heard their testimony that their livelihood depended on it. Furthermore, there was overwhelming evidence before the panel that the AL had gone to extreme lengths to submit the appellants, and that in so doing it demonstrated a total disregard for any consequences. On two separate occasions and in two different cities, the AL attacked Mrs. Enam at her home and in public. They kidnapped and tortured Mr. Ahmed. The persecutors had made it clear that it was not only the land that they were after,

but also money, as they demanded money from the appellants first when they assaulted their home and secondly when they kidnapped Mr. Ahmed. Further, the appellants testified that the AL would not relent upon obtaining the land as they would want to eliminate any evidence that they took it by force. In light of these egregious acts of cruelty and Mr. Ahmed's testimony that the agent of persecution is "the most powerful man in Bangladesh" who can harm whoever at whim, the panel should not have concluded that simply giving up the land would have saved the appellants.

[25] As can be seen in the excerpt from the Decision reproduced below, the RAD quoted directly from the exact paragraph of the Applicants' above-reproduced written submissions that, as mentioned by the Respondent, is replete with references to the same evidence that the Applicants allege was ignored:

The evidence does not support the argument that the agents of harm "would continue their attacks" even if the Appellants relinquish their property rights. Contrary to the submission that there is "overwhelming evidence" in support of this submission, the principal Appellant confirmed in testimony that there "will be no problem" if she were to relinquishing her property rights. Instead, she has chosen not to relinquish her property rights which would end the dispute. When asked by the RPD, "why don't you just give up your land," she offered that "it's a huge property, my mother's property, my every sibling is gone, I am the last person [...]."

[26] I agree with the Respondent that the Applicants have not raised a reviewable error in the RAD's appreciation of the testimonial evidence. The Applicants take issue with the RAD's appreciation and weighing of the evidence, which is not a proper ground for judicial review.

(2) *Testimony relevant to Applicants' ability to earn a basic income if property rights relinquished*

[27] The Applicants also argued the RAD, in relying on their BOC to find the Associate Applicant had a good job in Kuwait and that they were well off, ignored another portion of their BOC indicating that the Associate Applicant's work visa in Kuwait was expiring, as his employer could no longer keep him employed. The Applicants – in their late 50s and early 60s – thus no longer have an income source other than their properties and distinguish their case from *Sanchez* on this basis (*Sanchez* at paras 3-5, 16-17, 20). The Applicants argue ignoring this contradictory evidence is a reviewable error (*Cepeda-Gutierrez* at para 17).

[28] I am not persuaded by the Applicants' arguments regarding the Associate Applicant no longer being employed. As the Applicants note, relying on the answer to the certified question in *Sanchez*:

Persons claiming to be in need of protection solely because of the nature of the occupation or business in which they are engaged in their own country generally will not be found to be in need of protection unless they can establish that there is no alternative occupation or business reasonably open to them in their own country that would eliminate the risk of harm.

(*Sanchez* at para 20, emphasis added)

[29] In the present case, the Applicants have only argued that the RAD overlooked one paragraph in their BOC, which indicated that the Associate Applicant is no longer employed at his former job in Kuwait. However, the Applicants have not demonstrated that there is no alternative occupation or business open to them in Bangladesh.

[30] Moreover, it is generally inappropriate for a reviewing court to exercise its discretion to intervene in an issue on judicial review when it was not raised in the administrative process

being reviewed, but has been raised during the judicial review for the first time (see *Singh v Canada (Citizenship and Immigration)*, 2023 FC 875 at para 33; *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 22-28).

[31] While the Principal Applicant's BOC may have mentioned in a single paragraph that the Associate Applicant no longer has his former job, their appeal submissions before the RAD do not raise this as an issue. In my view, this is not a case where the Court should exercise its discretion to address an issue that should have been raised before the RAD but is now being raised for the first time on judicial review.

VII. **Conclusion**

[32] The Applicants have not demonstrated a reviewable error in the RAD's Decision. For the forgoing reasons, I find the Decision reasonable and must dismiss the application for judicial review. Neither party proposed any question for certification for appeal.

JUDGMENT in IMM-8994-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified for appeal.

"Ekaterina Tsimberis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

JAYSON THOMAS FOR THE APPLICANTS

ELI LO RE FOR THE RESPONDENT

SOLICITORS OF RECORD:

JAYSON THOMAS FOR THE APPLICANTS
TORONTO, ONTARIO

ATTORNEY GENERAL OF FOR THE RESPONDENT
CANADA
TORONTO, ONTARIO