

Federal Court



Cour fédérale

**Date: 20240322**

**Docket: IMM-1612-22**

**Citation: 2024 FC 454**

**Ottawa, Ontario, March 22, 2024**

**PRESENT: Madam Justice Sadrehashemi**

**BETWEEN:**

**AKBOR HOSSAIN JABED**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Akbor Hossain Javed, made a refugee claim in Canada based on his fear of his two uncles who he alleges are members of the Awami League, the ruling political party in Bangladesh. His refugee claim was rejected by the Refugee Protection Division [RPD] and his appeal of that refusal was dismissed by the Refugee Appeal Division [RAD]. Mr. Javed challenges the RAD decision on judicial review.

[2] Like the RPD, the RAD found Mr. Javed's credibility to be the determinative issue. On judicial review, Mr. Javed challenges the RAD's credibility assessment, arguing the inferences the RAD drew from his corroborative evidence and his testimony are unsupported by the evidence. The parties agree, as do I, that I should review the RAD's credibility assessment on a reasonableness standard.

[3] I have serious concerns with the RAD's assessment of Mr. Javed's credibility, including its determination that the newspaper article Mr. Javed submitted was fraudulent and that his testimony about his agents of persecution was evolving. Given the centrality of these findings to the RAD's overall credibility determination, I find these concerns to be a sufficient basis to set aside the decision and send it back for redetermination. It is, therefore, unnecessary to evaluate Mr. Javed's arguments regarding the RAD's treatment of his other corroborative evidence and its decision to not admit his new evidence.

[4] Based on the reasons below, I allow the application for judicial review.

## II. Analysis

[5] The RAD based its negative credibility determination on its evaluation of Mr. Javed's corroborative evidence and his testimony at his RPD hearing. I find that there were serious flaws with the RAD's determination that a local newspaper report was fraudulent, and that his testimony on the positions held by his uncles in the Awami League was evolving.

A. *Newspaper Article*

[6] The RAD found that the local newspaper article describing Mr. Javed's uncles' attack on him was likely to be fraudulent and its submission to the RPD by Mr. Javed undermined his credibility. Having testified that he had not spoken to the reporter, the RAD did not accept that the newspaper article "could have contained so much precise information, as well as a photograph and a direct quote from ...[Mr. Javed], without his assistance."

[7] There are a number of problems with the RAD's analysis. First, a factual error: there is no direct quote from Mr. Javed in the article. The only direct quote in the article is from an officer at a local police station, who, the article indicates, was contacted about the attack by the reporter.

[8] Second, the RAD's determination rests on weak implausibility findings. This Court has repeatedly held that implausibility findings in the refugee context must only be made in "the clearest of cases" where "the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant" (*Al Dya v Canada (Citizenship and Immigration)*, 2020 FC 901 at paras 27- 32; *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 (CanLII) at para 7). None of the implausibility findings relied upon by the RAD could be described as the "clearest of cases."

[9] Mr. Javed testified that he did not know how the reporter had his photo but that it was his college photo. The article indicates that Mr. Javed is a college student. Without any more evidence, I do not accept the RAD's view that it was "clearly unlikely" for a reporter to obtain this photo without Mr. Javed's assistance. Further, the precise details that the RAD is surprised the reporter could know without talking to Mr. Javed directly are all contained in the police report. Given that an officer at the local station was directly contacted by the reporter, I am not prepared to accept that it is "clearly unlikely" that the reporter could not have obtained these details without talking to Mr. Javed.

[10] The local newspaper article was a key piece of Mr. Javed's corroborative evidence for his claim. The RAD's finding that the newspaper article is fraudulent was based on a factual error and weak implausibility findings. In these circumstances, the RAD's finding that the newspaper article is fraudulent must be set aside.

B. *Testimony about Uncles' Position in the Awami League*

[11] Mr. Javed's refugee claim was based upon his fear of his two uncles who he claimed were influential in the Awami League, the ruling political party in Bangladesh. The RAD found that Mr. Javed's "testimony regarding the uncles' political power undermines his credibility" because it "shifted and evolved in the course of the hearing." I do not find that the exchange between Mr. Javed and the RPD member about Mr. Javed's uncles supports the RAD's determination that the testimony shifted or evolved in a way that justifies such a central negative credibility finding.

[12] The RAD claimed that initially Mr. Javed alleged that his uncles were “leaders” of the Awami League but later when asked about their specific positions, he “revised his testimony” to say that they were members of the Awami League. In my view, Mr. Javed’s central point was that his uncles were powerful. He first used the word “leaders” in the context of a lengthy answer as to how he could not receive protection from the courts in Bangladesh and then when asked immediately after “what do you mean by leaders” he consistently stated that they were members of the Awami League. I do not see this as an attempt to shift testimony or deceive, but rather as a clarification.

[13] Moreover, critical context to evaluating this exchange is that Mr. Javed was testifying in English with the support of an interpreter on stand-by when needed. In the short exchange at issue, the interpreter is eventually asked to assist Mr. Javed, who appeared to be struggling to find the right words. Overall, having carefully reviewed the testimony at issue, I do not find that the RAD’s negative credibility finding because of Mr. Javed’s alleged shifting testimony is supported by the transcript of the hearing. It is therefore an unreasonable finding that requires redetermination.

**JUDGMENT in IMM-1612-22**

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

1. With immediate effect, the style of cause is amended to name The Minister of Citizenship and Immigration as the sole Respondent;
2. The application for judicial review is allowed;
3. The RAD decision dated January 21, 2022 is set aside and sent back to be redetermined by a different member; and
4. No serious question of general importance is certified.

"Lobat Sadrehashemi"

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Judge

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

**DOCKET:** IMM-1612-22

**STYLE OF CAUSE:** AKBOR HOSSAIN JABED v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 27, 2023

**JUDGMENT AND REASONS:** SADREHASHEMI J.

**DATED:** MARCH 22, 2024

**APPEARANCES:**

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