

Federal Court



Cour fédérale

Date: 20240926

Docket: IMM-11072-23

Citation: 2024 FC 1517

Montreal, Quebec, September 26, 2024

PRESENT: Mr. Justice Gascon

BETWEEN:

SALMA BEGUM

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Salma Begum, is a citizen of Bangladesh. She is seeking judicial review of a decision dated August 7, 2023 [Decision] whereby the Refugee Appeal Division [RAD] dismissed her appeal and confirmed the Refugee Protection Division's [RPD] decision (albeit for slightly different reasons). Ms. Begum's claim for refugee protection under both sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] was rejected for

three reasons: because the Convention grounds do not cover property rights, because Ms. Begum did not establish a prospective risk of harm due to a lack of motivation by her agents of harm and the possibility for her to relocate to her brothers' home in Bangladesh, and because she would not be persecuted or exposed to a section 97 risk due to her profile as a widowed woman in Bangladesh.

[2] Ms. Begum submits that the RAD erred in its findings that her agents of harm lacked the motivation to harm her or her son, that she would not be at risk if she renounced her property, and that she would not be persecuted or at risk due to being a widow.

[3] For the reasons that follow, Ms. Begum's application for judicial review will be dismissed. I acknowledge that Ms. Begum's situation is unfortunate and regrettable. However, it does not justify her claim for refugee protection. Further to my assessment, I am satisfied that the RAD's Decision was responsive to the evidence and that its findings have the qualities that make the RAD's reasoning logical and consistent in relation to the relevant legal and factual constraints. Ms. Begum failed to prove that her agents of harm were still motivated to harm her or her son, that she would be unable to reside with her brothers in Bangladesh, or that she would be persecuted or harmed for being a widow.

II. Background

A. *The factual context*

[4] Ms. Begum is a 57-year-old widow. In Bangladesh, she lived with her adult son, who suffers from mental health issues.

[5] Ms. Begum alleges fear of a powerful member of the Awami League [AL] and his henchmen because she refused to sell him her home for less than market value.

[6] In July 2020, the AL leader [AL Leader] and four of his associates first approached Ms. Begum and informed her that people were conspiring to seize her house. The AL Leader then came back in October 2020 — right before Ms. Begum’s planned trip to Canada to visit her daughter — and disclosed his intention to buy her house. He had prepared a deed of sale at half the market value of her home. When Ms. Begum refused, she was threatened to be forcefully evicted or killed and was given seven days to sign the transfer papers.

[7] Fearing for her life, Ms. Begum left her son with family members and flew to Canada. She sought protection from Canada on October 14, 2020.

B. *The RAD’s Decision*

[8] Ms. Begum appealed the RPD’s negative decision to the RAD, relying on five main arguments. In her submissions, she claimed that the RPD erred in concluding that she was generally not credible, that she had not established the occupation of her house by her agents of harm, that the AL Leader lacked the motivation to harm her or her son, that she could move in with her brothers in Bangladesh, and that she would not face persecution or a risk of harm as a widow in Bangladesh. No new evidence was submitted on appeal.

[9] The RAD conducted its own analysis and dismissed the appeal. At the start of its analysis, it overturned the RPD's negative credibility conclusions regarding Ms. Begum's testimony as well as the RPD's conclusion that the AL was not currently occupying the property. However, the RAD regardless agreed with the RPD that Ms. Begum's claim should be rejected.

[10] First, the RAD found that Ms. Begum had not established a prospective risk of harm since she had not proven that the AL Leader was still motivated to harm her. The AL henchmen are presently in possession of Ms. Begum's house, there was no evidence that they have tried finding her or her son since she moved out over two and a half years ago, and Ms. Begum's brother alleged that the AL Leader would be able to register the house under his name after occupying it for some time. As a result, the agents of harm had achieved their goals.

[11] Second, the RAD joined the RPD in concluding that even if Ms. Begum complied with the demand to officially sell her house below market value or to give it away, her claim could not succeed under section 96 of the IRPA because property rights are not covered under any of the Convention grounds.

[12] Third, the RAD determined that Ms. Begum or her son's survival would not be at risk if she gave up on reclaiming her house since she could live with her brothers in Bangladesh. The evidence on file revealed that Ms. Begum and her son have been counting and can continue to count on the support of her brothers in Bangladesh and of her daughter in Canada.

[13] Finally, the RAD concluded that Ms. Begum would not be persecuted or at risk in Bangladesh because she is a widow caring for a mentally ill son. While recognizing the country condition evidence on the treatment of widows in Bangladesh, the RAD found no evidence that Ms. Begum would be specifically targeted due to being a widow.

C. *Standard of review*

[14] It is not disputed that the standard of reasonableness applies to the Decision under review. This is confirmed by the Supreme Court of Canada’s landmark decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], where the Court established a presumption that the standard of reasonableness is the applicable standard in judicial reviews of the merits of administrative decisions (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 7 [*Mason*]).

[15] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision is based on “an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85; *Mason* at para 64). The reviewing court must therefore ask whether the “decision bears the hallmarks of reasonableness—justification, transparency and intelligibility” (*Vavilov* at para 99). Both the outcome of the decision and its reasoning process must be considered in assessing whether these hallmarks are met (*Vavilov* at paras 15, 95, 136).

[16] Such a review must include a rigorous evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must take a “reasons first” approach and begin its inquiry by examining the reasons provided with “respectful attention,” seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Mason* at paras 58, 60; *Vavilov* at para 84). The reviewing court must adopt an attitude of restraint and intervene “only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process” (*Vavilov* at para 13), without “reweighing and reassessing the evidence” before it (*Vavilov* at para 125).

[17] The onus is on the party challenging the decision to prove that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision. The court must be satisfied that there are “sufficiently serious shortcomings” (*Vavilov* at para 100).

III. Analysis

[18] Ms. Begum first submits that the RAD erred in its conclusions regarding the AL Leader’s motivation to harm her. She argues that the AL Leader would not target her son because of his mental health issues and that he would only target her. According to her, the RAD should not have accepted her brother’s opinion that the AL Leader would be able to register the house under his name after some time, as he is not proficient in Bangladeshi property law. Additionally, she asserts that the RAD allegedly failed to make a risk analysis under section 97 of the IRPA.

[19] Furthermore, Ms. Begum contends that her property is needed for her and her son’s survival in Bangladesh and that the RAD erred in assuming that she could permanently live with

her brothers should she return to Bangladesh. She argues that if joining her son at her brothers' residence were an option, she would have logically done so.

[20] Finally, Ms. Begum does not explicitly challenge the RAD's analysis on her lack of persecution or risk of harm for being a widow. However, she submits that the RAD erred in not considering the entire country condition evidence on the discrimination of widows in Bangladesh.

[21] With respect, I am not persuaded by Ms. Begum's submissions.

A. *The AL Leader lacks the motivation to harm Ms. Begum or her son*

[22] It is trite law "that there is a difference between a persecutor's ability to pursue an individual throughout a country and his desire to do so or interest in doing so. The fact that a persecutor is able to pursue an individual is not decisive evidence that he is motivated to do so. If the persecutor has no desire to find, pursue and/or persecute an individual, or interest in doing so, it is reasonable to conclude that there is no serious possibility of persecution" [emphasis in original] (*Leon v Canada (Citizenship and Immigration)*, 2020 FC 428 at para 13).

[23] In the present case, the evidence fully supports the RAD's conclusion that the AL Leader had no desire or interest to find and harm her or her son. As stated by the RAD, the AL Leader had achieved his stated goal of taking Ms. Begum's property and did not need to pursue her or her son: AL henchmen have seized Ms. Begum's home and are still occupying it, and she failed to establish that AL goons have tried to track her or her son down or even inquire about their

whereabouts through their nearby family since she left Bangladesh, over two and a half years ago. Ms. Begum's son has also never been approached directly by the AL Leader to sign the land transfer, even though he is the legal owner of the house and lives near the property.

[24] Citing *Idris v Canada (Citizenship and Immigration)*, 2019 FC 24 at paragraph 13, the Minister of Citizenship and Immigration [Minister] argues that the RAD was entitled to consider the “significant passage of time” since Ms. Begum's last contact with the AL Leader in its analysis of the latter's motivation. In *Espana Alvarez v Canada (Citizenship and Immigration)*, 2021 FC 935 at paragraph 23, Justice Simon Fothergill found that a decision maker may reasonably infer from a “significant period of time” that a persecutor no longer has the means or motivation to harm a claimant. I accept that two and a half years of silence may not be a sufficiently long lapse of time to ground, in and of itself, a conclusion of lack of motivation. However, since it was but one factor among many others (rather than the only basis for the inference), I am satisfied that, in Ms. Begum's circumstances, the RAD could reasonably consider the passage of time in its analysis (*Naranjo Javier v Canada (Citizenship and Immigration)*, 2024 FC 714 at paras 24, 28).

[25] I am also not convinced by the other arguments put forward by Ms. Begum on the AL Leader's lack of motivation. First, the RAD could reasonably expect AL henchmen to approach Ms. Begum's son in order to uncover her whereabouts, at the very least. Indeed, there is no evidence that her son's mental problems are so severe that he is unable to communicate. Second, while it is true that Ms. Begum's brother is not an expert in Bangladeshi property law, the RAD's other reasons suffice to demonstrate that the AL Leader had no desire to track down and

harm Ms. Begum or her son. In other words, this lack of expertise is not a “sufficiently serious shortcoming” that would merit the Court’s intervention (*Vavilov* at para 100). Third, the RAD’s analysis on the AL Leader’s motivation is clearly a proper risk assessment under section 97 of the IRPA.

[26] I underscore that the question before me is not whether the interpretation proposed by Ms. Begum could be sustainable or reasonable. What I have to determine is whether the interpretation retained by the RAD was reasonable, i.e., whether it falls within the range of possible, acceptable outcomes (*Vavilov* at para 86). The sole fact that there could perhaps be other reasonable interpretations of the facts underlying the motivation of Ms. Begum’s agents of harm does not render the RAD’s interpretation unreasonable. When a reviewing court applies the standard of reasonableness, the question is not whether other alternative interpretations or conclusions would have been possible. Rather, it is whether the interpretation chosen by the decision maker passes the muster of reasonableness, regardless of the existence of other interpretations or conclusions (*Moonshiram v College of Immigration and Citizenship Consultants*, 2024 FC 1212 at para 71, citing *Tong v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 625 at para 32). Here, I find that it does.

B. *Ms. Begum could reasonably be expected to renounce her claim to her home*

[27] It is well established that those who are able to make reasonable choices to free themselves of a risk of harm must be expected to pursue those solutions, unless the choice would involve a deprivation of fundamental human rights such as the right to housing or the right to earn a basic income (*Sanchez v Canada (Citizenship and Immigration)*, 2007 FCA 99 at paras

18–19; *Kumar v Canada (Citizenship and Immigration)*, 2024 FC 1142 at para 21; *Khair v Canada (Citizenship and Immigration)*, 2023 FC 374 at para 43 [*Khair*]; *Singh v Canada (Citizenship and Immigration)*, 2021 FC 595 at paras 16-17; *Malik v Canada (Citizenship and Immigration)*, 2019 FC 955 at para 30).

[28] In the present case, I am not persuaded by Ms. Begum’s argument that her and her son’s survival would be at risk if she renounces her claim to her property. Ms. Begum had the burden of demonstrating that she could not find a new home or would otherwise be affected in a fundamental way by the loss of her house (*Khair* at para 43). The RAD was not convinced that she has done so. Consequently, it was open to the RAD to find that Ms. Begum could be reasonably expected to give up on her property.

[29] In my view, the RAD provided adequate reasons for its conclusion that the cession of Ms. Begum’s house would not hamper her and her son’s general ability to make a living. The RAD’s explanation was perhaps succinct, but I am not persuaded that it lacked justification, rationale or logic. There was no evidence on the record suggesting that Ms. Begum would be completely deprived of a place to live, and she never said that her brothers would not take her in.

[30] Ms. Begum testified that she did not want to live with her brothers because they are already residing with their spouses and children. However, as observed by the Minister, there is no evidence that she could not do so, especially considering that her son has already been living there since she left for Canada. In its analysis, the RAD considered Ms. Begum’s position but was not satisfied with her answers. Further, the evidence supported that Ms. Begum and her son

have been counting and continue to count on the help of her family. The RAD noted that Ms. Begum's daughter sends money to her brothers to look after her son, which is in conformity with the country condition evidence showing that many women in Bangladesh financially depend on their relatives. Ms. Begum's predicament is therefore not unusual.

[31] In short, I acknowledge that the addition of another person in an already busy household is not an ideal situation. That being said, the RAD was free to determine that Ms. Begum's or her son's survival would not be put at risk by moving in with her brothers. It reasonably concluded that, by moving in with her brothers and her son, Ms. Begum would not be deprived of any fundamental human right. I find that the RAD's assessment of the evidence on this point "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law" (*Vavilov* at para 86).

[32] On a final note, it is important to emphasize that it is not the task of a reviewing court to reweigh the evidence on the record, or to reassess the decision maker's findings of fact and substitute its own. As a result, absent exceptional circumstances, a reviewing court should not overturn findings of fact (*Vavilov*, at para 125). Rather, it must consider the reasons as a whole, together with the record (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 53), and limit itself to determining whether they are irrational or arbitrary. In this case, there are no such irrational or arbitrary conclusions.

C. *Ms. Begum will not be targeted due to her profile as a widow*

[33] Ms. Begum finally argues that the RAD erred in failing to examine the entire country condition evidence on the discrimination of widowed women in Bangladesh. Again, I disagree. In its Decision, the RAD explicitly mentions that it reaches its conclusion “[despite] the objective evidence regarding the discrimination that exists towards widowed women” (Decision at para 30). As a result, the RAD was clearly aware of the objective documentary evidence on the treatment of widows.

[34] The RAD did not discuss the country condition evidence because it determined that Ms. Begum had not provided evidence supporting that she could be personally persecuted or at risk of harm because she is a widow. The onus is on refugee claimants to establish a link between the general documentary evidence and their personal situations. General documentary evidence alone is not enough (*Rodriguez Sanchez v Canada (Citizenship and Immigration)*, 2023 FC 426 at para 46; *Zamor v Canada (Citizenship and Immigration)*, 2021 FC 672 at para 17; *Ayikeze v Canada (Citizenship and Immigration)*, 2012 FC 1395 at para 22). Here, Ms. Begum did not adduce any evidence of personal issues she faced because of her widow status.

[35] In its reasons, the RAD pointed out that Ms. Begum had managed to live and take care of her son without a husband for the last 30 years. When questioned by the RPD on the matter, she never mentioned having had any problems from the authorities or family members due to being a widow. She thus did not voice any fear of persecution or of harm as a widow in Bangladesh.

IV. Conclusion

[36] For the reasons set forth above, Ms. Begum's application for judicial review is dismissed. I am satisfied that the RAD reasonably considered the evidence in concluding that Ms. Begum's agents of harm would not be motivated to harm her or her son, that she could reasonably renounce her claim to her property, and that she would not be targeted in Bangladesh for being a widow. The Decision bears the hallmarks of justification, transparency, and intelligibility required under the standard of reasonableness.

[37] There are no questions of general importance to be certified.

JUDGMENT in IMM-11072-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed, without costs.
2. There is no question of general importance to be certified.

“Denis Gascon”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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