

Date: 20071003

Docket: IMM-5190-06

Citation: 2007 FC 1008

Ottawa, Ontario, October 3, 2007

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

MASOODHUR RAHAMAN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated August 15, 2006. The Board concluded that the applicant was neither a Convention refugee nor a person in need of protection, pursuant to sections 96 and 97 of the Act respectively.

ISSUE

[2] Did the Board err by concluding that the applicant was not credible, and it was therefore unnecessary to assess certain documents submitted by the applicant?

[3] For the following reasons, my answer to this question is negative.

BACKGROUND

[4] The applicant was born on October 7, 1981 in Bangladesh. He was raised in a Muslim family with long standing ties to the Awami League. The applicant was a member of the Awami League's student wing while in university, after which time he continued to be an active member.

[5] In 1999, he became the target of goons of the Bangladesh Nationalist Party (BNP), which was, at the time, the largest party in the national coalition government. The applicant was beaten on several occasions. In 2005, the applicant was threatened by the goons, who left burial garb at his home. He sought police protection but they did not do anything for him. Later, his family residence was attacked.

[6] The applicant fled to a nearby village where he stayed with a friend. He subsequently moved to the capital, Dhaka, but the BNP goons were still looking for him, so he fled to Canada using falsified travelling documents provided to him by a smuggler. He claimed refugee protection at an inland office of Citizenship and Immigration Canada.

DECISION UNDER REVIEW

[7] The Board's decision was based on three hearings on separate occasions, in front of the same panellist. The first was held in November 2005, and the second and third were held on May 8, 2006 and May 31, 2006.

[8] The Board found that the applicant was not credible and, because he showed a propensity to adduce false or fabricated evidence, the adverse finding of credibility was extended to all relevant evidence. The Board therefore concluded that it was unnecessary to conduct an assessment of human rights conditions in Bangladesh.

[9] The applicant provided two newspaper articles in support of his account, the first reporting his attendance at a protest, and the second detailing the attack on his home by the BNP goons. A verification report was conducted prior to the second hearing date by an investigator with the High Commission of Canada in Dhaka. The investigator's examination of the newspaper archives revealed that the documents submitted were forgeries.

[10] At the second hearing, the applicant expressed surprise at learning that the documents were falsified. However, at the third hearing, he candidly admitted that he obtained the documents with the help of a friend in order to bolster his refugee claim.

[11] The Board accepted the applicant's submission that an admission that some evidence is false does not necessarily mean that the rest is also false. However, because the applicant did not admit

the fabrication at first, the Board concluded that he showed a propensity to adduce false or fabricated evidence in order to deceive the Board.

[12] The Board found that the applicant was not a credible or trustworthy witness, and generally lacked credibility. Further, the Board was not satisfied by the sufficiency of the applicant's account of events that precipitated his decision to leave Bangladesh, even if it disregarded the falsified documents.

ANALYSIS

Standard of review

[13] When the Board makes a determination regarding the credibility of a refugee claimant, the decision will be reviewed by the Court using the standard of patent unreasonableness. As such, the Court will only intervene if the Board has made a perverse and capricious finding of fact, without regard to the material before it. This standard has been confirmed by the Federal Court of Appeal in *Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315 at paragraph 4:

There is no longer any doubt that the Refugee Division, which is a specialized tribunal, has complete jurisdiction to determine the plausibility of testimony: who is in a better position than the Refugee Division to gauge the credibility of an account and to draw the necessary inferences? As long as the inferences drawn by the tribunal are not so unreasonable as to warrant our intervention, its findings are not open to judicial review. [...]

Adverse credibility findings

[14] The applicant submits that the Board erred by overlooking other corroborating documentary evidence of his story based on a general adverse finding of credibility. It is my opinion that the Board did not commit a reviewable error in choosing to extend its finding that the applicant was not credible to the evidence as a whole. In admitting that he attempted to mislead the tribunal, the applicant severely damaged his credibility. In the case at hand, both his personal credibility and the credibility of the evidence are at issue; not only was documentary evidence central to the claim found to be false, but the applicant misled the Board by denying at first hand knowledge of the forgery.

[15] In *Osayande v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 368, [2002] F.C.J. No. 511 (QL) at paragraphs 19-21, the Court came to the same conclusion based on a very similar set of facts:

The CRDD held that this evidence, if genuine, "would have fully corroborated the claimant's allegations". At the hearing, the respondent produced the real first page of *The Observer* dated December 14, 1999. This document was identical to the exhibit introduced by the applicant, except that the article about the applicant was missing. The CRDD concluded that the newspaper produced by the applicant was fake. Upon questioning the claimant was at a loss to explain. The CRDD concluded that the story in the newspaper about the claimant being wanted by Nigerian authorities "is a fabrication designed to deceive the Tribunal". In plain English, the applicant was caught in a blatant lie designed to deceive the CRDD with respect to the main issue. This showed the applicant, in no uncertain terms, to be a liar.

It is trite law before this Court that an administrative panel such as the CRDD need not make specific reference to all evidence available before coming to a finding regarding the credibility of an applicant. Further, findings of credibility are reasonably open to the panel to

make and will not be overturned by the court unless found to have been made in a perverse or capricious manner.

In the present matter, the false newspaper document, its falsity not in issue before this Court, was taken into account by the CRDD, along with the other available evidence, and the tribunal came to a finding that the applicant was not credible. Where a witness before the CRDD is found to have severely damaged his own credibility in a specific instance, such as supplying a false document to the CRDD, that can reflect on other findings regarding his credibility.

[Emphasis added]

[16] The applicant submits that the tendering of fraudulent evidence and not admitting it immediately may have been fatal to his personal credibility, but the Board erred in failing to consider the human rights situation in Bangladesh, and refused to analyze other relevant documentary evidence.

[17] I do not agree. If the credibility of the applicant is so severely eroded that the Board does not believe that the applicant has a well founded fear of persecution, there is no need to look at whether the country conditions can support his claim.

[18] The Board's adverse credibility findings are supported by the reasons; the question of credibility is apparent on the face of the facts, and as such there is no ground upon which this Court can intervene.

Consideration of personal evidence

[19] The applicant cites *Lahpai v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 88, [2001] F.C.J. No. 232 (QL) in support of the position that it is insufficient to dismiss personal documentary evidence or medical reports without explanation. The Court writes at paragraph 21 of

Lahpai:

[...] when evidence is omitted, not only from the decision, but from consideration at the hearing, and such evidence squarely contradicts the findings of the Board on a central issue, the latter must clearly refer to that material and state why it did not rely on it. [...]

[20] A review of the record reveals that the documentary evidence not mentioned by the Board consists of a letter from the applicant's doctor confirming injuries consistent with one aspect of an attack suffered by the applicant in 2001, and two letters from members of the Awami League attesting to his association with the party. While it may have been desirable for the Board to explicitly consider the letters and give reasons for discounting them, I am of the opinion that none of the letters squarely contradict the Board's adverse finding of credibility, which was the central issue.

[21] Furthermore, no evidence was submitted to corroborate the veracity of the letters. The letters from the Awami League were not verified, and the injuries described to the doctor did not demonstrate anything more than a speculative connection to the persecution alleged by the applicant. I agree with the respondent's submission that it is insufficient for the applicant, who has admitted to producing false documents in the same proceeding, to assert without question that the documents are genuine. The Court found in *Hamid v. Canada (Minister of Employment and*

Immigration), [1995] F.C.J. No. 1293 (F.C.T.D.) (QL), at paragraph 21, that there must be further corroboration in such circumstances:

Consequently, in my opinion, the applicant's assertion that the Board is bound to analyze the documentary evidence "independently from the applicant's testimony" must be examined in the context of the informal proceedings which prevail before the Board. Once a Board, as the present Board did, comes to the conclusion that an applicant is not credible, in most cases, it will necessarily follow that the Board will not give that applicant's documents much probative value, unless the applicant has been able to prove satisfactorily that the documents in question are truly genuine. In the present case, the Board was not satisfied with the applicant's proof and refused to give the documents at issue any probative value. Put another way, where the Board is of the view, like here, that the applicant is not credible, it will not be sufficient for the applicant to file a document and affirm that it is genuine and that the information contained therein is true. Some form of corroboration or independent proof will be required to "offset" the Board's negative conclusion on credibility.

[Emphasis added]

[22] It has to be noted that in the case at bar, the applicant was given time to regain his credibility but failed to do so.

[23] No questions for certification were proposed and none arise.

JUDGMENT

THIS COURT ORDERS that the application for judicial review be dismissed. No question is certified.

“Michel Beaudry”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-5190-06

STYLE OF CAUSE: **MASOODHUR RAHAMAN and
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 25, 2007

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

DATED: October 3, 2007

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