

**Date: 20081009**

**Docket: IMM-1580-08**

**Citation: 2008 FC 1149**

**Toronto, Ontario, October 9, 2008**

**PRESENT: The Honourable Mr. Justice Campbell**

**BETWEEN:**

**ROKSANA RAHMAN  
SUSAHOSH RAHMAN  
and OGGNI RAHMAN**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The present Application challenges a decision of the Refugee Protection Division (RPD) which vacates the Applicants' Convention Refugee status. The vacation is based on the ground of misrepresentation. In reaching the decision under review, the RPD found that the Applicants did not disclose that, prior to applying for refugee protection within Canada, they entered Canada on visas issued by Canadian authorities in Bangladesh. The argument presented by the Minister to the RPD, and which was accepted by the RPD, is that proof of the misrepresentation exists in the fact that

photographs taken of the persons who applied for the visas are, indeed, photographs of the Applicants herein.

[2] The finding in the decision under review with respect to the important photograph evidence reads as follows:

The INS records show, as part of the visa application of December 22, 1998, photos of the visa applicants, Roksana Lais and her spouse, Mohan Raihan, and their two children, Shahosh Raihan and Aggnita Raihan.

The photos that accompany the Referral to the Refugee Division for Roksana Rahman and Susahosh Rahman and Oggni Rahman, dated November 9, 1999, on a balance of probabilities, are, on examination, in the opinion of this panel, the same persons. The panel determines, even allowing for a “coincidental happenstance”, that Roxsana Rahman has a “double” who entered the United States on the same date as Roksana Lais, it is beyond plausibility to conclude these two “look-alike” women would each have two “look-alike” children.

(Decision, p. 8)

Counsel for the Applicants argues that the opinion expressed by the RPD member was formed in breach of due process. I agree with this argument.

[3] The only evidence of the process by which the opinion was formed is that stated in the quotation provided from the RPD’s decision. A serious due process concern arises as a result.

[4] It is agreed that the actual photographs viewed by the RPD in reaching the opinion are not part of the record in the present Application. Indeed, what actually was viewed is unknown. It seems

obvious that both parties to such an important opinion formation should have complete knowledge of what is being considered and compared. The best way to ensure this essential procedural requirement is to have the opinion formation occur in an open forum and on the record. In the present case the formation of the identity opinion was not open to such scrutiny. In particular, neither party of the present Application had the opportunity, through questioning, to challenge the evidentiary basis upon which the opinion was formed, or through argument, to persuade the opinion-maker to come to a certain result.

[5] As a result, I find that the decision under review was rendered in fundamental breach of due process.

**ORDER**

Accordingly, the decision under review is set aside and the matter is referred back for redetermination in accordance with these reasons before a differently constituted panel.

“Douglas R. Campbell”

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Judge

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

**DOCKET:** IMM-1580-08

**STYLE OF CAUSE:** ROKSANA RAHMAN, SUSAHOSH AHMAN  
and OGGNI RAHMAN v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 9, 2008

**REASONS FOR ORDER  
AND ORDER BY:** CAMPBELL J.

**DATED:** OCTOBER 9, 2008

**APPEARANCES:**

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