

**Date: 20090323**

**Docket: IMM-5193-07**

**Citation: 2009 FC 304**

**Ottawa, Ontario, March 23, 2009**

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

**BETWEEN:**

**GOBINDA CHANDRA SAHA  
ASHISH KUMER SAHA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. INTRODUCTION**

[1] The Applicants, father and son, seek judicial review of a decision of the Refugee Protection Division (RPD) denying their claim for refugee protection.

## II. BACKGROUND

[2] The Applicants are Hindu citizens of Bangladesh. They claimed a well-founded fear of persecution based on their religion as part of a minority and membership in a particular social group – wealthy property-owners.

[3] The persecution relied upon by the Applicants was said to have started in 2001, the same year that the Awami League, which was supported by Bangladesh's religious minority, lost power and two years after the younger Applicant had left to study in Canada.

[4] The acts of persecution included attacks on temples at which they were present, the rape of a friend's daughter, the ransacking and looting of their home and the beating of the Applicants' wife/mother, the torture and beating of a friend, and the threat of similar treatment from Muslim fundamentalists.

[5] Finally, the younger Applicant alleged that in 2002, when he returned to Bangladesh to care for his ill mother, he was attacked and threatened with death on two occasions. He reported the second assault but the police did nothing. The third such event of his homecoming was an assault on the home and the beating of the senior Applicant's three sons.

[6] The RPD found that the Applicants did not fall within either s. 96 or s. 97 because of serious concerns about credibility and implausibility. These findings included:

- a. the RPD did not think it was reasonable that, following the incident in August 2001 when the older Applicant's wife was beaten and extorted, he would not have contacted the police;
- b. the RPD found it implausible that the Applicant left his wife and sons in Bangladesh, when he testified that they had been subject to attacks by his alleged persecutors;
- c. the RPD found it implausible that the younger Applicant would be the target of multiple attacks during his brief return to Bangladesh in August 2002 to care for his sick mother, when his younger brothers – 20 and 21 years old at that time, respectively – were not subject to similar treatment;
- d. the RPD concluded that the story of the alleged kidnapping of the older Applicant's son in Bangladesh in January 2007 was manufactured because (1) it was improbable that a ransom had been sought by his kidnappers only after his release, (2) the General Diary Entry was not on official police letterhead, (3) the newspaper announcement and letters from family were self-serving, and (4) the note from the hospital made no reference to the cause of his injuries;
- e. as for the letters from Drs. Pilowsky and Ekeh confirming that the older Applicant had been diagnosed with severe depression and anxiety, the RPD found that neither physician made reference to the cause of the depression and, in any event, their opinion as to the cause was only as credible as the facts, as presented by the Applicants.

[7] The RPD then went on to consider state protection. It found that the younger Applicant had not followed up on his one police complaint. The RPD also considered the documentary evidence of systematic attacks against Hindus and concluded that the incidence of those killed or injured was miniscule and therefore raised only a mere possibility of persecution.

[8] Lastly, the RPD considered the existence of an internal flight alternative (IFA) and concluded that Chittagong, a city of more than 2 million inhabitants, 500 kilometres from the Applicants' home, was viable particularly as they had been away more than five years and, being well educated, could find employment.

[9] The RPD summarized its view of the case as one where the Applicants were motivated by a desire for a better life, and not by fear of harm.

### III. ANALYSIS

[10] The Applicants' submission that the RPD erred in law by not considering all of the grounds of persecution, if true, should be reviewed on a standard of correctness (*Uluk v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 122).

[11] To the extent that the Applicants challenge findings of fact with respect to credibility, implausibility, the weighing of documentary evidence, and the factual basis for the IFA and state protection findings, these conclusions are to be reviewed on a reasonableness standard (*Dunsmuir v. New Brunswick*, 2008 SCC 9). To the extent that the findings are purely factual, the findings are

also subject to deference (*Aguebor v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 732 (F.C.A.) (QL)).

[12] On the first issue, it was not necessary to examine the Applicants' claim of s. 96 persecution based upon their wealth. Wealth or perception of wealth is not a grounds under s. 96 (see *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 at page 739 and *Moali de Sanchez v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 183). It was not necessary for the RPD to address that ground of persecution. The RPD did, in fact, analyse religious persecution but reached adverse conclusions based upon the record.

[13] The RPD's decision really turns on the other issues, which are subject to a reasonableness standard of review.

[14] The Applicants contend that it was unreasonable for the RPD to reject the psychological evidence and to conclude that the doctors had not provided reasons for the alleged post-traumatic stress disorder (PTSD).

[15] The RPD appears to have missed that Dr. Pilowsky found that the senior Applicant suffers from PTSD. However, this is an immaterial matter as the report finds the PTSD to be related to events which the RPD does not find credible.

[16] It is within the RPD's mandate to discount psychological evidence when the doctor merely regurgitates what the patient says are the reasons for his stress and then reaches a medical conclusion that the patient suffers stress because of those reasons. This is particularly the case where the RPD rejects the underlying facts of the diagnosis. In this case, there were no independent clinical studies performed to support the psychological assessment and no other medical basis for the diagnosis.

[17] The RPD gave reasoned reasons for its credibility and implausibility findings. For example, it was open to the RPD to not accept that a husband would leave his wife and sons in such a perilous situation if there was any truth to the allegations of harm.

[18] The same can be said for the other credibility and implausibility findings. Read as a whole, these findings and the weight given to the evidence does not afford a legal basis for the Court to interfere with the RPD's conclusions.

[19] It is not strictly necessary to address the issues of state protection or IFA. In any event, I find no reason to interfere with those conclusions.

#### IV. CONCLUSION

[20] Therefore, this judicial review will be dismissed. There is no question for certification.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** this application for judicial review is dismissed.

“Michael L. Phelan”

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Judge

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

**DOCKET:** IMM-5193-07

**STYLE OF CAUSE:** GOBINDA CHANDRA SAHA  
ASHISH KUMER SAHA

and

THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** March 3, 2009

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

**DATED:** March 23, 2009

**APPEARANCES:**

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