Federal Court  Cour fédérale

Date: 20100226

Docket: IMM-2381-09

Citation: 2010 FC 232

Ottawa, Ontario, February 26, 2010

PRESENT: The Honourable Mr. Justice Lemieux

BETWEEN:

SUMAYA MUSLEAMEEN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

Introduction and claims

[1] Sumaya Musleameen (the Applicant) is a citizen of Bangladesh, now 23 years of age. She came to Canada on June 28, 2004 on a student visa obtained by forging her father's consent. She made a refugee claim on June 6, 2006, which was denied on April 8, 2009. This judicial review challenges that decision. The member of the Refugee Protection Division (the tribunal or the RPD) expressed three reasons for rejecting her claim: (1) it did not believe her story she fled her country of origin for fear of her father's brutality; (2) she had not sought protection of state authorities in

Bangladesh which would have reasonably been available to her if she had asked for it; and, (3) changes in circumstance made it such she did not have a well-founded fear of persecution if returned to Bangladesh.

[2] The Applicant in her Personal Information Form (PIF) claimed her father is an abusive and brutal fundamentalist who believed women do not have any rights and should always be controlled. She says her father tortured her mother by mental and physical abuse on a regular basis to the point where after ten years of such treatment her mother fled to the United States on October 10, 1998 when the Applicant was 12. Her mother remarried, pursued her studies and is now a permanent resident of the U.S.

[3] She claims to have completed grade 10, with her mother paying for her tuition, but after that, in 2002, her father prevented her from further schooling. Matters deteriorated from then on when a number of incidents occurred which brought on his wrath leading to his verbal and psychological abuse of her for: (1) not wanting to wear a hijab; (2) her insistence on pursuing her education; and, (3) breaking her confinement to the house.

[4] During one particular brutal incident on May 14, 2002 when she was 16 years old, she alleges her father shot her in the left shoulder; she was hospitalized for two weeks; the doctor stated a complaint to the police had to be made, but none was filed for fear of the father's retribution at the insistence of her maternal aunt who had brought her to the hospital. This incident was precipitated when her father saw her get off the school bus not wearing a hijab.

[5] After discharge from the hospital, she went to live with her aunt. However, after several months, she claims she was forced back to the family home but not before her aunt and mother had agreed a way must be found for her to flee her father and Bangladesh.

[6] Unfortunately, the cycle of her father's abuse, both physical and verbal resumed and intensified to the point sometimes she became unconscious after being beaten. Meanwhile, her mother and aunt plotted her exit as an international student in Canada by obtaining a student visa which she eventually succeeded in obtaining on June 27, 2003 by forging her father's signature on a consent form.

[7] In late 2003 / early 2004, she met her brother's friend and tutor, Albaad, who came to the family home on a regular basis. Her father "caught" her speaking to Albaad. She says he flew into a rage and attempted to disfigure her with a broken bottle which she deflected from her face to her arm. She was, once more treated by the same doctor and hospitalized at the same as the first time for similar reasons as before. No complaint was lodged with the police. After discharge, she stayed with her aunt until she fled to Canada.

[8] She testified her aunt informed her father where she was. He told the aunt he would kill her on her return because his daughter had disgraced him.

The tribunal's decision

[9] The tribunal based its decision on three separate grounds: (1) credibility; (2) the availability of state protection; and, (3) no well founded fear of persecution should she return today to Bangladesh.

(1) Credibility – the implausibilities

[10] The tribunal found the applicant's "evidence, including her oral testimony, to be not credible". The tribunal said this was the determinative issue. The tribunal noted she had been treated twice at the same hospital, the Omar-Sultan Medical Hospital in the Dhanmondi area of Dhaka (the hospital) after the May 14, 2002 and early 2004 incident. She was treated both times by the same doctor. The tribunal asked the applicant "to provide documentary evidence of her treatment at this hospital so as to provide corroboration of her allegations. Her answer was she could not because the hospital had closed in 2007." She was asked if she had documentary evidence on the hospital's closing. She answered she could not despite her internet searches for this purpose, a fact confirmed by her counsel in post-hearing submissions. She was asked whether her medical files had been transferred to another hospital, to which she answered she did not know and when asked whether her aunt had investigated the issue, she answered "no" "because she thought her aunt really did not want to help her".

[11] She also testified that a couple of months before her first hearing, she had asked her aunt to contact her attending doctor at the hospital and sent her brother to look for him, all with no results. She also said she had asked her relatives in Bangladesh to help her but was rebuffed each time.

[12] From this testimony, the tribunal drew two implausiblities. First, in respect of the hospital closing the tribunal found: "[…] that had the hospital closed as the claimant has alleged, the claimant or her counsel would have been able to provide at least one or two references to it in Bangladeshi newspapers or medical publications. The panel notes that English is in some use in professional and business affairs in Bangladesh, therefore, any such information obtained could have been easily submitted to the Board".

[13] The tribunal also found: "Additionally, Google, as the claimant mentioned she vainly used, and other internet search engines, would, the panel finds, have enabled the claimant to at least obtain some reference or mention of the alleged hospital closure, had it occurred. The panel notes that a hospital closure would be a fairly significant event, as hospitals play vitally important roles in communities throughout the world, and would have been mentioned in the media had it occurred".

[14] The tribunal concluded on this point:

> […] The panel finds it implausible that a hospital closed in Dhaka in 2007, and yet not one reference at all could be found in regard to this, despite a detailed, concerted search by the claimant and then counsel, having at their disposal, by their evidence, modern internet search tools. The panel finds this implausible because, having regard to the particular circumstances, including the country conditions, it would not be reasonable to conclude that this is so. The panel can only deduce, and so finds from the lack of supporting documentary evidence, that the reason no information was available as this alleged closure is that it simply did not occur. From this allegation, which the panel has found to be implausible and thus not true, the panel makes a negative inference as to credibility.
>
> From this arise several implications. To summarize, the claimant could not corroborate her hospital visits because she said the hospital closed. The panel finds from the above evidence, on the balance of probabilities, that the hospital did not close. Thus, the panel notes a

> failure to corroborate the claimant's allegations of her attendance at this hospital, without adequate justification. The panel draws a negative inference as to credibility from this. Also, from her failure to corroborate the hospital visits, above, the panel has found that the claimant did not attend at this hospital as she had alleged. From this finding flows a finding that the claimant was not injured as she has alleged. [Emphasis mine.]

[15] The tribunal's finding the applicant had not been injured as alleged caused it to make reference to Exhibit C-2, a medical report from Dr. Blakeney where it noted that the claimant has a scar on the left forearm and on the left shoulder. The tribunal also made reference of this exhibit. The tribunal commented: "These scars are mentioned, as well as a repetition of the claimant's allegations that he father shot and cut her". The tribunal accepted the view of the tribunal officer:

> […] this report does not say that the shoulder injury is consistent with the claimant having been shot, only with her having had surgery. Thus, this report does not fully corroborate the shooting or the cutting.

[16] The tribunal pointed to further evidence "that leads the panel to the conclusion the claimant was not shot as she alleged". This evidence relates to the previously discussed evidence of the attending doctor not reporting the incident to the police and the reasons why. The panel drew the following implausibility finding:

> The panel finds it implausible that a doctor in a hospital would fail to notify the police, against hospital policy and/or the law. Policies are in place so that decision makers follow desired norms of behaviour as identified by an organization, removing them from the temptation to be swayed by the arguments or entreaties of persons wishing them to break policies. The fact that the crime in question was a gunshot wound, serious enough to require surgery and a two week hospital stay, together with the fact that it was a case of a father shooting his daughter, leads the panel to the conclusion that it is implausible that a doctor would choose to break policy by failing to report what could be described as a very serious crime which would shock the moral

> conscience of most people. The panel simply does not believe that, under the circumstances, a reasonable person would accept that a doctor in a hospital would choose to perform surgery to remove a bullet and admit the claimant for a two week hospital stay and not report the incident to the police as he was required to, only because he took sympathy on the claimant and her aunt, and their plight. Had a hospital report been made available which shed light on the doctor's alleged decision to not notify the police as required, the panel may have come to a different conclusion. However, as the claimant has failed to provide a medical report on this key incident of her refugee claim, without valid explanation, as noted above, the panel had made a finding of implausibility, from which it draws a negative inference as to the credibility. [Emphasis mine.]

(2) State protection

[17] Even if it had found the applicant credible, the tribunal concluded she had not rebutted the presumption of state protection "noting that a claimant is required to first seek the protection of her home country prior to that of Canada's, provided such protection is adequate and reasonably available and if she fails to do so, must provide a reasonable explanation."

[18] The tribunal noted her evidence she was afraid to call the police and convinced her aunt and doctor not to do so because of her fear of vengeance from her father on her and her aunt's family. It was also her evidence the police would not help her because they would side with her father on domestic matters.

[19] The tribunal wrote the following on state protection for domestic violence in Bangladesh:

> The panel acknowledges that there are problems with domestic violence in Bangladesh, and that the state does not provide the level of protection as might be expected. The question, however, is whether it would be adequate in the particular circumstances of the claimant. The panel notes, as an example, on page 11 on Exhibit C-3, it is stated that in the case of, for example, acid attacks on women,

> only roughly seven percent of men got convicted. The panel notes that while this is not exemplary, nevertheless there is a real possibility of investigation, charge and conviction of perpetrators of abuse against women, that is, if the incidents are reported.
>
> [Emphasis mine.]

[20] It then referred to documentary evidence a Refugee Board Research Directorate issue paper in relation to state protection in Bangladesh where it is written: "… the existing laws on the repression of women do not punish men who abuse their wives unless a 'grievous hurt' is inflicted." While observing the quote dealt with spousal abuse, it expressed the following view:

> While this quote deals with spousal abuse, the principle can reasonably be transferred to the case herein, in that the claimant has alleged that her father treated her, as the oldest female in the house, similar to the way a man would treat his wife if he were mistreating her. The panel notes that the harm in question in this instance was a gunshot wound to the shoulder, which the panel characterizes as grievous harm.
>
> [Emphasis mine.]

[21] The tribunal underlined the fact the applicant made no effort at all to contact the police for assistance but persuaded the doctor not to report for fear of revenge. [Adding]:

> She may have had this fear (that is, assuming the claimant's father actually shot her); but the question is whether it excused her from the duty to seek protection for herself at home in Bangladesh, in this case by letting the law take its course, and allowing the doctor to call the police as he wished to, and was required to, do.
>
> [Emphasis mine.]

[22] The tribunal found:

> […] this alleged fear of her father does not absolve the claimant of the duty to have sought protection at the time. This was a serious crime and there is not sufficient reason to believe the police would not have prosecuted the claimant's father. In fact, when it was suggested to the claimant that a shooting is a serious crime which should have been reported to the police, she replied by saying that the police would probably believe her father more than her. As there has been no allegation that her father would claim self-defence, and the claimant was alleged to have been shot, the panel finds that in fact the police would more likely believe her, and lay charges.
>
> [Emphasis mine.]

[23] The tribunal tackled the issue of her father's retaliation if she called the police. It noted it had suggested to the applicant that the father would be in jail and thus unlikely to be able to harm her to which the applicant would have responded her father might buy the police off. The tribunal found:

> […] The panel finds, on a balance of probabilities, that he would not be able to buy the police off for a serious crime like shooting his unarmed daughter.
>
> [Emphasis mine.]

[24] Finally, the tribunal put forward another reason why state protection would be available: the applicant's testimony the doctor was going to call the police as per hospital policy which meant "recourse to state protection was built into the hospital system". It concluded:

> […] The fact that the claimant chose to take strong actions to dissuade the doctor from helping her by having the police investigate leads the panel to the conclusion that the claimant deliberately elected not to seek the protection of her state, without sufficient justification. Thus, the claimant is not entitled to Canada's protection, as she failed to first seek the protection of her own state, Bangladesh, which the panel finds would have been adequate in the circumstances.

[Emphasis mine.]

(3) No well-founded fear of persecution

[25] The tribunal's conclusion on this point is based on changed circumstances since she left Bangladesh. Her father has a new woman in his life although she did not know if the couple were married or common law. Her brother had left the family home without repercussion. The applicant had failed to demonstrate her father had any interest in her at this time. She does not know if her father knows she is in contact with her mother or her brother. Her contacts in Bangladesh, her aunt and brother, have given her no information about her father's attitude and actions towards her and has adduced no evidence her father has threatened her or even asked about her since she left her country five years ago. It said she was asked directly what he might do to her if she returned there. She responded: " […] that he might force her to marry the son of one of his friends. When asked if she would comply if he tried to do this, she admitted she would not, and she then admitted that she really was not afraid of that".

[26] The tribunal concluded:

> In summary, the panel finds from examination of the above evidence that, on the balance of probabilities, her father would not harm, let alone persecute her, should she return to Bangladesh. Thus, whatever fear she may have of him is not well-founded, thus there is not a serious possibility of persecution or a risk of cruel and unusual treatment or punishment, or a danger of torture upon her return to Bangladesh.

[27] It added another point. It said her testimony revealed her real goal was to join her mother and sister in the United States but she has now realized this is unlikely to happen [adding]: "[…] It

was this realization, in fact, she testified, that was a major contributor in her decision to make a refugee claim in Canada when she did, some two years after arrival here. In fact, her main fear of Bangladesh, as expressed by her, is that a single woman with no family connections, life would be difficult for her there "… living on her own"."

[28] After analyzing the evidence, the tribunal concluded at most the evidence showed on this point was discrimination and harassment but not persecution.

The applicant's submissions

[29] Counsel for the applicant notes the tribunal's disbelief of the applicant's story principally rests on its finding her story lack corroborative evidence particularly on the lack of documentary evidence surrounding her inability to produce medical records of her two treatments at the hospital; her inability to produce any documentation reporting on the hospital's closing. He argues ignored the several efforts the applicant made to obtain this documentation and to trace the attending physician but to no avail. He also imported North American standards on major hospital closing being like to have been reported particularly in the face of the applicant's evidence the hospital was a two story structure in the suburb of Dhaka and was not a large one: "It's not like an expensive hospital or like a private hospital." (Certified Tribunal Record, page 396); in any event, counsel submits it was totally unreasonable to disbelieve every element of her story on this lack of corroboration. On this point, counsel asserts the tribunal misread the evidence because the applicant's injuries were corroborated by Dr. Blakeney's Report. Finally, the tribunal's credibility finding was also based on the implausibility the attending physician would breach the law or

hospital policy by not reporting the injuries to the police. Counsel submits the tribunal erred in doing so because such finding was not based on the evidence.

[30] Counsel for the applicant recognized the applicant did not seek state protection but argued taking into consideration relevant circumstances, it was not objectively unreasonable not to have sought it. The factors he pointed to were the applicant's young age of 16; the person she would be complaining against was her father who she feared would take revenge on her for having done so; the documentary evidence which shows that domestic violence laws are not enforced, police do not intercede in domestic violence matters considering them to be private matters and the pervasive police corruption in that State where people are not prosecuted or let out of jail through bribes and finally, due to the young age and the prevalent attitudes her father would be believed over her. Moreover, her mother never complained of her husband's many abuses.

[31] Counsel submits the tribunal based its finding the applicant lacked a well-founded fear of persecution if returned to Bangladesh on its view "from the evidence submitted it is doubtful if the claimant's father would target the claimant if she returned to Bangladesh." He argued the tribunal mischaracterized her evidence when it found her main fear of returning to Bangladesh was, as a single woman life would be difficult there. Her principal fear is her father. He pointed out the father's lack of interest in her because she had a new woman in his life was purely speculative.

The Respondent's submission

(a) Credibility

[32] After noting the tribunal's decision may not be perfect and may have some flaws in it, the test is whether, looked in its entirety, the result is a reasonable outcome. In terms of credibility, counsel argues that corroboration was not the issue; the bottom line was an insufficiency of evidence and the reasonableness of the explanations for not providing relevant evidence to prove her claim.

[33] While conceding the tribunal did not discuss Dr. Blakeney's report, counsel indicated the tribunal did not completely reject it and its lack of discussion was not material.

[34] In terms of the doctor not reporting the injuries to the police, counsel submitted the implausibility finding he would not report the injuries is not perverse or capricious.

(b) State protection

[35] In any event, counsel argued the issue of state protection would be determinative of the claim under both sections 96 and 97 of IRPA. Counsel submitted the tribunal considered the applicant's explanations for not seeking state protection finding there was insufficient justification. In doing so, no reviewable error was made. Counsel argued the claimant had a duty to attempt to access state protection from his or her home state before seeking international protection; here the applicant did not take any steps. This particularly so because of the grievous harm the father allegedly inflicted: shooting his daughter.

(c) Well-founded fear of persecution

[36] Counsel submitted this finding was also reasonable given the particular facts relied upon by the tribunal: (1) no evidence was adduced the father has threatened her or asked about her since she left; (2) her aunt and brother have not provided any information about his attitudes towards her; (3) he has a new partner in his life; (4) the tribunal discounted her fear of returning to her native country because she was a single woman; and, (5) her real goal was to join her mother and sister in the United States.

Analysis

(a) Standard of Review

[37] Clearly, the tribunal's credibility findings are owed great deference and has been so found by the Supreme Court of Canada a number of times recently (see *Mugesera v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 100, at paragraph 38 where reference was made to paragraph 18.1(4)(d) of the *Federal Courts Act*).

[38] In *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, while finding paragraph 18.1(4)(d) of the *Federal Courts Act* not to be a legislated standard of review, Justice Binnie labeled that provision: "[…] does provide legislative guidance as to "the degree of deference" owed to the IAD's findings of fact."; "provides legislative precision to the reasonableness standard in cases falling under the *Federal Courts Act* "namely a high degree of deference" (see paragraphs 3 and 46)".

[39] In matters of State protection, the question of whether it was unreasonable for an applicant not to have sought such protection is a mixed question of fact and law subject to review against the reasonableness standard.

(b) Discussion and conclusions

[40] In my view, this judicial review application must be allowed for the following reasons.

(1) The credibility finding

[41] The first reason relates to the major implausibility finding related to the hospital closing which led to the tribunal to conclude she did not suffer any injuries at the hands of her father. That implausibility finding is also linked to another implausibility finding a doctor would not fail to notify the police of the shooting incident.

[42] The law on the drawing of implausibilities is clear. I refer to two cases: *Aguebor v. (Canada) Minister of Employment, and Immigration* (F.C.A.), [1993] F.C.J. No. 732, [1993] A.C.F. no 732, 160 N.R. 315, where Justice Décary on behalf of the Federal Court of Appeal wrote the following at paragraph 4:

> **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. In *Giron*, the Court merely observed that in the area of plausibility, the unreasonableness of a decision may be more palpable, and so more easily identifiable, since the account appears on the face of the record. In our opinion, *Giron* in no way reduces the burden that rests on an appellant, of showing that the

> inferences drawn by the Refugee Division could not reasonably have been drawn. In this case, the appellant has not discharged this burden.
>
> [Emphasis mine.]

[43] I also cite Justice Muldoon's decision in *Valtchev v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 1131, 2001 FCT 776, at paragraphs 7, 8 and 9.

> **7** A tribunal may make adverse findings of credibility based on the implausibility of an applicant's story provided the inferences drawn can be reasonably said to exist. However, plausibility findings should be made only in the clearest of cases, i.e., if 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. A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu. [see L. Waldman, Immigration Law and Practice (Markham, ON: Butterworths, 1992) at 8.22]
>
> [Emphasis mine.]
>
> **8** In *Leung v. M.E.I.* (1994), 81 F.T.R. 303 (T.D.), Associate Chief Justice Jerome stated at page 307:
>
> > [14] ...Nevertheless, the Board is under a very clear duty to justify its credibility findings with specific and clear reference to the evidence.
> >
> > [15] This duty becomes particularly important in cases such as this one where the Board has based its non-credibility finding on perceived "implausibilities" in the claimants' stories rather than on internal inconsistencies and contradictions in their narratives or their demeanour while testifying. Findings of implausibility are inherently subjective assessments which are largely dependant on the individual Board member's perceptions of what constitutes rational behaviour. The appropriateness of a particular finding can therefore only be assessed if the Board's decision clearly identifies all of the facts which form the basis for their conclusions. The Board will therefore err when it fails to refer to relevant evidence

> which could potentially refute their conclusions of implausibility...
>
> [Emphasis mine.]

> **9** In *Bains v. M.E.I.* (1993), 63 F.T.R. 312 (T.D.) at 314, Mr. Justice Cullen quashed a decision of the tribunal after concluding that it erred because its plausibility findings were made without referring to the documentary evidence, and because they were made based on Canadian paradigms:
>
> > [4] ... However, in making a finding of what was plausible or implausible the Refugee Division made no reference to the documentary evidence filed in support of the applicant, namely the Amnesty International reports. According to the reports, the events described by the applicant were not an unusual occurrence and constant harassment of members or former members of Akali Dal was the norm, not the exception. Therefore, in my view, the failure to comment on the evidence filed, either in a negative or positive manner, seriously weakened the Refugee Division's decision and conclusions. Further, the applicant's contention is wholly consistent with the documentary evidence filed and is probably the only source of evidence sustaining the applicant's case; or is the only clue to determining if the applicant's evidence is plausible. This documentary evidence was the only gauge available regarding the conduct of authorities in Indian vis-à-vis Sikhs and the reports referred to these occurrences as "routine".
> >
> > [5] Moreover, the events as described by the applicant may have seemed implausible and therefore not credible to the Refugee Division, but as counsel for the applicant points out "Canadian paradigms do not apply in India". Torture, unhappily, is real, as is exploitation and revenge, often resulting in killings.
> >
> > [Emphasis mine.]

[44] In my view, the implausibility findings made by the tribunal must be set aside for the reason they do not meet the criteria set out in the jurisprudence. The entire premise for these findings is the assumption made by the tribunal the hospital closing would have been mentioned in the media or a

reference to it would have been found on the internet. In drawing this finding, the tribunal ignored the evidence it had received about what kind of hospital the hospital was – a two storey building not well known. Second, the tribunal ignored the legitimate efforts made by the applicant and her counsel to corroborate the closing. Third, the tribunal imported Canadian standards about the importance of hospital closings. Fourth, the inference drawn is contrary to Dr. Blakeney's report which the tribunal misconstrued. Dr. Blakeney clearly concluded in his report "the applicant had physical scars consistent with the injuries and her medical treatment she said she received for these injuries are medically credible". [Emphasis mine.] Sixth, the fact the doctor agreed not to report the incidents was not plausible, once again, is based on assumptions about how a doctor would behave in Canada without any facts on reporting by doctors in Bangladesh in circumstances of an alleged shooting of a 16 year old girl by her father.

[45] In summary, all of these factors point to the inferences drawn by the tribunal from the implausibilities are unreasonable.

(2) State Protection

[46] In my view, the tribunal's analysis on state protection is flawed. I recently had the advantage of summarizing the jurisprudence on state protection in *Mendoza v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 119, [2010] F.C.J. No. 132, at paragraphs 28 to 33. The key principle in the case of a person failing to seek protection, as is the case here, "is only fatal if the tribunal also finds that protection would have been reasonably forthcoming." A determination of reasonably forthcoming requires consideration of all appropriate circumstances. The standard of proof is the balance of probabilities.

[47] The tribunal noted “there were problems with domestic violence in Bangladesh and that the state does not provide the level of protection as might be expected.” It averted to instances of acid attacks on women which the tribunal drew an analogy with an instance of “grievous hurt” such as the shooting. The tribunal concluded there was a real possibility of investigation, charge and conviction. This standard is not one of the balance of probabilities – more likely than not. The tribunal erred. Moreover, as I see it, much of the factual analysis made by the tribunal is based on implausibilities whose factual basis was not established, e.g. the father could not be able to buy off the police to free himself from jail and therefore could not seek retribution.

(3) No well founded fear

[48] The tribunal’s error here is that it mischaracterized the nature of her fear upon returning to Bangladesh – the fear of a single woman living alone; that was not what she expressed which is of her father’s revenge. Much of the findings rest on speculation and conjecture. In my view, the applicant’s well founded fear is intimately tied to the totality of the evidence which the tribunal erred in casting aside.

[49] For these reasons, this judicial review is allowed.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this judicial review application is allowed, the tribunal's decision is quashed and her refugee claim is remitted for reconsideration by a differently constituted tribunal. No question of general importance was proposed.

"François Lemieux"

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Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2381-09
STYLE OF CAUSE:	SUMAYA MUSLEAMEEN v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	November 19, 2009
REASONS FOR JUDGMENT AND JUDGMENT:	Lemieux J.
DATED:	February 26, 2010

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