

Federal Court



Cour fédérale

Date: 20120730

Docket: IMM-8770-11

Citation: 2012 FC 944

Ottawa, Ontario, July 30, 2012

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

AZIZUL HAKIM CHOWDHURY

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of Pre-Removal Risk Assessment (PRRA) Officer Lisa Rae Devries (the Officer), dated March 4, 2010, with an addendum dated May 31, 2011, in which the Officer refused the Applicant's PRRA.

I. Facts

[2] The Applicant, Azizul Hakim Chowdhury, is a citizen of Bangladesh born on December 16, 1956. He is deaf and mute. His wife and three children all remain in Bangladesh along with his seven siblings. The Applicant arrived in Canada on August 23, 2003 and claimed refugee protection, alleging persecution by the police and several rival political parties who had forced him to draw political cartoons insulting each other; his refugee claim was refused on January 20, 2005 after the Board found insufficient credible and reliable evidence that he was at risk in Bangladesh and explicitly rejected the allegation that the Applicant is being sought by either state authorities or political party officials. In November 2006, he made a humanitarian & compassionate (H&C) application and, in February 2007, applied for a PRRA.

[3] The H&C and the PRRA were refused on March 3 and 4, 2010 respectively. However, they were inadvertently not disclosed to the Applicant, who made additional submissions in both the H&C and the PRRA in October 2010. Those additional submissions were considered in addenda dated May 24 and 31, 2011 and then both final decisions were disclosed to the Applicant.

II. Decision under Review

[4] The Officer began by summarizing the allegations and reasons for the refugee decision, and found that there was insufficient evidence to refute the findings in the negative refugee decision.

[5] The Officer noted that the Applicant had provided new evidence in the form of an undated and unattributed political cartoon, a complaint his daughter made to the police dated March 1, 2006, a letter from his daughter, a complaint made to the police against the Applicant dated March 19, 2006, a newspaper clipping describing threats against the Applicant's family, and country condition evidence. The Officer gave the cartoon little weight as there was no evidence it had been published, and the Applicant had not explained how it was obtained or whether it was attributed to him.

[6] The Officer rejected the evidence provided by the Applicant's daughter on the basis that she has an interest in his claim succeeding, and noted that his daughter's police complaint was inconsistent with the newspaper clipping. The Officer further noted that the newspaper clipping did not purport to contain news reporting and appeared rather to be a letter to the editor. Based on this and on objective evidence about the ease of bribing journalists in Bangladesh, the Officer gave the newspaper clipping little weight.

[7] The Officer also gave little weight to the police complaint about the Applicant, as it was dated almost three years after the Applicant left and gave no explanation for why he was still being sought despite having ceased drawing political cartoons. The Officer also noted that, despite naming three other individuals, the complaint focused unaccountably on the Applicant.

[8] Finally, the Officer considered the evidence about country conditions in Bangladesh, noting that corruption and human rights violations remain a problem, although there is some evidence that conditions are improving. The Officer also noted evidence about the difficulties faced by the

disabled, but found that this discrimination did not amount to persecution, particularly given the Applicant's achievements before he fled Bangladesh and the support provided by his family.

III. Issue

[9] The only issue in this application is whether the Officer unreasonably rejected the Applicant's evidence.

IV. Standard of Review

[10] This issue relates to the Officer's consideration of the evidence and findings of fact and therefore requires deference (see *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] SCJ No 12 at para 46).

V. Analysis

[11] The Applicant submits that the Officer unreasonably discounted significant new evidence that demonstrates an ongoing risk to him in Bangladesh merely because it originated from his family. This evidence consisted of a letter from his daughter dated April 28, 2006, a complaint his daughter made to the police dated March 1, 2006, and a newspaper clipping dated April 5, 2006 that described ongoing threats made to his family by people looking for the Applicant (found at pages 60 and 61 of the Applicant's Record). The Applicant relies on *Ugalde v Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FC 458, [2011] FCJ No 647 in support of this

argument. He also argues that the newspaper clipping was not necessarily written by his family members and that the Officer therefore acted unreasonably in rejecting it.

[12] He also notes that he provided a copy of a complaint made by a political official about the Applicant and others and submits that the Officer unreasonably discounted this evidence. The Applicant states that the timing of the complaint was explained by reference in the complaint to ongoing terrorist activities and an impending national election.

[13] The Respondent submits that the Officer's consideration of the evidence was reasonable and that the Applicant is simply asking this Court to re-weigh that evidence, which is outside its purview. The Respondent cites *Kim v Canada (Minister of Citizenship and Immigration)*, 2005 FC 437, [2005] FCJ No 540 in support of this argument. The Respondent also notes that Officers are entitled to give evidence little weight if it is vague or lacking in particulars, citing *Ferguson v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1067, [2008] FCJ No 1308 and other cases.

[14] In his reply, the Applicant disputes the Respondent's argument that the Officer gave multiple reasons for rejecting the evidence from the Applicant's daughter and states that the evidence was rejected solely because they came from a family member.

[15] In its further memorandum, the Respondent reiterates its argument that the Officer had other reasons for rejecting the evidence, although it does not list any other reasons in its submissions.

[16] In fact, the Officer did have other reasons for rejecting the evidence from the Applicant's family: the evidence was not consistent as to when the men came to the family home. The Applicant's daughter's police complaint states that men came to the home looking for her father on February 26, whereas the newspaper clipping states that this happened on February 4. The Officer noted this inconsistency at page 5 of the decision, and provided additional reasons for discounting the newspaper clipping (namely, that it looks more like a letter to the editor than a typical news report). Indeed, when the clipping is examined, it does appear to be signed by the Applicant's family at the bottom of the page. Although the Officer noted the inconsistency in the summary of the evidence rather than in the section titled "findings of fact," the inconsistency is nonetheless noted in the decision and the Officer was entitled to give little weight to internally conflicting evidence. Further, the Officer's consideration of this evidence must be examined in light of the Board's explicit rejection of the allegation that political party officials were looking for the Applicant; the Applicant simply did not provide sufficient evidence to refute the Board's earlier determination.

[17] Regarding the complaint to the police about the Applicant and others, the Officer was entitled to reject the evidence given the lack of explanation in the Applicant's submissions as to why he was now being sought again almost three years after fleeing the country and the vague and unspecific nature of the allegations in the complaint (e.g., "Recently we came to know from various sources that..."). Further, the complaint is only mentioned once in passing in the Applicant's submissions.

[18] The Applicant has not shown that the Officer's consideration of his evidence was unreasonable. Rather, he is disputing the Officer's weighing of the evidence and arguing that it ought to have been given more emphasis. This is not sufficient to show that the decision is unreasonable or to justify the Court's intervention.

[19] It is clear that the Officer considered the documents and ultimately decided to assign little weight to them. In this exercise the Officer is to be accorded a high level of deference (see *Sayed v Canada (Minister of Citizenship and Immigration)*, 2010 FC 796, [2010] FCJ No 978 at para 21 and *Kang v Canada (Minister of Citizenship and Immigration)*, 2011 FC 293, [2011] FCJ No 378 at para 40).

VI. Conclusion

[20] For these reasons, the application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

“ D. G. Near ”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8770-11

STYLE OF CAUSE: AZIZUL HAKIM CHOWDHURY v MCI

PLACE OF HEARING: TORONTO

DATE OF HEARING: JUNE 26, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** NEAR J.

DATED: JULY 30, 2012

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