

Federal Court



Cour fédérale

**Date: 20191127**

**Docket: IMM-2391-19**

**Citation: 2019 FC 1518**

**Ottawa, Ontario, November 27, 2019**

**PRESENT: Madam Justice Walker**

**BETWEEN:**

**SHAMIMA AKTER BHUIYAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Ms. Bhuiyan is a citizen of Bangladesh. She came to Canada in July 2017 and claimed refugee status. Ms. Bhuiyan alleged persecution by members of the ruling Bangladesh Awami League resulting from her husband's support of the Bangladesh Nationalist Party. The Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada rejected her refugee claim in a decision dated March 26, 2019, concluding that she was neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97, respectively, of the

*Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA). Ms. Bhuiyan seeks judicial review of the RPD's decision (Decision).

[2] The RPD concluded that (1) Ms. Bhuiyan was not credible and that she had not been subject to persecution in Bangladesh on the basis of imputed political opinion; and (2) there is an internal flight alternative (IFA) available to her in the city of Chittagong, Bangladesh.

[3] The determinative issue in this application is the RPD's IFA conclusion. If it was reasonable for the panel to expect Ms. Bhuiyan to seek safety in Chittagong before travelling to Canada to seek safe haven, her refugee claim must fail. For the reasons that follow, I find that the RPD's IFA conclusion was consistent with the jurisprudence of the Federal Court of Appeal (FCA) and this Court and was reasonable. Accordingly, Ms. Bhuiyan's application for judicial review will be dismissed.

#### I. Background

[4] Ms. Bhuiyan's fear of returning to Bangladesh derives generally from the alleged persecution of her husband, Mr. Rahman, by political opponents in the Awami League (AL) and, more specifically, from an attack on her personally which she believes was perpetrated by AL operatives. Mr. Rahman is a successful businessman in Dhaka, Bangladesh where he continues to run the family business. Ms. Bhuiyan and Mr. Rahman have two adult children who now live in Canada.

[5] Ms. Bhuiyan alleges that the family has been targeted by the AL due to Mr. Rahman's support of the Bangladesh Nationalist Party (BNP) and his relationship with BNP leaders. She traces the harassment from 2008, through an incident in May 2012 which was reported to the

police, and then to threats in the summer of 2016 which resulted in Mr. Rahman paying protection bribes to protect the couple's son, Siam.

[6] Despite Mr. Rahman's payment of bribes, Siam was kidnapped in August 2016 and was released following payment of a ransom. Following the kidnapping, Mr. Rahman and Siam travelled to the United States and from there, to Canada where Siam made a successful refugee claim. Mr. Rahman then returned to Bangladesh.

[7] On December 6, 2017, Ms. Bhuiyan's daughter was sexually assaulted by three men, the same men who had previously harassed and frightened her in October 2017. Ms. Bhuiyan described the attackers as pro-AL men. She reported both the harassment and her daughter's assault to the police. Ms. Bhuiyan and her daughter came to Canada in January 2017 and her daughter successfully claimed refugee status.

[8] Mr. Rahman travelled to Canada on June 23, 2017 on a visitor's visa to provide financial and personal support to his family.

[9] Ms. Bhuiyan returned to Bangladesh on July 11, 2017. In her Basis of Claim form, Ms. Bhuiyan stated that she returned to Bangladesh "to take care of the business in [Mr. Rahman's] absence and collect some money that some [of] our customers and tenants owe us and my husband will later return to Bangladesh".

[10] On July 12, 2017, Ms. Bhuiyan's office manager in Dhaka informed her that "AL goons" had returned to the office to extort more money. Ms. Bhuiyan instructed the manager to tell the individuals to deal with her husband, who would be returning to take care of the business.

[11] On July 15, 2017, Ms. Bhuiyan travelled to Jhikatala to collect rents. While returning to Dhaka, her rickshaw was attacked and she was beaten and threatened. Ms. Bhuiyan did not recognize the perpetrators but believed they were the same pro-AL people who had previously threatened her family and attacked her children. She received medical attention after the attack and filed a police report. It was this incident that precipitated Ms. Bhuiyan's final departure from Bangladesh to the United States on July 20, 2017 and her decision to claim refugee status in Canada upon her arrival the next day.

[12] Mr. Rahman returned to Bangladesh following Ms. Bhuiyan's arrival in Canada and continues to reside in Dhaka.

## II. Decision under Review

[13] The Decision is dated March 26, 2019. The RPD concluded that Ms. Bhuiyan had not established a well-founded fear of persecution on the basis of imputed political opinion or a prospective risk to her life or to cruel and unusual treatment.

[14] The RPD rejected Ms. Bhuiyan's refugee claim for two reasons. First, the panel found that she was not being targeted in Bangladesh for political reasons and that the threats and violence suffered by her family derived from the fact that her husband is a successful businessman who is seen as having money to contribute to the AL ruling party. Second, the RPD concluded that an IFA was available to Ms. Bhuiyan in Chittagong.

[15] The RPD made a number of adverse credibility findings in reaching its conclusion that Ms. Bhuiyan was not the subject of political persecution in Bangladesh. In brief, the RPD acknowledged that Ms. Bhuiyan left Bangladesh after she was assaulted by several unknown

men in July 2017 but did not accept Ms. Bhuiyan's submission that her attackers were the same AL "goons" responsible for the family's prior problems.

[16] With respect to the existence of an IFA in Chittagong, the RPD reviewed the applicable two-pronged test (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) (*Rasaratnam*)). The panel concluded that (1) there was no serious possibility of persecution in Chittagong because there was little evidence that the alleged AL agents of persecution would be able to either find or persecute Ms. Bhuiyan there; and (2) it was reasonable for her to relocate to Chittagong as she could continue to conduct business and support herself in that location. Her stated reason for resisting a move (inadequate internet connectivity) was not sufficient to make Chittagong an unreasonable alternative.

### III. Issues and standard of review

[17] The determinative issue before me is whether the RPD's IFA assessment was reasonable (*Singh v Canada (Citizenship and Immigration)*, 2017 FC 719 at paras 8-10; *Figueroa v Canada (Citizenship and Immigration)*, 2016 FC 521 at para 13).

[18] Ms. Bhuiyan also contests the RPD's analysis of the basis of her refugee claim in Canada and her credibility. While the availability of an IFA in Chittagong is dispositive of her refugee claim, I will briefly review certain of Ms. Bhuiyan's submissions in this regard for reasonableness (*Behary v Canada (Minister of Citizenship and Immigration)*, 2015 FC 794 at para 7; *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319 at paras 22 and 42; *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 at para 4, 160 NR 315 (FCA)).

IV. Analysis

1. *Was the RPD's IFA assessment reasonable?*

[19] The concept of an IFA is integral to the definition of a Convention refugee. If a claimant can seek refuge within their own country, without fear of persecution, they must do so unless a relocation to that refuge would be objectively unreasonable. The two-pronged test for determining if there is a viable IFA was set out by the FCA in *Rasaratnam*:

1. The RPD must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the proposed IFA;
2. Conditions in the part of the country proposed as an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to the claimant, for the claimant to seek refuge there.

[20] The test has been cited many times in the jurisprudence of this Court (see, e.g., *Haastrup v Canada (Citizenship and Immigration)*, 2018 FC 711 at para 25; *Jean Baptiste v Canada (Citizenship and Immigration)*, 2019 FC 1106 at para 20).

[21] The parties acknowledge that the RPD correctly identified the two-part test for an IFA in the Decision.

[22] Ms. Bhuiyan concedes that there is no serious possibility that she would be persecuted in Chittagong but argues that it would be unreasonable to expect her to seek refuge there when her husband and business are in Dhaka and her children are in Canada.

[23] I find that the panel reasonably assessed Ms. Bhuiyan's submissions regarding a relocation to Chittagong against each part of the *Rasaratnam* test and made no reviewable error in concluding that an IFA is available to her in Chittagong.

[24] In considering the first part of the test, the RPD noted that Chittagong is a city of over 4.5 million inhabitants located more than 200 km from Dhaka and concluded that Ms. Bhuiyan's persecutors would not know where to look for her. The panel also found that there was little evidence before it with respect to the reach of the AL network or the party's ability to coordinate its non-political activities in different regions of Bangladesh. In the absence of evidence to the contrary from Ms. Bhuiyan, I find that the RPD made no reviewable error in assessing the possibility of persecution in Chittagong.

[25] In *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA), the FCA confirmed that the onus rests on the claimant to demonstrate that a proposed IFA is unreasonable. The FCA also considered the second part of the *Rasaratnam* test in *Canada (Minister of Citizenship and Immigration) v Ranganathan*, [2001] 2 FC 164 (CA) at paragraphs 13-15, emphasizing that a claimant faces a "very high threshold" in establishing unreasonableness. The claimant must provide concrete evidence of conditions which would jeopardize their life and safety in the proposed IFA location.

[26] Ms. Bhuiyan submits that the RPD considered only a part of her answer regarding the reasonableness of a proposed IFA in Chittagong. She states:

37. The Tribunal has presented only a selected portion of the Applicant's answer about the proposed IFA in Chittagong. She did not tell the Board Member that she would not be able to live in Chittagong because of poor internet connection. She testified that I was involved in Information Technology business based in Dhaka that needed good internet connection. Her business was with Europe. She was unable to move to any village where internet connection was poor. She said it was not possible for [her] to shift her business infrastructure including all her engineers to Chittagong even if the internet connectivity was good there. She also said that she would not be able to live in Chittagong because her children were in Canada.

[27] Ms. Bhuiyan's argument is based on the fact that the RPD summarized her concerns in the Decision. However, my review of her responses to the panel's questions indicates that its summary was accurate. Her primary concern was the re-establishment of her business in Chittagong. Her testimony before the RPD was as follows:

Q.: But why could you not live and have a career in another part of Bangladesh and be away from people that are blackmailing and extorting your husband?

A: My business is business involved or it's about IT, Information Technology, and the business is (inaudible). In Bangladesh in villages, in the villages of Bangladesh the internet connection or the line is not very... it's not very good. So without this kind of internet connection, I cannot conduct my business. I cannot run my business without this kind of support.

Q: So, are you saying that there is no decent internet in Chittagong that has several million people?

A: Yes Chittagong, yes there is but I have everything, all my office like the infrastructure that office is set up, office, everything is in (inaudible), and all my engineers they live in Dhaka so it is not possible to just ask them to move or move all the engineers, bring them to Chittagong.

[28] Ms. Bhuiyan focussed on an anticipated disruption in her business affairs but provided little evidence of such a disruption. The business Ms. Bhuiyan refers to is the family business. From the evidence in the record, she appears to be involved in the business sporadically but is largely dependent on Mr. Rahman and his conduct of the business for support. She provided no details of her role in the business to the RPD and does not explain why she cannot continue to provide any required assistance to the business from Chittagong. There is no suggestion in the record that the business will have to move if Ms. Bhuiyan lives in Chittagong. I find that the RPD reasonably concluded that Ms. Bhuiyan would be able to continue her role in the business from Chittagong and have the means to support herself.



[29] Ms. Bhuiyan argues that the RPD erred in referring to possible support from Mr. Rahman as a secondary reason she would be able to re-establish herself in Chittagong. She states that he may not continue to support her. I do not find this argument persuasive. There is no evidence in the record that Mr. Rahman would discontinue his support of Ms. Bhuiyan should she be in Chittagong rather than Canada.

2. *Were the RPD's credibility and evidentiary findings reasonable?*

[30] The RPD made the following material findings in concluding that Ms. Bhuiyan was neither a Convention refugee nor a person in need of protection:

- Ms. Bhuiyan's refugee claim was based on the fact that Mr. Rahman is an affluent businessman in Dhaka whose association with the BNP had resulted in threats and extortion demands from AL supporters and in violence against the couple's children. A number of the incidents that formed the basis of Ms. Bhuiyan's fear of continued violence in Bangladesh involved her husband and children, and not Ms. Bhuiyan directly. The RPD drew a negative inference from the facts that (1) she provided neither the positive refugee decisions in each of the children's claims, nor any statements or affidavits from her husband or children to corroborate her allegations of political persecution; and (2) she did not call her children as witnesses.
- Ms. Bhuiyan explained that her fear of returning to Bangladesh was based on the fact that she would demand justice for what had happened to her children. Therefore, she would be a target for the AL perpetrators of that violence. The RPD found that Ms. Bhuiyan's explanation was not credible as she had returned to Bangladesh in 2017 to collect rents from tenants and not to seek justice.
- The RPD accepted that Ms. Bhuiyan was assaulted by unknown men in 2017. As she could not recognize the perpetrators of the attack, the RPD believed that the attack may have been random in nature and was not politically motivated.
- The RPD drew a negative inference from Ms. Bhuiyan's statement that she was a witness to the incidents of violence against her son and daughter in Bangladesh. The panel found that she was not an actual witness to either of those events. In so describing herself, Ms. Bhuiyan was seeking to embellish her involvement in the violence to support her argument that she was feared by the authorities.

- Mr. Rahman had travelled to and from Bangladesh on two occasions in order to operate his business. He now lives in Dhaka and conducts the business, albeit with the protection of bodyguards. Even though Mr. Rahman was not the claimant before the panel, his story was central to her claim and the fact that he did not fear for his life undermined Ms. Bhuiyan's refugee claim.

[31] The RPD's analysis of Ms. Bhuiyan's refugee claim centred on two conclusions, both of which were expressed intelligibly in the Decision and were supported by the evidence in the record. First, the RPD concluded that there was no evidence before it that the July 15, 2017 attack on Ms. Bhuiyan was politically motivated. I find that the panel made no reviewable error in this regard. Ms. Bhuiyan acknowledges in her submissions that she could not identify the perpetrators of the attack and provided no other evidence to the panel regarding the identities of her attackers.

[32] Second, the RPD concluded that Ms. Bhuiyan had not established that the Bangladesh authorities would try to silence her should she return because they fear she will seek justice for her children. Ms. Bhuiyan made no attempt during her 2017 return to Dhaka to pursue the complaints she and her husband had filed with the police regarding the attacks on her son and daughter. Rather, she returned to Bangladesh to run the business in Mr. Rahman's absence. I find that the RPD reasonably relied on Ms. Bhuiyan's past behaviour to assess the credibility of her assertion regarding her future actions.

[33] I turn now to Ms. Bhuiyan's material submissions regarding other parts of the RPD's credibility analysis. Ms. Bhuiyan submits that the panel erred in drawing a negative inference from the fact she submitted no evidence from Mr. Rahman or her children regarding their experiences in Bangladesh. She argues that, if the RPD required such evidence, it was the panel's obligation to ask for it.

[34] I agree with Ms. Bhuiyan that neither Mr. Rahman nor the children could have provided evidence regarding the identities of her July 2017 attackers. They did not witness the incident. However, the positive refugee determinations for either or both of her children and one or more affidavits from a family member would have assisted the RPD in assessing Ms. Bhuiyan's allegation of long-standing political persecution of her family. Her argument that the RPD should have requested such evidence is misguided as she bore the onus of establishing her claim.

[35] Ms. Bhuiyan argues that the RPD unfairly relied on her use of the word "witness" during her testimony to conclude that she was attempting to embellish her evidence. I agree. A fair reading of her testimony before the panel reveals that she gave a credible explanation of her use of the word to describe her involvement in the complaints to the police regarding her daughter's harassment and attack.

[36] Finally, Ms. Bhuiyan submits that the RPD should have considered her claim against the requirements of section 97 of the IRPA more comprehensively. However, I find that the brevity of the panel's section 97 analysis was not unreasonable in light of the evidence before it. The RPD found that Ms. Bhuiyan had not been specifically targeted for extortion. She alleged she was attacked in July 2017 because Mr. Rahman was not in Bangladesh to provide extortion money. The panel noted that he has since returned to Bangladesh and continues to conduct business. The RPD concluded that, prospectively, Ms. Bhuiyan would not be in danger.

[37] In summary, the RPD's credibility analysis is not without issue but, when read in its entirety, was reasonable. Ms. Bhuiyan's submissions regarding specific elements of the analysis are not sufficient to persuade me that it was unintelligible or lacked justification. The RPD's conclusion that she was not a Convention refugee and had not established a risk to her life or a

risk of cruel and unusual treatment or punishment resulted from a lack of evidence of any political involvement in the July 2017 attack and Ms. Bhuiyan's inability to establish a personalized and prospective section 97 risk.

V. Conclusion

[38] The application is dismissed.

[39] No question for certification was proposed by the parties and none arises in this case.

**JUDGMENT IN IMM-2391-19**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

"Elizabeth Walker"

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Judge

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

**DOCKET:** IMM-2391-19

**STYLE OF CAUSE:** SHAMIMA AKTER BHUIYAN v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** OTTAWA, ONTARIO

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