

Federal Court



Cour fédérale

Date: 20191203

Docket: IMM-2300-19

Citation: 2019 FC 1551

Ottawa, Ontario, December 3, 2019

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

**NILUFAR SULTANA,
MOHAMMED KAIYUM,
KARIMA KAIYUM AND
JUBAIR KAIYUM**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The present Application is a judicial review of a Pre-Removal Risk Assessment (PRRA) dated February 27, 2019 (the Decision), in which a Senior Immigration Officer (the Officer) denied the Applicants' PRRA.

[2] The Applicants are a family of citizens of Bangladesh consisting of a wife (the Principal Applicant), her husband (the Co-Applicant), and their two minor children. The Co-Applicant

claims that he was harassed and attacked in 1993 by an individual named Sultan Shiekh (Shiekh), the vice president of a cricket club, and his followers, after the Co-Applicant made a public complaint against Shiekh's illegal activities.

[3] The Applicants made an asylum claim in the U.S. in 1993, the result of which is unknown. They returned to Bangladesh in January 2006 to visit the Co-Applicant's ill father, went back to the U.S. in March 2006, and then entered Canada in August 2017. The Applicants were denied by the Refugee Protection Division (RPD), and their application for leave for judicial review was dismissed.

I. The Decision

[4] In their PRRA application, the Applicants claimed a new risk based primarily on new evidence of a false case brought against the Co-Applicant in June 2018. A key piece of new evidence (CTR, pp. 67-68) was a document here named "The September 15, 2018 Document" which appears in the Appendix to these reasons, together with an English translation.

[5] The following is a critical passage from the Decision. The emphasized sentences had a strong detrimental impact on the Applicants' claim:

As mentioned previously, I note that the applicants have adduced a copy of the Arrest Warrant with respect to a "false case" made against the male applicant in June 2018. I note a few points with respect to this document as well as others adduced pertaining to the most recent "false case" filed against Mr. KAIYUM. Firstly, as IRB report BGD105614.E states, while the accused and/or his/her legal representative "may obtain a copy of the order [which authorizes] the issuance of a warrant of arrest" a copy of the actual arrest warrant cannot be obtained by the accused or his/her lawyer. From submissions, I note that the applicants' lawyer in Bangladesh, Anis AHMED, states that he was able to obtain police and court documents, including arrest warrants. I find that the applicants have provided no explanation as to how their legal representative

in their home country would have been able to obtain copies of arrest warrants pertaining to the male applicant, when the documentary evidence indicates that only the police would have access to this type of document. Furthermore, the same report states that "arrest warrants exhibit the seal of the court, memo number, date of issuance, and the signatures of the "Present Officers" (POs) of the court (18 Aug. 2016)." I note that the copy of the Arrest Warrant dated September 5, 2018 does not appear to possess an official seal of the court. Thus, I find that the above considerations detract from the reliability of the copy of the Arrest Warrant dated September 5, 2018. I therefore assign this document minimal weight in this application, given the above considerations.

(Decision, CTR at p. 15)

[6] With respect to the Officer's conclusion that the September 5, 2018 Document was an "arrest warrant" instead of the order authorizing the issuance of an arrest warrant, the Officer apparently identified the title of the document as more important than the contents. The title of the document is "Arrest Warrant", whereas the following passage from its contents leads to the conclusion that the document is an order:

You are being ordered to arrest these accused and bring them in front of the court and do no error to it.

(See Exhibit A – The September 5, 2018 Document)

[7] As a result, I find that the Officer's conclusion was made in error of fact.

II. Conclusion

[8] The Officer's error of fact had a significant impact on other features of the Decision.

[9] First, the finding in paragraph 5 above that the "applicants have provided no explanation" introduced an erroneous inference of negative credibility.

[10] Second, the erroneous inference resulted in the allocation of “minimal weight” to the September 5, 2018 Document as an expression of doubt as to the authenticity of the Document.

As stated by Justice Ahmed in *Oranye v. Canada (Minister of Citizenship and Immigration)*, 2018 FC 390 at paragraph 27, this form of decision-making is unacceptable:

Fact finders must have the courage to find facts. They cannot mask authenticity findings by simply deeming evidence to be of "little probative value." As Justice Mactavish so rightly put it in *Sitnikova v. Canada (Citizenship and Immigration)*, 2017 FC 1082 (F.C.) at para. 20, which I will reproduce in its entirety:

This Court has, moreover, previously commented on the practice of decision-makers giving "little weight" to documents without making an explicit finding as to their authenticity: see, for example, *Marshall v. Canada (Citizenship and Immigration)*, 2009 FC 622 at paras. 1-3, [2009] F.C.J. No. 799 and *Warsame v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 1202, at para. 10. If a decision-maker is not convinced of the authenticity of a document, then they should say so and give the document no weight whatsoever. Decision-makers should not cast aspersions on the authenticity of a document, and then endeavour to hedge their bets by giving the document "little weight". As Justice Nadon observed in *Warsame*, "[i]t is all or nothing": at para. 10.

[11] And third, the Officer's errors led to the rejection of the Applicants' evidence effectively on the basis of an unsupported negative credibility finding:

Given all of the above and the evidence before me, I am unable to conclude that there is an active arrest warrant against the male applicant and/or his family members, or that he or his family members have been convicted and sentenced in Bangladesh. I am unable to conclude, from the information before me, that the police in Bangladesh are currently interested in the male applicant. There is little further independent and objective evidence on file that would persuade me to conclude that the applicants would face a

personalized risk of serious harm upon return to their home country.

(CTR at p. 16)

[12] For these reasons, I find the decision under review is unreasonable.

JUDGMENT IN IMM-2300-19

THIS COURT'S JUDGMENT is that the decision is set aside and the matter is referred back for determination by a different decision-maker.

There is no question to certify.

"Douglas R. Campbell"

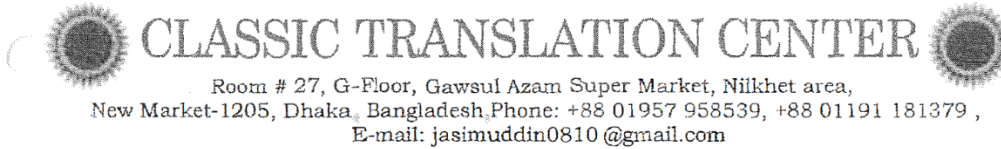
Judge

Exhibit "A"

12/18/2018

Warrent 18 translation.jpg

67



Bangladesh form No-4976
High Court Criminal Form No- 86

Criminal Case No- 176/18

Arrest Warrant

(Code of Criminal Procedure Section no-145 and Remedy act section 7 and 8)

(1) The name and the terms of the person or persons who will be required to make this warrant workable

To,
Officer In Charge
Lalbagh Thana
Dhaka Metropolitan Police
DMP, Dhaka

1. Mohammad Abdul Quader, son of- Mohammed Abdul Jabbar, Address-19/1 Umesh Dutta Road, Bakshi Bazar, Chakbazar, Dhaka
2. Mohammad Abdul Karim, son of- Mohammed Abdul Jabbar, Address-19/1 Umesh Dutta Road, Bakshi Bazar, Chakbazar, Dhaka
3. Mohammad Abdul Kaiyum, son of- Mohammed Abdul Jabbar, Address-19/1 Umesh Dutta Road, Bakshi Bazar, Chakbazar, Dhaka
4. Mohammed Abdul Jabbar son of Monir Uddin, Address-19/1 Umesh Dutta Road, Bakshi Bazar, Chakbazar, Dhaka

(2) Will describe the Offence
Resident of (3) This crimes had complained to the court this is why you are
Signature

You are being ordered to arrest these accused and bring them in front of the court and do no error to it.

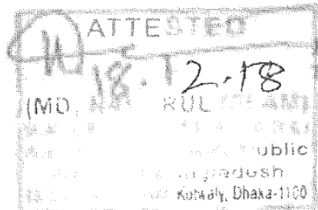
Today's Date-05/09/2018

(S/D Illegible)
Magistrate
Joint District Judge
Third Court, Dhaka

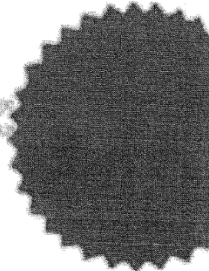
(Read Section 145 of penal code and remedy act 7 and 8)

In this 2018 Year's October Month's 30th (Thirtieth)
Day I order to appear before me and if I won't order to something different
before that, the bail will be granted if he pay 10 lakhs Taka as his bail
to appear in this date before court.

Year
and Date- 05/09/2018



(S/D Illegible)
Magistrate
Joint District Judge
Third Court, Dhaka



বাংলাদেশ ফরম নং- ৪৯৭৬

হাইকোর্ট জির্নাল ফরম নং- ৮৬

দায়রা মামলা নং- ১৭৬/১৮

শ্রোফতারী ওয়ারেন্ট

(ফৌজদারী কার্য বিধি ধারা ১৪৫ ও প্রতিকার আইন ৭ ও ৮ ধারা)

(১) যে ব্যক্তি বা যে সকল ব্যক্তিকে এই ওয়ারেন্ট তামিল করিতে হইবে তাহার বা তাহাদিগের নাম ও পদ

প্রতি,
অফিসার ইন্চার্জ
লালবাপ থানা,
ঢাকা মেট্রোপলিটন পুলিশ
জিএমপি, ঢাকা

১. ফৌজদারী কার্য বিধি ধারা ১৪৫, প্রতিকার আইন ৭ ও ৮ ধারা, উদ্দেশ্য দত্ত রোড, বকশি বাজার, চকবাজার, ঢাকা।
২. ফৌজদারী কার্য বিধি ধারা ১৪৫, প্রতিকার আইন ৭ ও ৮ ধারা, উদ্দেশ্য দত্ত রোড, বকশি বাজার, চকবাজার, ঢাকা।
৩. ফৌজদারী কার্য বিধি ধারা ১৪৫, প্রতিকার আইন ৭ ও ৮ ধারা, উদ্দেশ্য দত্ত রোড, বকশি বাজার, চকবাজার, ঢাকা।
৪. ফৌজদারী কার্য বিধি ধারা ১৪৫, প্রতিকার আইন ৭ ও ৮ ধারা, উদ্দেশ্য দত্ত রোড, বকশি বাজার, চকবাজার, ঢাকা।

(২) অপরাধ বর্ণনা করিবেন


নিবাসী

বাকগে

(৩) অপরাধের নালিশ হইয়াছে অতএব আপনাব

প্রতি এতদ্বারা আদেশ করা যাইতেছে যে আপনি আশামীদের কে ধরিয়৷ আমার নিকট উপস্থিত করিবেন। ইহাতে ত্রুটি না হয়।


তারিখ অদ্য- ০৫/০৯/২০১৮


ম্যাজিস্ট্রেট
মুগু জেলা দায়রা জজ
৩য় আদালত, ঢাকা

(ফৌজদারী কার্য বিধি ধারা ১৪৫ ও প্রতিকার আইন ৭ ও ৮ ধারা দেখুন)

যদি উক্ত ২০১৮ সালের অক্টোবর মাসের ৩০ তারিখে আমায় সম্মুখে উপস্থিত হইবার ও অস্বাভাবিক অন্যরূপ আদেশ না হওয়া পর্যন্ত উপস্থিত থাকিবার জামিন ১০ লক্ষ টাকা দেন তবে তাহাদিগকে ছাড়িয়া দেওয়া যাইতে পারে।

তারিখ অদ্য- ০৫/০৯/২০১৮


ম্যাজিস্ট্রেট
মুগু জেলা দায়রা জজ
৩য় আদালত, ঢাকা

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2300-19

STYLE OF CAUSE: NILUFAR SULTANA, MOHAMMED KAIYUM,
KARIMA KAIYUM AND JUBAIR KAIYUM v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 20, 2019

JUDGMENT AND REASONS: CAMPBELL J.

DATED: DECEMBER 3, 2019

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