

Federal Court



Cour fédérale

Date: 20211015

Docket: IMM-1423-20

Citation: 2021 FC 1077

Fredericton, New Brunswick, October 15, 2021

PRESENT: Madam Justice McDonald

BETWEEN:

**FARZANA HOSSAIN
RAJU AHMED TIPU
RUHAMA AHMED FAIHA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION AND THE MINISTER OF
PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS**

Respondents

JUDGMENT AND REASONS

[1] This is a judicial review from a decision of the Refugee Protection Division (RPD) denying the Applicants' claims for protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] For the reasons that follow this judicial review is granted as the RPD decision is unreasonable for failing to assess the grounds of risk alleged and for failing to properly assess the internal flight alternatives (IFA).

Background

[3] The Applicants are Ms. Hossain, her spouse Mr. Tipu, and their minor daughter Ruhama. Ms. Hossain and Mr. Tipu are both citizens of Bangladesh. Their daughter is a citizen of the United States.

[4] Ms. Hossain, the principal refugee claimant, was born in Botswana and moved to the United States at a young age, where she met and married Mr. Tipu in 2016. Ruhama was born a year later in the United States. Ms. Hossain is a citizen of Bangladesh by parentage, has only visited there once as a child, and does not speak Bengali. Ms. Hossain suffers from cerebral palsy. While in the United States, Ms. Hossain received a work permit, and applied for permanent residence, but stated that she was unsuccessful.

[5] Mr. Tipu was born in Bangladesh and operated a business in Sylhet. In 2011, he became a target for extortion by a local leader of the Awami League (AL). After Mr. Tipu filed a police complaint, the AL came to his business, beat him, and threatened to kill him. Mr. Tipu then moved to Dhaka to live with his uncle. A few months later, the AL again targeted him, beat him and threatened his life, forced him to sign over his business to them. After Mr. Tipu continued to receive threats, he left for Brazil and then Mexico, before entering the United States in 2014.

[6] The Applicants came to Canada in November 2017, due to the “prevailing conditions” in the United States, and made refugee claims.

RPD Decision Under Review

[7] On October 28, 2019, the RPD found that the Applicants were neither Convention refugees nor persons in need of protection.

[8] The RPD noted that Ms. Hossain had lived in the United States for approximately 20 years, yet had not claimed refugee protection there. The RPD wrote: “if [Ms. Hossain] was truly afraid of returning to Bangladesh, she would have applied, as an adult, for refugee protection in the United States” (at para 7). The RPD further held that since Ms. Hossain could not remember when she applied for permanent residency in the United States, she lacked a subjective fear of living in Bangladesh.

[9] The RPD further considered Ms. Hossain’s concerns that she would be targeted by the AL in Bangladesh due to the problems faced by her husband, as well as the fact that she is a Westerner who does not speak the language. The RPD rejected these explanations, noting at paragraph 8:

[...] the principal claimant has never lived in Bangladesh, she has a different name than her husband and the fact that she does not speak Bengali well has nothing to do with her living in that country. I find, on a balance of probabilities, that the principal claimant was very vague as to why she could not live in Bangladesh.

[10] With respect to Mr. Tipu, the RPD held that his failure to make a claim for refugee protection in either Brazil or Mexico was also illustrative of a lack of subjective fear of living in Bangladesh. Mr. Tipu claimed that an automatic refugee claim was triggered upon his entry in the United States, however, he never received a decision about the claim. The RPD rejected this explanation due to a lack of documentation.

[11] Finally, the RPD assessed whether there was an IFA. Mr. Tipu stated that the police in Bangladesh work with the AL. Mr. Tipu further stated that he would need police clearance to rent a house, and that this would lead to the AL finding him. Mr. Tipu also highlighted that when he had previously moved to Dhaka, the AL were able to locate him after four or five months. The RPD held that he did not face any risk of harm in Chittagong, Bangladesh. The RPD reasoned:

Country documentation indicates that Bangladesh police are very understaffed and are nearly three times lower than the UN's recommended ratio of police officers per person. In a city of 4.5 million people in Chittagong and understaffed police, I find that it is neither credible nor plausible that a police officer would know if someone was new to an area and ask for his documents (at para 16).

[12] The RPD further rejected the threat from the AL, given that Mr. Tipu had already signed over his business, and it had been eight years since Mr. Tipu had left the country.

[13] In assessing the IFA with respect to Ms. Hossain, the RPD stated, "Since the female claimant also indicated she was fearful of living in Bangladesh due to her husband's problems and since finding that there is an internal flight alternative, her claim on this ground must also fail, as I find that she would also have an internal flight alternative in Chittagong" (at para 19).

Issues

[14] The issues raised by the Applicants are as follows:

1. Did the RPD reasonably assess the evidence of risk?
2. Did the RPD properly apply the IFA test?

Standard of Review

[15] The parties are in agreement that the standard of review for the issues raised is reasonableness. As stated in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 99, “A reviewing court must develop an understanding of the decision maker’s reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness - justification, transparency and intelligibility - and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” [Citations omitted.]

Analysis

1. *Did the RPD Reasonably Assess the Evidence of Risk?*

[16] The Applicants argue that four grounds of risk were outlined in the basis of claim forms for consideration by the RPD, namely:

- The threats from the AL;
- Ms. Hossain’s father’s political issues and outstanding arrest warrant;

- The risk of gender-based violence against Ms. Hossain in Bangladesh; and,
- The risk to Ms. Hossain returning to Bangladesh as a westernized individual.

[17] The Applicants argue that the RPD failed to assess any of the risks other than the threat from the AL and failed to properly assess the AL risk.

[18] The Applicants argue that the failure of the RPD to consider all grounds of risks is unreasonable even if the RPD found the Applicants not to be credible. The Applicants rely upon the decision in *Jama v Canada (Citizenship and Immigration)*, 2014 FC 668 [*Jama*]. In *Jama*, this Court held that “It is also incumbent on PRRA officers to consider risk grounds that are apparent on the record, even if these are not specifically raised by the applicant [...] Such a duty does not evaporate even if an applicant is found not to be credible” (at paras 19, 20).

[19] In that regard, the RPD did have before it information from the UK Home Office which speaks specifically to the violence faced by women in Bangladesh. The RPD makes no reference to this information in the course of considering the risks to Ms. Hossain. In my view, this was an unreasonable approach by the RPD.

[20] In fact, the RPD focuses solely on the risk posed by the AL. In the RPD decision under the heading “credibility”, the RPD concludes that Ms. Hossain would not be at risk from the AL:

In summary, I find on a balance of probabilities, that the principal claimant would be able to go to Bangladesh and live there without fear of persecution due to the fact that she has never lived there, has a different name than her husband and her lack of subjective fear as previously stated (at para 9).

[21] The RPD reached this conclusion without considering the risk faced by Ms. Hossain in returning to Bangladesh with her husband and her child. Furthermore, the RPD failed to factor into the analysis the reality that the AL is the ruling party in Bangladesh.

[22] Overall, the RPD failed to address Ms. Hossain's evidence in relation to the risk both from the AL and the other grounds of risk asserted.

[23] The Applicants also argue that the RPD made impermissible plausibility findings with respect to the failure of both Ms. Hossain and Mr. Tipu to make claims in other countries. They rely on the decision in *Islam v Canada (Citizenship and Immigration)*, 2015 FC 1246 [*Islam*] where Justice Shore reviewed the relevant jurisprudence and stated at para 22:

The failure to make a refugee claim at the first opportunity may be a pertinent factor in assessing the credibility of an Applicant but it cannot be the sole basis upon which to draw an adverse credibility finding.

[24] Particularly relevant to this case is para 23 of *Islam* which states:

In the present case, this is exactly what the RPD did. Not only did the RPD impose on the Applicants a duty to seek refuge in the United States, it relied almost exclusively on the failure by the Applicants to claim refugee status in the United States to find that they lacked a subjective fear of persecution; and, therefore that their credibility was undermined with regard to allegations of threats and attacks in Bangladesh. Furthermore, the RPD failed to consider the explanations provided by the Applicants as to why they did not seek asylum in the United States. As a result, it was unreasonable for the RPD to conclude as it did.

[25] The RPD here failed to reasonably consider the explanations provided by both Applicants as to their failure to claim refugee status in other countries. The RPD summarily dismissed the

explanations as lacking credibility without considering whether or not the explanations were plausible. This renders the finding on this issue unreasonable.

2. *Did the RPD Properly Apply the IFA Test?*

[26] The Applicants argue that the RPD erred in the application of the IFA test as it failed to properly consider that the agent of persecution is the ruling national party of Bangladesh.

[27] In considering if there is a viable IFA, the RPD must find that (i) there is no serious possibility of persecution in the IFA area, and (ii) the conditions in the proposed IFA are such that it would not be unreasonable in all the circumstances for the claimants to seek refuge there (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589).

[28] The conclusion of the RPD that there was “no” evidence that the AL was still seeking out Mr. Tipu, fails to acknowledge the evidence from Mr. Tipu’s roommate and his mother, both of whom gave evidence that the AL was still seeking him out. There was no finding that this evidence was unreliable - it is simply not referenced by the RPD whatsoever.

[29] Further, the RPD fails to reconcile the fact that the agent of persecution is the state government. The RPD notes that the state government is largely ineffective. However, the RPD appears to equate police ineffectiveness with a lack of motivation to target the Applicants. That is not a logical conclusion and it is a conclusion that is not supported by the evidence in the UK Home Office report detailing police corruption in Bangladesh.

[30] Finally, the RPD also failed to consider the IFA in relation to any of the other grounds of risk raised by Ms. Hossain. This renders the IFA analysis incomplete and therefore unreasonable.

[31] The application for judicial review is granted.

JUDGMENT IN IMM-1423-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted. The decision of the RPD is set aside and the matter is remitted for redetermination; and
2. No question of general importance is proposed by the parties and none arises.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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