

Federal Court



Cour fédérale

Date: 20220311

Docket: IMM-6125-20

Citation: 2022 FC 335

Ottawa, Ontario, March 11, 2022

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

SHAHIN MIAH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Miah brings this application for review of a pre-removal risk assessment [PRRA] made by an immigration officer [officer] determining him not to be at risk of torture, risk to life or risk of cruel and unusual punishment if removed to his home country of Bangladesh. I am allowing his application because the officer unreasonably ascribed little probative value to a critical piece of evidence that tends to show that the Bangladesh police laid false charges against Mr. Miah.

I. Background

[2] Mr. Miah was a member of the Bangladesh National Party [BNP]. He alleges a fear of a rival political party, the Awami League, as retribution for his political involvement in the BNP and his refusal to join the Awami League. In 2009, Mr. Miah was abducted and attacked, resulting in a month-long hospitalization. Mr. Miah nevertheless continued his work with the BNP until 2011, when the Awami League began targeting his parents. At that point, he went into hiding until 2014 when he left Bangladesh. There were other incidents involving attacks against his family, both before and after his departure from Bangladesh. His father died of a heart attack in the immediate aftermath of one such attack.

[3] In 2018, when Mr. Miah was no longer in Bangladesh, the police there laid criminal charges against him under Bangladesh's *Special Powers Act*. Under these charges, the Bangladeshi police could detain Mr. Miah upon his return to Bangladesh. Mr. Miah alleges that the Awami League and the police in Bangladesh are intertwined and that the charges are further evidence of the risk he would face if returned to Bangladesh, given the possibility of torture at the hands of the police.

[4] Mr. Miah came to Canada and applied for refugee protection, but his claim was never heard by the Immigration and Refugee Board [IRB], as he was deemed inadmissible under section 34(1) of the *Immigration and Refugee Protection Act* [the Act] because of his membership in the BNP: *Miah v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 38. He then applied for a PRRA.

[5] The officer found that Mr. Miah's evidence failed to establish that he was targeted by the Awami League. The officer concluded that Mr. Miah's account of the 2009 attack against him was vague and did not include details that could definitely link his attackers to the Awami League. The officer similarly found a letter submitted by Mr. Miah's to be lacking in details that could establish a definitive link to the Awami League. Most importantly, the officer also determined the charge sheets evidencing the charges against Mr. Miah had a low probative value, because they indicated Mr. Miah's age as 35 instead of 33. Finally, the officer gave little to no weight to other letters submitted by Mr. Miah in support of his application.

II. Analysis

[6] Although Mr. Miah raises various issues, the determinative one in this case is the officer's error in assigning a low probative value to the charge sheets because of the inconsistency in his age. The officer did not explicitly doubt the authenticity of the charge sheets. For the reasons set out below, I find that the officer's assessment of the probative value of the charge sheets is irrational.

[7] In reaching this conclusion, I am mindful of the Supreme Court of Canada's direction that "absent exceptional circumstances, a reviewing court will not interfere with [the decision maker's] factual findings": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 125 [*Vavilov*]. Factual findings must nevertheless be reasonable; they cannot be "based on an irrational chain of analysis": *Vavilov*, at paragraph 103.

[8] A decision maker must assess the probative value of a document in relation to the fact being alleged. As I explained in *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14, at paragraph 21:

The second step in the fact-finding process is the assessment of probative value. As the Ontario Court of Appeal stated, “[p]robative value has to do with the capacity of the evidence to establish the fact of which it is offered in proof” (*R v T(M)*, 2012 ONCA 511 at para 43). In other words, probative value is an answer to the question, “to what degree is this information useful in answering the question I have to address?” In many cases, we do not have direct evidence of the ultimate facts that trigger the application of a legal rule. Instead, we need to rely on inferences from known facts. Probative value is the measure of the strength of those inferences.

[9] In this case, the officer assessed the probative value of the charge sheets on the basis of a clerical error that had no bearing on the underlying fact being proved, namely that Mr. Miah was falsely charged in absentia by the police in Bangladesh for alleged crimes he could not have committed.

[10] The officer gave only the following reasons:

I also note that the applicant is identified on his charge sheet at a different age. As of 2018-11-08, the date that counsel claims the document printed, the applicant would have been 33 years old. The applicant is listed as 35 years old on both the charge sheet and the first information report provided.

With the abovementioned issues, I find that these inconsistencies significantly reduce the reliability of the document, and therefore their [sic] probative value.

[11] In *Mohamud v Canada (Citizenship and Immigration)*, 2018 FC 170 [*Mohamud*], I explained that it is unreasonable to impugn the authenticity of a piece of evidence purely on the

basis of a clerical error. Likewise, a clerical mistake should not affect a document's probative value, as long as the mistake does not pertain to the precise fact to be proved.

[12] The officer did not question the authenticity of the charge sheets, which bear a court seal and are accompanied by an affidavit from Mr. Miah's counsel in Bangladesh who procured the documents from the court. At the hearing, counsel for the Minister acknowledged their authenticity. It is highly unlikely that the charge sheets refer to a different Mr. Miah, as his address and father's name are the same as those found in other documents in the record.

[13] This leaves the officer's finding of reduced probative value entirely unexplained. There is simply no rational connection between the mistake in Mr. Miah's age and the fact of being falsely charged in absentia. In other words, the mistake does not make it less probable that Mr. Miah is being persecuted by the Bangladeshi police. Mr. Miah's precise age is irrelevant to this inquiry.

[14] To the extent that the reference to "reliability" means that the officer doubted the authenticity of the charge sheets, this would also be unreasonable. At the hearing of this application, counsel for the Minister recognized that there were no valid grounds for doubting the authenticity of the charge sheets. As I explained in *Mohamud*, a clerical mistake alone is not grounds for doubting authenticity. Vague statements conflating reliability, authenticity, probative value and weight are no substitute for a careful articulation of the reasons for rejecting evidence that would otherwise go a long way towards supporting the claim: *Sitnikova v Canada (Citizenship and Immigration)*, 2017 FC 1082 at paragraph 20; *Oranye v Canada (Citizenship*

and Immigration), 2018 FC 390 at paragraph 27; *Osikoya v Canada (Citizenship and Immigration)*, 2018 FC 720 at paragraph 51. The lack of clear reasons for doing so may well render a decision unreasonable, as it does in the present case.

[15] Counsel for the Minister also acknowledged that the officer made a mistake in raising an issue with the fact that the charge sheets were issued in June 2019, while counsel for Mr. Miah stated that he received them in November 2018. In fact, counsel initially obtained copies of these documents in November 2018, but requested certified copies in June 2019, to file them with the PRRA application. This misunderstanding may have unreasonably compounded the officer's concerns regarding the charge sheets.

[16] An alternate finding regarding the false charges brought against Mr. Miah in 2018 would likely affect the officer's other conclusions regarding the lack of evidence connecting the Awami League to the persecution experienced by Mr. Miah, given that the objective evidence shows the Awami League to be closely connected with the police. Thus, the matter must be decided anew.

III. Conclusion

[17] For these reasons, Mr. Miah's application for judicial review is granted and the officer's decision shall be remitted for redetermination.

JUDGMENT in IMM-6125-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The matter is remitted to a different officer for reconsideration.
3. No question is certified.

“Sébastien Grammond”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6125-20

STYLE OF CAUSE: SHAHIN MIAH v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

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