

Federal Court



Cour fédérale

**Date: 20230308**

**Docket: IMM-777-22**

**Citation: 2023 FC 315**

**Ottawa, Ontario, March 8, 2023**

**PRESENT: The Honourable Mr. Justice Mosley**

**BETWEEN:**

**MD. SOMSUL ALAM TOFA  
RAZIA SULTANA  
MD SHOHABIB ALAM MAHDI**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] This is an application for judicial review of a decision by the Refugee Appeal Division [RAD] confirming a decision of the Refugee Protection Division which found that the Applicants are not Convention refugees or persons in need of protection pursuant to sections 96 and 97 of the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA].

[2] For the following reasons, the application is granted.

## II. **Background**

[3] The Applicants are citizens of Bangladesh. They claimed protection in Canada because of fear of persecution at the hands of the Rapid Action Battalion (RAB), a paramilitary organization in Bangladesh.

[4] The Principal Applicant is a veterinarian and business owner. After visiting England in August 2019, he alleges that he was stopped at Dhaka Airport by Bangladeshi immigration officials. He alleges the authorities seized 10,000 UK pounds he was carrying that had been raised for the Moulana Bhasani Foundation, an organization he works for. He alleges he was told not to tell anyone about this or he would be “vanished”.

[5] In October 2019, he told friends including a journalist about this incident. In late October, the Principal Applicant’s wife saw a RAB van outside their home and its occupants were asking about the Principal Applicant. She called him and told him not to come home. The Principal Applicant went into hiding at a friend’s house after leaving work that evening. The Principal Applicant’s wife and their son also left the family home and joined the Principal Applicant in another neighbourhood for a month. The same night or the next night, the RAB raided his home and searched for him.

[6] The family left Bangladesh for Canada and made a claim for refugee protection in January 2020.

[7] The RPD found that the Applicants were neither Convention refugees pursuant to section 96 of *IRPA* nor persons in need of protection pursuant to section 97(1) of *IRPA*. The panel stated the determinative issue was credibility. The panel found that there were significant discrepancies, inconsistencies and omissions in the Applicant's evidence and testimony, which rebutted the presumption of truth.

[8] On appeal, the RAD held that the RPD was correct in its findings on credibility and upheld the decision. The RAD focused on five main points:

- Omissions from the Applicant's Basis of Claim form (BOC) that the RAB had returned to the Applicants' home;
- Inconsistent evidence about the wife and son's departure from their home;
- The Principal Applicant continued to work for several hours after his wife called him about the RAB being at their home;
- Inconsistent evidence about the searches of the RAB in the Applicants' neighbourhood;
- Supporting documents did not overcome the credibility concerns.

### III. **Issues**

[9] The issues raised on this application are:

1. Did the RAD err in its credibility findings?
2. Did the RAD err in its assessment of the documentary evidence?

IV. **Analysis**

A. *Standard of review*

[10] There is no dispute that the standard of review of a RAD decision on an application for judicial review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

B. *Credibility findings*

[11] The Applicants do not dispute two negative credibility findings made by the RAD. The first finding pertained to an inconsistency between the Principal Applicant's testimony and his BOC regarding what his wife was told about the RAB's visit to their home on the first evening. The second finding pertained to inconsistent evidence regarding when and where the wife and son went into hiding after the RAB visit.

[12] The Applicants challenge the RAD's finding that the Principal Applicant's decision to remain at his office for an hour or two after being told by his wife that the RAB were at their home was inconsistent with the fear of persecution alleged.

[13] The Principal Applicant had testified that he had important work to do at the office before fleeing and told his wife not to call him again in case his phone was being tracked. He was not asked by the RPD what that work was. The Applicants submit that the question should have been put to him and absent more information; it was not open to the RPD and RAD to find his behaviour implausible.

[14] It is not for the Court to speculate about the reasons that the Principal Applicant may have had for remaining at the office once he was made aware that the RAB were looking for him. However, I agree that the question should have been put to him at the RPD hearing and the failure to do that undermines the implausibility finding of both tribunals. However, this error alone would not be dispositive of this application. I have more concern about the RAD's treatment of the documentary evidence.

C. *Assessment of the documentary evidence*

[15] At para 15 of its reasons, citing *Sheikh v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 238 (C.A.) at p. 244 [*Sheikh*], the RAD took the view that the RPD was entitled to discount the corroborating documents because it found the Applicant lacking in credibility.

[16] One of the more significant documents was the affidavit of a Mr. Rahman, a friend of the Principal Applicant. Mr. Rahman provided evidence that the Applicants had stayed at his home while hiding from the RAB.

[17] The RAD discounted Mr. Rahman's affidavit, as it did not contain much first-hand knowledge. This, despite jurisprudence that hearsay evidence is admissible: *Fahmy v Canada (Minister of Citizenship and Immigration)*, 2015 FC 865. More significantly, the RAD gave the affidavit no weight because the panel had already found that it was not true that the RAB had gone to the Applicants' home and had been searching for him. This, the Applicants argue, is "inverted reasoning".

[18] There is support in the case law for the proposition advanced by the Respondent that once a credibility finding is made it is open to the tribunal to find that corroborating evidence is insufficient to outweigh credibility concerns: *Kaiyaga v Canada (Minister of Citizenship and Immigration)*, 2022 FC 541 at para 55 and 56 and *Raza v Canada (Minister of Citizenship and Immigration)*, 2021 FC 299 at para 43.

[19] In *Brahim v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1215 at para 17 the Court wrote:

Since the RPD did not find the Applicant credible nor believed the underlying facts of his claim, it was entirely open for the RPD to give no evidentiary weight to the doctor's assessment or the letter from his cousin (*Murji v Canada (Minister of Citizenship and Immigration)*, 2004 FC 148, at para 16; *Danailov v Canada (MCI)*, [1993] FCJ No 1019, at para 2; *Garcha v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1012, at paras 19-21, 2002 FCJ No 1393).

[20] However, another line of reasoning holds that the tribunal must consider documentary evidence supporting an applicant's story before reaching a conclusion on the applicant's credibility: *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1583 at para 26. I find that line of reasoning to be more applicable in the context of this case.

[21] In a recent decision, Justice Favel stated that "the RPD has a duty to consider evidence as a whole before making an adverse credibility finding": *Kaya v Canada (Citizenship and Immigration)*, 2023 FC 123 at para 38.

[22] In *Li v Canada (Citizenship and Immigration)*, 2019 FC 307 Justice Norris stated at para 18:

[...] “overall credibility may affect the weight given to the documentary evidence,” citing *Huang v Canada (Citizenship and Immigration)*, 2011 FC 288 at paras 21-22. While this is no doubt true as a general proposition, adverse overall credibility findings alone are not sufficient grounds for rejecting potentially corroborative evidence. Such evidence must be examined independently of concerns about the claimant’s credibility before it can be rejected (*Yu v Canada (Citizenship and Immigration)*, 2015 FC 1138 at paras 31-37; *Lu v Canada (Citizenship and Immigration)*, 2016 FC 846 at paras 33-35; and *Ren* at para 27). Otherwise, the decision maker risks reasoning in a way that begs the very question at issue: the corroborative evidence is not believed simply because the claimant is not believed (*Sterling v Canada (Citizenship and Immigration)*, 2016 FC 329 at para 12). Moreover, as Justice Rennie (as he then was) stated in *Chen*: “It is impermissible to reach a conclusion based on certain evidence and dismiss the remaining evidence as inconsistent with that conclusion” (at para 20). [...]

[Emphasis added]

[23] I agree with the Applicants that the RAD in this instance made the same error as that described by Justices Favel and Norris. This is clear from the RAD’s treatment of Mr. Rahman’s affidavit where it wrote at para 17 of its decision that:

Given that I have determined that the RAB did not go to the home of the PA and search for him, nor did they search for him in Tangail, I afford this document no weight in determining the risk the Appellants allege.

[Emphasis added]

[24] The error lies in putting the conclusion before the evidence: *Chen v Canada (Citizenship and Immigration)*, 2013 FC 311 at para 22. Whatever the RAD may have thought of the Applicants’ testimony, Mr. Rahman’s affidavit provided first-hand and uncontroverted evidence

that the Applicants had sought refuge in his home. The treatment of the affidavit by the RAD was, therefore, unreasonable.

[25] There are also indications of “inverted reasoning” with respect to the letters from Md Mainul Islam, a friend of the Principal Applicant, and Mr. Haque, the Applicants’ neighbour. However, it is arguable they were not set aside on the basis that the RAD had previously already found the Applicant not credible. The RAD found them to be internally inconsistent and not providing enough information to outweigh previous credibility concerns.

[26] Md Mainul Islam’s letter was contrary to the Applicants’ BOC and testimony when it stated that the Principal Applicant told him of the airport incident a week after it occurred, rather than a few months later. This affected the credibility of the author but not necessarily that of the Principal Applicant who might be expected to have a more accurate memory of when the conversation occurred. Additionally, the rest of the letter contains information that was given to the author by the Principal Applicant, and since the Principal Applicant himself was found not credible, that finding was extended to the veracity of the letter.

[27] The letter from Mr. Haque, a neighbour, includes first-hand knowledge about RAB’s visits to the Applicants home after their departure. This evidence is relevant to the issue of the risks faced by the Applicants. The RAD found a contradiction between the Principal Applicant’s testimony that he had left Bangladesh without telling his friends and neighbours, on the one hand, and the statement in Mr. Haque’s letter that he was able to get a telephone number in Canada for the Applicants from a mutual friend. It is not apparent why this is a contradiction.



What is clear is that the RAD discounted the letter because of the credibility concerns it had with the Applicants' testimony.

[28] Letters from the General Secretary of the Tangail Zila Somity UK and the General Secretary of the Moulana Bhasani Foundation were discounted as they did not contain much first-hand information. However, the General Secretary of the Tangail Zila Somity UK confirmed the transfer of the 10,000 UK pounds to the Principal Applicant when he was in London, a significant fact that supported the claim.

[29] I agree with the Respondent that it was reasonable for the RAD to give no weight to an article in the *Daily Lokokatha*. The article provides no help in determining the risks faced by the Applicants.

## V. Conclusion

[30] Coupled with the weakness of the implausibility finding regarding the Principal Applicants delay in leaving his office upon being warned by his wife, the RAD's treatment of Mr. Rahman's affidavit and other supporting documents is sufficient in my view not to defer to the RAD's decision. This application will therefore be granted and remitted to the RAD for another determination on appeal by a different member.

[31] No serious questions of general importance were proposed and none will be certified.

**JUDGMENT in IMM-777-22**

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

1. The application is allowed.
2. The RAD's decision is set aside and the matter remitted for redetermination by another RAD panel; and
3. No question is certified.

"Richard G. Mosley"

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Judge

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

**DOCKET:** IMM-777-22

**STYLE OF CAUSE:** MD. SOMSUL ALAM TOFA, RAZIA SULTANA,  
MD SHOHABIB ALAM MAHDI v MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** FEBRUARY 13, 2023

**JUDGMENT AND REASONS:** MOSLEY J.

**DATED:** MARCH 8, 2023

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