

Federal Court



Cour fédérale

Date: 20230630

Docket: IMM-7177-22

Citation: 2023 FC 915

Ottawa, Ontario, June 30, 2023

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

**MIZANUR RAHAMAN BHUIYAN
RIASHAD BHUIYAN
MISHA BHUIYAN
MOSAMMET YESMIN RAHANA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Mizanur Rahaman Bhuiyan, his spouse Mosammet Yesmin Rahana, their adult daughter, and their minor son, are citizens of Bangladesh. They sought refugee protection in 2018, claiming to fear a local Member of Parliament, the Bangladeshi police, and

the Awami League and their goons because of Mr. Bhuiyan's refusal to join the Awami League and his anti-drug activism in Bangladesh. Prior to seeking protection in Canada, the Applicants left Bangladesh for Italy; however, they alleged that they were also not safe in Italy because the local Member of Parliament's nephews had threatened them while they were there.

[2] The Minister of Immigration, Refugees and Citizenship Canada intervened in the claim on the basis of Article 1E of the *United Nations Convention Relating to the Status of Refugees*, 189 UNTS 150 [Convention], claiming that the Applicants are excluded from refugee protection based on their permanent resident status in Italy.

[3] The Applicants seek judicial review of a decision by the Refugee Appeal Division [RAD] dated June 11, 2022, dismissing the Applicants' appeal and confirming the decision of the Refugee Protection Division [RPD] to reject their claim for refugee protection, finding that the Applicants are neither Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[4] The determinative issue for both the RPD and the RAD was exclusion under Article 1E of the Convention. The RAD found that the RPD had correctly concluded that the Applicants had not established that they no longer held permanent resident status in Italy. The RAD further concluded that the Applicants had not established, on a balance of probabilities, that their permanent residence permits would be revoked at the border, that they would be denied entry to Italy, or that they would be subject to an expulsion order. The RAD found that the Applicants

failed to provide a reasonable explanation for failing to inquire with the Italian authorities as to their permanent resident status.

[5] The Applicants submit that the RAD erred in its treatment of the new evidence submitted by the Applicants. The Applicants further submit that the RAD erred in accepting the RPD's interpretation of the evidence on whether the revocation of permanent resident status in Italy is automatic or not. Finally, the Applicants submit that the new evidence submitted by them demonstrates that their residency registration has been cancelled.

[6] During the hearing, the Applicants also argued that the RAD erred in its treatment of two letters from an Italian lawyer opining on the revocability of their residence cards and two letters from the Dhumcatu Social Organization, which supports citizens of Bangladesh with immigration matters in Italy [collectively, the Letters].

[7] The Respondent submits that the RAD provided comprehensive and intelligible reasons in support of its finding that the Applicants are excluded under Article 1E of the Convention and regarding the admissibility of the new evidence, resulting in the decision being reasonable. The Respondent objects to the Applicants making submissions as to the Letters as they did not raise this point in their memorandum and thus the Respondent was taken by surprise.

[8] Having considered the record and the parties' submissions, as well as the applicable law, the Applicants have failed to persuade me that the RAD's decision is unreasonable. For the reasons that follow, this application for judicial review is dismissed.

II. Analysis

[9] The parties agree that the applicable standard of review is that of reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]. A reasonable decision is one that is justified in relation to the facts and the law that constrain the decision maker (Vavilov at para 85).

[10] First, having carefully reviewed the Applicants' written submissions, I agree with the Respondent that the Minister was taken by surprise on the issue of the RAD's treatment of the Letters. For that reason, I shall not take into account the Applicants' submissions as to the RAD's treatment of that evidence.

[11] Second, like the Applicants, I have concerns as to the treatment of the new evidence by the RAD. The new evidence consists of (i) delegated authority forms signed by each Applicant, along with references to their Italian identification documents, to permit the local lawyer to obtain a history of addresses at which the Applicants lived, and (ii) a document that appears to be issued by a registry officer in Rome which certifies the list of addresses at which each Applicant had been resident. The list of addresses commences for Mr. Bhuiyan in 1997 and continues through until 2019 at which point it indicates, "[cancelled] for established unavailability." The list of addresses commences later for the remainder of the Applicants, commencing, respectively, in 2002 and 2006, and concludes with "[cancelled] for established unavailability" in 2019 for each of the three Applicants.

[12] The RAD decided not to admit the new documents on the basis of concerns surrounding their trustworthiness. The RAD found that they did not appear to be printed on official letterhead when compared to the birth certificate issued by the city of Rome for Mr. Bhuiyan's son. The RAD also identified other differences between the new evidence and the birth certificate. The Applicants argue that this conclusion is unreasonable because there is no good reason why the listing of residential addresses should be compared to a birth certificate, especially given the security features that the latter document is expected to contain. It is unreasonable, in the Applicants' view, to assume that the Italian lawyer would have obtained fraudulent documents.

[13] I agree with the Applicants' position on the rejection of the new evidence. The RAD's decision as a whole, however, is reasonable, as the RAD ultimately considered the new evidence. The RAD stated that in the event that it had erred in concluding that the registry documents should not be admitted into evidence, it would, in the alternative, consider them. The RAD then proceeded to address the contents of the documents, compared the information contained therein to the testimony of Mr. Bhuiyan, and considered the implications of the final entry in the context of the alleged lack of legal status of the Applicants as permanent residents in Italy. The RAD concluded that the registry documents spoke to the residential addresses and not the legal status of the Applicants as permanent residents in Italy. Consequently, given that the RAD ultimately considered the new evidence, and I find its analysis of that evidence to be reasonable, the RAD did not commit a reviewable error with respect to the new evidence.

[14] Third, I have not been persuaded that the RAD committed a reviewable error in concluding that the Applicants had not established that they no longer had permanent residence

in Italy. The RAD found that it had not been demonstrated that permanent residence permits are cancelled automatically, and that in any event, the Applicants had made no effort to obtain information about the legal status of their permanent residence from the Italian authorities nor did they provide a reasonable explanation for not doing so.

[15] The Applicants submit that the evidence is conflicting as to the possibility that the permits will be revoked and, as such, they should have been given the benefit of the doubt in this regard. The Applicants underscore that the evidence in the file was sufficient for them to meet their burden.

[16] The Respondent submits that the RAD was entitled to prefer more recent objective evidence with permissive language (“may”) than the older unofficial translation of the Italian legislation that stated “will”, thus implying that revocation was automatic. The Respondent further submits that it was the Applicants’ burden to demonstrate that their status had actually been revoked, which they failed to meet. Finally, the Respondent highlighted jurisprudence of this Court upholding RPD and RAD decisions that have found that the loss of status in Italy was not automatic.

[17] Having considered the RAD’s detailed analysis of the evidence on this issue, I do not find that there are any sufficiently serious shortcomings such that the decision cannot be said to exhibit the requisite degree of justification, intelligibility, and transparency (*Vavilov* at para 100). The RAD reasonably considered the legislative reference in the 2012 Response to Information Request [RIR] submitted by the Applicants but noted that it had been removed from the National

Documentation Package in 2019, and ultimately preferred the more recent evidence contained in two other RIRs to the single reference in the translated legislation. Ultimately, it was not unreasonable of the RAD to conclude that the Applicants had not met their burden.

[18] In conclusion and for the reasons set out above, I am of the view that the Applicants have failed to meet their burden of demonstrating that the RAD's decision is unreasonable. I therefore dismiss this application for judicial review. No serious question of general importance for certification was proposed by the parties, and I agree that no such question arises.

JUDGMENT in IMM-7177-22

THIS COURT'S JUDGMENT is that:

1. The Applicants' application for judicial review is dismissed; and
2. There is no question for certification.

“Vanessa Rochester”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7177-22

STYLE OF CAUSE: MIZANUR RAHAMAN BHUIYAN ET AL v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JUNE 28, 2023

JUDGMENT AND REASONS: ROCHESTER J.

DATED: JUNE 30, 2023

APPEARANCES:

Viken G. Artinian FOR THE APPLICANTS

Yaël Levy FOR THE RESPONDENT

SOLICITORS OF RECORD:

Allen & Associates FOR THE APPLICANTS
Montréal, Quebec

Attorney General of Canada FOR THE RESPONDENT
Montréal, Quebec