

Federal Court



Cour fédérale

**ahmDate: 20230719**

**Docket: IMM-4593-22**

**Citation: 2023 FC 991**

**Ottawa, Ontario, July 19, 2023**

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

**BETWEEN:**

**JASHIMUDDIN TALUKDER**

**Applicant**

**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”) dated April 27, 2022, confirming a decision by the Refugee Protection Division (“RPD”) that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”). The RAD found the determinative issue to be the Applicant’s credibility.

[2] The Applicant argues that the RAD erred in rejecting new evidence he submitted on appeal and unreasonably assessing the evidence before it.

[3] For the reasons that follow, I find that the RAD's decision is unreasonable. This application is therefore granted.

## **II. Facts**

### *A. The Applicant*

[4] The Applicant is a 56-year-old citizen of Bangladesh. He resided in Dhaka where he was a businessperson and, along with his wife, worked with local orphanages and charity groups.

[5] The Applicant claims that in early June 2018, he learned that members of the Awami League ("AL") sexually assaulted five girls at a local orphanage. He visited the girls at the hospital and then reported the incident to the police.

[6] On June 3, 2018, a group of AL members confronted the Applicant. In his Basis of Claim ("BOC") narrative, the Applicant claims that the men interrogated him about why he made the police report, beat him, and demanded a ransom. He required medical treatment at a hospital following the attack.

[7] On June 20, 2018, Jama'atul Mujahideen Bangladesh ("JMB") members confronted the Applicant's wife for assisting Hindus through her charitable work. The JMB members

demanded money from the Applicant's wife and assaulted her when she was unable to pay. In response to this incident, the Applicant organized and spoke at a protest against the JMB and Islamic extremism.

[8] On June 25, 2018, JMB attacked the Applicant, who was hospitalized for a few days. On June 27, 2018, the Applicant's wife filed a police report regarding the incident. After being discharged from the hospital, the Applicant and his wife moved to Sylhet.

[9] The Applicant traveled to the United States, where he stayed for five months and waited to return to Bangladesh when he felt it would be safe. He returned to Sylhet in February 2019 after his wife assured him that she was no longer having problems with the AL or JMB.

[10] On March 3, 2019, AL members came to the Applicant's home when he was not there and told the Applicant's wife they were aware that he had returned to the country. The men attacked the Applicant's wife, fracturing her leg.

[11] On April 1, 2019, the Applicant and his wife moved to Comilla. Shortly after moving, the Applicant became aware that a threatening letter was sent to his Dhaka residence. Fearful for his life, in July 2019, the Applicant arrived in Canada and sought refugee protection.

[12] On September 15, 2020, JMB members visited the Applicant's family home. When the Applicant's daughter refused to reveal his whereabouts, the men attacked her. She required

hospital treatment for one week. On June 6, 2021, JMB members attacked the Applicant's wife again.

[13] On June 24, 2021, the RPD issued its decision refusing the Applicant's claim. The determinative issue was credibility. The RPD found significant inconsistencies, discrepancies, and vagueness in the Applicant's testimony regarding the attacks on him, his wife, and his daughter. The RPD found the Applicant's corroborating evidence was insufficient to outweigh its credibility concerns and took note of the availability of fraudulent documents in Bangladesh.

[14] On October 1, 2021, AL members attempted to abduct the Applicant's son when he was returning from a cricket ground. Bystanders intervened to save the Applicant's son, but he required medical attention. The Applicant asserts that his family received threatening phone calls from the AL after this incident.

B. *Decision under Review*

[15] On April 27, 2022, the RAD dismissed the Applicant's appeal and confirmed the decision of the RPD, finding that the Applicant was not credible due to contradictions, inconsistencies, and omissions in his evidence concerning the attacks on his family.

[16] The Applicant sought to introduce new evidence on appeal. This evidence were reports from the Applicant's family physician and a registered psychotherapist. He also sought to introduce evidence after the perfection of his appeal regarding the alleged incidents that occurred

against his wife on June 6, 2021, and his son on October 1, 2021, as well as photographs of his daughter and her national identification card.

[17] The RAD found the psychological reports and the evidence concerning the alleged incident with the Applicant's son to be admissible. However, the RAD found that the evidence concerning the attack on the Applicant's wife was inadmissible as it related to events that occurred before the RPD issued its decision. The RAD was not satisfied that the evidence was unavailable at the time of the RPD's decision or at the time the Applicant perfected his appeal. The RAD also found the evidence concerning the Applicant's daughter inadmissible, as he did not explain why the evidence was not provided with his appeal record.

[18] The RAD noted that the Applicant's testimony that he fell unconscious during the June 3, 2018 attack was not reflected in his BOC form or in medical evidence. It also found that the Applicant gave conflicting evidence on how he was able to identify the AL members and whether the attack was sudden or followed an interrogation.

[19] The RAD also found the Applicant's testimony on the June 25, 2018 incident inconsistent. He testified the attack was retaliation for the police complaint that his wife made to the police following her attack earlier in the month. However, his wife's complaint is dated June 27, 2018—two days after the incident. While the Applicant also offered that the attack was retaliation for the protest he organized, the RAD noted that his BOC form did not state as such.

[20] The Applicant also gave conflicting evidence as to whether the AL or JMB was responsible for the alleged attack on his daughter. The RAD noted that the medical evidence produced to corroborate the attack only indicates that the Applicant's daughter was treated for an injury to her cheek.

[21] The RAD was unpersuaded by the Applicant's submissions that his testimony was affected by memory problems associated with depression and anxiety. The RAD stated that its adverse credibility findings arose from significant contradictions in the Applicant's evidence rather than an inability to recall details.

[22] Finally, regarding the evidence that the AL attempted to abduct the Applicant's son, the RAD found there was nothing to link the alleged incident to the Applicant's issues with the AL or JMB. For these reasons, the RAD dismissed the appeal and upheld the RPD's determination.

### **III. Issue and Standard of Review**

[23] This application raises the sole issue of whether the RAD's decision is reasonable.

[24] The standard of review is not in dispute. The parties agree the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) ("*Vavilov*"). I agree.

[25] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its

rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[26] For a decision to be unreasonable, an applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

#### **IV. Analysis**

[27] The Applicant submits that the RAD’s decision is unreasonable on four grounds: 1) the RAD erred in rejecting the Applicant’s evidence regarding the attack on his wife on June 6, 2021; 2) the RAD erred in its assessment of the medical evidence and the Applicant’s mental health could have affected his testimony; 3) the RAD made unreasonable findings regarding the October 2021 incident involving his son, and; 4) the RAD erred in assessing the corroborative evidence that the Applicant provided in support of his claim.

[28] In my view, the RAD's decision is unreasonable for failing to properly assess the Applicant's medical evidence and corroborative documentary evidence. Finding these issues sufficient to warrant this Court's intervention, I do not address the remaining two issues regarding the new evidence and the October 2021 incident.

A. *Medical Evidence*

[29] The Applicant produced reports from a physician and a psychotherapist, which state that he suffers from depression and anxiety and has been experiencing forgetfulness. The Applicant argued that the issues with his testimony before the RPD could be explained in part by the symptoms associated with these conditions. The RAD rejected this argument, stating that its adverse credibility findings do not stem from the Applicant's difficulty in recalling details during the hearing but rather, are based on significant contradictions and inconsistencies in the evidence. On judicial review, the Applicant submits that the RAD's findings on this point are irrational and illogical. He asserts that the adverse credibility findings were the result of his inability to recall details of the events that transpired in Bangladesh, which led to inconsistencies in the evidence.

[30] The Applicant notes that this is corroborated by the medical evidence. The report from the Applicant's physician describes the Applicant as experiencing "forgetfulness." The psychotherapist's report states that during his assessment, the Applicant "exhibited episodic memory difficulties" and experienced "difficulty recalling some details of the events and other information." The psychotherapist's report also states that that the Applicant showed "no



indications of any abnormalities in the thought process” and that “his thought content was clear and organized.”

[31] At the oral hearing, the Applicant’s counsel further noted that while medical evidence such as a psychotherapist’s report provides useful insight into a claimant’s state of mind, the context of a psychotherapy assessment is significantly different from a RPD hearing, where a claimant might find their symptoms of stress and anxiety are exacerbated. The Applicant’s counsel noted that for this reason, the Applicant is more likely to present a clear and organized thought content during the psychotherapy assessment than at the RPD hearing, and this does not necessarily equate to the finding that the Applicant’s symptoms of forgetfulness associated with his mental conditions did not lead to the inconsistencies at the RPD hearing.

[32] The Respondent asserts that the RAD’s reasons on this issue were reasonable. The Respondent cites a number of cases for the principle that a medical report is not a cure-all for deficiencies in the manner in which an applicant presents a refugee claim: *Atay v Canada (Citizenship and Immigration)*, 2008 FC 201 at paras 30-31; *Mico v Canada (Citizenship and Immigration)*, 2011 FC 964 at para 56; *Toma v Canada (Citizenship and Immigration)*, 2020 FC 359 at para 20.

[33] I agree with the Applicant. In my view, the RAD failed to meaningfully address the medical evidence speaking to the Applicant’s mental conditions and psychological symptoms. It is illogical to find that the evidence speaking to the Applicant’s forgetfulness and inability to recall details of events is irrelevant to the credibility findings because the latter were based on

contradictions and inconsistencies. An inability to recall certain details and the forgetfulness resulting from anxiety and depression are directly connected to the Applicant being unclear or providing inconsistent information about how certain events transpired. The medical evidence explicitly speaks to the Applicant's inability to recall details when recalling the events that transpired in Bangladesh, and a dismissal of this issue reflects a "failure to meaningfully grapple with key issues," rendering this finding unreasonable (*Vavilov* at para 128).

[34] Furthermore, I take note of the Applicant's contention that the Court should be mindful of the differences in context that may exacerbate an applicant's anxiety. I agree that testifying before the RPD, where the clarity and consistency of an applicant's testimony is partially determinative of their ability to remain in Canada, poses an entirely different psychological challenge than being assessed by a psychotherapist. It is therefore unintelligible to find that the psychotherapist's report proffered by the Applicant in this case, which states that the Applicant's psychotherapy assessment exhibited a clear and organized thought content, equates to the finding that the symptoms associated with his mental conditions do not explain the inconsistencies in his narrative. The key issue raised by the report is that the Applicant experiences forgetfulness and a difficulty recalling details of events, which is directly connected to his ability to testify before the RPD and which the RAD therefore had the obligation to assess. For these reasons, I find the RAD's assessment of the medical evidence regarding the Applicant's mental conditions to be unreasonable.

B. *Corroborative Evidence*

[35] The Applicant submits that the RAD failed to engage with the corroborative evidence that he provided in support of his claim. He asserts that the RAD unreasonably dismissed this evidence without consideration based on its credibility concerns. The evidence at issue includes supporting letters, police reports, and medical reports corresponding to attacks on the Applicant and his family.

[36] The Respondent asserts that the RAD reasonably found that the evidence was insufficient to overcome its credibility concerns and the Applicant is merely asking the Court to reweigh the evidence on the record.

[37] I agree with the Applicant and find that the RAD erred in its cursory consideration of the Applicant's corroborative evidence proffered on appeal. Despite multiple pieces of corroborative evidence submitted to support his claim on appeal, the RAD briefly addressed this evidence in one paragraph of its reasons, finding that the Applicant's letters of support were unhelpful because their authors were not present during the alleged incidents and therefore did not resolve the credibility concerns.

[38] As found by this Court in *Li v Canada (Citizenship and Immigration)*, 2019 FC 307 ("*Li*"), a decision-maker must not reject corroborative evidence simply because it doubts the Applicant's credibility (at para 18). It is unreasonable for the RAD to engage in circular reasoning by finding that "the corroborative evidence is not believed simply because the

claimant is not believed” (*Li* at para 18, citing *Sterling v Canada (Citizenship and Immigration)*, 2016 FC 329 at para 12). In the Applicant’s case, the RAD was required to examine the corroborative evidence independently of its concerns about the Applicant’s credibility and it failed to do so.

[39] I further agree with the Applicant that the availability of fraudulent documents in a claimant’s country of nationality is not a sufficient reason to cast doubt on the credibility of documentary evidence (*Li* at para 18; *Oranye v Canada (Citizenship and Immigration)*, 2018 FC 390 at para 29).

[40] For these reasons, I find that the RAD erred in assessing the Applicant’s corroborative evidence on appeal, rendering its decision unreasonable.

## **V. Conclusion**

[41] This application for judicial review should be granted. The RAD’s decision failed to meaningfully grapple with central evidence, including the medical evidence and the corroborative evidence proffered on appeal. No questions for certification were raised, and I agree that none arise.

**JUDGMENT in IMM-4593-22**

**THIS COURT’S JUDGMENT is that:**

1. This application for judicial review is granted. The decision under review is set aside and the matter remitted back for redetermination by a differently constituted panel.
2. There is no question to certify.

“Shirzad A.”

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Judge

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

**DOCKET:** IMM-4593-22

**STYLE OF CAUSE:** JASHIMUDDIN TALUKDER v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 30, 2023

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**APPEARANCES:**

Hart Kaminker FOR THE APPLICANT

Aida Kalaj FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Kaminker and Associates FOR THE APPLICANT  
Barristers and Solicitors  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario