

Federal Court



Cour fédérale

**Date: 20240206**

**Docket: IMM-4061-23**

**Citation: 2024 FC 189**

**Ottawa, Ontario, February 6, 2024**

**PRESENT: The Honourable Madam Justice Turley**

**BETWEEN:**

**PIYAS ROY**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS FOR JUDGMENT**

**I. Overview**

[1] The Applicant, a citizen of Bangladesh, seeks judicial review of a decision by a Senior Immigration Officer [Officer] dated February 17, 2023 rejecting his Pre-Removal Risk Assessment [PRRA] application pursuant to section 112 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] I am allowing the application for two reasons. First, the Officer erred in discounting evidence based on the prevalence of fraudulent documents in Bangladesh without assessing the authenticity of the evidence before them. Second, the Officer breached procedural fairness by drawing an adverse credibility inference without providing the Applicant an opportunity to address credibility concerns.

## **II. Background**

[3] The Applicant entered Canada in August 2019 on a valid study permit. His status was subsequently revoked and a removal order was issued in October 2021 because he was found inadmissible under paragraph 36(1)(a) of the *IRPA* due to his criminal convictions in Canada.

[4] The Applicant claimed refugee protection in November 2021, but his application was subsequently cancelled due to his inadmissibility and his pending removal order.

[5] In December 2021, the Applicant submitted a PRRA application. In support of his application, the Applicant alleged that he is at risk in Bangladesh because the extremist Muslim group Hefazat-e-Islam wishes to harm him and his family since they are Hindus. The Applicant further alleged that he is at risk from the state of Bangladesh due to an arrest warrant issued against him based on an allegation that he had posted anti-Islam messages on social media. The Applicant claimed that a falsified Facebook account had been created in his name.

[6] After holding a credibility hearing, the Officer rejected the Applicant's PRRA application. More particularly, the Officer determined that there was insufficient evidence to find that the

Applicant would be subject to a risk of persecution, torture, risk to life, or risk of cruel and unusual treatment or punishment if he returns to Bangladesh.

[7] The Officer cited three main reasons for denying the Applicant's application: (i) the "low credibility" of documents from Bangladesh; (ii) his failure to make a refugee claim until after a removal order had been issued against him; and (iii) the lack of evidence to support his allegation that he was wanted in Bangladesh because of falsified anti-Islam social media posts in his name: Pre-Removal Risk Assessment Notes to File dated February 17, 2023 at p 11 [Officer's Decision].

[8] The Applicant submitted numerous documents in support of his PRRA application including affidavits from family members, letters from his lawyer, medical documents and reports, and police reports and warrant information. In assessing this evidence, the Officer noted that fraudulent documents are widely available in Bangladesh. While the Officer acknowledged that the prevalence of fraudulent documentation "does not, in itself, indicate that the applicant's submissions are therefore fraudulent", the Officer concluded that it generally lowers the probative value of the documents: Officer's Decision at p 8. Ultimately, the Officer assigned low probative value to all of the Applicant's supporting documents from Bangladesh.

[9] Furthermore, the Officer found that the Applicant's testimony and evidence about the falsified social media posts was not credible. In particular, the Officer drew "considerable negative inference towards the applicant's credibility" related to the social media posts based on two credibility concerns: Officer's Decision at pp 10, 11.

[10] First, the Officer noted that the Applicant did not mention these falsified social media posts in the Basis of Claim [BoC] submitted in support of his refugee claim, despite the form requesting that claimants describe their risk in detail. The Applicant had instead given a broad explanation that there was a case against him and he would be arrested if he returned to Bangladesh. In his BoC, the Applicant stated that more information would be provided in the future: Officer's Decision at p 10.

[11] Second, the Officer noted that the Applicant responded "no" to the question about whether he had ever committed, been arrested for, charged with, or convicted of any criminal offence in his August 2020 study permit extension. The Officer determined that the Applicant "would have been aware of his alleged charges for almost a year at that point". As a result, the Officer concluded that either the Applicant had misrepresented himself, or his testimony and evidence about these posts were not credible: Officer's Decision at p 10.

[12] The Officer did not, however, raise either of these credibility concerns with the Applicant at his credibility hearing.

[13] Overall, based on a combination of the low probative value assigned to the Applicant's documents from Bangladesh and the two credibility concerns, the Officer found the Applicant's testimony and evidence about the social media posts not credible. The Officer therefore determined that there was insufficient evidence "to indicate that a falsified Facebook account was made in the applicant's name, which lead [*sic*] to the applicant facing charges in Bangladesh": Officer's Decision at p 10.

### III. Issues and Standard of Review

[14] The Applicant challenges the Officer's decision on a number of grounds. I find that two of the issues raised are determinative of this application:

- (1) Whether the Officer erred in discounting the probative value of the Applicant's supporting documents from Bangladesh without assessing their authenticity; and
- (2) Whether the Officer erred in failing to provide the Applicant an opportunity to address the credibility concerns relied upon by the Officer as related to the falsified social media posts.

[15] There is no dispute that the standard of reasonableness is applicable to the first issue. 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": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8 [*Mason*]. A decision should only be set aside if there are "sufficiently serious shortcomings" such that it does not exhibit the requisite attributes of "justification, intelligibility and transparency": *Vavilov* at para 100; *Mason* at paras 59-61. Furthermore, the reviewing court "must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable": *Vavilov* at para 100.

[16] While the Applicant also characterized the second issue as attracting the reasonableness standard of review, it clearly raises a matter of procedural fairness. Where breaches of procedural

fairness are alleged, no standard of review is applied, but the Court’s reviewing exercise is “best reflected on a correctness standard”: *Canadian Hardwood Plywood and Veneer Association v Canada (Attorney General)*, 2023 FCA 74 at para 57; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*CPR*]. When assessing whether procedural fairness was met, a reviewing court must ask whether the “procedure was fair having regard to all of the circumstances”: *CPR* at para 54.

#### IV. Analysis

##### A. *The Officer erred in failing to assess the authenticity of documents*

[17] The Officer erred in assigning little probative value to the Applicant’s supporting documents based on the prevalence of fraudulent documents in Bangladesh without making an explicit finding about their authenticity: *Ogbebor v Canada (Citizenship and Immigration)*, 2021 FC 994 at para 21; *Oranye v Canada (Citizenship and Immigration)*, 2018 FC 390 at para 27 [*Oranye*]; *Sitnikova v Canada (Citizenship and Immigration)*, 2017 FC 1082 at para 20.

[18] As Justice Ahmed stated in *Oranye*, decision-makers are required to assess and determine the authenticity of each document, and cannot simply rely on generalized statements about the availability of fraudulent documents to discount their probative value:

[29] It is unfortunate that generalizations about the “easy availability of fraudulent documents” are frequently relied upon as though they constitute incontrovertible evidence of fraud. Where they appear in country condition documents, these generalizations can only properly serve to alert the decision-maker to the issue. The finding about the authenticity of a document cannot depend or even be influenced by mere suspicion from the reputation of a given country. Each document must be analyzed individually and its authenticity decided on its own merits. If there is evidence of fraud, it speaks for

itself and the decision-maker should accord it no probative value. The alternative — that is, relying on the prevalence of fraud in a given country to impugn the authenticity of a document — amounts to finding guilt by association.

[19] In support of his claim that he was at risk in Bangladesh due to falsified anti-Islam social media posts made in his name and an outstanding arrest warrant, the Applicant tendered a significant number of documents. These included: (i) affidavits from several family members attesting to the fact that extremist Muslims created a Facebook account with anti-Islam posts in the Applicant's name; (ii) letters from a lawyer in Bangladesh dated January and October 2022 advising the Applicant that they had contacted the court and that the arrest warrant was “still valid and open” and that he will be arrested as soon as he returns to Bangladesh; (iii) a September 2019 police complaint alleging that the Applicant had insulted Islam through social media contrary to the Bangladesh Criminal Procedure Code and the Digital Security Act; (iv) a September 2019 Preliminary Information Report; (v) a June 2020 Chargesheet; and (vi) a October 2020 arrest warrant issued against the Applicant. Notably, the Officer found that there were no “significant issues or contradictions” within these supporting documents: Officer's Decision at p 6.

[20] However, in assessing this supporting evidence, the Officer did precisely what the jurisprudence instructs against – they did not analyze each individual document to determine its authenticity. Rather, after consulting the Immigration and Refugee Board [IRB]'s Responses to Information Requests on the availability of fraudulent documents in Bangladesh, the Officer simply concluded that many of the types of documents submitted by the Applicant “are widely available as fraudulent documents in Bangladesh”: Officer's Decision at p 8. On this basis alone, the Officer assigned low probative value to all the supporting documents.

[21] The Officer did not point to any defects with the documents themselves, such as irregularities on the face of the documents, or that the documents differ from what an authentic example should look like: *Jeje v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 24 at para 45 [*Jeje*]; *Liu v Canada (Citizenship and Immigration)*, 2015 FC 207 at paras 22-24. The Officer merely noted that, according to the IRB information, it was “not uncommon” for individuals to make false statements in affidavits: Officer’s Decision at p 7.

[22] The Officer further failed to address why they assigned little weight to the numerous police documents submitted in support of the Applicant’s PRRA application, other than that the IRB information stated that it was possible to obtain counterfeit “extracts from police records”: Officer’s Decision at p 7. It is well established, however, that documents purporting to be issued by a foreign authority are presumed to be genuine, unless there is a valid reason to doubt their authenticity: *Farah v Canada (Minister of Citizenship and Immigration)*, 2023 FC 760 at para 20; *Liu v Canada (Minister of Citizenship and Immigration)*, 2020 FC 576 at para 85; *Jeje* at para 40; *Chen v Canada (Citizenship and Immigration)*, 2015 FC 1133 at para 10.

[23] For the foregoing reasons, the Officer erred in discounting the probative value of the Applicant’s supporting documentation, without assessing the evidence in its own right or providing any specific reasons to doubt its authenticity. This error alone renders the decision unreasonable for want of justification.



B. *The Officer erred in failing to provide the Applicant an opportunity to address credibility concerns*

[24] The jurisprudence is clear that drawing adverse inferences based on credibility concerns without first putting them to the claimant is a breach of procedural fairness. It is incumbent on decision-makers to provide claimants an opportunity to respond to any credibility concerns before making adverse credibility findings: *Elias Moran v Canada (Citizenship and Immigration)*, 2022 FC 90 at paras 17-20 [*Moran*]; *Huang v Canada (Citizenship and Immigration)*, 2019 FC 1123 at para 32; *Jurado Barillas v Canada (Citizenship and Immigration)*, 2019 FC 825 at paras 15-18; *Ananda Kumara v Canada (Citizenship and Immigration)*, 2010 FC 1172 at paras 3-5.

[25] As explained by Justice Mosley, providing claimants with the opportunity to address specific credibility concerns is required to ensure they have the “right to be fully and fairly heard and to know the case against” them: *Moran* at para 18.

[26] In this case, however, the Applicant was not given an opportunity to address the two credibility concerns identified by the Officer. While the Officer held an oral hearing, they did not question the Applicant about his failure to mention the falsified social media posts in his BoC or his failure to disclose the criminal charges in his study permit application. Yet, the Officer drew a “considerable negative inference towards the applicant’s credibility” based on these two specific credibility concerns: Officer’s Decision at p 11. The Officer’s failure to alert the Applicant to these concerns and give him an opportunity to address them breached procedural fairness.

[27] There is no merit to the Respondent's argument that questioning the Applicant would not have yielded answers that would have addressed the Officer's credibility concerns. The Respondent argues that it is undisputed that the BoC does not mention the social media posts and the study permit does not mention the charges. That is not the point. The Applicant was denied the opportunity to explain why he did not specifically mention the social media posts in his BoC and why he stated he had no criminal charges in his study permit application. The denial of this opportunity, in and of itself, is the breach of procedural fairness.

[28] Furthermore, it is purely speculative to state that the Applicant could not have provided an explanation that would have satisfied the Officer. With respect to the BoC filed with the Applicant's refugee claim on November 1, 2021, as the Officer noted, the Applicant did state the general basis for why he was at risk and said more information was forthcoming. As the Applicant points out, the refugee claim never materialized due to the removal order and so further detailed information was never submitted. Notably, in his December 2021 PRRA application, the Applicant similarly stated, "will provide further" in response to why he was applying for a PRRA. He subsequently submitted supporting information in January, February, and October 2022.

[29] Moreover, the Officer's negative credibility inference based on the Applicant's failure to disclose the criminal charges in Bangladesh in his study permit extension of August 2020 was entirely premised on the finding that the Applicant would have been aware of the alleged charges for almost a year: Officer's Decision at p 10. However, the evidence on the record shows that while the complaint was lodged against the Applicant and a Preliminary Information Report was issued in September 2019, a year before the study permit extension, the charges were only laid on June

23, 2020. Further, according to the hearing notes, the Officer never questioned the Applicant regarding when he was advised about the June 2020 charges.

[30] It was a breach of procedural fairness for the Officer to draw this negative inference without giving the Applicant an opportunity to explain why he failed to respond “yes” to the question: “Have you ever committed, been arrested for or been charged with or convicted of any criminal offence in any country or territory?” The Officer also should have asked the Applicant when he became aware of the June 2020 charges against him.

[31] In light of the above, the Officer should have raised these two credibility concerns with the Applicant and given him an opportunity to respond, before drawing a negative credibility inference that then tainted the entire application. Had the opportunity been afforded, it would then have been open to the Officer, as the trier of fact, to reject or assign little weight to the Applicant’s explanation.

**V. Conclusion**

[32] The Officer unreasonably discounted the Applicant’s supporting documents without assessing their authenticity and breached procedural fairness in drawing adverse credibility inferences without giving the Applicant an opportunity to explain himself. The Officer’s decision is set aside and the matter is remitted to another officer for redetermination.

[33] The parties did not propose a certified question and I agree that none arises.

**JUDGMENT in IMM-4061-23**

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

1. The application is allowed.
2. The Officer's decision dated February 17, 2023 is set aside and the matter is remitted for redetermination by another officer.
3. There is no question for certification.

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"Anne M. Turley"

Judge

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

**DOCKET:** IMM-4061-23

**STYLE OF CAUSE:** PIYAS ROY v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 24, 2024

**JUDGMENT AND REASONS  
FOR JUDGMENT:** TURLEY J.

**DATED:** FEBRUARY 6, 2024

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