

Federal Court



Cour fédérale

**Date: 20240228**

**Docket: IMM-9819-22**

**Citation: 2024 FC 320**

**Ottawa, Ontario, February 28, 2024**

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

**BETWEEN:**

**MD MAJEDUL ISLAM, MARIA CORAZON  
ESCANO, NUR MYSHA ISLAM, MD  
MIKHAIL ISLAM RAYN and MD MIKHEL  
RAEES ISLAM**

**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 of the Refugee Appeal Division [RAD] dated September 12, 2022, upholding the Refugee Protection Division's [RPD] decision dated August 2, 2021, concluding that the Applicants are not Convention refugees pursuant to

section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] nor persons in need of protection pursuant to section 97 of IRPA.

[2] Having considered the record before this Court, including the parties' written and oral submissions, as well as the applicable law, the Applicants have failed to discharge their burden to demonstrate that the RAD's decision is unreasonable. For the reasons that follow, this application for judicial review is dismissed.

## II. Facts

[3] The Applicant, Md Majedul Islam [the Principal Applicant or PA], is a citizen of Bangladesh. His spouse, Maria Corazon Escano [Associate Applicant], is a citizen of the Philippines. Together they have four minor children. The Associate Applicant and the two eldest children are citizens of Bangladesh and the Philippines, and the third child is a citizen of the Philippines [all together the Applicants]. The fourth child is a citizen of Canada and is not part of this application.

[4] The PA and the Associate Applicant moved to Singapore for work from Bangladesh and the Philippines, respectively, where they met and eventually married in 2009. Prior to the marriage, the Associate Applicant converted from Christianity to Islam.

[5] The Applicants took a family trip to Bangladesh in 2015. On December 28, 2015, they found themselves in the middle of a political rally organized by the Bangladesh Nationalist Party [BNP], which was being interrupted by Awami League [AL] supporters. When the PA attempted

to assist a man being beaten during this rally, he was assaulted by AL supporters. The police allowed the PA and his family to leave the scene, on the condition that they leave Bangladesh within a week and not engage in anti-government activity.

[6] During another trip to Bangladesh in 2017, members of the AL attended the PA's family home and demanded a bribe. He tried reporting the incident but the police refused to take his complaint. The PA's cousin allegedly overheard people saying that they will "teach him [the PA] a lesson" if he tries to report them to the police again.

[7] The PA alleges that members of the AL continued to search for him and even approached his mother at a market on February 26, 2021, to ask about the PA's whereabouts.

[8] The Applicants moved to the Philippines from Singapore in 2019. While living in the Philippines, the Applicants allege having faced religious persecution, mainly on two separate occasions due to their Muslim faith when the PA was approached twice by a group of Christian preachers who aggressively demanded that he convert to Christianity.

[9] In the meantime, the PA visited Bangladesh for a third time in 2019.

[10] Finally, the PA and his family entered Canada on December 10, 2019, and filed their claims for refugee protection. Their claim is two-fold: first, they fear returning to Bangladesh based on the PA's implied political opinion, and second, they fear religious persecution in the Philippines as Muslims.

[11] The RPD concluded that the PA's claims against Bangladesh were not credible, and that the discrimination they faced in the Philippines as Muslims did not amount to persecution. The RAD agreed with the RPD's conclusion and rejected the appeal, finding that the Applicants did not establish that there is a serious possibility that they would be persecuted or that, on a balance of probabilities, they would face a danger of torture or risk to their lives, or cruel and unusual treatment or punishment, upon their return in Bangladesh or the Philippines.

### III. Decision under Review

[12] The RAD undertook its own independent analysis of the Applicant's file and, in a decision rendered on September 12, 2022, rejected the Applicants' appeal and upheld the RPD's decision. The RAD found that the PA's refugee claim against Bangladesh was not credible, and that the Associate Applicant did not prove that she could not avail herself of state protection from the Philippines. The RAD consequently concluded that the Applicants could reasonably live in the Philippines.

[13] The Applicants submitted new evidence before the RAD, after the perfection of their appeal, consisting of a psychological report and related documents pertaining to the Associate Applicant, documents concerning an alleged threatening phone call received by the PA's mother, and a medical document about their third child. The RAD admitted the first and second pieces of evidence, but not the third piece of evidence, being the third child's medical document.

[14] The RAD found that the third child's document was not admissible, because although it arose after the perfection of the appeal, the Applicants did not explain how this document was relevant to their alleged fear of persecution in Bangladesh and the Philippines.

[15] Also, the RAD agreed with the RPD's findings that the PA's claim was not credible as it contained significant inconsistencies, contradictions and omissions concerning key incidents which took place during the PA's trips to Bangladesh between 2015 and 2017. First, there were inconsistencies between the Applicants' Basis of Claim form [BOC] and the PA's testimony before the RPD regarding an incident that took place in Bangladesh in 2015; second, the PA's testimony that the police accused him of having engaged in anti-government activity in 2017 was not in his BOC; and third, the PA stated, in his sworn Schedule A "Background/Declaration" form that he was detained in Bangladesh in 2017, but testified that nothing happened to him in 2017 before the RPD.

[16] The RAD also agreed with the RPD that the Applicants did not rebut the presumption of state protection in the Philippines. Neither the subjective nor the objective evidence in this case display a convincing argument that the Applicants lack state protection in the Philippines as religious minorities. In addition, there is no prospective risk of persecution based on the Associate Applicant's gender and mental health condition in the Philippines.

#### IV. Issues and Standard of review

[17] The questions before this Court are the following:

- A. Is the RAD's decision to refuse to admit the new evidence submitted by the Applicants reasonable?
- B. Is the RAD's conclusion that the Applicants are not Convention refugees nor persons in need of protection reasonable?

[18] The standard of review in this case is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 25; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [*Mason*] at paras 7, 39–44). To avoid judicial intervention, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov* at para 99; *Mason* at para 59). A decision may be unreasonable if the decision maker misapprehended the evidence before it (*Vavilov* at paras 125–126; *Mason* at para 73). Reasonableness review is not a “rubber-stamping” exercise, it is a robust form of review (*Vavilov* at para 13; *Mason* at para 63). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

V. Analysis

A. *The RAD's decision on the admissibility of new evidence is reasonable*

[19] In the present case, the Applicants argue that the RAD erred by finding that their third child's medical document, attesting that he is being assessed for autism spectrum disorder, was inadmissible.

[20] The Applicants argue that the RAD erred in its analysis of the admissibility of the evidence because it erroneously believed that the medical document referred to the PA's fourth and youngest child, who is born in Canada and not a part of this application, when in fact it referred to the PA's

third child. Moreover, the Applicants argue that the RAD should have considered the medical evidence along with the National Documentation Packages [NDP] of both Bangladesh and the Philippines. The Applicants claim that the NDPs contain information on each country's healthcare systems that demonstrates the risk of returning to either country.

[21] In my view, the Applicants have not demonstrated that the RAD's assessment of the new evidence was unreasonable. Any new evidence submitted before the RAD must satisfy one of the criteria listed at subsection 110(4) of the IRPA, which provides the following :

**Evidence that may be presented**

(4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.

**Éléments de preuve admissibles**

(4) Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.

[22] If the new evidence meets one of the criteria above, the evidence must then also meet the conditions of admissibility identified in the jurisprudence, being credibility, relevance, newness and materiality (*Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96 [*Singh*] at para 38, citing *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 [*Raza*] at para 13).

[23] In addition, if the evidence before the RAD is submitted after the perfection of the appeal, it must be analyzed in light of the factors listed at paragraph 29(4)(a) of the *Refugee Appeal Division Rules*, SOR/2012-257 [RAD Rules], which provides the following:

**Factors**

(4) In deciding whether to allow an application, the Division must consider any relevant factors, including

(a) the document's relevance and probative value;

(b) any new evidence the document brings to the appeal; and

(c) whether the person who is the subject of the appeal, with reasonable effort, could have provided the document or written submissions with the appellant's record, respondent's record or reply record.

**Éléments à considérer**

(4) Pour décider si elle accueille ou non la demande, la Section prend en considération tout élément pertinent, notamment :

a) la pertinence et la valeur probante du document;

b) toute nouvelle preuve que le document apporte à l'appel;

c) la possibilité qu'aurait eue la personne en cause, en faisant des efforts raisonnables, de transmettre le document ou les observations écrites avec le dossier de l'appellant, le dossier de l'intimé ou le dossier de réplique.

[24] Relevance is a basic condition for the admissibility of new evidence before the RAD (*Singh* at para 45), and new evidence is considered to be relevant if it is "capable of proving or refuting a fact relevant to the asylum application" (*Raza* at para 13).

[25] The RAD found the newly submitted letter to be credible, but did not find it to be relevant to the Applicants' alleged fear of persecution in Bangladesh and the Philippines. The onus was on the Applicants to explain the relevance of this evidence, which they failed to do. In light of the foregoing, I am not convinced that the RAD's decision to refuse to admit this new evidence is unreasonable because it does not fall within a range of possible and acceptable outcomes (*Vavilov* at para 83). In fact, the RAD's assessment on the admissibility of new evidence requires deference, and it is not this Court's role to assess whether the evidence should have been admitted, but



whether the RAD's finding rejecting the new evidence was reasonable (*Mavangou v Canada (Citizenship and Immigration)*, 2019 FC 177 at paras 22, 27).

[26] Moreover, the Applicants argue that the RAD should have considered certain NDP excerpts relating to the availability of mental health services for children and adolescents in Bangladesh and the Philippines when assessing the admissibility of the third child's medical document. I am not persuaded by the Applicants' proposition. The RAD cannot be faulted for not treating specific elements of the NDP that were not identified or argued by the Applicants; and, in this case, the Applicants did not raise the particular excerpts on the availability of mental health services in the NDPs in their submissions to the RAD (*Xiao v Canada (Citizenship and Immigration)*, 2021 FC 386 at para 30; *Cova Torres v Canada (Citizenship and Immigration)*, 2023 FC 1672 at paras 43, 58; *Dakpokpo v Canada (Citizenship and Immigration)*, 2017 FC 580 at para 14). The availability of medical care in this case is an issue that is more appropriate for consideration in an application on humanitarian and compassionate grounds.

[27] Finally, while the RAD admittedly confused the fact that the medical document was related to the third child and not the youngest Canadian child, that error is not fatal to the RAD's analysis and conclusion. In my view, this minor misstep by the RAD is not "sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100; *Kabak v Canada (Minister of Citizenship and Immigration)*, 2005 FC 689 at para 38; *Canada (Minister of Citizenship and Immigration) v Patel*, 2002 FCA 55 at paras 4–5, 13; *Azanor v Canada (Citizenship and Immigration)*, 2020 FC 613 at para 25).

B. *The RAD's decision was reasonable*

(1) The PA's claim against Bangladesh

[28] The Applicants argue that the RAD erred in its analysis on the credibility of the PA's claims against Bangladesh, and that the RAD acted outside of its jurisdiction by seeking further explanations from the PA regarding his credibility issues.

[29] The Applicants submit that the RAD's request for additional explanations on inconsistencies in the evidence regarding the incidents that allegedly took place during the PA's first trip back to Bangladesh in 2015 demonstrate that the RAD did not have sufficient information to render a decision on this matter, and consequently should have sent it for redetermination by the RPD. In the alternative, the Applicants argue that the PA's explanation, that the inconsistencies in the evidence occurred due to confusion regarding the sequence of events, was reasonable.

[30] The Applicants also maintain that the PA's omission to include information on the police's accusation that he is involved in anti-government activities in 2017 was not a crucial element of his refugee claim, which explains why it was not part of his BOC, and therefore should not have negated his credibility in its entirety. Moreover, on the contradiction regarding the PA's alleged detention by the police in Bangladesh in 2017, the Applicants submit that this should not be held against the PA as he testified in an honest and open manner on the events that took place.

[31] Finally, the Applicants submit that the RAD erred in seeking additional submissions from the PA on his credibility issues. According to the Applicants, the RAD does not have the jurisdiction to seek additional testimonial evidence unless the testimony is regarding new evidence.

[32] With respect, I disagree with the Applicants.

[33] The inconsistencies surrounding the incident that took place in Bangladesh in 2015, the omission to include the police's alleged accusation against the PA in 2017, and the contradicting evidence with regards to the PA's alleged detention in 2017 are not insignificant. These incidents are central to the PA's claims against Bangladesh, and consequently, the RAD is entitled to rely on those inconsistencies to reach an adverse credibility finding (*Obozuwa v Canada (Citizenship and Immigration)*, 2019 FC 1007 at para 24). Such findings command a high degree of deference by this Court (*Noël v Canada (Citizenship and Immigration)*, 2020 FC 281 at para 16; *Zhao v Canada (Citizenship and Immigration)*, 2019 FC 1593 at para 33).

[34] Ultimately, the burden rests on the Applicants to prove the central elements of their claim on a balance of probabilities (*Iyombe v Canada (Citizenship and Immigration)*, 2016 FC 565 at para 14; *Nwankwo v Canada (Citizenship and Immigration)*, 2023 FC 786 at para 26). In this case, they have not done so, and I do not see any reason to interfere with the RAD's findings.

[35] I also respectfully dismiss the Applicants' argument that the RAD acted beyond its jurisdiction by asking the PA for additional explanations on the inconsistent evidence. In my view, the RAD is entitled to seek such explanation and is required, as it did, to provide notice in

accordance with the principle of procedural fairness (*Daodu v Canada (Citizenship and Immigration)*, 2021 FC 316 at paras 15–16; *Ali v Canada (Citizenship and Immigration)*, 2022 FC 1207 at para 14). Contrary to what the Applicants submit, the RAD is not obligated to send the matter back to the RPD for redetermination.

[36] In this matter, the Applicants have not proven that the RAD’s negative credibility finding was unreasonable and therefore, this Court cannot intervene with the RAD’s conclusion (*Vavilov* at para 100).

(2) The Applicants claim against the Philippines

[37] The Applicants maintain that the RAD’s finding that they can avail themselves of state protection in the Philippines is unreasonable. According to the Applicants, they have a valid refugee claim against the Philippines based on their religious beliefs and the Associate Applicant’s gender and mental health condition.

[38] The Applicants argue that the RAD’s conclusion that Muslims do not face persecution in the Philippines contradicts the evidence in the NDP, which highlights that Muslims face discrimination and human rights violations.

[39] Furthermore, the Associate Applicant claims that she cannot avail herself of state protection in the Philippines due to her personal circumstances as a single or unwed mother, and because she suffers from a mental health condition. She claims that if she returns to the Philippines, she will have to return without her husband, because he does not have status in the country. She

will therefore be perceived as a single or unwed mother, although she is not. She also argues that the evidence demonstrates that there is insufficient mental healthcare in the Philippines, which would prevent her from having access to proper treatment for her condition.

[40] Respectfully, the Applicants have not demonstrated any reviewable errors in the RAD's reasoning on this issue.

[41] The RAD did, in fact, consider the NDP evidence on the situation of Muslims in the Philippines. In doing so, the RAD reasonably determined that, while Muslims may face discrimination as a religious minority in the Philippines, the discrimination does not rise to the level of persecution. The RAD also considered the discrimination faced by the Applicants in two separate instances in the Philippines and highlighted that the discrimination they faced did not amount to persecution. This was a reasonable conclusion given the evidence presented before the RAD.

[42] The RAD also reasonably concluded that the Associate Applicant's argument that she will face persecution as an unwed or single mother is not established on the evidence. The Associate Applicant is not a single or unwed mother, and the Applicants have not provided any evidence as to why the PA could not join her in the Philippines. Indeed, the evidence demonstrates that the PA did live previously in the Philippines with the Associate Applicant in 2019, and there is no evidence that the PA could not return.

[43] Furthermore, in my view, the Associate Applicant's argument pertaining to the inadequacy of the healthcare in the Philippines is not established. The RAD clearly considered the Associate Applicants' mental health diagnosis and how it has affected her appreciation of her risk of persecution in the Philippines; however, the RAD concluded that there is no established link between the state of her mental health, the discrimination she experienced in the Philippines, and the risk of future persecution in the Philippines.

[44] In sum, state protection is presumed and the onus is on the Applicants to prove that there is no state protection based on "clear and convincing evidence" (*Pinto Ponce v Canada (Citizenship and Immigration)*, 2012 FC 181 at para 47; *Ali v Canada (Citizenship and Immigration)*, 2022 FC 1345 at para 32). The Applicants have not discharged their burden in this case and indeed, do not appear to have approached the police regarding the alleged incidents with the Christian preachers. The Applicants' reluctance to approach the police because of the Muslim/Christian issues is not supported by the NDP or other evidence, and is speculative.

[45] In light of the foregoing, I am satisfied that the RAD's decision falls within a range of possible, acceptable outcomes which are reasonable in light of the legal and factual constraints of this case (*Vavilov* at paras 86, 304).

## VI. Conclusion

[46] The RAD's decision bears the hallmarks of reasonableness. It is transparent, intelligible and justified in light of the relevant legal and factual constraints (*Vavilov* at para 99; *Mason* at para 59).

[47] The Applicants' application for judicial review is dismissed.

[48] The parties have not proposed any question for certification and I agree that none arises in the circumstances.

**JUDGMENT in IMM-9819-22**

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

1. The application for judicial review is dismissed.
2. There is no question for certification.

"Guy Régimbald"

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Judge



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

**DOCKET:** IMM-9819-22

**STYLE OF CAUSE:** MD MAJEDUL ISLAM, ET AL. v THE MINISTER OF  
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**PLACE OF HEARING:** MONTRÉAL, QUÉBEC

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**DATED:** FEBRUARY 28, 2024

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