Federal Court Cour fédérale

Date: 20240730

Docket: IMM-2038-23

Citation: 2024 FC 1208

Ottawa, Ontario, July 30, 2024

PRESENT: Mr. Justice Pentney

BETWEEN:

MOHAMMED NURUL ISLAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mohammed Nurul Islam, seeks judicial review of the decision rejecting his application for a Pre-Removal Risk Assessment ("PRRA"). He said he was at risk in Bangladesh at the hands of the Awami League ("AL") due to his membership in the Bangladesh National Party ("BNP").

[2] The decision is the third consideration of the Applicant's PRRA application. As explained in more detail below, an earlier decision was reversed by Order of this Court and the next one was vacated on consent. In addition, there have been three previous decisions of this Court concerning applications by the Applicant to stay his removal from Canada: two were granted and one was denied. The significance of the prior Court decisions in relation to the present matter is discussed below.

[3] While the Officer accepted that the Applicant subjectively feared he would be harmed by the AL, the PRRA was rejected because the Officer found there was not objective evidence that the individuals who had threatened his wife and mother after he fled Bangladesh were connected to the AL. The Officer also found the evidence did not demonstrate why the AL would be motivated to seek out or harm the Applicant.

[4] The Applicant submits that the decision is unreasonable on three main grounds: the decision lacks a rational chain of analysis; the Officer made veiled credibility findings without providing him the opportunity to rebut the concerns at an oral hearing; and the Officer failed to consider his risk profile in light of the objective country condition evidence. A theme that runs through the Applicant's arguments is the decision should be quashed because the Officer failed to follow the prior decision of this Court granting an earlier application for judicial review.

[5] For the reasons that follow, this application for judicial review will be dismissed. The decision is reasonable, the Officer did not make veiled credibility findings, and the assessment of

the Applicant's risk profile was based on the Officer's assessment of the evidence in the record. There is no basis to overturn the Officer's decision.

I. **Background**

[6] The Applicant is a citizen of Bangladesh, who says he fled the country after his friend Nurul Alam Nuru ("Nuru") was kidnapped and killed. In March 2017, the Applicant and Nuru attended a wedding reception, and when it ended the Applicant suggested to Nuru that he stay at his in-law's house and return home in the morning. Instead, Nuru returned home to see his family. Later that night, Nuru was forcibly taken, and his body was found the next day; he had been shot in the head. The Applicant asserts that this was done by AL goons because of Nuru's leadership role in the BNP; he had been Assistant General Secretary of the student wing of the BNP.

[7] The Applicant says that after the murder was discovered, Nuru's wife told him that the people who took her husband had been asking for the Applicant's home address. She advised him to flee. The Applicant then moved to Dhaka, where he gathered the documents he needed to come to Canada. He arrived in Canada on a Temporary Resident Visa on August 27, 2017, and submitted a claim for refugee protection in March 2018. However, he was found inadmissible by virtue of paragraph 34(1)(c) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] based on his membership in the BNP.

[8] In February 2020, the Applicant was invited to submit a PRRA application. A negative decision was issued in September 2020, but it was overturned on judicial review in March 2022. Justice Paul Favel quashed the decision and sent the matter back for redetermination because the officer had failed to convene an oral hearing to allow the Applicant to address the negative credibility findings that were central to the decision: *Islam v Canada (Citizenship and Immigration)*, 2022 FC 261.

[9] A second negative PRRA decision was issued in August 2022, and the Applicant again sought judicial review. That application was discontinued on consent when the Respondent offered to have the application examined by a different officer.

[10] A third negative PRRA decision was issued on January 24, 2023. The Applicant seeks judicial review of this decision.

[11] To complete the background, I should note that the Applicant has sought to prevent his removal from Canada on several occasions. On February 24, 2001, Justice Henry Brown granted the Applicant a stay of his removal, noting that he had said he faced a risk because he was a "signified leader" of the BNP: 2021 CanLII 33007. Although Brown J. found the evidence about the Applicant's role in the BNP to be lacking, and there was not substantial evidence to support his claims, he nevertheless was satisfied that the Applicant had established irreparable harm.

[12] On March 4, 2023, Justice Vanessa Rochester (now Rochester J.A.) dismissed the Applicant's motion for a stay of his removal: IMM-2038-23. She noted discrepancies regarding the Applicant's claimed role in the BNP, discussed in more detail below. The stay order was refused because Rochester J. found that the Applicant had failed to establish irreparable harm and the balance of convenience favoured the Respondent.

[13] On September 15, 2023, after leave was granted in the matter before the Court, Justice Martine St-Louis granted a stay of removal: IMM-2038-23.

II. **Issues and Standard of Review**

[14] The issue in this case is whether the PRRA decision is unreasonable. Within that, the Applicant raises three arguments: (a) the decision lacks a rational chain of analysis; (b) the Officer made a veiled credibility finding without affording him an oral hearing; and (c) the Officer failed to assess the risks he faces on return to Bangladesh because of his profile.

[15] These questions are to be assessed under the framework for reasonableness review set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, and recently confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 2.

[16] In summary, under the *Vavilov* framework, a reviewing court "is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual

constraints" (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 2). The reviewing court must look for any "fatal flaws" in the reasons' overarching logic (*Vavilov* at para 102). Absent exceptional circumstances, a reviewing court must not interfere with a decision maker's factual findings (*Vavilov* at para 125).

III. **Analysis**

[17] Before analyzing the specific arguments, it will be helpful to clear away some underbrush in the parties' arguments. In my view, both sides placed too much weight on the prior decisions of this Court.

[18] The Applicant criticizes the Officer for failing to heed the guidance of Favel J. in the prior judicial review, in particular that his sworn statement was sufficient to grant the PRRA request. For its part, the Respondent relies on the decision of Rochester J. denying the Applicant's motion for a stay of his removal, in particular the findings about the inconsistencies in his evidence relating to his prior membership in the BNP. Justice Rochester pointed out that the Applicant had sought to downplay his role in the BNP when he was facing exclusion from refugee protection, but later emphasized how active he had been when he applied for a PRRA. In the absence of any explanation for the difference, Rochester J. found the inconsistency weighed against the Applicant.

[19] Although each side invoked the principle of *stare decisis*, I am not persuaded that these prior decisions have the persuasive force that each side seeks to attribute to them. Justice Favel's

decision on the prior judicial review quashed a differently worded decision that was based on a different record than the case before me. For example, Favel J found that the previous PRRA Officer failed to make a clear finding on whether the Applicant was simply a member of the BNP or instead played a leadership role. The Officer in the decision under review here clearly made such a finding. The prior decision is obviously relevant to assessing the current decision, but the Officer was not bound to follow its specific findings to the extent these were based on a different evidentiary record.

[20] Similarly, Rochester J's finding that the Applicant's evidence about his involvement in the BNP is inconsistent is not a binding determination made after consideration of all of the evidence. This Court has repeatedly emphasized that decisions on stay motions have limited force beyond their immediate effect because they are based on a preliminary review of an often incomplete record (depending on the status of the underlying proceeding) and are made under significant time constraints, without the benefit of a full argument on the merits of the matter. In any event, the inconsistencies in the evidence are plain from the record before me, and it is neither necessary nor appropriate to rely to any significant degree on the previous decisions on the judicial review or stay motions.

[21] With this out of the way, we turn to the main issues raised by the parties.

A. *The decision does not lack a rational chain of analysis*

[22] The Applicant submits that the decision-maker's chain of reasoning does not add up. He points to the following elements in the decision: the Officer does not doubt his credibility and

accepts that he may believe that the AL is after him; he is an "active member" of the BNP, and was close friends with Nuru and was with him the evening before he was taken and killed; that individuals have come to his house on several occasions to search for him; and that it may have been AL supporters who killed Nuru. Despite these findings, the Officer doubted that the Applicant would face a risk from the AL on his return.

[23] On this point, the Applicant argues that the Officer demonstrated an overzealous questioning of the details of the evidence and would only have been satisfied by direct evidence from him that he had personally faced threats from AL supporters. The Officer did not doubt his credibility, and his evidence is presumed to be true: *Maldonado v Minister of Employment and Immigration*, [1980] 2 FC 302 (FCA); *Sundralingam v Canada (Citizenship and Immigration)*, 2022 FC 1768 [*Sundralingam*] at para 48. He also filed evidence from his wife and mother that demonstrated that AL goons continue to search for him and have threatened to harm him if they find him.

[24] The Applicant says the Officer's demand for direct evidence of threats is not supported by the case-law, and runs counter to Favel J's decision in the prior judicial review which found the following at paragraph 46:

> Had the Officer believed the Applicant, the Applicant would have established that he was a member of an opposition party, whose family and friends had been physically assaulted and murdered by the ruling Awami League. Further, he would have established that he was with Mr. Nuru the night of the murder. In these circumstances, such evidence would justify granting the PRRA application.

[25] According to the Applicant, instead of following Justice Favel's guidance, the Officer adopted an overly zealous approach and discounted evidence that did not contain the details that the Officer wanted to see. For example, the Officer gave less weight to the Applicant's wife's statement because she failed to explain how she knew the people who came to the house searching for the Applicant were affiliated with the AL. The Applicant says this is unreasonable, because the wife did say that AL members can be identified by the headbands they wear, and she noted that on some occasions the goons who came to the house wore headbands. There was no reason to question the wife's evidence that these individuals were AL supporters.

[26] The Officer's demand for direct evidence of threats from AL members permeates the decision, according to the Applicant. Yet this is an absurd requirement and sets an unrealistic standard for proof of risk. The Applicant relies on *Nagarasa v Canada (Citizenship and Immigration)*, 2018 FC 313 at para 23, where Justice Shirzad Ahmed found that "the Officer's overzealous approach to scrutinizing the letters for hearsay, dates and other allegedly missing details comes dangerously close to imposing an impossible standard that would effectively require letters from persons who were physically present during the alleged mistreatment." The Applicant argues that the Officer here made the same mistake.

[27] I do not agree. There is only one aspect of the decision that I find to be troublesome, but it is not sufficiently grave to undermine the entire decision.

[28] The Officer's chain of analysis is clear from reading the decision as a whole. The Applicant's list of facts that the Officer accepted is accurate, but that does not mean that his

PRRA must therefore have been granted. The Officer explains why the elements of the narrative that were accepted as true do not support a positive PRRA assessment. To summarize the Officer's line of reasoning, they accept that the Applicant fears that the AL is after him because of his association with Nuru and the BNP. However, the evidence about the subsequent threats by people who visited his home, threatened his wife and attacked his mother does not establish that they were linked to the AL. For example, the Officer states that there was no objective evidence (e.g. police reports) specifically linking the AL to Nuru's killing but goes on to accept that "it may have been the AL that abducted and killed Nuru" (emphasis added).

[29] The Officer also discussed the Applicant's claim that the AL were searching for him because he had been with Nuru the night of the wedding and the group was concerned that he will disclose what he knows about the murder. The Officer observed that the main problem with this thesis is that the Applicant did not state that he had any other information about the circumstances of the murder beyond that which had been reported in local newspapers. Based on this, the Officer questioned why the AL would be looking for the Applicant.

[30] The Applicant indicated that he was a target of the AL because of his membership and role in the BNP. The Officer discussed the Applicant's evidence on this point, noting that it had changed over time. In his PRRA request, the Applicant claimed to be a "signified leader" of the BNP, meaning he was a "well-known, active, longstanding member… more than a regular member…" The Officer then referred to the ID's finding that the Applicant was simply a member. However, the Officer also pointed out that the ID decision indicates that the Applicant had stated that he should not be considered a member of the BNP considering the nature of his

involvement, the fact that he never completed a membership application, and had no higher leadership designation. No explanation for these discrepancies was presented.

[31] The Officer then noted that in his April 21, 2022 statutory declaration, the Applicant stated he was an "active member" of the BNP until he left Bangladesh in 2017, while his December 15, 2022 declaration indicated that he was currently a member but did not specify what activities he participated in. No explanation was provided for the difference in the Applicant's evidence about whether or when his involvement with the BNP had ended.

[32] Based on this, the Officer stated: "Regardless, I accept that the [A]pplicant was a member of the BNP."

[33] The Applicant claims that the Officer made inconsistent and incomprehensible findings on this point, citing a different passage in the decision where the Officer stated: "I have considered the [A]pplicant's statements that he was an active member of the BNP and I accept this as true." I am not persuaded that there is any meaningful difference between the two descriptions of the Applicant's role.

[34] The decision must be considered as a whole, in light of the record that was before the Officer. Part of that record included claims by the Applicant that he was a "signified leader" of the BNP, which the Officer clearly did not accept. Instead, the Officer found that the Applicant was simply a "member" (albeit an "active" one) – in contrast to playing a leadership role. The

Applicant's argument on this point resembles the type of "treasure hunt for error" that the case-law has consistently rejected (*Vavilov* at para 102).

[35] In light of the record, and the Applicant's prior inconsistent statements regarding the role he played in the BNP, combined with his lack of explanation for the discrepancies, the Officer's finding on his role in the BNP is reasonable. Its place in the chain of reasoning is clear and logical. The Applicant's disagreement with the finding, and emphasis on minor differences in wording in the decision, does not meet his onus of demonstrating a significant shortcoming or flaw in the decision (*Vavilov* at para 100).

[36] There is, however, one aspect of the Officer's reasoning that veers towards an overly zealous examination of the evidence. A central issue for the Officer was the basis for the belief that the goons who visited the Applicant's wife were linked to the AL. She had provided several instances where unknown men came to the house to search for the Applicant and threaten them, and she said that they were linked to the AL. In a statutory declaration dated December 15, 2022, the Applicant's wife described a particular incident:

> On 15 August 2022 at 9:00 p.m., four AL goons came to our home. I know that this is a death anniversary for one of AL leaders in the town and they had a gathering. Once they were done their meeting, they threw some rocks at the window. After 20 minutes, they knocked on my door again with one local AL leader who I know is named "Lutfor" because he is very dangerous and known to murder people. He asked me the whereabouts of my husband and mother-in-law, Hasina Ahmed. I told them that they were not here and that they were in Canada, but they did not seem to believe me.

[37] On this point, the Officer refers to the passage cited earlier, and then states: "She does not, however, state how she recognized [Lutfor], how she knows that he murders people, how she knows he is a local AL leader, or if a threat was made on that date to harm or kill the [A]pplicant." Viewed in isolation, I agree with the Applicant that this is the type of overly zealous review of evidence that has been criticized in the past.

[38] In this case, however, this passage must be viewed in the context of the decision as a whole. The Officer discusses the remainder of the evidence provided by the Applicant, his wife and mother, noting that they do not demonstrate how they concluded that the goons who came to their house were linked to the AL. The Officer's line of reasoning is made evident in the following passage:

> In her declaration, the spouse describes these persons as "AL goons". However, she has not demonstrated how she came to the conclusion that these persons are from the AL. It is indicated that they are plain-clothed and it is not indicated that they identified themselves to her as members of the AL. While the submissions do state that members of the AL often wear a headband with their party symbol (a boat in the water), it is not indicated in her declaration that the people that attended the spouse's home were wearing such headbands at that time.

[39] This is an accurate description of the evidence. The Applicant bears the onus of demonstrating that the Officer's decision does not reflect the factual matrix, and in this instance, I find that the decision demonstrates a careful examination of what the evidence says – and does not say – on the crucial foundation for the Applicant's PRRA. On this latter point, it is important to underline that the Officer's analysis focuses on what the affidavits actually say, and does not discount them only because of what they do not say; the Officer did not fall into the "common

trap" of discounting evidence for what it does not say: see *Magonza v. Canada (Citizenship and Immigration)*, 2019 FC 14 at para 49.

[40] I can find no fault with the Officer's overall analysis, despite the fact that the discussion of the wife's description of one of the assailants may have been overly scrupulous.

[41] For the reasons set out above, I am not persuaded that the Officer's decision lacks a rational chain of analysis. The Officer's main findings are clear and support the conclusion that was reached. The reasons for the decision display the hallmarks of a reasonable decision: "justification, transparency and intelligibility" (*Vavilov* at para 99).

B. *The Officer did not make veiled credibility findings*

[42] The Applicant argues that the Officer's decision did not turn on insufficiency of evidence, but rather is grounded in veiled credibility findings. In part this submission rests on the assertion that Favel J. previously found that the Officer's questioning of certain details in the Applicant's narrative amounted to a credibility finding. As explained earlier, I am not persuaded by the reliance on that decision, because it was based on a different decision and a different factual record.

[43] In the Applicant's view, the Officer couched credibility concerns in the language of insufficiency of evidence. In particular, the Officer faulted the Applicant for failing to demonstrate first-hand knowledge of the AL threats against him. He says that he had fled Bangladesh by the time the AL goons threatened his wife and mother, and they provided sworn

evidence about what happened. The Officer's questions about their evidence must have rested on credibility concerns, because there was no basis to doubt the authenticity of their statements.

[44] On this point, the Applicant relies on several decisions, including one which he says is factually quite similar to the instant case because it involved doubts about a claimant's risks in Bangladesh as a result of BNP involvement: *Khan v Canada (Citizenship and Immigration)*, 2019 FC 534 [*Khan*]. The Applicant cites the following passage:

> [33] The Applicant's credibility was clearly at issue when the Officer stated that "the submissions and documents presented included little evidence to corroborate the Applicant's activities as a leader with the BNP while in Bangladesh." This statement shows that the Officer had unexplained and unstated concerns about the Applicant's credibility. In my view, this statement constitutes a veiled credibility finding because the Officer looked for evidence to corroborate the Applicant's claim that he faces political persecution and a personalized risk because of his active role in the BNP. The only way the Officer could make this finding was if he or she found the Applicant not to be credible or had doubts about statements in the Applicant's affidavit.
>
> [34] The Officer explicitly stated that the Applicant's affidavit was accepted as the basis for his claim for protection. The Officer did not explicitly find the Applicant to be not credible; nor did the Officer reference any contradictions, inconsistencies, or implausibilities arising from the Applicant's sworn testimony in his affidavit. This runs afoul of *Maldonado v Canada (Minister of Employment & Immigration)*, 1979 CanLII 4098 (FCA), [1979] FCJ No 248 at para 5: "When an applicant swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there be reason to doubt their truthfulness." The Officer expressed no such doubt in this case.

[45] According to the Applicant, the Officer in this case made the same mistakes as in *Khan*. He argues the Officer questioned his evidence as well as his wife's sworn statements about the

risks he faces on a return to Bangladesh. For example, the Officer was not satisfied that the individuals who repeatedly came to his house to threaten his wife and who attacked his mother were AL goons, despite their sworn statements to that effect. The Applicant argues that these doubts must rest on veiled credibility findings.

[46] In his Memorandum of Argument, the Applicant puts it this way: “In concluding that the evidence of his risk was insufficient, the Officer essentially stated he disbelieves the Applicant even when Favel J. found that details in the Applicant’s sworn statement alone were sufficient to grant the PRRA.” This questioning of sworn statements is indicative of a veiled credibility finding on the key question of the Applicant’s forward-facing risk. According to the Applicant, this is sufficient to make the entire decision unreasonable.

[47] I am not persuaded. A careful examination of the Officer’s reasons reveals that the evidence was analyzed but found wanting because of the lack of details regarding how the Applicant’s wife and mother identified their assailants as linked to the AL. Neither of them said that the goons ever said that they were from the AL, nor was there any other evidence to confirm that connection.

[48] The Officer did not express doubt about the fact that goons had repeatedly visited his house, threatened his wife and that on one occasion they attacked his mother. No questions were raised about that evidence. However, the Officer was not satisfied that the statements of the Applicant, or those of his wife and mother, demonstrated that the assailants were connected with the AL. The fact that the Applicant, his wife and mother all believed this to be the case did not

meet the onus of proof on this point. The Officer did not doubt the credibility of their evidence, but rather found that it fell short of establishing that the Applicant would face a risk from the AL on his return to Bangladesh. To put it another way, the evidence was believed, but found to be insufficient to support the Applicant's PRRA request.

[49] The reasons demonstrate a careful review of the evidence on this point, in which the Officer points out several instances where the crucial link with the AL was missing. For example, the wife indicates that AL members often wear headbands displaying the party's symbol. As the Officer notes, the wife never indicated that the specific assailants who visited her home and threatened her and the Applicant wore headbands with this marking. There was no evidence that they told her they were from the AL, and no other evidence showing that the group was interested in finding the Applicant.

[50] I disagree with the Applicant's contention that the Officer imposed an unrealistic burden on him regarding proof that the threats were from the AL. That is the key basis of the Applicant's PRRA, and the Officer carefully reviewed the evidence on this point. There is simply no indication in the decision that the Officer required direct proof that the Applicant had been threatened by the AL. Instead, the Officer examined the evidence submitted by the wife and mother and found it did not establish the crucial link. This is a reasonable finding, based on the evidence in the record.

[51] The Officer's conclusion that the evidence was insufficient was based on findings that reflected the limits of what the evidence actually said. These were findings that were open to the

Officer on the evidence in the record, and it is not the role of a reviewing Court to re-weigh the evidence. Based on this analysis, I am not persuaded that the Officer made any veiled credibility findings. In light of this, the question of whether an oral hearing was required does not arise.

C. *The Officer did consider the Applicant's profile*

[52] The Applicant asserts that the Officer failed to assess his risk as an active member (or perceived active member) of the BNP. He submits that the objective evidence demonstrates that violence is directed towards all members of the BNP, not only individuals in leadership positions or those who are viewed as important members.

[53] Once the Officer accepted that the Applicant was a BNP member, they were obliged to examine his risks in light of the country condition evidence. Instead of doing that, the Officer focused on what was missing in the Applicant's evidence. He says the Officer held him to a standard of perfection, demanding specific evidence of threats based on first-hand knowledge. The Applicant contends that the Officer unreasonably minimized the country condition evidence about the nature and extent of violence directed towards the BNP, and failed to consider the evidence about the role he had played in the organization.

[54] I cannot accept the Applicant's argument, because the decision demonstrates that the Officer examined the objective evidence as well as the Applicant's evidence about his role in the BNP. For example, the Officer summarized the letter from the BNP General Secretary in the Applicant's home city, noting that it stated that the Applicant had been an "active member and activist…until he escaped Bangladesh in 2017." The Officer reasonably finds that the letter does

not indicate whether the Applicant is still a BNP member, nor that he had been in any kind of leadership role previously. The letter's author recounted what he had been told about the AL's continuing interest in the Applicant but stated that this information had been provided by the Applicant's spouse and friends. There is no basis to disturb the Officer's decision to afford this letter little probative value because it was not based on any independent knowledge about the threats. That is the Officer's decision to make and the rationale for the conclusion is clearly explained in the decision.

[55] The fact that there may be country condition evidence that could support a finding that BNP members face a risk of violence does not, in itself, make the Officer's conclusion unreasonable. Parliament assigned the role of weighing this sort of evidence to the PRRA Officer, and it is not the role of the Court to engage in an assessment of the evidence, absent exceptional circumstances. No such circumstances exist here, and I can find no basis to question the Officer's analysis of the Applicant's risks, based on the evidence in the record.

IV. **Conclusion**

[56] For the reasons set out above, the application for judicial review will be dismissed. While the Officer's reasons are not perfect, the Applicant has failed to demonstrate an error on any central point that is sufficiently serious to make the entire decision unreasonable.

[57] There is no question of general importance for certification.

JUDGMENT in IMM-2038-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question of general importance for certification.

"William F. Pentney"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2038-23
STYLE OF CAUSE:	MOHAMMED NURUL ISLAM v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	DECEMBER 11, 2023
JUDGMENT AND REASONS:	PENTNEY J.
DATED:	JULY 30, 2024

APPEARANCES:

Sumeya Mulla	FOR THE APPLICANT
James Todd	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Waldman & Associates Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT