

Date: 20071106

Docket: IMM-6211-06

Citation: 2007 FC 1151

Ottawa, Ontario, November 6, 2007

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

ABDUL HALIM BISWAS

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION and
THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Abdul Halim Biswas came to Canada in 2003 from Bangladesh. He claimed refugee protection based on his fear of political persecution as a member of a political party, the Awami League. His claim was dismissed by a panel of the Immigration and Refugee Board because of a lack of credible evidence. Mr. Biswas then requested a pre-removal risk assessment and presented some new evidence to support his application. Nevertheless, the officer who conducted the assessment found that the new evidence did not show that Mr. Biswas was at risk of persecution or serious mistreatment if he returned to Bangladesh. Mr. Biswas argues that the officer erred by unfairly discounting the value of the evidence he supplied. He asks me to order a reassessment by a different officer.

[2] I can find no basis for overturning the officer's decision and must, therefore, dismiss this application for judicial review.

I. Issues

1. Did the officer fail to consider relevant evidence?
2. Did the officer fail to appreciate the significance of the new evidence?
3. Did the officer err in failing to respond to Mr. Biswas' request to defer his assessment until he received the response to his application for humanitarian and compassionate relief?

II. Analysis

A. *Did the officer fail to consider relevant evidence?*

[3] The officer reviewed the documentary evidence Mr. Biswas presented and determined that some of it was not new evidence and, therefore, should not form part of the risk assessment (relying on s. 113(a) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 ; relevant enactments are set out in an Annex). Mr. Biswas submits that the officer should have considered a letter written by Gazi Kamul Huda, General Secretary of one branch of the Awami League. The letter post-dated Mr. Biswas' refugee claim. However, the officer concluded that the letter could not be considered new evidence because its main contents related to events that had occurred before Mr. Biswas had left Bangladesh and, therefore, could have been presented as part of his refugee claim.

[4] Mr. Biswas disputes this conclusion because the letter also states that returning to Bangladesh would be “very risky to his life”. Since this is a reference to the current situation in Bangladesh, Mr. Biswas argues that this information could not have been presented in his refugee claim and, therefore, should have been treated as new evidence.

[5] In my view, the officer did not err. While, technically speaking, the letter’s reference to an ongoing risk was new information, it amounted merely to an isolated and unsubstantiated statement. As will be discussed below, the officer did go on to consider other, more direct, evidence that Mr. Biswas might currently be in danger. In the context of the evidence as a whole, the officer’s treatment of the Awami League letter was appropriate.

B. Did the officer fail to appreciate the significance of the new evidence?

[6] The officer considered two pieces of documentary evidence and found them both to be of little evidentiary value. The first was a letter written by Mr. Biswas’ wife in 2005. She stated that terrorists were threatening her and demanding money. She undertook to provide more details later but no further information about her circumstances was put before the officer.

[7] The officer noted that Mr. Biswas had not supplied the envelope in which the letter was allegedly sent, which would have confirmed its origins and date. Further, the officer was concerned that the letter did not originate from an unbiased source. In light of the numerous adverse credibility findings previously made against Mr. Biswas by the Immigration and Refugee Board, the officer

felt that the letter deserved little weight. I cannot fault the officer's treatment of this evidence.

Generally speaking, it is for the officer to determine how much weight a piece of evidence deserves.

The Court will intervene only when that determination is unsupportable.

[8] The officer also considered a letter from the Chairman of the Balora Union Council in which the author stated that Mr. Biswas had left Bangladesh because his life was threatened by "various tortures of a few unruly persons" and that his wife and son continued to be harassed by the same people. The officer concluded that the letter was vague. It did not identify the identities of the alleged persecutors or provide the reason why they were interested in Mr. Biswas and his family. The officer determined that the letter was of little probative value. Again, I cannot fault the officer's treatment of this evidence.

[9] Mr. Biswas also submitted that, if the officer was dissatisfied with the amount of detail in the letter, the officer had a duty to contact the author to obtain more information. In my view, there is no basis for this submission. The burden fell on Mr. Biswas, not the officer, to marshal persuasive evidence of persecution.

C. Did the officer err in failing to respond to Mr. Biswas' request to defer his assessment until he received the response to his application for humanitarian and compassionate relief?

[10] Mr. Biswas states that he made an oral request to the officer to defer his assessment until he found out the results of his application for humanitarian and compassionate consideration. The

officer never gave him a direct answer, but proceeded to issue his risk assessment while the other application remained outstanding.

[11] Mr. Biswas was unable to provide any authority or statutory basis for this argument. He pointed to the discretion of an enforcement officer to defer a person's removal from Canada pending a request for special relief and suggested that a risk assessment officer should have the same authority. To my mind, the two situations are not comparable. An enforcement officer's discretion derives from the wording of s. 48 of the *Immigration and Refugee Protection Act*. It appears there is no analogous provision that would invest risk assessment officers with a similar discretion.

[12] In light of the foregoing conclusions, I must dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S ORDER IS that

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

Annex

Immigration Refugee Protection Act, S.C. 2001, c. 27

Loi sur l'immigration et la protection des réfugiés, L.R. 2001, ch. 27

Enforceable removal order

48. (1) A removal order is enforceable if it has come into force and is not stayed.

Effect

(2) If a removal order is enforceable, the foreign national against whom it was made must leave Canada immediately and it must be enforced as soon as is reasonably practicable.

Consideration of application

113. Consideration of an application for protection shall be as follows:

(a) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;

Mesure de renvoi

48. (1) La mesure de renvoi est exécutoire depuis sa prise d'effet dès lors qu'elle ne fait pas l'objet d'un sursis.

Conséquence

(2) L'étranger visé par la mesure de renvoi exécutoire doit immédiatement quitter le territoire du Canada, la mesure devant être appliquée dès que les circonstances le permettent

Examen de la demande

113. Il est disposé de la demande comme il suit :

a) le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6211-06

STYLE OF CAUSE: BISWAS v. MCI & MPSEP

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: October 31, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: November 6, 2007

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