

**Date: 20071115**

**Docket: IMM-4315-07**

**Citation: 2007 FC 1199**

**Ottawa, Ontario, November 15, 2007**

**PRESENT: The Honourable Mr. Justice Orville Frenette**

**BETWEEN:**

**BJOYA CHAKRABARTY**

**Applicant**

**and**

**THE MINISTER OF PUBLIC SAFETY  
AND EMERGENCY PREPAREDNESS**

**Respondent**

**REASONS FOR ORDER AND ORDER**

**UPON** motion dated November 15, 2007 for an order granting the Applicant a stay against her removal scheduled for November 16, 2007;

**AND UPON** considering the written material submitted by the parties and by having heard counsels' oral submissions on November 15, 2007.

**The facts**

The Applicant is a citizen of Bangladesh. She is 55 years old, married, mother of two daughters who reside in Canada and one is a Canadian citizen.

The Applicant arrived in Canada on March 31<sup>st</sup> 2005, with a valid visitor's Visa. On April 22<sup>nd</sup> 2005, she sought refugee status and protection, based upon religious persecution in Bangladesh, but her request was denied by the Refugee Protection Division.

She sought a judicial review of this decision but her application was not authorized. She then applied for a Pre-Removal Risk Assessment (PRRA) decision, but her request was refused on August 30, 2007. She then applied for a judicial review of that decision, which has not yet been authorized.

The Applicant declared that she and her husband, practicing the Hindu Religion in a Country where 88% of the population belong to the Muslim Faith; they were victims of threats, physical violence by members of the Bangladesh Nationalist Party and Jamat-e-Islami Terrorists.

Her husband laid a complaint with the local police about those threats but no action was taken. She recalled that on one occasion, the local BNP Leader came to their house telling them to leave their house within 48 hours, otherwise they would be burned to death and were told to leave Bangladesh. She fled to Canada in 2005 and her husband went into hiding.

During the hearings of the RPD and PRRA, she described her real fear that she would be raped and/or killed if she returned to Bangladesh. Documents emanating from reputable organizations describe the state of violence and acts against the religious minorities in Bangladesh.

On January 11<sup>th</sup> 2007, the Government declared a state of emergency because of violence in the Country.

### **The Standard of review**

It is well known in law that on questions of credibility, plausibility and the weight to be given to evidence are largely questions of fact and are therefore within the jurisdiction and the expertise of the PRRA officer.

Therefore, a high level of deference must be granted to the decisions of the PRRA officer on the basis of such findings of fact.

The Court will not intervene in the PRRA officer's assessment of these matters, unless it is patently unreasonable. It is only reviewable if it is unsupported by the evidence or is capricious or perverse: *Aguebor v. Minister of Employment & Immigration* (1993), 160 N.R. 315; *Harb v. Canada (Minister of Citizenship and Immigration)*, 2003 FCA 39, [2003] F.C.J. No. 108.

To succeed, an Applicant must demonstrate that the findings are irrational or illogical and cannot be inferred from the evidence: *Voice Construction Ltd. v. Construction and General Workers' Union, Local 92*, 2004 SCC 23, [2004] S.C.J. No. 2.

### **The law on a stay motion**

The Applicant must satisfy the tripartite test set out in *Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302 (F.C.A.) and *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, namely:

1. Whether there is a serious question to be considered;
2. Whether the litigant, would, unless the interlocutory injunction was granted, suffer irreparable harm;
3. The balance of inconvenience, in terms of which of the two parties would suffer the greater harm from the granting or the refusal of an interlocutory injunction pending a decision on the merits.

### **1. Serious issue**

#### *a) Documentation*

The Applicant bases her contestation of the PRRA Officer's decision on the fact that she did not give sufficient weight to the documentation submitted by her which supported her fear. The Respondent answer's that the PRRA Officer did consider all the documentation, some of which showed that extremist BNP members were responsible for acts of violence against Hindus in Bangladesh.

The PRRA officer held that these documentation reports were general in nature and did not address the Applicant's particular situation. The PRRA officer also attached little importance to letters from the Applicant's two daughters, because the events had been previously found not credible by two IRB. However, the RPD did not have the letters when he reached his decision. The PRRA officer did write that the Hindus were a minority of 10% in Bangladesh, which 88% practised the Islamic Religion.

The PRRA officer considered the letters written by the Applicant's daughters but he did not attach any weight because of their interest in the matter. The PRRA officer wrote that none of these documents showed that the Applicant faced a personalized risk if she returned to Bangladesh. Furthermore, the information contained in those letters was not "new", and was solely based upon opinions, without details to support the source of such information.

The Applicant contends that she and her husband have been subjected to threats of harm and death if she returns to Bangladesh. There is documentation which supports the fact of violence and the letters of their daughters and others reveals personalized risk.

*b) State Protection*

The Applicant alleges fear of harm for herself and her husband if she returns to Bangladesh. The PRRA officer recognized the violence which the Hindus face in Bangladesh. The Respondent counters that she has not provided evidence that the Bangladesh Government was not presumed capable of protecting its citizens.

However, the Applicant reported that her husband has tried to obtain Police protection, but in vain.

*c) New Evidence*

The Applicant argues that the PRRA officer disregarded “new evidence”, i.e. the two letters from her daughters which confirms her risks if she returns to Bangladesh, declaring them to be “self serving”, with references to family information. He also excluded the letters written by Hindu religious organizations.

I do not wish to pre-judge a future assessment of this matter if the judicial review sought proceeds, and I realize that the questions of credibility, plausibility and weight are in the domain of the PRRA officer but I believe that the Applicant has raised a serious issue to be considered. The PRRA officer stated:

[T]he assessment reaffirms the existence of violence to which members of the Hindu minority in Bangladesh may occasionally be subject [...]

[...]

[...] The objective situation in Bangladesh confirms the existence of violence targeting religious minorities. [...]

If one joins these facts to the fears and risks confronting the Applicant, it is necessary to appreciate fully the “other or new evidence” of personalized risks, such as the daughters’ letters and other information.

I believe the PRRA officer could not fairly reach a just decision, by simply excluding such evidence. In a case which concerned similar problems, my colleague Justice Martineau allowed a judicial review of a decision of PRRA office because the latter had not properly assessed evidence of personalized risk: see *Fi v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1125, [2006] F.C.J. No. 1401.

In the above case, the PRRA officer had given no credibility to a letter from the mayor of Bert –Lid written on Palestinian National Authority (PNA) letterhead confirming the Applicant's fears.

On another point, uncontradicted oral testimony cannot be simply discarded without valid reasons or unless it is patently unbelievable: see *Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302 (C.A.).

In summary, there are serious issues to be considered.

## **2. Irreparable Harm**

The PRRA decision confirms the existence in Bangladesh of violence targeting religious minorities. The Applicant and her husband are part of the minority Hindu Faith.

The country is in a state of emergency since January 11, 2007. The Applicant fears for her safety and life if she returns to Bangladesh. The evidence adduced confirms her fears of the probability of suffering irreparable harm.

### **3. Balance of inconvenience**

It is in the public interest to enforce removal orders as soon as possible (*Refugee Protection Act*, S.C. 2001, C.27, s. 48(2)). However, a delay would not be against public interest in this case. The Applicant would suffer serious consequences if a delay was not granted. The balance of inconvenience weighs in her favour.



**ORDER**

**THIS COURT** grants the application for a stay of removal scheduled for November 16<sup>th</sup> 2007, until the Applicant's motion on leave and judicial review of the PRRA decision is finally determined.

"Orville Frenette"

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Deputy Judge

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

**DOCKET:** IMM-4315-07

**STYLE OF CAUSE:** Bijoya Chakrabarty v. MPSEP

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