

Date: 20090224

Docket: IMM-3547-08

Citation: 2009 FC 191

Ottawa, Ontario, February 24, 2009

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**BABLO TUSHAR,
ISRATH JAHAN, LAVINA JAHAN**

Applicants

and

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

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a negative Pre-Removal Risk Assessment (PRRA), which determined that the applicants would not be at risk of persecution, torture, or cruel and unusual punishment if returned to Bangladesh, their country of origin. For the reasons that follow, I find that the decision of the PRRA officer was reasonable. Thus, the Court dismisses their application for judicial review.

Background

[2] The applicants are Bangladeshi nationals. Bablo Tushar is the principal applicant. The other applicants are his wife, Ishrat Jahan, and their nineteen year-old daughter, Lavina Jahan. The family left Bangladesh and arrived in the United States of America on August 10, 2003. They came to Canada on October 1, 2003, where they claimed refugee status. They alleged that Mr. Tushar was being threatened and targeted by the Bangladesh National Party (BNP) on account of his political involvement with the Awami League (AL). Their claims were rejected by the Refugee Protection Division on December 7, 2004, on grounds of credibility and insufficiency of evidence. An application for leave to judicially review that decision was denied.

[3] In June of 2005, the applicants applied for an exemption, on humanitarian and compassionate grounds, from the legislative requirement to apply for permanent residence from abroad (the H&C application). On February 3, 2006, they filed applications for a PRRA. The H&C application was refused by decision dated June 12, 2008. The PRRA application was refused four days later, by the same officer.

[4] On July 30, 2008, the applicants were informed by the Canada Border Services Agency that they had been scheduled for removal to the U.S.A. on August 21, 2008. Their removal was subsequently deferred by CBSA to September 18, 2008, to allow Israth Jahan to attend a pregnancy related medical appointment. Notwithstanding that Mr. Tushar had voluntarily bought airline tickets for a September 19 departure to Bangladesh (rather than to the USA), the Court granted the

applicants' stay application and suspended execution of the removal order pending determination of the present review application.

[5] The impugned risk assessment is six pages in length. In it, the officer describes the risk alleged by the applicants. Although it is the same risk previously alleged in support of their failed refugee claim, the applicants tendered new evidence in connection with the PRRA. The officer determined that some of the new evidence would have been available in 2004 to be presented to the RPD in connection with the refugee claim, and for this reason refused to consider it.

[6] The officer afforded little weight to letters from the President of the Dhaka City AL, the General Secretary of the Dhaka City AL, as well as a former AL parliamentarian, on the basis that the authors' assertions that the applicant would be in danger of harm from government authorities or BNP supporters were speculative and uncorroborated by any objective evidence. The officer noted that none of the authors themselves attested to any history of harassment or persecution on account of their own political activities.

[7] Referring to a letter from the applicant's Bangladeshi lawyer suggesting that he is a wanted man and that the ruling BNP is relying upon the *Special Powers Act* of 1974 to put political opponents in indefinite detention, the PRRA officer noted that IRB documentation suggests that such assertions concerning the *Special Powers Act* generally lack credibility and are easily obtainable; accordingly, she found that the letter was of little probative value. Similarly, the officer granted little weight to a 2006 article from the Daily Sabuj Desh newspaper referring to the

applicant by name and reporting that he was harassed after elections in 2001, noting that a World Bank report referenced in IRB documentation describes a “high likelihood” of Bangladeshi journalists seeking or accepting money for news coverage, and that the article does not list any new developments in his case that would have warranted a report.

[8] In her reasons, the officer then went on to consider reports on general country conditions from a variety of sources (UK Home Office; BBC; US Department of State), to conclude that while there is evidence of continued political violence in Bangladesh and the targeting of high profile individuals, the principal applicant has not provided evidence that he is a prominent political figure or that he has a profile which would make him a person of interest to the authorities; rather, there was no evidence of his involvement in any Bangladeshi party for quite some time.

[9] On these grounds, the officer determined that the applicants had demonstrated “less than a mere possibility” of persecution, were they to be returned to Bangladesh, and that there were no substantial or reasonable grounds to believe they would face any risk of torture, cruel and unusual punishment or treatment, or a risk to their lives.

Issues

[10] The applicants raise two issues as grounds to set aside the officer’s decision:

- a. Whether the officer erred in demanding evidence to corroborate uncontradicted statements contained in the letters tendered from the President and the Secretary General of the Dhaka City AL, and the former Parliamentarian; and

- b. Whether the officer erred in making findings that were not based on the evidence by relying selectively on the IRB document discussing the *Special Powers Act*, and failing to appreciate that the Bangladeshi lawyer referenced abuse of the *Criminal Procedure Code (CrPC)* not the *Special Powers Act*, to place Mr. Tushar on a list of suspects.

Analysis

Corroborative Evidence Requirement

[11] The three letters submitted by the applicant from Bangladesh each concluded that Mr. Tushar will be arrested and is in danger upon his return to Bangladesh, either by government authorities or by BNP supporters. The applicants submit that there was no finding by the PRRA officer that these letters were not authentic and thus the evidence in them was not contradicted. They submit that in requiring that the applicants provide evidence to corroborate this evidence the officer erred and, in effect, put these applicants to a higher standard of proof than is required. Alternatively, the applicants submit that if corroborative evidence is required, such evidence was in the record before the officer, but was either ignored or overlooked by her.

[12] For its part, the respondent submits that it was reasonable of the officer to determine that the letters attesting to the risk Mr. Tushar allegedly faces were of little probative value. It is further submitted that the officer failed to find that there was any personalized risk to Mr. Tushar, even though there is evidence of abuses of human rights by the government authorities in Bangladesh.

[13] Having examined the officer's comments respecting corroborative evidence within the context of the decision as a whole, I am not persuaded that she applied the wrong test or that she placed too high a burden on the applicants and the evidence tendered by them.

[14] The officer's decision begins by noting that the refugee claim was denied on the basis of credibility. The RPD, it is noted, also concluded that Mr. Tushar's profile was not such that he would personally be of interest to the BNP or its supporters. Countering this finding of the RPD in a decision that this Court denied leave to review, is the evidence in three letters. The officer notes that the letter writers state that "various reliable sources" inform the authors that the police are looking to arrest Mr. Tushar. The officer asks: "Where is the evidence to support this assertion?" and finds there is none. She considers the lack of evidence that the letter writers themselves, although they occupy more prominent roles in the AL than Mr. Tushar, have themselves been targets of harassment, intimidation or threats. She concludes that the authors' assertions concerning the risks faced by Mr. Tushar are speculative and that they are to be given little weight.

[15] In my view, the officer's analysis of the evidence, in the context of the other evidence, is reasonable and cannot be upset on the basis claimed by the applicants. Given that the previous denial of the refugee claim was effectively a denial of the applicants' assertion that Mr. Tushar's life was in danger as a result of his involvement in the AL, the officer cannot be faulted for requiring clear and convincing evidence that he would be at risk if returned to Bangladesh when the same risk is alleged. Letters from persons occupying more prominent roles in the AL than the principle

applicant, with no evidence that they themselves have been targeted, is not clear and convincing evidence.

[16] The corroborative evidence identified by the applicants in the certified tribunal record which they submit supports the evidence in these letters, does not, in fact, corroborate the fundamental allegations – that the government authorities are looking to arrest and detain Mr. Tushar and that he is being sought by BNP goons. Rather, it corroborates facts such as the use of the *Special Powers Act* and arrest of persons in Bangladesh without warrant. Absent proof that Mr. Tushar is a target, he is at no greater risk on return than any other citizen of Bangladesh. That is insufficient for a finding that he and his family is at risk if returned to their country of birth.

Failure to Consider the Evidence Related to the Special Powers Act

[17] The applicants submitted a letter from a lawyer in Bangladesh which details the misuse by BNP authorities of the *Special Powers Act* and states that Mr. Tushar's name is on a list of political activists who could be arrested by the police by misusing section 54 of the *Code of Criminal Procedure* and that they may detain him for an indefinite period under the *Special Powers Act*. The officer finds that the letter is of "low probative value and is self-serving in nature". In particular, she quotes from the Response to Information Request BDG101313: "[l]etters signed by lawyers ... stating that a person is wanted under the Special Powers Act, without providing a Court/Police case number and warrant number, lack credibility."

[18] The applicants correctly point out that the applicants' Bangladeshi lawyer does not assert that Mr. Tushar is wanted under the *Special Powers Act*. This, they submit explains the lack of a reference to a case or warrant number. However, the officer's reasons for giving the letter little weight have nothing to do with the lack of a case or warrant number. Rather, the officer discounts the Bangladeshi lawyer's assertions on account of a lack of corroborative evidence for them.

[19] First, the lawyer writes that he has gone to various police stations and courts but did not find any complaints against Mr. Tushar but "one police officer from the local police station informed me that your name is in the list of opposition political activists" and that those on the list would be arrested. This statement, in light of the fact that the other three authors, who all occupy more significant positions as political activists, have not been arrested is rightly deserving of little or no weight. Second, he also writes that the source of his knowledge that Mr. Tushar is being sought by BNP supporters is from family members of Mr. Tushar. Aside from the fact that this evidence was provided by interested parties, the officer notes that the lawyer has not said in the letter how these family members came to know this. In all of these circumstances, the officer's decision not to accord the letter much evidentiary weight, cannot be said to be unreasonable.

[20] Accordingly, and for these reasons this application is to be dismissed. Neither party proposed any question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed; and
2. No question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3547-08

STYLE OF CAUSE: BABLO TUSHAR ET AL v.
THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: February 16, 2009

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

DATED: February 24, 2009

APPEARANCES:

Rezaur Rahman FOR THE APPLICANTS

Talitha A. Nabbali FOR THE RESPONDENT

SOLICITORS OF RECORD:

REZAUR RAHMAN FOR THE APPLICANTS
Barrister and Solicitor
Ottawa, ON

JOHN H. SIMS, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada
Ottawa, ON