

Date: 20090831

Docket: IMM-5607-08

Citation: 2009 FC 864

OTTAWA, Ontario, August 31, 2009

PRESENT: The Honourable Louis S. Tannenbaum

BETWEEN:

RUHUL AMIN SHEAKH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) of a decision of a Pre-Removal Risk Assessment Officer (PRRA Officer) dated October 31, 2008 wherein the officer rejected the Applicant's PRRA application.

[2] The applicant, Mr. Ruhul Amin Sheakh, was born on July 15, 1983 in Bangladesh. He claims a well-founded fear of serious personal harm and/or persecution as a result of his political activities in support of the Jatiya Party (JP). He claims his opposition to the ruling Awami League

(AL) gave him a public profile. In addition he outlined how he was a witness, on or about June 5, 2000, to the killing of an AL worker during a demonstration. This incident was the basis of his entire claim.

[3] The applicant submits that he managed to escape the police following the homicide and that he went into hiding. He claims he learned that the police had come looking for him in connection with the murder. He states that the police were using false accusations in order to persecute him.

[4] An application for refugee protection was dismissed on October 23, 2002 and leave to review that decision was denied by a judge of this Court.

[5] The Refugee Protection Division found that:

On a balance of probabilities I find the report of a killing and the claimant's involvement and subsequent difficulties to be a story created to advance a refugee claim.

In oral testimony the claimant stated that goons would still be after him since they were after him in the past. I have found that the AL goons, on a balance of probabilities, were not concerned with the claimant in the past and as a result I am satisfied they will not be concerned with him should he return to Bangladesh in the future.

[...]

On a balance of probabilities the central event of the claim did not occur. As a result the police or the AL goons have no interest in the claimant.

[...]

Since the panel finds the claimant's testimony not to be, on the core element of the claim, credible, there is no objective basis on which to find that the claimant has a well-founded fear of persecution and/or that the claimant would be subjected personally to a risk to his life or

to a risk of cruel and unusual treatment or punishment, should he return to Bangladesh.

[Emphasis added]

(Tribunal Record, pp. 14-16)

[6] The PRRA Officer found that the applicant had “not provided sufficient evidence to overcome the RPD’s negative credibility finding. There is insufficient evidence to persuade me to come to a conclusion different from that of the RPD”. Moreover, with regards to the documentary evidence regarding country conditions in Bangladesh, the PRRA Officer did “not find they constitute evidence of new risk developments which are personal to the applicant and which have arisen since the RPD decision”.

[7] The issue to be determined is whether the PRRA Officer erred in concluding that the applicant was not at risk of persecution, or cruel and unusual punishment.

Standard of Review

[8] The fact-driven inquiry when determining a claimant’s risk on return to a particular country calls into play paragraph 18.1(4)(d) of the *Federal Courts Act*, which provides this Court may grant relief if it is satisfied a tribunal “based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard to the material before it” which the case law equates to the common law standard of review of reasonableness (See *Dunsmuir v. New Brunswick*, 2008 SCC 9 (*Dunsmuir*); *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12; *Matsko v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 691, para. 8).

Credibility Findings

[9] The applicant submits that the PRRA Officer erred in applying the RPD's credibility findings on Mr. Sheakh. They claim that the RPD never analysed whether Mr. Sheakh's profile of a student activist would itself place him at risk. More importantly, there was no analysis of the applicant's credibility as it relates to his profile.

[10] The applicant consequently argues that, although the PRRA Officer is entitled to rely on the Board's credibility findings, he may only do so insofar as he is making the same analysis. Where a Board has failed to consider a ground, and has therefore not made a credibility finding on that ground, the PRRA Officer may not apply the credibility finding to risks which the Board never considered. Absent an express finding that a refugee claimant is not credible, finding that the RPD does not consider a given incident credible cannot be conflated to a finding that the claimant's entire claim is not credible (*Ariff v. Canada (Minister of Citizenship and Immigration)*, (1997) 68 A.C.W.S. (3d) 716).

[11] The applicant claims in his submissions to the PRRA Officer that he "sought refugee status for fear of persecution at the hands of the Bangladeshi police and the AL. He is afraid to go to the authorities in Bangladesh to get protection because of the fact that the police are looking for him. He is not safe anywhere in the country" (Submissions to PRRA Officer, Applicant's Record p. 61). "Mr. Sheakh is terrified that if he returns to Bangladesh, the AL will fulfill their threats to kill him and that he will be falsely arrested and detained for the death of the AL worker" (Submissions to PRRA Officer, Applicant's Record, p. 62). The applicant argues that "the country conditions in Bangladesh have radically deteriorated since Mr. Sheakh's refugee hearing, placing him at

continuing risk of persecution should he be returned to Bangladesh” (Submissions to PRRA Officer, Applicant’s Record, p. 63).

[12] Counsel for the applicant also adds “Mr. Sheakh fears a personal vendetta from the local AL leadership in Munshiganj and their ties to the police in his hometown. He also fears that given that the AL has an extensive network throughout the country, the Munshiganj AL leadership could easily have their goons hunt him down anywhere in Bangladesh.” Moreover “the local police continue to look for him for the false arrest of a crime he did not commit” (Submissions to PRRA Officer, Applicant’s Record, p. 65).

[13] The PRRA Officer found that the applicant had not provided sufficient evidence to overcome the RPD’s negative credibility finding. He noted that there was insufficient evidence to persuade him to come to a conclusion different from that of the RPD, specifically, “the claimant did not establish through credible and trustworthy evidence [that] he observed the killing of an AL worker” (RPD’s decision, Tribunal Record, p. 12).

[14] In reading the evidence submitted in this case and in recognizing the RPD’s finding as to Mr. Sheakh’s credibility regarding the core element of his claim, it was reasonable for the PRRA Officer to conclude as he did. Although the applicant claims the PRRA Officer made erroneous and irrelevant considerations and findings of fact, the Officer was not satisfied that the evidence provided could overcome the RPD’s negative credibility finding. The decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir, supra*).

Oral Hearing

[15] The applicant asserts that the PRRA Officer should have held an oral hearing seeing as they put forward evidence to counter a negative credibility finding at the RPD.

[16] Subsection 113(b) of the IRPA and section 167 of the *Immigration and Refugee Protection Regulations* SOR/2002-227 specifically recognize that, in some circumstances, it may be appropriate to convene an oral hearing in relation to an application for pre-removal risk assessment, especially if there are serious credibility concerns which are central to the decision and which, if accepted, would result in a positive decision.

[17] In the present case, the PRRA Officer considered the evidence presented and found that it did not qualify as “new” evidence as it addressed exactly the same risk assessed by the RPD. Where there was insufficient evidence to overcome the adverse credibility findings of the RPD, the issue of credibility was not engaged. Therefore, this argument must fail.

Applicant's Profile

[18] Despite the applicant's claim that the PRRA Officer failed to properly assess his risk on the return to Bangladesh, he did not present evidence to raise the question of new risk that had not already been assessed by the RPD. The RPD had assessed the evidence with respect to his claim and found him not credible; it found that he did not establish he was of interest to the AL. The PRRA Officer, in my opinion, adequately addressed the evidence in the claim. This Court's intervention is therefore not justified.

Reference to Documentary Evidence

[19] The applicant argues that the PRRA Officer erroneously construed the documentary evidence, insofar as he did not consider the applicant's increased risk as a political activist for the JP.

[20] The RPD did not refer to documentary evidence because it did not believe that the applicant was at risk of harm at the hands of the AL. There is no requirement to refer to documentary evidence which refers to risk to persons of a certain profile if the applicant has not established that he is of that profile. Therefore there was no reason for the PRRA Officer to refer to that evidence (*Fernando v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1349, paras. 25-35; *Kofitse v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 894, citing *Djouadou v. Canada (Minister of Citizenship and Immigration)*, (1999) 94 A.C.W.S. (3d) 1183, para. 4).

[21] The PRRA Officer assessed the current documentary evidence and found that, although the country conditions are not favourable in Bangladesh, the applicant had not shown that his risk was personal as opposed to generalized. This finding was open to the PRRA Officer given that the applicant had not provided sufficient evidence to overcome the RPD's finding that he had not established that he was at risk of harm from the AL.

Conclusion

[22] Considering the deference that this Court must exercise in deciding this case, and recognizing that the RPD found that the facts supporting the applicant's claim were incredible and that the PRRA Officer was not satisfied with the evidence provided and consequently unable to find

that the applicant had overcome the adverse credibility finding, I find that this Court's intervention is not warranted.

[23] The PRRA Officer reasonably weighed the applicant's fear. Furthermore, in reading the decision and the evidence filed I find the Officer's decision to be reasonable.

[24] Based on the foregoing, the judicial review application must be dismissed.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed. No question of general importance has been submitted for certification.

"Louis S. Tannenbaum"

Deputy Judge

AUTHORITIES CONSULTED BY THE COURT

1. *Kastrati v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1141;
2. *Brzezinska v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1182;
3. *Ortega v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 601;
4. *Latifi v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1388;
5. *Narany v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 155;
6. *Elmagraby v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 346;
7. *Syed v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 549;
8. *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1;
9. *Ruiz v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 465;
10. *Matsko v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 691;
11. *Cirahan v. Canada (Solicitor General)*, 2004 FC 1603;
12. *Bowen v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 112;
13. *Adjei v. Canada (Minister of Employment and Immigration)*, [1989] 2 F.C. 680;
14. *Orelie v. Canada (Minister of Employment and Immigration)*, (1991) 15 Imm. L.R. (2d) 1 (F.C.A.);
15. *Boulis v. Canada (Minister of Manpower and Immigration)*, [1974] S.C.R. 875;
16. *Mughal v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1557;
17. *Singh v. Canada (Minister of Employment and Immigration)*, [1985] 1 S.C.R. 177;
18. *Kaybaki v. Canada (Solicitor General of Canada)*, 2004 FC 32;
19. *Singh v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1303;
20. *Krishnan v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 846;
21. *Fernando v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1349;

22. *Kofitse v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 894;

23. *Bains v. Canada (Minister of Employment and Immigration)*, (1990) 109 N.R. 239

(F.C.A.); and,

24. *Elezi v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 422.

FEDERAL COURT

SOLICITORS OF RECORD

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