Federal Court  Cour fédérale

Date: 20120416

Docket: IMM-6269-11

Citation: 2012 FC 434

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, April 16. 2012

PRESENT: The Honourable Madam Justice Bédard

BETWEEN:

SUMON ROY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated 22, 2011, in which it determined that the applicant was neither a refugee nor a person in need of protection. The determinative issue was the existence of an internal flight alternative (IFA).

I. Background

[2] The applicant is a citizen of Bangladesh of the Hindu faith. He claims to fear members of the Islamist extremist group Jamaat-i-Islami (Jamaat group) and the Bangladesh Nationalist Party (BNP). His application is based on the following allegations. The applicant protested against the statements and actions of members of both groups on two occasions in 2006. The second incident occurred in July 2006 when members of these Islamist groups attacked the Hindu temple attended by the applicant. The applicant allegedly told the attackers that their actions were not consistent with the teachings of the Koran. The assailants looked at him and left. Starting in 2007, the applicant purportedly received about five threatening telephone calls. In February 2008 he encountered three members of the Jamaat group and two members of the BNP who attacked and threatened him. In his personal information form, the applicant described the incident as follows:

> 27. On 05 February 2008 1 encountered Tazul, Mizan, Zakir of the the Jamat and Juel & Rasel from the BNP at Sreemangal road in Moulvibazar at about 6-30 p.m., while returning from the Kalibari Temple.
>
> 28. They punched me a few times and uttered the threat that they did not like to see me in this Muslim country any more from that time because of my activities against the Islam and my reporting to the Police against them. They also said that they did not want to spend their time by killing me execution style.
>
> [*Sic* throughout]

[3] Believing that his life was at risk, the applicant left his country for Canada and claimed refugee protection.

II. Impugned decision

[4] The Board found that the determinative issue was the existence of an IFA that was available to the applicant, specifically in Dhaka. The Board indicated that for the purposes of this determination, it would assume that the applicant's allegations were true.

[5] The Board determined that if the applicant lived outside the Moulvibazar area, where he was living and where the incidents had occurred, he would be safe. The Board noted that Moulvibazar is a relatively small city with approximately 40,000 inhabitants located over 150 kilometres from Dhaka, which has a population of about 1,600,000 and is located in the Division of Sylhet, which has a population of about 8 million people.

[6] With respect to the documentary evidence on the security conditions in Bangladesh, the Board noted that most of the documentation that dealt with the conditions and treatment of religious minorities in Bangladesh showed that abuse was generally not solely linked to the identity of the people targeted, but that other factors were involved, for example, that control over the land is a central element of the persecution in the Chittagong Hills region. The Board further noted that, in this case, the cause of the assault was related to statements made by the applicant. The Board also considered the fact that the Awami League party had made positive gestures to ensure the rule of law and freedom of religion since it had assumed power. It also acknowledged that, in spite of some improvements, the government continued to have serious difficulties ensuring that fundamental rights, including the right to freedom of religion, were protected, and that religious extremism remained a persistent threat to the rule of law and to democratic institutions.

[7] The Board also noted various factors related to the applicant's particular circumstances that led it to determine that the city of Dakha constituted an IFA for him. The applicant claimed that members of the Jamaat group and the BNP would be able to locate him throughout the country because he had been targeted by them and because these groups had well-organized networks. The Board dismissed this argument because it did not see how the applicant would be of such interest to the two groups in question that they would seek to pursue him throughout the entire country, nor did it believe that his agents of persecution would have access to state resources to locate him. The Board based its finding on a number of factors, in particular:

a. During the incident in 2006, the applicant had not responded violently to his attackers;
b. The applicant identified only one incident during which he was attacked and beaten;
c. The applicant did not carry out important responsibilities at the temple;
d. The applicant's agents of persecution are not members of a government organization;
e. The applicant has limited knowledge of his agents of persecution;
f. The incidents had occurred over two years before and the applicant did not receive word that his agents of persecution were looking for him despite the fact that members of his family still live in that area and that he is still in contact with them regularly.

[8] The Board also found that even if the applicant's agents of persecution were still after him, it was highly unlikely that he would be recognized on the streets of Dakha or that they would link him to the incident that occurred in 2008.

[9] The Board further determined that Dakha was a reasonable IFA for the applicant. The Board noted that although the applicant has a different accent, his vocation as a salesman was easily exportable and that it was possible for a salesman who was fluent in the language to relocate. It also noted that the applicant was not married and had no children. In addition, the Board cited the following excerpt from the Operations Manual of the United Kingdom:

> The law provides for freedom of movement, and the Government generally respects this right in practice. Religious violence in Bangladesh is not state-sponsored, so internal relocation is generally a viable option and applicants in this category could relocate from areas where they are in the religious minority to safer areas that are not dominated by such violence or where they are in the majority.

III. Issue

[10] The only issue that arises in this matter is whether the Board's decision was reasonable.

IV. Standard of review

[11] It is settled law that the standard of review applicable to the Board's finding of an IFA is reasonableness (*Sanchez v Canada (Minister of Citizenship and Immigration)*, 2011 FC 926 (available on CanLII); *Guerilus v Canada (Minister of Citizenship and Immigration)*, 2010 FC 394 at para 10 (available on CanLII); *Krasniqi v Canada (Minister of Citizenship and Immigration)*, 2010 FC 350 at para 25 (available on CanLII); *Martinez Ortiz v Canada (Minister of Citizenship*

and Immigration), 2011 FC 726 at para 10 (available on CanLII); *Ramos Villegas v Canada (Minister of Citizenship and Immigration)*, 2011 FC 699 at para 11 (available on CanLII)).

[12] The same standard applies to the Board' assessment of the evidence. The Court owes deference to the Board's findings of fact and will intervene only if it finds that the Board's decision does not fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190). Furthermore, it is not for the Court to substitute its own assessment of the evidence for that of the Board, or to re-weigh the evidence. In *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59, [2009] 1 SCR 339, Justice Binnie, writing for the majority, stated the following:

> **59** . . . Where the reasonableness standard applies, it requires deference. Reviewing courts cannot substitute their own appreciation of the appropriate solution, but must rather determine if the outcome falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para. 47). There might be more than one reasonable outcome. However, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome.

V. Analysis

[13] The applicant contends that the Board carried out an unreasonable analysis of the evidence in several respects.

[14] First, the applicant submits that the Board erred in its assessment of the documentary evidence on country conditions with regard to the situation faced by persons who are members of religious minorities in Bangladesh. In his view, the documentary evidence clearly shows that despite

the Awami League's rise to power and efforts undertaken by the authorities, religious extremism remains widespread and cases violence toward, and attacks on, members of religious minorities are common. These religious groups are extremely violent and well-organized, and the government authorities are incapable of ensuring respect for the law, freedom of religion or the safety of members of religious minorities. In support of his position, the applicant relies on the judgment rendered by Justice Shore in *Barua v Canada (Minister of Citizenship and Immigration)*, 2012 FC 59 (available on CanLII) (*Barua*), in which the Court determined, on the basis of the same documentary evidence that was before the Board in this case, that the situation faced by religious minorities in Bangladesh had not improved, and that despite the Awami League's rise to power, promises by the government to protect their rights were not kept.

[15] Second, the applicant contends that while the Board did not initially cast doubt on his credibility, it did later indirectly question his credibility in its IFA analysis. The applicant argues that from the moment the Board found him to be credible, it should have accepted his entire narrative as being true and thus could not make findings which disregarded or contradicted certain elements of his narrative. The applicant is of the view that the Board largely minimized his situation and the risk he is faced with in Bangladesh. Given that the applicant's agents of persecution had told him to leave the country, not only the Moulvibazar area, and threatened to kill him if he did not do so, it is unreasonable to think that he could not relocate to another part of the country without fearing his agents of persecution. Moreover, the applicant had stated in his testimony that members of the Jamaat group and the BNP had a well-organized network that would enable them to locate him throughout the country. Therefore, the Board could not disregard this element. The applicant argues that given the situation he was in, the Board's decision imposes on him the risk that his

agents of persecution might carry out their threat, which in his view was tantamount to forcing him to play [TRANSLATION] “Russian roulette” with his life.

[16] Third, the applicant maintains that the Board also disregarded the letter from the president of the temple he attended, which confirmed that he was targeted by the BNP and Jamaat groups following the incidents that had occurred in 2006 and that he had been persecuted by them.

[17] Fourth, the applicant contends that it was unreasonable for the Board to have relied on the British Operations Manual as a basis for its finding that there was a reasonable IFA available to him and that the Board had erroneously felt bound by the guidelines issued in that manual.

[18] Fifth, the applicant argues that the Board erred by introducing the concept of the possibility of state protection in an area other than Moulvibazar.

[19] With respect and despite the arguments ably presented by the applicant’s counsel, I find that the Board’s decision was reasonable and that the intervention of this Court is not warranted.

[20] The question of whether or not an IFA exists is integral to the concept of a refugee (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (available on QL) (*Rasaratnam*). A decision as to whether or not an IFA exists involves an assessment of the circumstances with regard to the conditions in the applicant’s country of origin, but it also requires an assessment of the applicant’s particular circumstances. The country’s security conditions are certainly one of the elements to consider, but this assessment should not be carried out in a general

and abstract manner; it must be placed in context with the situation faced by the applicant in order to determine whether, in light of all of the circumstances, an IFA exists.

[21] An IFA assessment is a two-part process. First, the Board must be satisfied, on a balance of probabilities, that there is no serious possibility of the person claiming refugee protection being persecuted, subject to a danger of torture, a risk to life, or subject to a risk of cruel and unusual treatment or punishment in the proposed IFA. Second, it must be reasonable for the person in question to seek refuge there, given their particular circumstances and the conditions in the proposed IFA (*Rasaratnam*, p. 710).

[22] Once an IFA is raised, the applicant bears the burden of proving that it either does not exist or that it is unreasonable in the circumstances *Thirunavukkarasu v Canada (Minister of Employment and Immigration)* (1993), [1994] 1 FC 589 at para 12, 109 DLR (4th) 682 (CA).

[23] In this case, there is no doubt that the documentary evidence shows that the situation remains difficult for members of religious minorities in Bangladesh. Although the Board did not mention all of the documentary evidence, it did acknowledge that difficulties and major shortcomings remained with respect to respecting the rights of religious minorities and that religious fundamentalism was still present and active. In my opinion, the Board was not required to mention or comment on all of the documentary evidence that was before it (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 at para 17, 83 ACWS (3d) 264 (FC). (*Cepeda-Gutierrez*) and the reasons given by the Board are not to be read microscopically (*Cepeda-*

Gutierrez, above, at para 16). In *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)* SCC 62 at para 16, [2011] 3 SCR 708 (*Newfoundland and Labrador Nurses' Union*), the Supreme Court noted that it is not necessary for an administrative tribunal to mention every piece of evidence and each argument raised by the parties in its reasons:

> **16** Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, [1975] 1 S.C.R. 382, at p. 391). In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

[24] In this case, I find that it appears from the Board's decision that it analyzed the documentary evidence and that it neither trivialized the prevailing situation in Bangladesh nor provided a portrait that was at odds with the evidence. I also find that it was not determinative that the Board failed to mention the letter from the president of the Temple which corroborated the applicant's allegations and described the general situation of members of the Hindu minority in Bangladesh.

[25] In addition, the Board's analysis did not end with the assessment of the documentary evidence regarding the country conditions in Bangladesh. The Board also correctly assessed the applicant's personal circumstances within the context of the country conditions. I do not share the applicant's view that the Board, in its analysis, indirectly questioned his credibility.

[26] I am of the opinion that in light of the evidence, and accepting the applicant's narrative as fact, that it was reasonable for the Board to conclude that Dhaka constituted an IFA for the applicant. Even though the applicant's agents of persecution had threatened him with death if he remained in the country and even though the Jamaat group and the BNP have well-organized networks, it was not unreasonable to conclude that the evidence failed to show that his agents of persecution would, in 2011, still have an interest in pursuing the applicant throughout the country. There are a number of elements that can reasonably support this finding: (1) the time that had elapsed since the incident in 2006, (2) the nature of the incident that occurred in 2006, (3) the applicant's level of responsibility in the temple, (4) the fact that the applicant's family continued to live in the same area without incident, (5) the fact that no one had tried to locate the applicant since his departure (6) the fact that his agents of persecution are not government agents. It was also reasonable to conclude that it was highly unlikely that the applicant would be found or recognized in a huge city like Dakha and, even if he was, that he would be associated with the incidents in 2006.

[27] I am also of the view that the reference to the British operations manual was not inappropriate since it showed that violence against minorities was not state-sponsored and that the law provided for freedom of movement. This information does not contradict other elements of the evidence in the record. In *Ranganathan v Canada (Minister of Citizenship and Immigration)* (2000), [2001] 2 FC 164 at para 15 (available on QL) (CA), the Court noted that the applicant had to overcome a high threshold to show that an IFA analysis was unreasonable:

> **15** We read the decision of Linden J.A. for this Court as setting up a very high threshold for the unreasonableness test. It requires nothing less that the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily

> relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions.

[28] In this case, the applicant did not present such evidence.

[29] Therefore, in spite of the situation facing members of religious minorities in Bangladesh, I find that the Board's conclusions, based on the applicant's own circumstances and the incidents that led him to leave Bangladesh, fall within the range of possible, acceptable outcomes, having regard to the evidence. Moreover, I am of the view that one cannot simply transpose the Court's findings in *Barua* to this matter; we do not know the particular circumstances of the applicant in that matter, other than that he was a secretary of a Buddhist temple and that he was an activist for the protection of the rights of Buddhists in his community.

[30] As the Supreme Court indicated in *Newfoundland and Labrador Nurses' Union* at paras. 14-15, the reasons of a decision must be read in correlation to the outcome of the decision. This result must be assessed in light of the record in order to determine whether it falls within a range of possible outcomes:

> **14** … It is a more organic exercise — the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes. This, it seems to me, is what the Court is saying in *Dunsmuir* when it told the reviewing courts to look at "the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes" (para. 47).
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> **15** In assessing whether the decision is reasonable in light of the outcome and the reasons, courts must show "respect for the decision-making process of adjudicative bodies with regard to both the facts and the law" (*Dunsmuir*, at para. 48). This means that courts should not substitute their own reasons, but they may, if

> they find necessary, look to the record for the purpose of assessing the reasonableness of the outcome.

[31] For all these reasons and in light of all of the facts contained in the record, I find that the Board's decision is reasonable and that the Court's intervention is not warranted. The parties did not propose any question for certification and none arises from this matter.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed. No question is certified.

"Marie-Josée Bédard"
Judge

Certified true translation

Sebastian Desbarats, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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