

Federal Court



Cour fédérale

Date: 20120423

Docket: IMM-7184-10

Citation: 2012 FC 469

Ottawa, Ontario, April 23, 2012

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**RAHELA HAQUE
SHAHIDUL HAQUE
RAFIA HAQUE**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms. Rahela Haque and her husband, Shahidul, are citizens of Bangladesh. Their daughter, Rafia, was born in the United States. The family arrived in Canada in 2005 and applied for refugee protection, but a panel of the Immigration and Refugee Board denied their claim. They then applied for a pre-removal risk assessment [PRRA] but an immigration officer dismissed their application.

They then sought humanitarian and compassionate [H&C] relief, but the same officer found insufficient grounds to conclude that the applicants would experience unusual, undeserved or disproportionate hardship if they had to return to Bangladesh and apply for permanent residence from there.

[2] The applicants submit that the same officer should not have dealt both with their PRRA and H&C applications. They say that this was unfair. The applicants also argue that the officer's conclusion was unreasonable and contrary to positive decisions rendered in respect of their other family members. They ask me to quash the officer's decision.

[3] I can find no basis for overturning the officer's decision. The officer did not treat the applicants unfairly. Further, the officer considered the various grounds advanced in the applicants' submissions – the risk to the family in Bangladesh, the best interests of the children, and the degree to which they have become established in Canada – and concluded that they would not suffer serious hardship if they returned to Bangladesh to apply for permanent residence in the usual manner. I see no basis for finding the officer's decision to be unreasonable. I must, therefore, dismiss this application for judicial review.

[4] There are two issues:

1. Did the officer treat the applicants unfairly?
2. Was the officer's conclusion unreasonable?

II. Factual Background

[5] The applicants claim that they are at risk of mistreatment in Bangladesh because of the political activities of Ms. Haque's father, Mr. Golam Faruque. He was a senior member of the Awami League and was persecuted by the ruling Bangladesh National Party after the 2001 elections. The family, including Rahela, fled to the United States in 2002. The following year, Rahela returned to Bangladesh to marry Shahidul. After the wedding, they travelled to the United States where, in 2004, Rafia was born. The family travelled to Canada in 2005 and claimed refugee protection. A second daughter, Rahema, was born in Canada later that year.

[6] Mr. Faruque, his wife and two other children travelled to Canada and applied for refugee protection. They were found to be Convention refugees in 2007. Another of their children, Nahida Majib, also applied for refugee protection for herself and her family, but was turned down. She then made an H&C application. An immigration officer denied the application but the Federal Court granted her application for judicial review. On reconsideration, another officer granted the H&C.

III. The Officer's Decision

[7] The officer first considered the risk that the applicants might face in Bangladesh. He noted that Rahela had returned to Bangladesh in 2003 to marry, which suggested that neither she nor her father believed she faced a serious risk. The officer also observed that the applicants did not seek asylum in the United States.

[8] As for the ongoing risk of political persecution in Bangladesh, the officer reviewed the documentary evidence. He found that the applicants had not shown that their political profile would attract any interest.

[9] The officer was aware of the fact that some of the applicants' relatives achieved refugee status, and others were successful on their H&C. However, the officer felt he should decide each application on its merits.

[10] The officer considered the impact that return to Bangladesh would have on Rafia and Rahema. He found that both had Bangladeshi citizenship, as well as US and Canadian citizenship respectively. He reviewed the situation of children in Bangladesh, including the educational situation there. He noted that the children's first language was Bengali and that they had an extended family in Bangladesh, where the family still owns properties.

[11] As for their establishment in Canada, the officer noted that Mr. Haque had a business in Canada, but there was no evidence of the impact on any employees or others if he returned to Bangladesh. As mentioned, the applicants have other family members in Canada. However, the officer found that severing those ties would not cause the applicants serious hardship.

[12] The officer conceded the applicants have suffered psychological strain. However, there was no evidence they could not receive support or treatment in Bangladesh if they required it. Overall, the officer found that the applicants could reintegrate in Bangladesh without significant hardship. Therefore, he dismissed their application.

IV. Issue One – Did the officer treat the applicants unfairly?

[13] The applicants argue that the same officer who dismissed their PRRA should not have decided their H&C, all the more so because the same officer also decided Nahida’s H&C that was later overturned by this Court.

[14] There is no reason why an officer cannot decide both a PRRA and an H&C. Nor is there any reason why an officer cannot decide an issue relating to two branches of the same family. As the officer pointed out, “each case is based on the merits and details specific to each individual application”. There is nothing inherently unfair in this. The real question is whether the officer’s decision was unreasonable.

V. Issue Two – Was the officer’s conclusion unreasonable?

[15] Ms. Haque’s father and other family members received refugee protection in Canada. Her sister’s family succeeded on their H&C. In the circumstances, the applicants argue that the officer’s decision denying their H&C is inconsistent with the treatment of their family members and Canada’s policy of family integration.

[16] More particularly, the applicants contend that the officer was bound to accept their application given that this Court overturned his decision on Nahida Mujib’s H&C, and her application was subsequently granted.

[17] Further, the applicants maintain that the officer failed to give adequate attention to the best interests of the children, one of whom is a Canadian citizen. In particular, they suggest that the officer should have analyzed in greater depth the limited educational opportunities available in Bangladesh. The applicants also contend that the officer should have given more weight to the fact that, if their application was denied, their Canadian-born child would either have to leave Canada, where she has a legal right to remain, or be separated from her extended family in Canada. The officer's observation, that this choice was up to the child's parents, they say, was unreasonable.

[18] In my view, there were differences between the applicants' circumstances and those of their relatives. Those differences justified the officer's decision.

[19] To begin with, the applicants' circumstances were found by this Court to be different than those of Mr. Faruque. Therefore, the fact that Mr. Faruque and other family members were recognized as refugees did not mean that the applicants faced a similar risk in Bangladesh: *Haque v Canada (Minister of Citizenship and Immigration)*, 2010 FC 702.

[20] In addition, Ms. Nahida Mujib's successful application for judicial review of her H&C was based on the officer's failure to consider documentary evidence relating to the family's risk in Bangladesh. Here, the officer considered the relevant evidence. He was aware that Ms. Mujib was approved at the first stage for her H&C, but did not have before him the documentation supporting that application; therefore, he cannot be faulted for failing to consider the grounds on which her application ultimately succeeded.

[21] Further, the officer clearly considered the best interests of the children affected by the decision. He considered and weighed the relevant evidence on that issue, and specifically noted the presence of other family members in Canada, as well as an extended family in Bangladesh. The officer considered the documentary evidence relating to children's welfare and education in Bangladesh and found that Bangladesh is generally responsive to children's needs. As for the principle of family reunification, the officer took account of the applicant's family both here and in Bangladesh.

VI. Conclusion and Disposition

[22] In my view, the officer treated the applicants fairly in arriving at a reasonable decision based on the evidence before him. I must, therefore, 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 JUDGMENT is that:

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

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7184-10

STYLE OF CAUSE: RAHELA HAQUE, ET AL
v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 9, 2012

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

DATED: April 23, 2012

APPEARANCES:

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