Federal Court  Cour fédérale

**Date: 20120619**

**Docket: IMM-6729-11**

**Citation: 2012 FC 781**

**Ottawa, Ontario, June 19, 2012**

**PRESENT: The Honourable Mr. Justice Boivin**

**BETWEEN:**

**MOHAMMAD MUJIB ALAM**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] for judicial review of the decision rendered by the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated September 6, 2011, which refused the applicant's claim to be deemed a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

[2] The applicant seeks an order setting aside the decision and remitting the matter for redetermination by a differently constituted panel of the Board.

Factual Background

[3] Mr. Mohammad Mujib Alam (the applicant) is a thirty-four (34) year old citizen of Bangladesh. The applicant has claimed refugee protection in Canada as he fears persecution from the police and two Awami League (AL) government goons, identified as Rinku and Eliash, due to his membership and participation in the Bangladesh Nationalist Party (BNP) Ward #22 in his native country.

[4] The applicant alleges that he first joined the BNP in 2000 and later became an executive member in July 2001. In July 2006, he became the publicity secretary of the BNP Ward #22.

[5] In November 2006, the applicant asserts that he was attacked and beaten by a group of people – including Rinku and Eliash – as he was exiting a BNP meeting.

[6] In January 2007, the applicant states that AL goons threatened him several times when the AL backed caretaker government rose to power and told him to cease his political activities.

[7] In 2007, the applicant states that he met Mr. Nazrul Alam who assisted the applicant in obtaining a work permit in order to come to Canada.

[8] In November 2007, the applicant asserts that the secretary general of the BNP Chittagong was arrested and that the police sought him out to arrest him on March 15, 2008.

[9] On April 7, 2008, the applicant obtained his Canadian work permit and subsequently left Bangladesh on April 21, 2008.

[10] The applicant states that he was informed by his wife on October 2, 2009 that the police and the AL goon Eliash had come looking for the applicant. As he could not obtain an extension of his work permit, the applicant decided to file a refugee claim in Canada on October 19, 2009.

[11] The applicant's Personal Information Form (PIF) narrative was later amended to include the fact that his wife had appointed a lawyer in Bangladesh. The lawyer drafted a letter, dated December 18, 2010, which stated that the police continue to have an active interest in the applicant, that he was wanted under the *Special Powers Act*, and that he would face arrest and detention if he were to return to Bangladesh.

[12] The applicant's refugee claim was heard by the Board on August 4, 2011.

Decision under Review

[13] The Board rejected the applicant's application as it concluded that the applicant's narrative was not credible, that the requirements of sections 96 and 97 had not been satisfied, that the applicant did not meet the criteria of a refugee *sur place*, and that an Internal Flight Alternative (IFA) existed in Bangladesh.

*a) The Applicant's Credibility*

[14] Generally, the Board found that it was difficult to extract answers from the applicant, which could not be attributed to his stutter but rather to his avoidance of the Board's questions. The Board concluded that it believed that the applicant was knowledgeable regarding his country's history and political arena, that the applicant was involved with the BNP Ward #22, that there is an ongoing battle between the AL and the BNP in Bangladesh, and that the AL is currently in power, though the BNP has retained power in several jurisdictions.

[15] However, the Board was of the view that the applicant appeared to be making up his testimony as he went along. In light of several issues with the applicant's testimony and documentation and the lack of corroborative evidence, the Board concluded that the applicant had failed to credibly demonstrate that he had ever been personally targeted, contacted, approached, assaulted, detained, arrested or injured, or that he ever was or would continue to be a person of interest to the AL goons and to the police were he to return to Bangladesh. By way of a summary, the Board took issue with the following:

- The Board found that the applicant was not an active party member as he testified that he was "low level", as he had limited knowledge regarding the role of publicity secretary, and due to the fact that he could not confirm his attendance at the party meetings;
- The Board noted that it was unlikely that the AL goons or the police would have come looking for the applicant in March 2008 when he had been issued a police clearance report just weeks earlier;
- The Board did not believe that the AL goons and police had come looking for the applicant again in October of 2009, when the applicant had already been in Canada for one year. Though the applicant explained that his agents of persecution knew that his visa had expired, the Board noted that it found this explanation to be illogical since the visa had been expired since February 2009;
- The Board noted that the applicant could not establish the existence of his agents of persecution, Rinku and Eliash;

- The Board noted that the applicant had no medical report to corroborate his allegations of sustaining injuries at the hands of his persecutors, though he claimed to have sought medical attention;
- The Board concluded that the applicant had failed to establish that he had been in hiding after he learned from his wife that the police had looked for him on March 15, 2008;
- The Board noted that the applicant's family in Bangladesh did not move after the applicant's departure and has not had any problems to date;
- The Board noted that at the end of the hearing, the applicant added that the AL goons or the police had contacted his family in March of 2011. However, the Board found that this information had not been included in his amended PIF and that the applicant did not have a credible explanation for this omission;
- Finally, though the applicant submitted a letter from his lawyer in Bangladesh alleging that the applicant was sought under the *Special Powers Act* in Bangladesh, the Board noted that the applicant's profile did not match that of an individual that police would pursue, based on the information in the National Documentation Package.

*b) Refugee sur place:*

[16] Though the applicant argued that he participated in certain BNP activities in Canada and submitted documentary evidence to that effect, the Board found that he had failed to convey how these activities could lead to persecution if he was removed to Bangladesh. The Board noted that the applicant did not demonstrate how his alleged agents of persecution would be made aware of these activities. Consequently, the Board found that the applicant could not be considered a refugee *sur place*.

*c) Evaluation of an IFA:*

[17] The Board concluded that both prongs of the IFA test developed by the case law had been met in the present case. The Board found that the applicant had failed to produce evidence to refute the existence of an IFA. The Board also concluded that political violence in Bangladesh was localized for the most part and thus that relocation was possible. Furthermore, the Board was of the

view that low-level individuals would not be likely to be pursued outside of their local areas. The Board also reiterated that the applicant had not credibly established that his family in Bangladesh had experienced any difficulties, threats or aggressions due to the applicant's alleged involvement with the BNP. The Board proposed that the applicant and his family could relocate to another area in Bangladesh where the BNP has a majority positioning – either Bogra, Jaipurhal, Noakhali, Lakshimpur, or Feni – where he would be able to re-establish his role within the BNP organization, continue his political involvement if he so chose, and where he could find employment and a place to live. Therefore, the Board found that it would not be unduly harsh for the applicant to return to Bangladesh.

Issues

[18] The issues in this matter are as follows:

1) Are the Board's credibility findings unreasonable?
2) Did the Board err in its analysis of the applicant as a refugee *sur place*?
3) Did the Board err in its IFA analysis?

Statutory Provisions

[19] The following provisions of the *Immigration and Refugee Protection Act* are applicable in these proceedings:

| REFUGEE PROTECTION, CONVENTION REFUGEES AND PERSONS IN NEED OF PROTECTION | NOTIONS D'ASILE, DE REFUGIE ET DE PERSONNE A PROTEGER |
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| Convention refugee | Définition de « réfugié » |
| **96.** A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, | **96.** A qualité de réfugié au sens de la Convention – le réfugié – la personne qui, craignant avec raison d'être |

religion, nationality, membership in a particular social group or political opinion,

(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or
(*b*) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
*a*) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
*b*) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

**97.** (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally
(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or
(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,
(ii) the risk would be faced

Personne à protéger

**97.** (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
*a*) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
*b*) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
(ii) elle y est exposée en tout

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| by the person in every part of that country and is not faced generally by other individuals in or from that country, | lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas, |
| (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and | (iii) la menace ou le risque ne résulte pas de sanctions légitimes – sauf celles infligées au mépris des normes internationales – et inhérents à celles-ci ou occasionnés par elles, |
| (iv) the risk is not caused by the inability of that country to provide adequate health or medical care. | (iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats. |
| Person in need of protection | Personne à protéger |
| (2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection. | (2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection. |

Standard of Review

[20] The Court notes that it is trite law that the standard of reasonableness applies when reviewing a Board's assessment of an applicant's credibility and of the existence of an IFA (*Vargas v Canada (Minister of Citizenship and Immigration)*, 2012 FC 129 at paras 17-18, [2012] FCJ No 158; *Mejia v Canada (Minister of Citizenship and Immigration)*, 2009 FC 354 at para 26, [2009] FCJ No 438; *Diaz v Canada (Minister of Citizenship and Immigration)*; *Diaz v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1243 at para 24, [2008] FCJ No 1543). As the Supreme Court of Canada indicated in the case of *Dunsmuir v New Brunswick*, 2008 SCC 9,

[2008] 1 SCR 190 [*Dunsmuir*], the Court will therefore concern itself with the "existence of justification, transparency and intelligibility within the decision-making process" and with "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at para 47).

Analysis

[21] The Court will begin its analysis by examining the Board's conclusions on the applicant's credibility. The Court recalls that pursuant to the case of *Aguebor v Canada (Minister of Employment and Immigration*), [1993] FCJ No 732, it is the Board that is in the best position to assess the evidence, consider the testimony, attach probative value, and evaluate the credibility of a refugee claimant. The Court also recalls that a Board's decision should only be overturned in the clearest of cases. After having reviewed the testimonial and documentary evidence in the file, the Court finds that the Board's credibility findings were reasonable in light of the numerous problems that it raised in the applicant's narrative.

[22] At hearing before the Court, the applicant directed the Court to a number of details and argued that the Board had committed fatal errors. On that point, the applicant argued that the Board failed to mention the 2010 UK Report (Application Record, pp 58-60). However, a close reading of that report confirms that the 2010 UK Report, although more recent, is a more general document and does not contradict the findings of the 2006 Report (Tribunal Record, pp 60-61) referred to by the Board. Hence, although the applicant may wish for a reconsideration of the evidence (e.g. the applicant's testimony and documentary evidence – the police clearance, Tribunal Record at p 149, and the lawyer's letter, Tribunal Record, p 193), the Court is not

entitled to do so. The Court is of the view that the Board's decision, when read in its entirety, was reasonable in light of the applicant's failure to credibly establish the central elements of his narrative. Further, and contrary to the applicant's allegation, the Board's conclusions are in no way contradictory. Rather, and the Court agrees with the respondent, the Board simply believed the applicant's testimony on some points but found numerous problems with the applicant's narrative on other points.

[23] On the issue of the applicant's claim to be a refugee *sur place*, again the Court sees no reason to intervene in the Board's decision. The Board's findings on this point were clearly articulated, well explained, and it applied the correct test. Further, no evidence was adduced that there was media coverage or that the picture could potentially give rise to a negative reaction on the part of the authorities. The applicant's argument is speculative on that point.

[24] While the applicant may disagree with the Board's assessment of the evidence, the applicant has failed to persuade the Court that the Board's conclusion was unreasonable. My colleague, Justice Tremblay-Lamer in *Ngongo v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 1627 at para 23, provided the following observations:

> [23] … The only relevant question is whether activities abroad might give rise to a negative reaction on the part of the authorities and thus a reasonable chance of persecution in the event of a return.

[25] Thus, the Court is of the view that the Board correctly applied the test for a refugee *sur place* claim and could reasonably conclude that based on the testimony of the applicant, i.e. his role as a publicity secretary and the documentary evidence (Tribunal Record, pp 65 and 66) that, as a low-level member, the applicant would not likely be at risk.

[26] Finally, with respect to the Board's IFA analysis, the Court cannot accept the arguments of the applicant. The Court notes that it is trite law that the burden of demonstrating that an IFA is unreasonable is a heavy one, which falls upon the shoulders of a refugee claimant (*Ranganathan v Canada (Minister of Citizenship and Immigration)* (CA), [2000] FCJ No 2118, [2001] 2 FC 164). The Court observes that the Board correctly applied the test outlined in the case of *Rasaratnam v Canada (Minister of Employment and Immigration)* (CA), [1991] FCJ No 1256, [1992] 1 FC 706, to conclude that the applicant had a viable IFA in several places in Bangladesh where he would not be obliged to cease his political activities. The Court reiterates the respondent's argument that the applicant, a low level member, submitted no credible evidence to refute the proposed IFA.

[27] Also, the Court recalls that the Board's findings with respect to the existence of an IFA and the applicant's credibility are both determinative.

[28] For all of these reasons, and, in light of the standard of reasonableness, the Court must defer to the Board with respect to these findings.

[29] The Court finds that the Board's conclusions are supported by the evidence and that they fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above, at para 47). Therefore, the applicant's application for judicial review will be dismissed.

**[30]** The parties have not proposed any questions for certification and none arise.

## JUDGMENT

**THIS COURT'S JUDGMENT is that**

1. The application is dismissed;

2. There is no question for certification.

"Richard Boivin"

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-6729-11 |
| **STYLE OF CAUSE:** | **MOHAMMAD MUJIB ALAM v. MCI** |
| **PLACE OF HEARING:** | Montréal, Quebec |
| **DATE OF HEARING:** | April 19, 2012 |
| **REASONS FOR ORDER:** | BOIVIN, J. |
| **DATED:** | June 19, 2012 |

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