

Federal Court



Cour fédérale

Date: 20131203

Docket: IMM-9657-12

Citation: 2013 FC 1206

Ottawa, Ontario, December 3, 2013

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

ABDUL WADUD BABUL

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Abdul Wadud Babul, a citizen of Bangladesh, seeks judicial review of a decision by the Refugee Protection Division of the Immigration and Refugee Board denying his claim that he is a Convention refugee or a person in need of protection. The application is brought pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] For the reasons that follow, the application is dismissed.

BACKGROUND:

[3] Mr. Babul lived and worked in the United States between November 1985 and January 2004. While in the US he visited his home country several times. During one of the trips he got married. Following his return to Bangladesh in 2004, he was pressured to support the Jamaat-ul-Mujahideen Bangladesh party (the JMB) and the Awami League. This pressure was accompanied by threats of physical harm, and demands for money, which he provided on several occasions. Mr. Babul was a long-time supporter of the Bangladesh Nationalist Party (BNP). The BNP were in power at that time and in 2005 the JMB were proscribed. A number of JMB leaders were detained, but the local members increased their militancy throughout the country.

[4] JMB and Awami League members continued to harass Mr Babul, extorting money and threatening to harm his family if he did not pay. He left Bangladesh in March 2006 for Guam, enroute to the continental United States. Mr Babul claimed asylum upon arrival at the airport in Guam, but was detained by the authorities when it was determined that he had used fraudulent travel documents. Mr Babul was detained in a jail for six months, and at an immigration detention centre for three months thereafter, pending deportation.

[5] Mr Babul claims that he was tortured mentally and physically while detained in Guam. As a result, he says, he withdrew his asylum claim. He was asked by a US Immigration Officer if he had been threatened while in detention and to explain why he wanted to go home if he faced persecution there. Mr Babul says that he denied being threatened for fear of being tortured again, or being sent to the Guantanamo Bay detention camp. He told the Officer that he would rather accept death and go home than remain detained.

[6] Mr Babul returned to Bangladesh on December 15, 2006. In January 2007, a state of emergency was declared in Bangladesh. Mr Babul became involved with an organization established to fight corruption, the Durniti Protirodh Anddolan (the Anti-Corruption Movement, or ACM). In May 2007 Mr Babul received a threat that his family would be harmed if he did not cease his work with the ACM. He filed a complaint the same day with the police and continued his political work, becoming one of 301 members of the Election Committee in Sylhet on behalf of the BNP.

[7] In November 2008, Mr Babul was asked to join the Awami League in preparation for the forthcoming elections. He refused. An Awami League-led alliance won the general elections of December 29, 2008. On February 10, 2009, members of the Awami League went to Mr Babul's house and demanded a donation. He was told he must raise the amount demanded by February 20, 2009. Mr Babul reported the incident to the police but was accused of lying. He went into hiding. His home was ransacked on February 20, 2009. Following further threats from members of the JMB and a police search for him he left Bangladesh in May 2009. He entered Canada on a false American passport, destroyed the passport and filed an inland refugee claim about a week later.

DECISION UNDER REVIEW:

[8] The determinative issues for the Panel were the applicant's credibility and the availability of an Internal Flight Alternative (IFA) to Dhaka. The Panel noted that the applicant had never made an asylum claim during the 18 years he had lived in the United States prior to his return to Bangladesh in 2004. The Panel found that it was not credible that the applicant would then remain in Bangladesh for two years before leaving for Guam, and then agree to return to Bangladesh from

Guam in December 2006, if he feared for his life. It did not believe his claim of torture at the hands of the US authorities in Guam. In reviewing the record of the interview, the Panel found that the applicant was concerned about being released from detention and that if this could not happen, then he would return to Bangladesh.

[9] The Panel found that the applicant had failed to provide credible and trustworthy evidence authenticating his long political involvement with the BNP or that, as a consequence of this involvement, his life would be at risk. In particular, the Panel found that documents submitted to establish his membership in the party did not describe his role or history with the BNP or activities prior to the 2008 election. The Panel held that the documents contained insufficient information to be satisfied of his involvement with the BNP. The Panel also found that an amendment to the applicant's Personal Information Form (PIF) with regard to a beating and medical attention the applicant had sought on December 25, 2008, was included as an afterthought in order to establish that the applicant's life is and was at risk.

[10] The Panel stated that while it did not believe the applicant's claims, it believed that a viable IFA in Dhaka existed. The Panel held that there was little credible evidence that the applicant's membership within the BNP resulted in him being sought by the current political party, government or police in Dhaka and throughout Bangladesh. Moreover, the Panel found that there was insufficient evidence to conclude that the applicant was a member of BNP at present, or would become involved with the BNP to such an extent that it would put his life at risk, were he to return to Bangladesh, due to the political violence there.

[11] The Panel held that there was no credible reason why the applicant could not relocate to Dhaka given that it was a very large city and far from where he had previously resided.

Furthermore, the applicant had not established how he would be found in Dhaka, nor why he could not seek protection from the police since police protection had previously been sought in April 2009.

ISSUES:

[12] The questions raised in these proceedings can be condensed into the following issues:

1. Was it reasonable for the Panel to conclude that the applicant was not credible?
2. Did the Panel breach the duty of procedural fairness in its treatment of the applicant's decision to return to Bangladesh in 2006?
3. Was it reasonable for the Panel to conclude that there was a viable IFA available to the applicant?

[13] The standard of review for the first and third issues is reasonableness. The second attracts review on the standard of correctness: *Yildiz v Canada (Minister of Citizenship and Immigration)*, 2013 FC 839 at paras 42-45, [2013] FCJ no 905; *Soto v Canada (Minister of Citizenship and Immigration)*, 2011 FC 360 at para 19, [2011] FCJ no 446.

ANALYSIS:

Was it reasonable for the Panel to conclude that the Applicant was not credible?

[14] The applicant's problems with opposing political parties apparently began before he left for the United States in 1985. Mr. Babul did not seek asylum during this period and returned to his home country several times prior to returning there in January 2004. He says he realized his life was at risk as early as March 2004 but remained in Bangladesh for two years before leaving for Guam.

The Panel's finding that this was inconsistent with a subjective fear of persecution was open to it on the evidence.

[15] It was also open to the Panel not to believe the applicant's claim of having been tortured while detained in Guam. This claim was not reported to the American authorities when the applicant was interviewed prior to being removed. While his explanation for not doing so was plausible, it is clear that he chose to withdraw his asylum application rather than continue to be detained pending assessment of his claim by the US where the abuse could have been raised.

[16] The Panel conducted a thorough review of the evidence adduced by the applicant prior to making its negative credibility ruling with respect to his claim of active involvement with the BNP. Specifically, the Panel found that the documents submitted by the applicant lacked "independent, credible and trustworthy information" to support that the applicant "is who he says he is" within the BNP. Further, it noted that none of the documents specify what the applicant was allegedly accused of or establish that he had a profile in the BNP that would attract hostility from its opponents. Thus, the Panel did not ignore this documentary evidence. Rather, it accorded it low probative value after a close examination at the hearing, an assessment which was within its discretion.

[17] The Panel considered the corroborating evidence provided by the applicant to establish his claim before concluding that this evidence as a whole inspired little confidence in the claim. It was not necessary for the Panel to explicitly review each item of this evidence in its reasons:

Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board),

2011 SCC 62 at para 16. The Panel explicitly considered the evidence relevant to its determination as to the applicant's credibility, and, based on this evidence, reasonably concluded that the applicant's claim that his life was in danger as a result of his involvement with the BNP was not credible.

Did the Panel breach the duty of procedural fairness in its treatment of the applicant's decision to return to Bangladesh in 2006?

[18] The applicant submits that during the hearing, the Panel repeatedly stated that the applicant's reasons for withdrawing his claim for asylum and returning to Bangladesh from Guam in 2006 were irrelevant to his claim and instructed his counsel at that time to focus her questions on his fear of returning to Bangladesh and not on what had transpired in Guam.

[19] The hearing of the claim took place over several days. It is clear from the transcript that as the hearing progressed towards its conclusion, the Panel wanted to move on from the discussion of what had taken place in Guam, as that was already in the record, and to focus on the claim against Bangladesh. While the events in Guam were relevant to the question of why the applicant had withdrawn his asylum request and returned home in 2006, they did not go to the heart of the claim. The Panel evidently considered that the Guam events had been sufficiently covered and thought that counsel was being repetitive in going over the same ground. Having read the relevant portions of the transcript, I can understand how the Panel may have reached that conclusion.

[20] It is problematic that the Panel was initially prepared to accept the statements the applicant had made during the interview with U.S. Immigration authorities without putting them to the applicant to allow him to explain himself. However, the Panel accepted counsel's argument that she should be allowed to address this subject and both he and counsel asked the applicant to explain why he withdrew his claim in Guam. In both instances, the applicant explained that it was due to the abuse to which he had been subjected in the jail following his initial detention.

[21] The applicant's counsel had the opportunity at the hearing to ask her client to explain the answers he had given to the US Immigration official during the interview. She did ask him why he did not tell the immigration officer that he had been tortured but then chose to focus on what had allegedly gone on at the detention centre and whether the applicant had access to a lawyer. If there was some additional evidence that the applicant could have provided as to his reasons for withdrawing the claim, his counsel failed to elicit it over what was a protracted hearing.

[22] It is clear that the Panel understood the applicant's explanation for withdrawing his US claim. He simply did not believe that the applicant would leave US territory if he feared being killed in Bangladesh.

[23] While the Panel could have demonstrated greater patience in conducting the hearing, no breach of procedural fairness took place.

Was it reasonable for the Panel to conclude that there was a viable IFA available to the applicant?

[24] In determining whether a viable and safe IFA exists for the claimant, the Panel must be satisfied on a balance of probabilities that there is no serious possibility of the claimant being persecuted in the proposed IFA and that conditions there are such that it would not be unreasonable, upon consideration of all of the circumstances, including the claimant's personal circumstances, for the claimant to seek refuge there: *Hernandez v Canada (Minister of Citizenship and Immigration)*, 2011 FC 703 at paras 36-38.

[25] The applicant bears the burden of proof to demonstrate that an IFA does not exist or is unreasonable: *Saldana v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1092 at paragraph 22.

[26] In this instance, the Panel asked the applicant why he could not move to Dhaka, a city of over 10 million people, use the health and education and other services and seek assistance of the authorities there if necessary. The applicant's sole ground for not accepting the proposed IFA was that as a result of his political activities he was on an Awami League hit list that prevailed all over the country. As noted above, the Panel did not accept that the applicant had the political profile that he claimed to have as a member of the BNP and as one of 300 members of an anti-corruption organization in Sylhet, a town located some 400 kilometres from Dhaka.

[27] On the basis of the applicant's own testimony, the Panel's decision that a viable IFA existed was reasonable.

[28] Overall, the decision was transparent, intelligible and justified, and falls within the range of acceptable outcomes based on the facts and the law.

[29] No serious questions of general importance were proposed and none will be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. No questions are certified.

"Richard G. Mosley"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9657-12

STYLE OF CAUSE: ABDUL WADUD BABUL
v
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 1, 2013

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

DATED: DECEMBER 3, 2013

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