

Federal Court



Cour fédérale

Date: 20190312

Docket: IMM-3244-18

Citation: 2019 FC 295

Ottawa, Ontario, March 12, 2019

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

ZAHIDUL AMIN

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA] of a Refugee Protection Division decision dated June 1, 2018 [the Decision]. In this decision, an Immigration Officer [the Officer] determined that the Applicant would not be subject to risk of persecution, danger of torture, risk to life or risk of cruel and unusual treatment or punishment if removed to Bangladesh.

[2] Zahidul Amin [the Applicant] is a fifty year old man from Bangladesh.

[3] After graduating from a government college in 1986, the Applicant went to work with his brother's construction company as a project coordinator.

[4] The Applicant's brother became involved with the Bangladesh Nationalist Party [BNP] and began supporting the progressive agenda of the BNP, following his friend's election to municipal office. However, when Awami League [AL] came to power in 2009, that government targeted persons supporting the opposition cause and allegedly filed false cases against the Applicant and his brother.

[5] The Applicant and his brother were allegedly targeted because they were perceived as supporting the opposition cause. On May 20, 2014, a false case was allegedly filed against them.

[6] Thereafter, Jubo League [JL] leader, Nuruz Zaman Biswas demanded a huge amount of money from the claimant and his brother, threatening there would be severe consequences if the money was not paid.

[7] In January 2015, the Applicant was allegedly physically assaulted by persons demanding to know why the money they requested had not been paid. The Applicant's brother approached the Chairman of the Chamber of Commerce to discuss the problems they were facing, but was also asked for money. He also went to the police for assistance, but the police allegedly demanded payment of a bribe.

[8] On August 1, 2015, the Applicant allegedly paid some extortion money to the local AL office. However, he was later contacted and asked for the outstanding amount. After the claimant was threatened in a phone call, his brother filed a police report.

[9] On January 15, 2016, a group of 5 or 6 persons allegedly went to the home that the Applicant shared with his brother, shouting the brother's name. When the Applicant opened the gate to the property, he was beaten.

[10] On September 1, 2016, the Applicant's brother was killed, and upon hearing the news, the Applicant went to stay with a friend in Chittagong.

[11] On September 30, 2016, the Applicant travelled to the United States, with assistance from a smuggler who secured false travel documents for his trip.

[12] On March 8, 2017, the claimant entered Canada and filed a refugee claim.

[13] The Refugee Protection Division [RPD] found serious issues regarding the credibility of the Applicant's evidence.

[14] The Board found that neither the claimant nor his brother was perceived as supporting the opposition cause, and that neither the claimant nor his brother was targeted for persecution by the opposition while in Bangladesh.

[15] The only issue for the Court's consideration is whether the RPD erred in its several adverse credibility findings against the Applicant.

[16] The Applicant made no submissions regarding the applicable standard of review, but argued at the hearing that because of plausibility findings were involved, the standard of review should be higher than the reasonableness standard. I disagree, as plausibility findings of fact relate to the standard of probative value of evidence required to prove a fact, not the legal standard.

[17] The appropriate standard of review of findings of fact, inferential facts and of the factual component of a mixed fact and law finding is a highly deferential standard of reasonableness. The Court is not permitted to reweigh the evidence and cannot intervene on the basis of insufficiency of evidence so long as there is some probative evidence supporting the factual conclusions. Credibility findings of fact, including the inferential step of a finding of fact, should not be overturned except in the clearest case of error, (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47, 53, 55, 62; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 52-62; *Odia v Canada (Citizenship and Immigration)*, 2018 FC 363 at para 6; *Njeri v Canada (Citizenship and Immigration)*, 2009 FC 291 at para 11, *Judicial Review of Administrative Action in Canada*, D. J. M. Brown & The Honourable J. M. Evans, 14:3520, *Housen v Nikolaisen*, [2002] 2 SCR 235, 2002 SCC 33 at paras 21-22.)

[18] The Respondent in its Further Memorandum provided a list of the numerous credibility findings of the RPD in a summarized fashion. I set these out below (with counsel's emphasis at item "d"), as follows:

a) The Applicant provided highly contradictory evidence as to whether or not he or his family members actually had any political involvement with BNP. The Applicant's political profile and whether he is indeed wanted by the Bangladesh authorities goes to the core of his refugee claim. In his BOC narrative, he wrote that his brother "got involved with BNP and supported the progressive agenda," but later the Applicant recanted his statement and said that his brother was not directly involved, but because the brother's childhood friend was a member of BNP, "they hung around together and talked often." The RPD drew a negative credibility inference from the conflicting version of events and the Applicant's inability to testify in a manner consistent with his BOC narrative (pp 10-11);

b) The RPD found that given that the Applicant denied the information contained in his BOC which indicated his brother's had involvement with BNP during his oral testimony. That neither the Applicant nor his brother were or would be perceived as supporting the opposition cause, and that neither the Applicant nor his brother were targeted for persecution while in Bangladesh (p 12);

c) The RPD found that a letter provided from the Applicant's lawyer provided an inconsistent timeline as to what was included in the Applicant's BOC narrative and gave the letter little probative value given the noted inconsistencies (p 12);

d) The RPD especially considered the false report filed by the Applicant that outlined the findings of a police inspector. However, the RPD found that the document was not made contemporaneously with the events described and gave it no weight (p 14);

e) The RPD considered the death of the Applicant's brother and reviewed the death certificate that was provided. The RPD, however, did not find it credible that the Applicant would not name the eyewitness of the alleged murder in his 800 narrative, but would only bring this up later in oral testimony. Further, the Applicant testified that the eyewitness told him that the person who murdered his brother began "calling Out the Applicant's name" after—the-fact, and that the eyewitness told the Applicant that the

murderer stated “now that we have killed you, we will kill your brother.” However, the Applicant did not include the allegation that those responsible for killing his brother would be looking for him in his BOG. The RPD did not find it credible that the Applicant would forget such a crucial detail about the death of his brother that impacts his own personal safety, and found that the omissions are not reasonably explained. The RPD found that the Applicant is “not being truthful.” (p 15). The RPD drew a negative credibility inference accordingly, as they found the entire story about the brother’s death “did not have the ring of truth” to it and was “embellished.” (pp 15-16).

f) The RPD found that the Applicant’s statements that the ruling party’s “goons” took over his business to be speculative, and found that the “Al goons” have no further interest in the Applicant, nor does he face a forward-looking risk of harm (p 17).

g) Finally, the RPD found that the Applicant’s evidence with respect to the medical assistance he received after an alleged beating by “Al goons” did nothing to ameliorate their overarching concerns with the Applicant’s credibility. The Panel found that the letter of Dr. Arun Kanti Saha was not probative, as he or she was not the doctor that treated the claimant. Further, the Panel noted that the discharge certificates provide had similar wording and formatting, even though they were from two different institutions, and the certificates appear “to have been written on the same template.” The Panel did not find the Applicant’s explanation, which was that “the same clerk who works for one of those clinics also works for the other one on a part-time basis” to be satisfactory. The Panel made a negative credibility finding accordingly (p 18).

[19] The Applicant argued that the RPD erred in finding that the Applicant’s story was not credible because there was contradictory evidence between his testimony and his basis of claim narrative. For example, he argued that there were no inconsistencies between his BOC narrative and his oral testimony, but if there were, that in the alternative, they are due to the fact that he was nervous and scared. Similarly, the Applicant further argues that his failure to name the employee who shot his brother in the BOC is a minor inconsistency and goes to the mental stress he endured.

[20] In the case at bar, I find that the inconsistencies statements regarding the degree of the Applicant's brother's involvement with the BNP, his failure to identify an eyewitness to his brother's murder, and the inconsistencies regarding the allegation that this witness heard the killers uttering threats about the Applicant all go to the heart of his application. It is apparent that the RPD considered the evidence as a whole and reasonably found that overall, these inconsistencies were significant. There is evidence to support these findings, and the Court cannot reweigh the evidence to substitute its own opinion.

[21] The Applicant similarly seeks the Court's intervention as to whether the RPD erred in finding that there was insufficient and contradictory evidence regarding a false claim against the Applicant. The discussion centered on a Lawyer's letter. It provided an inconsistent timeframe from that reported in the Applicant's his Basis of Claim. The RPD reasonably noted that the Applicant provided no objective corroborating documents from any court in Bangladesh. He had retained a lawyer for this purpose and there obviously must have existed more germane documents to support his argument that a false claim had been made against him. This is a further issue of the RPD's evaluation of the evidence.

[22] The Applicant argues that the RPD erred in finding that there was a lack of sufficient credible evidence linking the applicant's brother's death with police persecution. This misstates the issue that his failure to name the employee who saw his brother get shot in the BOC is a minor inconsistency and goes to the mental stress he endured, because the death of the Applicant's brother was accepted. The Board's point is that the Applicant did not provide any evidence to identify those

responsible for his brother's death, thereby not providing any clear causal chain to his own alleged mistreatment.

[23] On another point, the Applicant submits that the RPD erred by concluding that there was no forward-facing risk to the Applicant, as his persecutors had taken over the business of his brother. The Applicant claims that he owns other properties that could make him a continuing target of his aggressors. This argument was speculative, as the Applicant submitted no probative evidence in support of this fact. Given the time that has passed since the incident and the apparent elimination of incentive for any further targeting, the Applicants' brother's property no longer being a consideration, these foundational facts which are supported by evidence are sufficient to support the inference that he would be targeted on his return to Bangladesh.

[24] Accordingly, I find that the Board's conclusion that the Applicant was not at risk of persecution or the subject of probable cruel and unusual treatment pursuant to sections 96 and 97 of the IRPA is reasonable.

[25] The application is dismissed. No questions are certified for appeal.

JUDGMENT in IMM-3244-18

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed and no questions are certified for appeal.

“Peter Annis”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3244-18

STYLE OF CAUSE: ZAHIDUL AMIN v MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 12, 2019

JUDGMENT AND REASONS: ANNIS J.

DATED: MARCH 12, 2019

APPEARANCES:

Obaidul Hoque FOR THE APPLICANT

Erin Estok FOR THE RESPONDENT

SOLICITORS OF RECORD:

Obaidul Hoque FOR THE APPLICANT
Barrister & Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario