

IMM-3095-96

BETWEEN:

**ABUL HASHIM MOHAMMAD, AYESHA SULTANA
ABUL AFJAL MOHAMMAD (a minor), FARJANA HASHIM, (a minor),
ABUL ASHRAF MOHAMMAD (a minor)**

Applicants

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

GIBSON J.:

These reasons arise out of an application for judicial review of a decision of the Convention Refugee Determination Division (the "CRDD") of the Immigration and Refugee Board wherein the CRDD determined the applicants not to be Convention Refugees within the meaning assigned to that term in subsection 2(1) of the *Immigration Act*.¹ The decision is dated the 16th of August, 1996.

The applicants are citizens of Bangladesh. Abul Hashim Mohammad (the "principal applicant") bases his claim to Convention refugee status on an alleged well-founded fear of persecution if he is required to return to Bangladesh by reason of his political opinion and

¹R.S.C. 1985, c. I-2.

membership in a particular social group, the Jatiya Party. The other applicants, the principal applicant's spouse and their children, base their claims on their membership in a particular social group, namely, the family of a Jatiya Party member.

The principal applicant served for many years in the Armed Forces of Bangladesh. In 1987, with the rank of Lieutenant Commander, he was appointed to the Directorate General of Forces Intelligence (the "DGF"), the Bangladesh Armed Forces intelligence unit. The human rights record of the DGF leaves a good deal to be desired. For that reason, the CRDD first considered whether the principal applicant should be excluded from Convention refugee status under Article 1, section F(a), of the United Nations Convention Relating to the Status of Refugees. The CRDD concluded in this regard as follows:

The panel finds the claimant's testimony in this regard lacking in credibility. ... Nevertheless, the panel finds that there is insufficient evidence upon which to exclude the claimant.

The CRDD therefore went on to examine the applicants' claims to be Convention refugees. It found against them on credibility grounds. It noted what it found to be a number of internal inconsistencies in the testimony of the principal applicant. In commenting on these in its reasons, it noted that the principal applicant:

...is a highly educated and intelligent person who understands and speaks the English language.

This is a theme that reappears throughout the CRDD's reasons. At another point in its reasons, the CRDD describes the principal applicant as:

...a well-travelled, well-informed, intelligent, and sophisticated person who has undergone training in the United States... .

The CRDD also notes a number of what it considers to be implausibilities in the principal applicant's testimony. It notes that it found

the principal applicant "...to be very evasive and vague with his testimony in areas that are central to his claim."

The principal applicant's spouse also testified before the CRDD. The CRDD found her testimony also to be lacking in credibility. It found her responses to be "evasive". It identified implausibilities in her testimony.

On the issue of past persecution, the CRDD concludes in the following terms:

Given the above implausibilities and inconsistencies in the adult claimants' testimony, as well as the manner in which they testified - that is, characterized by vagueness and evasiveness - the panel determines that the claimant and his family did not experience past persecution in Bangladesh as they claim.

Looking to what might await the applicants if they are required to return to Bangladesh, the CRDD concluded:

...the panel finds no persuasive evidence that there is more than a mere possibility that they would be persecuted if they were to return to Bangladesh, merely by virtue of the [principal applicant's] membership in the JP.

In further support of its conclusion against the applicants, the CRDD notes that the applicants sojourned for five days in the United States before coming to Canada and made no claim in the United States. It rejects their explanation for this as "...just another indication that the claimants do not have a subjective fear of persecution, for Convention reasons, in Bangladesh." The CRDD also notes that the Applicants destroyed their travel documents before entering Canada. Once again the CRDD rejects the explanation and determines that that explanation is "yet another" indication of the applicants' lack of credibility.

Before rejecting each of the applicants' claims

separately, the CRDD records its general conclusion in the following terms:

Given the above, the panel finds that the claimants do not have a well-founded fear of persecution in Bangladesh. Having found this, the panel will not address the issue of internal flight alternative, although this was identified at the outset of the hearing as one of issues in these claims.

Counsel for the applicants submitted that the CRDD's conclusions as to credibility simply cannot be supported on the basis of the transcript of the hearing before the CRDD. He referred me to numerous passages from the transcript in support of this argument. He also referred me extensively to documentary evidence that was before the CRDD that, he argued, supported the testimony of the applicants.

Counsel for the respondent noted authorities from the Federal Court of Appeal counselling caution in judicial review of decisions of tribunals such as the CRDD that are based on credibility findings and counselled against a "microscopic examination" of the CRDD's reasons and the transcript on which those reasons are based.

Since the hearing before me, I have reviewed the transcript of the testimony of the principal applicant and his spouse before the CRDD and the elements of the extensive documentary evidence that was before the CRDD to which counsel for the applicants referred me.

I conclude that the CRDD made no reviewable error in finding as it did with respect to the credibility of the testimony before it of the principal applicant and his spouse.

The Federal Court of Appeal has acknowledged that a decision of the CRDD based on credibility may be overturned on judicial review where the CRDD's findings are perverse or capricious, not founded on the evidence, founded on inferences that could not reasonably have been

drawn, or where the internal contradictions identified in the CRDD's decision do not relate to matters relevant to the claim. Further, the Court of Appeal has determined the CRDD is entitled to deference but must not engage in a microscopic examination of the evidence before it.²

In my review of the material before the Court and my consideration of the submissions of counsel, I have also taken into account what I consider to be the sage counsel of Joyal J. in *Miranda v. Minister of Employment and Immigration*,³ where he wrote:

For purposes of judicial review, however, it is my view that a Refugee Board's decision must be interpreted as a whole. One might approach it with a pathologist's scalpel, subject it to a microscopic examination or perform a kind of semantic autopsy on particular statements found in the decision. But mostly, in my view, the decision must be analyzed in the context of the evidence itself. I believe it is an effective way to decide if the conclusions reached were reasonable or patently unreasonable.

While I have some difficulty with the inference that the test is reasonableness against patent unreasonableness, in all other respects, I have been governed in my review of the material and of counsel's submissions by the words of Mr. Justice Joyal.

Against the foregoing, I must conclude that the CRDD, which had the principal applicant and his spouse before it when they gave their testimony and therefore had the opportunity to observe their demeanour and the manner in which their testimony was given, made no reviewable error in concluding as it did regarding the credibility of their testimony and, on that basis, in dismissing the claims to Convention refugee status of all the applicants in this matter. In the result, this application for judicial review will

²See for example, *Giron v. Canada (Minister of Employment and Immigration)* (1992), 143 N.R. 238 (F.C.A.); *Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315 (F.C.A.); and *Rajaratnam v. Canada (Minister of Employment and Immigration)*, (1991), 135 N.R. 300 (F.C.A.).

³(1993), 63 F.T.R. 81 (F.C.T.D.)

be dismissed.

Neither counsel recommended certification of a question. No question will be certified.

Ottawa, Ontario
July 30, 1997

Judge