Federal Court  Cour fédérale

Date: 20231031

Docket: IMM-9135-22

Citation: 2023 FC 1452

Toronto, Ontario, October 31, 2023

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

NILUFA BEGUM
MOHAMMED BELAYET HOSSAIN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a negative Pre-Removal Risk Assessment [PRRA] decision, dated February 21, 2022 [the Decision]. In the Decision, a Senior Immigration Officer [Officer] determined that the Applicants would not face a risk of persecution, be subject

to a risk of torture, or face a risk to life or risk of cruel and unusual treatment or punishment, if returned to Bangladesh.

[2] As explained in greater detail below, this application is allowed, because the Officer did not conduct a reasonable analysis of the female Applicant's risk of gender-related persecution under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

II. Background

[3] The first Applicant identified above [the Principal Applicant] and the second Applicant who is her husband [the Associate Applicant] are citizens of Bangladesh. The Principal Applicant alleges that in 1987, when she was 16 years old, a group of men in Bangladesh assaulted her. Shortly after the assault, she went to live in South Africa with relatives. In 1993, the Principal Applicant returned to Bangladesh to marry the Associate Applicant, and they remained there for ten months before moving to Botswana together. While in Bangladesh, the Associate Applicant was involved with the Jatiya Party, a political party. He alleges that, as a result of his involvement with this group, the ruling party in Bangladesh had charges laid against him.

[4] In 1997, the Applicants moved to the US, where they stayed until 2017. The Applicants did not claim refugee protection in the US. In November 2017, the Applicants entered Canada and subsequently made a refugee claim here in December 2017.

[5] The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB] rejected the Applicants' claim on December 2, 2019. The RPD found on a balance

of probabilities that the Applicants were unable to provide a reasonable explanation for failing to claim refugee protection in the US while living there for 20 years. The RPD also found that the Applicants had a viable internal flight alternative in Chittagong, Bangladesh.

[6] The Applicants appealed to the Refugee Appeal Division [RAD] of the IRB, which dismissed the appeal on January 17, 2020.

[7] On July 29, 2021, this Court dismissed the Applicants' application for leave and judicial review of the RAD decision. The Applicants subsequently applied for a PRRA, the Decision in which is the subject of this application for judicial review.

III. Decision under Review

[8] In the Decision, the Officer noted that, pursuant to section 113(a) of the IRPA, only new evidence arising after the rejection of the Applicants' claim by the IRB, or that was not reasonably available or that the Applicants could not reasonably have been expected in the circumstances to present at the time of the rejection, would be considered.

[9] In the PRRA application, the Applicants submitted the following new evidence that was dated after the RPD decision: a letter from a psychologist dated February 25, 2020; various country condition reports; news articles on the human rights situation of Bangladesh from 2019 to 2021; the Notice of Decision from the Federal Court decision in *Hossain v. Canada (Citizenship and Immigration)*, 2021 FC 1077; a letter from the general secretary of the Jatiya Party dated September 10, 2018; a letter from a lawyer in Bangladesh, dated January 20, 2019;

and a copy of an arrest warrant issued against the Associate Applicant (and others) on January 1, 2019.

[10] The Officer reviewed the findings of the IRB and reviewed and considered the new evidence. The following paragraphs summarize the findings in relation to which the Applicants argue the Officer erred.

[11] In considering the country condition evidence [CCE], the Officer acknowledged that the human rights reports and news articles on Bangladesh identified various issues women face such as domestic violence, child marriage, acid violence, rape, sexual harassment and dowry-related violence against women that is present in some parts of society in Bangladesh. The Officer found that there are deep societal issues in Bangladesh related to violence and specifically violence against women. However, the Officer also found the CCE identified a generalized risk of violence that the entire population faces in Bangladesh in varying degrees and that it did not have much probative value in determining the Applicants' personalized risk. The Officer therefore gave the CCE little weight.

[12] The Officer considered the letter from the lawyer and summarized it as stating that the political condition has worsened in Bangladesh under the Awami League. The lawyer explained that, as requested by the Applicants, he had withdrawn the Warrant of Arrest, Charge Sheet and FIR against the Associate Applicant. However the lawyer also stated that the Warrant for Arrest against the Associate Applicant is active, such that he could be arrested if he returned to Bangladesh. The Officer found the letter contained confusing and conflicting information as to

whether there is an active arrest warrant against the Associate Applicant and therefore gave the letter low probative value and little weight.

[13] Finally, the Officer considered the copy of the arrest warrant issued against the Associate Applicant, and others, on January 2, 2019. The Officer found that this evidence was addressed by the RPD. The Officer also conducted further research into openly available information on the internet and found that the charges were allegedly brought forward by the BNP political party, which was in power until 2008. The Officer noted that the BNP party has not held power since 2008 and only holds 10 out of 300 seats in the Bangladesh Jatiya Sangsad. The Officer concluded that, given the political motive for the charges against the Associate Applicant, it was highly unlikely he would be pursued, as the chief perpetrators of his alleged persecution were no longer in power. Ultimately, the Officer gave the warrant some weight.

[14] In conclusion, the Officer found that there was less than a mere possibility that the Applicants would face a risk of persecution as described in section 96 of the IRPA if they returned to Bangladesh, and that they were unlikely to face a risk of cruel or unusual treatment, or punishment, or risk to life under section 97 of the IRPA.

IV. Issues and Standard of Review

[15] The Applicants raise the following issues for consideration by the Court:

A. Did the Officer unreasonably assess gender as a ground of risk?

B. Did the Officer misapprehend evidence regarding the political connections of the agents of persecution?

C. Did the Officer deprive the Applicants of procedural fairness by failing to disclose a credibility concern regarding irregularities in the lawyer's letter and its translation?

[16] Both parties agree (and I concur) that the applicable standard of review for the first two issues is reasonableness (see *Canada (Minister of Citizenship and Immigration) v Vavilov*), 2019 SCC 65 [*Vavilov*]).

[17] The Applicants submit that the third issue requires review on the correctness standard. However, while issues of procedural fairness are typically reviewed on the standard of correctness, whether a PRRA officer is required to convene an oral hearing, arising from a credibility concern related to new evidence, is reviewable on the standard of reasonableness (see *Islam v Canada (Citizenship and Immigration*), 2022 FC 261 at para 15; *Ritual v Canada (Citizenship and Immigration)*, 2021 FC 717 at para 29).

V. Analysis

[18] My decision to allow this application for judicial review turns on the Officer's analysis of the Principal Applicant's allegation of fear of gender-related persecution under section 96 of the IRPA. The Applicants filed CCE that post-dated the IRB's rejection of the claims, and the Officer considered the gender-related risk. However, the Officer's rejection of that risk, on the basis that it represents a generalized risk of violence faced by the entire population in Bangladesh, is unintelligible and cannot withstand reasonableness review under the principles explained in *Vavilov*.

[19] To be clear, the mere fact that the Officer speaks of the need to consider the Applicants' "personalized risk" is not in itself problematic. As the Respondent submits and the Applicants acknowledge, every claimant must demonstrate personalized risk (see, e.g., *Sokhi v Canada (Citizenship and Immigration)*, 2009 FC 140 at para 46). To the extent that a claimant relies on generalized evidence of similar situated persons, the claimant must show that that evidence is relevant to them, i.e. that they are sufficiently similar to those described in the evidence. As such, the mere use of language such as "personalized" does not alone indicate that a decision-maker has conflated the tests under sections 96 and 97 of the IRPA (see *Fodor v Canada (Citizenship and Immigration)*, 2020 FC 218 [*Fodor*] at para 38).

[20] As Justice McHaffie explained in *Fodor* at paragraphs 40 to 41, it is appropriate for a section 96 analysis to consider whether those described in the general evidence are sufficiently similar to the claimant. However it is not appropriate to require a claimant to show that their risk is personalized in the sense that it is not also faced by other similarly situated persons or other members in a group. It is the latter reasoning that would import elements of the section 97 analysis into section 96. Justice McHaffie further explained, as follows, the required link to the general evidence (at para 42):

> 42. In this regard, the "link" or "nexus" to the general evidence will depend on the nature of the generalized evidence. To the extent that the evidence demonstrates that members of a Convention-ground class are persecuted in a particular country—regardless of personal circumstances such as wealth, social position, geographic location or other circumstances—then membership in that class may be sufficient to show that the evidence of persecution applies to the claimant personally. If, on the other hand, the evidence shows that discrimination and persecution in the country is variable depending on other factors, then there will be a greater need for the claimant to demonstrate how or why some or all of the evidence is relevant to them.

[21] As the Applicants submit, examples of the sort of personalized analysis that may be required can be found in this Court's jurisprudence in the context of refugee claims by Hungarian Roma. For example in *Balogh v Canada (Citizenship and Immigration)*, 2016 FC 426 [*Balogh*] at paragraph 19, Justice LeBlanc explained the following:

> 19. Moreover, while the documentary evidence of general country conditions of Roma in Hungary raises human rights concerns, the mere fact of being of Roma ethnicity in Hungary is not, in and of itself, sufficient to establish that an applicant faces more than a mere possibility of persecution upon return (*Csonka v Canada (Citizenship and Immigration)*, 2012 FC 1056, at paras 67-70 [*Csonka*]; *Ahmad v Canada (Minister of Citizenship and Immigration)*, 2004 FC 808, at para 22 [*Ahmad*]. Both subjective fear and objective fear are components in respect of a valid claim for refugee status (*Csonka*, at para 3). The applicant has a burden of establishing a link between the general documentary evidence and the applicant's specific circumstances (*Prophète v Canada (Citizenship & Immigration)*, 2008 FC 331, at para 17; *Jarada v Canada (Minster of Citizenship and Immigration)*, 2005 FC 409, at para 28; *Ahmad*, at para 22).

[22] Returning to the case at hand, the difficulty with the Decision is that it is not possible to understand from the Officer's reasons the basis for the conclusion that the CCE did not have much probative value in determining the Applicants' personalized risk.

[23] To begin, I note that the Officer described the CCE as identifying a generalized risk of violence that the entire population faced in Bangladesh in varying degrees. On its face, this finding is not intelligible, as the Officer's description of the CCE focused upon various forms of violence against women, not violence against the population as a whole.

[24] However, assuming that the Officer's finding was meant to refer to the entire female population, the reasoning that the CCE did not inform a determination of the Applicants'

personalized risk still remains unintelligible, because the Principal Applicant is clearly a member of that population.

[25] The Officer found that there were deep societal issues in Bangladesh, specifically in relation to violence against women. However, the Officer did not assess whether those issues of gender-related violence constituted, or could in some circumstances constitute, persecution. For instance, the Decision does not include a finding (akin to the conclusion regarding Hungarian Roma described at paragraph 19 of *Balogh*) that the mere fact of being a woman in Bangladesh was not, in and of itself, sufficient to establish more than a mere possibility of persecution. Nor is there any analysis (of the sort explained in paragraph 42 of *Fodor*) of factors personal to the Principal Applicant that may serve to include or exclude her from any particular categories of women who may face persecution in Bangladesh.

[26] The Respondent submits that that the Applicants presented no evidence or argument linking the Principal Applicant to certain categories of violence against women identified in the CCE, as such as domestic violence or dowry-related violence. While I agree with this submission, the Decision is devoid of any such analysis. As *Vavilov* explains at paragraph 96, reasonableness review requires consideration of whether a decision-maker has provided justification for a decision, not whether the parties or the Court might be able to develop such justification themselves. In the absence of any analysis or findings of the sort described above, it is not possible to understand from the Decision how the Officer concluded that the CCE did not inform an assessment of the Principal Applicant's risk.

[27] In this respect, this matter is also distinguishable from *Abdelsalam v. Canada (Citizenship and Immigration)*, 2020 FC 196 [*Abdelsalam*], upon which the Respondent relies. The Respondent refers the Court to Justice Russell's reasoning, in dismissing the application for judicial review in *Abdelsalam*, that the evidence of the applicants in that case demonstrated only a generalized risk to women (at para 56). However, it is apparent from *Abdelsalam* both that Justice Russell concluded this was not a new risk that had not previously been considered by the RPD (at para 58) and that, in that context, the PRRA officer in that case conducted an analysis of the CCE and the applicants' PRRA submissions as to her personal circumstances and concluded that they did not support a finding of personalized risk (at para 59).

[28] Based on the foregoing analysis, I find that the Decision is unreasonable and will allow this application for judicial review, returning the matter to another PRRA officer for redetermination. It is therefore unnecessary for the Court to address the other issues raised by the Applicants. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-9135-22

THIS COURT'S JUDGMENT is that this application for judicial review is allowed and the matter is returned to a different Pre-Removal Risk Assessment officer for redetermination. No question is certified for appeal.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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