Federal Court Cour fédérale

Date: 20240301

Docket: IMM-899-23

Citation: 2024 FC 351

Montréal, Quebec, March 1, 2024

PRESENT: Madam Justice Azmudeh

BETWEEN:

ZAHIDUL ISLAM BHUIYAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Under section 72(1) of the *Immigration and Refugee Protection Act* [IRPA], the Applicant, Zahidul Islam Bhuiyan [the "Applicant"], is seeking a Judicial Review of the rejection of his refugee protection appeal by the Refugee Appeal Division ["RAD"] of the Immigration and Refugee Board of Canada ["IRB"]. The Judicial Review is dismissed for the following reasons.

[2] The Applicant is a citizen of Bangladesh from North Karimpur village and who left due to his fear of persecution from Islamic terrorists belonging to Jammat-Ul-Mujahideen Bangladesh (JMB) for his refusal to join them. The Refugee Protection Division of the Immigration and Refugee Board ["RPD"] dismissed his claim. The Applicant appealed this decision to the Refugee Appeal Division ["RAD"]. The RAD dismissed his claim because he has an internal flight alternative ["IFA"] in the cities of Sylhet or Khulna. The Applicant is seeking judicial review of this decision on the ground that it was unreasonable.

II. Decision

[3] I dismiss the Applicant's judicial review application because I find the decision made by the RAD to be reasonable.

III. Standard of Review

[4] The parties submit, and I agree with them, that the standard of review in this case is that of reasonableness (*Vavilov v Canada (Citizenship and Immigration),* 2017 FCA 132 [*Vavilov*]).

IV. Analysis

A. *Legal Framework*

[5] The two-prong test for an IFA is well established. An IFA is a place in an applicant's country of nationality where a party seeking protection (i.e., the refugee claimant) would not be at risk – in the relevant sense and on the applicable standard, depending on whether the claim is made under section 96 or 97 of the IRPA – and to which it would not be unreasonable for them to relocate.

[6] When there is a viable IFA, a claimant is not entitled to protection from another country. More specifically, to determine if a viable IFA exists, the RAD must be satisfied, on a balance of probabilities, that:

a. the claimant will not be subject to persecution (on a "serious possibility" standard), or a section 97 danger or risk (on a "balance of probabilities" standard) in the proposed IFA; and

b. in all the circumstances, including circumstances particular to the claimant, conditions in the IFA are such that it would not be unreasonable for the claimant to seek refuge there.

[7] Once IFA is raised as an issue, the onus is on the refugee claimant to prove that they do not have a viable IFA. This means that to counter the proposition that they have a viable IFA, the refugee claimant has the burden of showing either that they would be at risk in the proposed IFA or, even if they would not be at risk in the proposed IFA, that it would be unreasonable in light of the circumstances for them to relocate there. The burden for this second prong (reasonableness of IFA) is quite high as the Federal Court of Appeal in *Ranganathan v Canada (Minister of Citizenship and Immigration) (C.A.)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 [*Ranganathan*] has held that it requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions. For the IFA test generally, see *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (CA); *Ranganathan*; and *Rivero Marin v Canada (Citizenship and Immigration)*, 2023 FC 1504 at paragraph 8.

B. *1st Prong: Was the RAD's analysis in finding that the Applicant did not face a serious possibility of persecution on a Convention Ground under section 96 IRPA or on a balance of probabilities a personal risk of harm under section 97(1) IRPA in the IFA reasonable?*

[8] The Applicant argued that how the RAD dealt with the new evidence was unreasonable. For reasons that I explain, I agree with this argument in part. However, I find that the rejection of the new evidence did not render the decision as a whole unreasonable.

[9] Approximately a month after he filed his RAD memorandum, the Applicant attempted to file the following evidence before the RAD pursuant to s. 110(4) of IRPA:

a. Affidavit from the Appellant dated September 12, 2022. Items B through D below were attached to the Applicant's Affidavit as Exhibits;

b. Affidavit from the Appellant's father undated, notary seal dated August 23, 2022. In it, the father stated that he was approached by two men at the local bazar in the village where the men inquired about the son. The father informed them that he was in Canada and that he would not return. He then received a "ghost letter" threatening the son and the rest of the family if they informed the police.

c. Affidavit from the Appellant's brother dated August 3, 2022, translated into English on August 30, 2022. In it, the bother explains the circumstances when two persons, followed by three police officers, came to his store to inquire about the Applicant.

d. Anonymous threat letter, undated, translated into English on August 30, 2022.

[10] In his affidavit, the Applicant states the following statement:

> 4.Following the refusal of my refugee claim, I have recently been informed by my father and brother that fundamentalists have contacted them and enquired about my whereabouts. My father was contacted in person and received an anonymous letter in early July 2022 and my brother was also approached at the end of July 2022. After being informed of these incidents by my family, I asked them to provide me with affidavits and a copy of the anonymous letter received by my father which they did the following month. I then took the necessary steps to have said documents translated. A copy of these translated documents are enclosed to my present affidavit as Exhibit "A";

[11] The RAD accepted item A, (i.e., the Applicant's affidavit) but rejected the exhibits, (i.e., items b through d above).

[12] To admit the new evidence, the member took issue with why the new evidence was filed approximately a month later than the RAD memorandum, and that the memorandum was silent on the upcoming new evidence, even though the Applicant had already spoken to his family and knew that the affidavits were on their way. I find that the RAD erred on this point. While it is reasonable for the RAD to apply a narrow interpretation to s. 110(4) of IRPA, it must still assess it in the context of its unavailability at the time of the rejection of the claim by the RPD.

[13] Having said this, this error is not determinative. The RAD's IFA analysis presumes the acceptance of the ongoing risk in the locality. The Applicant argued that the RAD's partial rejection of new evidence in this case was unreasonable. In effect, the RAD accepted the Applicant's affidavit but not the exhibits attached to it, which included an affidavit from the Applicant's father and brother. The Applicant also argued that it was unreasonable for the RAD to reject the new evidence, in part for the information they did not contain, i.e., sufficient

evidence of continued interest by the agents of persecution in the IFA. To substantiate his argument, the Applicant referred to a number of cases where the Federal Court found it unreasonable to read the evidence for what it lacks rather than for what it contains (*Alim v Canada (MCI)*, 2021 FC 230 and *Mahmud v Canada (MCI),* 1999 CanLII 8019 (FC).

[14] I find that the Applicant's reference to these cases are misplaced. These cases are in the context of an erroneous credibility assessment. However, the legal issue in this case is IFA. Once IFA is raised, the onus shifts to the Applicant to establish that he does not have a viable IFA. Therefore, details on the means, reach and the ongoing motivations of the agent of harm are relevant information without which a refugee claimant may not be able to discharge their onus.

[15] This is why I find that the error to analyse s. 110(4) for new evidence to be filed a month after the memorandum not to be determinative. As the Applicant's counsel confirmed, the rejected evidence was all in the context of events in the Applicant's local village. The RPD accepted the Applicant's credibility that he was at risk in his local village, and the RAD's independent analysis of the evidence is consistent with this finding. As the RAD stated, this finding did not, and should not, extend to inferences. The RAD also conducted an independent credibility assessment and rejected that the Applicant was persecuted in Dhaka prior to coming to Canada. For reasons that I will elaborate, I find this analysis to be reasonable.

[16] I find that the RAD conducted an independent analysis of RPD's record and agreed with the RPD that the Applicant did not have the profile of someone that the Islamic fundamentalists would be motivated to pursue in the IFA locations some six years after he had left the country.

The Applicant's new evidence, i.e. his affidavit, also at best supported that the interest in him remained local. Therefore, it was reasonable for the RAD not to find that the Applicant had discharged his onus that he would face a serious possibility of persecution on a Convention ground, or on a balance of probabilities a personal risk of harm, in the IFA.

[17] It was part of the Applicant's evidence that when he left his village, he went to Dhaka prior to coming to Canada. However, he was chased by angry fundamentalists who called his name and wanted to harm him. At the RPD, he testified that he had assumed that the fundamentalists in his village might have taken his picture and distributed it within their network. The RPD found that it did not have sufficient evidence to conclude that it was the agents of persecution, and not random individuals, who were chasing the Applicant in Dakha. The RAD conducted its own independent analysis and did not find the Applicant's evidence on being chased in Dakha to be credible. This was because of a contradiction between the Applicant's testimony at the RPD and the events in Dhaka as retold on RAD appeal. On appeal, he stated that the fundamentalists in Dhaka had told him they had recognized him from a picture that was sent to them. The details of the chase in Dhaka, a large city far from the Applicant's home, is central to the motivation and means of the agents of persecution and I find the RAD's credibility assessment on this point to be reasonable. It is not for this Court to reweigh the evidence.

[18] The RAD found that the Appellant has not established a serious possibility of persecution or that he would, on a balance of probabilities, be subjected personally to a risk to his life, or to a risk of cruel and unusual treatment or punishment, or to a danger of torture in Sylhet or in Khul – the proposed IFA. I find the RAD's analysis of the first prong of the IFA test to be reasonable.

C. *2nd Prong: Was it reasonable for the RAD to conclude that it would be reasonable for the Applicant, in his particular circumstances, to relocate to the IFA?*

[19] At the RPD, the Applicant had testified that other than fearing the fundamentalists, there was no other reason for which he could not relocate to either Sylhet or Khul. Based on this, the RAD found that it was not unreasonable for the Applicant to relocate to the IFA. I find this conclusion to be reasonable.

[20] The Applicant argued that he is regularly in touch with this family from Canada. However, because of the continued interest of the agents of persecution in him, which is manifested by approaching the family, if he were to return to Bangladesh, he had to live in hiding and break contact with his family. Not being in touch with his family would amount to the type of undue hardship that would render the IFA unreasonable.

[21] I find that the Applicant has based his arguments not on the facts of this case but on inferences not supported by evidence. There was nothing before the RAD to suggest that any family member was ever harmed or threatened to be harmed in connection to information on the Applicant's whereabouts. I find that the Applicant is speculating that if he lived in the proposed IFA in Bangladesh instead of Canada, his ability to connect to his family through means of communication would have changed or that he would have had to hide his whereabouts in the IFA from his family. The RAD's analysis on the Applicant not needing to hide his location from his family was reasonable.

[22] The Applicant relies on the case of A.*B. v Canada (Citizenship and Immigration)*, 2020 FC 915 to argue that a refugee claimant is not expected to live in hiding in the IFA. The agents

of harm had also visited the family and inquired about their whereabouts in that case. The Court concluded that it was unreasonable to expect family members to put their own lives in danger by denying knowledge of or misleading the agents of persecution. However, the facts of this case are different. The Applicant is not reasonably expected to hide in the IFA and the evidence in this case show that the family members have never had to put their own lives in danger in the course of their interactions with the local police or the two men approaching them about the Applicant.

[23] I find that the RAD's conclusion on the second prong of the IFA to be reasonable as well.

V. Conclusion

[24] The Application for Judicial Review is therefore dismissed.

[25] There is no question to be certified.

JUDGMENT IN IMM-899-23

THIS COURT'S JUDGMENT is that

1. The application for Judicial Review is dismissed.

2. There is no question for certification.

"Negar Azmudeh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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