Federal Court Cour fédérale

Date: 20240412

Docket: IMM-9346-22

Citation: 2024 FC 582

Ottawa, Ontario, April 12, 2024

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

SABBIR RAHMAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is the judicial review of a decision of the Refugee Appeal Division [RAD] confirming the decision of the Refugee Protection Division [RPD] that Mr. Sabbir Rahman [Applicant] is neither a *Convention* refugee nor a person in need of protection.

[2] The Applicant is a citizen of Bangladesh. He claims that he fears persecution at the hands of local leaders of the Chhatra League [CL], the student wing of the Bangladesh ruling

party, Awami League [AL]. The Applicant claims that he refused to join the party or participate in their activities and criticized the AL government, after which he and his family members were threatened and harassed by local leaders of the CL. He also claims that a warrant of arrest has been issued against him and his brother under the Digital Security Act [*DSA*] because of his criticism of the government in social media posts.

[3] The RPD rejected the Applicant's claim. The RPD found that the determinative issue was the availability of an internal flight alternative [IFA] in Chittagong, including related serious credibility concerns. Further, that the arrest warrant for the Applicant and his brother was not authentic and that the Applicant is not wanted by the police. The RPD found that the Applicant did provide sufficient credible evidence that he faced serious persecution by the CL; however, it determined that the CL local leaders did not have the motivation or means to find the Applicant in the IFA location. The RPD found that the proposed IFA was not objectively unreasonable, as the Applicant speaks Bengali, and there was no evidence that a distinct Bengali dialect is spoken in Chittagong.

[4] The RAD dismissed the Applicant's appeal of the RPD decision and confirmed that the Applicant is neither a *Convention* refugee nor a person in need of protection. The RAD found that the determinative issues were credibility and IFA.

[5] The RAD conducted an independent assessment of the RPD record and identified issues with the authenticity of three additional documents: the court document dated August 16, 2021 [Deposition Document]; the First Information Report [FIR] dated August 16, 2021; and the news

article from the *Daily Janakantha* dated August 30, 2021 [*Daily Janakantha* Article]. The Applicant was notified of the issues by the RAD. In response to letters from the Applicant's counsel, the RAD provided two further letters detailing its concerns about the authenticity of each of the three documents.

[6] The Applicant also submitted new evidence, specifically:

i. a letter from Advocate Uzzal Kumar Mandal [Advocate UKM] dated March 26, 2022 [March 26 UKM Letter];

ii. a legal opinion from Sarwar & Associates dated March 30, 2022 [Sarwar Opinion];

iii. a letter from Mr. Molijul Islam, a correspondent with the *Daily Janakantha*, dated February 27, 2022 [Islam Letter];

iv. a copy of an online article, "Languages of Bangladesh," published by *The Business Standard* on February 21, 2022; and

v. a letter from Advocate UKM dated August 11, 2022 [August 11 UKM Letter].

[7] Having reviewed the applicable legal framework, the RAD determined that the two letters from Advocate UKM would be admitted but that the remaining three items were inadmissible. The RAD declined the Applicant's request for an oral hearing because neither of the letters admitted as new evidence raised a serious issue about the credibility of the Applicant, was central to the determination of the Applicant's claim and, if accepted, would justify allowing

or rejecting the appeal, as required by s 10(6) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[8] The RAD noted that the RPD had found that the arrest warrant was not authentic because it was inconsistent with the sample country documentation found in the National Documentation Package [NDP]. The RAD agreed, setting out its reasons for its finding. The RAD also found that the submission of a non-genuine document, the arrest warrant, had a significant impact on the general credibility of the Applicant and that it put into doubt a central element of his claim, being that he was ordered to be arrested for alleged offences under the *DSA*.

[9] The RAD found the Deposition Document and the FIR were also not authentic and provided its reasons for this conclusion. The RAD's concerns were primarily with respect to inconsistencies when the documents were compared to the objective country documentation. The RAD considered but did not accept the explanations for the discrepancies offered by the Applicant or by way of the UKM Letters. The RAD found that the inauthenticity of these two additional documents had a further significant impact on the Applicant's credibility, and they put into further doubt a central element of his claim, being whether he had been charged with offences under the *DSA*. The RAD found that the Applicant had failed to establish, on a balance of probabilities, that he had been charged under the *DSA* and was wanted by the Bangladesh authorities.

[10] The RAD noted that it had also given the Applicant notice of its authenticity concerns regarding the *Daily Janakantha* Article. The RAD found the article to be inauthentic, as it had attempted to verify the article through the URL provided but was unsuccessful.

[11] The RAD found the presumption of truthfulness to be rebutted based on the Applicant's submission of four inauthentic documents.

[12] As to the IFA, the RAD noted that the RPD had found, despite concerns about the Applicant's credibility, that the Applicant was persecuted by CL members in Dhaka. However, it found he had a viable IFA in Chittagong.

[13] Under the first prong of the IFA test, the RAD confirmed the RPD's finding that the Applicant's testimony about how the CL members were able to find him anywhere in Bangladesh was speculative, especially in light of the RAD's concerns about the Applicant's credibility. The RAD reviewed the country documentation about CL and rejected the Applicant's argument that it overwhelmingly indicated that CL commits violence on behalf of the AL and that CL would therefore have the capability and connections to locate the Applicant in Chittagong. The RAD found that there was no credible evidence that low-level members of the local CL have connections with the AL that would provide them with the means to locate the Applicant in Chittagong. Finally, the RAD noted that both of the places in which the Applicant sought refuge were sub-districts in the Dhaka region, and the CL's ability to locate the Applicant in the Dhaka district did not mean the same CL members would find him in the proposed IFA.

For all these reasons, the RAD found the Applicant had not credibly established that the local CL members would have the means or motivation to locate the Applicant in Chittagong.

[14] Under the second prong of the IFA test, the RAD noted that the only finding the Applicant disputed was that there is no language barrier in Chittagong. However, although the information was minimal, there was objective country documentation indicating that internal relocation is not culturally or linguistically unreasonable. The RAD preferred the country documentation over the Applicant's testimony, considering its credibility concerns regarding the Applicant's evidence. The RAD found that relocating to Chittagong would not be unduly harsh in the Applicant's circumstances and that the Applicant had a viable IFA in Chittagong.

Issues and Standard of Review

[15] The Applicant frames the issues solely in terms of alleged breaches of procedural fairness. Conversely, the Respondent frames the issues solely in the context of the reasonableness of the decision.

[16] In my view, the issues can be framed as follows:

1. Was the RAD's decision procedurally fair?
    a. Was the RAD biased?
    b. Was the Applicant entitled to an oral hearing?

c. Did the RAD breach the Applicant's right to procedural fairness by failing to conduct a separate assessment under s 96?

d. Did the RAD breach the Applicant's rights to procedural fairness by not giving him an opportunity to respond with respect to the arrest warrant?

2. Was the RAD's decision reasonable?

a. Was the RAD's refusal to accept the Applicant's explanation with respect to the Deposition Document reasonable?

b. Was the RAD's refusal to accept the Applicant's explanation with respect to the FIR reasonable?

c. Was the RAD's IFA analysis reasonable?

[17] Questions of procedural fairness are reviewed on a correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43 held that). The Court, owing no deference to the decision maker, must ask "whether the procedure that was followed was fair having regard to all the circumstances" (*Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 56). If the court is satisfied that the procedure was not fair, then the application should be allowed.

[18] In assessing the merits of the Officer's decision, there is a presumption that the reviewing court should use the reasonableness standard (*Canada (Minister of Citizenship and*

Immigration) v Vavilov, 2019 SCC 65 [*Vavilov*] at paras 23, 25). Here, none of the circumstances warrant a departure from that presumption. “The reviewing court asks whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at para 99).

Procedural Fairness

a. Bias

[19] The Applicant submits that the RAD’s “deficient” notices and the lack of opportunity to respond give rise to a reasonable apprehension of bias. In the Applicant’s submission, the RAD was never truly interested in receiving a proper explanation from the Applicant and had already prejudged the situation.

[20] The Applicant first argues that the RAD provided notices to the Applicant which did not raise the authenticity of the arrest warrant as an issue, and then dismissed the appeal “on an issue that was never raised” with the Applicant without affording the Applicant an opportunity to respond. The Applicant also argues that the RAD’s failure to listen to the Applicant’s explanation with respect to the FIR demonstrates that the RAD had a closed mind. In particular, the Applicant says that the RAD’s inexplicable refusal to accept his explanation regarding the reference in the FIR to the wrong section of the *Code of Criminal Procedure, 1898* [*Code*] demonstrated bias. In the Applicant’s view, if the RAD truly had concerns about the reference to

s 354 of the *Code*, rather than to s 154, then it could have sought clarification from one of the interpreters employed by the Immigration and Refugee Board.

[21] I agree with the Respondent that the Applicant's allegations of bias are without merit.

[22] Although the Applicant repeatedly and throughout his submissions refers to the RAD's notices of new issues as "deficient," I do not agree.

[23] In its first notice, the RAD identified the new issues it intended to consider and provided the Applicant with the opportunity to respond. Specifically, it identified concerns with the authenticity of the Deposition Document, the FIR and the *Daily Janakantha* Article. Counsel for the Applicant sought further details, which the RAD provided.

[24] Given the Applicant's further complaint of a lack of specificity, in its third response the RAD provided the particulars of its concerns with the three documents:

> **Certified case No. 107 dated August 16, 2021 with translation**
>
> - Inconsistencies with Item 11.10, section 4.2 of the current NDP for Bangladesh: "The law allows police to arrest anyone without a warrant if they believe that an offense under the law has been, or is being committed…" is inconsistent with the content of the document, in which the plaintiff, Sub-Inspector of the Nababgonj Police Station, reports to the Officer in Charge and requests that the Appellants and his brother be arrested under the Digital Security Act.
> - Inconsistencies with Item 11.9 under the section entitled "The Digital Security Act 2018" of the current NDP for Bangladesh: "Section 43 of the Act gives arbitrary powers to the police to [….] arrest an

individual without a warrant if they believe that an offence under the DSA has been or is being committed…" is inconsistent with the content of the document, in which the plaintiff, Sub-Inspector of the Nababgonj Police Station, reports to the Officer in Charge and requests that the Appellants and his brother be arrested under the Digital Security Act.

- The document is entitled "Deposition" and references two witnesses, but there is no attached record or summary of the deposition of the witnesses.

FIR 107/412 dated August 16, 2021 with translation

- Inconsistencies with general content and the sample provided in Item 10.7 of the current NDP for Bangladesh at pp. 16-17:

  • Inconsistencies with the sample FIR:

    - In the sample, the reference is to (Control No. 243) and the subtitle under it is, "Preliminary information regarding the offenses under section 154 of the Criminal Procedure Code filed with the police station". This is inconsistent with the FIR translation at pp. 108-109 of the RPD record, which refers to (Control No. 352) and the subtitle underneath it is "First Information Report of the Cognizable Offence Filed with the Police Station Under s. 354 of the Criminal Code Proceedings".

    - There is no attached deposition as required.

    - The alleged offence took place in February but was not reported to the police until August 2021.

    - The document indicates that "Reasons for the delay are mentioned in the body of this deposition"; the document is a FIR

not a deposition and there is no explanation for the delay.

- The document indicates that an Inspector will appoint the Investigation Officer; however, there is also an officer named and assigned to the case. The sample does not contain any reference to which officer is assigned to investigate the case.

News article from the Daily Janakantha dated August 30, 2021 with translation

- The original, at p. 117 of the RPD record, appears to be a copy or print-out of an online article written in Bengali. For example, other articles with links are set out to the right of the page. At the bottom of the article there is an indication in English that the number of shares is zero. At the bottom of the page, there is a typewritten URL that appears to have been added to the copy of the online article as opposed to having been printed out with the online article. Attempts to verify that the article exists by using the typewritten URL are not successful; the URL does not exist.

[25] Counsel for the Applicant provided written submissions in response to these concerns on August 10, 2022, and on August 31, 2022, which are referenced in the RAD's decision. The notice to the Applicant of the new issues to be considered by the RAD was not deficient and the Applicant was afforded – and took – the opportunity to respond.

[26] Second, contrary to the Applicant's submissions, the notice is not deficient because of the fact that it does not mention the arrest warrant. This was not a new issue raised by the RAD. The RPD compared the arrest warrant submitted by the Applicant with a sample contained in the objective NDP evidence and identified major discrepancies between the two. It noted, for instance,

that unlike the sample in the objective evidence, the arrest warrant provided by the Applicant contained no description of the offence for which the Applicant is wanted or alleged to have committed. The RPD found that the warrant of arrest was forged and, on a balance of probabilities, that there is, in fact, no arrest warrant issued against the claimant. The RPD also found that furnishing a non-genuine arrest warrant seriously undermined the credibility of the Applicant's allegation that he is being sought by the police and generally put into question his overall credibility. In the absence of some other compelling corroborative evidence, the RPD found that the Applicant is not being pursued by the police as alleged and that the presumption of truthfulness had been rebutted.

[27] The RAD noted the RPD's finding and addressed the Applicant's submissions to the RAD concerning the arrest warrant. The RAD did not accept the Applicant's arguments, for the reasons it set out.

[28] The Applicant clearly was aware that the authenticity of the arrest warrant was at issue before the RAD, and he provided submissions in response. There is no merit to his allegation that the issue was not brought to his attention and that he was denied procedural fairness, and there is certainly no merit to his allegation that the RAD demonstrated bias on the basis of his ill-founded assertion of lack of notice, or at all.

[29] As to the FIR, there is similarly no merit to the Applicant's contention that the RAD "did not listen" to his explanations, thereby demonstrating a closed mind. As seen from the decision, the RAD made its determination respecting the authenticity of the FIR based on inconsistencies between it and the objective evidence. The discrepancies between the NDP and the FIR included differences in phrasing and, importantly, a reference to s 354, rather than 154,

of the *Code*. The RAD found the discrepancies significant because the NDP indicated that the FIR is completed using a particular form according to the instructions printed on it, and there is no variation between police division or unit. The RAD acknowledged that the August 11 UKM Letter stated that the format of the FIR sometimes varies, but noted that no reference for this statement was provided. The RAD stated that it preferred the objective country documentation.

[30] Contrary to the Applicant's submission, it is clear from the RAD's reasons that the RAD listened to, considered and rejected the Applicant's explanation respecting the FIR. There is nothing in the RAD's reasoning process to suggest the RAD was closed-minded respecting the authenticity of the FIR or that it had predetermined the outcome of the appeal.

[31] The test for bias is well established and asks, "what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision maker], whether consciously or unconsciously, would not decide fairly" (*Committee for Justice and Liberty v National Energy Board,* 1976 CanLII 2 (SCC), [1978] 1 SCR 369, adopted by much subsequent jurisprudence). The Applicant has not met this test.

[32] There is also no merit to the Applicant's submission that if the RAD had concerns about the reference in the FIR to s 354 of the *Code*, rather than to s 154, then it could have sought clarification from one of the interpreters employed by the Immigration and Refugee Board. The onus is on the Applicant to establish his case. If the Applicant was of the view that there had been a translation error in the document he provided, then the onus was on him to raise this on

appeal to the RAD (see, for example, *Gutierrez Medina v Canada (Minister of Citizenship and Immigration)*, 2023 FC 591 at para 27) and to provide affidavit evidence of a translator to support that submission. He did not do so.

b. Oral Hearing

[33] In essence, the Applicant asserts that the RAD breached his right to procedural fairness by failing to hold an oral hearing. More specifically, that the RAD should have accepted as new evidence the Islam Letter, written by a correspondent with the *Daily Janakantha*, and the online article, "Languages of Bangladesh," as, in the Applicant's view, this evidence met the requirements of s 110(4) of the *IRPA*. The Applicant submits that, pursuant to *IRPA* s 110(6), the RAD should have granted him an oral hearing to address its credibility concerns respecting the Islam Letter, and that he had a right to an oral hearing under s 7 of the *Charter*.

[34] When appearing before me, the Applicant submitted that the lack of an oral hearing was the most significant issue.

[35] The Applicant appears to challenge the RAD's decision that the Islam Letter and the "Languages of Bangladesh" article were inadmissible. He asserts that the RAD did not accept the new evidence because it had credibility concerns and, therefore s 110(6) imposes a mandatory oral hearing. The Applicant submits that although the RAD and this Court "routinely" interpret ss 110(3) and (6) to apply to new evidence that has been admitted, this is incorrect, and it is obvious that whenever the RAD has credibility concerns it must hold an oral hearing.

[36] There is no merit to this submission.

[37] The relevant provisions of section 110 of the *IRPA* are as follows:

> Procedure
>
> 110(3) Subject to subsections (3.1), (4) and (6), the Refugee Appeal Division must proceed without a hearing, on the basis of the record of the proceedings of the Refugee Protection Division, and may accept documentary evidence and written submissions from the Minister and the person who is the subject of the appeal and, in the case of a matter that is conducted before a panel of three members, written submissions from a representative or agent of the United Nations High Commissioner for Refugees and any other person described in the rules of the Board.
>
> …..
>
> Evidence that may be presented
>
> (4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.
>
> Exception
>
> (5) Subsection (4) does not apply in respect of evidence that is presented in response to evidence presented by the Minister.
>
> Hearing
>
> (6) The Refugee Appeal Division may hold a hearing if, in its opinion, there is documentary evidence referred to in subsection (3)
>
> > (a) that raises a serious issue with respect to the credibility of the person who is the subject of the appeal;
> >
> > (b) that is central to the decision with respect to the refugee protection claim; and
> >
> > (c) that, if accepted, would justify allowing or rejecting the refugee protection claim.

[38] Thus, pursuant to ss 110 (3), (4) and (6) of the *IRPA*, the RAD *must* proceed without a hearing on the basis of the record before the RPD, but *may* accept documentary evidence if that evidence arose after the rejection of the claim, was not reasonably available or could not reasonably have been expected in the circumstances to have been presented at the time of the rejection. The RAD *may* hold a hearing if, in its opinion, there is documentary evidence (a) that raises a serious issue with respect to the credibility of the person who is the subject of the appeal; (b) that is central to the decision with respect to the refugee protection claim; and (c) that, if accepted, would justify allowing or rejecting the refugee protection claim.

[39] In addition to these statutory requirements, the RAD must consider the relevant factors of newness, relevance and credibility as set out in *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 [*Raza*]; *Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96 [*Singh*] at paras 38-49).

[40] Contrary to the Applicant's submissions, *Singh* held that "the new evidence must meet the admissibility criteria set out in subsection 110(4), and a new hearing can be held only if the new evidence fulfils the conditions set out in subsection 110(6)" (para 51). Further, this Court has held that "[t]he RAD can only hold an oral hearing once new evidence is admitted under subsection 110(4) and the new evidence meets the statutory criteria for a hearing under subsection 110(6)" (*Hossain v Canada (Citizenship and Immigration)*, 2023 FC 1255 at para 41 [*Hossain*], citing *Singh* at paras 48, 51, 71; *Gunasinghe v Canada (Citizenship and Immigration)*, 2023 FC 400 at para 33; *Rehman v Canada (Citizenship and Immigration)*, 2022 FC 783 at para 44 [*Rehman*]; *Mohamed v Canada (Citizenship and Immigration)*, 2020 FC 1145 at paras 19-22).

[41] I also note that counsel for the Applicant made a similar argument in *Hossain* which was rejected by Justice Turley and who also noted that in *AB v Canada (Citizenship and Immigration)*, 2020 FC 61 [*AB*], Justice Ahmed found:

> [17] In view of the jurisprudence, the Applicants have advanced a misconstrued conception of the application of subsections 110(4) and 110(6) of the IRPA. The RAD is not required to hold an oral hearing to assess the credibility of new evidence – it is when otherwise credible and admitted evidence raises a serious issue with respect to the general credibility of the applicant that the determination of an oral hearing becomes relevant. A "credibility finding" on the admissibility of new evidence is not equivalent to a credibility assessment on the Applicants. [Emphasis in *AB*]

[42] Accordingly, there is no merit to the Applicant's argument that the RAD was required to hold an oral hearing to assess the credibility of the new evidence. Nor did the RAD assess the credibility of the proposed new evidence.

[43] As the Respondent points out, the Applicant submits that the RAD declined to admit the Islam Letter on the basis that the name of the newspaper was misspelled on the letterhead. However, the RAD's decision is clear that the letter was not admitted because "[t]he Appellant did not provide submissions as to why this document meets the requirements of subsection 110(4) of the IRPA, as required by the *RAD Rules*." That is, as the new evidence did not meet the requirements of s 110(4), s 110(6) did not come into play. In that regard, the RAD also stated that even if it had been able to determine that the information was not reasonably available or could not reasonably have been expected to be provided to the RPD, it had concerns about whether the document came from a credible source, and it noted the misspelling of the newspaper's name in the letterhead.

[44] The Applicant does not address the RAD's reason for not admitting the Islam Letter; therefore, in my view, the Applicant has not demonstrated that the RAD erred in failing to admit that new evidence. And, because the RAD did not admit any evidence that raised a serious issue with respect to the credibility of the Applicant, it was not obliged to hold an oral hearing.

[45] With respect to the admissibility of the "Languages of Bangladesh," the evidence of the different dialects in Bangladesh, the Applicant submits that he could not have foreseen that the RPD would have concluded that Chittagong was a viable IFA and, therefore, he could not have anticipated that evidence of the dialect spoken in Chittagong would be necessary. The Applicant submits that the new evidence of the dialect spoken in Chittagong was in response to the IFA raised by the RPD; therefore, he submits, pursuant to Rule 29(3) of the *Refugee Appeal Division Rules*, SOR/2012-257 [*RAD Rules*], it ought to have been accepted. The Applicant submits that the RAD violated his right to procedural fairness in rejecting the evidence.

[46] I first note that RAD Rule 29 states that, on appeal to the RAD, an applicant seeking to submit new evidence must explain how the document meets the requirements of s 110(4) of the *IRPA* and how it relates to the applicant "unless the document is being presented in response to evidence presented by the Minister." The IFA was properly raised by the RPD at the hearing, not by the Minister, and the Applicant was therefore required to meet the requirements of RAD Rule 29.

[47] The RAD held that the document did not meet the requirements of s 110(4). The RPD had identified Chittagong as a potential IFA at the hearing, and the Applicant testified about the

difference in dialect in Chittagong as a reason why it would be objectively unreasonable for him to move to Chittagong. The RAD correctly stated that it is well established that, once the issue of an IFA is raised, the onus is on the Applicant to show that they do not have an IFA. The RAD acknowledged that the subject article was published after the RPD's decision but found that the Applicant had not made any submissions as to why information about the languages spoken in Bangladesh would not have been available before the RPD's decision.

[48] I note that there is no obligation for the RPD to provide notice before a hearing that IFA will be an issue, as long as specific IFA locations are identified at the hearing (see, for example, *Oyiborhoro v Canada (Citizenship and Immigration)*, 2022 FC 675 at paras 18-19). Thus, the RPD is to raise an IFA at the hearing and the applicant is to be afforded the opportunity to address it. That is what occurred in this instance. The RPD raised Chittagong as a potential IFA. The Applicant responded claiming there was a language barrier. He testified that Bengali (which he speaks) and other dialects of Bangali are spoken in Chittaagong, but he offered no evidence that there is a particular Bengali dialect that it would be difficult for him to understand. The RPD found there was no evidence upon which to conclude that language would constitute a barrier to the IFA location. I note that the record does not indicate that the Applicant sought to provide post-hearing submissions on languages spoken in Chittagong.

[49] In any event, in its analysis under the second prong of the IFA test, the RAD noted that the Applicant only disputed the RPD's finding that there was no language barrier in Chittagong and argued that the NDP does not contain any information about the different languages or dialects in Bangladesh. The RAD did not agree and found that although information about

languages in Bangladesh is minimal, there was objective country documentation indicating that internal relocation is not culturally or linguistically unreasonable. The Applicant does not dispute this finding.

c. Separate assessment under s 96

[50] The Applicant submits that the RAD's failure to conduct a separate assessment under s 96 is a reviewable error, as the Applicant has submitted sufficient evidence to prove nexus. The Applicant argues that, even if the Applicant does not submit arguments with respect to s 96, it is the RAD's duty to engage in a s 96 analysis. Had the RAD done so, the Applicant believes the RAD would have found a nexus to the *Convention* grounds. The Applicant submits the RAD breached his rights to procedural fairness by not conducting a s 96 analysis.

[51] This submission cannot succeed. Although the Applicant now submits that the RAD would have found a nexus had it engaged in a s 96 analysis, the question of nexus was not at issue before the RAD. In the Applicant's written submissions to the RAD, the Applicant stated, "As the Refugee Protection Division (RPD) has accepted that Sabbir Rahman (the Appellant) has established nexus grounds, in his appeal, the Appellant shall focus on credibility and the determinative issue, which is Internal Flight Alternative (IFA)." Indeed, the RPD found the nexus to a *Convention* ground was established. The RAD's decision says nothing to suggest the RAD disagrees with the RPD on this point. Nexus was simply not at issue on appeal.

[52] In these circumstances, I see no error in the RAD's approach.

d. Arrest Warrant – Opportunity to Respond

[53] As discussed above, the Applicant knew that the authenticity of the arrest warrant was in question because the RPD found it not to be authentic. The Applicant cannot now reasonably suggest that he did not know the RAD would have concerns about the arrest warrant's authenticity and that he was therefore denied an opportunity to respond. Indeed, the RAD's reasons address the Applicant's arguments made to the RAD as to the authenticity of the arrest warrant. There was no breach of procedural fairness.

[54] Further, while the Applicant complains that the RAD did not put him on notice of the specific concern that the warrant is directed "to the Accused" rather that to the police station that would execute the warrant, and argues that what it really meant was that it was addressed "*towards* the accused," I do not agree. The RPD decision put the Applicant on notice that there were "major discrepancies" between the arrest warrant and the sample document found in the NDP and gave some examples of this. This should have alerted the Applicant that the RPD's concerns were broader than just the two features to which it called attention. When the Applicant prepared his submissions to the RAD, he had the opportunity to explain any differences between the two documents.

[55] The Applicant also claims he was not afforded the presumption of truthfulness because he was not afforded an opportunity to respond to the RAD's concerns about the authenticity of the arrest warrant. However, the Applicant did have an opportunity to – and did – respond. Further, the RAD pointed out that this Court has identified that inconsistencies with standard

templates are a reason to doubt that a foreign document is authentic. I note that *Liu v Canada (Minister of Citizenship and Immigration)*, 2020 FC 576 [*Liu*] at paras 85-87 supports this point.

[56] In conclusion, for the above reasons I find that the RAD did not breach the duty of procedural fairness owed to the Applicant.

Reasonableness

Deposition Document

[57] The Applicant submits the RAD erroneously refused to accept his explanation with respect to the Deposition Document. Citing *Liu*, he submits that documents issued by a foreign authority, such as the Deposition Document, are presumed to be authentic unless there is evidence to rebut that presumption. The Applicant submits that simply because an arrest warrant is not required does not mean a police officer cannot ask for one, and that nothing in the *DSA* prohibits an officer from requesting a warrant. The Applicant submits that the RAD therefore should not have concluded that the Deposition Document was forged on the basis that the police sought an arrest warrant.

[58] The Applicant also submits that the RAD misinterpreted Item 9.4 of the NDP with the result that the RAD's assumption that the Applicant could not have obtained any court documents is false.

[59] As the Applicant submits, in *Liu*, this Court held that documents purporting to be issued by a competent foreign public authority should be accepted as what they purport to be – and,

thus, as evidence of their contents – unless there is a valid reason to doubt their authenticity. That is, the presumption of regularity is rebuttable. *Liu* provided a non-exhaustive list of the items that might rebut the presumption, including inconsistencies with standard templates for the type of document in question.

[60] The Applicant appears to have made the same argument before the RAD. The RAD's reasons address this and explain why the RAD did not accept the explanation offered by the Applicant.

[61] The RAD noted that in the Deposition Document, the sub-inspector of the police station writes to the officer-in-charge of the police station and "strongly demand[s]" that he be able to arrest the accused. However, that such a request would be unnecessary as the *DSA* specifically allows the police to search and arrest without a warrant where an offence under the *DSA* is suspected. Referring to NDP objective documentation, the RAD also found that the request was inconsistent with police powers respecting any cognizable offence; a police officer can arrest any person, without a court order or arrest warrant, where a reasonable suspicion exists that the person committed a cognizable offence.

[62] The RAD acknowledged that the August 11 UKM Letter states that, even though the *DSA* allows police to arrest without a warrant, "the complainant, in this case the sub-inspector will have to request to his Superior officer in the police station in the Enjahar [also known as the deposition]." However, the RAD noted that Advocate UKM did not cite any authority for this statement. Further, it was not clear to the RAD why the sub-inspector would be considered the

complainant when two witnesses or informants were identified on the document and references were made to depositions.

[63] And, although the Applicant says the RAD identified no other issues respecting the Deposition Document, I note that the RAD also noted that the document is entitled “Deposition” and references two witnesses, but there is no attached record of depositions of the witnesses.

[64] Finally, the RAD pointed out that the country documentation (Item 9.4 of the NDP) indicates that neither an accused nor his lawyer can obtain copies of court documents if the accused has not surrendered to the authorities. As the Applicant was living in Canada, the RAD concluded that he had not surrendered to the Bangladesh authorities, and his lawyer would be unable to obtain a copy of the court document (Disposition Document). The Applicant submits that the RAD misunderstood Item 9.4. He emphasizes the portion of the document that says, “the accused (if he is not a fugitive), or his or her legal representative, may obtain a copy of the order authorising the issuance of a warrant of arrest.” However, it appears that the RAD was referring to section 2.1 of Item 9.4, which states that sources indicate that an accused person is allowed to obtain certified copies of an "Order Sheet" by making an application for the documents, but that in order to obtain these copies, the accused person has to have surrendered him or herself to authorities and not be a fugitive. The Applicant appears to be referring to section 2.2, which concerns copies of arrest warrants. I do not agree that the RAD misunderstood this item.

[65] Finally, in his reply submission, the Applicant refers to Item 9.2 of the NDP, which the Applicant says contains an article about the *Special Powers Act* that confirms that the order to

arrest someone without a warrant is typically made by senior officers, rather than by officers from the local police station such as inspectors or constables. However, as that item is concerned with a different piece of legislation, and not the *DSA*, it is not apparent to me how it assists him. And, in any event, the Applicant did not make this submission to the RAD, nor was it raised in his written submissions filed in support of this judicial review. Rather, it was improperly raised for the first time in his reply.

[66] In sum, the RAD considered and rejected the Applicant's arguments pertaining to the inconsistences between the Deposition Document and the content of the NDP documentation. The RAD's decision was not unreasonable on this point.

FIR

[67] The Applicant submits that disregarding his explanation respecting the FIR demonstrates that the RAD did not properly assess the Applicant's submissions and evidence. However, as discussed above at para 32, the RAD came to its conclusion respecting the FIR because it identified several discrepancies between it and the objective country documentation, including the reference to the wrong section of the *Code*, that were not adequately explained. Indeed, the RAD provided a table identifying the inconsistencies between the FIR and the NDP sample. The RAD's finding with respect to the FIR was reasonable.

[68] As to the discrepancy between the sample FIR document, which indicated that the document should state "Preliminary information regarding the offenses under section 154 of the Criminal Procedure Code filed with the police station," while the FIR submitted by the Applicant states "First Information Report of the Cognizable Offence Filed with the Police Station Under s.

354 of the Criminal Code Proceedings", the RAD acknowledged the Applicant's argument that the reference to s 354 is actually s 154 in the original of his document, but that it may be difficult to see on the scanned copy in the RPD record. The RAD rejected that argument, finding that the reference is clearly to s 354.

[69] The Applicant does not appear to dispute that he was given the opportunity to explain the discrepancy, and that he did in fact offer an explanation. Instead, the Applicant seems to believe that he was owed a second chance to explain the same discrepancy because the RAD did not accept his explanation. There is no merit to this submission. The onus is on the Applicant to make his case and he simply failed to do so.

IFA

[70] The Applicant makes no submissions identifying any error of the RAD with respect to its findings as to the availability of an IFA, except as pertaining to the admissibility of the new evidence, as discussed above, other than attempting to argue on reply that "there is no viable IFA because IFA is inherently unreasonable due to the fact that the state actor is an agent of persecution." However, this is a new issue and was improperly raised on reply.

[71] The RAD's IFA finding is determinative.

Conclusion

[72] For the reasons above, I find that the RAD did not breach the duty of procedural fairness. Further, that its findings on the merits were reasonable and, in any event, the unchallenged IFA is determinative.

Certified Question

[73] The Applicant proposed the following question for certification:

> In compliance with the principles of procedural fairness, how must the RAD apply the *Reza* factors when assessing the admissibility of new evidence presented before the RAD, specifically when credibility was not at issue at the RPD?

[74] The test for certification is set out in *Zhang v Canada (Citizenship and Immigration)*, 2013 FCA 168 at para 9:

> [9] It is trite law that to be certified, a question must (i) be dispositive of the appeal and (ii) transcend the interests of the immediate parties to the litigation, as well as contemplate issues of broad significance or general importance. As a corollary, the question must also have been raised and dealt with by the court below and it must arise from the case, not from the Judge's reasons (*Liyanagamage v. Canada (Minister of Citizenship and Immigration)* (1994), 176 N.R. 4 (F.C.A.), at paragraph 4; *Zazai v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 89, 36 Imm. L.R. (3d) 167, at paragraphs 11–12; *Varela v. Canada (Minister of Citizenship and Immigration)*, 2009 FCA 145, [2010] 1 F.C.R. 129, at paragraphs 28, 29 and 32).

[75] The Respondent opposes the certification of this question.

[76] I agree with the Respondent that it is not immediately clear how this question relates to the matter before me. Credibility was at issue before the RPD in this matter. Further, the RAD did acknowledge that the *Raza* factors would apply if new evidence was found to be admissible under s 110(4) of the *IRPA*. However, it found that the new evidence that it declined to admit was inadmissible because it did not meet the s 110(4) requirements. Further, on judicial review, the Applicant made no arguments as to the application of the *Raza* factors by the RAD. Accordingly, I decline to certify the proposed question.

JUDGMENT IN IMM-9346-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;

2. There shall be no order as to costs; and

3. The Court declines to certify the question proposed by the Applicant for certification.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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