

Federal Court



Cour fédérale

**Date: 20250506**

**Docket: IMM-4968-24**

**Citation: 2025 FC 824**

**Ottawa, Ontario, May 6, 2025**

**PRESENT: The Honourable Mr. Justice Manson**

**BETWEEN:**

**ASIF SHIKDER**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] This is an application for judicial review of a decision (the “Decision”) by the Refugee Appeal Division (the “RAD”). The Decision affirmed the Refugee Protection Division’s (the “RPD”) finding that the Applicant is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the “Act”).

## II. Background

[2] The Applicant, a Bangladeshi national, came to Canada in January 2020 on a study permit. In July 2020, at the age of 15, he claimed refugee protection as an unaccompanied minor in Canada.

[3] The Applicant's claim was based on fear of persecution from his paternal aunt, a faction of the Awami League, and two gangs, the "15 Club" and the "Disco Boys". These agents of harm were interested in the Applicant for his wealth and the two properties that he inherited from his grandfather in 2018. His paternal aunt wanted these properties for herself, and she also had a vendetta against the Applicant and his mother, who was from the Bede nomadic community.

[4] In 2018, the Applicant was kidnapped by members of the 15 Club and forced to pay ransom. The following year, he was attacked by the same gang. The Applicant also faced harassment from a rival gang, the Disco Boys, who wanted the Applicant to join them.

[5] In January 2020, he came to Canada on a student visa to finish high school. During this time, his aunt took possession of the properties. Shortly after, his aunt's son was killed and gang members took possession of the properties.

[6] In July 2020, the Applicant made his refugee claim. In his Basis of Claim ("BoC"), he noted that his family moved to Dhaka to escape the danger they faced, but that they continued to

face threatening phone calls. They were also approached by individuals in Dhaka in 2021, who were seeking information on the Applicant and threatened him.

### III. The Decision

[7] The RAD upheld the RPD's decision dismissing the Applicant's claim. The RAD agreed with the RPD that the Applicant is reasonably required to relinquish his property rights to avoid the risk of persecution and that he has a viable Internal Flight Alternative ("IFA") in Chittagong.

[8] The RAD accepted that the Applicant's claim against his aunt had a nexus to race and considered his allegations against his aunt under both section 96 and 97 of the Act. Specifically, the RAD found that there was "sufficient evidence to indicate that the Appellant's aunt has threatened him and is, at least in part, motivated to remove his ownership of the properties due to his ethnicity." However, the RAD found that the Awami League and youth gangs that had pursued the Applicant in the past were motivated solely by the Applicant's wealth and ownership of the properties and considered these allegations under section 97 of the Act.

[9] The RAD then agreed with the RPD that the Applicant can reasonably give up ownership of the properties to avoid the risks posed by his aunt and the Awami League faction that are related to his ownership of the properties. The Applicant would not be deprived of a fundamental human right in doing so because there was no evidence that he would not be able to earn a living without the properties.

[10] Then the RAD addressed the Applicant's arguments that even if he gave up the properties, he would not have an IFA in Chittagong because his aunt is motivated to pursue him due to her longstanding personal vendetta against him; the Awami League is motivated to pursue him because they will fear that he will report their illegal actions to the media; and the youth gangs will be motivated to forcibly recruit him and extort him.

[11] The RAD found that his aunt, the faction of the Awami League, and the youth gangs would not be motivated to locate him in Chittagong for the following reasons:

- a) With respect to his aunt, the evidence indicates that any violence and threats of violence that the Applicant's aunt inflicted on his family were related to her interest in gaining ownership of the properties, and there's been no evidence that she had pursued his family members since she lost possession of the properties four years ago.
- b) With respect to the Awami League, the evidence was that the reason the Awami League faction has continued to contact the Applicant's family is solely because they want him to transfer them ownership of the properties. The RAD found the Applicant's assertion that the Awami League would still want to kill him if he relinquished the properties was speculative and unsupported by the evidence.
- c) Lastly, with respect to the youth gangs, there was no evidence of incidents with the youth gangs outside the area localized to his school in Dhaka or of any interest

in him since 2020. Additionally, since the youth gangs were interested in the Applicant because of his wealth, if he relinquished his rights to those properties, their interest would be diminished.

[12] Since the agents of harm were not motivated to find the Applicant, the RAD found that the Applicant had an IFA in Chittagong. The Applicant did not meet the onus of showing the IFA was unreasonable in view of the RAD's findings regarding the lack of risk of his agents of harm in the IFA, the Applicant's psychotherapy assessment, and the availability of mental health services in a major city like Chittagong.

#### IV. Issues

[13] Is the Decision reasonable?

#### V. Analysis

[14] The standard of review with respect to the RAD's substantive findings is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 25).

[15] The Applicant asserts that the Decision is unreasonable for two reasons. First, the RAD erred in finding that the Applicant could free himself from persecution by abandoning his property rights. Second, the Officer erred by misapprehending evidence in its assessment that the Applicant has an IFA in Chittagong.

A. *Issue 1*

[16] The Applicant argues that the RAD erred by only focusing on the exception to the requirement that an applicant return property to avoid harm as when the applicant's ability to earn a living is threatened. He submits that an individual whose property disputes are enmeshed with a protected ground (like race) are not expected to relinquish their rights.

[17] The Applicant specifically focuses on the acknowledgement by the RAD, which was not recognized by the RPD, that there is sufficient evidence that the Applicant's claim has a nexus to race, in that the Applicant's aunt threatened him, at least in part, due to his maternal line of ethnicity. While the RAD said it would consider this fact in the context of both sections 96 and 97 of the Act, they failed to do so reasonably under section 96 of the Act.

[18] The Applicant's position is that all the case law relied upon by the Respondent is distinguishable, in that those cases did not have the nexus recognized here between giving up a property to avoid persecution and a legitimate section 96 claim (race). Where that nexus is established, even in part on a basis for divesting property, it is not reasonable to require such divestiture to avoid persecution under section 96 of the Act.

[19] The Respondent answers by relying on the Federal Court of Appeal's decision in *Sanchez v Canada (Citizenship and Immigration)*, 2007 FCA 99 [*Sanchez*] at paragraphs 16-19, and argues that when the motivation for persecution is based on the ownership and divestiture of

property and not an ancillary section 96 claim (here, race), it is not sufficient to support the immutable or fundamental basis for a finding of persecution under section 96 of the Act.

[20] The RAD held that a refugee claimant is expected to make reasonable choices to free themselves of a risk of harm, unless doing so would involve a deprivation of a fundamental human right such as the right to earn a basic living (*Sanchez* at paras 16, 19).

[21] The RAD did not err in its application of the law to the Applicant's case. While the RAD found that ethnicity might have been an ancillary factor for his aunt not wanting the Applicant to have the paternal property, his aunt's motivation for persecution was the properties, not his race. The RAD reasonably concluded that the choice of relinquishing those property rights would not deprive him of a fundamental right or affect an immutable characteristic, and that the Applicant could relinquish the properties to avoid a risk of harm. I agree with the RAD that although relinquishing his rights to the properties would be unfortunate, that difficulty does not constitute a risk pursuant to section 96 or 97 of the Act.

B. *Issue 2*

[22] Second, the Applicant asserts that the RAD misapprehended the evidence by finding that the Awami League had possession over the Applicant's properties, when the RPD found that gangs had taken possession of the property. The Applicant submits that the RAD also erred in attributing the ongoing threatening phone calls to his family to the Awami League, instead of to criminal gangs. This, he says, led the RAD to incorrectly find a lack of a recent link between the gangs and the Applicant as a reason to discount the risk posed by the gangs to the Applicant.

[23] While it may seem like semantics, the RAD did not state that the Awami League had possession over the properties, but a “faction of the Awami League”. This is reasonable in light of the RPD’s decision which stated that the Applicant alleged the youth gangs were connected to the Awami League. As pointed out by the Respondent, this connection is described in the Applicant’s BoC narrative. More importantly, the RAD’s general reference to “a faction of the Awami League” is supported by the RPD’s findings that the Applicant, who bears the burden of establishing the identity of his agent of harm, “provided mixed testimony over the identity of the gangsters that have possession of the properties” and “did not even know which gang possessed his properties”. Given these findings by the RPD, I do not find the RAD misapprehended the evidence as suggested. Since the Applicant could not identify the individuals who possessed the properties, the RAD’s use of the term “faction of the Awami League” to refer to an unidentified group of people, who at the very least had some connection to the Awami League based on the Applicant’ submissions, does not mean the RAD was unreasonable in their assessment of the evidence.

[24] The Applicant asserted that whichever gang is in possession of the properties is interested in getting the properties under their name and that is the reason for the phone calls and threats. It is reasonable to conclude that if the Applicant relinquishes his property rights to whomever is in possession of the properties, that all agents of persecution he alleged – his aunt, the faction of the Awami League, and the gangs – would no longer have a motivation to pursue the Applicant because he no longer has the properties or the wealth that they are interested in.

[25] I also agree with the RAD that the Applicant failed to meet the high threshold of establishing that relocation to Chittagong is objectively unreasonable in light of the findings regarding his agents of harm and availability of mental health services in Chittagong and that Chittagong is a viable IFA.

[26] The Applicant has failed to establish that the RAD's decision is unreasonable in light of the relevant factual and legal constraints that bear on it.

VI. Question for Certification

[27] At the hearing, counsel for the Applicant proposed the following question for certification:

Is it reasonable for the RAD, after accepting that a property dispute has a nexus to a section 96 (on the ground of race), to expect the refugee claimant to relinquish his rights to the disputed property in order to protect himself from harm/risk associated with the property dispute?

[28] As I advised counsel at the hearing, the Court does not condone parties bringing questions for certification without notice, which was done here. This is especially true where the responding party does not have the opportunity to provide input on the question prior to the hearing. The Consolidated Practice Guidelines for Citizenship, Immigration, and Refugee Protection Proceedings amended on June 29, 2023 (the "Guidelines"), state that "[w]here a party intends to propose a certified question, opposing counsel shall be notified at least five (5) days prior to the hearing, with a view to reaching a consensus regarding the language of the proposed

question.” The Court expects counsel to comply with these guidelines (*Matharu v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 902 at paras 28-30).

[29] The timing and manner in which the Applicant brought the question may be a sufficient reason for this Court to refuse to consider the question for certification as it prejudices the Respondent and the Court, and in most cases, does not serve the interests of justice (*Medina Rodriguez v Canada (Citizenship and Immigration)*, 2024 FC 401 at para 44). However, given that the Respondent did not object to the Court considering it, I have nevertheless decided to consider the merits of the question.

[30] For the reasons below, I disagree the question as proposed should be certified.

[31] In order for a question to be properly certified under section 74 of the Act, the question must be a serious question dispositive of the appeal, must transcend the interests of the parties and must raise an issue of broad significance or general importance (*Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para 36; *Zhang v Canada (Citizenship and Immigration)*, 2013 FCA 168 at para 9). As a corollary to the requirement that it be of general importance, it cannot have been previously settled by the decided case law (*Obazughanmwun v Canada (Public Safety and Emergency Preparedness)*, 2023 FCA 151 at para 28).

[32] The Applicant asserts the question meets this test as it is dispositive of the appeal, transcends the interests of the parties because it deals with the interpretation of the Refugee

Convention in sections 96 and 97 of the Act, is divorced from the facts of this case, and is significant in that it is the first time the Court is being asked to consider the relinquishment of property rights when a nexus to race is established.

[33] The Respondent argues that the question is not dispositive, and it is not a question of general importance as it has already been determined by the Federal Court of Appeal and the jurisprudence of this Court. It is not dispositive because the proposition that the “RAD accepted that a property dispute had a nexus to section 96” is not what the RAD found. Rather, the Respondent asserts that the RAD found there was a potential motivation related to the property, but in this particular case, the property was motivation for the persecution, not the enumerated section 96 ground, which was race. The fact that the question of race “merely touches upon” a fundamental issue of motivation for persecution, which here is the ownership of property, is not sufficient to establish a nexus to section 96 of the Act.

[34] I decline to certify the question due to its procedural and substantive inadequacies. First, as mentioned above, the Applicant admittedly did not bring this question before the Court in accordance with the Guidelines. It is not in the interests of justice for this Court to certify this question as both the Respondent and the Court were deprived of meaningful engagement and submissions on the question. Second, the question as posed is not a question of general importance that transcends the interests of the parties. As explained above, I agree with the Respondent that when the risk of persecution is based on a property dispute that “merely touches upon” an enumerated ground in section 96 of the Act, it is not sufficient to establish a nexus between the property and a section 96 claim, with the effect of protecting property under section

96. The RAD reasonably applied the jurisprudence to the Applicant's section 96 and section 97 claims.

VII. Conclusion

[35] The application is dismissed.

[36] The Court declines to certify the question proposed in paragraph 27.

**JUDGMENT in IMM-4968-24**

**THIS COURT'S JUDGMENT is that:**

1. The application is dismissed.
2. There is no question of general importance for certification.

"Michael D. Manson"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4968-24

**STYLE OF CAUSE:** ASIF SHIKER v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 16, 2025

**JUDGMENT AND REASONS:** MANSON J.

**DATED:** MAY 6, 2025

**APPEARANCES:**

|                   |                    |
|-------------------|--------------------|
| Naseem Mithoowani | FOR THE APPLICANT  |
| Bradley Bechard   | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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|----------------------------------------------------------------------------------------------|--------------------|
| Mithoowani Waldman<br>Immigration Law Group<br>Barristers and Solicitors<br>Toronto, Ontario | FOR THE APPLICANT  |
| Attorney General of Canada<br>Toronto, Ontario                                               | FOR THE RESPONDENT |