

Federal Court



Cour fédérale

**Date: 20160627**

**Docket: IMM-3328-15**

**Citation: 2016 FC 713**

**Ottawa, Ontario, June 27, 2016**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**FARID KHAZAYI,  
SALIMA MOKHAMED TAKHER,  
FATIMA KHAZAYI, ALI REZA KHAZAYI**

**Applicants**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The applicants, a family originally from Afghanistan, are citizens of Russia. They sought refugee protection in Canada based on their fear of persecution in Russia as Afghani Muslims.

They also claimed to be at risk of persecution in Afghanistan because they are Shia Muslims, and as a result of a family dispute.

[2] A panel of the Immigration and Refugee Board dismissed the applicants' claims primarily because their conduct did not appear to be consistent with a subjective fear of persecution. The applicants submit that the Board's decision was unreasonable considering the evidence showing mistreatment of similarly-situated persons in Russia. They also contend that they were denied a fair hearing before the Board because they lacked the assistance of a competent and neutral interpreter. They ask me to quash the Board's decision and order another panel to reconsider their claims.

[3] I can find no basis for overturning the Board's decision and must, therefore, dismiss this application for judicial review.

[4] There are two issues:

1. Were the applicants denied a fair hearing?
2. Was the Board's decision unreasonable?

## II. The Board's Decision

[5] The applicants explained to the Board that they experienced various forms of persecution in Russia as Afghan Muslims. In particular, Mr Khazayi claimed that the police threatened to frame him for a drug crime and extorted \$1,000 from him. Further, the Mafia took away his merchant permit, and beat him up. His wares were later stolen and his storage facility was burned down. He says that he was threatened again in 2015; he was asked to pay \$10,000 or else his son would be kidnapped.

[6] The applicants also claimed that they were discriminated against by members of the public and that the children were mistreated by students at school. They did not approach police for help because they considered that it would be pointless to do so.

[7] In 2013, the applicants began making plans to leave Russia. Mr Khazayi was denied a visitor's visa to Canada, but a travel agent advised him that he might have more success if he travelled to Germany first. Mr Khazayi travelled to Germany and succeeded in obtaining a visitor's visa to the US in 2014. In the meantime, he also travelled to China and Iran on business.

[8] The Board found that the applicants appeared not to fear persecution in Russia. Mr Khazayi travelled extensively but did not make a refugee claim elsewhere, including Germany or the United States. In addition, the applicants did not leave Russia until over a year after they acquired their US visas. They could not identify a specific incident that caused them to decide to leave Russia as early as 2013, except for a vague reference to an incident in Moscow that year.

[9] The Board concluded that the applicants had been subjected to discrimination in Russia, not persecution. As foreigners, they were perhaps more susceptible than others to discriminatory behaviour, but they had not been personally targeted.

### III. Issue One – Were the applicants denied a fair hearing?

[10] The applicants argue that they were denied the assistance of a capable and impartial interpreter. They point to the fact that the interpreter translated “racial discrimination” as “discrimination” and responded defensively when this was pointed out. Since persecution on

grounds of race was a live issue in the hearing, they applicants contend that this was a significant error.

[11] I cannot agree. The Board addressed the issue immediately on the applicants' objection and the translation was clarified. The Board reasonably concluded that the error did not affect any material issues before it. In addition, an audit of the interpretation of the applicants' testimony revealed no more than minor errors. In my view, the applicants had a fair hearing.

#### IV. Issue Two – Was the Board's decision unreasonable?

[12] The applicants submit that the Board made a number of errors in its treatment of the evidence before it. In particular, the Board drew an adverse inference from the fact that the applicants had not sought refuge elsewhere, such as Germany or the US, instead of Canada. However, they explained that their plan had always been to make it to Canada where they could be reunited with family members. Their plans crystallized only after the 2015 threat from the Mafia. They travelled to the US on their visas and then, just a month later, arrived in Canada.

[13] The applicants also point to documentary evidence supporting their claim, which the Board seemed to ignore. That evidence showed that racist attacks occurred throughout Russia, that almost 60% of Africans in Moscow had been physically assaulted, and that discriminatory sentiments are widely-held throughout the country.

[14] In my view, the Board reasonably concluded that the applicants may have been discriminated against, but that they did not have a well-founded fear of persecution. This is

corroborated by the fact that Mr Khazayi did not seek refugee protection in any other countries when he had a chance to do so.

[15] The documentary evidence supported the allegation that the applicants may be at risk of racially motivated violence. However, that risk did not rise to the threshold required for a successful refugee claim, that is, a reasonable chance of persecution.

[16] In respect of the 2015 threat, given the lack of details, I cannot conclude that the Board's finding that the threat was unlikely to be carried out was unreasonable. The threat amounted to a criminal offence consistent with the overall prevalence of organized criminality in Russia. It was not clear evidence of racial or religious persecution.

#### V. Conclusion and Disposition

[17] The applicants received a fair hearing before the Board. In addition, the Board reasonably concluded on the evidence before it that the applicants had failed to show a well-founded fear of persecution in Russia. Therefore, I must dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

**JUDGMENT**

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

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

“James W. O'Reilly”

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Judge

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

**DOCKET:** IMM-3328-15

**STYLE OF CAUSE:** FARID KHAZAYI, SALIMA MOKHAMED TAKHER,  
FATIMA KHAZAYI, ALI REZA KHAZAYI v  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** FEBRUARY 3, 2016

**JUDGMENT AND REASONS:** O'REILLY J.

**DATED:** JUNE 27, 2016

**APPEARANCES:**

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