

Federal Court



Cour fédérale

**Date: 20170811**

**Docket: IMM-4515-16**

**Citation: 2017 FC 765**

**Ottawa, Ontario, August 11, 2017**

**PRESENT: The Honourable Madam Justice Roussel**

**BETWEEN:**

**BUJAR HURUGLICA  
SADIJE RAMADANI  
HANIFE HURUGLICA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicants are citizens of Kosovo of the Muslim religion. Bujar Huruglica is married to Hanife Huruglica and Hanife's mother is Sadije Ramadani. They came to Canada from the United States [US] in March 2013 and sought refugee protection.

[2] The Applicants allege persecution at the hands of Wahhabi Islamic extremists who perceive them to be traitors as a result of the work done by Bujar and Hanife Huruglica, as well as Hanife's brother, for companies that were under contract to the US government in Iraq, Afghanistan and Kosovo. The Applicants allege that the extremists made several threatening phone calls and visited Ms. Ramadani, demanding large sums of money.

[3] Their refugee claims were joined with those of Hanife's brother and sister-in-law. They were rejected by the Refugee Protection Division [RPD] on June 19, 2013. Only the three (3) Applicants named in this file appealed the decision to the Refugee Appeal Division [RAD]. In September 2013, the RAD dismissed the appeal and confirmed the decision of the RPD. The Applicants sought judicial review of the RAD's decision. In 2014, Justice Michael L. Phelan of this Court allowed the application, finding that the RAD erred in applying a reasonableness standard of review to the decision of the RPD (*Huruglica v Canada (Citizenship and Immigration)*, 2014 FC 799 [*Huruglica FC*]). The Minister of Citizenship and Immigration appealed the decision, arguing that the appropriate standard of review is reasonableness. In March 2016, the Federal Court of Appeal upheld *Huruglica FC* and confirmed that the RAD erred in its selection of the appropriate review standard (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 [*Huruglica FCA*]). The matter was sent back to the RAD for redetermination.

[4] On redetermination, the Applicants provided a further memorandum of argument, as well as additional documentary evidence. The RAD subsequently communicated a number of other documents to the Applicants relating particularly to Islamic terrorism and gave them the

opportunity to provide added submissions on the disclosure package. The RAD also requested that the Applicants tender copies of any police reports they may have in relation to their allegations. In response to the disclosure from the RAD, the Applicants tendered further evidence, including a copy of a police report dated September 25, 2013, relating to a complaint made by Ms. Ramadani regarding an incident that occurred on October 3, 2012 when two (2) individuals came to her home, threatened her and demanded that she give them fifty thousand euros (50,000 €) within twenty-four (24) hours.

[5] The RAD found that the production of the police report raised a credibility issue regarding the Applicants' allegation that they were threatened by Wahhabi extremists and as a result, convened an oral hearing pursuant to subsection 110(6) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The oral hearing proceeded on September 15, 2016.

[6] On October 1, 2016, the RAD dismissed the appeal. The RAD found the determinative issue to be state protection. After adopting a contextual approach to its analysis of state protection, the RAD found that : (1) the Applicants did not establish with sufficient evidence that they were victims of Wahhabis or Islamic extremists; (2) the Applicants had made limited attempts to seek police protection; and (3) the Applicants did not provide clear and convincing evidence that if they lodged a complaint against the police officers involved, state protection would not be available to them through other mechanisms in place in Kosovo.

[7] The Applicants seek judicial review of the RAD's decision. Although the Applicants raise a number of issues, I find that the determinative issue in this application for judicial review is the RAD's assessment of the evidence.

## II. Analysis

[8] The reasonableness standard of review applies when this Court is reviewing a decision of the RAD (*Huruglica FCA* at para 35). The Court should not intervene if the RAD's decision is justifiable, transparent and intelligible and if it falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]).

[9] Moreover, it is not the function of this Court upon judicial review to substitute its own view of a preferable outcome and to reweigh the evidence that was before the RAD and the RPD (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59, 61). The RAD's decision "should be approached as an organic whole, without a line-by-line treasure hunt for error" (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 14, 16; *Gong v Canada (Citizenship and Immigration)*, 2017 FC 165 at para 7).

[10] The Applicants submit that the RAD's assessment of the evidence was unreasonable because it was made without regard to the evidence. They argue that the RAD erred in finding that the police report did not identify the agents of persecution as Wahhabi Muslims. Even if the

report does not specifically identify the perpetrators as Wahhabis, the report indicates that the two (2) men were “wearing shorts and long beards”, which is consistent with the physical appearance of Wahhabis. The Applicants contend that the description found in the police report of Wahhabis is consistent with their testimony before the RPD and contradicts the RAD’s finding that the Applicants were not threatened by Wahhabi individuals and that there was no religious connotation to the October 2012 incident. While the RAD was not required to find that the culprits were Wahhabis, it was required to analyze evidence contradicting its conclusions. Without such analysis the RAD’s finding cannot be considered justified, transparent, and intelligible, and therefore is unreasonable.

[11] The Respondent submits the RAD’s decision is reasonable as it is based on the police report, the Applicants’ oral testimony and documentary practice of the police in Kosovo. In discharging its function of weighing evidence, the RAD reasonably noted that the police report indicated that the persons responsible for the alleged threats were unknown and that Ms. Ramadani told the police that neither she nor her sons had any problems with anyone from different religious sects.

[12] I agree with the Applicants that the RAD’s assessment of the evidence is unreasonable as it relates to the Applicants’ alleged persecutor.

[13] In conducting its analysis of state protection, the RAD considered a number of factors including: (1) the nature of the human rights violation; (2) the profile of the alleged human rights

abuser; (3) the efforts of the Applicants to seek protection from the authorities; (4) the response of the authorities to requests for their assistance; and (5) the available documentary evidence.

[14] Regarding the profile of the Applicants' alleged abuser, the RAD found that while the police report tendered by the Applicants corroborated the threat made and the demand for money, the police report did not corroborate that the threats were received by Wahhabis or by religious extremists. The RAD reached this conclusion because the police report does not mention that the alleged perpetrators were Wahhabis. The RAD found that if Ms. Ramadani had stated to the police that the perpetrators were Wahhabis, it would have been reasonable to expect this information to be included in the police report. The RAD concluded by finding that the Applicants were not threatened by Wahhabi extremists as alleged, there was no religious connotation to the incident and the Applicants embellished the allegation that they were threatened by Wahhabis to bolster their refugee claims.

[15] The RAD correctly noted that the police report states that the persons responsible were "unknown". However, the report also indicates that they were "wearing shorts and long beards". This description appears to be consistent with other evidence in the record and in particular, the testimony of Mr. Huruglica on May 3, 2013 before the RPD:

MR. HURUGLICA: [The police] told me, we cannot help you. Just stop working in Afghanistan. We cannot – we cannot do miracles. We cannot find those people. They are such many people with the short pants and with the long beard that they are walking around.

MEMBER: Short pants?

MR. HURUGLICA: Short pants, you know. Yeah. They dress like that, the Wahhabis.

[Counsel]: Flood pants?

MR. HURUGLICA: Yeah, flood pants.

MEMBER: Not like shorts? Like.

MR. HURUGLICA: I mean, yeah, like they are - - you have ankle here, right above the ankle.

MEMBER: Okay. Short pants. And what was the rest of it? The long?

MR. HURUGLICA: The long beards. And called Wahhabis.

(Applicants Record at 147-148.)

[16] The Applicants' description of Wahhabis is also consistent with the information contained in an article dated October 31, 2011 entitled "*Embassy attack highlights Balkan Islamists*" found at page 304 of the Certified Tribunal Record [CTR] which states as follows:

The young man wore a long beard and pants that stopped above his ankles. He sprayed the U.S. embassy in Bosnia with machine gun fire.

Friday's incident in Sarajevo, in which the gunman and a police officer were wounded but no one died, was the latest in a series of incidents in eastern Europe involving Wahhabis - followers of an austere brand of Sunni Islam promoted by radicals, including the Taliban and al-Qaida fighters.

The recent rise of militant Wahhabis and other Islamic radicals across the Balkans – including Bosnia, Serbia, Kosovo, Macedonia, Albania, Montenegro and even European Union member Bulgaria – has triggered concerns that the region could become a breeding ground for terrorists with easy access to Western Europe or the U.S.

[Emphasis added.]

[17] There is also other evidence on the record which contradicts the RAD's finding that there was no religious connotation to the October 2012 incident. To that effect, Mr. Huruglica stated in

his Basis of Claim form, dated March 3, 2013 and amended later on March 13, 2013, that “extremists identifying themselves as members of Wahhabi go to my mother-in-law’s home in Kosovo, tell he [sic] that her family has a number of traitors to Islam because they support the US military” (CTR at 377). Equally, Ms. Ramadani testified at the redetermination hearing that although unknown to her, the men who came to her home were Wahhabis (CTR at 1408).

[18] Given the evidence on the record regarding the physical description of Wahhabis and the evidence corroborating the religious connotation of the October 2012 incident, the RAD should have addressed this conflicting evidence in its decision (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 FCJ 1425 at paras 15, 17). I further note that the police report the RAD relied on to support its findings was prepared almost a year after the October 2012 incident. As the police report postdates some of the conflicting evidence, the need for the RAD to address it was even stronger.

[19] I am mindful of the fact that reasons need not be perfect and that deference is owed to the RAD’s decision. If the RAD had limited its observations to the insufficiency of evidence demonstrating that the Applicants were victims of Wahhabis or other Islamic extremists, I might have been persuaded that the mischaracterization of the evidence did not impact the RAD’s overall analysis of state protection. However, the RAD also found that the Applicants embellished the allegation that they were threatened by Wahhabis to bolster their refugee claims. The RAD made a similar credibility finding later in the decision when it examined the other contextual factors related to its state protection analysis and in particular, the response of the authorities to the Applicants’ requests for assistance. The RAD reiterated that the Applicants



tendered a police report which undermined their allegations that the threat and extortion attempts were made by Islamic extremists in Kosovo and found, “in the context of its findings with regard to the police report, on a balance of probabilities, that the [Applicants’] allegation that they received threatening phone calls from Wahhabi extremists was an embellishment to bolster their refugee claims”.

[20] These credibility concerns relate to a central element of the Applicants’ refugee protection claims and may have permeated the RAD’s entire analysis. I find that I am not in a position to conclude on the reasonableness of the RAD’s state protection analysis as it is inextricably linked to the RAD’s assessment of the police report and its credibility findings of the Applicants’ allegations regarding the alleged perpetrators (*Horvath v Canada (Citizenship and Immigration)*, 2013 FC 788 at para 37).

[21] For these reasons, I find the decision is unreasonable and cannot be allowed to stand as it does not “fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law”, as set out in *Dunsmuir*. Accordingly, the application for judicial review is allowed, the decision is set aside and the matter shall be remitted back to a differently constituted panel for redetermination.

[22] No questions were proposed for certification and I agree that none arise.

**JUDGMENT in IMM-4515-16**

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

1. The application for judicial review is allowed;
2. The decision is set aside and the matter is remitted back to a differently constituted panel of the Refugee Appeal Division for redetermination;
3. No question of general importance is certified.

"Sylvie E. Roussel"

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Judge

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

**DOCKET:** IMM-4515-16

**STYLE OF CAUSE:** BUJAR HURUGLICA, SADIJE RAMADANI, HANIFE HURUGLICA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 27, 2017

**JUDGMENT AND REASONS:** ROUSSEL J.

**DATED:** AUGUST 11, 2017

**APPEARANCES:**

Luke McRae FOR THE APPLICANTS

Tamrat Gebeyehu FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Bondy Immigration Law FOR THE APPLICANTS  
Barristers and Solicitors  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario