

Federal Court



Cour fédérale

**Date: 20191004**

**Docket: IMM-4332-18**

**Citation: 2019 FC 1261**

**St. John's, Newfoundland and Labrador, October 4, 2019**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**EDISHER PATASHURI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Mr. Edisher Patashuri (the “Applicant”) seeks judicial review of the decision of the Immigration and Refugee Board, Refugee Appeal Division (the “RAD”), confirming the decision of the Refugee Protection Division (the “RPD”) that he is neither a Convention refugee nor a person in need of protection within the meaning of section 96 and subsection 97(1), respectively, of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Applicant is a citizen of Georgia. His application for protection before the RPD was dismissed on various grounds, including negative credibility findings and the availability of state protection. Upon appeal, the RAD upheld the state protection finding.

[3] The Applicant based his claim for protection upon acts of extortion by the local police, leading to the loss of his business and property. He claimed that he was beaten in the police station. He claimed that he received no assistance from the local police and that in spite of approaching the head office of the Prosecutor of Georgia, in Digomi, Tbilisi, no help was forthcoming.

[4] In its decision, the RAD determined that the Applicant had failed to “exhaust all sources of protection.”

[5] In the submissions made upon his application for judicial review, the Applicant characterizes the determinative issue as the RAD’s finding about the availability of state protection.

[6] The Applicant argues that the RAD erred in its state protection finding by failing to understand the evidence about the office to which a person would report allegations of police misbehaviour, including torture. He takes issue with the manner in which the RAD treated the documentary evidence, including an Immigration and Refugee Board Documentation Centre (the “IRBDC”) report that relies upon a US Department of State report for 2013, respecting investigations in Georgia of wrongdoing by the police.

[7] The Minister of Citizenship and Immigration (the “Respondent”) submits that, on the basis of the evidence before it, the RAD’s decision meets the legal test of reasonableness.

[8] A finding of state protection is reviewable on the standard of reasonableness; see the decision in *G.S. v. Canada (Minister of Citizenship and Immigration)*, 2017 FC 599 at paragraph 12.

[9] According to the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, the standard of reasonableness requires that a decision be justifiable, transparent and intelligible, falling within a range of possible, acceptable outcomes that are defensible on the law and facts.

[10] The hallmarks of a “reasonable” decision at law are justifiability, transparency, and intelligibility; see the decision in *Dunsmuir, supra*, at paragraph 47.

[11] Upon considering the written and oral submissions of the parties and the materials contained in the Certified Tribunal Record (the “CTR”), I am not satisfied that the decision of the RAD meets the applicable standard of review.

[12] The document from the IRBDC appears to undermine the findings of the RAD about the availability of state protection. The RAD apparently does not recognize the reliance of the IRBDC upon the 2013 US Department of State report.

[13] It is not necessary for me to address the other arguments raised by the Applicant.

[14] In the result, this application for judicial review is allowed, the decision of the RAD is set aside and the matter is remitted to a differently constituted panel of the RAD for re-determination.

[15] There is no question for certification arising.

**JUDGMENT in IMM-4332-18**

**THIS COURT'S JUDGMENT is that** the application for judicial review is allowed.

The decision of the Refugee Appeal Division is set aside and the matter remitted to a differently constituted panel of the Refugee Appeal Division for redetermination. There is no question for certification arising.

"E. Heneghan"

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Judge

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

**DOCKET:** IMM-4332-18

**STYLE OF CAUSE:** EDISHER PATASHURI v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 10, 2019

**JUDGMENT AND REASONS:** HENEGHAN J.

**DATED:** OCTOBER 4, 2019

**APPEARANCES:**

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Catherine Vasilaros FOR THE RESPONDENT

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