

Federal Court



Cour fédérale

**Date: 20191107**

**Docket: IMM-913-19**

**Citation: 2019 FC 1392**

**Toronto, Ontario, November 7, 2019**

**PRESENT: Mr. Justice Diner**

**BETWEEN:**

**RUSLAN HUSEYNOV**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**(Delivered from the Bench at Toronto, Ontario on November 6, 2019  
and edited for syntax and grammar with added references to relevant case law)**

**I. Overview**

[1] This application judicially reviews a decision of the Refugee Appeal Division, or RAD, confirming the finding of the Refugee Protection Division, or RPD, that the Applicant is neither

a Convention refugee nor a person in need of protection. For the following reasons, I am dismissing the application.

[2] The Applicant is a citizen of Azerbaijan. In brief, he claims that in late 2013, his father – having refused testify against his former superior in the Azerbaijan navy – was arrested on false charges of accepting a \$2000 bribe. Following the arrest, police searched his home and threatened his family. His father was eventually released on house arrest a year later. Then, in October 2015, he Applicant says he was abducted for two days and beaten by unknown individuals, again as a result of his father’s refusal to testify. He reported the abduction to the local Attorney General and Ombudsman, but no action was taken.

[3] In March 2016, the Applicant claims he was again abducted, and beaten for two days. This time, he says his captors warned him that he had complained too much and ordered him to pay \$20,000 and leave the country. An agent received his payment and arranged his departure from Azerbaijan on a United States visa.

[4] The RPD found the Applicant’s story lacked credibility. The RPD accorded positive weight to several supporting documents including the Applicant’s medical report and letter from his father – but found they were outweighed by credibility issues, namely (i) inconsistencies and omissions in the evidence, (ii) his delay in departing Azerbaijan, and (iii) lack of corroborating evidence.

[5] The Applicant appealed, but the RAD upheld the RPD's decision. First, the RAD rejected new evidence, noting most were dated before the RPD refusal, with no explanation of why they were not reasonably available for his first hearing. One document postdated the RPD decision, but the RAD found that it reiterated other evidence. Given that no "new evidence" was admitted under subsection 110(4) of the *Immigration and Refugee Protection Act*, the RAD denied the request for an oral hearing.

[6] Second, the RAD found nothing in the record to rebut the presumption that the RPD considered the evidence before it. The RPD was justified in according minimal weight to the Applicant's documents, in light of the negative credibility findings.

[7] Third, on credibility, the RPD drew reasonable negative inferences, given (i) omissions and inconsistencies in the Applicant's testimony, (ii) the delay in departing Azerbaijan and (iii) the lack of corroborating evidence. Finally, given the Applicant's lack of credibility, a section 97 analysis was not required.

## II. Issues and Analysis

[8] The Applicant summarized his arguments before this Court, namely that the RAD erred in each of its primary determinations, i.e., a failure to (a) admit new evidence, (b) properly assess the evidence, and (c) conduct a section 97 analysis. I am to review the RAD's findings of fact and of mixed fact and law on a reasonableness standard, including conclusions with respect to new evidence and credibility (*Tejuoso v Canada (Citizenship and Immigration)*, 2019 FC 903 at

para 25, *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35). I will proceed through each of the three arguments raised by the Applicant.

A. *New Evidence*

[9] The Applicant challenges the RAD's decision to reject a document that confirmed the father's court matter and sentence, partly served through imprisonment and partly through house arrest. However, these facts were not controversial. They were already in evidence before the RPD and I find that it was open to the RAD to conclude that this document did not qualify as new evidence under the test set out in section 110 of the Act, and the relevant jurisprudence (including *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96).

[10] The Applicant argues that the wording of the document implies that the investigation of the father was still ongoing when the document was issued in December 2017, and remained ongoing while the RAD decided its case. I make two observations in this regard.

[11] First, the RAD's interpretation was a valid one, and thus its finding was open to it. Second, even if the investigation was continuing at the time the RAD made its decision, and even if the document had been admitted, it would in my view not have affected the RAD's overall conclusion, namely that the Applicant (himself) was not wanted by state actors. In other words, this document does not help in establishing that the Applicant is personally at risk; it would only assist as one (rather thin) document corroborating the father's evidence regarding his sentence, which was already accepted. But it would not undermine the other conclusions regarding credibility due to inconsistency and omissions, and delay, regarding the Applicant himself.

[12] Ultimately, the RAD may reasonably conclude that documents are not new, even where they post-date the RPD's decision (see for instance *Ilias v Canada (Citizenship and Immigration)*, 2018 FC 661 at para 30 at para 35).

B. *Assessment of the Evidence*

[13] The Applicant first submitted that the RAD erred in failing to independently assess the evidence, and instead simply agreed with the RPD's negative credibility findings without an independent assessment. I disagree. Although the RAD largely agreed with the RPD's findings, this does not necessarily mean that it failed to conduct its own analysis. Where it supported the RPD's conclusions, the RAD provided an explanation of its reasoning. And where it made independent findings of fact, the RAD also made that clear.

[14] The Applicant also submits in his factum that in failing to conduct an independent analysis, the RAD repeated several errors committed by the RPD. First, he argues that the RAD erroneously held him to higher standard on the basis that he was an educated person with a professional background, and failed to account for other factors such as his brain injury and the challenges inherent in responding to questions through an interpreter.

[15] Once again, I cannot support this argument. The RAD has every reason to consider the background of the claimant, including his age, culture, background and prior social experience (*Cooper v Canada (Minister of Citizenship & Immigration)*, 2012 FC 118 at para 4). It was thus reasonable for the RAD to consider his background including his professional status. I note that the RAD also explicitly considered his arguments regarding the "stressful nature of refugee

hearings” and the “use of translators,” but rejected them in light of the numerous opportunities provided at the hearing to elaborate upon any concerns regarding the hearing, that took place over three hearing dates, over a period of three months before the RPD.

[16] The Applicant further argues that the RAD repeated the RPD’s error of conducting a microscopic analysis of the evidence, thereby ignoring or misconstruing relevant evidence, and applying a Western perspective to non-Western issues. I agree that credibility findings cannot be based on minor contradictions that are secondary or peripheral to the refugee claim (*Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 23). But that did not occur here. The omissions, including from the basis of claim form originally submitted, and inconsistencies noted by the RAD that took place during the course of the hearing, were significant, and relevant.

[17] The Applicant also argued that the RAD misconstrued the evidence relating to leaving the country, which raised a concern about the legitimacy of the Applicant’s fear of persecution (as noted above, also found by the RPD). First, I would note that the Applicant raised similar arguments before the RAD but it rejected the argument. Counsel counters that the time spent was in an effort to get assistance and state protection, and again, it was the accumulation of other events that led him to leave the country. While I agree with the Applicant that this is one possible argument, the outcome that the RAD (and RPD) came to regarding inaction in 2014 and 2015, was both possible, and thus reasonable, in all the circumstances.

C. *Section 97*

[18] The Applicant submits that in light of the RPD's finding that the imprisonment of the Applicant's father on false charges was credible, the RAD was required to carry out a section 97 risk analysis

[19] A separate section 97 analysis is not required in all circumstances. The Federal Court of Appeal has made it clear that "where the Board makes a general finding that the claimant lacks credibility, that determination is sufficient to dispose of the claim unless there is independent and credible documentary evidence in the record capable of supporting a positive disposition" (*Canada (Citizenship and Immigration) v Sellan*, 2008 FCA 381 at para 3).

[20] I am quite aware that there may be instances where, in assessing an applicant's objective risk of harm, the documentary evidence is such that the claimant's particular circumstances make him or her a person in need of protection, despite the fact that the Board has found the claimant lacks credibility (see for instance *Maimba v Canada (Citizenship and Immigration)*, 2008 FC 226 at para 22). During the hearing, I provided one example of this – for a particular profile of a person from a persecuted minority, whose particular narrative was found to have lacked credibility, but where an assessment of the objective risk profile should still take place.

[21] There was no such evidence here. The RAD found that the Applicant did not provide any objective documentary evidence to establish his claim, and this was fair. Of course, certain documentation regarding the Applicant's father was found credible, but this documentation did

not provide any objective basis to conduct a section 97 residual fear analysis. Given that the onus rests squarely on a claimant to establish a section 97 claim (just like a section 96 claim), the RAD was not required to engage in this risk analysis (see *Dag v Canada (Citizenship and Immigration)*, 2017 FC 375 at paras 8-18).

### III. Conclusion

[22] After independently assessing the evidence, the RAD reasonably concluded that the Applicant failed to credibly establish that he would face persecution if returned to Azerbaijan. Given the significant omissions and inconsistencies that the RAD pointed to in his testimony, as well as the lack of any new or objective documentary evidence advanced on appeal to support the basis of his claimed fear, the RAD reasonably upheld the RPD refusal. I am accordingly dismissing the application for judicial review. I commend the very able submissions made by both counsel.



**JUDGMENT in IMM-913-19**

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

1. This application for judicial review is dismissed.
2. No questions for certification were argued, and I agree none arise.
3. There is no award as to costs.

"Alan S. Diner"

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Judge

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

**DOCKET:** IMM-913-19

**STYLE OF CAUSE:** RUSLAN HUSEYNOV V THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 6, 2019

**JUDGMENT AND REASONS:** DINER J.

**DATED:** NOVEMBER 7, 2019

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