

Federal Court



Cour fédérale

Date: 20220914

Docket: IMM-2377-21

Citation: 2022 FC 1293

Ottawa, Ontario, September 14, 2022

PRESENT: Mr. Justice McHaffie

BETWEEN:

DIMITRI KIKNAVELIDZE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Refugee Appeal Division (RAD) of the Immigration and Refugee Board (IRB) dismissed Dimitri Kiknavelidze's refugee claim because it found that despite any partisan political violence he may have faced in Tbilisi, he had an internal flight alternative (IFA) where he could seek refuge within Georgia. Despite Mr. Kiknavelidze's arguments, I find the RAD's decision was reasonable. The RAD did not ignore, misunderstand, or selectively analyse the

evidence before it. Nor did it err by not reaching a conclusion on Mr. Kiknavelidze's credibility. The existence of an IFA was determinative of Mr. Kiknavelidze's refugee claim, as it is of this application.

[2] The application for judicial review is therefore dismissed.

II. Issues and Standard of Review

[3] Mr. Kiknavelidze raises six issues on this application. One of these challenges the RAD's decision not to make a determinative finding regarding credibility. The other five relate to the RAD's conclusion that Mr. Kiknavelidze would not face a serious possibility of persecution in the IFA cities of Kutaisi or Batumi. Although not presented in quite this order, I will address the issues raised by Mr. Kiknavelidze as follows:

A. Did the RAD err in not making a credibility finding on a critical issue?

B. Did the RAD err in finding Mr. Kiknavelidze would not face a serious possibility of persecution in the proposed IFA cities, and in particular:

(1) Did the RAD ignore Mr. Kiknavelidze's evidence?

(2) Did the RAD fail to consider the identity of the agent of persecution?

(3) Did the RAD engage in selective analysis of the documentary evidence?

(4) Did the RAD fail to consider whether Mr. Kiknavelidze could express his political opinion in the IFA?

(5) Did the RAD err in finding that the agents of persecution lack motivation to persecute him in the IFA?

[4] There is no dispute that the merits of the RAD's decision are reviewable on the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25; *Sadiq v Canada (Citizenship and Immigration)*, 2021 FC 430 at para 32. In applying this standard, the Court reviews the decision as a whole to determine whether it is internally coherent and rational, and whether it is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at paras 15, 85, 99–105. A reasonable decision displays the requisite attributes of justification, intelligibility, and transparency, reasonably accounting for the applicable law and the evidence and submissions before the decision maker: *Vavilov* at paras 15, 86, 99, 106, 125–128. An applicant on judicial review bears the onus to show that a decision is unreasonable. To do so, they must show that any shortcomings or flaws it relies on are sufficiently central or significant to render the decision unreasonable: *Vavilov* at para 100.

III. Analysis

A. *The RAD did not err in declining to make credibility findings*

(1) Mr. Kiknavelidze's refugee claim

[5] Mr. Kiknavelidze worked at the Tbilisi City Hall from 2009 to 2018. His refugee claim alleges he faced persecution and violence at the hands of members of the ruling Georgian Dream party because of his membership in, and active support of, the United National Movement (UNM), a competing political party. In particular, Mr. Kiknavelidze alleged in his Basis of Claim (BOC) that he was an active supporter of the UNM, and was outspoken in exposing corruption at Tbilisi City Hall by members of the Georgian Dream party. This led to him being forced to

accept a demotion in 2015. He continued to support the UNM against the Georgian Dream party in elections in 2016 and 2017.

[6] On October 5, 2017, Mr. Kiknavelidze says he was attacked by a co-worker because of his party affiliation. The following week, on October 12, 2017, he says he was attacked and beaten by five Georgian Dream members after participating in a UNM protest outside City Hall, leading to a three-day hospitalization. On both occasions, he says the police refused to take his complaint since the assailants were connected to the Georgian Dream party. He decided he had to leave Georgia, but could not do so immediately because his child contracted pneumonia.

[7] In the interim, Mr. Kiknavelidze attended another demonstration in Tbilisi on December 6, 2017. He alleges he was again attacked and beaten after the event by a group of Georgian Dream members, who told him to stop supporting the UNM and to remain silent about corruption in City Hall. He was hospitalized again, and his reports to police were allegedly ignored once more when the attackers were identified as Georgian Dream supporters. In late January 2018, Mr. Kiknavelidze says he was attacked by the same co-worker who had attacked him in October 2017. The co-worker threatened him again two weeks later. As his child had recovered by then, Mr. Kiknavelidze left Georgia at the end of February 2018.

[8] The Refugee Protection Division (RPD) dismissed Mr. Kiknavelidze's claim because it found his testimony not credible. In particular, the RPD noted inconsistencies between Mr. Kiknavelidze's BOC narrative, his hospital records, and his oral evidence regarding the

alleged attacks. It also disbelieved Mr. Kiknavelidze's evidence about the police refusing to take reports in light of country condition evidence regarding policing in Georgia.

(2) Mr. Kiknavelidze's appeal to the RAD

[9] Mr. Kiknavelidze appealed the RPD's decision to the RAD. In his appeal submissions, Mr. Kiknavelidze challenged the RPD's credibility findings. In examining the appeal, the RAD invited Mr. Kiknavelidze to make submissions on why he would not have a viable IFA in either Batumi or Kutaisi. Mr. Kiknavelidze responded by filing a series of news reports about political protests in Georgia and submissions related to the availability of an IFA.

[10] The RAD accepted the news articles as new evidence of political events in Georgia post-dating the RPD's decision. However, it found that Mr. Kiknavelidze had an IFA in Georgia, and that this was determinative of his appeal. In doing so, the RAD concluded that it did not need to address Mr. Kiknavelidze's credibility, although it stated its disagreement with the RPD's findings:

My role is to look at all the evidence and decide if the RPD made the correct decision. I agree with Mr. Kiknavelidze's counsel that the RPD erred with respect to its credibility finding in this case. However, I find that Mr. Kiknavelidze would have a viable internal flight alternative (IFA) in either Kutaisi or Batumi.

[...]

Due to my finding that the issue of IFA is determinative, it is not necessary for me to consider the merits of the RPD's credibility findings. For the purposes of my IFA analysis, I will assume, without deciding, that Mr. Kiknavelidze was credible with respect to the attacks he alleged at the hands of his former co-worker and also the unknown members of the Georgia[n] Dream Party after two protests he had attended.

[Emphasis added; endnote omitted.]

(3) The RAD did not err in declining to address credibility

[11] Mr. Kiknavelidze argues it was an error of law for the RAD to “assume, without deciding” that he was credible. He contends that whether he had been beaten and threatened in the past because of his political activities was a critical issue relevant to the question of whether a person of his profile would attract persecution in the future.

[12] I do not agree. The RAD has no general obligation to decide issues that are not determinative of an appeal before it: see, e.g., *Doherty v Canada (Citizenship and Immigration)*, 2017 FC 661 at para 11; *Calderon v Canada (Citizenship and Immigration)*, 2010 FC 263 at para 11. Where the outcome of the appeal would be the same regardless of whether Mr. Kiknavelidze was credible or not, it was open to the RAD to simply assume that he was credible for the purposes of its analysis, without making a conclusive determination on the point.

[13] I appreciate Mr. Kiknavelidze’s concern that the RPD made material adverse findings about his credibility and that he wished the RAD’s reasons would clearly reverse those findings and confirm his credibility. However, I cannot accept that this concern imposes on the RAD, as a matter of law, an obligation to address the credibility issues where they are not material to the outcome of the appeal. In any event, in the present case, the RAD did expressly state that it agreed that the RPD had erred in its credibility findings. Having done so, the fact that the RAD did not need to make its own credibility determinations to decide the appeal cannot reflect poorly on Mr. Kiknavelidze.

B. *The RAD did not err in its IFA findings*

[14] Refugee protection in Canada is only granted where a claimant cannot seek refuge within their own country. Where a claimant can reasonably avoid persecution by relocating within their country, they have an IFA and do not meet the definition of a Convention refugee in section 96 or the definition of a person in need of protection in section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]: *Calderon* at para 10.

[15] The two-part test for determining whether there is a viable IFA is not in dispute. First, the RAD must assess whether there is a serious possibility that the claimant will be persecuted or face a risk described in section 97 of the *IRPA* in the proposed IFA. Second, it must assess whether the conditions in the proposed IFA are such that it is not unreasonable for the claimant to seek refuge there: *Calderon* at para 14, citing *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA) and *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA).

[16] In his concise submissions to the RAD on the IFA issue, Mr. Kiknavelidze noted that the news articles he filed showed that opponents of the Georgian Dream party and members of the UNM are targets of persecution in various places in Georgia, with the leader of the UNM and protesters being arrested. He argued that there was no indication that Batumi or Kutaisi were safe for people of his profile and that he was at risk of government repression in the expression of his political opinion. He referred to the “specific agents of persecution” who had targeted him in the

past, asserting they had “the means and motive to continue to target him” and they “believe it is their mission to prevent him from engaging in any anti [Georgian Dream] activity.”

[17] The RAD did not accept these arguments. It found the specific agents of persecution who had previously attacked him would not have either the means or motivation to locate him in the new IFA cities. The RAD concluded that the evidence did not establish that the conflict with these individuals “extended beyond being a dispute of a local nature,” noting the link between the attacks and the scandals at City Hall and the protests Mr. Kiknavelidze attended in Tbilisi. The RAD also noted that there was no evidence that these individuals had searched for Mr. Kiknavelidze or caused any problems for his wife, who remains in the same house in Tbilisi.

[18] The RAD also considered Mr. Kiknavelidze’s broader risk of persecution as a member of the UNM. It noted that while there was evidence of violence between the political parties around election time, the incidents were “relatively isolated and related to the desire of some Georgian Dream supporters to win the elections.” The RAD found that the evidence of persecution of UNM members focused on high-level officials, and not low-level campaigners like Mr. Kiknavelidze. The RAD concluded there was no evidence that it would be the *modus operandi* of the Georgian Dream party or the government to persecute a relatively low-level individual like Mr. Kiknavelidze. It therefore concluded Mr. Kiknavelidze had not established he would face a serious possibility of persecution in either of the IFA cities at the hands of the Georgian Dream party, the governing regime, or anyone else.

[19] On the second prong of the IFA test, the RAD noted that Mr. Kiknavelidze had made no submissions on the reasonableness of moving to Batumi or Kutaisi. It found that the evidence did not establish that it would be unreasonable in the circumstances for him to move to one of these cities. Since both prongs of the IFA test were met, the RAD concluded Mr. Kiknavelidze had an IFA and was therefore not a Convention refugee nor a person in need of protection.

[20] Mr. Kiknavelidze does not challenge the RAD's findings with respect to the second prong of the IFA test. However, he raises five arguments with respect to the RAD's conclusions on the first prong. For the following reasons, I find that none of these establishes that the RAD's decision was unreasonable.

(1) The RAD did not ignore Mr. Kiknavelidze's evidence

[21] Mr. Kiknavelidze argues it was unreasonable for the RAD to assert that there was "no evidence" that the Georgian Dream party's *modus operandi* would be to persecute a low-level individual like him. He argues that his own experiences of being attacked, which the RAD assumed to be true, are themselves evidence that his activities and profile were sufficient to attract persecution, and that the RAD improperly ignored this evidence in reaching its conclusion.

[22] I agree with the Minister that the RAD did not ignore Mr. Kiknavelidze's evidence regarding the incidents in Tbilisi. As set out above, Mr. Kiknavelidze raised potential risks in the IFA cities both from the "specific agents of persecution" who had targeted him in the past, and from government repression more broadly. The RAD considered these two potential risks in its

IFA analysis. With respect to the “specific agents of persecution” involved in the Tbilisi attacks, namely one of Mr. Kiknavelidze’s co-workers and other Georgian Dream members in Tbilisi, the RAD concluded that this was a localized conflict centred in Tbilisi and related to Tbilisi City Hall.

[23] It was in considering the potential risk from the Georgian Dream party or the government more generally in Batumi or Kutaisi that the RAD indicated there was no evidence that the *modus operandi* of the party or government would be to persecute a low-level individual such as Mr. Kiknavelidze. The RAD’s analysis makes clear that it did not ignore the evidence related to the attacks in Tbilisi. It simply concluded that this evidence did not show a broader *modus operandi* on behalf of the Georgian Dream party that would put Mr. Kiknavelidze at risk across Georgia.

[24] Mr. Kiknavelidze also points to country condition evidence of incidents in 2014 in which individuals described simply as “activists” from the UNM were attacked. He suggests that this belies the RAD’s findings that persecution of UNM followers is confined solely to high profile members. However, the RAD did consider the evidence of such incidents, noting that they were “relatively isolated.” In my view, this evidence does not render unreasonable the RAD’s broader conclusion that persecution of low-level members of the UNM is not the Georgian Dream party’s general *modus operandi* to the extent that Mr. Kiknavelidze faced a serious possibility of persecution in the IFA cities. While Mr. Kiknavelidze may disagree with the RAD’s conclusion, this Court is not to interfere with the RAD’s factual findings unless it “has fundamentally

misapprehended or failed to account for the evidence before it”: *Vavilov* at para 126.

Mr. Kiknavelidze has not satisfied me that the RAD made such an error.

(2) The RAD did not fail to consider the identity of the agents of persecution

[25] Mr. Kiknavelidze argues that the RAD erred in confining its analysis exclusively to the local agents of persecution who attacked him in 2017 and 2018. He argues that in doing so, the RAD failed to consider that there are Georgian Dream activists in every city in Georgia who attack UNM members elsewhere.

[26] Contrary to Mr. Kiknavelidze’s assertions, however, the RAD did expressly consider both the local agents of persecution in Tbilisi and the potential for persecution from other Georgian Dream members in Kutaisi or Batumi. Indeed, the RAD addressed the two under separate headings, expressly turning from the risk presented by those in Tbilisi to the risk of government repression elsewhere in Georgia. It considered whether the evidence established that there was a serious possibility of persecution from Georgian Dream party members throughout Georgia and concluded there was not. While Mr. Kiknavelidze clearly disagrees with the RAD’s assessment of that evidence, it cannot be reasonably argued that the RAD confined its analysis to the agents of persecution in Tbilisi or failed to consider the potential risk from Georgian Dream members elsewhere.

(3) The RAD's analysis of the documentary evidence was reasonable

[27] Mr. Kiknavelidze argues that the RAD's conclusion that incidents of Georgian Dream members attacking UNM members are "relatively isolated" was based on an unreasonable and selective analysis of the documentary evidence. Having reviewed this evidence and Mr. Kiknavelidze's arguments, I cannot agree.

[28] The RAD referred in its reasons to a Response to Information Request (RIR) regarding the UNM contained in the National Documentation Package for Georgia published by the IRB. Under the heading "Incidents of Violence," the RIR quotes a representative of the Human Rights Center (HRIDC) as saying that while UNM members sometimes experience violence, the incidents "are not widespread." As Mr. Kiknavelidze points out, the RIR then goes on to refer to a number of violent incidents, specifically violent protests in 2012 and 2013 involving both attacks on UNM members and by UNM members; an attack in 2014 on a UNM Member of Parliament; violent incidents at four campaign rallies in April 2014; attacks on a former UNM minister and two opposition leaders in May and June 2014; the attacks on activists in 2014 referred to above; and an attack on the UNM's office in March 2015.

[29] I cannot agree with Mr. Kiknavelidze, however, that the RAD unreasonably adopted the HRIDC representative's observation that incidents are "not widespread" while ignoring the subsequent reports of violence. The RAD does not refer to or quote the "not widespread" observation, nor does it do so to the exclusion of other evidence. Rather, the RAD appears to have undertaken its own assessment and concluded that the incidents reported were "relatively

isolated.” In my view, this was a reasonable assessment of the evidence regarding the incidents reported in the RIR. While Mr. Kiknavelidze argues that the specific reports of violence “contradict” the assessment that such incidents are “not widespread” (or “relatively isolated”), neither the various incidents reported in 2014 and 2015 nor the more recent events in 2020 and 2021 require a different conclusion than that reached by the RAD. I therefore see no indication that the RAD ignored the evidence before it or undertook an unreasonably selective assessment of it in its analysis.

- (4) The RAD did not fail to consider whether Mr. Kiknavelidze could express his political opinion in the IFA

[30] Mr. Kiknavelidze next challenges the RAD’s reference to attacks on UNM party members occurring “around election time” and being “related to the desire of some Georgian Dream supporters to win the elections.” He suggests that this “begs the question of whether the RAD is requiring the applicant to abstain from campaigning for his party during the next election.” By analogy to this Court’s decision in *Fosu Atta*, he argues it is unreasonable for the RAD to expect him to forego the exercise of his political opinion: *Fosu Atta v Canada (Citizenship and Immigration)*, 2008 FC 1135 at para 17; see also *Anaya Moreno v Canada (Citizenship and Immigration)*, 2020 FC 396 at paras 56–57.

[31] I cannot accept this argument. There is no indication in the RAD’s reasons that it assumed or required Mr. Kiknavelidze to abstain from campaigning for the UNM. On the contrary, the RAD’s reference to the risks Mr. Kiknavelidze faced as a “relatively low-level

campaigner” indicates that the RAD assessed his risk based on him continuing to participate politically at the same level.

[32] Mr. Kiknavelidze also claims the RAD’s reasons effectively state that he “must stop protesting in Tbilisi and must stop expressing his opposition in Tbilisi.” He argues the RAD “cannot tell him how and where he should express his opinion.” Again, I disagree, for three reasons. First, Mr. Kiknavelidze is trying to impute to the RAD reasoning that does not appear anywhere in its reasons. Second, there was no evidence of Mr. Kiknavelidze’s intention, if he sought refuge in Batumi or Kutaisi, to nonetheless return to Tbilisi to continue to engage in political activism. Third, and perhaps most importantly, the very nature of an IFA is that it involves an assessment of whether a refugee claimant will face persecution in a different part of their country of nationality. In my view, it is not open to a claimant to rebut the existence of an IFA, and thereby claim refugee protection in Canada, by saying that they must be permitted to return to the very location of the original persecution in their country of nationality. To do so would undermine the well-established concept of an IFA entirely.

(5) The RAD’s finding regarding motivation was reasonable

[33] Finally, Mr. Kiknavelidze argues it was unreasonable for the RAD to find that the specific agents of persecution in Tbilisi were not motivated to find him in the proposed IFA cities. He argues the RAD “fails to consider” that these agents of persecution might resent him engaging in activities outside Tbilisi that might harm their interests in Tbilisi, such as organizing busses to travel to Tbilisi for protests. However, such a speculative possibility was neither supported by evidence nor put to the RAD for consideration. It certainly does not undermine the

reasonableness of the RAD's conclusion that the violence Mr. Kiknavelidze faced in Tbilisi was local in nature and that the evidence did not establish that his former co-worker and the other Georgian Dream party members involved in the Tbilisi attacks would be motivated to track him down and persecute him in Batumi or Kutaisi.

IV. Conclusion

[34] I am therefore not satisfied that Mr. Kiknavelidze has met his onus to establish that the RAD's decision was unreasonable. The application for judicial review must therefore be dismissed.

[35] Neither party proposed a question for certification. I agree that none arises in the matter. Finally, while this application was commenced in the name of "Dmitri Kiknavelidze," the applicant's passport, his application for refugee protection, and the RAD's decision identify him as "Dimitri." For consistency, the title of proceedings will be amended to reflect the "Dimitri" spelling.

JUDGMENT IN IMM-2377-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. The title of proceedings in this matter will be amended to reflect the correct spelling of the applicant's name as Dimitri Kiknavelidze.

"Nicholas McHaffie"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2377-21

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