

Federal Court



Cour fédérale

**Date: 20221115**

**Docket: IMM-8166-21**

**Citation: 2022 FC 1554**

**Ottawa, Ontario, November 15, 2022**

**PRESENT: The Honourable Mr. Justice Gleeson**

**BETWEEN:**

**ZAMIR SYLIA, GENTIANA SYLIA, AND  
SAJMIR SYLIA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Principal Applicant, Zamir Sylia [PA], his wife, Gentiana Sylia, and their adult son, Sajmir Sylia, are citizens of Albania. They arrived in Canada in 2018 and sought protection. The PA reports he fears persecution resulting from his political activities. His wife and son fear persecution due to their association with the PA.

[2] The Refugee Protection Division [RPD] found the Applicants not to be Convention refugees nor persons in need of protection, a finding upheld by the Refugee Appeal Division [RAD] in a decision dated October 18, 2021.

[3] The Applicants apply under section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for judicial review of the RAD decision. They submit the RAD unreasonably concluded documentary evidence was not credible and in turn erred in deciding an oral hearing was not required.

[4] The Respondent submits that Applicants have mischaracterized the RAD's treatment of the documentary evidence, that the decision not to conduct an oral hearing was reasonable and the RAD reasonably determined that the Applicants had a viable internal flight alternative [IFA] in Albania.

[5] Having considered the Applicants' written and oral submissions and as explained in greater detail below, I am satisfied that the RAD reasonably concluded the Applicants had failed to meet their burden of demonstrating a serious risk of persecution within the proposed IFA or that relocation to the IFA would be unreasonable. The Application is therefore dismissed.

## II. Background

[6] The PA reports that in 2010 he began to support a political party known as *Levizja Socialiste per Integrim* [LSI]. In 2013, he became a party member. He began receiving threatening phone calls from political opponents around this time.

[7] In February 2014, the PA took on the job of Chief of Firefighters in the city of Shkoder. He alleges he was offered this job in part because of his LSI support. Shortly after his appointment, a labour dispute occurred and five firefighters were terminated by one of the PA's superiors against his recommendation. The PA states that in June 2014, he began to receive threats from the former firefighters. His wife, a business owner, testified that she was frequently audited by government authorities after this incident.

[8] In February 2016, the PA was informed by Shkoder's Mayor that he would be replaced as Chief of Firefighters. He suspected his dismissal was politically influenced because the Mayor was a member of an opposing political party.

[9] Later in February 2016, the PA was stabbed outside his home by two unknown attackers. He states his assailants told him "we will destroy you, we will kill you." He was treated at a hospital and filed a police report.

[10] After his release from hospital in early March 2016, the Applicants travelled to the city of Tirana, staying in a home they owned. The Applicants report they returned to Shkoder one week later after unknown individuals rang their doorbell and knocked on their door very early one morning. The PA feared another attack.

[11] The PA was formally dismissed from his firefighter's job in June 2016. He commenced a lawsuit concerning his dismissal. That lawsuit was dismissed and the decision remains under appeal.

[12] The PA's adult son states he received an anonymous threatening letter in January 2018. The letter sought payment and threatened the son with the same fate as the PA if he did not pay 30,000 euros. He reported the threat to police.

[13] The PA also claims he continued to receive threatening phone calls from the time of his dismissal until mid-2018. He filed a police report regarding the anonymous threats in May 2018.

[14] The Applicants travelled to Canada in 2018 and commenced their claim for refugee protection in March 2019. On February 22, 2021, the RPD found the Applicants were not Convention refugees nor persons in need of protection. The RPD declined to consider the Applicants' three police reports, noting irregularities that led the RPD to believe the police reports were not genuine.

### III. Decision under review

[15] In its decision, the RAD first addressed and admitted new evidence in the form of a number of media articles and a letter related to the pending appeal in the PA's challenge of his dismissal as Chief of Firefighters. The RAD did not admit new police reports provided to establish the genuineness of the three reports that were before the RPD. The RAD concluded the RPD had erred in questioning the authenticity of the original reports and on this basis found the police reports already formed part of the record.

[16] The RAD found the determinative issue to be the viability of the proposed IFA in Tirana, and set out the two-prong IFA test. In considering the first prong of the test, the RAD concluded

the Applicants had not established a profile that would motivate persecution or that suspected agents of persecution were behind the violence and threats the Applicants had reported. The RAD also concluded that there was little evidence to indicate his political profile had resulted in the PA's dismissal from the position as Chief of Firefighters.

[17] The RAD also concluded that returning to Shkoder after the stabbing incident and remaining there for almost two years undermined their subjective fear of persecution. The RAD acknowledged the Applicants' explanation for the return – the threat they perceived from the unknown individuals at their door in Tirana – but noted the absence of any evidence linking the knock on the door in Tirana to the threat they believed existed in Shkoder.

[18] In considering the second branch of the IFA test, the RAD affirmed the RPD's finding that it would not be unreasonable for the Applicants to relocate to Tirana. The RAD noted the PA is educated, the Applicants have work experience and access to healthcare, and they had visited the city on many occasions and owned a home there.

[19] Finally, the RAD concluded the Applicants had not established state protection was unavailable to them in Albania.

#### IV. Issues and Standard of Review

[20] The Applicants have framed the issues as being whether the RAD's decision to assess the credibility and plausibility of the three police reports was reasonable and whether the RAD's

decision not to conduct an oral hearing was procedurally unfair. I am not convinced that any question of procedural fairness arises and have framed the issues as follows:

- A. Did the RAD make credibility findings about the police reports?
- B. Was the RAD's IFA analysis reasonable?

[21] The applicable standard of review for both issues is reasonableness.

[22] In conducting a reasonableness review, a court will ask whether a decision bears the hallmarks of reasonableness: intelligibility, justification and transparency (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 15 [*Vavilov*]). A reviewing court will consider whether the decision is based on an internally coherent and rational chain of analysis and whether the outcome is justified in relation to the facts and law (*Vavilov* at para 85).

V. Analysis

A. *The RAD did not err in its treatment of the police reports*

[23] The Applicants argue that having concluded the police reports were genuine; the RAD erred in then finding those reports not to be credible. The Applicants further argue that, by finding the reports were not credible, the RAD acted unfairly in not convening an oral hearing. Finally, the Applicants argue that the RAD's unreasonable treatment of the police reports undermine the IFA analysis as the RAD relied on its conclusion regarding the police reports to conclude no serious risk of persecution existed in the proposed IFA.

[24] The Respondent argues that the Applicants have mischaracterized the RAD's findings as they relate to the police report. I agree.

[25] Although the RAD found the police reports raised some issues of credibility, the RAD found those issues were insufficient to call into question the genuineness of the reports. The RAD's concern was not one of credibility. Instead, the RAD found the police reports did not provide objective evidence relating to the identity or motivation of the PA's attackers or the unidentified individuals who sought to extort the PA's son and made the threatening phone calls. In simply reiterating the Applicants' speculative allegations, the police reports did not assist in attributing the reported incidents to the alleged agents of persecution. Nor did the police reports assist in establishing the events were acts of persecution rather than acts of general criminality.

[26] The RAD acknowledged the Applicants' belief that the violence and threats came from either political opponents or terminated firefighters but explained: "there needs to be sufficient evidence to establish that the alleged agents of harm are connected to the future risks the [Applicants] may face if they return to Albania" (at para 53). The RAD reasonably concluded the reports did not demonstrate that either group presented a forward-looking risk of persecution.

[27] The RAD's conclusion that the police reports did not contain probative evidence or demonstrate a serious risk of persecution within the IFA was not a credibility finding. The RAD did not err in this respect, nor did it err in concluding an oral hearing was not warranted.

B. *The RAD's IFA analysis was reasonable*

[28] The Applicants submit that in undertaking an IFA analysis, the RAD was required to first find or assume that the Applicants faced a well-founded fear of persecution in some part of Albania. The existence of a risk of persecution outside of an IFA, the Applicants submit, is necessary before moving on to consider whether that risk will exist within the IFA. The Applicants argue that the RAD's reasoning was flawed because it undertook the IFA analysis after assuming the Applicants had no well-founded fear of persecution in any part of Albania.

[29] The RAD does not expressly address the issue of the Applicants' risk outside of the IFA. However, an administrative decision maker's written reasons are not to be considered in a vacuum, nor assessed against a standard of perfection (*Vavilov* at para 91). Relevant context includes the arguments made and issues identified by an Appellant before the RAD. In this case, the Applicants alleged the RPD's credibility findings were in error and challenged the IFA finding.

[30] Responding to the issues and arguments raised on appeal, the RAD's analysis began with a statement that the determinative issue was the viability of the proposed IFA. The RAD then made it clear that the RPD's disputed credibility findings were to be assessed "in the context of [the] IFA analysis" (at para 20). Prior to intervening, a reviewing court must be satisfied that any errors or shortcomings are such that required elements of justification, intelligibility and transparency, attributes of a reasonable decision, have been undermined (*Vavilov* at para 100). Considering the RAD's decision in context, I am satisfied that the RAD's IFA analysis



responded to the issues raised on appeal and was undertaken on the assumption that persecution in Shkoder was a possibility.

[31] In considering the viability of the IFA, the RAD considered the evidence after setting out the two-prong test (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA) at 710-711).

[32] The RAD addressed the Applicants' profiles and found they lacked prominent political profiles that might provoke continued persecution.

[33] The RAD found the PA had provided vague evidence relating to his role with the LSI, the PA's son's evidence only demonstrated LSI membership, and the PA's wife was not active in Albanian politics. The RAD further found the Applicants failed to establish that either political opponents or the terminated firefighters were behind the violence and threats the Applicants had reported.

[34] The RAD took note of the Applicants' evidence that perpetrators were never identified and that the PA testified he did not know who the attackers were. According to the PA, the threats could have been "due to politics" or "maybe from the firefighters." The RAD found the police reports to be of little probative value to establishing a forward-looking risk within the IFA and that the evidence did not demonstrate the Applicants had been targeted in the IFA. The RAD acknowledged the PA's assertion that he was dismissed from his firefighting position because of his political profile but found there was little evidence to support the claim. The RAD also found

there was insufficient evidence to support the Applicants' argument that the court rejecting the PA's wrongful dismissal claim was politically motivated. In addressing the PA's assertion that he was one of 130 LSI directors the Democratic Party had taken to court alleging criminal activity, the RAD noted the PA was not listed by name in the proceeding. The RAD rejected as unreasonable the PA's claim that he was listed under a nickname.

[35] In finding the second prong the test was satisfied, the RAD also considered the Applicants' circumstances including education, work experience and familiarity with Tirana.

[36] I am not persuaded that the RAD erred in its treatment of the evidence, or that the conclusions reached were not reasonably available to the RAD in light of the evidence and the analysis undertaken. The RAD's IFA analysis engaged in a consideration of the risk within the IFA based on the evidence before it.

[37] The Applicants also take issue with the RAD's state protection analysis. Given the RAD's conclusion of no serious risk of persecution in the IFA, a finding I consider was reasonable, the state protection analysis was unnecessary (*Campos Shimokawa v Canada (Minister of Citizenship and Immigration)*, 2006 FC 445 at para 18).

[38] With respect to the merits of the argument advanced, the Applicants' position does not reflect more than a disagreement with the RAD's interpretation of the evidence and the weight given to it. The RAD reached the state protection conclusion within the context of the Applicants' failure to demonstrate that government employees, political parties or former

firefighters posed a threat of harm. The RAD acknowledged that Albania's placement on the democracy spectrum partially eroded the presumption of state protection. It also acknowledged the mixed evidence as it related to the effectiveness of or adequacy of state protection in Albania. The RAD further acknowledged the police failure to identify suspects but noted the Applicants' similar inability to assist the police in this regard. On this basis, the RAD found the Applicants had not provided clear and convincing evidence that state protection was unavailable. This finding was reasonable.

VI. Conclusion

[39] The application for judicial review is dismissed. No question of general importance has been identified and none arises.

**JUDGMENT IN IMM-8166-21**

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

1. The Application is dismissed.
2. No question is certified.

**"Patrick Gleeson"**  

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**Judge**

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

**DOCKET:** IMM-8166-21

**STYLE OF CAUSE:** ZAMIR SYLIA, GENTIANA SYLIA, AND SAJMIR SYLIA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** MAY 11, 2022

**JUDGMENT AND REASONS:** GLEESON J.

**DATED:** NOVEMBER 15, 2022

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