

Federal Court



Cour fédérale

Date: 20230308

Docket: IMM-7659-21

Citation: 2023 FC 320

Ottawa, Ontario, March 8, 2023

PRESENT: Associate Chief Justice Gagné

BETWEEN:

KADYRALI KIRANOV

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Kadyrali Kiranov was refused protection by the Refugee Protection Division [RPD] and Refugee Appeal Division [RAD]. Both found that the discrimination that he alleges he faced in Kazakhstan due to his Tajik ethnicity does not amount to persecution, and that he is neither a Convention refugee nor person in need of protection.

[2] The Applicant argues that the RAD erred in three key ways: by not considering the issue of cumulative discrimination (i.e. whether the alleged incidents he described cumulatively amount to persecution); by holding against the Applicant the fortitude he exhibited in the face of discrimination; and by not considering the absence of access to justice or state protection in his country.

[3] For the reasons that follow, this Application for judicial review will be dismissed.

II. Facts

[4] The Applicant lived with his wife, two young children, and his parents in a small village in Kazakhstan. The Applicant's immediate family members are all Tajik, and their native language is Tajiki. The Applicant's mother is Uzbek (another ethnic minority group in Kazakhstan).

[5] In his Basis of Claim (BOC), the Applicant states that Tajiks began facing problems in Kazakhstan in 2015. He references a series of ethnic clashes between Tajiks and Kazakhs, evidence of which is outlined in the National Documentation Package [NDP]. As a result, some Tajiks were forced to leave their homes and flee their communities.

[6] In 2015 and 2016, the Applicant taught a boxing class twice a week, primarily to Kazakh children. In June of 2016, Kazakh parents started to withdraw their children from the Applicant's class and asking to be reimbursed. The Applicant lost his job because these parents did not want their children to receive instruction from a Tajik. After losing his job, the Applicant supported

his family by farming cotton and selling it to a local factory. But people started asking the Applicant and his family to leave the country and threatened to burn down their home. The Applicant states that he lived in fear in his own country.

[7] The Applicant says the police cannot protect his family because Kazakhs occupy all positions of power, including within the police.

[8] The Applicant arrived in Canada in October of 2019 and made a claim for refugee protection shortly thereafter.

[9] The RPD found that the discrimination the Applicant faced in Kazakhstan did not rise to the level of persecution and rejected his claim. The Applicant appealed to the RAD but did not present new evidence.

III. Decision Under Review

[10] The RAD dismissed the Applicant's appeal and agreed with the RPD that the determinative issues were discrimination not rising to the level of persecution, along with the availability of state protection.

[11] The RAD made three key findings.

[12] First, the RAD determined that any discrimination the Applicant faced in the areas of accommodation, education, language and health services did not rise to the level of persecution.

The RAD reviewed the evidence adduced with respect to each of these aspects of life and found that neither the evidence specific to the Applicant nor the objective evidence demonstrated persecution towards Tajiks.

[13] Second, the RAD found that the threats and problems the Applicant faced at his job did not either rise to the level of persecution. The Applicant's most serious allegation is that he was forced to quit his part-time teaching job due to threats he received from parents of his students. The RPD concluded that this was an isolated incident, which did not seriously affect the Applicant's ability to earn a living. Although acknowledging the incident as serious and ethnically motivated, the RPD found that the threats were a criminal act by private individuals. The RAD agreed, itself noting that neither of the corroborating letters from the Applicant's co-coaches made it evident that the Applicant's departure was due to his ethnicity. The RAD further observed that although the co-coaches were themselves Tajik they did not mention facing similar issues in their letters.

[14] Nonetheless, the RAD accepted that parents of his Kazakh students threatened the Applicant because he is Tajik, and that he had to stop coaching as a result. However, the RAD found that the Applicant did not establish that he faced a serious possibility of persecution on a forward-facing basis. The Applicant did not lead evidence of further threats in the following three years he remained in Kazakhstan and the country condition evidence confirmed a lack of widespread or large-scale ethnic violence. The Applicant was able to keep making a living through farming and there is no evidence of the Applicant attempting and being unable to find

any other employment due to his ethnicity. The RAD additionally noted evidence that Kazakhstani law prohibits discrimination in employment on the basis of ethnicity or race.

[15] Third, and alternatively, the RAD considered the Applicant's state protection argument. It noted that the Applicant had not made substantive submissions on this point and that the Applicant did not report the threats made against him to the police. In that sense, the Applicant has not provided any actual evidence that he has been refused police assistance.

[16] The documentary evidence is also not particularly helpful to the Applicant. In fact, there is evidence that police do respond in cases of ethnic violence. Although the RAD acknowledged the issues of corruption, police abuse, and non-independent juries, the Applicant failed to provide any clear and convincing evidence of the state's inability to protect him. Therefore, the RAD found that the Applicant had not rebutted the presumption of state protection.

IV. Issues and Standard of Review

[17] This Application for judicial review raises the following questions:

- A. *Did the RAD err in its assessment of discrimination, and whether that discrimination rose to the level of persecution?*
- B. *Did the RAD err in its assessment of state protection?*

[18] The standard to be applied to the substance of a RAD decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at paras 23, 25, 99;

Kiknavelidze v Canada (Citizenship and Immigration), 2022 FC 1293 at para 4). In summary, under the *Vavilov* framework, a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker (*Vavilov* at para 85). An administrative decision-maker's exercise of public power must be justified, intelligible and transparent (*Vavilov* at paras 95, 99). The burden is on the party challenging the decision to demonstrate that the errors are sufficiently central and significant to justify overturning the decision (*Vavilov* at para 100).

V. Analysis

A. *Did the RAD err in its assessment of discrimination, and whether that discrimination rose to the level of persecution?*

[19] The Applicant notes that neither the RPD nor RAD made adverse credibility findings against him. He testified that Tajiks in Kazakhstan were subject to discrimination in terms of access to health care, housing, education, and the use of their own language. Yet, the RAD found that there was no documentary evidence to support these allegations. The Applicant argues that a lack of documentation does not mean that these problems do not exist. The Applicant is a Tajik from Kazakhstan and is therefore well-positioned to speak to his personal experiences, as well as those of his community. The Applicant argues that a credible witness does not need to corroborate his testimony (*Jiang v Canada (Citizenship and Immigration)*, 2019 FC 57 at para 22).

[20] According to the Applicant, both the RPD and the RAD accepted that he faced numerous instances of discrimination in Kazakhstan as a Tajik. The Applicant submits that, despite

claiming to have assessed the cumulative nature of discrimination, the RAD actually assessed each problem individually (*Tetik v Canada (Citizenship and Immigration)*, 2009 FC 1240 at para 27).

[21] Finally, the Applicant submits that he cannot be faulted for having persevered in the face of persecution and having remained in his country after the threats and incidents he recounted (*Janiak v Canada (Citizenship and Immigration)*, 2012 FC 778).

[22] Turning now to these arguments, I am first of the view that the RAD did consider the totality of the evidence, and that the Applicant's allegations of discrimination, cumulatively, fall short of persecution. The RAD aptly noted that the Applicant experienced discrimination based on his language. However, this was not sufficiently serious to amount to persecution, given that the Applicant also speaks Kazakh, one of Kazakhstan's two official languages. In my view, it was reasonable for the RAD to find that, although the Applicant and his children feel they cannot speak Tajik freely outside their home, there does not appear to be evidence in the NDP that minorities are prevented from or penalized for speaking their native language. In other words, they might feel discriminated against but there is no evidence of persecution.

[23] The RAD also clearly and unequivocally acknowledged the central discriminatory incident, which resulted in the Applicant losing his coaching job and being threatened by private individuals. However, the Applicant remained employed on his farm and did not lead any evidence of further job denials or losses. I agree with the RAD that the threats received amounted to a criminal act by private individuals. Furthermore, the Applicant led no evidence of

further threats received from June 2016 to October 2019, when he remained in Kazakhstan. I agree that the Applicant has not demonstrated any forward-facing risks.

[24] The Applicant's arguments as to discrimination in the spheres of health care, housing, and education are also unsupported by the evidence.

[25] The RAD paid careful attention to each of the points raised by the Applicant, despite the fact that many of his allegations had no evidentiary foundation. The RAD even went so far as to address some of the nuances in the NDP evidence, noting the evidence of advantages afforded to Kazakhs. However, and again, the RAD reasonably found no evidence of cumulative discrimination rising to the level of persecution.

[26] The Applicant's broad statements about the widespread persecution of Tajiks across Kazakhstan do not cohere with the documentary evidence, nor did the Applicant lead any evidence connecting such to his personal experience. I agree with the Applicant that the absence of evidence is not itself evidence. However, the burden was his and the absence of evidence can indicate an insufficiency of evidence. Furthermore, bald assertions not supported by evidence are unpersuasive. Therefore, although the RAD found the Applicant credible, the Applicant cannot speak personally to the experience of all Tajiks across Kazakhstan and still carries the burden of leading sufficient evidence to demonstrate discrimination rising to the level of persecution. He failed to do this.

[27] I also find the Applicant's second point that the RAD held the Applicant's fortitude against him baseless. The fact that the Applicant remained in his community and experienced no further threats for the following three years indicates a lack of forward-facing risk.

[28] Finally, I do not find that the RAD failed to consider the cumulative nature of discrimination by assessing each problem individually. The Applicant has not established a link between the arson threats he received and the incidents of violence towards minorities described in the NDP evidence. In fact, some of those incidents involved other ethnic minority groups, making this alleged link even more tenuous. I therefore find that the RAD reasonably determined that the Applicant did not face a well-founded fear of persecution should he return to Kazakhstan.

B. *Did the RAD err in its assessment of state protection?*

[29] The Applicant submits that he did not believe he would receive justice in Kazakhstan because he is a member of a minority. He argues that the RAD failed to consider whether he would be denied protection as a Tajik.

[30] Respectfully, I also disagree with the Applicant on this point. The Applicant did not meet his onus to rebut the presumption of adequate or sufficient state protection. The Applicant never reported the threats of arson to the police. There is no evidence that the Applicant was refused police assistance. In fact, the documentary evidence indicates that police do respond promptly in cases of ethnic violence. State protection need not be perfect (*Koky v Canada (Citizenship and Immigration)*, 2011 FC 1407 at para 61). Although there are demonstrated issues with corruption

and police abuse more broadly in Kazakhstan, the Applicant failed to establish a personal nexus to a lack of state protection. Therefore, the RAD did not err in finding that the Applicant had not rebutted the presumption of state protection.

[31] The Applicant submits that the RAD should have considered whether he “would” be denied state protection. This is an entirely speculative exercise and it is not this Court’s role to engage in such speculation. The Applicant led no evidence that Tajiks, as an ethnic group, are barred from accessing the justice system in Kazakhstan.

[32] In *Meci v Canada (Citizenship and Immigration)*, 2014 FC 892, Justice René Leblanc neatly summarizes the principles of state protection found in *Ruszo v Canada (Citizenship and Immigration)*, 2013 FC 1004. He notes that a claimant cannot make a mere assertion of subjective reluctance to engage the state or to doubt the effectiveness of state protection without reasonably testing it; a claimant must make all objectively reasonable efforts to exhaust all courses of action available to them.

[33] The Applicant did not attempt to report the threats to police, but rather sought to rely on a speculative assertion that he would likely not have received state protection had he tried. This is an unsubstantiated claim and I am of the view that the RAD’s conclusion on this point was reasonable.

VI. Conclusion

[34] In my view, the RAD considered the totality of the evidence and reasonably determined that the incidents of discrimination alleged by the Applicant did not rise to the level of persecution. The RAD also reasonably determined that the Applicant has failed to adduce sufficient evidence that adequate state protection was unavailable to him. As a result, this Application for judicial review is dismissed. The parties do not propose a question of general importance for certification and no such question arises from the facts of this case.

JUDGMENT in IMM-7659-21

THIS COURT'S JUDGMENT is that:

1. The Application for judicial review is dismissed;
2. No question of general importance is certified;
3. No costs are granted.

"Jocelyne Gagné"
Associate Chief Justice

FEDERAL COURT
SOLICITORS OF RECORD

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