

Federal Court



Cour fédérale

Date: 20240322

Docket: IMM-1927-22

Citation: 2024 FC 449

Ottawa, Ontario, March 22, 2024

PRESENT: Mr. Justice Pentney

BETWEEN:

KHAIRILLO MIRZAYEV

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of the decision of the Refugee Appeal Division that dismissed his refugee claim because he had a viable Internal Flight Alternative (“IFA”).

[2] The Applicant is a cotton farmer from rural South Kazakhstan. He says his problems began when he protested the new price for cotton established by the son (identified as “MA”) of the new head of his village (known as the “Akim”). He was then wrongly arrested by police, who

he says were acting on behalf of the Akim and MA. He was released when he agreed to pay \$10,000 USD to MA and to stop spreading rumours about the Akim and his family.

[3] The next day the Applicant made a first payment of \$2,000 and promised to pay the rest after the harvest. He then moved to another city where he found work in construction. MA saw the Applicant's wife at the local market and asked her when he was going to pay the rest of the money. His wife delivered a second payment of \$2,000 to MA a short time later. The Applicant fled to Canada and claimed refugee status. In January 2020, his wife encountered MA, who asked for the money. She told him that the Applicant had left the country, and MA told her that he would be arrested if he ever returned.

[4] The Refugee Protection Division ("RPD") dismissed the Applicant's refugee claim, and the Applicant's appeal to the RAD was dismissed. The RAD disagreed with certain of the RPD's findings, but ultimately dismissed the appeal because it found the Applicant had a valid IFA. The RAD accepted that the Applicant could not return to his community, and that the agent of persecution had the means to locate him elsewhere in Kazakhstan because he would have to register his residence and police had access to the database with that information. However, the RAD found that the agent of persecution lacked the motivation to locate the Applicant in the IFA.

[5] The RAD's conclusion on the motivation of the agents of persecution was based on the following findings:

- The agents of persecution have never gone to the Applicant's home, despite the fact that his wife and parents still live there and they were a means through which they could contact the Applicant;
- Although the Applicant said he did not have the funds to pay the amount demanded, his family owns land on which they grow cotton and have rented some land to others;
- The last interaction with MA was the wife's encounter in January 2020, and there had been no contact in the two intervening years;
- There was no evidence that MA searched for the Applicant when he left his home town; when she encountered him, MA only asked when the Applicant would pay the amount;
- Despite the threat to lay false criminal charges against the Applicant, there was no evidence of any charges being filed.

[6] Taking all of these facts together, the RAD concluded that the agents of persecution lacked the motivation to try to locate the Applicant in the IFA location.

[7] The Applicant argues that the decision is unreasonable because it is based on speculation and stereotypical reasoning. He submits that the RAD's application of the IFA test indicates that it accepted that the agents of persecution were bad people who had harmed him in the past. That is why it was not safe for him to return home. The RAD also found that the agents of persecution had the means to locate the Applicant in the IFA location through the registration database. In light of this, the Applicant submits that the IFA finding is unreasonable because it involves unfounded speculation about what the agents of persecution are likely to do.

[8] This argument cannot succeed. There is a difference between speculation not rooted in the evidence and inferences of future conduct based on all of the evidence about what the agent of persecution has done in the past. There is always a degree of uncertainty associated with any prediction of future action. Nevertheless, the IFA test requires an assessment of whether the agent of harm has both the means and motivation to seek to harm the claimant in the IFA location.

[9] Once a viable IFA location was identified, the Applicant bore the onus of proving it was not reasonable. In this case, based on its examination of the evidence, the RAD concluded that the agents of persecution lacked the motivation to locate him in the IFA location. This finding was based on a careful review of the evidence about what the agent of persecution had done – and not done – during the relevant period. The RAD explains its reasoning process in clear terms, and its conclusion flows from the evidence and is based on the application of the proper legal test.

[10] The Applicant's entire claim, as set out in his Basis of Claim form, is based on his fears of future persecution because of the money he owes as a result of the extortion by the son of the Akim. The fact that MA had not approached the Applicant's wife or parents to try to obtain the rest of the money is a relevant consideration. This is particularly so because he had previously received some of the money from the wife. It is also pertinent that there was no evidence that MA had searched for the Applicant when he moved to the other location. The absence of evidence of criminal charges is another example of relevant evidence, because it shows that MA had not followed through on his previous threats. The RAD did not fasten on any single fact, but

rather expressly stated that its finding on motivation was based on a cumulative assessment of the entire record.

[11] The RAD's decision is reasonable, when assessed under the framework established by *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, and recently confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21. The Applicant has not demonstrated any reviewable error in the decision and I can find no basis to overturn it.

[12] For the reasons set out above, the application for judicial review is dismissed.

[13] There is no question of general importance for certification.

JUDGMENT in IMM-1927-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1927-22
STYLE OF CAUSE: KHAIRILLO MIRZAYEV v THE MINISTER OF
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PLACE OF HEARING: TORONTO, ONTARIO

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REASONS AND JUDGMENT: PENTNEY J.

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