Federal Court  Cour fédérale

Date:20240628

Docket: IMM-5490-23

Citation: 2024 FC 1022

Ottawa, Ontario, June 28, 2024

PRESENT: Madam Justice Azmudeh

BETWEEN:

NERITAN SHEHU
EDLIRA SHEHU
PARIS SHEHU
NIRVANA SHEHU

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Under section 72(1) of the *Immigration and Refugee Protection Act* [IRPA], the Applicants are seeking a Judicial Review of the rejection of their refugee protection appeal by the Refugee Appeal Division [“RAD”] of the Immigration and Refugee Board of Canada [“IRB”]. The Judicial Review is dismissed for the following reasons.

[2] There is no factual disagreement between the parties. The Applicants are citizens of Albania. The adult Applicants were educated in Hizmet/Gulenist schools. Turkey had accused Mr. Gulen and his followers of wanting to stage a coup in Turkey. The Applicants alleged that they faced a serious possibility of persecution or a personal risk of harm in Albania because of connections of the Albanian government with Turkey. They also alleged fear of being kidnapped and sent to Turkey.

[3] Both the RPD and the RAD found the Applicants to be credible witnesses. This meant that they agreed that they had established their allegations on their lived experience. However, both the RPD and RAD engaged in an analysis to assess whether the evidence would support a positive finding under either s. 96 or 97(1) of IRPA, and they found that it did not.

II. Decision

[4] I dismiss the Applicants' judicial review application because I find the decision made by the RAD to be reasonable and reached in a procedurally fair manner.

III. Standard of Review and Issues

[5] The Applicants raised two issues: a) whether the RAD breached its duty of procedural fairness and, b) whether the RAD decision is reasonable.

[6] Reasonableness review is a deferential standard, and requires an evaluation of the administrative decision to determine if the decision is transparent, intelligible, and justified (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII), [2019] 4 SCR 653 [*Vavilov*], at paras 12-15 and 95). The starting point for a reasonableness review is the

reasons for the decision. Pursuant to 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" (*Vavilov,* at para 85).

[7] The onus is on the party challenging the decision to prove that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision. The court must be satisfied that there are "sufficiently serious shortcomings" (*Vavilov,* at para 100).

[8] With respect to issues of procedural fairness, the standard of review is not deferential. It is for the reviewing court to ask, "with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed" (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*CPR*], at para 54). Consequently, when an application for judicial review concerns procedural fairness and a breach of the principles of fundamental justice, the question that must be answered is not necessarily whether the decision was "correct". Rather, the reviewing court must determine whether, given the particular context and circumstances of the case, the process followed by the administrative decision maker was fair and gave the parties concerned the right to be heard, as well as a full and fair opportunity to be informed of the evidence to be rebutted and to have their case heard (*CPR,* at para 56). Reviewing courts are not required to show deference to administrative decision makers on matters of procedural fairness (*Vargas Cervantes v Canada (Citizenship and Immigration)*, 2024 FC 791, at para 16).

IV. Analysis

A. *Did the RAD reach its decision fairly?*

Allegations against former counsel

[9] The Applicants submit that they had raised a breach of procedural fairness argument at the RAD with respect to the incompetence of their counsel at the RPD. The Applicants argue that the RAD's dismissal of that issue amounts to a breach of procedural fairness.

[10] I disagree with the Applicants' characterization that the manner by which the RAD resolved this issue was either procedurally unfair or resulted in an unreasonable decision.

[11] An unpaid representative had assisted the Applicants at their RPD hearing. As the RAD noted, the RPD had treated the Applicants like self-represented individuals and took the time to explain the process, the National Documentation Package (NDP) and the legal issues. The RPD also provided an opportunity for post-hearing submissions, and when those submissions were not legible, it contacted the unpaid representative to resend them. They were again resubmitted in a poor format and another attempt was made to have them resent. They were not sent again, and the RPD only decided the case after these multiple opportunities were given. The RAD also noted that the unpaid representative could not have been assessed with the professional standards of licenced paid representatives such as lawyers or registered consultants. I find the RAD's analysis of the arguments raised on the incompetence of counsel to be thorough, transparent, intelligible, and justifiable.

[12] The Applicants also challenged the RAD's findings on new documents. First, the RAD clearly applied the test prescribed in section 110(4) of the IRPA to reject the new evidence. The RAD member also turned their mind into whether the new documents were those attempted to be filed at the RPD and found that they were probably different documents that did not meet the narrowly construed test set out in the legislation. Finally, the RAD explained that even if the documents were admitted, they would not have changed the decision.

[13] I find that the Applicants received a full opportunity to explain to the RAD how they thought they were not given a fair hearing at the RPD. The RAD explained why it disagreed and why the RPD process was fair. I also find that the RAD's treatment of the new evidence was legally sound and responsive to the arguments made. The decision to reject the new evidence was both reasonable and reached in a procedurally fair manner.

[14] I also find that the rest of the RAD decision was reached in a procedurally fair manner. The member was responsive to the evidence and the arguments on the record. There is a clear and logical chain of reasoning as to how the member reached his decision. There is nothing before me to suggest that the member failed to consider the totality of the evidence.

[15] I cannot equate the Applicants' desire to weigh the evidence differently with a breach of procedural fairness. The RAD member engaged with the Applicants' submissions and considered all the evidence relevant to the competence of the unpaid representative, and reached the decision in a procedurally fair manner. (*Ibrahim v Canada (Citizenship and Immigration)*, 2020

FC 1148 at para 30; *Kaur v Canada (Citizenship and Immigration)*, 2023 FC 1064 at para 12; *Kohl v Canada (Attorney General)*, 2024 FC 45 at para 69)

B. *Was the RAD analysis in finding that the Applicants did not face a serious possibility of persecution on a Convention Ground under section 96 IRPA or on a balance of probabilities a personal risk of harm under section 97(1) IRPA reasonable?*

Credibility findings

[16] At the hearing, the Applicants' counsel argued that what makes the RAD decision unreasonable is its internal inconsistency: on one hand, the RAD found the Applicants to be credible. On the other hand, it did not accept parts of their evidence when one of the Applicants had testified that she was followed by individuals who spoke in Turkish and made threatening comments.

[17] I find that the Applicants are confusing that the RAD's credibility findings – i.e., accepting the facts of their lived experience – with the inferences that the Applicants draw from those facts. The RAD accepted the facts that had taken place. The RAD also accepted that the facts had indeed scared the Applicants. However, the onus is on the refugee claimants to establish with sufficient evidence that their lived experience establishes the legal definition of a Convention Refugee under s. 96 IRPA or a person in need of protection under s. 97(1) IRPA.

[18] The RAD member engaged in a legally sound and clearly articulated analysis of the Applicants' similarly flawed argument that was repeated before the Court:

> [26] The Appellant argues that this [*Albanian state being the puppet for the Turkish government, as stated in para 25 of RAD reasons*], too, was unchallenged credible testimony, and therefore there is no need for objective documents to establish this. I do not

> agree. These are not things that the Appellants have experienced. They are things that they believe will happen to them in the future. They may genuinely have a subjective fear of these things (and therefore be credible), but this does not mean the risks are objectively borne out. A refugee claim has a subjective and objective component, and the RPD correctly considered whether the risks are borne out in the objective documentation. As explained above, this is not a situation where the RPD doubted the Appellants' credibility, and therefore not one where the benefit of the doubt comes into play, as the Appellants allege.

[19] The RAD engaged in a detailed analysis of the objective country evidence and found that there was insufficient evidence to establish that Albanian citizens who have been educated in Hizmet schools would either face a serious possibility of persecution or a personal risk of harm in Albania. The RAD's analysis engaged with incidents of harassment or discrimination and how they did not rise to the level of persecution. The RAD also engaged with the country's documents and analysed them in the context of the Applicants' profile as Albanian citizens fearing the Albanian authorities because of their closeness to the Turkish authorities and disagreed with the Applicants' assertion that they faced a serious possibility of persecution by them. The RAD also engaged with the absence of evidence on any actions by Turkish authorities in Albania against Albanian citizens. I find that the RAD provided clear reasons with a chain of reasoning that was rationally connected to its conclusions.

[20] The Applicants argued that corroboration is not needed for credible evidence, and that no claim can be established with 100% corroboration of all of its allegations. I agree. However, the Applicants have confused sufficiency of evidence, as it relates to establishing the legal conclusions, with corroboration needed to establish disputed facts. The RAD member had analysed all of these concepts in a clearly articulated and legally sound chain of reasoning.

[21] The Applicants argued that the documents were silent on the citizenship of those deported or taken to Turkey, and it was unreasonable for the RAD member to assume that this did not happen to Albanian citizens. The onus was on the Applicants to establish the objective basis of their claim with sufficient credible evidence. Sufficiency of evidence has nothing to do with the finding that the Applicants were credible witnesses. Believing their lived experience or their subjective fear did not make up for the gaps and holes in the objective documentary evidence. In fact, RAD's chain of reasoning clearly demonstrates the member's full engagement with the Applicants' arguments and their reason for rejecting them:

> [29] The Appellants argue that the RPD was wrong to conclude this given that it accepted that there is evidence of illegal extraditions and raids on schools and forcible returns. The Appellants say this is straightforward evidence that this is happening regardless of nationality. I disagree. I reviewed the evidence, and nowhere does it say that this is happening to people who are not Turkish citizens.
>
> [30] The Appellants argue that "[t]he fact that the evidence above does not mention the nationalities of the illegally extradited individuals does not mean that they are not Albanian". I can only rely on what the evidence says. I cannot speculate. The only concrete evidence in the record is of a Turkish national being returned to Turkey from Albania. I have reviewed the updated NDP and have not found any reference to extraditions of Albanian citizens.

[22] The RAD member's refusal to speculate on the evidence does not render the decision to be unreasonable. In fact, it makes it transparent and justifiable.

[23] The Applicants also argued that the RAD engaged in selective and microscopic analysis of the evidence. For this, they quoted from paragraph 33 of the RAD's reasons where the member had quoted from a country document that suggested the relationship between the Albanian and Turkish authorities had "cooled". I disagree with the Applicants' characterization

of the RAD treatment of the objective country documents. The RAD's analysis is not limited to this quote. The RAD reasons show the RAD's engagement from multiple documents, including those filed by the Applicants, and makes clear findings on the totality of the evidence.

[24] I find that the Applicants are not happy with how the RAD has weighed the evidence. This Court has repeatedly stated that this is not a ground for intervention on judicial review. (*Gega v Canada (Citizenship and Immigration)*, 2021 FC 1468, at para 23; *Boughus v Canada (Citizenship and Immigration)*, 2010 FC 210, at paras 56-57; *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690, at para 33).

[25] The RAD's analysis was thoughtful and logical in explaining a clear chain of reasoning. I therefore reject the Applicants' argument that it was unreasonable.

V. Conclusion

[26] For the foregoing reasons, the RAD decision was reached in a procedurally fair manner and it is intelligible, justifiable and transparent. It is therefore reasonable.

[27] The Application for Judicial Review is dismissed.

[28] There is no question to be certified.

JUDGMENT IN IMM-5490-23

THIS COURT'S JUDGMENT is that

1. The application for Judicial Review is dismissed.

2. There is no question for certification.

"Negar Azmudeh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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