Federal Court  Cour fédérale

Date: 20200903

Docket: IMM-4332-19

Citation: 2020 FC 881

Ottawa, Ontario, September 3, 2020

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

VASYL VYSHNEVSKYY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the case

[1] Mr. Vasyl Vyshnevskyy is seeking judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act], of a decision rendered by the Refugee Protection Division [RPD] whereby the RPD found Mr. Vyshnevskyy to have a viable Internal Flight Alternative [IFA] within Ukraine. Hence, he was not a Convention refugee under section 96 nor a person in need of protection under section 97 of the Act.

II. Facts

[2] Mr. Vyshnevskyy is a citizen of Ukraine from the City of Ternopil in the western part of Ukraine.

[3] In 2005, he started his own automotive business selling used trucks. In 2007, he was approached by a local criminal gang seeking to extort protection money from him, with the promise that his business would be safe from other gangs. Mr. Vyshnevskyy continued to pay the protection money when, in 2008, this criminal gang demanded increased payments. In July 2008, with Mr. Vyshnevskyy only being able to pay the original amount, the criminal gang severely beat him and eventually demanded an even larger amount of protection money from him.

[4] In October 2008, with Mr. Vyshnevskyy again finding himself not able to pay the amount demanded by the criminal gang, he once again suffered a severe beating by his aggressors. This resulted with Mr. Vyshnevskyy, in December 2008, having to close his business, however, he managed to stash away at a friend's lot two of his trucks that remained unsold. Mr. Vyshnevskyy then began to work as a painter.

[5] In January 2009, members of the criminal gang continued to victimize and threaten Mr. Vyshnevskyy if he did not pay the money they said he owed to them prior to closing his business. He filed a police complaint, but to no avail. Soon thereafter, the leader of the criminal gang made it clear to Mr. Vyshnevskyy that he knew that he, Mr. Vyshnevskyy, had gone to the police, which resulted in the extortion demand being increased threefold.

[6] Mr. Vyshnevskyy could not meet the exorbitant demands for money, which resulted in him suffering a further beating at the hands of these criminals in July and September 2009. Mr. Vyshnevskyy was forced to sell his own car and to borrow money from friends in order to pay what he could to the criminal gang.

[7] Mr. Vyshnevskyy states that in January 2010, the criminal gang raided his home, took everything of value, and again beat him. A few weeks later Mr. Vyshnevskyy received a call from individuals professing to be members of the Organized Crime Unit [OCU] of the police with whom he had filed a formal complaint. Members of the OCU came to his home and interviewed Mr. Vyshnevskyy who told them his entire story, including the fact that he was keeping his two unsold trucks at a friend's lot.

[8] Soon thereafter, the police located and impounded his two unsold trucks, leading Mr. Vyshnevskyy to believe that the police were in cahoots with the criminal gang that was extorting money from him. This only caused the leader of the criminal gang, having found out about the two unsold trucks, to become infuriated and further threaten Mr. Vyshnevskyy.

[9] In February 2010, scared for his life, Mr. Vyshnevskyy went to stay with a friend in Kozova, about 40 kilometers outside of Ternopil. Mr. Vyshnevskyy's efforts to seek assistance from the authorities showed no result; he wrote a letter to the Prosecutor's Office, but again to no avail. The threats continued.

[10] In April 2010, Mr. Vyshnevskyy's ex-wife and daughter received a strange and threatening visit from individuals claiming to be police officers, enquiring on the whereabouts of Mr. Vyshnevskyy. Fearful for their lives, his ex-wife and daughter had to move out of their home.

[11] In May 2010, after having returned to his apartment in Turnopil, the criminal gang kidnapped Mr. Vyshnevskyy, beat and tortured him. Why he returned is not clear, however, the gang demanded that Mr. Vyshnevskyy sell his apartment to pay his debt. They also told Mr. Vyshnevskyy that they had located his ex-wife and daughter, and threatened to harm them if he did not comply.

[12] Mr. Vyshnevskyy chose not to sell his apartment, and in July 2010 went into hiding with another friend in Berezhany, a city about 55 kilometers outside of Ternopil where Mr. Vyshnevskyy had attended post secondary studies in 1983 following his military service; he began preparing to leave Ukraine. With the assistance of an agent, he left for Italy in September 2010, and thereafter, flew to Canada on October 4, 2010, where upon arrival he immediately claimed refugee protection.

[13] Mr. Vyshnevskyy's original refugee hearing took place in December 2013 and February 2014, following which his application was denied on the basis of credibility and the existence of a viable IFA in Odessa, a major city of about one million people and about 675 kilometers to the southeast of Ternopil.

III. Decision Under Review

[14] The RPD first determined that as Mr. Vyshnevskyy's fear related to criminal gangs, his claim had no nexus to one of the five grounds recognized by the *United Nations Convention* Relating to the Status of *Refugees*, 28 July 1951, 189 UNTS [Convention], and that he was therefore not a Convention refugee pursuant to section 96 of the Act. Mr. Vyshnevskyy is not contesting this finding.

[15] Consequently, the RPD proceeded to examine the claim under section 97 of the Act. Mr. Vyshnevskyy argued that he would be targeted everywhere in Ukraine because of corruption throughout the country. The RPD determined that the threat from the criminal gang in question was a generalized risk of a localized nature, and that Mr. Vyshnevskyy's continued fear was somewhat speculative as the events in question had taken place nine years earlier. In particular, the RPD noted that Mr. Vyshnevskyy was not threatened when he was staying with his friend in Berezhany.

[16] Consequently, the RPD concluded that Mr. Vyshnevskyy was not a Convention refugee, nor a person in need of protection under sections 96 and 97 of the Act.

IV. Issues

[17] The Applicant raises a number of issues. However in my view, there are only two issues to be considered: the first is whether there was a breach of procedural fairness in the RPD not proposing Odessa as a possible IFA prior to the commencement of the hearing, and secondly, whether the decision of the RPD regarding the viability of the IFA was reasonable.

V. Standard of Review

[18] With regard to the question of procedural fairness, although the standard of review may be "best reflected in the correctness standard […] strictly speaking, no standard of review is being applied." A court must simply determine "[w]hether the procedure was fair having regard to all of the circumstances", and ask "whether a fair and just process was followed" (*Canada Pacific Railway Company Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

[19] As to the viability of the IFA, the parties agree, as do I, that the standard of review is that of reasonableness (*Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 16).

VI. Relevant legal provisions

[20] Sections 96 and 97(1) of the Act read as follows:

Convention refugee	**Définition de réfugié**
96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	96 A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

b) soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

Personne à protéger

97(1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

97(1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n’a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s’il y a des motifs sérieux de le croire, d’être soumise à la torture au sens de l’article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d’autres personnes originaires de ce pays ou qui s’y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles

accepted international standards, and	infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

VII. Procedural Fairness Issue

[21] I conclude that the RPD did not breach procedural fairness by not proposing Odessa as a viable IFA prior to Mr. Vyshnevskyy attending his hearing. Applicants must come to the hearing prepared to deal with the issue of possible IFAs (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA) [*Thirunavukkarasu*]; *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA), 1991 CarswellNat 162 at para 12 (WL Can) [*Rasaratnam*]).

[22] In *Alkhoury v Canada (Citizenship and Immigration)*, 2020 FC 153 [*Alkhoury*], Mr. Justice Pentney reiterated that the question of an IFA is always an issue in refugee hearings (*Alkhoury* at para 13). In concluding that the overall procedure was fair, Justice Pentney noted that the Applicant's "counsel had an opportunity to pursue this at the hearing, either by further questioning, leading further evidence, making submissions, or by requesting the opportunity to lead further evidence or make further submissions following the hearing" (*Alkhoury* at para 15).

[23] Similarly here, the RPD met the requirements of procedural fairness as it raised the possibility of Odessa as a viable IFA at the outset of the hearing and gave the Applicant an

opportunity to respond (*Tariq v Canada (Citizenship and Immigration)*, 2017 FC 1017 at paras 25-29; *Figueroa v Canada (Citizenship and Immigration)*, 2016 FC 521 at para 15, 24-38, 56). The RPD also provided a rational basis for why it considered Odessa as a possible IFA.

[24] In any event, Mr. Vyshnevskyy did not raise the issue of procedural fairness when the proposed IFA was raised at the RPD hearing, nor did he offer additional evidence after the hearing to show that Odessa was not a viable option prior to the RPD rendering its decision.

VIII. Analysis

[25] I should mention that Mr. Vyshnevskyy's credibility is not in issue. The RPD did not question the veracity of his story as to what he had experienced at the hands of the criminal gang.

[26] The test for a viable IFA was recently set out in *Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799, where Mr. Justice McHaffie stated:

> [7] To determine if a viable IFA exists, the RAD must be satisfied, on a balance of probabilities, that (1) the claimant will not be subject to persecution (on a "serious possibility" standard), or a section 97 danger or risk (on a "more likely than not" standard) in the proposed IFA; and (2) in all the circumstances, including circumstances particular to the claimant, conditions in the IFA are such that it would not be unreasonable for the claimant to seek refuge there: *Thirunavukkarasu* at pp 595–597; *Hamdan v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 643 at paras 10–12.
>
> [8] Both of these "prongs" of the test must be satisfied to conclude that a refugee claimant has a viable IFA. The threshold on the second prong of the IFA test is a high one. There must be "actual and concrete evidence" of conditions that would jeopardize the applicants' lives and safety in travelling or temporarily relocating to a safe area: *Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 (CA) at

> para 15. Once the potential for an IFA is raised, the claimant bears the onus of establishing it is not viable: *Thirunavukkarasu* at pp 594–595.
>
> [Emphasis added.]

A. *The first branch of the IFA test - the risk of persecution in Odessa*

(1) The passage of time

[27] Mr. Vyshnevskyy argues that the RPD's conclusion premised upon the passage of nine years is unreasonable. He submits that he filed his refugee claim on time – once he arrived in Canada – and that a first decision by the RPD was issued in March 2014 denying his claim. He adds that this decision was successfully appealed from and that a new hearing before the RPD was scheduled in 2019. Therefore, even though the assessment of the risk is prospective, Mr. Vyshnevskyy contends that it was reasonable for him to engage in some level of speculation as to the continued existence of the risk of persecution although nine years had passed since he left Ukraine.

[28] In addition, Mr. Vyshnevskyy argues that since he was found to be a credible witness, it follows that he is in the best position to reasonably assess the risk he would be exposed to upon returning to Ukraine. Mr. Vyshnevskyy asserts that under the circumstances, he alone is the only one reasonably capable of truly understanding the nature of the criminal gangs, how they operate across Ukraine, and the likelihood that they would continue to pursue him even if he is to move to Odessa.

[29] Finally, Mr. Vyshnevskyy argues that the RPD speculated without any support, analysis or justification when it concluded that “this gang would not have the motivation, the means, or the interest in attempting to locate the Applicant at this time.”

[30] I cannot agree with Mr. Vyshnevskyy.

[31] First of all, the RPD did not suggest that Mr. Vyshnevskyy remained in Canada illegally throughout the nine years that he was here, nor that it was somehow his fault that his refugee process took the time that it took to proceed to this point. The RPD simply considered the passage of time as part of its analysis on the likelihood of the criminal gang continuing to have an interest in pursuing him. In fact, when asked by the member during his RPD hearing why, after nine years, Mr. Vyshnevskyy would think that the criminal gang would still be interested in pursuing him, he answered simply “that there is corruption in Ukraine”.

[32] Furthermore, I cannot agree that since Mr. Vyshnevskyy was found to be a credible witness, he was in the best position to assess the prospective risk of persecution he would be exposed to upon his return to Ukraine. He must nonetheless meet his burden of proof of “actual and concrete evidence” of the condition that would jeopardize his life and safety in the IFA (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 at para 15; *Ohwofasa v Canada (Citizenship and Immigration)*, 2020 FC 266 at paras 23, 28; *Onuwavbagbe v Canada (Citizenship and Immigration)*, 2020 FC 758 at para 21). This, he failed to do according to the RPD.

[33] Here, Mr. Vyshnevskyy provided no objective evidence that the criminal gang remained interested in him. In addition, Mr. Vyshnevskyy's daughter is currently living in Ternopil, in the home which Mr. Vyshnevskyy refused to sell when pressed to do so by the criminal gangs, and although the criminal gang had told Mr. Vyshnevskyy that they would harm her if he did not pay up, there is no evidence that Mr. Vyshnevskyy's daughter was tracked down or that she has had any issues with the criminal gang since Mr. Vyshnevskyy left Ukraine.

[34] As stated by Madam Justice Kane: "[t]he fact that [Mr. Vyshnevskyy's] testimony was found to be credible with respect to [his] fear does not alleviate the need to provide sufficient objective evidence" (*Iyere v Canada (Citizenship and Immigration)*, 2018 FC 67 at para 41 [*Iyere*]).

[35] Under the circumstances, it was certainly reasonable for the RPD to have determined that the passage of nine years since the terrible events took place was a relevant consideration under section 97 of the Act, and that on the balance of probabilities, the criminal gangs "would not be interested in pursuing him".

(2) The means to locate him in Odessa

[36] Mr. Vyshnevskyy argued that it was unreasonable for the RPD to determine that a criminal gang in Ternopil would not have the means to locate him in Odessa as such a finding has no basis in the evidence. Mr. Vyshnevskyy's highlights the National Documentation Package [NDP] for Ukraine which suggests that there is a national registration database for individuals to register in order to access public services, and that although there are penalties for improperly

accessing the registration system, Mr. Vyshnevskyy contends that it is not a deterrent to criminals from accessing private information as Ukraine is a corrupt country.

[37] I agree with the Respondent that Mr. Vyshnevskyy is merely speculating in suggesting that the criminal gang would continue to track him through a national registration database, as there exists no evidence that it could or would proceed with doing so.

[38] After considering the evidence and submissions of Mr. Vyshnevskyy's counsel at the hearing, the RPD stated:

> Although submissions were made with respect to connections to other gangs, the panel finds insufficient persuasive evidence of any connection whatsoever, as this was a localized issue which occurred nine years in the past. The panel concludes that this gang would not have the motivation, the means, or the interest in attempting to locate the claimant at this time.

[39] I have not been persuaded that this finding was in any way unreasonable under the circumstances. Mr. Vyshnevskyy has not established that the criminal gang he fears had an ongoing interest in him "let alone an interest that would motivate them to persecute the applicant in an area of the country in which they did not operate" (*Calle Henao v Canada (Citizenship and Immigration)*, 2020 FC 84 at para 17 [*Calle Henao*]).

[40] I should also mention that during oral arguments, his counsel argued that the criminal gang tracked down Mr. Vyshnevskyy while he was living with his friend in Kozova, and beat him; the argument being that if the criminal gang could track Mr. Vyshnevskyy down in Kozova, they could track him down anywhere in Ukraine.

[41] I am not certain that statement by counsel is correct.

[42] In his Personal Information Form, Mr. Vyshnevskyy stated that he moved to Kozova in February 2010, yet returned to his apartment in Turnopil in May 2010. From his narrative, it was from there, not in Kozova, that he was kidnapped, beaten and tortured.

[43] Why Mr. Vyshnevskyy returned to his apartment in Turnopil is not clear, however, the gang thereafter demanded that Mr. Vyshnevskyy sell his apartment to pay his debt. They also told Mr. Vyshnevskyy that they had located his ex-wife and daughter, and threatened to harm them if he did not comply.

[44] In any event, I am not persuaded on this issue by Mr. Vyshnevskyy's counsel.

(3) Complicity of the police in Mr. Vyshnevskyy's persecution

[45] Mr. Vyshnevskyy asserts that the RPD disregarded important evidence with regard to the State's complicity in the persecution of the Applicant, which renders its conclusion flawed. He emphasizes that when he contacted the OCU in Ukraine, the police later confiscated his trucks and informed the criminal gang that he had filed a complaint. As a result, Mr. Vyshnevskyy submits that this led to a heightened level of the persecution toward him, culminating with being kidnapped, brutally beaten and tortured.

[46] However, during questioning at the hearing before the RPD, Mr. Vyshnevskyy was unclear as to whether the individuals who visited him were actually from the OCU, or other individuals posing as OCU members.

[47] That said, although the RPD did describe Mr. Vyshnevskyy's experience with the police, it did not specifically address the concern regarding the availability of State protection in its analysis. However, in reading the decision as a whole, I find that the RPD properly considered all the factors relating to the first prong of the IFA test. The RPD considered Mr. Vyshnevskyy's submissions about corruption, internally displaced persons, gang phenomena in Ukraine, as well as his own experience in this country in particular as regards his experience at the hands of the police.

[48] In any event, it seems to me that the issue of the local police involvement with the criminal gangs would only be relevant to the extent the gangs themselves remained interested to pursue Mr. Vyshnevskyy all the way in Odessa – assuming, of course, they became aware of his return to Ukraine, which is not in itself clear. Here, the RPD found that they would not. As was stated by Madam Justice McVeigh: "[t]he onus is on the Applicants, and not providing concrete evidence is not a license to say that the RAD or the RPD engaged in speculation. In my view, they did not engage in speculation" (*Diaz Pena v Canada (Citizenship and Immigration)*, 2019 FC 369 at para 37).

[49] Given the paucity of evidence on this point, I think it strains credulity to suggest that somehow this local criminal gang maintains Mr. Vyshnevskyy on their radar screen after nine

years to the point of meaningfully continuing to search for him, waiting for his return to Ukraine. Putting aside for the moment that Mr. Vyshnevskyy may well subjectively believe that his fear is justified, as there is no evidence to suggest that this is the case, I think it would make greater sense that this gang would be more inclined to focus on the low hanging fruit of targets in their area.

[50] The bottom line is that Mr. Vyshnevskyy has not provided objective evidence to establish the alleged risk or how the people he fears would find him, nor that the criminal gangs would have the means to do it (*Iyere* at paras 37 and 41).

B. *The second branch of the IFA test – was Odessa objectively unreasonable as an IFA*

[51] The onus is on the Applicant to show that it is objectively unreasonable for him/her to find refuge where the Board suggests (*Thirunavukkarasu* at para 12). Therefore, "it is not a matter of a claimant's convenience or the attractiveness of the IFA, but whether one should be expected to make do in that location, before travelling halfway around the world to seek a safe haven, in another country" (*Thirunavukkarasu* at para 15).

[52] In addition, the threshold for finding an IFA to be unreasonable is very high. As set out by the Federal Court of Appeal, "[i]t requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area" (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (CA) at para 15 [*Ranganathan*]).

[53] Mr. Vyshnevskyy argues that it was unreasonable for the RPD to conclude that he could reasonably relocate in Odessa because there are impediments to registration in Odessa as set in the NDP evidence, in particular if he has to rent accommodation in that city. Registration is needed to access medical care, his pension, access key government services and the right to vote. Consequently, Mr. Vyshnevskyy asserts that the inability to register will have consequences on his access to medical care, and prevent him from obtaining his pension, thus putting into jeopardy his ability to access housing and sustain a living, putting his life and safety at risk.

[54] Again, I think Mr. Vyshnevskyy is stretching the evidence. The documentary evidence suggest difficulty, not impossibility of registration. In any event, I must agree with Mr. Vyshnevskyy that the RPD did not address the issue of the difficulties inherent in registration in Odessa.

[55] However, as stated by the Respondent, that is because the issue of the inherent difficulties with registration was not raised by Mr. Vyshnevskyy before the RPD.

[56] Although the subject of registration was raised before the RPD, Mr. Vyshnevskyy pointed to registration to underscore his argument that on account of general corruption in Ukraine, the criminal gang would be able to locate him in Odessa. The concerns with respect to the possible difficulties with registration, and the consequences arising therefrom, were never specifically raised before or addressed by the RPD.

[57] The RPD's reasons need only be responsive to the submissions made before it, and I can hardly fault the RPD for not considering this issue (*Odunsi v Canada (Citizenship and Immigration)*, 2016 FC 208 at paras 17-18; *Jele v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 24 at paras 23-28; *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 13-28; *Alberta (Information and Privacy Commissioner v Alberta Teacher's Association)*, 2011 SCC 61 at paras 23-25).

[58] The other issue which Mr. Vyshnevskyy argues not to have been considered by the RPD was his age and that, as a pensioner, he would not be able to find employment; the pension he would receive would not be enough to support him in Odessa.

[59] I find Mr. Vyshnevskyy's argument that he would have no means of sustaining himself in Odessa in the event he was to relocate there to be inconsistent with the argument he was making about continuing to be of interest to the criminal gangs. The gangs were targeting him in Ternopil because he had a business and had money. It would normally follow that if he did not have access to significant funds in Odessa, the interest that the criminal gang would have in pursuing him would be significantly reduced.

[60] Mr. Vyshnevskyy argues that he still has his apartment in Ternopil, and also that returning from Canada, rightly or wrongly, he would be perceived by the criminal gangs as having money. Again, I find this argument unconvincing.

[61] In any event, on this issue, I agree with the Respondent. Mr. Vyshnevskyy's evidence regarding the amount of his pension was also not before the RPD, and is new evidence before this Court. Consequently, I see no reason to look to this evidence in considering the reasonableness of the RPD decision (*Odunsi v Canada (Citizenship and Immigration)*, 2016 FC 208 at paras 17-18 and 24; *Jele v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 24 at paras 23-28; *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 13-28; *Alberta (Information and Privacy Commissioner v Alberta Teacher's Association)*, 2011 SCC 61 at paras 23-25).

[62] The RPD determined that Mr. Vyshnevskyy was well educated and had various transferable skills he acquired from owning a business. In the end, the RPD acknowledged that a certain level of hardship in relocating would invariably take place, but not to the level of establishing that such relocation would be unjustified.

[63] In addition, no evidence was brought to my attention by Mr. Vyshnevskyy that directly contradicts any specific finding of the RPD.

[64] Finally, Mr. Vyshnevskyy argues that the RPD jumped from a mere outline of the facts to a conclusion in favour of a viable IFA. I do not agree. As stated in *Vavilov*:

> [128] Reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis" (*Newfoundland Nurses*, at para. 25), or to "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion" (para 16). To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice.

[65] The RPD does not have to discuss every issue raised before it, and while it may have been preferable for the RPD to explain its analysis in greater detail, the reasons, read as a whole, meet the requirements of justification, transparency and intelligibility (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 25; *Vavilov* at para 128).

IX. Conclusion

[66] This application for judicial review should be dismissed.

JUDGMENT in IMM-4332-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There are no questions for certification.

"Peter G. Pamel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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