Federal Court  Cour fédérale

Date: 20220217

Docket: IMM-5303-21

Citation: 2022 FC 203

Ottawa, Ontario, February 17, 2022

PRESENT: The Associate Chief Justice Gagné

BETWEEN:

SHPEJTIM KRASNIQI and FLORIANA KASTRATI

Applicants

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Shpejtim Krasniqi and Floriana Kastrati are a couple of Kosovars who came to Canada in September 2019 and sought refugee protection. They claimed that as members of the Albanian National Christian Democratic Party of Kosovo (PSHDK), they fear persecution from Muslim extremists, based on their political and religious ideals.

[2] Although the Refugee Appeal Division [RAD] found that the Refugee Protection Division [RPD] erred in a few of its findings, it nevertheless dismissed the appeal, being of the view that the evidence did not support the claim.

[3] The Applicants submit that the RAD committed reviewable errors by refusing to admit new evidence and hold an oral hearing, and by failing to consider and apply relevant and probative evidence with respect to their fear of persecution on the ground of political opinion, pursuant to section 96 of the *Immigration and Refugee Protection Act of Canada*, SC 2001, ch. 27 [IRPA].

II. Decision under review

[4] The Applicants proposed the admission of two articles as new evidence on appeal before the RAD. These two articles confirmed that the PSHDK have secured seats in the legislative assembly in Kosovo and continue to be relevant participants in the Kosovo political spectrum.

[5] The RAD reiterated the relevant provisions of the IRPA and the test for the admission of evidence that was not before the RPD. In this case, the RAD found that the first criterion of the test was met, but rejected their request as it found the documents failed on the relevance and newness factors of the test. In the RAD's view, the two documents were not capable of proving or disproving facts relevant to the claim for protection, such as the male Applicant's involvement with the party, or that people involved with the party faced a serious possibility of persecution.

[6] The RAD specified that the documents establish that the party exists and is active in Kosovo but that they do nothing to establish the Applicant's political basis claim according to which members of the party are targeted for their political opinion.

[7] The RAD also refused to consider a PSHDK Facebook link because no printout was provided by the Applicants as prescribed by Rule 27 of *Refugee Appeal Division Rules,* SOR/2012-257. The RAD also notes that all staff of the Immigration and Refugee Board including RAD members are forbidden from accessing Facebook on their work computer.

[8] As no new evidence was accepted by the RAD, it rejected the Applicants' request for an oral hearing.

[9] As for the merits of the appeal, the RAD found the determinative issues on appeal to be whether the RPD erred in relation to its treatment of the Applicants' political opinion claims, and whether the RPD erred in finding the Applicants have not established an objective basis for their fear of persecution.

[10] On the political opinion claims, the RAD overturned the RPD's finding that there was no documentary evidence of PSHDK membership. The Applicants did provide the RPD with a stamped and headed letter from the PSHDK stating that the male Applicant has been a member of the PSHDK head presidency since 2009. The RAD also clarified that the female Applicant was not a member of the PSHDK but a supporter of its ideals.

[11] The RAD also concurred with the Applicants that the RPD erred by not assessing the Applicants' political opinion claim. It was not sufficient for the RPD to simply find the party to be moribund and not engage in the analysis of the Applicant's claim based on political opinion.

[12] The RAD made its independent assessment and found that there was no information in the National Documentation Package (NDP) for Kosovo to support the Applicants' claim that they would be persecuted for their PSHDK membership or support. The RAD made the same observation for the documentary evidence provided by the Applicants themselves, as it was silent on the targeting of anyone from the PSHDK. Overall, the RAD found that the evidence, the Applicants' testimony, and their Basis of Claim all point to issues regarding relations between Christians and the Muslim majority in Kosovo.

[13] Moreover, there is nothing in the evidence explaining who the alleged attackers were, what their motives were, or whether these attacks were linked to political affiliations with PSHDK or religious beliefs. Overall, the RAD member found that the Applicants did not provide sufficient supporting evidence for their allegations.

[14] Next, the RAD assessed the Applicants' religious risk profile. The RPD and RAD acknowledged that the Applicants' faith was difficult to discern as they have stated that they are not Christians on paper but were raised supporting Christianity. Consequently, based on their evidence, the RAD concluded that the Applicants had established themselves as Christian sympathisers and are alleging a fear of persecution for expressing pro-Christian views, regardless of their actual faith.

[15] The RAD found that the RPD did not ignore the Applicants' evidence and referred to it in its decision. Essentially, the RPD agreed that there are radicals in Kosovo but did not agree that this results in a serious possibility of persecution against the Applicants for being Christian sympathisers. The RAD found there was more evidence in the NDP showing that problems faced by Christians in Kosovo are far less serious than as alleged, resulting in only a mere possibility, and not a serious possibility, of religious persecution against the Applicants as Christian sympathisers.

[16] Therefore, the RAD upheld the RPD's finding on the Applicants' religious risk profile and dismissed their refugee claim.

III. Issue and Standard of Review

[17] This application for judicial review raises the following issues:

A. *Did the RAD err by refusing to admit new evidence?*

B. *Did the RAD err in its findings that the Applicants' evidence was insufficient to make their claim?*

[18] I agree with the parties that the RAD's decision is reviewable on a standard of reasonableness.

[19] In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (at para 10) (*Vavilov*), the Supreme Court of Canada adopted a revised framework to determine the

applicable standard of review and assess the merits of an administrative decision. The Supreme Court of Canada affirmed that the "analysis begins with a presumption that reasonableness is the applicable standard in all cases." Further, "reviewing courts should derogate from this presumption only where required by a clear indication of legislative intent or by the rule of law." There is no reason in this case to depart from this presumption.

[20] In assessing the reasonableness of a decision, *Vavilov* establishes that a "reviewing court must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable" (at para 99). Consequently, the reviewing court must ask whether the decision bears the hallmarks of reasonableness, that is justification, transparency and intelligibility, and whether the decision is justified in relation to the relevant factual and legal constraints that bear on the decision (at para 99). Moreover, a decision is reasonable if it is "based on reasoning that is both rational and logical" (at para 102).

IV. Analysis

A. *Did the RAD err by refusing to admit new evidence?*

[21] Pursuant to subsection 110(4) of the IRPA, a person may present new evidence that arose after the rejection of their claim in limited circumstances: evidence that was not reasonably available or that the person could not reasonably have been expected in the circumstances to have presented at the time of the rejection. If one of these factors is met, then the RAD must ensure that the evidence is not excluded by the criteria set out in *Raza v Canada (Citizenship and Immigration*, 2007 FCA 385, which were cited and confirmed in *Canada (Minister of*

*Citizenship and Immigration) v Sing*h, 2016 FCA 96, at para 38. That is, the RAD must consider the credibility, the relevance and the newness of the evidence.

[22] The criteria to establish relevance and newness are defined as such:

> 2. Relevance: Is the evidence relevant to the PRRA application, in the sense that it is capable of proving or disproving a fact that is relevant to the claim for protection? If not, the evidence need not be considered.
>
> 3. Newness: Is the evidence new in the sense that it is capable of:
>
> > (a) proving the current state of affairs in the country of removal or an event that occurred or a circumstance that arose after the hearing in the RPD; or
> >
> > (b) proving a fact that was unknown to the refugee claimant at the time of the RPD hearing; or
> >
> > (c) contradicting a finding of fact made by the RPD (including a credibility finding)?
>
> [*Singh*, at para 38]

[23] In considering the above test, the parties' submissions, as well as the RAD's assessment of the law and evidence, I do not believe that the RAD's decision on the admission of new evidence was unreasonable.

[24] As established by the RAD, the RPD did not make an analysis or a finding on the claim based on political opinion. Rather, it observed that there was insufficient opinion to establish this claim. The PRD's only findings were that there was no evidence of the male Applicant's membership in the party and that, in any event, the party was moribund.

[25] Yet, these two findings were set aside by the RAD who started with the basic premise that the male Applicant has been a member of the party since 2009 and that the party exists and is currently active in Kosovo.

[26] Consequently, the primary fact that would have to be proven or disproven to establish the claim on the basis of political opinion would not be whether or not the party is moribund, but rather if members of the PSHDK were targeted for their political opinion.

[27] I agree with the RAD that the documents in question do nothing to establish this. Therefore, it was reasonable for the RAD to determine that the two articles are not relevant, as they do not assist in proving or disproving a fact that is relevant to the claim for protection.

[28] Finally, since no new evidence was accepted, the requirements of subsection 110(6) of the IRPA were not met and no oral hearing was required.

B. *Did the RAD err in its findings that the Applicants' evidence was insufficient to make their claim?*

[29] In light of the standards established by the Supreme Court in *Vavilov*, I find that the RAD reasonably concluded that the Applicants did not prove a fear of persecution based on the male Applicant's membership to the PSHDK or the female Applicant's support for the PSHDK.

[30] In my view, the RAD conducted a thorough and logical assessment of the evidence at hand, and made a reasonable decision. The Applicants simply appear to be dissatisfied with the

decision and the manner in which the RAD weighed the evidence. The Applicants have failed to identify a reviewable error that would warrant this Court's interference.

[31] The RAD considered all of the evidence corroborating the proliferation of Islamic radicalism and extremism in Kosovo. It detailed the evidence and clearly explained why this evidence was insufficient to meet the criteria on the established standard. This can be observed at paragraphs 32 to 38 of the decision. For instance:

> [32] I note that there is no reference to the PSHDK Party in the National Documentation Package (NDP) for Kosovo, either which existed at the time of the RPD Hearing or the present NDP, which I am also required to consider. This is not to say the party does not exist, but rather that there is no NDP information to support the Appellants' claim that they would be persecuted for their PSHDK Membership (in the case of the Principal Appellant) and support, since the party is not even mentioned in any context, let alone that of targeting of PSHDK members and supporters.
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> [33] In terms of the documentary evidence provided by the Appellants themselves, with the exception of the letter from the PSHDK themselves, none of this evidence refers to the PSHDK either. Most of the evidence relates to the problems regarding relations between Christians and Muslims in Kosovo, with some evidence about the political situation in general.
>
> [34] I have also considered the allegation regarding the Principal Appellant's role with the PSHDK leadership as a factor. Again, there is no documentary evidence regarding the targeting or persecution of anyone from the PSHDK, from the leadership down to a casual supporter, before me.
>
> [35] I have considered the Principal Appellant's testimony regarding threats against him, but found it to be quite general, and lacking in specificity. This was also the case in relation to the Principal Appellant's BOC. In the case of the BOC Amendment, most of the written testimony provided was related to the fear on religious grounds. What little there is regarding political opinion concerns the Principal Appellant's view on the general situation rather than specific incidents against him or the Spousal Appellant.

[32] The RAD also considered the medical evidence about the attack but found that it did not show that the attack was due to the Applicants' political affiliations with PSHDK, nor did it say anything on who the attackers were or their motivation.

[33] The evidence submitted was simply insufficient to establish a link between the proliferation of Islamic radicalism and extremism in Kosovo and the possible political persecution of those who are members of or associated with the PSHDK. To make such an assumption or conclusion would be pure speculation. The Applicants were not able to identify the attackers and link them to "Islamic radicalism and extremism in Kosovo," nor were they able to connect the reason for the attack to their memberships or support of the PSHDK.

[34] In my opinion, the RAD's independent assessment of the evidence was reasonable and within the boundaries of the factual and legal constrains imposed on it.

V. Conclusion

[35] For these reasons, this Application for judicial review is dismissed. The parties proposed no question of general importance for certification and none arises from the facts of this case.

JUDGMENT in IMM-5303-21

THIS COURT'S JUDGMENT is that:

1. The Application for judicial review is dismissed;

2. Ne 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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