

Federal Court



Cour fédérale

**Date: 20220401**

**Docket: IMM-5696-19**

**Citation: 2022 FC 445**

**Ottawa, Ontario, April 1, 2022**

**PRESENT: Madam Justice St-Louis**

**BETWEEN:**

**SARWARI ZAFAR, SARWARI ZAINAB, SARWARI OBAID,  
SARWARI KAWSAR, SARWARI SANA, SARWARI MATI  
BY HIS LITIGATION GUARDIAN SARWARI ZAFAR, AND THE  
AFGHAN WOMEN'S ORGANIZATION REFUGEE  
AND IMMIGRANT SERVICES**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicants are a family of six, Mr. Zafar Sarwari [the Principal Applicant], his wife, Ms. Zainab Sarwari, and their four (4) children. The Afghan Women's Organization refugee and Immigrant Services is the organisation that applied to sponsor them.

[2] The Applicants seek judicial review of the decision rendered by a migration officer of Citizenship and Immigration Canada at the Embassy of Canada in Turkey [the Officer] rendered on July 3, 2019, and refusing their permanent resident visa application as members of the Convention refugee abroad class [the Decision]. In the Decision, the Officer cited, *inter alia*, section 145 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations] that pertains to the Convention refugee abroad class as well as section 147 of the Regulations that pertains to the country of asylum class.

[3] In brief, the Officer considered that the Applicants' story was not credible and found that there were no credible evidence to establish the Applicants met the requirement of the Convention refugee abroad class as set out in section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] and in paragraph 139(1)(d) and sections 145 and 147 of the Regulations.

[4] For the reasons that follow, I will grant the Applicants' application and will return the file to a new officer for a new determination of the Applicants' permanent resident visa application as members of the Convention refugee abroad class.

## II. Background and Impugned decision

[5] In February 2018, the Applicants left Afghanistan for Tajikistan and in January 2019, they applied for Canadian permanent resident visas as members of the Convention refugee abroad class, sponsored by the Afghan Women's Organization refugee and Immigrant Services. On May 9, 2019, the Applicants were interviewed by the Officer.

[6] On May 15, 2019, the Officer addressed a letter to the Applicants, and outlined both sections 145 and 147 of the Regulations. The Officer stated their concerns that they did not find the events as outlined in the application and at the interview to be credible and that they did not believe that the Principal Applicant had a well-founded fear of persecution in Afghanistan. The Officer particularly raised the below elements, and provided the Applicants with the opportunity to respond: (1) the country condition evidence suggests that the Taliban practice force recruitment only exceptionally; (2) the Taliban are largely Pashtun and the Principal Applicant's family are Tajik; (3) the Applicants lived in Kabul, an area under government control; (4) the complaint submitted to the police refers to having received threats "for a while" whereas the Principal Applicant stated at the interview having received one call; and (5) the complaint does not mention either the Taliban or the Principal Applicant's son.

[7] On June 7, 2019, the Principal Applicant responded, and outlined essentially that (1) he was nervous at the interview; (2) a large amount of members of Taliban act in Kabul, citing a report from AP, AFP and Reuters reporting attacks in Kabul and bombings; (3) the government is too weak to be able to control this; (4) the Taliban do recruit from all ethnic backgrounds and they target all people of Afghanistan; (5) he was nervous but meant that he received the same call repeatedly; and (6) he did not mention the Taliban name in the complaint because he was very scared and nervous to mention the name because Afghanistan's police office and government are very corrupted and a majority of them are connected with the Taliban.

[8] On July 3, 2019, the Officer refused the Applicants' application, decision that is the subject of this judicial review. In their July 3, 2019 letter to the Principal Applicant, the Officer

noted that the Applicants had alleged that they could not return to Afghanistan as the Principal Applicant's son was targeted for forcible recruitment by the Taliban. The Officer indicated having considered the Applicants application forms, the responses they provided at the May 9, 2019 interview and in their response to the Officer's letter of May 15, 2019.

[9] The Officer did not find the information provided to be credible given what they considered the significant discrepancies therein, and did not therefore believe that the Principal Applicant had a well-founded fear of persecution in Afghanistan. In regards to section 147 of the Regulations, the Officer found there was no credible evidence in the Principal Applicant's submissions that he had been, and continue to be seriously affected by civil war, armed conflict or massive violation of human rights.

[10] The Officer noted that (1) the country condition evidence suggests that the Taliban practices forced recruitment only exceptionally, relying on a 2017 report by the Norwegian Country of Origin Information Centre [Norwegian report]; (2) the Principal Applicant's son would appear to be an unlikely candidate as (i) the Taliban are largely Pashtun and the family is Tajik; and (ii) the family lived in Kabul, an area under government control; and (3) the Principal Applicant's explanation was that the Taliban were looking for "smart, young people".

### III. The statutory framework

[11] The relevant provisions of the Regulations read as follows:

**PART 8 – Refugee Classes**

DIVISION 1 – Convention  
Refugee Abroad, Humanitarian-

**PARTIE 8 – Catégories de réfugiés**

DIVISION 1 – Réfugiés au sens de  
la Convention outre-frontières,  
personnes protégées à titre

protected Persons Abroad and Protected Temporary Residents	humanitaire outre-frontières et résidents temporaires protégés
[...]	[...]
General	Dispositions générales
General requirements	Exigences générales
139 (1) A permanent resident visa shall be issued to a foreign national in need of refugee protection, and their accompanying family members, if following an examination it is established that	139 (1) Un visa de résident permanent est délivré à l'étranger qui a besoin de protection et aux membres de sa famille qui l'accompagnent si, à l'issue d'un contrôle, les éléments suivants sont établis :
[...]	[...]
(d) the foreign national is a person in respect of whom there is no reasonable prospect, within a reasonable period, of a durable solution in a country other than Canada, namely	d) aucune possibilité raisonnable de solution durable n'est, à son égard, réalisable dans un délai raisonnable dans un pays autre que le Canada, à savoir :
(i) voluntary repatriation or resettlement in their country of nationality or habitual residence, or	(i) soit le rapatriement volontaire ou la réinstallation dans le pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle,
(ii) resettlement or an offer of resettlement in another country;	(ii) soit la réinstallation ou une offre de réinstallation dans un autre pays;
[...]	[...]
Convention Refugee Abroad	Réfugiés au sens de la Convention outre-frontières
[...]	[...]
Member of Convention refugees abroad class	Qualité
145 A foreign national is a Convention refugee abroad and a member of the Convention refugees abroad class if the	145 Est un réfugié au sens de la Convention outre-frontières et appartient à la catégorie des réfugiés au sens de cette convention

foreign national has been determined, outside Canada, by an officer to be a Convention refugee.

l'étranger à qui un agent a reconnu la qualité de réfugié alors qu'il se trouvait hors du Canada.

[...]

[...]

Member of country of asylum class

Catégorie de personnes de pays d'accueil

147 A foreign national is a member of the country of asylum class if they have been determined by an officer to be in need of resettlement because

147 Appartient à la catégorie de personnes de pays d'accueil l'étranger considéré par un agent comme ayant besoin de se réinstaller en raison des circonstances suivantes:

(a) they are outside all of their countries of nationality and habitual residence; and

a) il se trouve hors de tout pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle;

(b) they have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in each of those countries.

b) une guerre civile, un conflit armé ou une violation massive des droits de la personne dans chacun des pays en cause ont eu et continuent d'avoir des conséquences graves et personnelles pour lui.

#### IV. Issues before the Court and decision

[12] The parties agree that the Court must decide if the Decision is reasonable or not, per the Supreme Court of Canada's decision *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[13] Under the standard of reasonableness, the reviewing court must consider "[t]he decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome", to determine whether the decision is "based on an internally coherent and rational

chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at paras 83, 85; see also *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*] at paras 2, 31).

[14] The Applicants submit that the Decision is unreasonable because (1) the Officer ignored evidence from the cited Norwegian report which directly contradicts their findings; (2) the Officer did not explain why the Applicants’ explanation that the son was young and smart and needed by the Taliban was not an exceptional circumstance; (3) the Officer’s finding on the number of telephone calls received without explanation is unreasonable; (4) the Officer rejecting the letter from the Taliban without making a direct finding of fraud is unreasonable as the document would be enough for the family to be Convention refugees; and (5) the Officer did not explain why they rejected the Applicants’ claim to membership of the asylum class.

[15] One issue allows the Court to grant the Application, and it is thus not necessary to examine the other arguments. The Applicants have demonstrated that the Officer failed to explain why the Applicants, refugees outside of Afghanistan in Tajikistan, have not shown they are personally affected by the civil war, armed conflict of massive violation of human rights in Afghanistan. The Applicants submit that it is not incumbent on them to demonstrate that they are being threatened by the Taliban in order to meet the requirements of the asylum class, and assert that there was evidence of war in Afghanistan in the record.

[16] Section 147 of the Regulations clearly states that a foreign national is a member of the country of asylum if they have been determined by an officer to be in need of resettlement

because (1) they are outside all of their countries of nationality and habitual residence; and (2) they have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in each of those countries. The Applicants referred to evidence on the Afghan state in their reply to the procedural fairness letter, and the Officer did not address or engage with their evidence in that regard. I agree with the Applicants. Once the Officer themselves raised section 147 of the Regulations, and given the Applicants' response to the procedural fairness letter, the Officer had to provide some explanation as to why the Applicants did not meet the requirements of the country of asylum class. In the particular circumstances of this case, this is a fatal flaw.



**JUDGMENT in IMM-5696-19**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is granted;
2. No question is certified.

"Martine St-Louis"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5696-19

**STYLE OF CAUSE:** SARWARI ZAFAR, SARWARI ZAINAB, SARWARI OBAID, SARWARI KAWSAR, SARWARI SANA, SARWARI MATI BY HIS LITIGATION GUARDIAN SARWARI ZAFAR, AND THE AFGHAN WOMEN'S ORGANIZATION REFUGEE AND IMMIGRANT SERVICES v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC BY VIDEOCONFERENCE

**DATE OF HEARING:** MARCH 21, 2022

**JUDGMENT AND REASONS:** ST-LOUIS J.

**DATED:** APRIL 1, 2022

**APPEARANCES:**

Me Ronald Poulton FOR THE APPLICANTS

Me Hillary Adams FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Poulton Law Office FOR THE APPLICANTS  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario