

Federal Court



Cour fédérale

Date: 20230605

Docket: IMM-7157-22

Citation: 2023 FC 777

Toronto, Ontario, June 5, 2023

PRESENT: Madam Justice Go

BETWEEN:

**Ilyas Ibrahim TAGARI
Saheda Ilyas TAGARI
Rehan Ilyas TAGARI
Faisal TAGARI
Ibrahim Ilyas TAGARI**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Ilyas Ibrahim Tagari [the “Principal Applicant” or “PA”], his wife, and their three children [together, the “Applicants”] are citizens of Lesotho, where the PA owned a business.

The Applicants fear a risk to their lives because they refused to comply with demands for extortion from criminals, who threatened to harm them.

[2] The Refugee Protection Division [RPD] rejected the Applicants' claim in May 2021 on the basis that the risks they faced in Lesotho were not individualized. In a decision dated January 21, 2022, the Refugee Appeal Division [RAD] upheld the RPD's conclusion surrounding the Applicants' risks and confirmed that they are neither Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]* [Decision].

[3] The Applicants seek judicial review of the Decision. For the reasons set out below, I find the Decision reasonable and I dismiss the application.

II. Issues and Standard of Review

[4] The only issue is whether the Decision is reasonable. The Applicants argue that the RAD erred by failing to consider and assess the heightened risk they face as members of the Indian minority in Lesotho. The Applicants further argue the RAD erroneously relied on their subjective evidence in finding that the risks they face are no greater than those faced by other business owners.

[5] The parties agree that the Decision is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

[6] 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 that constrain the decision-maker: *Vavilov* at para 85. Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences: *Vavilov* at paras 88-90, 94 and 133-135.

[7] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant: *Vavilov* at para 100. Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances: *Vavilov* at para 125. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep”: *Vavilov* at para 100.

III. Analysis

[8] The framework of analysis for generalized risk arises from the statutory provisions found in subparagraph 97(1)(b)(ii) of *IPRA*, which can be found in Appendix A.

[9] In the Decision, the RAD agreed with the Applicants that the RPD failed to clearly identify the nature and degree of the Applicants’ risk before examining whether it is faced generally by others in Lesotho. The RAD set out the two-stage analysis confirmed by the Court in *Portillo v Canada (Citizenship and Immigration)*, 2012 FC 678 [*Portillo*] at paras 40-41: see also *Correa v Canada (Citizenship and Immigration)*, 2014 FC 252 [*Correa*] at paras 74-77.

[10] In essence, the two-stage analysis requires a claimant to establish, first of all, that there is a personal risk, and the decision-maker must identify the nature of ongoing or future risk, the basis for the risk, and the degree of risk: *Portillo* at para 40. Second, if there is a personal risk, the claimant must establish that the risk faced by them is not one faced generally by others in or from their country: *Portillo* at paras 41-42. Here, the decision-maker must determine whether the nature and degree of risk faced by the claimant transcends the risk faced by the population generally, or at least a significant subset of the population: *Correa* at paras 83-84.

[11] Applying the two-stage analysis, the RAD found that the Applicants failed to establish (1) that they face personal risk and (2) that the risk they face is not one faced generally by others in or from Lesotho. As such, the RAD confirmed the RPD's conclusion that the Applicants are not persons in need of protection pursuant to section 97 of *IRPA*.

A. First Prong

[12] For the first prong of the risk assessment, the RAD characterized the Applicants' risk as arising from their refusal to comply with the demands of criminals, who targeted the Applicants because of their ownership of a car dealership and possession of valuable assets. The RAD acknowledged that the criminals threatened the Applicants that they would resort to bodily harm if the Applicants did not comply with the demands.

[13] However, the RAD was not persuaded that the degree of risk was sufficient to remove the Applicants' situation from the category of generalized risk. Based on the PA's testimony, the RAD found that the incidents of robberies, often violent, beginning in 2001 were common in

Lesotho. The RAD also found that a violent September 2019 robbery was not connected to the threats of extortion received by the PA a few months earlier in July 2019, when the Applicants allege their risks escalated. The RAD also found no evidence that the criminals involved in the July 2019 threats continued to target the Applicants after following the PA for two weeks.

[14] As such, based on the evidence that the criminals do not have a continued interest in the Applicants, and the fact that the PA sold his business after their departure from Lesotho, the RAD concluded that the risk faced by the Applicants was not personal and therefore failed to satisfy the first prong of the test.

[15] The Applicants argue that the RAD failed to consider the dual aspect of their refugee claim, which relied in part on their identity as members of the Indian minority in Lesotho, and erred by only assessing their risk based on the PA's identity as a business owner.

[16] The Applicants rely on *Trigueros Ayala v Canada (Citizenship and Immigration)*, 2012 FC 183 [*Trigueros Ayala*], where the Court stated that where a more notable portion of a population is "subjected to threats of extortion and violence, the evidence must demonstrate that the Applicants have experienced something that is beyond what has been experienced by the population that is otherwise subjected to such threats": at para 8.

[17] In *Trigueros Ayala*, the evidence showed that twenty percent of small businesses made extortion payments in response to threats of violence, and the Court found that the applicants fell in that twenty percent as there was no evidence that they suffered risk greater than what those

twenty percent were exposed to: at para 9. In this case, pointing to evidence in the National Documentation Package [NDP] for Lesotho, the Applicants highlight that only 0.3 percent of the population is composed of minority ethnic groups such as Europeans and Asians. As such, the Applicants assert that if their ethnicity was considered by the RAD, the risk they face would appear “far less generalized” than what was found in the Decision, based on the RAD’s focus on business owners in general.

[18] I find the Applicants’ arguments unpersuasive.

[19] Contrary to their assertion, I do not find that the Applicants made their Indian minority status a “central aspect” of their claim. Rather, their claim focused on the risk they faced from the unknown individuals who attempted to extort them.

[20] I acknowledge that the Applicants did mention being an Indian minority in the PA’s Basis of Claim [BOC] narrative. However, I agree with the Respondent that read as a whole, the Applicants’ claim focused on the risk they face due to their perceived wealth. The PA’s BOC narrative reflects that the Applicants’ Indian minority status, similar to their status as a business owners, is tied to that perception:

I am not sure why I am targeted in Lesotho but as best as I can determine and what I believe is that I am targeted because people believe that the Indian minority in Lesotho have money and as an obvious transparently open business owner, I would have appeared to have money but now I am just targeted for extortion. I am targeted for violence for not agreeing to the extortion and I can’t get help.

[21] I also acknowledge that the PA mentioned once during the RPD hearing that he believes the incidents of violence, such as the one in September 2019, happen more to “foreigners,” which presumably refer to minority groups making up 0.3% of the population. However, the Applicants also testified that such violent incidents are common and happen “all over Lesotho.” Thus, far from making their Indian minority status “central” to their claim, the Applicants’ evidence and submission in this regard was equivocal at best.

[22] The Applicants also mentioned their Indian minority status in the “Facts” section of their appeal submissions to the RAD. However, the Applicants did not provide any submissions on this issue to pursue this argument. More importantly, the Applicants did not challenge the RPD’s findings in relation to the Applicants’ race and nationality as a basis of their claim.

[23] As noted in para 13 of the RPD decision:

When asked if [the Applicants] feared persecution based on their faith/religion, [the PA] testified ‘no’. He added the robbers just wanted money and were committing crimes to achieve their goal. When asked if they feared persecution based on their race, he stated ‘no’. When asked if they feared persecution based on being a member of a particular social group including gender as a woman, he responded ‘no’. Then, I asked the principal claimant to describe the basis of their claim. He testified they experienced harm and threats from robbers in the past in Lesotho and they are fearful of harm from if they returned to Lesotho. Then, I asked the principal claimant what, in his opinion, is the basis of the robbers’ and extorters’ intent to harm him and his family. He testified they wanted money and for that reason they were indulging in the acts of crime including, robbing, threatening and assaulting.

[Emphasis added]

[24] On appeal to the RAD, the Applicants did not dispute the RPD's silence regarding the Applicants' risk as Indian minorities. Notwithstanding this lack of dispute, the RAD did consider, albeit briefly, whether the Applicants' race, ethnicity, or national origin was a motivator in any of the crimes at para 22 of the Decision. The RAD concluded in the negative, noting that the Applicants did not describe anything about their experiences that would indicate otherwise.

[25] The Applicants bear the onus to set out their risks and provide an evidentiary basis for such risks: see *Lawal v Canada (Citizenship and Immigration)*, 2021 FC 964 [*Lawal*] at para 20. The Applicants cannot fault the RAD for not considering their risks as members of the Indian minority when they themselves did not make this a central aspect of their claim, nor raise this argument with evidence on appeal: *Lawal* at para 20.

[26] Further, as already noted above, the Applicants specifically denied at the RPD hearing that they were targeted on the basis of their race.

[27] I also reject the Applicants' argument that their concession of not being targeted based on nationality or race arose in the context of questioning regarding section 96 of the *IRPA*, and that they face a serious risk to their lives or safety under section 97, exacerbated by their Indian minority status.

[28] Having reviewed the transcript and the audio recording of the RDP hearing, I find no support for the position that the Applicants' concession was meant only for questioning under

section 96. I further note that their former counsel in their submissions to the RPD never advanced any submission linking their race and their section 97 claim. The only time counsel mentioned the Applicants' nationality or race before the RPD was in the context of their citizenship in India and the issues they faced as Muslims in India.

[29] Based on all of the above, I find that the RAD was justified in finding that the analysis does not pass the first stage of the framework for the generalized risk assessment.

B. Second Prong

[30] While not necessary for it to do so, the RAD went on to consider the second prong of the framework and noted that the evidence given by the PA indicated that the violent robberies he experienced throughout the years were not linked in any way, and are commonly experienced by business owners in the country. The RAD thus concluded that the nature and degree of risk the Applicants face in Lesotho from criminals demanding money and other valuables is not any greater than that faced by other business owners in the country, which make up a large subset of the population.

[31] The Applicants take issue with the RAD's reliance on their subjective evidence, notably the PA's testimony regarding the alleged prevalence of crime against businesses in Lesotho. The Applicants argue that the RAD relied on the PA's testimony, which was based on their experience as minority Indian business owners, and accepted a picture of crime in Lesotho unsupported by the objective evidence. The Applicants submit that the crime rates generally experienced in Lesotho are "likely not equivalent" to the rates they themselves experienced,

highlighting that the NDP does not indicate any disproportionately high crime rate similar to what they experienced. The Applicants opine that if the situation for business owners were as dire as described by the PA in his testimony, the NDP would have mentioned it.

[32] The Applicants' arguments are without merit. First, I do not find it unreasonable for the RAD to consider and accept the Applicants' own evidence provided by the PA's testimony. Indeed, the Decision would have been unreasonable had the RAD failed to consider the Applicants' own subjective evidence on a material point, in the absence of any negative credibility finding or otherwise contradictory objective evidence.

[33] Second, I disagree with the Applicants that the RAD ought to have considered the incongruity between the Applicants' own evidence regarding the prevalence of violent crimes on the one hand, and the lack of information about these crimes in the NDP on the other.

[34] The absence of information in the NDP about crimes in Lesotho, a small country with limited country conditions reports, did not make the Applicants' subjective evidence "incongruous." Further, it was the Applicants' onus to show that the risk they face is not widespread in Lesotho. The RAD appropriately accepted the PA's testimony in this regard; doing so did not render the Decision unreasonable.

[35] In any event, the RAD's findings with respect to the first prong was determinative of the Applicants' appeal.

[36] In light of all of the above, I conclude that the Applicants have failed to demonstrate that there were reviewable errors in the Decision that warrant intervention from this Court.

IV. Conclusion

[37] The application for judicial review is dismissed.

[38] There is no question for certification.

JUDGMENT in IMM-7157-22

THIS COURT'S JUDGMENT is that:

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

"Avvy Yao-Yao Go"

Judge

APPENDIX A:

Immigration and Refugee Protection Act, SC 2001, c 27
Loi sur l'immigration et la protection des réfugiés, LC 2001, ch 27

Person in need of protection	Personne à protéger
<p>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</p> <p>(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or</p> <p>(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if</p> <p>(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,</p> <p>(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,</p> <p>[...]</p>	<p>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 :</p> <p>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;</p> <p>b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :</p> <p>(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,</p> <p>(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,</p> <p>[...]</p>

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7157-22

STYLE OF CAUSE: ILYAS IBRAHIM TAGARI, SAHEDA ILYAS TAGARI, REHAN ILYAS TAGARI, FAISAL TAGARI, IBRAHIM ILYAS TAGARI v THE MINISTER OF CITIZENSHIP, AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 23, 2023

JUDGMENT AND REASONS: GO J.

DATED: JUNE 5, 2023

APPEARANCES:

David Orman FOR THE APPLICANTS

Andrea Mauti FOR THE RESPONDENT

SOLICITORS OF RECORD:

David Orman FOR THE APPLICANTS

Orman Immigration Law
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario