Federal Court Cour fédérale

Date: 20230731

Docket: IMM-9566-22

Citation: 2023 FC 1040

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 31, 2023

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

ENNIO CELESTINO MINARINI AVILA
DANIEL ALEJANDRO MINARINI PEREZ
CARLOS DAVID MINARINI PEREZ

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicants—Ennio Celestino Minarini Avila and his two adults sons, Daniel Alejandro Minarini Perez and Carlos David Minarini Perez—are citizens of Venezuela and Italy. They are seeking judicial review of a decision by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada [IRB] dated September 8, 2022. The RAD confirmed

the determination of the Refugee Protection Division [RPD] that the appellants are not Convention refugees or persons in need of protection.

[2] The applicants, like Mr. Minarini Avila’s wife, Alba Corina Perez de Minarini, claimed refugee protection in Canada. The RPD accepted the claim of Ms. Perez de Minarini, who holds Venezuelan nationality but is not an Italian citizen, having concluded that she would face the serious possibility of persecution on the basis of her political opinion if she were to return to Venezuela. Ms. Perez de Minarini is not a party to these proceedings.

[3] Neither Mr. Minarini Avila nor his son Carlos has ever lived in Italy; only Daniel has lived there for six months to study.

[4] Before the RPD, Mr. Minarini Avila testified that he did not wish to relocate there because he does not speak Italian. He also alluded to experiences of other members of the Venezuelan community who were not well received there. His son Daniel testified that, during the six months he spent studying in Italy, somebody told him that, despite his Italian passport, he remained a foreigner from Venezuela. Moreover, the applicants relied on the documentary evidence in the National Documentation Package [NPD], which relates several incidents of racist crimes and acts of violence. They denounced Italian elected officials for blaming immigrants for the pandemic, in addition to engaging in anti-immigration rhetoric. They also presented a psychological report on Daniel’s state of health, which is relevant to the reasonableness and viability of having all of the appellants settle in Italy.

[5] The RPD rejected the applicants' claim; the determinative issues before the RPD, as before the RAD, were whether the discrimination in Italy amounted to persecution and the existence of state protection. The RPD judged that the applicants had failed to demonstrate that they would face a serious possibility of persecution in Italy. It recognized the problems of racism, xenophobia and intolerance existing in Italy, but noted the objective evidence indicating that the Italian authorities have been addressing these problems by way of a national action plan to fight discrimination. It concluded that Italy provides adequate protection to individuals on its territory. The two adult sons had expressed a fear of persecution in the area of employment based on their membership in the particular social group of young men. The RPD concluded that, given their age, they would be part of the general population with an unemployment rate of 9.8%, and that they would therefore not face employment discrimination. Moreover, although the RPD recognized that a discriminatory atmosphere and inter-ethnic tensions did prevail in Italy, it was not persuaded that the situation amounted to persecution.

[6] The RAD confirmed the RPD's decision. It was of the view that the incident reported by the son Daniel, despite the vexatious and discriminatory nature of such comments, was not criminal in nature and did not warrant intervention by the authorities. It noted that the other discriminatory experiences reported by the applicants were mainly hearsay from members of the Venezuelan community who had not received a warm welcome. The RAD referred to *Rajudeen v Canada (Minister of Employment and Immigration)*, [1984] FCJ No. 601 (QL), and *Canada (Attorney General) v Ward*, 1993 CanLII 105 (SCC), [1993] 2 SCR 689, to define persecution.

[7] The RAD recognized the evidence in the NDP indicating that the state protection from discriminatory and xenophobic acts was not perfect, but held that the RPD had not erred in determining that the state protection was adequate. It noted that the Italian judicial system was implementing fundamental guaranteed rights for all nationals. While the NDP does document racist crimes, these mainly concern people of Roma origin rather than Venezuelans or people from Latin America. It noted that the same report in the NDP states that the Foggia authorities intervened to punish people responsible for violence against people of Latin American origin. As for the psychological report, the RAD determined that the applicants had failed to establish that Italy could not offer similar psychological services or that such services could not be offered remotely online.

[8] Finally, the RAD noted that Ms. Perez de Minarini's claim was accepted and that she would, at the very least, be able to include her husband in her application for permanent residence (*Chavez Carrillo v Canada (Citizenship and Immigration)*, 2012 FC 1228 at para 18).

[9] This application for judicial review raises the issue of whether the decision was reasonable. The standard of reasonableness applies to the merits of the visa officer's decision (*Musasiwa v Canada (Citizenship and Immigration)*, 2021 FC 617 at para 22; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 23).

[10] The applicants are essentially submitting that the RAD engaged in a selective assessment of the documents contained in the NDP regarding the level of discrimination in Italy, the adequacy of the state protection and discrimination in the realm of employment, in the context of

the direct evidence in the record; they argue that the RAD ignored parts of the very reports it had cited, erred in not taking into account this contradictory evidence, did not connect the evidence in the NDP to their particular circumstances, and did not truly ask themselves whether, given the applicants' circumstances, they could, realistically and safely, take refuge in Italy.

[11] I simply cannot agree with the applicants. The problem with the applicants' arguments is that, aside from the six months that Daniel spent studying in Italy, they have never spent any time there; apart from the single example of discrimination suffered by Daniel when he was told that, despite his Italian passport, he would never be Italian, there is no evidence that they have personally suffered discrimination of any kind. Their entire argument is based on the NDP and anecdotal evidence from friends and acquaintances.

[12] The RAD recognized that the state protection was not perfect, but the applicants have not demonstrated that they would not have access to adequate protection. Even more importantly, the applicants' arguments do not demonstrate that the RAD erred in its assessment of the alleged persecution. Although the objective evidence supports the fact that race-based discrimination exists in Italy, especially against migrants, the applicants have not persuaded me that it was unreasonable for the RAD to conclude that the applicants had failed to establish that this discrimination amounted to persecution.

JUDGMENT in IMM-9566-22

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. No question is certified.

"Peter G. Pamel"
Judge

Certified true translation
Francie Gow

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-9566-22
STYLE OF CAUSE:	ENNIO CELESTINO MINARINI AVILA, DANIEL ALEJANDRO MINARINI PEREZ, CARLOS DAVID MINARINI PEREZ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
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APPEARANCES:

Francisco Alejandro Saenz Garay	FOR THE APPLICANTS
Rosine Faucher	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Saenz Avocat Montréal, Quebec	FOR THE APPLICANTS
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT