Federal Court  Cour fédérale

Date: 20240201

Docket: IMM-11123-22

Citation: 2024 FC 166

Ottawa, Ontario, February 1, 2024

PRESENT: Madam Justice Pallotta

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

VERONIQUE MARIE BELLAMY

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Minister of Citizenship and Immigration (Minister) seeks judicial review of an October 27, 2022 decision (Decision) of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board. The RAD set aside the Refugee Protection Division's (RPD) July 16, 2021 decision, and substituted its own decision that the respondent (now known as Daria Bloodworth)

is a Convention refugee under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

II. **Background**

[2] Ms. Bloodworth is a citizen of the United States of America. She is a transgender woman who was living in Colorado before coming to Canada in November 2019 to seek refugee protection.

[3] Ms. Bloodworth claims protection based on a fear of transphobic persecution, including by Americans, American society generally, and specific individuals. In particular, she fears she will be the target of threats and violence by her former roommate, her former landlord, and a debt collection agency. Ms. Bloodworth states the police and US justice system will not protect her.

[4] Ms. Bloodworth states that in May 2019, her roommate at Colorado State University threatened her with a gun while making transphobic statements. She immediately went to the university police who called the Fort Collins Police Service. After interviewing her, the Fort Collins police arrested the roommate, confiscated his gun, and charged him with "felony menacing" under Colorado state law. Menacing is a crime of knowingly placing or attempting to place another person in fear of imminent serious bodily injury by threat or physical action. If committed with a weapon, it is a felony offence. The court issued a mandatory protection order as a condition of the roommate's release while the charges were pending, restraining him from contacting or approaching Ms. Bloodworth.

[5] In July 2019, after Ms. Bloodworth was told the district attorney was planning to drop the charges against the roommate, she filed for a civil protection order. A magistrate judge granted a temporary protection order. The case against the roommate was formally dismissed on July 22, 2019 and on the same day, a judge considered whether to make the temporary civil protection order permanent. The judge denied Ms. Bloodworth's request, finding she did not meet the criteria for issuing a permanent protection order.

[6] With no protection orders in place, Ms. Bloodworth states the roommate stalked her, including by standing outside her residence with a gun, and he pursued her despite changing residences twice. Ms. Bloodworth states she called the police or went to the police station to report events of stalking behaviour, but did not receive protection. She was told her former roommate had the right to open carry a firearm. Eventually, she stopped calling the police.

[7] Ms. Bloodworth believes the roommate was able to find her because her former landlord gave him her new addresses. Ms. Bloodworth is refusing to pay a judgment in the landlord's favour for unpaid rent and property damage (she maintains she does not owe the money), and because of the outstanding judgment she is required to provide address, employment, and bank information to the Fort Collins court registry, which the landlord can access. Ms. Bloodworth saw her former roommate in the court gallery at the hearing of the landlord and tenant matter, and believes one reason he is stalking her could be because the landlord instructed him to intimidate her into paying the judgment.

[8] Also, Ms. Bloodworth states a debt collection agency is threatening legal action to recover money it claims to be owed.

III. **The RAD's Decision**

[9] The RPD rejected Ms. Bloodworth's claim for protection, finding she had not rebutted the presumption of state protection with clear and convincing evidence. The RPD determined Ms. Bloodworth is not a Convention refugee or a person in need of protection on the basis that operationally adequate state protection is available to her in the US. Ms. Bloodworth appealed the RPD's decision to the RAD.

[10] The RAD set aside the RPD's decision, finding the RPD had erred by failing to consider critical evidence about events that took place after the charges against the roommate were dropped and a protection order was no longer in place. Specifically, the RAD found the RPD had failed to consider that Ms. Bloodworth was denied police protection or investigation when she reported continued stalking by her former roommate seven separate times, and the RPD had failed to consider how Colorado's open carry gun laws combined with the general climate of anti-trans hatred growing in the US could make Ms. Bloodworth perpetually vulnerable and at risk.

[11] The RAD conducted an independent assessment, finding the evidence did not establish that the landlord or debt collection agency acted in a persecutory way. The RAD found Ms. Bloodworth experienced past persecution by her parents, and she had experienced considerable discrimination in employment and relationships with housemates. On a forward-looking basis,

the RAD found Ms. Bloodworth would face a serious possibility of persecution by her former roommate. The RAD explained that its reasons therefore focused on Ms. Bloodworth's access to state protection against the threats and stalking by her former roommate, and her ability to relocate elsewhere in the US in order to be protected from him.

[12] The RAD concluded on a balance of probabilities that state protection would not be forthcoming for Ms. Bloodworth in Colorado, as she would more than likely be denied protection if she were to report further threats from the roommate. In addressing the viability of potential internal flight alternatives (IFAs), the RAD identified six possible IFA states but concluded that Ms. Bloodworth does not have a viable IFA because relocation for a person with her profile, in her circumstances, would be unreasonable.

IV. **Issues and Standard of Review**

[13] The issue on this application for judicial review is whether the RAD committed reviewable errors in its state protection or IFA assessments that render the decision unreasonable.

[14] The Minister raises the following alleged errors.

[15] On state protection, the Minister alleges the RAD misapplied the test, particularly as it relates to a democratic country like the US. The Minister alleges: (i) the RAD's conclusion that adequate state protection would not be available to Ms. Bloodworth was unreasonable in view of the evidence and the RAD's own findings; and (ii) the RAD failed to consider whether Ms. Bloodworth had exhausted all reasonable options in seeking state protection.

[16] On IFA, the Minister alleges: (i) the RAD reversed the onus by dismissing Delaware, an IFA it had raised, due to a lack of evidence on the treatment of transgender individuals in the state; and (ii) for New York City, having accepted that the city was "safe" under the first prong of the IFA test, the RAD reversed the onus and lowered the high threshold applicable to the second prong of the test.

[17] Whether the RAD's decision is unreasonable is determined according to the principles set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. The reasonableness standard of review considers whether a decision bears the hallmarks of reasonableness—justification, transparency, and intelligibility: *Vavilov* at para 99. A reasonable decision is based on an internally coherent and rational chain of analysis and it is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85. The Minister, as the party challenging the RAD's decision, bears the onus of demonstrating that it is unreasonable: *Vavilov* at para 100.

V. **Analysis**

A. *State protection*

[18] In its decision, the RAD stated it considered whether Ms. Bloodworth received adequate state protection in the context of the risks she faces as a trans woman.

[19] The RAD found Ms. Bloodworth was not denied state protection when she first complained of threats made by the roommate in May 2019. The police, district attorney, and courts acted appropriately with respect to the threats.

[20] However, the RAD found Ms. Bloodworth was denied adequate protection after the charges against the roommate were dropped. While the RAD noted there was nothing improper about the police response, and it understood why the police were unable to treat the roommate's lawful presence and possession of a weapon as a threat, the RAD found the RPD's assessment of Ms. Bloodworth's risk to be lacking. It was not sufficient to say there was no crime for the authorities to act on. The RAD found that the roommate was attempting to terrorize Ms. Bloodworth by repeatedly appearing near her residences with a gun, and the ability to open carry guns heightens the risk and fear of fatal assault for trans individuals who already face elevated risks of random and targeted violence.

[21] The RAD noted similarities between Ms. Bloodworth's case and the circumstances in *Canada (Citizenship and Immigration) v Miller*, 2022 FC 1131 [*Miller*], where the RAD was found to have erred by requiring perfect rather than adequate US state protection for a woman who feared harm by her abusive, white nationalist husband. However, the RAD found *Miller* was distinguishable, and not determinative of the question of state protection in Ms. Bloodworth's case.

[22] The RAD concluded (footnotes omitted):

> [64] Ms. B is a trans woman who has lived in several US states and experienced discrimination or persecution in each beginning in her

> youth. She most recently sought safety in one of the seven US states that offer full-ranging public accommodations laws. Despite this, she has encountered discrimination that led to her relocation to different cities within Colorado. She remained in Colorado for over a decade until she was met with police refusal to investigate her reports of continued stalking by a man whom the authorities knew possessed a gun and had uttered transphobic slurs against her. Again, I note that Colorado is an open carry state and, therefore, that Ms. B would not have recourse to any protection unless and until her ex-roommate escalated his behaviour. For this reason, the refusal by police to investigate Ms. B's repeated reports of stalking by her ex-roommate lead me to find that she was denied adequate protection.
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> [65] There is little to no evidence before me about the policies that are actually in force at police stations in Colorado. I have no evidence to indicate whether local police have received training or any kind of advice on interacting with trans individuals and understanding the unique threats that the trans community faces. The evidence I do have indicates that, on a balance of probabilities, there are only weak policies, if any exist at all, and that training was likely never offered at all. The anecdotal evidence of trans individuals' encounters with police also suggests that police sometimes lose interest in responding to similar complaints by the same person. Considered alongside previously cited evidence of police tendencies to minimize the threats and harms faced by trans victims, as well as Ms. B's own experience of police dismissing her complaints about stalking, I find that Ms. B is more likely than not to be denied further protection in Colorado if she again reports threats from her ex-roommate. As a result, I find, on a balance of probabilities, that state protection would not be forthcoming for Ms. B in Colorado. I further accept Ms. B's evidence that her repeated experience of having her complaints dismissed without investigation or action have caused her to be reluctant to approach the police for help in the future.

[23] The Minister submits a state is presumed to be capable of protecting its citizens, and a refugee claimant must provide clear and convincing evidence to demonstrate that state protection is inadequate: *Hinzman v Canada (Citizenship and Immigration)*, 2007 FCA 171 at paras 43-44 [*Hinzman*], citing *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at 724-725 [*Ward*]. The jurisprudence, including Federal Court of Appeal jurisprudence, reflects the heavy burden

facing a refugee claimant attempting to rebut the presumption of adequate state protection for the US in particular: *Hinzman* at paras 45-46; *Canada (Citizenship and Immigration) v Hund*, 2009 FC 121 at paras 23-24; *Miller* at para 64. As a democratic country with a system of checks and balances among its three branches of government, including an independent judiciary and constitutional guarantees of due process, a claimant bears a heavy burden in attempting to rebut the presumption that the US is capable of protecting them, and would be required to prove they had exhausted all the domestic avenues available to them without success before claiming refugee status in Canada: *Hinzman* at para 46; see also *Miller* at para 64.

[24] The Minister contends the RAD erred by imposing a standard of perfect state protection, and by relying on country condition evidence to speculate that future police protection would not be forthcoming when that finding did not reflect Ms. Bloodworth's personal experience, and was not based on the kind of clear and convincing evidence that is necessary to rebut the presumption of US state protection. The Minister states: the RAD's reasons are silent on the level of democracy in the US and the consequent burden on Ms. Bloodworth; the RAD did not identify any gap in Colorado's laws, which include state-level laws to protect transgender individuals; the state protection analysis was unduly narrow and internally inconsistent in that the RAD placed undue focus on the period after the charges were dropped, failed to consider its own findings of adequate state protection, and relied on speculative findings that were not supported by the evidence.

[25] The Minister submits that, even assuming a local police failure, such a failure is insufficient to rebut the presumption. It was incumbent on Ms. Bloodworth to demonstrate she

took all objectively reasonable measures to obtain state protection, and the reasons do not address this point. The RAD did not address other options available, such as escalating any concerns with the local police response, or resorting to alternative law enforcement agencies. The RAD did not address the fact that in response to the RAD's notice asking whether she sought a new protection order after the stalking incidents, Ms. Bloodworth responded that she had not, explaining "[g]iven that police would not issue case numbers or reports for the repeated instances of stalking, it was nigh impossible to prove to a court that refused to look at my evidence that I was in danger and needed a protection order." The Minister states Ms. Bloodworth may have been able to obtain a protection order upon proof of repeated stalking, which is particularly relevant in view of the RAD's findings that the court had not acted improperly in refusing her application for a permanent protective order and it was understandable that the police could not act when the roommate was not in breach of a protective order. The RAD's reliance on unsuccessful efforts with local police was contrary to the Federal Court of Appeal's guidance in *Hinzman*, and in *Canada (Citizenship and Immigration) v Kadenko*, [1996] 124 FTR 160, 1996 CanLII 3981 (FCA) at 3 [*Kadenko*].

[26] Ms. Bloodworth states democracy alone does not ensure effective state protection (*Sow v Canada (Citizenship and Immigration)*, 2011 FC 646 at paras 11-13; *Alassouli v Canada (Citizenship and Immigration)*, 2011 FC 998 at para 42), and she provided ample evidence to rebut the presumption that the US is capable of protecting its citizens. Ms. Bloodworth submits her evidence in this case went beyond the standard of proof required by *Ward*, and included judicial admissions and US judicial precedents impeaching the independence and fair-mindedness of the judiciary itself, at all levels of court. The only logical conclusion that can be

drawn from the evidence is that the US is incapable of protecting its citizens. In any event, Ms. Bloodworth contends that the question of whether the US is capable of protecting its citizens is irrelevant in view of her evidence showing that the US is unwilling to do so.

[27] Ms. Bloodworth states the roommate is *one* relevant agent of persecution, and the RAD's findings support its conclusion that state protection is not available to her. Any errors the RAD made—for example, by refusing to admit relevant evidence, by ignoring evidence showing that she exhausted all options to obtain state protection, and by making erroneous findings that the state provided adequate protection in response to the May 2019 threats and there was no impropriety on the part of police, the district attorney, or the court—operate in the Minister's favour. Ms. Bloodworth submits none of the errors the Minister raises would impact the overall decision. The RAD correctly concluded that state protection was inadequate because, even functioning, it did not yield actual results: *Moran Gudiel v Canada (Citizenship and Immigration)*, 2015 FC 902 at paras 24-25 [*Moran Gudiel*]. The presumption of state protection is rebutted by clear and convincing evidence that protection is inadequate or non-existent: *Flores Carrillo v Canada (Minister of Citizenship and Immigration)(FCA)*, 2008 FCA 94 at para 38 [*Flores Carrillo*].

[28] Ms. Bloodworth contends the Minister's arguments do not confront the extensive evidence that she is a Convention refugee, or they are contrary to the evidence. She provided evidence to the RAD that demonstrates unequal access to justice for transgender Americans, including state-level break out reports and the 2015 US Transgender Survey by the National Center for Transgender Equality (2015 USTS) showing abuse and nationwide distrust of police

and the judiciary. Ms. Bloodworth states she did not simply assert a subjective reluctance to engage the state. She provided sufficient evidence that she had exhausted all options until it was no longer reasonable for her to seek state protection. A claimant is not required to seek state protection that would not be forthcoming: *Ward* at 724.

[29] Ms. Bloodworth submits the RAD did not disregard the obligation to rebut state protection, but found she met her burden. She states the RAD did not impose a perfect protection standard; rather, it imposed the standard in *Moran Gudiel* that state protection must yield actual results.

[30] I find the Minister has met the burden to establish reviewable errors in the RAD's state protection analysis that render the RAD's decision unreasonable according to the principles in *Vavilov*. I agree that the RAD imposed an incorrect standard of perfect state protection. I also agree that the RAD's findings of inadequate state protection were not based on the kind of clear and convincing evidence that was necessary to rebut the presumption of US state protection.

[31] Refugee protection serves as a back up to the protection one expects from their country of nationality; it is surrogate protection, activated only upon failure of national protection: *Ward* at 709. A state protection assessment is forward-looking, and considers whether the protection is operationally adequate: *AB v Canada (Citizenship and Immigration)*, 2018 FC 237 at paras 15-17.

[32] The law is well settled that, in the absence of a complete breakdown of state apparatus, it should be assumed that states are capable of protecting their own citizens: *Ward* at 724-725; *Miller* at para 63. To rebut the presumption of state protection, there must be clear and convincing evidence of the state's inability to provide adequate protection: *Ward, ibid*; see also *Flores Carrillo* at paras 25-26. This requires more than showing that state protection is not perfect or it is not always effective; refugee claims were never meant to allow claimants to seek out better protection than that from which they benefit already: *Ward* at 725-726; *Burai v Canada (Citizenship and Immigration)*, 2020 FC 966 at para 46, citing *Canada (Minister of Employment and Immigration) v Villafranca*, [1992] FCJ No 1189 (FCA) at para 7 [*Villafranca*].

[33] Refugee claimants attempting to rebut the presumption that the US is capable of protecting them have a "heavy burden": *Hinzman* at para 46; *Miller* at para 64. They must demonstrate they took all objectively reasonable efforts, without success, to exhaust all courses of action reasonably available to them: *Ruszo v Canada (Citizenship and Immigration)*, 2013 FC 1004 at para 32 [*Ruszo*], citing *Hinzman* and *Ward*, among other cases.

[34] Ms. Bloodworth correctly points out that democracy alone does not ensure effective state protection; however, the jurisprudence that governs a US state protection analysis is not based on democracy alone. It is based on the quality of the institutions and law enforcement agencies, the checks and balances in place, and the fact that the country is governed by the rule of law. There is no merit to Ms. Bloodworth's arguments that her evidence impeached the independence and fair-mindedness of the US judiciary itself, at all levels of court, and demonstrated that the US is incapable of protecting its citizens.

[35] Ms. Bloodworth's argument that her former roommate is one relevant agent of persecution does not reflect the RAD's findings. The RAD's only finding of forward-looking persecution was that Ms. Bloodworth would face a serious possibility of persecution by her former roommate. This is why the RAD focused on Ms. Bloodworth's access to state protection against the threats and stalking by him, and her ability to relocate elsewhere in order to be protected from him.

[36] Ms. Bloodworth submits that, even if the RAD erred, the underlying evidence supports the RAD's conclusions and correcting the RAD's errors would only strengthen the decision.

[37] While the RAD's decision must be read in context, which includes the evidentiary record, it is not the Court's role on judicial review to re-assess or reweigh the evidence, or conduct its own analysis of the matter and ask what decision it would have made if it were deciding the matter itself: *Vavilov* at paras 83, 94-97, 125. The Court must review the decision the RAD actually made, and it must consider both the outcome and the rationale that led to that outcome: *Vavilov* at para 83. Where a decision maker has fundamentally misapprehended the evidence before it, ignored critical evidence, or failed to account for evidence before it that ran counter to its conclusion, the reviewing court will intervene: *Vavilov* at para 126.

[38] Stated another way, the Court does not simply decide whether the result is correct, despite the findings on which it is based and the rationale for reaching it. It is not open to a reviewing court to disregard a flawed basis for a decision and substitute its own justification for the outcome: *Vavilov* at para 96.

[39] The RAD's state protection assessment focused on the availability of state protection in Colorado. The Minister alleges the RAD unreasonably concluded that state protection would not be forthcoming for Ms. Bloodworth in Colorado. For the reasons below, I substantially agree with the Minister's arguments.

[40] First, I agree with the Minister that the RAD erred in assessing whether there was clear and convincing evidence sufficient to rebut the presumption of US protection, particularly in view of the RAD's own findings regarding Ms. Bloodworth's experience.

[41] The RAD's conclusion that state protection would not be forthcoming in Colorado was based on how the Fort Collins police handled Ms. Bloodworth's complaints after the district attorney dropped the felony menacing charges against the roommate. Prior to then, the RAD agreed with the RPD's findings that Ms. Bloodworth was not denied state protection from the roommate. The RAD rejected Ms. Bloodworth's arguments that the police, district attorney, and courts acted unfairly or in bad faith in how they handled the May 2019 threats. The RAD stated police often assume trans women instigate violence or downplay the violence they experience, but found, after reviewing the evidence of how the Fort Collins police responded to Ms. Bloodworth, including body camera video footage, that the officers who responded to her call for help responded appropriately. With respect to Ms. Bloodworth's allegation that she was denied justice because the roommate was not convicted despite sufficient evidence to secure a conviction, the RAD found it "would be relying on excessive speculation and supposition to reach the same conclusion as Ms. B with the evidence I have before me."

[42] I agree with the Minister that the RAD's focus on how the police handled events in the period after the charges were dropped was too narrow. This approach was inconsistent with Federal Court of Appeal guidance that, particularly for a country like the US, failures of police protection are not synonymous with a lack of state protection: *Villafranca* at para 7; *Kadenko* at 3; *Hinzman* at para 46.

[43] Furthermore, I agree with the Minister that the RAD erred in its assessment of the Fort Collins police response after the charges were dropped. The RAD characterized the handling of Ms. Bloodworth's complaints as a "refusal by police to investigate Ms. B's repeated reports of stalking by her ex-roommate" and a "refusal to act on her complaints of stalking". At the same time, the RAD found nothing improper about the police response to Ms. Bloodworth's reports of continued stalking, and noted that it understood why the police were unable to treat the roommate's lawful presence as a threat. The RAD's statements that the police "refused" to investigate or act are either contrary to the evidence—the police did investigate, and determined they could not act—or they are unintelligible because the RAD did not explain why it considered police officers who acted according to the law and within the confines of their authority were refusing to investigate or act.

[44] Ms. Bloodworth states the fact that the police could not take action to protect her equates to a lack of state protection, but that is not so. She refers to the principle in *Moran Gudiel* that adequate protection must yield actual results: *Moran Gudiel* at paras 24-25. However, whether a refugee claimant's past attempts to obtain police protection yielded actual results is not the test. That would be a backward-looking assessment, and an unduly narrow one. State protection is a

forward-looking assessment that considers a state's capacity to implement measures at an operational or practical level for the persons concerned: *Moran Gudiel* at paras 25-30.

[45] The RAD's findings that the local Colorado police refused to investigate repeated reports of stalking and refused to act on complaints of stalking were central findings. They were a basis for distinguishing *Miller*, and the key basis for concluding that state protection would not be forthcoming for Ms. Bloodworth in Colorado if she were to return. The RAD also accepted Ms. Bloodworth's evidence that her "repeated experience of having her complaints dismissed without investigation or action have caused her to be reluctant to approach the police for help in the future". Although the RAD's state protection analysis mostly relates to the state's ability to protect, rather than Ms. Bloodworth's willingness to approach the state for protection, in my view the RAD's statement about her reluctance is problematic for two reasons. It relies on the finding that it was Ms. Bloodworth's repeated experience that the police dismissed her complaints without investigation or action. Also, the RAD did not assess whether it was objectively reasonable for Ms. Bloodworth to be reluctant to approach the police for help in the future (*Ward* at 724), particularly in view of the RAD's own findings that there was nothing improper about the police response, and the police did take action when they had a legal basis to do so.

[46] Turning to the second alleged error, I agree with the Minister that the RAD erred by relying on what it perceived to be a local police failure without assessing whether Ms. Bloodworth had demonstrated, with clear and convincing evidence, that she exhausted the courses of action reasonably available to her, without success: *Ruszo* at para 32; *Hinzman* at

paras 45-46. The RAD did not consider whether there were avenues of redress for police inaction. More relevant to the circumstances of this case, the RAD did not address whether Ms. Bloodworth had avenues available to her that would provide a basis for the police to take action—such as a protective order for repeated stalking, requiring the ex-roommate to maintain a certain distance. At a minimum, the RAD should have addressed Ms. Bloodworth's statement that she did not try to obtain a civil protection order after the stalking events. The RAD noted the court's finding that Ms. Bloodworth had not met the criteria for a permanent protection order when she first applied. At that time, the stalking incidents had not occurred. The RAD did not address whether Ms. Bloodworth's belief that, without incident reports from the police, it would be "impossible to prove to a court that refused to look at my evidence that I was in danger and needed a protection order" constituted clear and convincing evidence that this avenue was unavailable to her. Consequently, I agree with the Minister that the RAD's conclusion that, since Colorado is an open carry state, Ms. Bloodworth "would not have recourse to any protection unless and until her ex-roommate escalated his behaviour" was speculative, rather than supported with evidence.

[47] The Minister also contends the RAD did not identify a gap in the state protection measures available to Ms. Bloodworth. Ms. Bloodworth counters that the gap existed because she got a temporary but not a permanent protection order. Ms. Bloodworth's argument does not reflect the RAD's findings. As noted above, the RAD did not find any reason to question the judge's dismissal of Ms. Bloodworth's application and did not consider whether she could obtain a protection order based on evidence of stalking.

[48] I recognize that one of the RAD's reasons for distinguishing *Miller* was that the decision "did not address the gaps that appear in the system of protection available to trans women or the way that gun violence, ownership, and open-carry laws exacerbate the vulnerability of trans women". However, this does not change my opinion that the RAD erred. The RAD's finding that state protection would not be forthcoming for Ms. Bloodworth in Colorado was based solely on how the police handled her complaints of stalking after the May 2019 charges were dropped. The RAD's analysis of gaps in police protection relies on findings that were contrary to the evidence (for example, that the Fort Collins police refused to investigate complaints) considered in view of systemic issues such as a lack of police policies and training on interacting with trans individuals and understanding the threats they face, reports that police sometimes lose interest in responding to similar complaints by the same person, and reports that police tend to minimize the threats and harms faced by trans victims. However, the RAD made no clear finding that Ms. Bloodworth encountered these systemic policing issues in her interactions with the Fort Collins police force. To the contrary, the RAD found that the police officers responding to the May 2019 threats were fair and respectful to Ms. Bloodworth, and they were not dismissive of the facts. It found the evidence did not demonstrate any maliciousness or unwillingness to enforce the law, but rather reflected a measured and appropriate response. The RAD also found nothing improper about the police response to Ms. Bloodworth's reports of stalking after the charges were dropped. In fact, the RAD found "the police would have been unable to treat [the ex-roommate's] lawful presence and possession of a weapon as a threat" (emphasis added). Consequently, the evidence did not support that the Fort Collins police were unwilling to act for discriminatory or other improper reasons.

[49] A reasonable decision is one that is justified in light of the facts and law that constrain the decision maker: *Vavilov* at para 85. I find the RAD's errors on state protection render the decision unreasonable, and warrant setting the decision aside.

B. *IFA*

[50] In addressing the viability of potential IFAs, the RAD "was mindful that the willingness of the state to enact preventative laws--those that prohibit the discrimination that builds to, encourages, and normalizes violence--is important in ensuring the right of trans people to a free and dignified life". In this regard, the RAD relied on information in a 2018 LGBT Policy Spotlight on public accommodations (Accommodation Spotlight), part of the US national documentation package (US NDP), and found that only Colorado, Delaware, Illinois, Maine, Nevada, New Jersey, and New York have enacted state-level laws prohibiting discrimination based on sexual orientation and gender identity that explicitly include all the categories considered in the report—schools, public transportation, hospitals, and businesses such as restaurants and hotels. The RAD found that "[t]he remainder of the US—the vast majority—endorses by omission some form of discrimination on the basis of sexual orientation and gender identity". As a result, the RAD concluded that, for trans individuals, there are only seven US states where their rights are theoretically fully protected and where they have the greatest chance of living a free and dignified life.

[51] While the RPD had suggested IFAs of Los Angeles, San Francisco, New York City, Seattle, and Portland, Oregon, the RAD found that the California, Washington, and Oregon do not have comprehensive state-level accommodation laws that would protect Ms. Bloodworth's

right to equal treatment and access to public spaces and services. Therefore, the RAD did not consider those states in the IFA analysis.

[52] The RAD found Colorado was not likely to offer adequate state protection to Ms. Bloodworth in the future and therefore did not consider any part of that state.

[53] With respect to the states of Delaware, Maine, New Jersey, Illinois, Nevada, and New York, the RAD found Delaware was not a suitable IFA because of the lack of information about the treatment of transgender individuals living there. The RAD found Maine, New Jersey, Illinois, and Nevada were not suitable IFAs because of what it considered to be high rates of discrimination and violence experienced by transgender individuals there.

[54] With respect to the state of New York, the RAD focused only on New York City in its IFA analysis.

[55] The RAD found Ms. Bloodworth would not face a serious possibility of persecution by her ex-roommate in New York City, and the evidence did not establish that she would face a serious possibility of persecution by the general public or a serious possibility of discrimination rising cumulatively to the level of persecution in New York City. However, the RAD found that relocation for a person with Ms. Bloodworth's profile, in her circumstances, would be unreasonable. The RAD's assessment in this regard relied principally on the 2015 USTS and items 6.1 and 6.2 of the US NDP—namely, the Accommodation Spotlight, and a public opinion study on the state of the LGBTQ community in 2020.

[56] Though not rising to the level of persecution, the rates of discrimination in New York informed the RAD's finding that relocation would be unreasonable. The RAD noted evidence that poverty is a strong risk factor for violence and there is widespread poverty within transgender communities. Poverty also exacerbates other risk factors like access to safe, stable, and adequate housing. Based on homelessness rates reported in the 2015 USTS and later reports of an increase, the RAD inferred that the homelessness rate in the trans community was very high.

[57] The RAD noted that while Ms. Bloodworth attended college and university, she did not complete any degrees. The RAD found, based on Ms. Bloodworth's history of vulnerability, unstable employment, poverty, and homelessness as a result of her trans identity, that she is at risk of experiencing the same in New York City where she does not appear to have social network supports. The RAD found Ms. Bloodworth would be vulnerable in New York City, where the cost of living is "terribly high", the risk of violence in less expensive neighbourhoods is high, and, based on the 2015 USTS results, reporting violent incidents to the police may expose her to harassment and discrimination. The RAD also found Ms. Bloodworth was likely to encounter some mistreatment while attempting to access healthcare, may be denied coverage for routine care because she is transgender, and may be unable to afford medical care that is not covered by insurance.

[58] In view of my findings on state protection, which are determinative, I will attempt to address the IFA issue succinctly.

[59] A refugee claimant bears the onus of establishing that a proposed IFA is not viable, and can discharge the onus by defeating at least one prong of the two-pronged IFA test. The first prong of the test asks whether the claimant would face a serious possibility of persecution under section 96 of the *IRPA*, or a risk of harm under section 97, in the proposed IFA. The second prong asks whether it would be unreasonable in all the circumstances for the claimant to relocate to the proposed IFA.

[60] The RAD found there was no evidence that the roommate, as the sole agent of persecution, had the means or the motivation to look for Ms. Bloodworth if she moved outside of Colorado. The RAD's IFA finding was based solely on the second prong of the IFA test. In this regard, the RAD found it would be unreasonable for Ms. Bloodworth to move to another part of the country in order to be safe.

[61] The Federal Court of Appeal in *Thirunavukkarasu v Canada (Minister of Employment and Immigration)(CA)*, [1994] 1 FC 589 [*Thirunavukkarasu*] and in *Ranganathan v Canada (Minister of Citizenship and Immigration)(CA)*, [2001] 2 FC 164 [*Ranganathan*], made it clear that the second prong of the IFA test requires actual and concrete evidence of conditions that would jeopardize a claimant's life and safety. As stated in *Ranganathan* at paragraphs 15-16:

> [15] We read the decision of Linden J.A. for this Court [in *Thirunavukkarasu*] as setting up a very high threshold for the unreasonableness test. It 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. In addition, it requires actual and concrete evidence of such conditions. The absence of relatives in a safe place, whether taken alone or in conjunction with other factors, can only amount to such condition if it meets the threshold, that is to say if it establishes that, as a result, a claimant's life or safety would be jeopardized.

> This is in sharp contrast with undue hardship resulting from loss of employment, loss of status, reduction in quality of life, loss of aspirations, loss of beloved ones and frustration of one's wishes and expectations.
>
> [16] There are at least two reasons why it is important not to lower that threshold. First, as this Court said in *Thirunavukkarasu* [at page 599], the definition of refugee under the Convention "requires claimants to be unable or unwilling by reason of fear of persecution to claim the protection of their home country in any part of that country". Put another way, what makes a person a refugee under the Convention is his fear of persecution by his home country in any part of that country. To expand and lower the standard for assessing reasonableness of the IFA is to fundamentally denature the definition of refugee: one becomes a refugee who has no fear of persecution and who would be better off in Canada physically, economically and emotionally than in a safe place in his own country.

[62] Consequently, in assessing whether the second prong of the IFA test is met, it is an error to reverse the onus or lower the threshold so as to fundamentally denature the definition of refugee. Having considered the RAD's reasons in light of the record, I find that the RAD made such errors in Ms. Bloodworth's case.

[63] With respect to Delaware, I agree with the Minister that the RAD reversed the onus by dismissing an IFA it had raised due to a lack of evidence on the treatment of transgender individuals in the state. There was no further analysis. Ms. Bloodworth argues there was no evidence that she would get adequate protection in the state, and no reason to conclude that Delaware is any better than any other US state in terms of the experience of transgendered people. However, the RAD's task was to engage in an analysis of whether Ms. Bloodworth had met her onus with concrete evidence of conditions that would satisfy the high threshold for defeating the second prong of the IFA test for Delaware. The RAD did not do so.

[64] Turning to New York City, I agree with the Minister that the RAD erred by reversing the onus and lowering the threshold. Having found that Ms. Bloodworth would not face persecution in New York City under the first prong of the test, a determination that New York City is not a viable IFA required actual and concrete evidence that the conditions Ms. Bloodworth would face in New York City are such that she cannot be expected to relocate there. This requires more than evidence demonstrating hardship and disadvantage. In this case, the RAD supported its conclusion that it would be unreasonable for Ms. Bloodworth to relocate to New York City with statements of disadvantage in finding housing and employment, and findings that she may experience issues with access to healthcare, or may be exposed to harassment and discrimination reporting violent incidents to the police. The RAD relied on generalized evidence, without mention of government supports, and without sufficiently engaging with Ms. Bloodworth's circumstances.

[65] The RAD was required to apply the IFA test set down by the Federal Court of Appeal and it did not do so. Accordingly, I must remit this matter to a different RAD panel for a redetermination of Ms. Bloodworth's appeal.

VI. **Conclusion**

[66] This application for judicial review is allowed. The Minister has met his onus of demonstrating the RAD made reviewable errors that rendered the decision unreasonable. The RAD's decision is set aside, and the matter will be remitted for redetermination.

[67] The parties did not raise a question for certification and there is no question to certify.

[68] Ms. Bloodworth seeks costs and damages based on the Minister's conduct and alleged bad faith in commencing this application for judicial review and requesting a hearing in Vancouver, which necessitated travel. There is no basis for granting the relief she seeks.

[69] I would add that Ms. Bloodworth's written and oral submissions included arguments that were disparaging or accused the Minister and the Minister's counsel of acting in bad faith or committing acts of misconduct. While I discussed Ms. Bloodworth's accusations against the Minister's counsel at the hearing of this matter, I wish to stress that allegations of impropriety and attacks on the integrity of a party or their counsel are serious. It is not acceptable to make unjustified and unsubstantiated allegations of this nature.

JUDGMENT in IMM-11123-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is allowed.
2. The RAD's decision is set aside, and the matter shall be remitted to a different RAD panel for redetermination.
3. There is no question to certify.

"Christine M. Pallotta"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-11123-22
STYLE OF CAUSE:	THE MINISTER OF CITIZENSHIP AND IMMIGRATION v VERONIQUE MARIE BELLAMY
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	JULY 27, 2023
JUDGMENT AND REASONS:	PALLOTTA J.
DATED:	FEBRUARY 1, 2024

APPEARANCES:

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