

Federal Court



Cour fédérale

Date: 20240627

Docket: IMM-2099-22

Citation: 2024 FC 997

Toronto, Ontario, June 27, 2024

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

**ADIAN ARYLOV
ELENA ARYLOVA
SEMEN ARYLOV
VERANIKA ARYLOVA
SOFIA ARYLOVA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of the Refugee Appeal Division [RAD] dated February 11, 2022 [Decision], in which the RAD confirmed the decision of the

Refugee Protection Division [RPD] that the Applicants are neither Convention refugees nor persons in need of protection.

[2] A explained below, this application is dismissed, because the Applicants' arguments do not undermine the reasonableness of the Decision.

II. Background

[3] The Applicants are a family of five including three minor children, all citizens of Russia. The Principal Applicant [PA] is the designated representative of the minor children [Minor Applicants]. The Applicants fear persecution due to the Kalmyk ethnicity of the PA and Minor Applicants, and they fear harm from an uncle (a cousin of the PA's mother) [the Uncle] who defrauded the PA's mother and stole the PA's car.

[4] The PA claims that in his military studies and service from 1994 to 1996, he was called names and fights were picked with him due to his Kalmyk ethnicity. The PA moved to St. Petersburg in 2000, where he was insulted and stopped by the police without reason and released following payment. In 2003, the PA's father disappeared, and in 2004, the PA's cousin was killed. One of the Minor Applicants was pushed and insulted by a Russian boy in 2009 and had a fight with a group of skinheads in 2010.

[5] In 2012, the Applicants moved to the PA's hometown, where they lived with the PA's mother. In 2014, the Uncle illegally sold the PA's mother's house to his daughter. The PA believed the Uncle was trying to harm his mother and his family, because they belong to the

Torghut tribe while the Uncle belongs to the Khosnut tribe, and that the Uncle was jealous because the PA's grandparents left the house to his mother and not to the Uncle's family.

[6] The PA and his wife [the Associate Applicant, or AA] visited the United States [US] in 2016. When the PA and AA returned to Russia, they learned the Uncle had sold the PA's car without his permission. The PA reported the theft of the car to the police on February 6, 2017. Two days later the Uncle beat the PA and threatened to kill the Applicants if the PA reported to the police or demanded anything from him. The PA received medical treatment on February 8, 2017, and reported the attack to the police on February 10, 2017. The police refused to open a case against the Uncle due to his political and police connections and accused the PA of having fraudulent documents about his injuries and ownership of the car.

[7] In May 2017, the Applicants moved to live with the AA's parents for protection. In June 2017, the Applicants obtained Canadian visas. They left Russia for Canada on September 29, 2017, and claimed refugee protection on November 2, 2017.

[8] The RPD rejected the Applicants' claim on the basis that they had a viable internal flight alternative [IFA] in Moscow. The Applicants appealed the RPD's decision to the RAD. In the Decision under review in this application, the RAD dismissed the Applicants' appeal.

III. Decision under Review

[9] As a preliminary matter, the RAD addressed whether to accept new evidence filed by the Applicants. The Applicants provided three documents as new evidence with their appeal: an article from an online newspaper, dated August 19, 2021; social media posts from vk.com, dated

August 26 and 27, 2021; and an article titled *Well-Forgotten Old: Hate Crimes and Efforts to Counteract Xenophobia and Radical Nationalism in Russia in the First Half of 2021*, from the Sova Center for Information and Analysis, dated July 30, 2021.

[10] The RAD noted that the Applicants had made submissions that the August 19 article was relevant and was published after the RPD decision, and it therefore accepted it as new evidence. It also accepted the July 2021 article as new evidence, as it provided an update on country conditions.

[11] However, the RAD found that the Applicants had not made separate submissions about the second document, the social media posts from August 26-27, 2021, and therefore found that it had insufficient information to determine if the document met the requirements of subsection 110(4) of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]*, which governs the admission of new evidence in an appeal to the RAD. The RAD held that the *Refugee Appeal Division Rules, SOR/2012-257 [RAD Rules]*, are very clear that the Applicant's memorandum must include full and detailed submissions regarding how any new evidence meets the requirements of subsection 110(4) of the *IRPA* and how that evidence relates to the Applicant. The RAD therefore rejected the August 26-27 posts as new evidence.

[12] The RAD then turned to its substantive analysis on the determinative issue of the viability of the IFA in Moscow as identified by the RPD.

A. *First Prong of the IFA Test*

[13] Under the first prong of the IFA test, the RAD first considered the Principal Applicant's submission that he has always experienced discrimination in Russia based on his ethnicity. The RAD agreed that the RPD's analysis of discrimination against Kalmyks in Moscow was insufficient and undertook its own assessment. The RAD found the determinative issue was whether discrimination based on the Applicants' Kalmyk ethnicity rose to the level of persecution. The RAD found there was no evidence that the PA or AA faced any restrictions on earning their livelihoods, on accessing educational facilities, or on their rights to practice their religions.

[14] Citing the guidance set out by the Court in *Kristofova v. Canada (Citizenship and Immigration)*, 2016 FC 415, for what is required when determining whether acts of violence amount to persecution or discrimination, the RAD assessed the Applicants' evidence of systemic persecution based on ethnicity. The RAD considered evidence of violence against the Applicants between 1994 and 2012 as set out in the PA's Basis of Claim narrative and his testimony. The RAD considered the objective evidence, but it did not find any reference to the persecution of Kalmyks. The RAD considered objective evidence about attacks in Russia against ethnic "others" generally, including the more recent objective evidence the Applicants provided as new evidence, but found it did not demonstrate that discrimination against Kalmyks amounts to persecution in Russia, either generally or in the case of the Applicants.

[15] After considering the Applicants' evidence that the PA was stopped once by the police in 2000 and had encountered a few incidents of physical violence that he attributed to his ethnicity,

and the fact that he worked for 24 years in the Federal penitentiary system without incident, as well as the fact that the minor male Applicant was bullied once on the playground and the PA's assumption that his father and cousin were killed due to their ethnicity, the RAD found the evidence did not amount to persecution.

[16] The RAD next turned to the Applicants' alleged fear of the Uncle and their onus under the IFA test to demonstrate the Uncle has the means and motivation to locate the Applicants in Moscow. The RAD considered the Applicants' argument that the RPD erred in finding the Applicants had not presented any evidence to corroborate their allegations about the political position of the Uncle. The RAD considered the Applicants' new evidence, the translation of an online newspaper from August 19, 2021, which stated that the Uncle is the leader of the Republic of Kalmykia Pensioners' Party regional branch. The RAD noted the article also said the Uncle's career as a public official ended in 2012 when he was asked to resign due to a perceived conflict of interest.

[17] The RAD found the new evidence established that the Uncle is the leader of a regional special interest party, but that he was dismissed from a public position in 2012, demonstrating limited influence with the ruling United Russia party. The RAD found the evidence did not support the PA's testimony that the Uncle associates with people who are well connected and powerful and that he has friends in law enforcement agencies.

[18] Also in relation to the Uncle's means to locate the Applicants in Moscow, the RAD considered their submission that the Uncle would be able to locate the PA in Moscow by accessing the residence registration system in Russia through connections or paying bribes due to

corruption. The RAD referred to a 2015 Response to Information Request [RIR], which states that Federal Migration Service [FMS] is the sole authority responsible for residence registration and that registration is carried out at local FMS offices throughout Russia. Based thereon, the RAD dismissed a 2009 RIR, which cited a single source identifying that unauthorized persons might be able to gain access to registration information through official connections, the payment of bribes or other illicit means. The RAD also noted the Applicants' evidence is that the Uncle's sphere of influence is regionally limited to Kalmykia and to a special interest group, pensioners, and concluded that the Applicants had not established that the Uncle could find their address in Moscow.

[19] The Applicants argued before the RAD that the RPD had not considered that, because the Uncle is a relative, they would have to sever ties with all their family members in order to seek an IFA. The RAD considered the Applicants' written and oral evidence about the Uncle's ongoing efforts, including the PA's belief that the Uncle murdered the PA's mother and that a police officer and another man were looking for the Applicants. However, the RAD found that the Applicants were speculating about the Uncle's involvement in the PA's mother's death and visits from strangers and police, concluding that the evidence did not demonstrate that the Uncle was looking for the Applicants.

[20] The RAD relied on *Leon v. Canada (Citizenship and Immigration)*, 2020 FC 428 [*Leon*] at para 16, citing *Roy v. Canada (Citizenship and Immigration)*, 2012 FC 434 at para 26; *Deb v. Canada (Citizenship and Immigration)*, 2015 FC 1069 at paras 17-18, to find that based on the absence of evidence, there was a lack of ongoing interest in pursuing the Applicants.

[21] In conclusion on the first prong of the IFA test, the RAD found the Applicants did not present sufficient credible evidence to meet their burden to demonstrate, on a balance of probabilities, that they will be subject to persecution on the basis of their Kalmyk ethnicity or a section 97 danger or risk from the Uncle in Moscow.

B. *Second Prong of the IFA Test*

[22] The RAD noted that the Applicants did not make any arguments or submissions about the RPD's finding on the second prong of the IFA test. The RAD found that the PA and the AA are well educated and have considerable work experience, and it noted that Moscow has a population of over 12.5 million. The RAD found the Applicants did not establish with concrete evidence that the conditions in Moscow would jeopardize their life and safety. The RAD found that, in all the circumstances, conditions in Moscow are such that it would not be unreasonable or unduly harsh for the Applicants to seek refuge there.

[23] In conclusion, the RAD dismissed the appeal and confirmed the decision of the RPD that the Applicants are neither Convention refugees nor persons in need of protection.

IV. Issues

[24] Based on the parties' submissions, this application for judicial review raises the following issues:

- A. Did the RAD fail to consider the claims of the Minor Applicants on their merits?
- B. Did the RAD err in refusing to admit new evidence?

- C. Did the RAD err by making an improper finding with respect to the agent of persecution's current profile?
- D. Did the RAD err in assessing the documentary evidence regarding access to the address registration database in Russia?
- E. Did the RAD err in assessing the documentary evidence regarding the persecution of minorities in Russia?
- F. Did the RAD err in assessing the agent of persecution's motivation?

[25] These issues are to be reviewed on the standard of reasonableness (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16-17).

V. Analysis

- A. *Did the RAD fail to consider the claims of the Minor Applicants on their merits?*

[26] The Applicants submit that, in conducting the IFA analysis that resulted in the rejection of their claims, the RAD failed to consider the claims of the Minor Applicants on their merits. The Applicants note that, in their submissions to the RAD in support of their appeal, they argued there was an obligation upon the RPD to consider each claim separately and that the RPD's decision made no specific reference to the claims of the Minor Applicants and provided no explanation as to why their claims were refused.

[27] I find little merit to this argument. In *Nwanze v Canada (Citizenship and Immigration)*, 2023 FC 844, at paragraph 43, the Court noted that the RPD and RAD frequently deal with multiple claimants in a single decision, particularly where the claims of minors are joined to those of their parents. Where one of the applicants' claims raises a distinct issue, it must be addressed separately (see para 43). However, the Applicants' submissions on appeal to the RAD in the case at hand did not identify aspects of the claims of any of the Minor Applicants that raised a distinct issue.

[28] Moreover, the Decision clearly engaged with the Minor Applicants' claims. This is demonstrated, for instance, by the fact that the Officer's analysis, as to whether the discrimination the Applicants would face in the IFA would amount to persecution, took into account incidents that had been experienced by the Minor Applicants.

B. *Did the RAD err in refusing to admit new evidence?*

[29] The Applicants argue that the RAD erred in failing to accept into evidence the social media posts from vk.com. The RAD declined to admit this evidence, because the Applicants had not complied with the requirement under the RAD Rules to provide full and detailed submissions regarding how the new evidence met the requirements of subsection 110(4) of *IRPA*. The Applicants argue that this reasoning overlooked the fact that the Applicants' submissions related to the online news article, which the RAD did admit, were also intended to apply to the social media posts.

[30] The Applicants are relying upon submissions in their Appellant's Memorandum before the RAD, which explained that they wished to introduce the news article and social media reports into evidence. Ensuing paragraphs of the submissions referred to the timing of evidence, argued that it was material because it addressed a concern raised by the RPD regarding the Uncle's profile, and stated that the evidence came from an objective news source.

[31] The Applicants acknowledge that their submissions could have been clearer, as the reference to the evidence being from an objective news source related only to the news article. In my view, the RAD cannot be faulted for failing to identify an intention on the part of the Applicants that their submissions related to both pieces of new evidence. I agree with the Respondent's position that it was not unreasonable for the RAD to conclude that the Applicants had failed to meet their onus to provide full and detailed submissions about the admissibility of the social media posts.

[32] I also note the Respondent's submission that the news article, which was admitted into evidence, was accepted by the RAD as evidence that the Uncle was the leader of the Republic of Kalmykia Pensioners' Party and that the social media evidence was submitted simply to provide the same evidence in a different format. As such, even if the latter evidence had been admitted, it would not change the outcome of the Decision. In their reply submissions in this application, the Applicants agree the social media evidence is redundant, because the news article established the Uncle's profile.

C. *Did the RAD err by making an improper finding with respect to the agent of persecution's current profile?*

[33] This next issue relates to the Uncle's profile, including as evidenced by the news article referenced above. The Applicants argue that the RAD improperly inferred, from the fact that the Uncle was dismissed from his role in 2012, that he was a person of limited influence. The Applicants emphasize that the dismissal happened 10 years ago and that he was made the head of a political party in 2021 and was running for a seat in the Duma.

[34] I agree with the Respondent's submission that the Applicants are asking the Court to reweigh the evidence, which is not its role in judicial review.

D. *Did the RAD err in assessing the documentary evidence regarding access to the address registration database in Russia?*

[35] The Applicants submit that the RAD erred in its treatment of the country condition evidence related to Russia's address registration system, which included a RIR stating that unauthorized persons might be able to gain access to registration information through official connections or the payment of bribes.

[36] The RAD noted the RIR's citation of a single source for this information and that the information was uncorroborated. The RAD preferred a more recent RIR, which stated that a particular government authority was the sole authority. Noting the Applicants' new evidence, establishing that the Uncle's sphere of influence was regionally limited to Kalmykia and to a

special interest group (pensioners), the RAD upheld the RPD's finding that the Uncle could not find their address in Moscow through the residence registration system.

[37] Again, the Applicants are asking the Court to reweigh the evidence. I find nothing unreasonable in the RAD's treatment of this country condition evidence.

E. *Did the RAD err in assessing the documentary evidence regarding the persecution of minorities in Russia?*

[38] The Applicants argue that the RAD erred in unreasonably assessing, based on the country condition evidence and the Applicants' evidence of their personal experiences, whether the discrimination against Kalmyks in Russia would rise to the level of persecution to be experienced by the Applicants if they were to relocate to the IFA in Moscow. I need not repeat the Applicants' submissions in detail, other than to state my finding that they represent a disagreement with the RAD's weighing of the evidence and represent no basis for the Court to intervene.

[39] However, before leaving this issue, I note that at the hearing of this application, the Applicants' counsel raised an additional argument that, regardless of whether the discrimination that might be experienced in the IFA rose to the level of persecution, such discrimination would make it unreasonable for the Applicants to move to the IFA. This argument relates to the second prong of the IFA test. However, as confirmed in the Decision, the Applicants did not make any arguments before the RAD about the RPD's finding on the second prong of the IFA test. As such, this arguments cannot be raised before the Court in this application for judicial review.

F. *Did the RAD err in assessing the agent of persecution's motivation?*

[40] Finally, the Applicants argue that the RAD erred in assessing the Uncle's motivation to search for them in the IFA. They submit that it was unreasonable for the RAD to conclude, based on the Applicants having no information that the Uncle was looking for them, and that he was not motivated to track them down. They argue that the RAD's reasoning is speculative, because the Applicants would not necessarily know if the Uncle had been looking for them.

[41] As the Respondent submits, in the context of an IFA analysis, it is the refugee claimants' onus to establish that the agent of persecution has both the means and motivation to locate them in the IFA. As such, the absence of evidence that the persecutor has been looking for them is an element that can reasonably support a finding of a lack of ongoing interest and therefore a viable IFA (*Leon* at para 16). I find nothing unreasonable in this aspect of the RAD's analysis.

VI. Conclusion

[42] As I have rejected the Applicants' arguments challenging the reasonableness of the Decision, this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-2099-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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