

Federal Court



Cour fédérale

Date: 20100914

Docket: IMM-286-10

Citation: 2010 FC 909

Ottawa, Ontario, September 14, 2010

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

**KHAKIM KHAKIMOV
DILOVAR KADIROVA
AMIRBEK SOBIROV**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Background

[1] The Principal Applicant, his wife and young son are citizens of Uzbekistan who seek protection in Canada pursuant to s. 96 and 97(1) of the *Immigration and Refugee Protection Act*,

S.C. 2001, c. 27 (*IRPA*). The Applicants claim to have been the subject of an extortion scheme by government officials in Uzbekistan.

[2] In a decision dated December 8, 2009, a member of the Immigration and Refugee Board, Refugee Protection Division (the Board) determined that the Applicants were neither Convention Refugees nor persons in need of protection. The Board, in its brief decision, did not appear to doubt the Principle Applicant's testimony regarding the extortion scheme that took place in Uzbekistan by "tax police officers". However, the Board concluded that:

- The Applicants' fear of tax police who engage in criminal behaviour lacked a nexus to a Convention refugee ground. Thus, the claim under s. 96 failed.
- The Applicants failed to rebut the presumption of state protection. Thus, the claim under both s. 96 and 97(1) failed.

[3] The Applicants seek judicial review of this decision.

II. Issues

[4] The key issue in this application is whether the Board erred in its determination that state protection was available for the Applicants by failing to have regard to:

1. the evidence of the Applicants that they had attempted to access state protection in Uzbekistan; and

2. the documentary evidence that specifically addressed the corruption and problems of state protection in Uzbekistan.

III. Standard of Review

[5] As a whole, the Board's decision is reviewable on the standard of reasonableness. On this standard, the Court should not intervene where the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 47). In addition, the Court may grant relief if it is satisfied that the tribunal made its decision without regard to the material before it (*Federal Courts Act*, R.S.C. 1985, c. F-7, s. 18.1(4)(d)).

IV. Analysis

A. *Attempt to access state protection*

[6] In his Personal Information Form (PIF), the Principal Applicant described the alleged extortion by two tax police officers and outlined the following events that occurred after the extortion had begun:

- On September 1, 2007, the Applicants sought the assistance of a family friend (the friend), who worked for the tax department.

- On September 4, 2007, the friend found out that the two officers were working for a senior official in the tax police, and told the Principal Applicant that he would speak to their boss.
- On September 9, 2007, the friend told the Principal Applicant that he spoke to the officer's boss and the boss said that he "was very angry and did not like for him to approach for any negotiations".
- On September 15, 2007 the two tax police officers returned to the Applicant's business, very angry about the complaints made to their boss. The Principal Applicant alleged that one of the officers punched him in the stomach, and hit his brother-in-law in the face with a gun. They informed the Principal Applicant and his brother-in-law that their punishment would be that they would now be paying \$1000.00 per month, and threatened them that "if you do not pay we will kill you".

[7] The Applicants submit that this evidence demonstrates that they did try to access state protection contrary to the finding of the Board that:

The claimants did not venture on pursuing state protection with a view of mitigating their problems. The claimant only consulted a friend of his father to see if he could help. As a consequence, the tax officers became enraged that the claimant, directly or indirectly communicated with their superior.

[8] The Board appears to have ignored the argument of the Applicants that they had attempted to access state protection, in approaching the friend, who in turn spoke with a senior tax police

officer. It was open to the Board to consider, and reject, that the tax police formed part of the state apparatus. However, there was no discussion in the reasons of this point.

[9] The Applicants put forward evidence which, in their view, established that they had sought state protection; it was incumbent on the Board to consider this evidence. It may have been open to the Board, upon a proper analysis, to determine that further efforts ought to have been made. In the absence of any such consideration, I conclude that the Board erred by failing to have regard to the evidence that the Applicants had sought state protection.

B. *Documentary evidence of corruption*

[10] The documentary evidence contained extensive references to problems of corruption in Uzbekistan. The decision contains a sweeping statement that “we acknowledge that there is corruption” and a few references to documentary evidence to support its conclusion of adequate state protection. Beyond this, the decision contains little to satisfy me that the Board had regard to the evidence before it. I have two serious concerns with the Board’s assessment of the documentary evidence in this case:

[11] Firstly, it is widely accepted that the Board cannot rely on documentation to uphold a conclusion when it contradicts the same finding, without addressing the contradiction in the analysis. See, for example, *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35, [1998] F.C.J. No. 1425 (QL). When citing the US DOS report concerning

the conduct of the police, the Board removed sentences that were in direct contradiction to their point, instead of addressing the issue. The Board erred in removing the statement out of context.

[12] Secondly, the Board relied on the arrest and conviction of Sandjar Umarov as evidence to support the argument that the state is addressing issues of corruption. A reading of the document relied on shows that independent, reliable sources believe that Mr. Umarov's arrest and conviction were politically motivated. In its decision, the Board neglects to discuss the international objection to the arrest on political grounds: for example, "the Bush administration and international human rights organizations have criticized the arrest as being politically motivated" [Applicant's Record, p.29]. The Board, on this point, came to a perverse conclusion on the evidence before it.

[13] The Respondent points out that the documentary evidence referring to arbitrary arrests demonstrates that those individuals were human rights or political activists, and not persons similarly-situated to the Principal Applicant. The problem with this argument is that the Board does not consider this distinction in its reasons. It may have been open to the Board to conclude, on its review of the documentary evidence, that there was no evidence that similarly-situated persons were routinely and arbitrarily arrested. However, such an analysis, if done at all, was not contained in the reasons, and is not open to the Respondent to now argue.

[14] In short, the Applicants presented evidence to support their argument that adequate state protection could not be found in Uzbekistan. The Board's failure to adequately deal with this documentary evidence before it leads me to the conclusion that the Court should intervene.

V. Conclusion

[15] For these reasons, I will allow this application for judicial review, and send the decision back to the Board for redetermination.

[16] Neither party proposed a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is allowed, the decision of the Board is quashed and the matter is sent back to the Board for re-determination by a newly-constituted panel of the Board; and

2. No question of general importance is certified.

“Judith A. Snider”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-286-10

STYLE OF CAUSE: KHAKIMOV v. MINISTER OF CITIZENSHIP
AND IMMIGRATION

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AND JUDGMENT:** SNIDER J.

DATED: SEPTEMBER 14, 2010

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