

Federal Court



Cour fédérale

Date: 20180426

Docket: IMM-3503-17

Citation: 2018 FC 454

Vancouver, British Columbia, April 26, 2018

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

ZVIAD KHRIKADZE

Applicant

And

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Mr. Zviad Khrikadze, is a citizen of Georgia. He fled Georgia and arrived in Canada in 2012. He initially claimed protection based on a fear of persecution due to his political opinion. Subsequent to a change of government in Georgia Mr. Khrikadze amended his claim alleging that he also feared a senior police official in Tbilisi who was pursuing a personal vendetta against him.

[2] The Refugee Protection Division (RPD) determined that: (1) Mr. Khrikadze had not established a well-founded forward looking fear of persecution based on political opinion; (2) the evidence did not establish on a balance of probabilities that the reported personal vendetta was related to his political opinion or any other Convention ground; and (3) that Mr. Khrikadze had not established with reliable and credible evidence that he faced a risk to life, or a risk of cruel and unusual treatment or punishment stemming from the claimed personal vendetta. The RPD concluded Mr. Khrikadze was neither a Convention refugee nor a person in need of protection as contemplated by sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[3] Mr. Khrikadze now brings this application for judicial review under subsection 72(1) of the IRPA. He submits that a number of the adverse credibility and plausibility findings made by the RPD are unreasonable and that the RPD's failure to advise him of concerns relating to the availability of family members to appear as witnesses violated his right to procedural fairness.

[4] For the reasons that follow, I am unable to conclude that the RPD's credibility findings were unreasonable or that there was any breach of procedural fairness. The application is dismissed.

II. Background

A. *General*

[5] Mr. Khrikadze reports that he arrived in Canada after two failed attempts to flee Georgia. His wife and sons remain in Georgia. His initial refugee claim was based on a fear of persecution

due to political opinion. However, shortly after his arrival in Canada, the Georgian government he reportedly feared was replaced with a new government which was in line with his political opinion.

[6] Prior to his RPD hearing in 2017, he amended his refugee claim to include an allegation that a senior police official in Tbilisi was pursuing a personal vendetta against him on the belief that he had had an affair with the official's wife.

[7] In April 2017 the Minister provided notice of the intent to intervene at the hearing to "make representations on the issues of program integrity and credibility." The Minister did not appear at the hearing but did provide written submissions in advance of the hearing.

B. *Decision under review*

[8] The panel accepted that the applicant had established his identity on a balance of probabilities as a Georgian national.

[9] In addressing the IRPA section 96 claim the RPD noted evidence that the applicant's cousin had also fled Georgia and had been accepted as a Convention refugee in Canada based on political opinion. The RPD then noted that an election shortly after Mr. Khrikadze had left Georgia put a new party in power, and that "[t]here is almost no evidence that persons who sought political change, and had won that political change by the coming of power of the Georgian Dream (GD), face any further political harassment, discrimination or persecution in Georgia following the 2012 election."

[10] On this basis, the RPD found Mr. Khrikadze had no well-founded fear of persecution. The RPD also concluded that any connection between the applicant's political opinion and the personal vendetta claim was speculative and had not been established on a balance of probabilities.

[11] The RPD then addressed the personal vendetta claim in respect of Mr. Khrikadze's IRPA section 97 risk. The RPD found that Mr. Khrikadze's personal and professional history was material to the section 97 claim. It noted an evolving narrative in respect of Mr. Khrikadze's report that he had played professional soccer finding that "[t]he claimant was not a reliable witness when it came to his personal and professional history in Georgia." The RPD also found that Mr. Khrikadze's evidence concerning his auto business was inconsistent with the information contained in his Personal Information Form.

[12] The RPD addressed the Georgian authorities' reported seizure of over \$95,000 US from Mr. Khrikadze, again concluding he had not been forthright in relating his personal history and financial dealings. The RPD noted: (1) the applicant had allegedly paid numerous smugglers to get him out of Georgia and had supported himself in Canada for years before the assets were seized; (2) that evidence in respect of his business ventures was not consistent with the amount reportedly seized by Georgian authorities; (3) Mr. Khrikadze did not report any meaningful work after the financial and operational failure of his two reported business ventures; (4) his claim that he had relied on a loan from his father, who was employed in a meat processing facility, to open a business was inconsistent with him having amassed significant savings prior to pursuing his

two business ventures; and (5) despite these factors Mr. Khrikadze claimed to have significant savings.

[13] The RPD also identified concerns with Mr. Khrikadze's narrative as it related to the reported personal vendetta. It noted that he reported the agent of harm was the husband of a woman who had worked for him at his bakery, a business he reported closed in 2011. However, he reports the agent of harm took no action until 2013 when he reportedly kidnapped Mr. Khrikadze's father in an attempt to locate Mr. Khrikadze. The RPD acknowledged that it could only speculate as to why there was such a lengthy delay between the alleged affair and the agent of harm finding out about it. Nonetheless the RPD found that the credibility of the allegations were somewhat impugned as they were not included in the initial statements of the claimant nor was the claim amended at the earliest opportunity.

[14] The RPD stated that the reported 2013 kidnapping was central to the claim, noting Mr. Khrikadze was not present at the time the events reportedly occurred. The RPD found the credibility of this event was called into question by numerous inconsistencies within and between the corroborating documentary evidence, in particular letters provided by Mr. Khrikadze's father and Mr. Khrikadze's version of events.

[15] The RPD also rejected Mr. Khrikadze's reports that his family was hiding in his brother-in-law's home, were unable to leave, and that he could not contact them because the agent of harm, through the police, would find their location. In rejecting this claim the RPD noted: (1) both the applicant's wife and father have applied for, and received, government identification

documents and the father still collects his pension; (2) none of the family's statements about their living circumstances are contained in affidavits; (3) living in the home of a family member does not suggest a genuine attempt at evasion if, as Mr. Khrikadze alleged, the agent of harm is able to corrupt the judiciary and use violence with impunity; (4) Mr. Khrikadze did not explain how the authorities could track his family's communications; and (5) they have been able to live at a family member's home for years without being found.

[16] The RPD found that the inability to communicate with the family was concocted to protect them from being called as witnesses, noting that "the claimant has almost no firsthand information to impart and the claimant's explanation for the lack of any contact with his family is not reasonable."

[17] The RPD also found Mr. Khrikadze's report that his son had been injured by police while the police were searching for him, and a reported second attack on Mr. Khrikadze's father just days before the hearing—after four years without any alleged reprisals—were not supported by the evidence.

III. Preliminary Issue - Style of Cause

[18] Mr. Khrikadze has named the Minister of Immigration, Refugees and Citizenship as the respondent in this matter. The correct respondent is the Minister of Citizenship and Immigration (*Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, s 5(2) and IRPA, s4(1)). Accordingly, the respondent in the style of cause is amended to the Minister of Citizenship and Immigration.

IV. Issues

[19] The application raises the following issues:

A. Was the RPD's IRPA section 97 determination reasonable?

B. Did the RPD breach Mr. Khrikadze's right to procedural fairness?

V. Standard of Review

[20] Mr. Khrikadze's IRPA section 97 claim engages matters of mixed fact and law that are to be reviewed against a standard of reasonableness. Reviewing courts may not intervene where a decision is justified, transparent and intelligible, and the outcome falls within the range of reasonable possible outcomes that are defensible in respect of the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47, 51 and 53; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59; *Velez v Canada (Citizenship and Immigration)*, 2010 FC 923 at paras 22 and 23).

[21] In considering issues of procedural fairness the Court shall determine whether the duty to act fairly has been satisfied within the specific context of the matter before it (*Moreau-Bérubé v Nouveau Brunswick (Judicial Council)*, 2002 SCC 11 at para 75, citing *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 21, 174 DLR (4th) 193).

VI. Analysis

A. *Was the RPD's IRPA section 97 determination reasonable?*

[22] Mr. Khrikadze submits that the RPD's adverse credibility findings relating to his soccer career resulted from a microscopic examination of his evidence. He argues that it was clear in his response to questioning that his memory in respect of when he played professionally was imperfect and it was therefore unreasonable for the RPD to take issue with any inconsistencies. He further submits that this information was irrelevant to the claim.

[23] I am unable to agree with Mr. Khrikadze's submissions in this respect. Mr. Khrikadze has cited no authority to support the argument that a decision-maker is limited to evidence of direct relevance to a claim when assessing credibility. The RPD was not limited in the manner suggested. Further the RPD expressly states why Mr. Khrikadze's professional soccer career and work history was considered to be of material relevance stating:

I do find that the circumstances of the claimant are material, as the claimant is alleging that he is targeted by an agent of the state and cannot approach authorities, and that he had some sports profile according to his original statements, but it is now unclear as to what extent.

Further, these matters are material as his professional experiences substantiate the issue of the seized assets; the claimant alleged that the authorities had unjustly seized over \$95,000 USD.

[24] Mr. Khrikadze further submits that the RPD mischaracterized his evidence regarding his auto business when finding that he sought to "gloss over" the evidence, and the RPD erred in concluding that the applicant changed his testimony about the nature of his business. While Mr.

Khrikadze disagrees with the RPD's characterization of his evidence, the RPD is owed significant deference in this respect (*Aguilar Zacarias v Canada (Citizenship and Immigration)*, 2012 FC 1155 at para 9 [*Zacarias*]). I have reviewed the transcript of the hearing and am unable to find fault with the RPD's determination on this issue.

[25] Mr. Khrikadze also points to the RPD's finding that his evidence regarding the nature of his auto business changed. In this respect I am persuaded that the RPD did in fact err in concluding that the substance of his evidence had changed. An erroneous finding of fact alone however does not justify the Court's intervention on judicial review. The Court must be satisfied that the decision-maker based its decision on the error of fact, and that the error was "made in a perverse or capricious manner or without regard for the material before" the RPD (*Federal Courts Act*, RSC, 1985, c F-7, s18.1(4)(d)). In this case the RPD's concern with Mr. Khrikadze's description of his auto business was only one of many examples the RPD cited of inconsistent evidence and the finding that his evidence changed on this issue was not determinative. The error does not undermine the reasonableness of the RPD's decision.

[26] The RPD concluded that Mr. Khrikadze's reported savings in the amount of \$95,000 US were not in line with his employment history. Mr. Khrikadze submits this was an improper plausibility finding. I do not take issue with Mr. Khrikadze's position that implausibility findings should be limited to the clearest of cases where there is a reliable evidentiary basis (*Ansar v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1152 at para 17; *Zacarias* at para 10). However, in this case the RPD engaged in a detailed review of the evidence including the short-lived nature of Mr. Khrikadze's business ventures, his evidence that they were financial

and operational failures, and that he had to seek a loan from his father to start-up the auto business. There was a clear evidentiary basis upon which the RPD could reasonably conclude savings in the amount of \$95,000 US were not in line with Mr. Khrikadze's employment history.

[27] Finally Mr. Khrikadze submits that the RPD's concerns relating to the timing of his amended claim and the failure to address Counsel's explanation for the content of supporting letters from Mr. Khrikadze's father render the decision unreasonable. Again I disagree.

[28] It was not unreasonable for the RPD to address the timing of Mr. Khrikadze's claim amendment on the basis that a claimant would have "a significant motivation to amend his allegations knowing that his political allegations would no longer sufficiently establish a claim." While Mr. Khrikadze may not have been under any obligation to amend his claim earlier than he did, the RPD did not err in viewing the delay as having some relevance to the credibility assessment in light of the fundamental importance of the amendment to the claim.

[29] In regards to counsel submissions I would simply note that a decision-maker's failure to "include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred...does not impugn the validity of either the reasons or the result under a reasonableness analysis" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

[30] The reasons in this case allow me to understand why the RPD reached the decision it did and to conclude that the decision falls within the range of acceptable outcomes. The RPD's IRPA section 97 determination is reasonable.

B. *Did the RPD breach Mr. Khrikadze's right to procedural fairness?*

[31] The RPD noted the absence of first hand testimony in respect of the reported personal vendetta, a vendetta that according to Mr. Khrikadze's evidence did not arise until after his departure from Georgia. The RPD noted that the absence of this evidence further undermined the credibility of the allegations. Mr. Khrikadze submits that the RPD's failure to advise that it wished to question family members was procedurally unfair.

[32] In this case the applicant had notice as of April 18, 2017 that the Minister intended to intervene at his hearing to "make representations on the issues of program integrity and credibility." Mr. Khrikadze had notice that credibility was in issue in advance of the hearing.

[33] The family statements in the record contain little detail in respect of the alleged personal vendetta. The limited written statements from Mr. Khrikadze's wife, his brother-in-law or his children fail to even identify the agent of harm.

[34] Mr. Khrikadze had the burden and obligation to place his best foot forward in advancing his claim for refugee protection. He had ample notice that the credibility of his claim was in issue. The RPD satisfied its duty to act fairly in the circumstances of this case.

VII. Conclusion

[35] The RPD's decision is transparent, justified and intelligible and it falls within the range of reasonable possible outcomes based on the facts and the law. I am satisfied that there was no breach of procedural fairness.

[36] The parties have not identified a question of general importance for certification, and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No question is certified.
3. The style of cause is amended to name the Minister of Citizenship and Immigration as the respondent.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3503-17

STYLE OF CAUSE: ZVIAD KHRIKADZE v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: JANUARY 30, 2018

JUDGMENT AND REASONS: GLEESON J.

DATED: APRIL 26, 2018

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