Federal Court  Cour fédérale

Date: 20190822

Docket: IMM-6300-18

Citation: 2019 FC 1093

Ottawa, Ontario, August 22, 2019

PRESENT: Madam Justice Walker

BETWEEN:

MOKHIGUL NURRIDINOVA
ERKIN NURRIDINOV
MALIKA SIROJIDDINOVA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants, Mokhigul Nurridinova, Erkin Nurridinov and Malika Sirojiddinova, seek judicial review of a decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada. The RAD dismissed the Applicants' appeal of a decision of the Refugee Protection Division (RPD) and confirmed the RPD's decision that they were neither Convention refugees nor persons in need of protection pursuant to sections 96 and 97 of the

Immigration and Refugee Protection Act, SC 2001, c 27 (IRPA). The application for judicial review is brought pursuant to subsection 72(1) of the IRPA.

[2] For the reasons that follow, the application is dismissed.

I. Background

[3] The Applicants are citizens of Uzbekistan. Mokhigul Nurridinova and Erkin Nurridinov are married and Malika Sirojiddinova is their daughter. I note that the adult Applicants' surnames are spelled "Nurridinova/Nuriddinova" and "Nurridinov/Nuriddinov" throughout the Court file. I have used the spellings set out in the Notice of Application in this judgment.

[4] The Applicants arrived in Canada in March 2017 and made refugee claims.

[5] In 2007, Mr. Nurridinov travelled to Sweden and made a refugee claim using a false identity. He alleged that he had been arrested, interrogated and abused by the Uzbek government because of his association with local Muslims. The refugee claim was refused in 2009.

[6] When Mr. Nurridinov returned to Uzbekistan in 2012, he was questioned and detained briefly at the airport.

[7] The adult Applicants were married on August 28, 2012 and Malika was born on November 19, 2013.

[8] On February 28, 2014, Mr. Nurridinov returned to Sweden to work. Ms. Nurridinova remained in Uzbekistan and, in January 2016, opened a grocery store. She alleges that she was approached by a tax inspector, Ravshan, in June 2016 who extorted money from her each month from June 2016 to January 2017. Ms. Nurridinova states that Ravshan threatened to imprison her if she did not pay, indicating that he had powerful friends in the Uzbekistan National Security Service (SNB). Ravshan stated that he knew about the Applicants and Mr. Nurridinov's problems with the Uzbek authorities. He threatened to have them imprisoned for sending money to Islamic opponents of the government.

[9] Mr. Nurridinov returned to Uzbekistan from Sweden in July 2016. He states that he was asked questions upon his return but allowed to leave the airport. He alleges that he was detained two days later for approximately 10 hours and questioned by authorities. He was released after his father paid a bribe.

[10] Mr. Nurridinov states that he confronted Ravshan shortly after his return from Sweden. Ravshan stated that he would have Mr. Nurridinov arrested by his powerful friends for being a traitor to the country.

[11] The Applicants used an agent to help them flee Uzbekistan. On November 10, 2016, they flew to Almaty, Kazakhstan, and applied for Greek visas. The applications were rejected and the Applicants returned to Uzbekistan on December 2, 2016.

[12] With the agent's assistance, the Applicants applied for Canadian temporary resident visas using false information. The Canadian visas were granted and, on January 26, 2017, the Applicants travelled to Kiev, Ukraine, where they received the visas. On March 6, 2017, they came to Canada and made refugee claims in April/May 2017.

[13] The Applicants allege that Ravshan and SNB agents have searched for them since they left Uzbekistan.

[14] The RPD's decision is dated November 2, 2017. The RPD concluded that the Applicants are neither Convention refugees nor persons in need of protection pursuant to sections 96 and 97 of the IRPA. The determinative issue before the RPD was the Applicants' credibility. The RPD made the following findings:

> 1. Mr. Nurridinov based his Swedish asylum claim on the allegation that he had been arrested, abused and interrogated in August 2006 by Uzbek authorities for his involvement with local Muslims. However, when he returned to Uzbekistan from Sweden in May 2012, after four years abroad, he was asked only three questions at the airport over the course of an hour and released, contrary to Ms. Nurridinova's Basis of Claim (BOC) narrative that referred to the payment of a bribe to secure his release. More importantly, the RPD reviewed the documentary evidence for Uzbekistan and concluded that, if Mr. Nurridinov escaped to Sweden in 2007 following his arrest and interrogation, he would not merely have been asked routine questions at the airport when he returned. Rather, he would likely have been viewed as a potential threat to state security and subjected to lengthy interrogation and arrest. Therefore, the RPD concluded that Mr. Nurridinov was not arrested and tortured in 2006 and that the Uzbek authorities had no interest in him.
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> 2. The RPD found that Mr. Nurridinov would have required an exit visa to travel to Sweden (a non-former USSR country) on February 28, 2014. The visa is commonly referred to as an "OVIR" and its issuance determined by the security service. The panel noted that individuals connected to unregistered religious

groups and dissidents have been denied exit visas. The RPD stated that Mr. Nurridinov's ability to obtain an OVIR buttressed its finding that the Uzbek authorities had no interest in him and further undermined the credibility of the allegation that he was previously arrested, interrogated and abused by the government.

3. The RPD found that Ms. Nurridinova's narrative regarding the extortion and threats made by Ravshan were not credible. The threats were based on Mr. Nurridinov's prior problems with the government and poor reputation. The panel linked its finding that Mr. Nurridinov had not been arrested in 2006 to the alleged extortion by Ravshan:

> [50] Given that the male claimant did not have the experiences alleged the panel finds, on a balance of probabilities, that the principal claimant did not have problems with the tax collector known as Ravshan, who extorted money from her, threatening to use her husband's prior problems with the government against them. Further, the panel finds, on a balance of probabilities, that the male claimant's alleged encounter with Ravshan in 2016, wherein the male claimant was allegedly threatened with arrest and called a traitor did not occur.

4. As a result of this finding, the RPD concluded that the Applicants' allegation that Ravshan and SNB agents made inquiries about them following their departure from Uzbekistan was not credible.

5. Finally, the Applicants' return to Uzbekistan in December 2016 following their brief, unsuccessful trip to Kazakhstan to apply for Greek visas led the RPD to draw an adverse inference that they were not in fact being extorted and threatened with imprisonment in Uzbekistan. The RPD stated that Ms. Nurridinova's explanation that they had to return because they did not want Ravshan to find out that they had left was illogical. If she was no longer in Uzbekistan, there was no reason why she would concern herself with Ravshan. There was also no reason why she would continue making extortion payments to him. Further, Ms. Nurridinova explained the return by stating that, if they stayed any longer, they would be deported to Uzbekistan as they only had a temporary two-week permit to remain in the country. The RPD found that this explanation was not credible.

[15] The RPD addressed the Applicants' prospective risk upon a return to Uzbekistan. The panel stated that there was no persuasive evidence that they would experience problems on their return merely because they had claimed asylum abroad. The RPD concluded that, as the Applicants were not being sought by Uzbek authorities, nor were they members of any banned religious groups or perceived to have contact with such groups, there was no reason why they should fear returning to Uzbekistan.

[16] The Applicants appealed the RPD decision to the RAD. The RAD dismissed the appeal and confirmed the RPD's decision. The Applicants seek judicial review of the RAD's Decision in this application.

II. Decision under review – RAD Decision

[17] The Decision is dated November 1, 2018. The RAD reviewed the RPD's credibility assessments and its findings regarding the Applicants' risk in returning to Uzbekistan. After reviewing the evidence in the record, the RAD found that "the Appellants are not credible in their allegations and have not established that they face an objective risk if they returned to Uzbekistan".

[18] The RAD addressed Mr. Nurridinov's credibility. The Applicants argued that the RPD erred in drawing an adverse inference regarding his alleged arrest and torture in 2006 from the fact that he was able to return without issue to Uzbekistan from Sweden in 2012. The Applicants also argued that it was perverse to find that Mr. Nurridinov would not have been issued an exit

visa if he had previously had problems with the Uzbek government and that the RPD did not ask how Mr. Nurridinov obtained his exit visa.

[19] The RAD found that the RPD's negative inferences were not speculative. Based on the objective documentary evidence in the national documentation package (NDP) regarding the Uzbek authorities' treatment of individuals suspected of religious associations, Mr. Nurridinov's ability to return to Uzbekistan without issue undermined the credibility of his allegations of arrest and torture in 2006. The documentary evidence highlighted the improbability of the version of events he described. The RAD stated that the RPD committed no error in finding that Mr. Nurridinov's ability to exit the airport in 2012 also undermined the credibility of his allegation that he was of interest to the authorities.

[20] The RAD agreed that the RPD did not ask the Applicants how Mr. Nurridinov obtained an OVIR exit visa but stated that, by way of the RPD decision, they had notice of this issue. Despite having received notice, they provided no explanation to the RAD. The RAD concluded that the RPD did not err in finding that Mr. Nurridinov's ability to obtain an exit visa undermined the credibility of his allegation that he was arrested and tortured by the SNB because of his association with local Muslims.

[21] The RAD then considered the RPD's negative assessment of Ms. Nurridinova's credibility. The Applicants argued that the RPD's negative findings flowed solely from its conclusion that Mr. Nurridinov was not arrested in 2006 in Uzbekistan. They state that the RPD should have assessed Ms. Nurridinova's consistent and corroborated testimony. Even if the RPD

was correct in concluding that her husband was not persecuted in 2006, it does not mean that Ms. Nurridinova was not persecuted in 2016. The RAD disagreed, stating that the testimony of an associate claimant can impact the credibility of other claimants and their allegations. The RAD stated that the corollary to the RPD's finding that Mr. Nurridinov was not arrested and tortured as alleged "is that the female Appellant's claim in her testimony and BOC that the tax collector stated her husband was under surveillance and known to be arrested would also be unlikely". This undermined her credibility. The panel concluded that the RPD's reliance on its adverse credibility findings regarding Mr. Nurridinov to impugn Ms. Nurridinova's allegations was not an error. The RAD also found inconsistencies between Ms. Nurridinova's BOC and aspects of the adult Applicants' testimony before the RPD.

[22] The RAD addressed the Applicants' argument that the RPD: (1) erred in finding that it was illogical for them to continue to pay Ravshan after they left Uzbekistan for Kazakhstan in November 2016 and (2) engaged in speculation in concluding that Uzbek citizens could remain in Kazakhstan longer than two weeks. The RAD rejected the argument and stated that any fear the Applicants had in being deported from Kazakhstan would not explain why they would voluntarily return when the reach and control of their alleged agents of persecution was greatest in Uzbekistan. The RAD found that the RPD's conclusion that the Applicants could have remained in Kazakhstan longer than two weeks was not speculative and that they had failed to provide any evidence in support of their statement that Uzbekistan citizens were only granted two-week permits upon entry to Kazakhstan. The RAD concluded that their voluntary return was not consistent with their alleged fear of extortion and imprisonment by Uzbek authorities.

[23] Finally, the RAD confirmed the RPD's finding that the Applicants had not established an objective risk upon return to Uzbekistan as failed asylum seekers. Based on its own review of the documentary evidence in the NDP and Mr. Nurridinov's experiences in being able to return to Uzbekistan after long periods abroad, the RAD found no serious possibility of persecution or, on a balance of probabilities, risk of cruel or unusual treatment or punishment or torture. The RAD stated that returning asylum seekers who were at risk of harassment and persecution were those labelled by the authorities as opponents or threats to national security. The panel found that the Applicants did not have profiles which would place them at risk and that it was mere speculation that their Canadian refugee claims would attract increased attention upon return. The fact that Mr. Nurridinov had made a failed asylum claim in Sweden, resided in the country for a total of seven years and made to return trips to Uzbekistan, strongly indicated to the RAD that the Applicants did not possess a forward-facing risk upon their return. This finding was buttressed by the fact that there was no evidence that the Uzbek authorities continued to search for the Applicants.

III. Issues

[24] The Applicants raise the following issues in this application:

1. Did the RAD breach the Applicants' rights to procedural fairness by (1) substantively addressing two procedural fairness errors in the RPD decision, rather than returning the matter for redetermination by the RPD; and (2) making negative credibility findings regarding Ms. Nurridinova without giving her an opportunity to respond?

2. Was the Decision unreasonable?

IV. Standard of review

[25] The procedural fairness issues raised by the Applicants will be reviewed for correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54). My review in this regard focuses on the procedure followed by the RAD in arriving at its Decision and not on the substance or merits of the case in question.

[26] I will review the substance of the Decision for reasonableness (*Canada (Citizenship and Immigration) v Huruglica*), 2016 FCA 93 at para 35 (*Huruglica*); *Gebremichael v Canada (Citizenship and Immigration*), 2016 FC 646 at para 8). In practical terms, this means that I am required to assess whether the RAD's credibility findings and its assessment of the country condition evidence for Uzbekistan and the Applicants' profile were reasonable (*Gbemudu v Canada (Citizenship, Refugees and Immigration)*, 2018 FC 451 at para 23).

[27] The reasonableness standard is concerned with ensuring that the decision of a tribunal is justified, transparent and intelligible, and that the decision falls within a range of possible and acceptable outcomes which are defensible in respect of the facts and law applicable in the particular case (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 (*Dunsmuir*)). In other words, the reviewing court must look at both the outcome and the reasons that are given for that outcome (*Delta Air Lines Inc v Lukács*, 2018 SCC 2 at para 27). The *Dunsmuir* criteria are met if the reasons provided by the tribunal "allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of

acceptable outcomes" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

V. Analysis

1. Did the RAD breach the Applicants' rights to procedural fairness by (1) substantively addressing two procedural fairness errors in the RPD decision, rather than returning the matter for redetermination by the RPD; and (2) making negative credibility findings regarding Ms. Nurridinova without giving her an opportunity to respond?

The RPD's procedural fairness errors

[28] As part of their appeal to the RAD, the Applicants submitted that the RPD made adverse credibility findings on the following two issues, aspects of which were not put to them during the hearing:

> (1) The RPD found that Uzbek citizens required an OVIR exit visa to travel to countries outside of the former USSR. The exit visas are stringently reviewed by the security service. Individuals involved in religious activities were of particular interest to the authorities and faced restrictions on travel. Mr. Nurridinov's ability to obtain an exit visa to travel to Sweden in 2014 undermined the credibility of his allegation that he was previously arrested and abused by the government because of his association with local Muslims.
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> (2) The RPD questioned why the Applicants would return to Uzbekistan after a brief journey to Kazakhstan in November 2016. The Applicants stated that their agent had allowed them to obtain a temporary two-week permit. The RPD panel noted that Mr. Nurridinov acknowledged that an entry visa was not required for Kazakhstan. The RPD concluded it was not credible that the agent would have obtained a temporary permit for the Applicants.

[29] The Applicants argued that: (1) the RPD did not ask Mr. Nurridinov how he obtained an exit visa to leave Uzbekistan in 2014; and (2) the RPD did not challenge Mr. Nurridinov's testimony that all Uzbeks could only remain in Kazakhstan for two weeks without a permit.

[30] In this application, the Applicants argue that the RAD breached their right to procedural fairness by acknowledging that the RPD did not raise these issues during the hearing but then making its own negative credibility findings, again without any opportunity for them to make submissions. The Respondent submits that the RAD made no error in considering the RPD's procedurally unfair errors and in substantively addressing them, as the errors were specifically raised by the Applicants on appeal. The Applicants' choice not to provide evidence contesting the RPD's findings was their responsibility.

[31] The RAD's findings were as follows:

> [17] … With respect to the Appellants' argument that the RPD did not ask them how they obtained the visa, I agree that the RPD did not ask them this during the hearing. However, by way of its decision, the Appellants were provided notice of this issue. Despite having received notice of this issue by way of the RPD's decision, they provide no explanation in this appeal for how the male Appellant was able to obtain an exit visa. In light of the lack of an explanation, I find the RPD did not err in finding that the male Appellant's ability to obtain an exit visa undermines the credibility of his allegation that he was arrested, interrogated and tortured by the SNB because of his association with local Muslims.
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> [24] … With respect to the RPD's finding about the two week permits they allegedly had in Kazakhstan, I find the RPD was not speculating. The Appellants having been given notice of this issue by way of the RPD's decision provide no evidence to show that Uzbekistan citizens are only granted a two week permit, even though they do not require a visa to travel to Kazakhstan. I draw a negative inference from the Appellants' bald assertion that Uzbekistan citizens are only granted a two-week permit upon entry to Kazakhstan. I have also reviewed the stamps in the Appellant's

> passports in the RPD record and find no support that the Appellants were only able to stay in Kazakhstan for two weeks.

[32] The Applicants state that the RAD's characterization of the RPD's erroneous findings as "notice" of these issues effectively, and improperly, excused the RPD's errors. They argue that the RPD's decision is a final judgment and should not be used as notice for issues to be considered in a subsequent proceeding. The Applicants also argue that the proper course of action for the RAD was either to refer their case to the RPD for redetermination or to convene an oral hearing and make its own determination. The Applicants submit that the RAD's reliance on their ability (and failure) to submit new evidence was faulty given the stringent requirements for the admission of evidence before the RAD.

[33] In order to address the Applicants' argument that the RAD breached their right to procedural fairness by making its own negative credibility findings despite the RPD's errors, I will first canvass the role of the RAD on appeal as contemplated by the IRPA and as described by Justice Gauthier of the Federal Court of Appeal in *Huruglica*.

[34] Subsection 110(1) of the IRPA contemplates an appeal to the RAD from decisions of the RPD on questions of law, fact and mixed law and fact. The RAD is required to proceed without a hearing on the basis of the record before the RPD (subsection 110(3)), subject to the limited rights of the parties to present new evidence set forth in subsection 110(4) and to an oral hearing pursuant to subsection 110(6) of the IRPA. After considering the appeal, the RAD must make one of three decisions (section 111 of the IRPA):

Decision	**Décision**
111. (1) After considering the appeal, the Refugee Appeal Division shall make one of the following decisions:	**111. (1)** La Section d'appel des réfugiés confirme la décision attaquée, casse la décision et y substitue la décision qui aurait dû être rendue ou renvoie, conformément à ses instructions, l'affaire à la Section de la protection des réfugiés.
(a) confirm the determination of the Refugee Protection Division;	
(b) set aside the determination and substitute a determination that, in its opinion, should have been made; or	
(c) refer the matter to the Refugee Protection Division for re-determination, giving the directions to the Refugee Protection Division that it considers appropriate.	
...	[...]
(2) The Refugee Appeal Division may make the referral described in paragraph (1)(c) only if it is of the opinion that	**(2)** Elle ne peut procéder au renvoi que si elle estime, à la fois :
(a) the decision of the Refugee Protection Division is wrong in law, in fact or in mixed law and fact; and	a) que la décision attaquée de la Section de la protection des réfugiés est erronée en droit, en fait ou en droit et en fait;
(b) it cannot make a decision under paragraph 111(1)(a) or (b) without hearing evidence that was presented to the Refugee Protection Division.	b) qu'elle ne peut confirmer la décision attaquée ou casser la décision et y substituer la décision qui aurait dû être rendue sans tenir une nouvelle audience en vue du réexamen des éléments de preuve qui ont été présentés à la Section de la protection des réfugiés.

[35] In *Huruglica*, Justice Gauthier considered the scope of the RAD's role when reviewing an RPD decision. She emphasized the importance of the words of the IRPA read in their entire context in accordance with the purposive approach mandated by modern statutory interpretation principles (at para 46). Justice Gauthier stated that sections 110 and 111 of the IRPA, subject to paragraph 111(2)(b), "evidence the legislator's intent that the RAD bring finality to the refugee claims determination process" (at para 58). In addition, Justice Gauthier addressed the circumstances in which the RAD may refer an appeal to the RPD for redetermination (*Huruglica* at para 69):

> [69] I now turn to paragraph 111(2)(b). It provides that once an error has been identified (paragraph 111(2)(a)), the RAD may refer the matter back for redetermination with the directions that it considers appropriate only if it is "of the opinion" that it cannot make a decision confirming or setting aside the RPD decision without hearing the evidence presented before the RPD. This possibility acknowledges the fact that in some cases where oral testimony is critical or determinative in the opinion of the RAD, the RAD may not be in a position to confirm or substitute its own determination to that of the RPD.

[36] Returning to the present case, the RAD addressed the Applicants' arguments regarding the OVIR exit visa and two-week Kazakhstan permit and drew its own conclusions. The panel did not remit the Applicants' case to the RPD for reconsideration, nor did it convene an oral hearing. While I agree with the statement that an RPD decision is a final decision and is not intended as notice, the use of this wording by the RAD is unfortunate but not determinative. I find that the RAD did not breach the Applicants' right to procedural fairness for the following reasons.

[37] The circumstances in which the RAD is permitted to refer a matter to the RPD for redetermination are limited. Subsection 111(2) of the IRPA permits the RAD to make a referral to the RPD only if it is of the opinion that:

> (a) the decision of the RPD is wrong in law, in fact or in mixed law and fact; and
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> (b) it cannot make a decision under paragraph 111(1)(a) or (b) without hearing evidence that was presented to the RPD.

[38] The Applicants argue that their case should have been remitted to the RPD to allow them full rein to present new evidence. In my view, this argument ignores the restriction contained in paragraph 111(2)(b). The RAD's role is to bring finality to the determination of a refugee claim. Only if the RAD concludes it cannot make a decision without hearing "evidence that was presented to the Refugee Protection Division" (and in the French version of the provision, "des éléments de preuve qui ont étés présentés à la Section de la protection des réfugiés") does the IRPA contemplate the re-involvement of the RPD. Here, the Applicants do not argue that there was evidence before the RPD that was overlooked or misconstrued by either the RPD panel or the RAD. Rather, the premise of their procedural fairness argument is that there was no evidence before the RPD on which it could have based its decision. As a result, the RAD was precluded from returning the Applicants' case to the RPD for redetermination by paragraph 111(2)(b) of the IRPA.

[39] I emphasize that this result is not unfair. The Applicants raised the issues in question on appeal to the RAD. They had full knowledge of the nature of the RPD's concerns regarding Mr. Nurridinov's OVIR exit visa and its skepticism concerning their explanations for their reavailment to Uzbekistan from Kazakhstan. Nevertheless, the Applicants did not submit

evidence contradicting the RPD's findings. They submit that, to do so, would be to condone the RPD's errors and that their ability to present evidence to the RAD was limited by subsection 110(4) of the IRPA. They could not be sure that any evidence tendered would be admitted.

[40] Subsection 110(4) of the IRPA provides that:

Evidence that may be presented	**Éléments de preuve admissibles**
(4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.	**(4)** Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.

[41] The scope of an appellant's ability to present new evidence to the RAD is restricted by subsection 110(4) consistent with the premise that a RAD appeal proceeds on the basis of the record before the RPD (subsection 110(3)). However, where the RAD determines that the RPD reached a conclusion on an unanticipated issue without evidence from the appellant, subsection 110(4) would permit the admission of new evidence. The appellant could not reasonably have been expected in the circumstances to have presented the evidence to the RPD. The fairness of the system is maintained and the RAD would be in a position to properly resolve the appellant's claim. The Applicants' argument that the restrictive scope of subsection 110(4) required the RAD to return their case to the RPD is not persuasive.

[42] In the alternative, the Applicants argue that the RAD should have convened an oral hearing pursuant to subsection 110(6) of the IRPA to permit them to address the RPD and RAD's adverse findings. Subsection 110(6) contemplates an oral hearing before the RAD in limited circumstances:

Hearing	**Audience**
110. (6) The Refugee Appeal Division may hold a hearing if, in its opinion, there is documentary evidence referred to in subsection (3)	**110. (6)** La section peut tenir une audience si elle estime qu'il existe des éléments de preuve documentaire visés au paragraphe (3) qui, à la fois :
(*a*) that raises a serious issue with respect to the credibility of the person who is the subject of the appeal;	*a*) soulèvent une question importante en ce qui concerne la crédibilité de la personne en cause;
(*b*) that is central to the decision with respect to the refugee protection claim; and	*b*) sont essentiels pour la prise de la décision relative à la demande d'asile;
(*c*) that, if accepted, would justify allowing or rejecting the refugee protection claim.	*c*) à supposer qu'ils soient admis, justifieraient que la demande d'asile soit accordée ou refusée, selon le cas.

[43] Paraphrasing the provision, the RAD may convene an oral hearing if, in its opinion, there is new evidence that raises a serious issue with respect to the credibility of an appellant. Here, the Applicants submitted no new evidence. Therefore, the RAD was not required to hold an oral hearing.

RAD's negative credibility findings regarding Ms. Nurridinova

[44] The Applicants submit that the RAD breached their right to procedural fairness in making its own adverse credibility findings based on inconsistencies in Ms. Nurridinova's sworn testimony. They argue that these inconsistencies were not raised by the RPD and should have been put to Ms. Nurridinova by the RAD (*Kwakwa v Canada (Citizenship and Immigration)*, 2016 FC 600 (*Kwakwa*)). The Respondent argues that the RAD is permitted to review the Applicants' record and make its own credibility findings (*Adeoye v Canada (Citizenship and Immigration)*, 2018 FC 246 (*Adeoye*); *Tan v Canada (Citizenship and Immigration)*, 2016 FC 876 (*Tan*)).

[45] Having confirmed the RPD's core negative assessment of Ms. Nurridinova's credibility, the RAD identified additional inconsistencies between the narrative in her BOC and the testimony at the RPD hearing. The RAD panel set out three specific factual inconsistencies that arose from the RPD's questioning of the adult Applicants.

[46] I find that the RAD did not breach the Applicants' right to procedural fairness in making the additional adverse credibility findings. In their memorandum in support of their RAD appeal, the Applicants raised the following issue:

> The [RPD] Panel erred in failing to consider the testimony of Mokhigul Nurridinova to be credible since it was consistent, uncontradicted, plausible and corroborated.

[47] The RAD's role on appeal is to consider the record before the RPD and to review the RPD's decision against the issues raised by the appellant, respecting the basic principle of

procedural fairness that a party must have an opportunity to respond to new issues that will have a bearing on a decision affecting them (*Tan* at para 32). While the RAD cannot raise a new issue without notice to the parties, it is entitled to make independent findings of credibility against an appellant where credibility was at issue before the RPD, the RPD's findings are contested on appeal and the RAD's additional findings arise from the evidentiary record (*Adeoye* at paras 12-13, citing *Sary v Canada (Citizenship and Immigration)*, 2016 FC 178 at paras 27-32). This principle was recognized in *Kwakwa*, cited by the Applicants, where Justice Gascon stated that a new question or issue is one which "constitutes a new ground or reasoning on which a decision-maker relies, other than the grounds of appeal raised by the applicant, to support the valid or erroneous nature of the decision appealed from" (*Kwakwa* at para 24).

[48] I agree with the Applicants that the issue of credibility is very broad and that the RAD cannot have *carte blanche* to identify any new credibility issue. However, the Applicants raised the issue of Ms. Nurridinova's testimony broadly, stating that it was "consistent, uncontradicted, plausible and corroborated". The RAD directly addressed this ground of appeal, highlighting inconsistencies between her BOC and testimony, and Mr. Nurridinov's testimony, that arose from questions posed by the RPD. As a result, I find that the RAD did not raise a new question in support of its decision and did not breach the Applicants' right to procedural fairness.

2. Was the Decision unreasonable?

[49] The Applicants submit that the Decision was unreasonable in three respects. They argue that the RAD erred in: (1) drawing a negative inference regarding Mr. Nurridinov's credibility based on his ability to return to Uzbekistan from Sweden in 2012 without issue and to obtain an

exit visa in 2016, despite the prior interest of the Uzbek authorities; in so doing, the RAD used an improper "strawman" test; (2) doubting the Applicants' subjective fear of persecution in Uzbekistan due to their return from Kazakhstan in 2016; and (3) improperly assessing their risk of return to Uzbekistan as refused asylum seekers.

[50] I find that the Decision was not unreasonable. The RAD comprehensively considered each of the Applicants' grounds of appeal and set out its reasoning intelligibly. The panel did not ignore the Applicants' evidence or explanations. The evidence reasonably supports the RAD's findings, and the RAD's reasons permit the Court to conclude that the Decision falls within the range of possible, acceptable outcomes defensible in respect of the facts and the law. The Court's intervention is not warranted.

[51] The Applicants argue that the RAD and RPD improperly inferred from Mr. Nurridinov's allegations of persecution in 2006 that he would subsequently be of interest to the Uzbek authorities. He argues that he is not a wanted individual, nor is he a leader or somehow famous, and that the events of 2006 would not result in him being charged and imprisoned years later upon his return in 2012. Mr. Nurridinov argues that the RAD embellished the extent of the Uzbek authorities' interest in him and that its central adverse credibility findings flowed from this error. He states that the Applicants' fear of return to Uzbekistan is based primarily on the threats from Ravshan, the corrupt tax inspector.

[52] In my view, the Applicants' argument is not consistent with their narrative and evidence. The essence of their claim is that they cannot return to Uzbekistan because they fear persecution

due to their affiliation with local Muslims and the threats of imprisonment by Ravshan based on his knowledge of Mr. Nurridinov's prior problems with the Uzbek authorities. If the Applicants no longer fear the Uzbek authorities, their refugee claims and assertions of a well-founded fear of persecution in Uzbekistan are undermined. I find no embellishment in the RAD's assessment of Mr. Nurridinov's narrative of his alleged 2006 torture. I also find no reviewable error in the RAD's weighing of his ability to enter and exit the country largely unchallenged and the resulting likelihood of the Uzbek authorities' lack of continued interest in him.

[53] I do not agree with the Applicants' argument that the RAD ignored their submissions regarding their two-week stay in Kazakhstan and return to Uzbekistan as the RAD specifically addressed the Applicants' explanations for their return in the Decision. The panel accepted their explanation for their continued payments to Ravshan, drew a negative inference from their unsupported statement that they were only granted a two-week permit, and observed that they took no action while in Kazakhstan to investigate their options. It was open to the RAD to conclude that the Applicants' willingness to return to Uzbekistan was not consistent with their alleged fear of extortion and imprisonment by Uzbek authorities.

[54] Finally, the RAD's analysis of the Applicants' fear of persecution in Uzbekistan based on their perceived political opinion as returned asylum seekers was based on the documentary evidence for Uzbekistan. The panel's conclusion that the Applicants did not fall within the profiles of Uzbek nationals who were subject to harassment and prosecution on return was detailed and consistent with the Applicant's description of their own circumstances:

> [29] The documentary evidence suggests that most of the Uzbek nationals who applied for protection abroad and who returned and were harassed, charged and/or prosecuted were those who were labelled as opponents or threats to the national security. In particular, they are people suspected of having organized or participated in violent attacks in Uzbekistan; political opponents; members or suspected members of Islamist groups and Islamic movements banned in Uzbekistan; government critics and wealthy individuals who have fallen out of favour with the authorities or who have assets that authorities would like to seize. The Appellants fit none of the above mentioned profiles. They do not allege to be wealthy; they have not established they are members of any Islamist group or of an Islamic movement that had been banned by the government; and they are not politically active or critics of the government.

[55] The Applicants argue that, just because they have not faced problems in the past, does not mean they will likely not face problems in the future. In my view, the RAD reasonably concluded that "it would be mere speculation that the Appellants' refugee claims in Canada would attract increased attention upon return".

VI. Conclusion

[56] The application will be dismissed.

[57] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT in IMM-6300-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Elizabeth Walker"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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