

Federal Court



Cour fédérale

Date: 20210805

Docket: IMM-2690-19

Citation: 2021 FC 823

Ottawa, Ontario, August 5, 2021

PRESENT: Mr. Justice Norris

BETWEEN:

ARIF BASHIROV

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant, Arif Bashirov, is a sixty-three-year-old citizen of Azerbaijan. He arrived in Canada in May 2016 and made a refugee claim, alleging a risk of persecution by the Azerbaijani government due to his political activism as a member of the Azerbaijan Democratic Party (“ADP”), an opposition party. The applicant claimed to have joined the party in 2012 and to have taken on ever-more senior roles over the next four years. He claimed that he had lost his job as an engineer because of his political involvement and that he had been detained and

tortured because of this as well. The applicant obtained a visa to enter the United States and, after a brief stay there, entered Canada irregularly and sought protection here.

[2] The Refugee Protection Division (“RPD”) of the Immigration and Refugee Board of Canada (“IRB”) heard the applicant’s claim over three separate sittings between March and July 2017. On July 24, 2017, the RPD delivered oral reasons rejecting the applicant’s claim for protection.

[3] The applicant appealed this decision to the Refugee Appeal Division (“RAD”) of the IRB. For reasons dated March 29, 2019, the RAD rejected the appeal and confirmed the RPD’s determination that the applicant is not a Convention refugee or a person in need of protection.

[4] The applicant now applies for judicial review of the RAD’s decision under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. For the reasons that follow, this application must be dismissed.

[5] It is well-established that the substance of a decision by the RAD is reviewed on a reasonableness standard (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35). That this is the appropriate standard of review has been reinforced by *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

[6] A reasonable decision “is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker”

(*Vavilov* at para 85). The onus is on the applicant to demonstrate that the RAD's decision is unreasonable. To set aside a decision on this basis, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100). The court "must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable" (*ibid.*).

[7] The determinative issue for the RPD was the applicant's lack of credibility. The RPD based this adverse finding on the following considerations:

- **Demeanour:** the RPD found that the applicant's demeanour undermined his credibility because he did not answer questions in a straightforward manner. The RPD found that the applicant appeared confused by lines of questioning which would not have posed any difficulty if the applicant was relating matters of personal experience, as he claimed.
- **Failure to seek protection in the United States:** the applicant was in the United States for approximately two weeks in 2016 before entering Canada and did not claim asylum. The RPD did not find the applicant's explanation that a claim in the US would be unsuccessful to be reasonable. The RPD drew an adverse inference on this basis. The RPD also drew an adverse inference from the applicant's failure to produce his US visa.
- **Fraudulent documents:** the RPD found that the stamps on police letters submitted by the applicant were computer-generated scans rather than authentic stamps. The RPD made the same finding with respect to an ADP membership card and a letter from the party. As

a result, the RPD concluded that the documents were fraudulent. This, in turn, led the RPD to draw an adverse inference concerning the applicant's credibility.

- **Knowledge of ADP policy positions and politics in Azerbaijan:** the RPD noted that at the first hearing, the applicant could not answer questions with respect to key policy positions of the ADP. In the third session, he could answer similar questions in significant detail. The applicant explained that this discrepancy was because he was nervous in the first session. The RPD did not find this explanation reasonable, and noted that there was ample time between the first and third sessions for the applicant to produce evidence explaining his difficulty in testifying. The RPD found that the applicant had learned about ADP policies in the interim to bolster his claim, and drew an adverse inference regarding the applicant's credibility from this.

[8] In his appeal to the RAD, the applicant challenged the correctness of the RPD's adverse credibility determination. He also submitted that the poor quality of interpretation had deprived him of a fair hearing. The latter submission was supported by an annotated transcript prepared by someone who was fluent in both Azerbaijani and English but who was not otherwise qualified as an interpreter. The RAD refused to admit the annotated transcript. The applicant also sought to file new evidence relating to an incident involving his wife. The RAD refused to admit this evidence as well, finding that the requirements of subsection 110(4) of the *IRPA* (as interpreted in *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96) were not met.

[9] The RAD found that the quality of interpretation met the required standard and did not give rise to any issues of procedural fairness. The RAD acknowledged that there had been some

confusion over terminology during the testimony (e.g. concerning positions the applicant had held in the ADP) but that the standard required is one of comprehension, not perfection. The RAD was satisfied that this standard had been met.

[10] The RAD reviewed the RPD's determinations on a correctness standard. The RAD found that the RPD did not enjoy any advantage in assessing the evidence compared to the RAD and, as a result, was not owed any deference in this regard.

[11] The RAD made the following findings relating to the applicant's credibility:

- The RPD had erred in its adverse credibility finding due to the applicant's failure to seek refugee protection in the United States. The RPD overturned this finding.
- The RAD also found that the RPD had erred in one respect in its understanding of the applicant's evidence (which in turn was due at least in part to an interpretation error).
- The RPD did not err in its assessment of the police letters or the letters from the ADP the applicant had submitted. The RAD agreed that the anomalies with the police documents identified by the RPD suggested they were not actually provided by the police. The RAD found similar anomalies in the party documents submitted by the applicant and concluded that they were not authentic either.
- The RAD determined that the RPD had sound reasons for drawing a negative credibility inference based on the substantial differences between the applicant's account of ADP policies at the third hearing compared to the first. The RAD found that the applicant's lack of knowledge of these policies at the first hearing was "fundamentally incompatible"

with being a person who had held the roles in the party he claimed to have held. The medical issues which the applicant said at the second hearing had caused him discomfort were not supported by medical evidence, nor did they explain the discrepancies in his evidence between the first and third hearings.

[12] In summary, the RAD concluded that while there was an error in the RPD's decision, the overall finding was correct, and the applicant is neither a Convention refugee nor a person in need of protection.

[13] The applicant challenges the RAD's decision on three grounds which I would state as follows: (1) the RAD erred in refusing to admit the new evidence; (2) the RAD's assessment of the quality of interpretation at the RPD is unreasonable; and (3) the RAD's adverse assessment of the applicant's credibility is unreasonable. I do not agree that the RAD's decision is flawed in any of these ways.

[14] Looking first at the new evidence submitted by the applicant, this consisted of a written statement from the applicant's wife as well as a medical report describing certain injuries for which she had received treatment. In her statement, the applicant's wife alleged that she had been attacked and injured on May 28, 2018, when she had returned to Azerbaijan from Georgia (where she was living) for a visit. She alleged that the attack was motivated by opposition to her husband's political views.

[15] The RAD acknowledged that neither document was available at the time the claim was rejected because they both related to events that had occurred after the RPD's decision. However, the RAD found that the statement from the applicant's wife lacked credibility. Under *Singh*, the RAD was required to determine whether the statement was credible, "considering its source and the circumstances in which it came into existence" (at paras 38 and 44). The applicant has not established that the RAD's determination is unreasonable. The RAD explained why the statement was not credible, especially when considered against the backdrop of serious credibility concerns found by the RPD and upheld by the RAD. These concerns were based, in part, on the applicant's submission of fraudulent documents. It was not unreasonable for the RAD to doubt the veracity of the statement from the applicant's wife or to conclude that it was therefore inadmissible.

[16] Similarly, it was not unreasonable for the RAD to find that the medical report had no probative value for the applicant's claim due to the lack of explanation for the injuries for which the applicant's wife was treated. When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances (*Vavilov* at para 125). The applicant has not established that there are any such circumstances here.

[17] Second, the RAD reasonably determined that the fairness of the RPD hearing was not compromised by inadequate interpretation. It is unclear whether the applicant is challenging the RAD's refusal to admit the annotated transcript but, in any event, that determination was not unreasonable given that the person who prepared it had no expertise beyond speaking the

Azerbaijani language. Perhaps more to the point, the applicant has not established that it was unreasonable for the RAD to conclude that, whatever their cause, any difficulties around the applicant's descriptions of his role in the party (the main area of complaint relating to interpretation) were not overly material to the adverse credibility determination. That adverse credibility determination was based on several other factors besides this.

[18] This brings me, finally, to the applicant's submission that the adverse credibility determination itself is unreasonable. I do not agree.

[19] The RAD was alive to issues of credibility throughout its decision. This is demonstrated by the fact that it overturned the credibility finding by the RPD relating to the applicant's failure to seek protection in the United States. It is also demonstrated by the RAD's careful analysis of the applicant's evidence concerning his roles in the party and its disagreement with the RPD's understanding of that evidence in one respect. Apart from this, key considerations for both the RPD and the RAD were the applicant's evolving knowledge of the policies of the ADP and the genuineness of the documents he filed. Whether considered separately or together, both reasonably support an adverse determination regarding the applicant's credibility. The RAD engaged with and responded to the applicant's arguments on appeal. As demonstrated by its reasons, the RAD conducted an independent assessment of the evidence relating to these key considerations and the applicant's credibility generally. Once again, absent exceptional circumstances, its findings are owed deference by a reviewing court. The applicant has not established any basis to interfere with these findings.

[20] For these reasons, the application for judicial review must be dismissed.

[21] The parties have not suggested any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that none arise.

JUDGMENT IN IMM-2690-19

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

“John Norris”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2690-19

STYLE OF CAUSE: ARIF BASHIROV v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JUNE 16, 2021

JUDGMENT AND REASONS: NORRIS J.

DATED: AUGUST 5, 2021

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