

Federal Court



Cour fédérale

**Date: 20230331**

**Docket: IMM-1727-22**

**Citation: 2023 FC 459**

**Ottawa, Ontario, March 31, 2023**

**PRESENT: The Honourable Mr. Justice Fothergill**

**BETWEEN:**

**MIRIANI GOGOLIDZE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Miriani Gogolidze is a citizen of Georgia. He seeks judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [IRB]. The RAD confirmed the determination of the Refugee Protection Division [RPD] of the IRB that Mr.

Gogolidze is neither a Convention refugee nor a person in need of protection pursuant to ss 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] Mr. Gogolidze used to reside in Tbilisi, the capital of Georgia. He owned land in the town of Sachkhere, approximately 175 kilometres away. The land is rich in sand mines that can be used for the production of building materials.

[3] The Mayor of Sachkhere [Mayor] expressed interest in purchasing the land. When Mr. Gogolidze refused, the Mayor became angry and threatening. Mr. Gogolidze claims to have a well-founded fear of persecution by the Mayor if he returns to Georgia.

[4] The RAD unreasonably concluded, based in part on a factual error, that the Mayor had no ongoing interest in locating Mr. Gogolidze or causing him harm. The RAD's misapprehension of a central component of the evidence renders its decision unreasonable. The application for judicial review is allowed.

## II. Decision of the RPD

[5] In his testimony before the RPD, Mr. Gogolidze acknowledged that his BOC narrative wrongly claimed he was hospitalized for seven days following the altercation with the Mayor. He clarified that he required medical treatment for seven days, not hospitalization. Otherwise, Mr. Gogolidze confirmed that his BOC form was complete, true, and correct.

[6] On June 23, 2021, Mr. Gogolidze submitted post-hearing evidence. It is unclear whether this was considered by the RPD.

[7] The RPD dismissed Mr. Gogolidze's claim on July 22, 2021. The determinative issue was credibility. The RPD found several material inconsistencies between Mr. Gogolidze's BOC narrative and his oral testimony regarding: (a) whether the Mayor became angry and threatening after his offer to purchase the land was first refused; (b) when Mr. Gogolidze received a warning from a friend who worked with the police; (c) whether he had attempted to secure a letter from this police friend; and (d) whom he claimed to fear persecution from. The RPD concluded that Mr. Gogolidze had failed to establish a forward-facing risk of persecution by anyone in Georgia.

[8] Mr. Gogolidze appealed to the RAD. His appeal was dismissed on January 20, 2022. The RAD amended its decision on January 28, 2022.

### III. Decision under Review

[9] The RAD accepted that the post-hearing evidence presented by Mr. Gogolidze may never have come to the attention of the RPD. The RAD admitted the post-hearing evidence on appeal, either because it may have been considered by the RPD, or because it consisted of documents the RPD had refused to accept.

[10] The RAD observed that, in some respects, the RPD's analysis of Mr. Gogolidze's credibility may have been "unduly microscopic". The RAD nevertheless agreed that only some parts of his testimony were credible:

In some respects, the RPD's analysis of the Appellant's credibility comes across as unduly microscopic. However, I agree with the basic thrust of its conclusion that, on a balance of probabilities, the evidence does not establish that he currently faces a threat to his life or that he would face cruel and unusual punishment or treatment stemming from the events of December 2018 and January 2019. Some aspects of his testimony are credible but others are not. As to whether the RPD failed to consider the post-hearing evidence, there is reason to be concerned that this evidence may have been overlooked. However, the post-hearing evidence is properly before me as part of this appeal and I have taken it into consideration in assessing the Appellant's credibility.

[11] The RAD held that Mr. Gogolidze's fear of persecution by the Mayor was not based on his political opinion, and there was no nexus to the grounds for refugee protection enumerated in s 96 of the IRPA.

[12] The RAD made the following factual findings respecting Mr. Gogolidze's claim for protection (at para 16):

- At a meeting held in mid-December 2018, the Mayor of Sachkhere expressed an interest in acquiring land that the Appellant owned in the town, the Appellant declined his offer and the Mayor then asked him to reconsider his position. He was very forceful in making his views known.
- The Appellant and the Mayor once again encountered each other in the parking lot of a restaurant on the evening of January 4, 2019. The Mayor asked the Appellant if he had reconsidered his position with respect to his offer to acquire

his property. The Appellant reiterated that he would not accept the offer. There then followed a verbal exchange that included mutual insults, which led to a physical confrontation in which the Appellant was injured.

- In April 2019, two men went to the Appellant's home in Tbilisi. As there was no response, they visited the homes of two neighbours and spoke to them. They asked whether they knew where the Appellant was and when he would be returning home. These two men did not identify themselves, nor explain the reason why they wanted to contact the Appellant.
- On May 9, 2019, two men went to the Appellant's home and spoke to his wife. They asked her when the Appellant would be returning home. The Appellant's wife did not respond to them. She asked them to leave. They replied that they had been sent by the Mayor of Sachkhere.
- At some point after May 27, 2019, the Deputy Mayor of Sachkhere contacted the Appellant's wife by telephone on more than one occasion. He used threatening and foul language that was directed at the Appellant.

[13] The RAD determined that Mr. Gogolidze had failed to establish a forward-looking risk of harm from the Mayor. First, the RAD noted that the physical altercation between Mr. Gogolidze and the Mayor in January 2019 was unplanned and occurred by happenstance. Second, the RAD agreed with the RPD that little weight should be ascribed to the claim that a police contact had warned him the Mayor was conspiring to frame him. There was no supporting evidence, and no reason to think the police would cooperate in such a scheme. Third, the RAD rejected as speculative the allegation that the Mayor's attempts to locate Mr. Gogolidze reflected an intention to kill him.

[14] Even if the Mayor once had an interest in locating Mr. Gogolidze, the RAD found he had since lost that interest. The RAD noted that almost three years had passed since the Mayor had

last attempted to locate him, and there was no evidence that his wife, who remains in Georgia, had ever changed her residence or gone into hiding.

[15] Finally, the RAD found that Mr. Gogolidze's credibility was undermined "to some degree" by his identification of a person other than the Mayor as the agent of persecution at three separate instances in his BOC narrative. The RAD did not accept that a translation error could account for this inconsistency.

[16] The RAD therefore concluded that Mr. Gogolidze did not have a forward-looking, credible fear of the Mayor, and dismissed his claim for protection.

#### IV. Issue

[17] The sole issue raised by this application for judicial review is whether the RAD's decision was reasonable.

#### V. Analysis

[18] The RAD's decision is subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 10). The Court will intervene only where "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).

[19] The criteria of “justification, intelligibility and transparency” are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[20] Mr. Gogolidze challenges the RAD’s decision on numerous grounds. One of these is determinative. The RAD unreasonably concluded, based in part on a factual error, that the Mayor had no ongoing interest in locating Mr. Gogolidze or causing him harm.

[21] The RAD accepted the post-hearing evidence that may not have been considered by the RPD. That evidence consisted of the original Georgian language versions of letters of support that were introduced at the time of the RPD’s hearing, letters from two neighbours and a distant relative, and an article regarding the spelling of Georgian names and words.

[22] The RAD did not question the credibility of the post-hearing evidence, finding as follows:

I have included the post-hearing evidence in the RPD’s record as part of my analysis of the documentary evidence. I find that the statement from the two neighbours is particularly significant. Also included in my analysis is evidence presented at the RPD’s hearing from the Appellants’ parents, his wife and three long-time friends.

[23] Mr. Gogolidze says the RAD unreasonably found that the Mayor had not attempted to locate him for almost three years. While the date of his wife’s letter did not include the year, the letters from a neighbour and the distant relative were clearly dated June 2021 and confirmed that the Mayor’s representatives had visited Mr. Gogolidze’s wife very recently.

[24] The letter from Mr. Gogolidze's wife included the following:

My husband is not a political man, he has never interfered in politics, and he has never been a political opposition activist. But I am sure that [the Mayor and his deputy] will never forgive him insulting them in public. In this particular case this matter is not about his house and his plot of land.

After Mirian fled Georgia, the criminal (as well as political) situation in the country has worsened, and the value of a human life in Georgia today is very low. Moreover, Mirian has not been forgotten. [The Mayor's deputy] himself called several times. He was drunk when calling. He was cursing Mirian using dirty words, and was threatening my husband if he returns back to Georgia.

He called several times during Mirian's stay in Canada. I always used to drop his calls.

On Sunday, May 9, at 8 pm, someone knocked on the door of our Tbilisi apartment. I was at home with the kids.

In front of the door there were two unknown men under 40 years old. They did not speak rudely. One of them asked me when Mirian was going to return to the country.

I got upset and said to them that he was not going to return to Georgia, and I told them to leave me alone, and never come back. One of the strangers said that we (he did not specify whom he meant) are waiting for him.

Finally, the stranger said: "Regards from [the Mayor]". After that they turned around, and left our apartment.

I am repeating: I am very scared of Mirian's returning to Georgia, even though our children and I miss him very much. But the most important thing for us is his safety and security.

[25] Mr. Gogolodze's parents also submitted a letter, in which they said the following:

[The Mayor], whom we have known since childhood from the City of Sachkhere, will never forgive our son for his insulting. In today's criminal Georgia, it is very easy to square accounts for an influential person.



[26] According to one of Mr. Gololidze's childhood friends:

A few days ago, his wife Ketevan advised me that some strangers visited her and asked about Mirian's whereabouts, and in the end of the meeting they relayed best regards from [the Mayor]. I did not get surprised that Mirian had not been forgotten by his enemies. I believe that Miriani's returning to Georgia is very dangerous, because [the Mayor] is a very influential politician, and he never forgives insulting in public. [...]

[27] The RAD mistakenly found that the Mayor had shown no interest in locating or harming Mr. Gogolidze for almost three years. In fact, the Mayor's representatives had visited Mr. Gogolodze's wife at their Tbilisi home as recently as May 2021. The RAD did not question the credibility of the numerous letters of support, all of which depicted the Mayor as a ruthless, influential man who reacts strongly to perceived insults and is not afraid to settle scores.

[28] The RAD acknowledged that the letters of support described the Mayor as ruthless, powerful and influential, that he would "stop at nothing to get back at" Mr. Gogolodze, and that he had the means to do so. The RAD nevertheless commented: "I am not able to determine whether or not that assessment is correct." Having accepted the letters of support as evidence, and having expressed no concerns regarding their credibility, it is unclear how the RAD arrived at this conclusion.

[29] The RAD's misapprehension of a central component of the evidence renders its decision unreasonable.

VI. Conclusion

[30] The application for judicial review is allowed, and the matter is remitted to a differently-constituted panel of the RAD for redetermination. Neither party proposed that a question be certified for appeal.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is allowed, and the matter is remitted to a differently-constituted panel of the RAD for redetermination.

“Simon Fothergill”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1727-22

**STYLE OF CAUSE:** MIRIANI GOGOLIDZE v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 21, 2023

**JUDGMENT AND REASONS:** FOTHERGILL J.

**DATED:** MARCH 31, 2023

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