

Federal Court



Cour fédérale

**Date: 20230630**

**Docket: IMM-6159-22**

**Citation: 2023 FC 918**

**Ottawa, Ontario, June 30, 2023**

**PRESENT: Mr. Justice Diner**

**BETWEEN:**

**DENG MIN HAO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant seeks judicial review under s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a Decision by the Refugee Appeal Division [RAD] to reject his refugee claim under ss. 96 and 97 of IRPA. For the reasons that follow, I will dismiss the Judicial Review.

## II. Background

[2] The Applicant is a citizen of Brazil. He sought refugee status in Canada with his parents and elder sister. The Applicant's parents are citizens of China who emigrated to Peru in 1991. The Applicant's elder sister was born in Peru, where she still holds citizenship. The Applicant's family moved to Brazil in 1997 where the Applicant was born.

[3] The Applicant and his family allege they faced risk in Brazil due to their Chinese ethnicity. They allege they were victims of frequent robberies in Brazil, and that the police were of little assistance, and in some instances insulted the Applicant and his family or demanded bribes. The Applicant further claims he and his sister were excluded socially at school and sometimes bullied.

[4] The Applicant and his family received US visas in July 2016. They had also applied for Canadian visas but they were refused in November 2016. In February 2017, the Applicant, his mother and his sister left Brazil for the US. They crossed from the US into Canada at an irregular border crossing and made a refugee claim. The Applicant's father obtained a visa to Canada and flew from Brazil to Canada in July 2018, and made a refugee claim.

[5] The Refugee Protection Division [RPD] found that the Applicant's parents and his sister were excluded from refugee protection under Article 1E of the Convention and s. 98 of IRPA on the basis of permanent resident status in Brazil. The RPD also found that the Applicant is not a Convention refugee nor a person in need of protection because (i) he has not established a nexus

between his alleged fear and a Convention ground, and (ii) any risk he faces in Brazil is one faced generally by the population of that country.

III. Decision under Review

[6] On appeal, the RAD found that the RPD had erred with regard to the finding that the Applicant's parents and sister were excluded from refugee protection under Article 1E of the Convention and s. 98 of IRPA. The RAD determined that the Applicant's parents and sister do not currently have status in Brazil that is similar to the status of citizens of Brazil, and that on a balance of probabilities, they could not regain their former status as permanent residents.

[7] The RAD also evaluated the claims of the Applicant, his sister, and their parents, against their respective countries of citizenship. The RAD found that there was insufficient information in the record before it to make a determination on the claims of the Applicant's parents against China, and decided to send their claims back to the RPD to be re-determined.

[8] The RAD also found that the Applicant's sister had not adduced sufficient credible evidence to establish that she would face a serious possibility of persecution in Peru, or that, on a balance of probabilities, she would not face a likelihood of s. 97 harm. The RAD thus dismissed the appeal of the Applicant's sister and confirmed the RPD decision that she is neither a Convention refugee nor a person in need of protection.

[9] Finally, with regard to the Applicant, the RAD agreed with the RPD that he had not established that he faces a likelihood of s. 97 harm. The RAD concluded the Applicant had not

provided evidence that he would be personally subject to a risk to life, or a risk of cruel or unusual punishment that is not shared generally with others in and from Brazil. The RAD dismissed the Applicant's appeal and confirmed the RPD decision that he is neither a Convention refugee nor a person in need of protection [Decision].

#### IV. Issues and Standard of Review

[10] The Applicant argues that the Decision is unreasonable. First, he argues the RAD never considered the central argument of his appeal, namely that he became a "soft target" in Brazil due to police racism against people of Chinese ethnicity. Second, he submits the RAD erred in assessing whether state protection was operationally adequate.

[11] Both of the issues raised by the Applicant are reviewable on the standard of reasonableness as set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov].

#### V. Analysis

[12] The Applicant argues that the RAD does not consider his central submission that he is a "soft target", in other words, at risk of widespread crime because of police racism against persons of Chinese ethnicity. He submits that the RAD failed to properly consider his family's unchallenged testimony before the RPD that the police had failed to intervene to protect them after several violent attacks and that the police had repeatedly extorted the Applicant's family and made racist comments towards them. The Applicant relies on *Cao v Canada (Citizenship*

*and Immigration*), 2016 FC 1393 [*Cao*] to argue that the RAD erred by failing to address the “soft target” question, which was clearly raised by the Applicant on appeal before the RAD.

[13] The Applicant contends that the issue on appeal was not whether the attacks were motivated by racism, but instead, whether the attacks occurred because of racist behaviour by police and their unwillingness to intervene. The Applicant submits the Decision does not grapple with this central issue and thus fails to be responsive to the key arguments or issues raised on appeal, as required by the reasonableness standard in *Vavilov*.

[14] I find that contrary to the Applicant’s assertion, the RAD sufficiently grappled with the key issues in this case (*Vavilov* at para 134). It did in fact address whether the Applicant and his family were “soft targets” by looking at the issue of police racism. Although the RAD does not use the term “soft targets” in its Decision, I find that it nonetheless discussed this notion, as defined in *Cao* and as understood by the Applicant. In *Cao*, Justice Bell referred to the notion of “soft targets” as a situation in which an applicant may be at risk due to “an allegation of racially motivated crime and local police misconduct motivated by racism” (*Cao* at para 15). Here, the RAD found that there was insufficient evidence to establish either that the Applicant was at risk of racially motivated crime, or at risk of local police misconduct motivated by racism.

[15] The determinative issue is the sufficiency – or rather insufficiency – of evidence put forth by the Applicant to establish his claim. The RAD analysed whether there was sufficient evidence to support (i) whether the attacks experienced by the Applicant and his family were motivated by

racism, and (ii) whether the police were unwilling to intervene due to racism. The RAD concluded that there was insufficient evidence with regard to both.

[16] This case is distinguishable from *Cao*, because here, the RAD recognized that the RPD erred in finding that the Applicant had not established a nexus. In *Cao*, the RAD had failed to assess the evidence of police racism in establishing a nexus to a Convention ground (*Cao* at para 17). On the other hand, here the RAD found that the Applicant “testified that he fears persecution in Brazil based on this [*sic*] ethnicity as a Brazilian of Chinese descent. I find that he has established a nexus to a Convention ground. I will evaluate his claim as a section 96 claim.” The RAD analysed whether the Applicant faced persecution due to discrimination from classmates, from criminals, and from the police.

[17] First, the RAD recognized that the Applicant was bullied by classmates and may have been socially excluded by teachers due to his ethnicity, but concluded that it did not amount to persecution and thus could not form the basis for the Applicant’s refugee claim.

[18] Second, the RAD accepted that criminals who had robbed the Applicant and his family had made derogatory references to their Chinese ethnicity, but determined that “notwithstanding these epithets, the Appellants have not established that the attacks were motivated by the Appellants’ ethnicity rather than criminal attacks for material gain.” The RAD found that the evidence submitted to the RPD was insufficient to establish that the Applicant and his family had been targeted by criminals due to their ethnicity. The RAD noted that one report, a US Department of State document entitled “*Brazil 2017 Crime & Safety Report: Sao Paulo*”, states

that Sao Paulo experiences high levels of criminality and that criminals often target individuals whom they perceive have money. Furthermore, the RAD found that the Applicant had not been specifically targeted due to his ethnicity when his cellphone was stolen twice, since the Applicant testified that a few of his classmates also had their cellphones stolen. It was thus reasonable for the RAD to conclude that the Applicant does not face a risk of crime that is not shared generally by the citizens in Brazil.

[19] Third, the RAD found that despite reports of police corruption and bribes, the evidence submitted by the Applicant and his family did not support their claim that police discrimination made them “soft targets.” The RAD referred to an article entitled “*Brazilian leader Zhang Wei was shot and killed by [a gangster] – the Consulate General urges the police to solve the case*”, the Chinese Consulate General in Sao Paulo urged Chinese nationals in Brazil to cooperate with police investigation work.

[20] The RAD also referred to an article entitled “*Qingtian overseas Chinese group in Brazil get in touch with local police to resist robbers*”, a police official is quoted saying that the police would do their best to “crack down on criminals, eradicate the criminal group, and provide a safe environment for overseas Chinese. He said the Chinese are hardworking and kind, we should keep our relationships.”

[21] With regard to the two letters written by friends of the Applicant’s family, which attest to crimes against people of Chinese ethnicity in Brazil and police indifference or inaction in

investigating these crimes, the RAD assigned them little weight due their lack of detail, and that fact that they do not establish facts relevant to the Applicant's claim.

[22] The Applicant contends that his testimony and that of his family about being insulted by police when they reported theft presents a very similar situation to that of the applicant in *Cao*, who was told by the police that "Chinese people always bring a lot of trouble" (*Cao* at para 4). The Applicant argues that this uncontested testimony is sufficient to establish that he and his family were "soft targets" due to police racism and inaction.

[23] I disagree. The issue of sufficiency of evidence attracts significant deference (*Ogbolu v Canada (Citizenship and Immigration)*, 2022 FC 129 at para 35). Here, I find that the RAD's analysis of the evidence is reasonable and responsive to the issues brought by the Applicant on appeal, including the issue of whether the Applicant was at risk of being a "soft target" due to discrimination from the police. It was open to the RAD to conclude in its Decision, that the Applicant "has not adduced sufficient credible evidence to establish that he faces a serious possibility of persecution in Brazil on a Convention ground."

[24] Contrary to the Applicant's argument, these findings are also internally consistent since it was open to the RAD to conclude that an aspect of the Applicant's claim showed a nexus to a Convention ground – namely, the bullying and exclusion from classmates and students – but that other aspects of his claim did not have a nexus – such as being the direct or soft target of crime.



[25] Moreover, the Applicant argues that the RAD's finding that he has not rebutted the presumption of state protection is unintelligible and unjustified. The Applicant submits that the RAD's analysis of the state protection was too brief and conclusory in light of the RPD's explicitly stating in its decision that "state protection was not forthcoming" for the Applicant. He contends that the RAD ought to have elaborated on why it departed from the RPD's finding and assessed the steps that he and his family took to approach the state. The Applicant further submits that in order to rebut the presumption of state protection, he was not required to demonstrate that the police will not provide state protection because of his ethnicity, citing *Badran v Canada (Minister of Citizenship and Immigration)*, [1996] FCJ No 437.

[26] Once again, I find no reviewable error. The RAD had every right to review the evidence in the record, including the RPD decision and transcripts from that hearing, and come to a different conclusion than the RPD regarding state protection (*Rozas Del Solar v Canada (Citizenship and Immigration)*, 2018 FC 1145 at para 125). The RAD provided sufficient reasons to justify its finding that the Applicant has not met his onus to rebut the presumption of state protection. The Applicant's arguments amount to a disagreement with the weight that the RAD afforded to the evidence.

[27] The Applicant's claim that he would be a "soft target" is predicated on his allegation that he is unable to obtain police assistance due to his ethnicity, thus the Applicant was required to demonstrate, on a balance of probabilities, that he was facing discrimination from the police and did not have access to state protection. The Applicant did not do so. The RAD acknowledged that the Applicant's evidence demonstrated that there is police corruption, but noted that the

police had taken reports when the Applicant's family had reported the crimes. The RAD reasonably concluded that there was insufficient evidence to establish that the Applicant would not benefit from state protection, since the articles and reports submitted to the RPD, as outlined above, showed that police were concerned with providing a safe environment for Chinese nationals in Brazil, that the Chinese Consulate General trusted the police, and urged its expatriates to cooperate with the police.

VI. Conclusion

[28] The RAD's determination that the Applicant had not provided sufficient evidence to establish that (i) he faces persecution in Brazil, and (ii) would not have access to state protection due to his ethnicity, is determinative of the Applicant's claim. The Applicant has not established that the RAD committed a reviewable error. The Judicial Review is dismissed. The Parties propose no question of general importance for certification, and I agree that none arises.

**JUDGMENT in IMM-6159-22**

**THIS COURT'S JUDGMENT is that:**

1. The judicial review is dismissed.
2. No questions for certification were argued and I agree none arise.
3. There is no award as to costs.

"Alan S. Diner"

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Judge

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

**DOCKET:** IMM-6159-22

**STYLE OF CAUSE:** DENG MIN HAO v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** HELD IN TORONTO

**DATE OF HEARING:** MAY 24, 2023

**JUDGMENT AND REASONS:** DINER J.

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