Federal Court  Cour fédérale

Date: 20160512

Docket: IMM-5088-15

Citation: 2016 FC 534

Ottawa, Ontario, May 12, 2016

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

LF and EL

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicants, LF and EL, seek judicial review of the decision of the Refugee Appeal Division of the Immigration and Refugee Board [RAD] dated October 26, 2015, which allowed the Minister's appeal of the decision of the Refugee Protection Division [RPD], and substituted its own decision, refusing the applicants' claims for refugee protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[2] The RPD had found that the applicants faced a risk of persecution in South Africa as members of a particular social group: women facing gender violence, and that there was not adequate state protection. The RAD overturned both findings.

[3] The applicants now submit that the RAD erred in law with respect to the test for a well-founded fear of persecution and with respect to the test for state protection, and that the decision is not reasonable. In addition, the applicants submit that the RAD erred by not remitting the decision to the RPD, in accordance with section 111 of the Act and the guidance of the Federal Court of Appeal decision in *Canada (Minister of Citizenship and Immigration) v Huruglica*, 2016 FCA 93, [2015] FCJ No 297 (QL) [*Huruglica (FCA)*], because the RAD did not have sufficient evidence upon which to substitute the decision.

[4] For the reasons that follow, the application is dismissed. The RAD did not err in its identification, understanding or application of the law with respect to the well-founded fear of persecution or the adequacy of state protection. The RAD conducted an independent assessment of the evidence on the record, along with the new evidence, and at no time suggested that it did not have sufficient evidence upon which to find that the RPD erred and to substitute the decision. The RAD's decision is reasonable; it is amply supported by the facts and the law.

I. Background

[5] The principal applicant, LF, formally adopted her granddaughter, EL, before leaving South Africa. They arrived in Canada in October 2014, and claimed refugee protection in February 2015.

[6] Their claim for refugee protection originally included the principal applicant's husband. The RPD rejected his claim because he is a citizen of the United Kingdom and is not at risk of persecution there.

[7] The RPD considered LF's claims regarding her fear of criminality in South Africa. LF recounted that her home was broken into six times between 1990 and 2002. A number of these incidents were reported to the police. She relocated, but in October 2012, she was the victim of a home invasion.

[8] The RPD also considered EL's account of being cyber stalked when she was fourteen. The offence was reported to the police. The police response was originally dismissive. After some follow up, a perpetrator was identified, but no charges were laid.

[9] EL also recounted that she was raped by an acquaintance in South Africa six weeks prior to leaving for Canada. She did not report the assault to the police or to her family.

The RPD decision

[10] The RPD found that the applicants did not have a claim based on the criminal acts recounted by LF, such as the burglaries, because there is no nexus to a Convention ground and these crimes reflect generalized violence of which the applicants were not personally targeted.

[11] However, the RPD found that the applicants are Convention refugees as members of a particular social group: women facing gender violence in South Africa.

[12] The RPD found that the applicants' fears of gender violence in South Africa are well-founded. The RPD noted that South Africa has one of the highest rates of rape in the world, citing an Amnesty International report and a United States Department of State [US DOS] report. The RPD also noted that the US DOS report indicates that there are 200,000 crimes committed against women each year in South Africa. In addition, a 2009 study reported that 25% of South African men admitted to committing one or more rapes and a 2011 study reported that 37.4% of South African men admitted to committing one or more rapes. The RPD concluded that no woman in South Africa, regardless of their age or ethnicity, is immune from the risk of rape.

[13] The RPD also concluded that there was "clear and convincing evidence" that the state is unwilling or unable to protect the applicants. The RPD referred to the lack of charges laid with respect to the cyber stalking offence and found that EL's conduct in not reporting the allegation of rape was understandable given that she did not have a positive experience with the police when she had reported the cyber stalking. The RPD also noted that EL was planning to leave South Africa; therefore, reporting the rape would not have led to any result.

II. The Decision Under Review

[14] The RAD recounted the claims of the applicants and the findings of the RPD.

[15] The RAD accepted new evidence from the respondent, including newspaper articles and other publications from the South African government regarding the existing laws and state protection more generally.

[16] The RAD noted the statutory options available on an appeal, as set out in section 111 of the Act. It then identified its role, noting the prevailing jurisprudence at the time the appeal was heard, and indicated that it applied the approach in *Huruglica v Canada (Minister of Citizenship and Immigration)*, 2014 FC 799, [2014] 4 FCR 811 [*Huruglica (FC)*]. The RAD undertook to examine and conduct an independent assessment of the evidence before the RPD. The RAD proceeded without a hearing, noting that no hearing was requested and that the issues in the appeal did not include credibility.

[17] The RAD found no error in the RPD's finding that the applicants' claims regarding generalized violence, which did not relate to any Convention ground, did not establish an objective basis for a refugee claim.

[18] The RAD also found no error in the RPD's finding that the applicants belonged to the particular social group of women facing gender violence in South Africa, which could include all women in South Africa, and that this established a nexus to a section 96 Convention ground.

[19] However, the RAD found that the RPD had erred in finding that the applicants would be subject to a serious possibility of persecution by reason of their membership in the particular social group.

[20] The RAD noted that South Africa is a functioning democracy. The RAD acknowledged that although criminal laws are in place, rape remains a pervasive problem in South Africa. The reporting rate of sexual offences remains low and underreporting is attributed to various factors

which make it impossible to accurately estimate the rates. The RAD found that, on a balance of probabilities, the high rate of unreported sexual offences does not support the conclusion that the applicants face a reasonable chance of being sexually assaulted because they are women.

[21] The RAD also noted the studies referred to by the RPD regarding admissions by South African men of committing rape and acknowledged that these are "shocking statistic[s]", but found that these reports did not provide enough detail to establish, on a balance of probabilities, that the applicants would be at risk simply as a result of their gender.

[22] The RAD concluded that there is less than a serious possibility that the applicants would be the victims of gender violence by virtue of their membership in the social group if they were to return to South Africa and, as a result, they are not Convention refugees pursuant to section 96.

[23] The RAD also conducted a state protection analysis and considered whether there is adequate state protection available to the applicants in South Africa and whether it would be objectively unreasonable for them to pursue state protection should they require it upon their return.

[24] The RAD cited the relevant principles from the jurisprudence, including the burden on the applicants to rebut the presumption of adequate state protection in a functioning democracy, and considered the evidence in light of the relevant principles.

[25] The RAD noted that LF had not had a great deal of contact with the police other than the police response to the break and enters and the home invasion. The RAD noted the police response was adequate.

[26] The RAD found that the police had responded to EL's complaint of cyber stalking after their initial dismissive attitude. The RAD noted the applicants' testimony that the police did not respond for budgetary reasons, but found that there could be many other reasons why charges were not pursued. The RAD noted that although they were advised to do so, EL and her biological mother did not make a complaint to higher police authorities. The RAD noted that the failure of the police to apprehend the perpetrator does not mean that there is inadequate state protection.

[27] With respect to the serious allegation of rape, the RAD found that the adequacy of state protection cannot be assessed on the basis of an applicant's reluctance or failure to seek state protection. The RAD noted that EL did not report her allegation to the police in South Africa or to family members. The RAD noted her explanation regarding her past experience with the cyber stalking offence and found that, although she may have subjective fears regarding reporting to the police, if the state can provide adequate state protection based on an objective assessment, this does not rebut the presumption of state protection.

[28] The RAD canvassed the documentary evidence and noted that there are laws prohibiting sexual offences, police resources and services for sexual assault victims, and advocacy groups encouraging better protection and attitudinal change, but acknowledged that state protection is

not perfect. For example, although there are laws prohibiting sexual offences and severe minimum sentences, there remain criticisms that judges on sexual offence courts consider the behaviour of victims or their relationship to the accused when imposing sentences; and, although there are specialized sexual offence courts, several have been shut down and are only now in the process of being re-established. The RAD also acknowledged that corruption is a problem. However, the RAD found that police officers who do not comply with the established protocol for the investigation and prosecution of sexual offences are subject to sanctions and that there is a functioning police oversight organization.

[29] The RAD noted that there is no evidence of a complete breakdown of the state, of similarly situated individuals who did not receive state protection, or of past personal experience that would lead the applicants to believe that state protection would not be available to them.

[30] The RAD concluded that state protection would reasonably be forthcoming if the applicants were to require it and seek it, and that it would not be unreasonable for them to do so. As a result, the applicants had not rebutted the presumption of adequate state protection with clear and convincing evidence.

III. The Issues

[31] The applicants raise the following issues:

- Did the RAD err in law in misstating the test for a well-founded fear of persecution, and, as a result, unreasonably find that the applicants did not have a well-founded fear of persecution?

- Did the RAD err in law in misstating the test for state protection and, as a result, unreasonably find that there would be adequate state protection available to the applicants if they were to return to South Africa and seek state protection?
- Did the RAD err in substituting its own decision and finding that the applicants were not Convention refugees?

IV. The Standard of Review

[32] The RAD conducted an appeal of the RPD's decision. The Court conducts a judicial review of the RAD's decision.

[33] With respect to the RAD's role in conducting the appeal of the RPD's decision, the RAD noted that it followed the guidance of the Federal Court in *Huruglica (FC)* and conducted an independent assessment of the evidence. The Federal Court of Appeal in *Huruglica (FCA)*, has now confirmed that the standard of review to be applied by the RAD is correctness and the RAD should determine whether the decision below is wrong. The outcome of the RAD in this case reflects this approach. The RAD conducted its own independent assessment of the evidence on the record before the RPD and the new evidence and found that the RPD was wrong with respect to the applicants' well-founded fear of persecution and the adequacy of state protection.

[34] With respect to the Court's review of the RAD's decision, the applicants argue that the RAD applied the wrong legal test for both the establishment of a well-founded fear of persecution and the adequacy of state protection.

[35] There is a distinction between whether the correct legal test was applied, which is reviewed on the standard of correctness, and for which no deference is owed, and whether the decision maker applied the correct test to the particular facts, which is a question of mixed fact and law reviewed on the reasonableness standard, and for which deference is owed (*Ruszo v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1004 at paras 20-22, [2013] FCJ No 1099 (QL) [*Ruszo*]).

[36] To determine whether a decision is reasonable, the Court focuses on "the existence of justification, transparency and intelligibility within the decision-making process" and considers "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190). Deference is owed to the decision maker and the Court will not re-weigh the evidence.

V. Did the RAD err in law in misstating the test for a well-founded fear of persecution, and as a result, unreasonably find that the applicants did not have a well-founded fear of persecution?

[37] The applicants argue that the RAD elevated the test for a well-founded fear of persecution beyond that required and called on them to demonstrate that they would face a serious possibility of persecution on a balance of probabilities – i.e., that it was more likely than not. Rather, they were only required to show on a balance of probabilities that there are good grounds to believe they will be harmed.

[38] The applicants submit that the jurisprudence has established that a "well-founded fear of persecution" means that there is a reasonable chance that harm will occur to the claimants. This is more than a mere possibility and less than a probability (*Sivaraththinam v Canada (Minister of Citizenship and Immigration)*, 2014 FC 162, [2014] FCJ No 171(QL) [*Sivaraththinam*]).

[39] The applicants submit that the RAD erred by stating that it was required to find that there is more than a mere possibility that every woman in South Africa will be sexually assaulted.

[40] The applicants agree that finding that women are a "particular social group" does not mean that all women in a society will qualify for refugee status. A woman must still demonstrate a well-founded fear of being persecuted based on her membership in the particular social group. The applicants argue that the harm they suffered in the past supports their fear of future persecution and that it is objectively well-founded (*Natynczyk v Canada (Minister of Citizenship and Immigration)*, 2004 FC 914 at para 71, [2004] FCJ No 1118 (QL)).

[41] The respondent submits that the RAD understood the law regarding the establishment of a well-founded fear of persecution and conducted an individualized assessment of whether the applicants had such a well-founded fear as a member of a particular social group, which composes half the population of South Africa. The RAD properly found that there was not more than a mere possibility that the applicants would be victims of gender violence due to their membership in the social group, if they return to South Africa.

The RAD identified and applied the correct test for a well-founded fear of persecution

[42] The RAD considered the approach to determine whether the applicants faced a risk as a member of the particular social group of women in South Africa.

[43] The RAD referred to *Josile v Canada (Minister of Citizenship and Immigration)*, 2011 FC 39 at para 31, [2011] FCJ No 63 (QL) [*Josile*], where Justice Martineau noted: "Thus, the real test is whether the claimant is subject to persecution by reason of his or her membership in that particular social group."

[44] The RAD cited part of paragraph 36 of *Josile*. The entire paragraph illustrates the two step analysis required:

> In light of Canadian law and the evidence before the Board, the conclusion that as a Haitian woman, the applicant does not have reasonable fear of persecution because of her membership in that group is unreasonable. Had the Board accepted that a risk of rape is grounded in the applicant's membership in a particular social group, then the inquiry should have resulted in a determination of whether there is "more than a mere possibility" that the applicant risks suffering this harm in Haiti. The particular circumstances and situation of the applicant in the case of return to Haiti have not been thoroughly considered and analyzed. The next step of the failed analysis would have been to determine whether in the alleged absence of male protection in her particular case, adequate state protection is available to the applicant.

[45] The decision maker must first, determine whether a refugee claimant is a member of the particular social group and, second, determine if the particular claimant faces more than a mere possibility of persecution as a result of their membership.

[46] The jurisprudence has acknowledged that there are various ways to describe the test for a well-founded fear of persecution.

[47] The Federal Court of Appeal explained in *Adjei v Canada (Minister of Employment and Immigration)*, [1989] 2 FC 680 at 683, [1989] FCJ No 67 (QL):

> What is evidently indicated by phrases such as "good grounds" or "reasonable chance" is, on the one hand, that there need not be more than a 50% chance (i.e., a probability), and on the other hand that there must be more than a minimal possibility. We believe this can also be expressed as a "reasonable" or even a "serious possibility", as opposed to a mere possibility.

[48] In *Sivaraththinam* (at para 46) the Court stated that the "appropriate standard is a reasonable chance, which lies somewhere between more than a minimal possibility and a probability."

[49] Requiring an applicant to demonstrate that they would face persecution on a balance of probabilities is too high a standard. However, the RAD did not impose such a standard on the applicants. The RAD used several different terms, including "more than a mere possibility", "less than a serious possibility" and "reasonable chance", but did not impose a balance of probabilities standard.

[50] It is clear that the RAD understood the correct test and applied it to the evidence on the record. The RAD stated that once membership in the social group is established, "the real test is whether the appellants would be subject to a serious possibility of persecution by reason of their

membership in that particular social group." The RAD then conducted an individualized assessment.

[51] The RAD considered the statistics regarding reported and unreported sexual offences, the reports of admissions by men of rape, and the country condition documents, including those regarding the greater risk faced by women working on farms. The RAD acknowledged that problems remained. The RAD concluded that despite the troubling statistics, of which insufficient details were available, these applicants were not at risk simply due to their gender. The RAD considered the troubling evidence of pervasive gender violence in South Africa, but as required, focussed on whether the applicants, as members of the identified social group, would face more than a mere possibility of gender violence.

VI. Did the RAD err in law in misstating the test for state protection and, as a result, unreasonably find that there would be adequate state protection available to the applicants if they were to return to South Africa and seek state protection?

[52] The applicants submit that the RAD incorrectly applied the test for state protection by focussing on the existence of laws rather than on the adequacy and effectiveness of state protection.

[53] The applicants point to specific examples of the RAD's findings: that counselling was offered to LF after her home invasion; that the police failed to apprehend the cyber stalker; that some police did not appropriately respond to rape allegations; and, that South Africa collects crime statistics. The applicants argue that none of these references are indicative of state protection.

The RAD applied the correct test for state protection, conducted a complete analysis, and reached a reasonable finding.

[54] Although the applicants may understandably be dissatisfied with the response to their victimization in South Africa, their personal experience is not sufficient to establish that state protection is inadequate. The examples provided by the applicants were not held out by the RAD to be the indicators of state protection. The RAD conducted a broader analysis of all the evidence and acknowledged the problems in South Africa. No country is held to a standard of perfect state protection or the resolution of all crimes.

[55] The jurisprudence which governs the state protection analysis is well established. The RAD properly understood the law and applied it.

[56] The RAD noted the governing legal principles. These principles start from the premise that refugee protection is considered to be surrogate or substitute protection in the event of a failure of national protection *(Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at 709, 103 DLR (4th) 1). There is a presumption that a state is capable of protecting its citizens which is only rebutted by clear and convincing evidence that state protection is inadequate or non-existent; the evidence must be "relevant, reliable and convincing evidence which satisfies the trier of fact on a balance of probabilities that the state protection is inadequate" (*Flores Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at para 30, [2008] 4 FCR 636).

[57] As noted, adequate state protection does not demand perfection, but state protection must be effective to a certain degree and the state must be both willing and able to protect (*Bledy v Canada (Minister of Citizenship and Immigration)*, 2011 FC 210 at para 47, [2011] FCJ No 358 (QL)). State protection must also be adequate at the operational level (*Henguva v Canada (Minister of Citizenship and Immigration)*, 2013 FC 483 at para 18, [2013] FCJ No 510 (QL); *Meza Varela v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1364 at para 16, [2011] FCJ No 1663 (QL)).

[58] The RAD noted that South Africa is a functioning democracy. However, democracy alone does not ensure effective state protection; the quality of the institutions providing protection must be considered (*Sow v Canada (Minister of Citizenship and Immigration)*, 2011 FC 646 at para 11, [2011] FCJ No 824 (QL) [*Sow*]).

[59] In addition, the onus on an applicant to seek state protection varies and is commensurate with the state's ability and willingness to provide protection (*Sow* at para 10; *Kadenko v Canada (Minister of Citizenship and Immigration)*, [1996] FCJ No 1376 (QL) at para 5, 143 DLR (4th) 532 (FCA)). Regardless, an applicant cannot simply rely on their own belief that state protection will not be forthcoming (*Ruszo* at para 33). Nor can local failures of the state to specific incidents support a finding of inadequate state protection (*Ruszo* at para 31). The analysis must be much broader.

[60] The applicants relied on an excerpt of my decision in *Kovacs v Canada (Minister of Citizenship and Immigration)*, 2015 FC 337, [2015] FCJ No 297 (QL) [*Kovacs*] which referred

to the various approaches to assess the adequacy of state protection. The key point in *Kovacs* was in the subsequent paragraphs, which noted that despite the various assessments, the standard of adequate state protection had not been elevated:

> [71] I have considered all the jurisprudence noted by the applicants regarding the assessment and determination of adequate state protection, including: *Dawidowicz*, which reiterated that efforts alone were small comfort and that the empirical reality of the adequacy of state protection should be evaluated; *Kumati*, which noted that a law on the books is not sufficient without evidence that the law actually functions to protect; *Majoros*, which noted that state protection should be sufficiently effective at the operational level; *Salamanca*, which suggests that adequate state protection means that it is more likely than not that the applicant will be protected; and, *Djubok*, which notes that the various risk factors, as well as their intersection, must be assessed.
>
> [72] In my view, this guidance elaborates on the indicators of adequate state protection but it does not elevate the standard. Adequacy remains the standard and what will be adequate will vary with the country and the circumstances of the applicants. In this case, the Officer's reasons as a whole indicate that he considered the mixed evidence about state protection in Hungary and its effectiveness. This mixed evidence was the context for his assessment of the adequacy of state protection for the risks faced by these applicants.
>
> [73] With respect to the guidance from the jurisprudence, this Court has consistently applied the same principles, leading to different results in different cases due to different facts and circumstances. Each case must be decided on its own facts. On judicial review, the issue is whether the decision maker made findings which are reasonable based on the evidence before the decision maker.

[61] Similarly, in the present case, the issue is whether the RAD's state protection findings are reasonable based on the evidence before the RAD.

[62] The RPD extensively analyzed the documentary evidence demonstrating action to address sexual offences legislatively and operationally. The RAD referred to the existence of the laws, the minimum penalties, the sexual assault courts and their reestablishment, the rape crisis centres, as well as the concerns about the police response and the oversight mechanisms for police conduct.

[63] The RAD's analysis of the evidence of state protection went beyond merely referring to the laws and the initiatives in place, but also considered various reports about how the institutions were functioning, the criticisms of non-governmental organizations and the initiatives to address the criticisms.

[64] The RAD's analysis was comprehensive and the finding that state protection is adequate is reasonable, as is the finding that the applicants had not rebutted the presumption with clear and convincing evidence. The RAD considered the objective country condition evidence to determine whether the applicants' reluctance to engage state protection upon their return is justified. The RAD reasonably found that their reluctance to engage the state is not sufficient nor is their assumption that the police response to a gender crime would not be adequate.

VII. Did the RAD err in substituting its own decision and finding that the applicants were not Convention refugees?

[65] The applicants argue that the RAD erred in substituting its own decision because it was apparent that the RAD was not satisfied with the evidence on the record, particularly regarding state protection.

[66] The applicants submit that the RAD is required to conduct an independent assessment of the evidence on the record and if the RAD cannot make an informed decision based on the record and without hearing oral evidence, the RAD must remit the matter to the RPD for a new hearing. The applicants point to the recent decisions of the Federal Court of Appeal in *Huruglica (FCA)* at para 78 and *Canada (Minister of Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 51, [2016] FCJ No 315 (QL) and to section 111 of the Act.

The RAD did not err in substituting its own decision after conducting an independent assessment

[67] In *Huruglica (FCA)*, the Court of Appeal clarified the role of the RAD and summarized the approach at para 103:

> I conclude from my statutory analysis that with respect to findings of fact (and mixed fact and law) such as the one involved here, which raised no issue of credibility of oral evidence, the RAD is to review RPD decisions applying the correctness standard. Thus, after carefully considering the RPD decision, the RAD carries out its own analysis of the record to determine whether, as submitted by the appellant, the RPD erred. Having done this, the RAD is to provide a final determination, either by confirming the RPD decision or setting it aside and substituting its own determination of the merits of the refugee claim. <u>It is only when the RAD is of the opinion that it cannot provide such a final determination without hearing the oral evidence presented to the RPD that the matter can be referred back to the RPD for redetermination</u>. No other interpretation of the relevant statutory provisions is reasonable.
>
> [Emphasis added]

[68] The Court of Appeal elaborated on the statutory analysis (at paras 69-70), noting the need for a case-by-case assessment to determine whether the RAD should substitute the decision or send the matter back to the RPD for redetermination:

> [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.
>
> [70] This also recognizes that there may be cases where the RPD enjoys a meaningful advantage over the RAD in making findings of fact or mixed fact and law, because they require an assessment of the credibility or weight to be given to the oral evidence it hears. It further indicates that although the RAD should sometimes exercise a degree of restraint before substituting its own determination, the issue of whether the circumstances warrant such restraint ought to be addressed on a case-by-case basis. In each case, the RAD ought to determine whether the RPD truly benefited from an advantageous position, and if so, whether the RAD can nevertheless make a final decision in respect of the refugee claim.

[69] Section 111 of the Act provides:

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.

[70] The RAD noted that credibility was not an issue in the appeal. In addition, oral testimony would not have shed any additional light on the state protection analysis.

[71] I do not agree with the applicants that the RAD had any doubt about whether it could make a decision based on the evidence on the record or was not satisfied that it had sufficient evidence to correct the errors of the RPD with respect to its findings of a well-founded fear of persecution and that state protection was inadequate. The RAD was clearly not of the opinion that it could not make a decision either confirming the RPD decision or substituting its own determination. There is nothing in the decision to suggest otherwise. The RAD conducted an

independent assessment as required, applied the correct tests to the evidence, applied the facts to the law, corrected the errors of the RAD and reached a reasonable decision.

VIII. The Style of Cause is Amended

[72] Given the nature of the applicants' allegations and the age of EL, the style of cause is amended to refer to the applicants only by their initials. The parties consented to the amendment to the style of cause.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question proposed for certification.

3. The style of cause is amended to identify the applicants by their initials.

"Catherine M. Kane"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5088-15
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