

Federal Court



Cour fédérale

**Date: 20181212**

**Docket: IMM-1379-18**

**Citation: 2018 FC 1249**

**Ottawa, Ontario, December 12, 2018**

**PRESENT: The Honourable Madam Justice McDonald**

**BETWEEN:**

**ZAUR FAKHRADDIN OGLU HAJIKHANOV**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, Mr. Hajikhanov, is a citizen of Azerbaijan who seeks refugee protection on the basis of his political affiliation. In his hearing before the Refugee Appeal Division (RAD), he sought to rely upon the evidence of another citizen of Azerbaijan who was granted refugee status because of his involvement in the same political party. The RAD denied the Applicant's claim and found that his evidence of risk of persecution was not credible. For the reasons that follow, this judicial review is dismissed as the decision of the RAD is reasonable.

## **Background**

[2] Mr. Hajikhanov claims that he was persecuted by authorities due to his involvement in the Popular Front Party (referred to as the “Party”). He alleges that he joined the Party in 2009 and was detained by authorities in October 2013 and again in September 2016. He also alleges that authorities called him in for questioning in January 2016.

[3] On January 13, 2017, he entered Canada from the United States and made a refugee claim.

## **RAD Decision**

[4] Before the RAD, the Applicant presented the evidence of Mr. Musayev, a person who was granted refugee status by the Refugee Protection Division (RPD). The Applicant and Mr. Musayev are from the same country and both based their refugee claims on political involvement with the Party. However, the RAD did not consider these documents to be relevant evidence with respect to the Applicant’s appeal. The RAD noted that it is not bound by decisions of the RPD on other refugee claims since each claim must be decided on its own merits and no two cases are the same. The RAD did not accept these documents as new evidence, especially in light of the Applicant’s credibility concerns.

[5] The RAD agreed with the RPD’s conclusion that the Applicant lacked credibility. There were three main credibility concerns surrounding the Applicant’s claim: the alleged detention in

October 2013, the request by authorities to question him in January 2016, and his alleged detention in September 2016.

[6] The Applicant claimed that he was arrested by police on October 2, 2013 because he was putting up political posters. He testified that the police had informed his cousin of the arrest, and that his cousin paid a bribe for his release. The Applicant also alleged that he was tortured during this detention and he submitted a hospital report as evidence. While he claimed that he obtained the hospital report to provide to the Party to document his treatment, he testified that he did not actually provide the report to the Party. This caused the RPD to question his credibility regarding the detention. The RAD agreed with the RPD that the injuries detailed in the hospital report were not caused by the Applicant having been tortured or detained by the authorities.

[7] The Applicant alleged that in January 2016 he received a telephone call from the Azerbaijani prosecutor's office requesting that he attend for questioning. The RPD found there were a number of contradictions in the Applicant's testimony regarding this telephone call. The RAD agreed with the RPD that there were credibility concerns with the Applicant's evidence on when and who the prosecutor's office called. Due to this, the RAD determined that the Applicant was not called in for questioning in January 2016.

[8] The Applicant also submitted a copy of a summons from the prosecutor's office, but given the credibility findings with respect to the January 2016 telephone call from the prosecutor's office, the RPD determined that this document was not credible. The RAD agreed that considering the credibility concerns, this document was only submitted to embellish the

refugee claim. The RAD relied on the decision in *Granada v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1766 [*Granada*] that a negative credibility finding by the Board may support negative findings on documentary evidence. Therefore, no evidentiary weight was given to this document.

[9] In September 2016, the Applicant claimed that he participated in a demonstration and was arrested by the authorities and held for eight days. The RPD had rejected this allegation based on the fact that there were no further encounters with authorities after the January 2016 telephone call. That is, there were no repercussions for him for not attending the previous summons date. Given these credibility findings, it was concluded that the Applicant had not been arrested in September 2016 for political demonstration.

[10] Due to the lack of reliable evidence, the RAD ultimately concluded that the Applicant will not suffer a risk to his life or be persecuted due to membership in the Party if he were to return to Azerbaijan.

## **Issues**

[11] The Applicant raises the following issues:

- Was the treatment of the documentary evidence reasonable?
- Did the RAD reasonably consider the “new” evidence?
- Is membership in the party sufficient to establish risk?

## **Standard of review**

[12] The appropriate standard of review for decisions involving an exercise of discretion for questions of mixed fact and law is reasonableness. Reasonableness is a deferential standard and is concerned with the existence of “justification, transparency and intelligibility within the decision-making process” and whether the decision falls within a range of possible, acceptable outcomes (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[13] With respect to the assessment of evidence, the standard of review is also reasonableness (*Yin v Canada (Citizenship and Immigration)*, 2010 FC 544 at paragraph 2).

## **Analysis**

### **Was the treatment of the documentary evidence reasonable?**

[14] The Applicant argues that the RPD was unreasonable in rejecting the hospital report and the summons as evidence. He argues that the RAD ought to have independently assessed the probative value of this documentary evidence.

[15] The RAD specifically referred to both the hospital report and the summons in its reasons and dismissed their probative value, as did the RPD, because the testimony surrounding these documents was not credible. It was reasonable for the RAD to give these documents little evidentiary weight as this is in keeping with Justice Martineau’s statement in *Granada* at paragraph 13 that, “...[A]n applicant’s lack of credibility may affect the weight given to

documentary evidence and in appropriate circumstances may allow the Refugee Division to discount that evidence.”

[16] In other cases the Federal Court has concurred with the approach in *Granada (Jia v Canada (Minister of Citizenship and Immigration))*, 2014 FC 422 at paragraph 19).

[17] In essence the Applicant is asking this Court to reweigh the evidence which the RAD reasonably rejected. That is not the role of this Court.

**Did the RAD reasonably consider the “new” evidence?**

[18] The Applicant tendered the following new evidence for the RAD’s consideration: the RPD decision with respect to Mr. Musayev, the refugee claim interview notes of Mr. Musayev, and an affidavit of Mr. Musayev.

[19] The Applicant argues that this new evidence demonstrates that his claim is identical to another claim which was allowed. He argues that this evidence together with the country condition information demonstrates that ordinary membership in the Party is sufficient to establish risk.

[20] Rule 29 of the *Refugee Appeal Division Rules*, SOR/2012-257 allows an applicant to submit new evidence, but the applicant must explain how the evidence meets the requirements of section 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The RAD must

then consider any relevant factors in admitting a document, which includes the document's relevance and probative value, any new evidence the document brings to the appeal, and whether the applicant with reasonable effort could have provided the evidence before the appeal was perfected.

[21] Here the RAD considered this evidence offered by the Applicant but concluded that it was not relevant or probative for his claim. Although the Applicant claims that his and Mr. Musayev's personal histories are intertwined and that their claims are similar, there was nothing in the evidence to substantiate this allegation. As the RAD noted, while the panel that considered Mr. Musayev's claim may have found his evidence to be convincing and credible, that evidence was not before the RAD and, in any event, would not necessarily cure the credibility issues with the Applicant's evidence.

[22] Furthermore, the documents are dated after the Applicant had perfected his appeal before the RAD. The documents do not add anything new to the claim and could have been readily provided before the appeal had been perfected.

[23] For these reasons, the RAD did not accept the evidence as meeting the requisite criteria as the evidence, even if admitted, could not resolve the Applicant's overlying credibility issues.

[24] This was a reasonable finding and is entitled to deference.

**Is membership in the party sufficient to establish risk?**

[25] The Applicant argues that membership in the Party alone is sufficient to establish risk. He points to the National Documentation Package as well as the information in the responses to request for information which he argues shows that members of the Party are subject to detention.

[26] In considering this issue, the RAD determined that membership in the Party alone was not enough to establish persecution by the Azerbaijani government. It is trite law that country condition reports by themselves are not indicative of persecution as there needs to be a connection to the particular circumstances of the claimant (see *Oskose v Canada (Citizenship and Immigration)*, 2018 FC 372 at para 19).

[27] The country condition information revealed that the individuals who were subject to detention because of their membership in the Party tended to be journalists and high-ranking politicians. As the Applicant did not present evidence that he held a high-ranking position in the Party, the RAD found that his profile or involvement with the Party was not of a nature to put him at risk. The RAD determined that the country condition evidence was not sufficient to overcome the credibility concerns or establish a well-founded fear of persecution.

[28] The RAD reasonably considered the evidence as well as the Applicant's submissions. As the Applicant has not demonstrated any errors, this judicial review is dismissed.



**JUDGMENT in IMM-1379-18**

**THIS COURT'S JUDGMENT is that**

1. This judicial review is dismissed; and
2. There is no question for certification.

"Ann Marie McDonald"

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Judge

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

**DOCKET:** IMM-1379-18

**STYLE OF CAUSE:** ZAUR FAKHRADDIN OGLU HAJIKHANOV v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 24, 2018

**JUDGMENT AND REASONS:** MCDONALD J.

**DATED:** DECEMBER 12, 2018

**APPEARANCES:**

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