Federal Court  Cour fédérale

Date: 20190226

Docket: IMM-2823-18

Citation: 2019 FC 231

Ottawa, Ontario, February 26, 2019

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

**HAIAN CAO, HUANXIAO LIU,
CINDY YIANZHEN CAO, YING HUI CAO,
AND YINGHAO CAO**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the decision of the Refugee Appeal Division ("RAD") of the Immigration and Refugee Board of Canada, dated May 29, 2018, which found that the Applicants were neither Convention refugees nor persons in need of protection pursuant to s 96 and s 97, respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("IRPA").

[2] For the reasons that follow, this application for judicial review is dismissed.

Background

[3] Haian Cao ("Male Applicant"), his spouse Huanxiao Liu ("Female Applicant"), and their three minor children (collectively, the "Applicants") are citizens of Guyana. The Male Applicant and the Female Applicant were originally Chinese citizens. However, in 2001 they left China to live in Guyana. They became Guyanese citizens in October 2011. The three minor children were born in Guyana and are Guyanese citizens. The Female Applicant acted as their designated representative in the Canadian immigration proceedings and all of the Applicants relied on the Female Applicant's basis of claim narrative.

[4] The Male and Female Applicants claim that while they were working at a friend's restaurant in Guyana, it experienced numerous robberies. In mid-December 2003, as they were about to close, they were attacked by two armed masked men, one of which grabbed the Female Applicant and put a gun to her head. Neighbours called the police who arrested the two men and who were later sentenced to ten-year jail terms. However, friends of the two imprisoned men began regularly coming to the restaurant to order food and would leave without paying. The Male and Female Applicants reported this harassment to the police at first, but since the police did not intervene, on many occasions they chose not to report such incidents.

[5] The Male and Female Applicants purchased the restaurant in 2004 and later relocated to a different area, but claim that harassment from different native Guyanese occurred and continued for many years.

[6] In January 2010, the Male and Female Applicants opened a second restaurant. They allege that in March 2010, the Female Applicant was working at the restaurant when four men came in and ordered food. When asked for payment, one of the four men pulled out a handgun and opened fire towards the Female Applicant. The men demanded that she hand over all of the money from the cash register and warned her that there would be severe consequences if she reported this incident to the police. The Male and Female Applicants did not report the matter to the police.

[7] The Male and Female Applicants claim that on November 10, 2014, a Guyanese male broke into their home, grabbed their daughter and demanded money. They paid the man $3000 USD for her release. Before leaving, the intruder warned them not to report the incident to the police.

[8] Finally, the Male and Female Applicants claim that on December 20, 2014, the Female Applicant went shopping with their three minor children and bumped into one of the perpetrators of the 2003 incident at the mall. He made a handgun signal pointing to her neck and laughed. He asked if the Female Applicant remembered him and if she knew of an assault involving the daughter of an Indian shop owner. After this event, the Applicants decided to report all the

incidents that they had experienced to the police. They claim that the police refused to take the report as the Applicants did not have evidence of these incidents.

[9] In addition to these incidents, the Male and Female Applicants claim that their sons often experienced discriminatory treatment, teasing and bullying at school on account of their Chinese ethnicity; that they were never able to determine whether charges were pressed against a drunk driver who struck one of their sons; and, the police were not responsive to an incident when someone backed into their car.

[10] Given these events, the Applicants decided to leave Guyana. The Female Applicant and the three minor children arrived in Canada on February 2, 2015, and submitted claims for refugee protection in March 2015. The Male Applicant stayed in Guyana to sell the restaurant. He claims that on March 13, 2015, he encountered one of the men who had attacked his wife. Fearing for his life, he ultimately abandoned the restaurant and left Guyana on July 6, 2015, to go to China to be with his ill mother. He remained in China until October 15, 2015, when he travelled to Canada. The Male Applicant claims that he did not immediately seek refugee protection in Canada in case he needed to urgently travel to China to take care of his mother. He claimed refugee protection in February 2016.

[11] In a decision dated September 2, 2016, the Refugee Protection Division ("RPD") found that the Applicants were neither Convention refugees nor persons in need of protection. The RPD decision was appealed to the RAD, which confirmed the RPD's decision on February 13, 2017. On September 20, 2017, this Court allowed the Applicants' application for judicial review

of the RAD's decision, setting it aside and remitting the matter back to a differently constituted panel of the RAD for re-determination.

[12] The RAD's subsequent negative decision is the subject of the judicial review now before me.

Decision under review

[13] The RAD considered whether evidence submitted by the Applicants was admissible as new evidence pursuant to s 110(4) of IRPA. In their application for judicial review, the Applicants do not dispute the RAD's finding that none of the evidence was admissible.

[14] The RAD then considered the two grounds of appeal submitted by the Applicants. The first of these was whether the RPD reasonably considered the best interests of the three minor children. As the RAD's treatment of that issue has also not been raised by the Applicants in their application for judicial review, I need not further address it in these reasons.

[15] The second ground of appeal was whether the RPD's negative credibility findings were based on an incomplete examination of the supporting evidence. More specifically, that the RPD minimized the impact of crime and violence in Guyana by failing to completely consider the documentary evidence regarding Chinese businessmen. The RAD stated that there was no documentation in the National Documentation Package ("NDP") to suggest that ethnic Chinese were targeted in Guyana because of their race. Rather, that documentation focused on the fact

that people were targeted based on perceived wealth or money. The RAD found, on a balance of probabilities, that the Male and Female Applicants were targeted as restaurant owners and because they were perceived to be wealthy. Further, since the NDP indicated that violent crimes are perpetrated against everyone, and in the absence of probative evidence that robberies disproportionately target Chinese people, the fact that Chinese businesspersons are victims of crime does not, in and of itself, indicate that they are disproportionality victimized or are targeted because of race. Although the Applicants presented three news articles in support of their position, the RAD preferred the NDP documentation.

[16] The RAD then addressed what it termed as other issues. The RAD noted that the RPD had found the Applicants' risk to be generalized and rejected that they had been personally targeted. The RAD agreed with the RPD. The RAD repeated its prior finding that the NDP did not support that the risk of violent crime is higher for ethnic Chinese people. It then stated that the fact that a person or group of people may be victimized repeatedly or more frequently by criminals because, for example, of their perceived wealth or because they live in a more dangerous area, or that they continue to be pursued after reporting to the police, or that they face retaliation for not complying with criminal demands, does not remove the risk from the exception if it is faced generally by others. Nor does consequential harm faced in those circumstances mean that the risk is not a generalized one. The RAD found that the NDP indicated that business owners are targeted by criminals in Guyana, but nothing indicated that those robberies were motivated by ethnicity. Rather, they were criminal acts against individuals perceived to have money.

[17] The RAD concluded that the robberies described by the Applicants were not racially motivated. It noted that the RPD had found that the Applicants were not persons in need of protection under s 97(1) of the IRPA as they would not be subject to risk personally but were victims of general crime, not of crime for which they were personally targeted. The RAD stated that the Applicants had not specifically addressed this on appeal, but on the RAD's review there was no evidence that the Applicants were personally targeted.

[18] The RAD found that the Applicants were neither convention refugees nor persons in need of protection.

Issues and Standard of Review

[19] The Applicants raise three issues:

1. Did the RAD conflate the test under s 96 with the test under s 97?
2. Did the RAD err in assessing the issue of generalized risk?
3. Did the RAD err in determining that the Applicants failed to establish a nexus to the Convention?

[20] The Applicants submit that the question of whether the RAD conflated the legal tests under s 96 and s 97 of the IRPA is a question of law which is subject to review on a standard of correctness, while the issues concerning generalized risk and nexus are subject to review on a standard of reasonableness.

[21] The Respondent submits that it is not clear that the RAD's treatment of the legal tests under s 96 and s 97 of the IRPA is reviewable on the standard of correctness as the jurisprudence of this Court is divided on this matter. However, the RAD is a specialized expert tribunal regarding the determination of Convention refugee status and protected person status. As such, it is directly involved in the implementation of the complex administrative scheme concerning these determinations and has a considerable degree of expertise regarding the scheme's imperatives and nuances. The Respondent submits that the standard of reasonableness should apply to the entire decision of the RAD.

[22] I agree with the parties that the standard of reasonableness applies to the last two issues. This is a deferential standard. The Court will not interfere with the decision if it is justifiable, transparent and intelligible and falls within the range of possible acceptable outcomes that are defensible in respect of the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47; *Komaromi v Canada (Citizenship and Immigration)*, 2018 FC 1168 at para 22 ("*Komaromi*"), *Fazekas v Canada (Citizenship and Immigration)* 2018 FC 289 at para 17). And while there may be debate as to the standard of review applicable to the treatment of legal tests under s 96 and s 97 of the IRPA, whether the standard is correctness or reasonableness is not determinative in this matter as I have found that the tests were not conflated.

Issue 1: Did the RAD conflate the test under s 96 with the test under s 97?

[23] The Applicants submit that the RAD erred in analyzing nexus by conflating the legal tests for s 96 and s 97. There were two issues most relevant to the appeal before the RAD. First,

whether the Applicants' allegations create a nexus to a s 96 ground. This concerns whether the Applicants were attacked due to their Chinese ethnicity, or simply because they are perceived to be wealthy. If there is no nexus, then the RAD was required to consider if the claim should be rejected under s 97 on the basis of generalized risk. The Applicants maintain that the RAD considered these issues simultaneously and conflated them.

[24] The Respondent submits that the RAD did not seek a degree of personal risk to the Applicants that exceeded the risk to other residents of Guyana in general, but correctly considered whether the Applicants were targeted on the basis of a Convention ground. Disproportionality was relevant to the RAD's nexus analysis because the RAD needed to determine if there was a reasonable chance that by reason of race, or membership in a particular social group with which the Applicants were associated, they faced persecution in Guyana. The Respondent also adds that where a hearing panel is asked to consider claims under s 96 and s 97 of the IRPA, some of the same evidence may apply to both determinations.

Analysis

[25] The Applicants are, of course, correct that the analyses and tests under s 96 and s 97 of the IRPA are different. The applicable test under s 96 requires an assessment of whether there is more than a mere possibility that a claimant will be persecuted on a Convention ground, and the test under s 97 requires determining whether the claimant, on a balance of probabilities, faces a personalized risk to his or her life or of cruel and unusual treatment or punishment (*Lakatos v Canada (Citizenship and Immigration),* 2018 FC 1061 at para 36).

[26] In *Fi v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1125 at paras 14-16, Justice Martineau explained:

> [14] […] it is trite law that persecution under section 96 of IRPA can be established by examining the treatment of similarly situated individuals and that the claimant does not have to show that he has himself been persecuted in the past or would himself be persecuted in the future. In the context of claims derived from situations of generalized oppression, the issue is not whether the claimant is more at risk than anyone else in his country, but rather whether the broadly based harassment or abuse is sufficiently serious to substantiate a claim to refugee status. If persons like the applicant may face serious harm for which the state is accountable, and if that risk is grounded in their civil or political status, then he is properly considered to be a Convention refugee (*Salibian v. Canada (Minister of Employment and Immigration)*, [1990] 3 F.C. 250 at 259 (F.C.A.); *Ali v. Canada (Minister of Citizenship and Immigration)* (1999), 235 N.R. 316.
>
> [16] […] Unlike section 97 of IRPA, there is no requirement under section 96 of IRPA that the applicant show that his fear of persecution is "personalized" if he can otherwise demonstrate that it is "felt by a group with which he is associated, or even, by all citizens on account of a risk of persecution based on one of the reasons stated in the definition [of a Convention refugee]" (*Salibian*, above, at 258).
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> [Emphasis in original.]

[27] In other words, a claim for protection pursuant to s 97 does not require that the motive for the harm be related to Convention grounds, however claimants must prove that the danger is faced by them personally: the risk at issue cannot be a risk generally faced by other citizens of the country (*Guerrero v Canada (Minister of Citizenship & Immigration)* 2011 FC 1210 at para 27 ("*Guerrero*")). Indeed, as s 97(1)(b)(ii) of the IRPA defines a person in need of protection as "a person in Canada whose removal to their country or countries of nationality ... would subject them personally to a risk to their life or a risk of cruel and unusual treatment or punishment if the

risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country".

[28] It is significant to note, when considering the Applicants' allegation of a conflation of the tests, that the structure of the RAD's reasons followed the issues as they were identified by the Applicants in their appeal materials. Thus, in the first part of its reasons, the RAD is addressing the Applicants' assertion that the RPD had failed to address country conditions documentary evidence concerning the impact of crime on Chinese businesspersons. The Applicants' appeal of the RPD decision was clearly made on the basis that the RPD considered only the risk to persons of Chinese ethnicity in Guyana, and failed to consider risk to them as Chinese businesspersons.

[29] In addressing that appeal ground, the RAD first found that there was no documentation contained in the NDP to support that ethnic Chinese were being targeted because of their race and that, on a balance of probabilities, the Applicants were targeted because the Male and Female Applicants were restaurant owners and perceived to be wealthy. The RAD noted that the NDP documentation states that violent crime against everyone in Guyana is a major problem, and the lack of probative evidence establishing that robberies against Chinese indicated a disproportion targeting of Chinese people. The RAD concluded that, on the balance of probabilities, the fact that Chinese businesspersons are victims of crime does not, in and of itself, indicate that Chinese businesspersons are disproportionately victimized, or, that they are targeted because of their race. In this way, the RAD's use of the term disproportionately was concerned with the s 96 nexus in the sense that the RAD was considering if the persecution the Male and Female Applicants would face upon returning to Guyana – as Chinese business owners – fell

within a Convention ground as a particular social group, or, if they were targeted based on race. Accordingly, viewed in this context, I do not agree with the Applicants that the use of the word disproportionately illustrates that the RAD was conflating the tests in s 96 and s 97. Rather, the RAD was conducting its s 96 and s 97 analyses largely simultaneously.

[30] Further, it was while the RAD was still considering whether the RPD erred in its consideration of the documentary evidence that the RAD stated that the documents at issue contained nothing to personalize the circumstances of the Applicants. For that reason, I do not find its statement at the end of paragraph 43 of its decision, in which paragraph the RAD was considering the documentary evidence submitted by the Applicants, that there was nothing in the report under consideration to personalize the circumstances of the Applicants, to demonstrate that the RAD conflated the tests as the Applicants submit.

[31] The next section of the RAD's reasons is entitled "Other Issues" with the subheading "In the alternative – Generalized Risk". In that section, the RAD stated that, in the alternative the RPD found that the Applicants were also disqualified under the generalized risk provision of s 97(1)(b)(ii) and that the RPD found that the Applicants were not personally targeted. The RAD stated that the RPD also found that the Applicants' claim was not based on a genuine fear or risk of serious harm in Guyana, but that in their appeal memorandum the Applicants did not address this issue specifically, but made general references to the persecution faced by Chinese businesspersons in Guyana. In this context, the RAD stated that it agreed with the RPD that this claim would fall under the category of generalized risk for the reasons it set out – being that the Applicants were not personally targeted and the risk is one generally faced by others in Guyana

(being individuals perceived to be wealthy). I am also not persuaded that the mere use of the "in the alternative" subheading demonstrates that the RAD conflated and failed to appreciate the difference in the two tests.

[32] In sum, while the Applicants would have preferred that the RAD use discrete silos in its reasons concerning its consideration of s 96 and s 97, and although I agree that the RAD's wording could have been more precise, viewed as a whole and read in context, I am not persuaded that the RAD conflated the tests.

Issue 2: Did the RAD err in assessing the issue of generalized risk?

Applicants' Position

[33] The Applicants submit that the RAD relied on outdated jurisprudence when assessing generalized risk. More recent case law, starting with *Portillo v Canada (Minister of Citizenship and Immigration)*, 2012 FC 678, clearly establishes that it is incorrect to reject a claim under s 97 simply because there is a generalized risk of criminal activity (*Lovato v Canada (Minister of Citizenship and Immigration)*, 2012 FC 143 at para 9). Rather, in each case there must be an individualized inquiry conducted to ascertain whether the person is at risk, even though there may be generalized risk of crime in the country (*Vivero v Canada (Citizenship and Immigration)*, 2012 FC 138 at paras 24-25; *Guerrero* at para 32).

[34] Here it was unreasonable for the RAD to state that the fact that a person may continue to be pursued after reporting to the police or relocating, or that they face retaliation for not complying with the demands of the criminals does not mean that the risk is not generalized. The incidences of criminality had become personalized to the Applicants such that it was unreasonable for the RAD to dismiss the claim under s 97 without further analysis in accordance with the jurisprudence referenced by the Applicants. Here there was evidence that the person who attacked the Applicants in 2003 threatened future reprisals during that incident, and again in December 2014 and March 2015. Thus, the risk was personalized.

Respondent's Position

[35] The Respondent submits that the RAD's analysis of generalized risk was reasonable. The RAD conducted an individualized and forward-looking s 97(1) analysis of the risk the Applicants would face in Guyana and considered whether a significant group of persons in Guyana faced the same risk. The RAD reasonably agreed with the RPD that the Applicants were at risk of being robbed and burglarized in Guyana, that there was no indication of escalating harm, repeat victimization, or risk of future reprisals, and that the risk the Applicants would face is a generalized risk faced by others in Guyana, particularly those who are perceived to be wealthy.

[36] Further, in their submissions to the RAD the Applicants did not directly raise the allegation of repeat encounters with the 2003 perpetrator in relation to personalized risk under s 97(1). Instead, they contested the credibility findings of the RPD generally and submitted that it

erred in its treatment of the documentary evidence. Accordingly, the RAD was not required to address the alleged repeat encounters in its analysis of generalized risk and the reasonableness of the RAD's decision generally cannot be challenged on the basis of an issue not put to it.

[37] And, of the various incidents that the Applicants described, only the alleged attendance of friends of the 2003 perpetrators at their restaurant appear to be repeated, and this conduct did not escalate. The RAD reasonably concluded that the Applicants faced the same risk as certain subgroups of the population: individuals perceived to be wealthy or successful business owners. The Respondent submits that an increased risk experienced by a subcategory of the population that is sufficiently large is not personalized where the whole population experiences the same risk, albeit at a reduced frequency. The fact that a person or group of people is victimized repeatedly by criminals because of their perceived wealth or success, without more to establish a personalized risk, amounts only to a generalized risk as recognized by the RAD. The RAD rejected the Applicants' claims because the mistreatment they described arose from a risk that was of the same nature and degree as that faced by sizeable subgroups in the population, such as businesspersons and individuals perceived to be wealthy in Guyana.

Analysis

[38] The question under s 97 of the IRPA is whether the return of the Applicants to Guyana would personally expose them to the dangers and risks contemplated by that provision (*Maija v Canada (Minister of Citizenship and Immigration)*, 2006 FC 12 at paras 16-17; *Li v Canada (Minister of Citizenship and Immigration)*, [2004] 3 FCR 501 at para 45). Thus, the

inquiry under s 97 should not focus on the reasons for which an applicant is being targeted, but rather on any evidence that an applicant was being specifically targeted to an extent beyond that experienced by the population at large (*Vaquerano Lovato v Canada (Citizenship and Immigration)*, 2012 FC 143 at para 13 ("*Lovato*")). This question necessitates "an individualized inquiry, which is to be conducted on the basis of the evidence adduced by a claimant 'in the context of a present or prospective risk' for him" (*Prophète v Canada (Citizenship and Immigration*) 2009 FCA 31 at para 9). And, as the Applicants submit, the fact that the risk to an applicant arises from criminal activity does not in and of itself foreclose the possibility of protection under s 97 (*Lovato* at para 9).

[39] That being said, nor does membership in a particular economic sector transform a generalized risk of criminal violence against an applicant into personal risk. In *Acosta v Canada (Citizenship and Immigration)*, 2009 FC 213, Justice Gauthier held at para 16:

> [16] The applicant referred to a passage of the documentary evidence which confirms that bus fare collectors are frequently subject to extortion by the Gang. However, the Board examined this country documentation and found it to clearly indicate the prevalence of gang related violence in a variety of sectors. It is no more unreasonable to find that a particular group that is targeted, be it bus fare collectors or other victims of extortion and who do not pay, faces generalized violence than to reach the same conclusion in respect of well known wealthy business men in Haiti who were clearly found to be at a heightened risk of facing the violence prevalent in that country.

[40] Similarly, in *Rodriguez Perez (Citizenship and Immigration)*, 2009 FC 1029,the applicants argued that since small business owners were one of the groups primarily targeted by *maras*, the applicants who were small business owners were more at risk than the general population, and the risk to them was therefore personalized. However, the Court found:

> [35] I am of the view that if the risk to violence or injury or crime is a generalized risk faced by all citizens of the country who are seen as relatively wealthy by the criminals, the fact that a specific number of individuals may be targeted more frequently because of their wealth, does not mean that they are not subject to a "generalized risk" of violence. The fact that the persons at risk are those perceived to be relatively wealthy, and can be seen as a subset of the general population, means that they are exposed to a "generalized risk". The fact that they share the same risk as other persons similarly situated does not make their risk a "personalized risk" subject to protection under section 97. A finding otherwise would "open the floodgates" in that all Guatemalans who are relatively wealthy, or perceived as being relatively wealthy, could seek protection under section 97 of IRPA.

[41] The Federal Court has made similar findings in *Prophète v Canada (Ministry of Citizenship and Immigration)* 2008 FC 331 at para 23 (upheld by the Federal Court of Appeal: *Prophète v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 31), *Carias v Canada (Citizenship and Immigration)*, 2007 FC 602 at para 25, and more recently in *De Munguia v Canada (Citizenship and Immigration)*, 2012 FC 912 at paras 29-36 and in *Komaromi* at paras 26-27. In *Komaromi* Justice Norris stated:

> [26] In *Correa*, as in some other cases under section 97, the reviewable error arose from the RPD conflating the reason for targeting with the risk itself (at paras 93-94). Thus, in the case of, say, a business person who had been targeted for extortion, it would be an error for the RPD to find that the risk was generalized because business people generally are targeted for extortion without considering the particular manner in which the claimant had been targeted in the past and whether it gave rise to an ongoing future risk to the claimant personally as compared to others.

[42] In this case, the Applicants submit that the instances of criminality against them had become personalized such that it was unreasonable to dismiss their claim under s 97 without

further analysis. Specifically, that the same person who attacked the Applicants in 2003 again threatened them in 2014 and 2015.

[43] I note first, however, that the RPD found that the evidence in crucial areas of the Applicants' claim lacked credibility. In that regard, it also specifically found that while it was more likely than not that the Applicants were subject to an armed robbery at the restaurant where they worked in 2003, they had failed to establish on sufficient reliable evidence and on the balance of probabilities that the alleged 2015 encounter and threat was by one of the armed robbers from the incident 12 years earlier.

[44] Further, in their submissions to the RAD the Applicants framed their ground of appeal as being that the RPD's "negative credibility findings were based on incomplete examination and negligence of the provided supporting evidences and constituted a reviewable error". More specifically, that the RPD minimized the impact of crime and violence in Guyana on the Applicants by failing to completely consider the country's documentary evidence and to consider the Male and Female Applicants as Chinese businesspersons in Guyana. The Applicants identified portions of the RPD's reasons which they submitted demonstrated that the RPD only assessed the impact on Chinese or ethnic Chinese persons and failed to consider the impact on Chinese businesspersons such as the Male and Female Applicants. The Applicants also pointed to documentary evidence which they submitted supported their view that ethic Chinese are sandwiched between two major racially polarized communities and the Chinese businesspersons in Guyana are criminally and discriminately targeted by both sides due to their wealth.

[45] The only aspect of the appeal to the RAD that touched on credibility was the suggestion that certain listed documents, which the Applicants claimed were vital to establishing their credibility, were underestimated or ignored. The Applicants submitted this was a reviewable error and should afford them an oral hearing. However, in its reasons the RAD directly addressed the documentation referred to in the Memorandum of Appeal, the same listed documents, and found that this was before the RPD and was considered by it. Therefore, it was not new evidence under s 110(4) of the IRPA and, in the absence of new evidence, the RAD declined to hold an oral hearing.

[46] In my view, it is not open to the Applicants to ignore the unrebutted credibility findings of the RPD, in particular as to implausibility of the same assailant being involved in the 2003 and 2015 incidents, to ground its argument that the RAD erred by failing to apply the jurisprudence it cites in assessing the alleged, but discredited, repeat perpetrator scenario.

[47] Further, the Applicants simply did not pursue, as a ground of appeal before the RAD, an allegation that the RPD erred in its finding as to the unrelatedness of the 2015 attack, the Applicants' credibility in that regard, or that the RPD failed to consider the issue of repeat victimization in its s 97 analyses. The reasonableness of a decision by the RAD cannot normally be impugned on the basis of an issue that was not put to it (*Canada (Citizenship and Immigration) v RK*, 2016 FCA 272 at para 6, *Abdulmaula v Canada (Citizenship and Immigration*) 2017 FC 14 at para 15). Accordingly, the RAD cannot be criticised for failing to address the issue in its reasons.

[48] There was no evidence before the RAD to demonstrate that the Applicants were personally targeted to an extent beyond that experienced by the population at large. While the RAD did accept that business owners who appear wealthy may be more at risk of being the victims of economically-motivated crimes than the general population, this alone does not suffice to meet the requirements of s 97.

[49] In the absence of evidence that the incidents of general criminality had become personalized, the RAD did not err in its assessment of the Applicants' s 97 risk.

Issue 3: Did the RAD err in determining that the Applicants failed to establish a nexus to the Convention?

Applicants' Position

[50] The Applicants submit that the RAD erred in finding that they failed to establish a nexus to the Convention and in finding that the documentation did not support the proposition that Chinese business owners are targeted due to their ethnicity. The Applicants argue that there was evidence on file which tended to demonstrate that Chinese business owners were being specifically targeted, namely separate news articles which noted that there had been a surge in criminal attacks against members of the Chinese community, and that the attacks coincided with a politically inspired and orchestrated campaign by known opposition elements. The Applicants maintain that it was unreasonable for the RAD to reject the implications of these news articles simply because the same information was not specifically noted in the NDP. The NDP does not

confirm that ethnically motivated attacks against the Chinese persons do not occur; it is simply silent on the issue.

[51] The Applicants also submit that the articles demonstrate that there is a political motivation to attacks against Chinese persons in Guyana. While the individuals who perpetrated the attacks on the Applicants were motivated by financial gain, they also had an additional political and xenophobic motivation, which is sufficient to establish a nexus to a Convention ground.

Respondent's Position

[52] The Respondent submits that the Applicants provided insufficient evidence to support their contention that they were targeted in Guyana because of their race. The RAD also reasonably preferred the NDP evidence to the three news articles submitted by the Applicants, because of the articles' speculative and political nature, as well as their lack of detail in establishing that the Applicants were part of a group targeted on account of their ethnicity. The Applicants essentially challenge the weighing of the country condition evidence, which does not establish a reviewable error.

[53] The Respondent further submits that the RAD carefully assessed the documentary evidence and reasonably concluded that crimes committed against persons of Chinese descent in Guyana, including the Applicants, did not amount to persecution on account of race. There were crimes against persons of Chinese descent in Guyana, but there was also a generally high crime

rate in the country overall, particularly against persons based on their perceived wealth. None of the evidence submitted by the Applicants indicates that there were mixed economic and racial motives for the crimes as they described.

[54] Finally, the Respondent maintains that the Applicants are not part of a "particular social group" under s 96 of the IRPA. Victims of criminal activity and individuals perceived as wealthy or as successful businesspersons do not constitute a "particular social group" for the purposes of s 96 of the IRPA.

Analysis

[55] The RAD found that the Applicants had not established, on a balance of probabilities, that there was a reasonable chance that they were targeted due to their Chinese ethnicity. The RAD came to this conclusion by assessing the documentation regarding conditions in Guyana. It found that the incidence of crime and criminal activities in Guyana is rampant against all Guyanese. The RAD noted that the NDP documents referred to racial tensions that existed prior to the 2011 elections between the Afro-Guyanese population and the Indo-Guyanese population. It also noted that the *United States 2015 Crime in Safety Report* indicated that ethnic and religious diversity have not been directly linked to incidents of violence in recent years. Nor was there any documentation in the NDP to suggest that ethnic Chinese were being targeted because of their race, and the Applicants failed to submit any probative evidence to establish that robberies against Chinese indicated a disproportionate targeting of Chinese people. In my view, given the documentary evidence, it was open to the RAD to conclude that the crimes perpetrated

against the Applicants were economically rather than racially motivated. Nor was it unreasonable for the RAD to conclude that the risk faced by the Applicants is one that is generally faced by others in Guyana.

[56] Moreover, the onus rests on the Applicants to present the evidence and information necessary to establish their claim (*Dag v Canada (Citizenship and Immigration)*, 2017 FC 375 at paras 14-15). Here, the only evidence that pointed to a possibility of racially-motivated violence consisted of three brief articles submitted by the Applicants. The first was an article which appeared in Stabroek News on March 6, 2013, which states that the Ministry of Home Affairs had on that date expressed deep concerns of persistent robberies against the Chinese community, over the prior few months, which the Ministry attributed to coincide with a politically inspired and orchestrated campaign by known opposition elements. The campaign was described by the Ministry as characterized by sustained and systemic efforts of vilification, criminalization and xenophobic in character. The article also reports that opposition rejected the claim stating that it has not criticized the Chinese community but raised concerns about the wisdom of the government allowing Chinese-only labour on the construction of a hotel. The second article, which appeared in iNews Guyana on August 19, 2014, states that the ruling People's Progressive Party ("PPP") has noted with grave concern that there have been sustained and calculated attacks by the opposition and two media houses perpetrated on foreign investors of Chinese origin. Amongst other things, the article notes that the PPP believes that the attacks are in blatant contradiction to a call for investments and that there must be no discrimination against Chinese investors. The last article, which appeared in iNews Guyana on August 25, 2014, reported a surge in criminal attacks on Chinese nationals and businesses in Guyana over the prior week, and

indicates that police patrols would be intensified in Georgetown as a result. The article refers to statements by the Home Affairs Minister indicating that businesspeople in the Chinese community were easy targets because they are foreigners and do not understand local culture and "[t]hey don't understand the kind of criminal gangsterism that exist in certain parts of the country, in particular, Georgetown and therefore they ae vulnerable".

[57] The RAD acknowledged and described these articles, noting that one of them suggested that the attacks were politically inspired, but found that no information was given concerning the political motivation and that it preferred the NDP documentation on the situation in Guyana with respect to crime and the Chinese population. Having reviewed the articles, I note that only one suggests any political motivation and it appears to demonstrate only political posturing, not true political motivation.

[58] It was also open to the RAD to prefer the NDP documentation and to consider that the NDP did not identify the risk to Chinese persons or business persons in Guyana upon which the Applicant founded their appeal. Nor can the Applicants' submission that the news articles form a *prima facia* nexus, and one that cannot be dislodged by silence on the issue in the NDP documentation, succeed. In that regard, I note that in *Su v Canada*, 2017 FC 243, the applicant in that case submitted similar articles indicating that Chinese nationals had been targeted. Justice Southcott upheld the RAD's finding that these articles could not negate the documentation regarding the general criminality of Georgetown and the focus on business owners. In essence, the Applicants seek to have the Court reweigh the evidence, which is not its role (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 61).

[59] The RAD's conclusions, based on its review of the documentary evidence, are within the range of possible, acceptable outcomes; accordingly, there is no basis for the Court to interfere with the decision.

[60] In conclusion, as I am not persuaded that the RAD committed a reviewable error, this application for judicial review must be dismissed.

JUDGMENT IN IMM-2823-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There shall be no order as to costs.

3. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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