

Federal Court



Cour fédérale

**Date: April 20, 2022**

**Docket: IMM-34-20**

**Citation: 2022 FC 557**

**Ottawa, Ontario, April 20, 2022**

**PRESENT: Madam Justice Sadrehashemi**

**BETWEEN:**

**JAN BALGAR, IVA BALGAR, AND  
VOJTECH BALGAR**

**Applicants**

**And**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicants are a family: husband, wife, and an adult son. They are all citizens of the Czech Republic and Germany. They made claims for refugee protection against both the Czech Republic and Germany. Both claims are based on the allegation that the family would face discrimination amounting to persecution—in Germany on the basis of being Czech nationals and

in the Czech Republic on the basis of being members of a particular social group, those who are treated “as traitors for having lived long-term in the United States.”

[2] The Refugee Protection Division [RPD] refused their claims in June of 2015. This first refusal was challenged by an application for leave and judicial review in this Court and was ultimately granted by way of a consent order. The matter was sent back to the RPD to be redetermined by a new member. It is the redetermination that is the subject of this judicial review.

[3] The Applicants argue that in assessing their claims against Germany, the RPD erred in finding there was no nexus to a ground of protection in the Refugee Convention. I do not agree. The RPD decision is clear that it found a nexus, on the basis of being a Czech national in Germany, but determined that the cumulative discrimination being alleged did not arise to the level of persecution. I also do not agree with the Applicants’ claims that the RPD did not conduct a forward-looking analysis of their claim of persecution or that it required evidence of past persecution. Neither of these errors are apparent on review of the RPD’s reasons.

[4] As there are two countries of reference, it would be sufficient for the RPD to have found that the claim was not made out for either Germany or the Czech Republic. In the same way, having found there is no basis to interfere with the RPD’s decision with respect to the family’s claim against Germany, I need not consider the reasonableness of the decision with respect to the Czech Republic.

[5] For the reasons below, the Applicants' judicial review is dismissed.

## II. Background Facts

[6] The Applicants were all born in the Czech Republic. Due to the adult male Applicant's family ties to Germany, all the Applicants were able to obtain German citizenship. At some point in the early 1990s, the adult male Applicant lived in Germany for approximately a year. Other than that, the family has lived in the Czech Republic and the United States.

[7] From approximately 1999 to 2009, the Applicants lived in the United States. The family travelled there because of their financial difficulties in the Czech Republic. They did not have permanent status in the United States. Sometime in 2009, the family returned to the Czech Republic because of health issues and an illness in the adult male Applicant's family.

[8] In May 2012, the Applicants left the Czech Republic and travelled to Canada and made claims for refugee protection soon after their arrival. The claims were rejected by the RPD and found to have no credible basis in June 2015. This refusal was successfully challenged and sent back to the RPD to be redetermined.

[9] The Applicants' RPD hearing was held on October 21, 2019 and was refused on November 20, 2019.

III. Issues and Standard of Review

[10] The Applicants' challenge to the RPD decision relates to the substance of the Member's decision in relation to the claims for protection against Germany and the Czech Republic. The parties agree that I should apply the reasonableness standard of review to my analysis. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. This case raises no issue that would justify a departure from that presumption.

IV. Analysis

[11] The Applicants assert that the RPD failed to recognize that there was a nexus to a Convention ground in relation to their claim against Germany. This assertion has no support in the RPD's reasons. The RPD explicitly stated that it had found that there was a nexus to a Convention ground: "The panel considered the principal claimant's allegations with a view to determining whether they disclosed a nexus to the Convention refugee definition. The panel determines that they do, because the allegations of discrimination relate to the claimants' nationality, that is, the Czech origins."

[12] The basis of the RPD's refusal was its finding that the discrimination the Applicants could face in Germany would not amount to persecution.

[13] The Applicants raise two further issues: i) the failure of the RPD to conduct a forward-looking assessment; and ii) the RPD's insistence that there be evidence of past persecution. The Applicants raise these claims in the context of their nexus argument, which I have found to be without merit. Even when considering these issues in relation to the RPD's determination on the cumulative discrimination amounting to persecution claim, there is no support in the RPD's reasons that these errors were made.

[14] The RPD conducted a forward-looking assessment of the discrimination claim. The RPD considered the country documentation that was relevant to the issue. The RPD commented on the types of experiences that the adult male Applicant claimed to have experienced in Germany and found that those did not amount to persecution. These statements by the RPD are not indicative of an approach that requires that the Applicants experienced past persecution or that the RPD failed to view its task as a forward-looking assessment. The RPD considered the recent country documentation about discrimination in Germany and found that the Applicants had not established that they would face discrimination amounting to persecution in Germany. I see no basis to interfere with this assessment. The determination is transparent, intelligible and justified.

[15] The application for judicial review is dismissed. Neither party raised a question of general importance for certification and none arises.

**JUDGMENT IN IMM-34-20**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

"Lobat Sadrehashemi"

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Judge

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

**DOCKET:** IMM-34-20  
**STYLE OF CAUSE:** JAN BALGAR ET AL v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION  
**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE  
**DATE OF HEARING:** OCTOBER 19, 2021  
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**DATED:** APRIL 20, 2022

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