

Federal Court



Cour fédérale

Date: 20220509

Docket: IMM-2021-20

Citation: 2022 FC 681

Toronto, Ontario, May 9, 2022

PRESENT: Mr. Justice Diner

BETWEEN:

**RAHIMA MUHAMMAD HASHEM
HANIFA M. YOSUF
ZABIULLAH MOHAMMAD YUSOF
SAMANA ABDUL HUSSAIN
RAIHAN ZABIULLAH AND
KASRA ZABIULLAH**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of the decision to refuse their applications for permanent residency as members of the Convention refugee abroad class (“Decision”). They

argue that it was unreasonable for the Migration Officer (the “Officer”) to conclude that the Applicants have a durable solution in Tajikistan. For the reasons that follow, I find the decision to be reasonable and will dismiss the application.

II. Background

[2] The Applicants are citizens of Afghanistan who have been residing in Tajikistan for approximately twenty years. They have been residents in Tajikistan continuously since 2008, and holders of renewable residence permits, first issued around 2008, and then renewed in 2015, and valid until 2020. In 2016, seeking to resettle in Canada, the Applicants applied for Canadian permanent residence as members of the Convention refugee abroad class. On October 22, 2019, the Applicants were interviewed by the Officer with the assistance of an interpreter.

[3] The Global Case Management System (“GCMS”) notes associated with the interview indicate that the Applicants informed the Officer that their residence permit allowed them to live where they want within Tajikistan, work and access health care and education, and that they did not face a risk of deportation. However, the Applicants also informed the Officer that they faced many problems in Tajikistan, including that they could not purchase property or obtain citizenship. They also claimed that they faced difficulties obtaining documents to travel outside the country, and that they paid more to access the same public services.

[4] During the interview, the Officer raised a concern that it appeared the Applicants have a durable solution of local integration in Tajikistan, since their residence permits allow them to live, work, and access healthcare and other services available to the general public. The Officer

provided the Applicants with an initial opportunity to respond to the concern at the interview and also informed them that a further opportunity would be provided in writing. The Applicants then reiterated to the Officer that they faced many problems with their residence cards, including instances of corruption by the police and differential treatment in accessing public services.

[5] Following through on his commitment, the Officer sent a procedural fairness letter (“PFL Letter”) to the Applicants. The PFL Letter reiterated the concern that the Applicants had a reasonable prospect within a reasonable period of a durable solution in Tajikistan. The Officer referenced s 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the “Act”) and ss 139(1)(d), 145 and 147 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [(the “Regulations”), which are reproduced in Annex A of these Reasons. The Officer acknowledged the Applicants’ responses during the interview regarding travel restrictions and problems with law enforcement, but noted that their answers did not suggest that they were actually prevented from travelling abroad or that the police conduct they had encountered was institutional or as a result of a lack of rights that they possessed as residents of Tajikistan.

[6] On December 19, 2019, the Applicants’ counsel provided a written response (“PFL Response”) to the Letter, accompanied by a country conditions package which included articles on discrimination and religious suppression of minorities in Tajikistan, restrictions on movement imposed on refugees, as well as UNHCR documentation suggesting Afghans in Tajikistan are practically unable to obtain citizenship, despite technically being eligible.

[7] In their PFL Response, the Applicants emphasized that they do not have a durable solution in Tajikistan for several reasons, namely: that their status as residence permit holders is

not similar to permanent residents of Canada; that they cannot obtain citizenship there; that the Tajikistan government had adopted a policy of suppressing the religious freedom of Afghan women; that significant movement restrictions were imposed on refugees; and, that economic challenges and corruption resulted in difficulties faced by Afghans in finding gainful employment and operating businesses.

III. Decision Under Review

[8] On January 21, 2020, the Officer decided that the Applicants did not meet the requirements of s 96 of the *Act*, and ss 139(1)(d), 145 and 147 of the *Regulations*. The Officer wrote:

You are able to avail yourself of protection in Tajikistan, where you currently reside, as you are a permanent resident of that country. You are able to participate broadly in society, similar to nationals of that country. Therefore, you have a durable solution in a country other than Canada and you do not meet the provisions of the above paragraph [139(1)(d) of the *Regulations*].

[9] In addition, the Officer noted in the GCMS notes that with respect to the PFL Response, the Applicants' difficulties finding suitable employment appeared to stem from economic conditions in the country, which also affected Tajik nationals. The Officer noted the Applicant's claims of discrimination and harassment by police, but considered these factors to be anecdotal and did not prevent the Applicants from working.

[10] Similarly, the Officer also acknowledged the Applicants' religious suppression concerns, noting once again that these were laws related to religious expression in Tajikistan, of general application, applying to Tajik nationals as well.

[11] The Officer also considered that the Applicants' legal status as long-term residents was a key indicator of local integration, and that they had access to participate broadly in society.

[12] Finally, in the GCMS notes, the Officer also noted the Applicants' concern that they could not obtain Tajik citizenship. The Officer accepted this proposition, and observed that "as in Canada, permanent residence in Tajikistan is not equivalent to citizenship and that there is some discrimination against those of Afghan origin in Tajikistan." The Officer nonetheless concluded that the Applicants are locally integrated in Tajikistan and could continue to live there without fear of refoulement to their native Afghanistan and therefore, that they had a durable solution in a country other than Canada.

[13] The Applicants challenge the Officer's Decision, pursuant to s 72 of the *Act*.

IV. Issues and Analysis

[14] The only issue in this application is whether the Officer's Decision was reasonable.

[15] The Parties agree that the applicable standard of review is reasonableness, set out by the Supreme Court in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [Vavilov]. A court performing a reasonableness review scrutinizes the decision maker's decision in search of the hallmarks of reasonableness – justification, transparency and intelligibility – to determine whether it is justified in relation to the relevant factual and legal constraints that brought the decision to bear (Vavilov at para 99).

[16] The Applicants raise two arguments in support of their position that the decision was unreasonable. First, they submit the Officer failed to consider the documentary evidence, including country condition evidence with respect to a lack of religious freedoms and rights for Afghans living in the Applicants' status in Tajikistan.

[17] Second, the Applicants submit the Officer erred by concluding they were locally integrated in Tajikistan as a result of the significant time they had spent there. They say that given the fact that they had significant difficulty finding employment, have suffered discrimination in various forms, cannot obtain citizenship or travel freely outside the country, the Officer erred in finding they had a durable solution. I cannot agree that the Officer made reviewable errors in either of these areas.

(a) Findings regarding country condition evidence were reasonable

[18] With regard to the first argument, the Applicants essentially contend that the Officer failed to assess various points raised in the documentary evidence accompanying the PFL Response and articulate a logical explanation for why it was not sufficient to support the Applicant's position. In support, they rely on *Saiffee v. Canada (Citizenship and Immigration)*, 2010 FC 589 at para 30 [*Saiffee*] for the proposition that an officer making a decision without knowledge of the country conditions could constitute a reason to overturn a decision. The Applicants argue that the country condition evidence "overwhelmingly points to the systemic suppression of religious freedom and the rights of minority groups in Tajikistan" and that as Afghan Shia Muslims, the Applicants would be unable to adhere to their religious customs there.

[19] The Respondents counter that there are restrictions on wearing religious symbols in various countries, and as here, such restrictions apply to the population in general, rather than the Applicants. The Respondent pointed out that in another recent decision with a very similar factual scenario of long-term residence permit holders living in Tajikistan, this Court found it was reasonable to conclude the applicants had a durable solution in Tajikistan (*Hayatullah v. Canada (Citizenship and Immigration)*, 2020 FC 466 [*Hayatullah*]).

[20] I am unable to agree that there is any basis to suggest the Officer in this case ignored evidence or made the Decision without knowledge of country condition evidence. To the contrary, while the Officer's reasons may have been brief, the Officer considered and weighed the Applicants' PFL Response in tandem with laws in Tajikistan related to religious expression, which the Officer noted apply to the population at large. The Officer nonetheless clearly considered the country condition evidence before determining that the Applicants had a durable solution in Tajikistan. The Applicants have not pointed me to any particular or contradictory evidence that the Officer failed to address.

[21] Indeed, his findings are consistent with those of the officer in *Hayatullah*, although the facts are different. There, at para 19, Justice McVeigh provided numerous evidentiary findings of the officer which supported the reasonableness of the officer's conclusion, findings which are very similar to the general country condition evidence presented here. The findings in *Hayatullah* included that: the applicants had full socio-economic rights similar to Canada; their cards were marked "permanent resident" and are different in form and rights conferred from refugee documents held by other Afghans in Tajikistan; they only had to renew these cards every

five years while the refugee holders have to do it every year; they were integrated into Tajik society; their evidence of discrimination (including bullying, bribery and/or harassment) was vague and general; they were able to obtain employment and an education; unlike most refugee claimants and non-permit holders, they were allowed to live in the capital city Dushanbe; and that the Tajik government does not provide or create jobs for refugees and that they have to support themselves without social services is not so different than Canada, where they would also be expected to support themselves.

[22] Although I acknowledge, as Applicant's counsel pointed out, that every case must be examined on its own facts, I refer to these findings in *Hayatullah* to reject the assertion that this Officer's findings with respect to country conditions were unreasonable. Here, the Officer, according to the detailed interview notes and the comments on the PFL Response contained in the GCMS notes, was sensitive to the country conditions in Tajikistan and the circumstances of the Applicants in particular, acknowledging that people of Afghan origin face "some discrimination" there. Furthermore, the Officer was also well aware of the status given to the Applicants, noting a strong local knowledge of their situation, through various comments such as the fact that their status is (i) not equivalent to citizenship, but (ii) allows for unrestricted movement, not available to asylum seekers and refugees in Tajikistan.

[23] As for *Saifee*, relied on by the Applicants, Justice Mainville, at para 30, specifically recognized that it may be assumed that an officer was either knowledgeable about country conditions or could easily access available evidence. Here, no such assumption is necessary. The Officer demonstrated that he appreciated the nuances present in the country for residence permit

holders such as the Applicants, and the situation in which they found themselves. There is no basis to interfere with the Officer's conclusions regarding the country condition evidence.

(b) Findings concerning a durable solution for the Applicants was reasonable

[24] As for the second argument, the Applicants submit that the Officer erred by concluding that the Applicants are locally integrated in Tajikistan and have a durable solution there on the basis of the time they have spent there, and that the Officer overlooked their testimony and the country condition evidence documenting difficulties faced by Afghans in Tajikistan. Once again, I cannot agree.

[25] Firstly, and similar to my analysis of the first argument, the Applicants have not convinced me that there is any basis to consider the Officer to have ignored their testimony or the country condition evidence they submit.

[26] The Officer acknowledged and explicitly responded to the Applicants various concerns about their personal situation, as stated in the interview and their PFL Response to the PFL Letter. The Officer made specific reference to the country conditions in Tajikistan in the January 2021 GCMS note, including: Tajikistan's status as a signatory to the *Convention relating to the Status of Refugees*, July 28, 1951, 189 UNTS 137 ("*Convention*"); the difficult employment conditions there; the fact that movement restrictions apply to asylum seekers but not permanent residents; and, the universal application of laws relating to religious expression. These were all concerns that the Applicants brought up as being flawed findings. I note that the fact that the Officer did not weigh a particular piece of evidence the Applicants found significant as heavily

as they would have wished is not sufficient to suggest the Officer “completely overlooked” the country condition evidence.

[27] Secondly, I agree with the Respondent’s observations that the officer simply never had any evidence of the personal issues which the Applicants complained of, whether relating to any discrimination from workplaces, inability to enrol in schools or find housing, or travel freely within the country. The fact that the Applicants were not able to travel abroad to the extent that they might have wished is not a requirement of a durable solution. Certainly, they presented no evidence that Tajikistan would not permit them re-entry should they decide to leave the country. Sufficient evidence of such elements may have convinced the Officer that they never had a durable solution in Tajikistan, but that evidence was lacking.

[28] The Applicants further submitted that the evidence, considered in a holistic fashion, even if describing a more general situation for Afghan refugees in Tajikistan, meant that they satisfied the requirements of paragraph 139(1)(d) of the *Regulations*. However, I note that provision of the *Regulations* creates a requirement for a foreign national applying for permanent residency to establish that a reasonable prospect for a durable solution, either through voluntary repatriation or resettlement within a reasonable time in a country other than Canada, is not available to them.

[29] The assessment of this requirement is forward looking. “Durable solution” is neither defined in the *Act* nor the *Regulations* (*Kediye v. Canada (Citizenship and Immigration)*, 2021 FC 888 at para 12). Nonetheless, both the *Convention*, and *Citizenship and Immigration Canada’s Operational Manual 5 Overseas Selection and Processing of Convention Refugees and*

members of the Humanitarian-protected persons Abroad Classes (the “*OP-5*”) can provide a useful guide as to whether an officer has reasonably concluded that a durable solution exists (see *Al-Anbagi v. Canada (Citizenship and Immigration)*, 2016 FC 273 at paras 16-18 [*Al-Anbagi*]).

[30] As for *OP-5*, although policy manuals are not binding on the officer or this Court, they nevertheless can offer useful insight into the purpose and meaning of the Act and of the Regulations (*Saifee* at para 31; *Al-Anbagi* at para 18). *OP-5* specifically notes that “[l]egal status as a long-term resident is a key indicator of local integration” (*OP-5* at p.54; *Al-Anbagi* at para 21), and further refers visa officers to questions for assessing minimum standards for determining whether applicants are locally integrated. These include whether the applicant: (i) faces the possibility of refoulement or deportation; (ii) has a well-founded fear of persecution in the country of refuge; (iii) has or is likely to have within a reasonable time, access to participation in the economy, property and rental housing; and, (iv) has the ability to move freely in the country of refuge.

[31] A review of the Decision record makes it clear that, contrary to the Applicants’ submissions, the Officer in this case was not solely concerned with the Applicants’ long-term residence in Tajikistan, although it is certainly significant that they had been continuously residing there for over a decade. Rather, the Officer viewed all of the circumstances holistically, including their ability to practice their religion.

[32] Specifically, the interview questions that the Officer posed, the concerns raised during the interview and in the PFL Letter, and finally, the Decision - including consideration of the PFL

Responses - make it abundantly clear that the Officer was concerned, beyond the Applicants' lengthy stay in the country, with their ability to participate broadly in society, including the right to work, obtain an education, and travel within the country. The Applicants confirmed they had housing and education, could travel within the country, and faced no risk of deportation. The issues they raised, including with difficulty finding employment (in a very poor labour market), and in the wearing of a hijab in public places, are also problems faced by all nationals.

[33] I note in closing on this point, and particularly given that the situation as described by the Officer was not perfect including some disparity in housing, the cost of education and even the existence of some discrimination, a durable solution does not need to be a perfect solution (*Gebreselasse v. Canada (Citizenship and Immigration)*, 2021 FC 865 at para. 2). Indeed, a durable solution may exist even with the existence of generalized risk (*Hassan v. Canada (Citizenship and Immigration)*, 2019 FC 531 at para 19).

[34] Here, at best, the Applicants provided evidence of an imperfect situation, within an environment of generalized risk. Just as a durable solution need not be perfect, the explanation of the Officer need not be perfect. However, it was sufficiently cogent and rational to render it reasonable in both justification and outcome.

V. Conclusion

[35] The Applicants have not convinced me that any reviewable error exists in this case: the Officer's rationale is logical, and demonstrates the indicia of reasonableness in light of the totality of the evidence. The application is accordingly dismissed.

JUDGMENT in IMM-2021-20

THIS COURT'S JUDGMENT is that:

1. The Application for judicial review is dismissed.
2. No costs will issue.
3. No question for certification was submitted and I agree none arises.

"Alan S. Diner"

Judge

Annex “A” – Relevant Provisions

*Immigration and Refugee Protection Act, SC 2001, c 27**Loi sur l’immigration et la protection des réfugiés (L.C. 2001, ch. 27)*

<p>Convention refugee</p> <p>96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,</p> <p>(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or</p> <p>(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.</p>	<p>Définition de réfugié</p> <p>96 A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :</p> <p>a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;</p> <p>b) soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.</p>
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*Immigration and Refugee Protection Regulations, SOR/2002-227**Règlement sur l’immigration et la protection des réfugiés (DORS/2002-227)*

<p>Convention Refugees Abroad, Humanitarian-protected Persons Abroad and Protected Temporary Residents</p> <p>General requirements</p> <p>139 (1) A permanent resident visa shall be issued to a foreign national in need of refugee protection, and their accompanying family members, if following an examination it is established that</p> <p>...</p> <p>(d) the foreign national is a person in respect of whom there is no reasonable prospect, within a reasonable period, of a durable solution in a country other than Canada, namely</p>	<p>Réfugiés au sens de la Convention outre-frontières, personnes protégées à titre humanitaire outre-frontières et résidents temporaires protégés</p> <p>Exigences générales</p> <p>139 (1) Un visa de résident permanent est délivré à l’étranger qui a besoin de protection et aux membres de sa famille qui l’accompagnent si, à l’issue d’un contrôle, les éléments suivants sont établis :</p> <p>...</p> <p>d) aucune possibilité raisonnable de solution durable n’est, à son égard, réalisable dans un délai raisonnable dans un pays autre que le Canada, à savoir :</p>
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<p>(i) voluntary repatriation or resettlement in their country of nationality or habitual residence, or</p> <p>(ii) resettlement or an offer of resettlement in another country;</p> <p>...</p>	<p>(i) soit le rapatriement volontaire ou la réinstallation dans le pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle,</p> <p>(ii) soit la réinstallation ou une offre de réinstallation dans un autre pays;</p> <p>...</p>
<p>Convention Refugees Abroad</p> <p>Member of Convention refugees abroad class</p> <p>145 A foreign national is a Convention refugee abroad and a member of the Convention refugees abroad class if the foreign national has been determined, outside Canada, by an officer to be a Convention refugee.</p>	<p>Réfugiés au sens de la Convention outre-frontières</p> <p>Qualité</p> <p>145 Est un réfugié au sens de la Convention outre-frontières et appartient à la catégorie des réfugiés au sens de cette convention l'étranger à qui un agent a reconnu la qualité de réfugié alors qu'il se trouvait hors du Canada.</p>
<p>Member of country of asylum class</p> <p>147 A foreign national is a member of the country of asylum class if they have been determined by an officer to be in need of resettlement because</p> <p>(a) they are outside all of their countries of nationality and habitual residence; and</p> <p>(b) they have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in each of those countries.</p>	<p>Catégorie de personnes de pays d'accueil</p> <p>147 Appartient à la catégorie de personnes de pays d'accueil l'étranger considéré par un agent comme ayant besoin de se réinstaller en raison des circonstances suivantes :</p> <p>a) il se trouve hors de tout pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle;</p> <p>b) une guerre civile, un conflit armé ou une violation massive des droits de la personne dans chacun des pays en cause ont eu et continuent d'avoir des conséquences graves et personnelles pour lui.</p>

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2021-20

STYLE OF CAUSE: RAHIMA MUHAMMAD HASHEM, HANIFA M. YOSUF, ZABIULLAH MOHAMMAD YUSOF, SAMANA ABDUL HUSSAIN, RAIHAN ZABIULLAH AND, KASRA ZABIULLAH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD VIA TELECONFERENCE

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JUDGMENT AND REASONS: DINER J.

DATED: MAY 9, 2022

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