

Federal Court



Cour fédérale

**Date: 20220513**

**Docket: IMM-5352-21**

**Citation: 2022 FC 723**

**Vancouver, British Columbia, May 13, 2022**

**PRESENT: The Honourable Mr. Justice Gleeson**

**BETWEEN:**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Applicant**

**and**

**THI HA PHAM  
QUOC KHANH NGUYEN  
KHANH NAM NGUYEN**

**Respondents**

**JUDGMENT AND REASONS**

I. Overview

[1] The Principal Respondent [PR] and her two sons are citizens of Vietnam. In a decision dated July 22, 2021, the Refugee Appeal Division [RAD] overturned a finding of the Refugee Protection Division [RPD] holding the Respondents not to be Convention refugees or persons in need of protection. The RAD found the RPD erred in concluding the Respondents had a viable

Internal Flight Alternative [IFA] within Vietnam and the RAD further held the Respondents likely did not have access to adequate state protection.

[2] The Applicant Minister applies under section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for judicial review of the RAD's decision, arguing it is unreasonable. I agree. For the reasons that follow, the Application is granted.

## II. Background

[3] In 2018, the PR and her then boyfriend entered Canada on visitor visas and began cohabiting. In August 2018, the PR's minor children joined the couple in Canada. On the day the children arrived, there was an altercation between the PR's boyfriend and the PR's oldest son. The son's face was cut with a knife, the police were called and the PR's boyfriend was charged with assault. A Deportation Order subsequently issued and the boyfriend was removed to Vietnam in July 2019.

[4] In November 2018, the PR filed for refugee protection for herself and her children. She reports she fears her former boyfriend will attempt to locate and kill her and her family should she return to Vietnam. She does not believe police in Vietnam will take steps to protect her because the initial crime occurred in Canada and she states she will be unable to relocate within Vietnam for financial reasons. She also states her older son's face is scarred from the assault and he will struggle to find work and build social connections in Vietnam, an image-focused society. Finally, the PR alleges she fears retribution from her abusive ex-husband (the biological father of

her two sons) and his family should they discover her son sustained a serious scar “under [her] watch.”

[5] The RPD concluded the Respondents’ evidence was generally credible, but the determinative issue was the availability of an IFA in Ho Chi Minh City. The RPD concluded the Respondents had failed to demonstrate a serious possibility of persecution by either her former boyfriend or ex-husband within the IFA. Noting the absence of supporting evidence, the RPD also dismissed the PR’s claims relating to her son’s medical needs and employment and social prospects in Vietnam. The RPD noted IRPA section 97(1)(b) excludes risks caused by the inability of a country to provide adequate medical care and found photographic evidence indicated the PR’s son was not as severely disfigured as the PR suggested.

[6] The RPD further found it would not be unduly harsh to expect the Respondents to move to the IFA. Addressing the absence of familial support in the IFA, the RPD noted the PR performs skilled work at nail salons and supports her children in Canada without this assistance. The RPD also found the PR supported herself and her children in Vietnam through her work as a nail technician and was a successful businessperson. The RPD noted the PR still owns a home in Vietnam and the children would be able to attend school in the IFA.

### III. Decision under Review

[7] The RAD found the RPD erred in concluding Ho Chi Minh City presented a viable IFA.

[8] The RAD held the PR's former boyfriend may have the motivation and means to locate and harm the Respondents in the IFA. The RAD found the RPD's reasons for concluding otherwise were flawed.

[9] In addition, the RAD found the Respondents are unlikely to have access to adequate state protection from the PR's former boyfriend. The RAD drew from the National Documentation Package to conclude there are serious gaps in the protection of women from gender-based violence in Vietnam. For instance, the RAD noted the United Nations has expressed concern about the country's low rate of reporting and convictions despite the fact that Vietnam has strengthened its legal framework on violence against women. The RAD also found the evidence was mixed regarding the general effectiveness of state protection, noting the Vietnamese police are "effective at maintaining order" but "typically act with impunity" and can be corrupt.

#### IV. Issues and Standard of Review

[10] In submitting the RAD's decision is unreasonable, the Applicant raises two issues:

- A. Did the RAD err in finding Ho Chi Minh City was not a viable IFA?
- B. Did the RAD err in finding the Respondents would not have adequate state protection in Vietnam?

[11] There is no dispute as to the standard of review. The RAD's decision is to be reviewed on the reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 25 [*Vavilov*]). A reasonable decision "is one that is based on an internally

coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85). The decision must, as a whole, be transparent, intelligible and justified (*Vavilov* at para 15). It is not enough for the outcome to be justifiable; an otherwise reasonable outcome cannot stand if reached on an improper basis (*Vavilov* at para 86).

V. Analysis

A. *The IFA analysis is not justified and transparent*

[12] The Applicant argues the RAD erred in finding the PR’s former boyfriend would likely have the means to locate her in the IFA.

[13] In considering means, the RAD acknowledged the distance between the IFA and the boyfriend’s hometown as well as the size of Ho Chi Minh City. However, the RAD relied on the availability of quick and inexpensive air travel between the locations and the fact that the PR, as a single mother, would likely gravitate toward a circle of friends. The RAD found these factors established a likelihood that the former boyfriend would be able to locate the Respondents.

[14] The Applicant submits the evidence does not support the RAD’s conclusion. The Applicant argues there is no evidence to indicate the former boyfriend has the means to fly to the proposed IFA. More significantly, the RAD failed to explain how the former boyfriend might locate the Respondents in a city of millions. The RAD’s suggestion that this may be accomplished through mutual friends was not supported by any evidence. The RAD instead

speculated that the PR would rely on a circle of friends to “get by” in Vietnam, that those friends would include those common to the PR and her former boyfriend and finally that those common friends would share the PR’s location with her former boyfriend. The Applicant notes the PR did not rely on friends to re-settle, work and support her children in Canada and argues there was no reasonable basis to conclude she would be required to do so in the IFA.

[15] The Respondents concede the evidence did not reference the cost or ease of air travel between the former boyfriend’s city of residence and the proposed IFA but submit the RAD’s finding is rooted in its holding that the PR’s former boyfriend might be able to locate her in Ho Chi Minh City because she would gravitate toward a circle of friends. The Respondents take the position that the RAD was entitled to accept the PR’s evidence that she would not be safe anywhere in Vietnam. It is submitted that the determination of refugee claims requires some speculation as to what may occur to a claimant and the RAD did not overstep its jurisdiction or craft an unreasonable decision in this instance.

[16] I take no issue with the Respondents’ position that refugee claims generally require decision makers to draw inferences and this inevitably involves some degree of speculation. However, inferences drawn by a decision maker must be based on clear and non-speculative evidence (*Wijekoon Mudiyansele v Canada (Citizenship and Immigration)*, 2022 FC 312 at para 22, citing *Soos v Canada (Citizenship and Immigration)*, 2019 FC 455 at paras 13-14).

[17] The RAD does not identify the evidence underpinning its conclusions that the PR would likely seek out the support of mutual friends to establish herself in the IFA and that these friends

would likely report the PR's whereabouts to the former boyfriend. The Applicant accurately points out that the PR's evidence indicated she would rely on family members for support, not friends and acquaintances. In addition, the PR specifically acknowledged she does not know how her former boyfriend might locate her in the IFA. The RAD's IFA assessment does not reflect a transparent, coherent and rational chain of analysis and is therefore unreasonable.

B. *The RAD erred in finding the presumption of state protection had been rebutted*

[18] I am also of the opinion that the RAD erred by substituting a lower threshold than that of "clear and convincing evidence" in concluding the Respondents had rebutted the presumption in favour of state protection.

[19] In considering the documentary evidence, the RAD acknowledged Vietnam's efforts to improve its response to violence against women. The RAD highlighted that the evidence indicated a high prevalence of violence against women, low reporting rates and convictions and inadequate victims' services. The RAD then addressed effectiveness, noting the evidence was mixed and Vietnamese police are vulnerable to corruption. However, the RAD failed to assess any of this evidence in light of the PR's circumstances. It is not evident how the objective mixed evidence on the issue of effectiveness of state protection leads to the conclusion that state protection in Vietnam is inadequate for an individual with the PR's profile.

[20] While not expressly addressed by the RAD, it is also important to recognize a subjective reluctance to seek out state protection is insufficient to rebut the presumption in favour of the adequacy of state protection (*Ruszo v Canada (Citizenship and Immigration)*, 2013 FC 1004 at

para 33). In this case, and despite evidence the PR had previously been a victim of abuse by her ex-husband, there was no evidence she had attempted to access state protection or believed doing so would place her at greater risk. The RAD's failure to address the issue of subjective reluctance also undermines the reasonableness of the state protection analysis.

VI. Conclusion

[21] The Application is granted. The parties have not identified a question of general importance for consideration and I am satisfied that none arises.



**JUDGMENT IN IMM-5352-21**

**THIS COURT'S JUDGMENT is that:**

1. The Application is granted.
2. The matter is returned for redetermination by a different decision maker.
3. No question is certified.

"Patrick Gleeson"

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Judge

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

**DOCKET:** IMM-5352-21

**STYLE OF CAUSE:** THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION v THI HA PHAM QUOC KHANH  
NGUYEN KHANH NAM NGUYEN

**PLACE OF HEARING:** BY VIDEOCONFERENCE

**DATE OF HEARING:** MAY 4, 2022

**JUDGMENT AND REASONS:** GLEESON J.

**DATED:** MAY 13, 2022

**APPEARANCES:**

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