

Federal Court



Cour fédérale

Date: 20250128

Docket: IMM-9363-23

Citation: 2025 FC 173

Ottawa, Ontario, January 28, 2025

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

**OMER FARUK AKAGUN
MACIDE NICOLE AKAGUN
OLGA AKAGUN**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS AND JUDGMENT

I. INTRODUCTION

[1] Mr. Omer Faruk Akagun (the “Male Applicant”), his wife Olga Akagun (the “Female Applicant”) and their daughter Macide Nicole Akagun (collectively “the Applicants”) seek judicial review of the decision of the Immigration and Refugee Board, Refugee Appeal Division

(the “RAD”), dismissing their appeal from the decision of the Immigration and Refugee Board, Refugee Protection Division (the “RPD”).

[2] In its decision, the RAD confirmed the findings of the RPD that the Applicants are not Convention refugees nor persons in need of protection pursuant to section 86 and subsection 97(1), respectively, of the *Immigration and Refugee Protection Act*, S.C. 2021, c. 27 (the “Act”).

[3] The Applicants are citizens of Turkey. The Female Applicant and Ms. Macide Nicole Akagun are also citizens of Russia.

[4] The Applicants advance their claim for protection against Turkey on the grounds of imputed political opinion, that is support for the Hizmet, a movement suspected by the Turkish government of instigating the attempted coup against the government in July 2016.

[5] The Female Applicant advances a claim against Turkey arising from approaches from the Turkish police demanding sexual favours and money. She alleged that she suffered stigmatization and harassment in Turkey while she lived there between 1998 and 2018.

[6] The Female Applicant also alleges a fear of persecution against Russia, on the basis of a sexual assault and kidnapping in that country, as well upon her status as the wife of a wealthy Muslim man.

[7] The RPD made negative credibility findings. The RAD likewise made negative credibility findings, in particular about the Applicants' failure to credibly establish that the Male Applicant was under investigation in connection with the failed coup of 2016. The RAD also determined that travel by the Male Applicant in the summer of 2019, using his Turkish passport, undermined both subjective fear and credibility.

[8] The RAD found that the Female Applicant failed to show how stigmatization and harassment against her in Turkey rose to the level of persecution or fear of harm, as contemplated by the Act.

[9] The RAD dismissed the appeal upon the basis of the allegations of persecution and harm advanced against Turkey; it did not address the allegations against Russia.

[10] The Applicants now argue that the RAD's decision is unreasonable. They submit that the RAD failed to consider the evidence relating to the Male Applicant and his association with Hizmet-affiliated organizations, among other things.

[11] The Applicants submit that the RAD failed to apply the *Chairperson's Guideline 4: Gender Considerations in Proceedings Before the Immigration and Refugee Board* (the "Gender Guidelines").

[12] The Minister of Citizenship and Immigration (the “Respondent”) argues that the RAD made reasonable credibility findings. Otherwise, he submits that the RAD considered the evidence and reasonably found that the Applicants had not established grounds for protection.

[13] Following the teaching in *Canada (Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653, the decision is reviewable on the standard of reasonableness.

[14] In considering reasonableness, the Court is to ask if the decision under review “bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision”; see *Vavilov*, *supra*, at paragraph 99.

[15] The Respondent notes that the Applicants do not challenge the RAD’s credibility findings. In the absence of a challenge to those findings, I see no basis to interfere with them.

[16] The credibility findings are clearly expressed. According to the decision of the Federal Court of Appeal in *Huruglica v. Canada (Citizenship and Immigration)*, [2016] 4 F.C.R. 157, the RAD is mandated to apply a correctness “standard” to the decision of the RPD. In other words, the RAD can conduct its own assessment of the evidence that was submitted to the RPD and make its own conclusions.

[17] The Male Applicant objects that the RAD failed to consider the evidence tendered to support his claim of risk from the Turkish government.

[18] I disagree.

[19] The RAD set out its reasons for finding that the Male Applicant did not hold the profile likely to attract attention from the Turkish government as a perceived supported of Hizmet. In its assessment of the evidence, it found insufficient evidence to link the Male Applicant with Hizmet. The RAD, not the Court, is mandated to assess the evidence.

[20] I am not persuaded by the submissions on behalf of the Female Applicant about the failure of the RAD to follow the Gender Guidelines. Resort to the Gender Guidelines is no substitute for the assessment of the evidence by the RAD, the body authorized to carry out that task.

[21] The decision of the RAD shows consideration of the evidence and shows that the RAD understood the bases of the Applicants' claim. The reasons reflect consideration of the evidence and meet the applicable legal standard or review - they are justified, transparent, and intelligible.

[22] In the result, the Application for judicial review will be dismissed. There is no question for certification.

JUDGMENT IN IMM-9363-23

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed. There is no question for certification.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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