Federal Court  Cour fédérale

Date: 20250721

Docket: IMM-13958-24

Citation: 2025 FC 1293

Toronto, Ontario, July 21, 2025

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

JUAN CARLOS NAVARRO SERRATE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of a Refugee Appeal Division [RAD] decision rejecting his refugee claim under subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] for not rebutting the presumption of state protection. I am dismissing the application because the RAD's determination that the Applicant did not reasonably explain his failure to seek police protection is justified in the circumstances of this case.

II. Background

[2] A citizen of Bolivia, the Applicant filed for divorce from his wife and moved to Argentina in 1992. In 2006, his wife and two sons falsely had the Bolivian courts declare him missing and deceased. Ultimately, this allowed them to sell the matrimonial property for their own gain. In the same year, the Applicant returned from Argentina and realized that his divorce had never been finalized, and that he had been declared deceased. After several years, the Applicant was able to regain his identity, but not his lost property.

[3] In December 2016, the Applicant filed a criminal complaint against his former spouse, and an investigation was opened in January 2017. The Applicant's two sons, both lawyers, were added to the investigation in February 2019.

[4] In October 2017, the Applicant was attacked by unidentified men who warned him to leave his sons alone. After this attack, he began to receive threatening phone calls. In March 2019, his former spouse and sons accosted him as he left the courthouse. While the police approached, they did not intervene when the Applicant's sons introduced themselves as lawyers. Later that evening, the Applicant was confronted by his family at his home, and they demanded he drop the criminal charges. When he refused, four men assaulted him, and one held a knife to his throat.

[5] The Applicant fled for Canada on March 26, 2019. He claimed asylum in October 2019 based on his fear of his former spouse and his sons. At his Refugee Protection Division [RPD]

hearing in March 2022, the Applicant conceded that he was only pursuing his claim under subsection 97(1) of the *IRPA*. The RPD dismissed his claim for not establishing a failure of state protection, and the availability of an internal flight alternative [IFA]. With respect to an IFA, the RPD noted that if the Applicant dropped his criminal case, then his family would no longer be motivated to pursue him. The RPD determined that this would not be a breach of his fundamental rights as the case concerned economic rights.

[6] On appeal, the RAD agreed that the Applicant's situation would be resolved if he dropped the case against his family. Finding this was dispositive, the RAD did not make determinations on the IFA and state protection. The Applicant's first judicial review application was granted on consent, and the matter was remitted to the RAD for redetermination.

[7] On redetermination, the RAD dismissed the Applicant's appeal. It concluded that he had not rebutted the presumption of adequate state protection. This is the decision under review.

III. Analysis

[8] There is no dispute that the applicable standard of review is reasonableness. 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": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8 [*Mason*]. A decision should only be set aside if there are "sufficiently serious shortcomings" such that it does not exhibit the requisite

attributes of “justification, intelligibility and transparency”: *Vavilov* at para 100; *Mason* at paras 59–61.

[9] States are presumed capable of protecting their citizens: *Canada (Attorney General) v Ward*, 1993 CanLII 105 (SCC), [1993] 2 SCR 689 at 725 [*Ward*]. The onus is on an applicant to demonstrate that protection is unavailable and inadequate with relevant, reliable, and convincing evidence: *Ward* at 724; *Flores Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at para 30; *Hamam v Canada (Citizenship and Immigration)*, 2023 FC 1656 at para 32.

[10] Here, the RAD determined that the Applicant’s explanations for not seeking police protection were unreasonable. Looking at the matter holistically, I find that the RAD’s reasoning is justified, transparent and intelligible. There is no legal basis upon which I may intervene.

[11] The first attack was in October 2017, following which the Applicant received threatening calls. When he was first asked by the RPD about why he did not report these events to the police, the Applicant stated that his sons as lawyers have too much power, and that the one time he “tested” the police they did not assist him. When the RPD asked him when this “test” occurred, the Applicant referred to the March 2019 incident at the courthouse: Transcript of the RPD hearing, Certified Tribunal Record [CTR] at 497–498 [RPD transcript]; Reasons and Decision – Refugee Appeal Division dated July 18, 2024 at para 15 [RAD Decision].

[12] In a follow-up question, the RPD again asked why he had not reported the October 2017 events. The Applicant responded that the police do not intervene in criminal cases before the court. When the RPD asked how he knew the police would not assist him, the Applicant again referred to the March 2019 incident at the courthouse: RAD Decision at para 15; RPD Transcript, CTR at 498–499. The RPD pointed out that this happened almost two years later: RPD Transcript, CTR at 498.

[13] With respect to the March 2019 incident at the courthouse, the Applicant stated that the police were nearby and did not intervene because his sons were lawyers: RAD Decision at paras 15–16; RPD transcript, CTR at 498, 505. The Applicant testified that he did not report the attack later that night because all police are corrupt in Bolivia. However, he stated that his own lawyer had reported it to the court the next day: RAD Decision at para 16; RPD transcript, CTR at 501, 505.

[14] After reviewing the totality of the evidence, the RAD concluded that the Applicant had not provided the police with "an opportunity to act to protect him as he did not report any of the threats and assaults to them": RAD Decision at para 18. Furthermore, the RAD determined that "[w]hile the [Applicant] may believe that the police are corrupt or the police would not respond to a report because there is a current court case, he had the obligation to make attempts to seek protection and failed to do so" [emphasis added]: RAD Decision at para 24.

[15] It was reasonable for the RAD not to accept the Applicant's subjective belief that the police would not help him absent other, more probative evidence. An applicant may genuinely

believe that something is true, but that does not necessarily make it so: *Lin v Canada (Citizenship and Immigration)*, 2022 FC 341 at para 21; *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at paras 16–35.

[16] I do not agree with the Applicant that the RAD failed to assess the operational adequacy of state protection in Bolivia. It found that Bolivia is a democratic, plurinational state. According to the country condition evidence, the national police are the primary law enforcement agency. The RAD acknowledged a lack of objectivity in criminal prosecutions, politically-motivated prosecutions, and police violence against political protesters: RAD Decision at paras 21–22. The Applicant argues that the RAD ignored evidence of police corruption. However, there is no evidence showing that the Applicant's sons have any nexus to political power. Similarly, the Applicant's evidence on corruption is specific to ties between Bolivian authorities and drug trafficking, yet there is nothing to indicate a nexus here either. Furthermore, while the criminal process may be slow, the RAD reasonably found that this "does not demonstrate that inadequate efforts are made to protect citizens": RAD Decision at para 23.

[17] In addition, the RAD reasonably rejected the Applicant's argument that the criminal courts and the police are interconnected such that his lawyer reporting the March 2019 attack to the court was equivalent to seeking state protection. As the RAD noted, this Court has concluded that "the police force is presumed to be the main institution mandated to protect citizens, and that other governmental or private institutions are presumed not to have the means nor the mandate to assume that responsibility": *Katinszki v Canada (Citizenship and Immigration)*, 2012 FC 1326 at para 15; see also: *Zepeda v Canada (Minister of Citizenship and Immigration)*, 2008 FC 491 at

paras 24–25. In the absence of evidence to the contrary, the RAD did not err in finding that the Bolivian police was the responsible institution. Reporting the incident to the court did not therefore satisfy the Applicant's obligation to seek police protection.

[18] Relying on *Ward*, the Applicant argues that the RAD erred in expecting him "to expose himself to risk demonstrating that state protection was not forthcoming": Applicant's Memorandum of Fact and Law at para 32. I do not agree. Here, the state is not the agent of persecution. In that vein, the RAD's determination that the Applicant had an obligation to attempt seeking police protection is reasonable. It is not equivalent to requiring the Applicant to "risk his or her life seeking ineffective protection of a state, merely to demonstrate that ineffectiveness": *Ward* at 724.

[19] I acknowledge the Applicant's argument that the March 2019 courthouse incident proves inadequate state protection. From his perspective, the police breached their mandate to uphold public safety when they saw him being accosted in front of the courthouse but did nothing. However, as the RPD noted, "[o]ne isolated incident of police officers declining to intervene is insufficient to establish a failure of state protection": Reasons and Decision – Refugee Protection Division dated March 30, 2022 at para 32. Indeed, this Court has concluded in such circumstances that an applicant must demonstrate "multiple occasions" of failed state protection to rebut the presumption: *Estrada Alejandro v Canada (Citizenship and Immigration)*, 2022 FC 1073 at para 18; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 925 at para 13; *Ruszo v Canada (Citizenship and Immigration)*, 2013 FC 1004 at para 51.

[20] Based on the foregoing, the RAD's finding that the Applicant had not rebutted the presumption of state protection is reasonable. The Applicant failed to provide an adequate explanation for not reporting the October 2017 attack and threats, as well as the March 2019 attack, to the police.

IV. Conclusion

[21] The Applicant has failed to establish that the RAD's state protection determination is unreasonable. The application for judicial review is dismissed.

[22] The parties did not propose a certified question, and I agree that none arise.

JUDGMENT in IMM-13958-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

" Anne M. Turley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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