

Federal Court



Cour fédérale

**Date: 20190405**

**Docket: IMM-2733-18**

**Citation: 2019 FC 415**

**Ottawa, Ontario, April 5, 2019**

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

**BETWEEN:**

**VASILI PHOTSKHVERASHVILI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, Vasili Photskhverashvili, is a 43-year-old citizen of Georgia who arrived in Canada in September 2016 and made a claim for refugee protection some seven months later. In a decision dated July 18, 2017 the Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB] rejected his claim, finding that he was not credible and had a viable internal flight alternative in Tbilisi, the capital of Georgia.

[2] The Applicant appealed the RPD's decision to the Refugee Appeal Division [RAD] of the IRB. The RAD dismissed the appeal in a decision dated May 16, 2018 and, pursuant to paragraph 111(1) (a) of the *Immigration and Refugee Protection Act, SC 2001, c-27 [IRPA]*, confirmed the RPD's decision. The Applicant has now applied under subsection 72(1) of the *IRPA* for judicial review of the RAD's decision. He asks the Court to set aside the decision and return the matter for redetermination by another member of the RAD.

I. Background

[3] The Applicant is married and has two children who are currently living in hiding in Georgia. He claims that because he was an active supporter of the United National Movement [UNM], a political party which had formed the government of Georgia until the elections of 2012, he was threatened starting in 2012 by individuals connected to the Georgian Dream, an opposing political party, namely David Nikabadze, the Partskhanakanevi police chief, and Nikolz Tevdoradze who was regarded as a village head.

[4] In August 2016, four men, including a cousin of Mr. Tevdoradze, attacked the Applicant; he had to be hospitalized for the injuries he suffered in the attack. Three days later, while he was still in the hospital, men broke into the Applicant's home and threatened his family. Two weeks after the attack, the Applicant received an anonymous phone call threatening him that in one week he would be killed and his family destroyed. After this call, the Applicant relocated his family within Georgia and fled to Canada in late September 2016.

[5] The Applicant says his enemies have visited his mother twice since he arrived in Canada and threatened to kill him.

## II. The RAD's Decision

[6] For the RAD, the determinative issue on the appeal was the existence of an internal flight alternative [IFA] for the Applicant in Tbilisi. Unlike the RPD, the RAD did not address the Applicant's subjective fear, credibility, or the availability of state protection. Rather, the RAD assumed, without deciding, for the purposes of its IFA analysis that the Applicant was credible.

[7] The RAD then noted the two-pronged test for assessing an IFA: first, whether on a balance of probabilities, that there is no serious possibility of the individual being persecuted in the part of the country where an IFA may exist; and second, the conditions in the part of the country proposed as an IFA must be such that it would not be unreasonable, in all the circumstances, including those particular to a claimant, for refuge to be sought there.

[8] In assessing the first prong on the IFA test, the RAD acknowledged the Applicant's fear that he would be found in Tbilisi because Mr. Nikabadze's position as a village police chief provided him with access to the Applicant's address when he registers with the authorities in Tbilisi - something he must do to work or have his children educated. The RAD found though, that the evidence did not show that Mr. Nikabadze intended to access the registry.

[9] The RAD agreed with the RPD's finding that the threats and attack the Applicant experienced were local in nature. In the RAD's view, neither Mr. Nikabadze nor Mr. Tevdoradze

had power they could extend past their local region. The RAD further noted that the threats were connected to electoral campaigns and stopped four months after the October 2016 election. The RAD observed that the Applicant's mother was not living in hiding, and while visited with threats on her son's life, she was not harmed.

[10] The RAD then reviewed the possibility that the Georgian state or the Georgian Dream would harm the Applicant or his family. In the RAD's view, the Georgian Dream's treatment of political opponents showed instances of violence in the lead-up to elections in Georgia, notably involving individuals affiliated with the Georgian Dream party attacking those affiliated with the UNM. These incidents were relatively isolated, the RAD concluded, and were borne of some Georgian Dream supporters' desire to win the elections and none of them involved the murder or threatened murder of UNM supporters or their families. The RAD found the only conduct by the Georgian Dream toward the UNM party members that might be considered objectionable or threatening was what had occurred after elections and involved prosecutions largely for corruption.

[11] The RAD then addressed the second prong of the IFA test - whether it would be unreasonable for the Applicant and his family to move to Tbilisi. The RAD was unable to assess the Applicant's argument that there were financial, logistical and other barriers to relocating to Tbilisi because he did not elaborate on the nature of such barriers.

[12] The RAD found it was not unreasonable for the Applicant to relocate to Tbilisi because he: (i) would have no language or cultural barriers; (ii) was an entrepreneur; (iii) has held

important positions; (iv) was familiar with Tbilisi, having lived there from 1998 to 2002 while attending university; (v) was well-educated; and (vi) has a brother living in Tbilisi. The RAD noted that because Tbilisi was the largest city in Georgia, it would offer the Applicant and his wife considerable opportunity to find work, a suitable religious institution (if desired) and suitable educational facilities for his children.

[13] The RAD thus concluded that Tbilisi provided a suitable IFA for the Applicant.

### III. Analysis

[14] Although the Applicant identifies several separate issues, these issues, in my view, are subsumed by one over-arching issue - was the RAD's decision reasonable?

#### A. *Standard of Review*

[15] The applicable standard for review of the RAD's decision is reasonableness (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35).

[16] Determinations on the availability of an IFA are also reviewed on the reasonableness standard (*Tariq v Canada (Citizenship and Immigration)*, 2017 FC 1017 at para 14). As the Court noted in *Lebedeva v Canada (Citizenship & Immigration)*, 2011 FC 1165 at para 32, such determinations "warrant deference because they involve not only the evaluation of the applicant's circumstances, ...but also an expert understanding of the country conditions involved."

[17] The reasonableness standard tasks the Court with reviewing an administrative decision for “the existence of justification, transparency and intelligibility within the decision-making process” and determining “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190).

[18] Those criteria are met if “the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes” (*Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

[19] So long as “the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome”; nor is it “the function of the reviewing court to reweigh the evidence” (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 61 [*Khosa*]).

B. *The Applicant’s Submissions*

[20] The Applicant says the RAD engaged in speculation when it found that, since the Applicant’s mother was not harmed, his family would not be harmed in Tbilisi. According to the Applicant, the conclusion that his family would not be harmed in Tbilisi because his mother had not been attacked was based on the RAD’s own subjective beliefs, given the absence of any documentary evidence showing that the Georgian Dream targets the parents of UNM activists.

[21] The Applicant further says the RAD also speculated that violence between the Georgian Dream and UNM was only pre-election and the threats were confined to the pre-election period and four months after the election. In the Applicant's view, there is more than a mere possibility that the agents of persecution will harm him since there is no evidence that they have forgiven him, and some arbitrary number of kilometers will not prevent them from seeking him out and killing him. According to the Applicant, his persecutors have the means and motive to attack him, which is all that is required because if complete certainty of the risk was the threshold, that would make the *Refugee Convention* meaningless and in a very large proportion of cases only corpses or cadavers would be granted refugee status.

[22] In the Applicant's view, the RAD took a selective analysis of the documentary evidence concerning relations between the UNM and Georgian Dream. According to the Applicant, the RAD's findings that the "acrimony was less bitter" and "politically calm relative to recent years" only means it was not as bad as the past. The Applicant says the pattern of behaviour established during numerous elections all over Georgia where UNM members were persecuted will continue as there will be future elections and future conflicts. Regardless of the situation between the UNM and Georgian Dream, the Applicant maintains that the issue is whether the agents of persecution who harmed him in the past and threatened to kill him still pose a threat.

### C. *The Respondent's Submissions*

[23] The Respondent submits that the Applicant's arguments are merely disagreements with the manner in which the RAD weighed and assessed the evidence, and that he has not identified any errors warranting the Court's intervention. In the Respondent's view, the RAD conducted an

independent assessment of all the evidence and properly found that the Applicant had an IFA in Tbilisi. The Respondent notes that once the issue of an IFA is raised, the onus rests with an applicant to show that he or she does not have an IFA, and in this case the Applicant did not meet this onus.

[24] With respect to the first prong of the IFA test, the RAD found the threats to the Applicant were local in nature, the alleged persecutors did not have influence extending across the country, and although Mr. Nikabadze had access to the registry in Tbilisi there was no evidence that he would use that access to find the Applicant. Contrary to the Applicant's allegations, the Respondent says there was no evidence the alleged persecutors harmed his family, specifically his mother, and it was not unreasonable for the RAD to find the Applicant's evidence in this regard implausible.

[25] The Respondent notes there was no objective evidence that the government of Georgia or the Georgian Dream have attempted to murder UNM supporters or their families, and the only objectionable practice was arresting high-level UNM members after the elections.

[26] In the Respondent's view, the RAD's finding that the Applicant's mother was not harmed was not speculative but, rather, a relevant factor in view of the Applicant's allegation that he had been threatened with the death of his family and his mother is a member of his family. The Respondent says the fact that the Applicant has not received any additional threats since 2016 is a relevant factor in assessing future persecution and whether the IFA location was reasonable. As such, the first prong of the IFA test was analysed correctly.



[27] According to the Respondent, the RAD reasonably found that there were no financial, logistical or other barriers preventing the Applicant from moving to Tbilisi and, as such, the second prong of the test was met.

D. *Was the RAD's Decision Reasonable?*

[28] An IFA has been defined as “a fact situation in which a person may be in danger of persecution in one part of a country but not in another” (*Thirunavukkarasu v Canada (Minister of Employment & Immigration)*, [1993] FCJ No 1172 at para 2, 109 DLR (4th) 682 [*Thirunavukkarasu*]). Because an IFA in another part of the same country is determinative of refugee status, the onus is on an applicant to prove that they are at serious risk of being persecuted throughout the country (*Thirunavukkarasu*, paras 2 and 6).

[29] To find an IFA, the RAD must be satisfied, on a balance of probabilities, that: (1) there is no serious possibility of an appellant being persecuted in the IFA; and (2) in all the circumstances - including circumstances particular to an appellant - conditions in the IFA are such that it would not be unreasonable to seek refuge there (*Rasaratnam v Canada (Minister of Employment & Immigration)* (1991), [1992] 1 FC 706 at paras 5 and 6).

[30] I agree with the Respondent that the Applicant's arguments are merely disagreements with the manner in which the RAD weighed and assessed the evidence. It is not the function of the Court when reviewing a decision of the RAD to reweigh the evidence (*Khosa* at para 61).

[31] In this case, the RAD reasonably concluded that the threats to the Applicant were local in nature, that his alleged persecutors did not have influence extending across the country, and that, while the police chief (Mr. Nikabadze) had access to the registry in Tbilisi there was no evidence he would use that access to find the Applicant.

[32] As noted by the Respondent, the Applicant had the onus of demonstrating why an IFA in Tbilisi was not reasonable. The burden does not fall upon the RAD to explain why the proposed IFA would be safe for the Applicant. Other than making a skeletal argument that there were financial, logistical and other barriers to relocating to Tbilisi, the Applicant did not elaborate on the nature of such barriers; nor did he provide any information as to why state protection would not be available in Tbilisi. In my view, it was reasonable for the RAD to conclude in this case that Tbilisi provided a suitable IFA for the Applicant.

#### IV. Conclusion

[33] In conclusion, the RAD in this case reasonably conducted its own independent analysis of the record before it. Its reasons provide an intelligible and transparent explanation for its decision to dismiss the Applicant's appeal, and the outcome is defensible in respect of the facts and the law.

[34] Neither party proposed a question of general importance for certification; so, no such question is certified.

**JUDGMENT in IMM-2733-18**

**THIS COURT'S JUDGMENT is that:** the application for judicial review is dismissed;  
and no question of general importance is certified.

"Keith M. Boswell"

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Judge

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

**DOCKET:** IMM-2733-18

**STYLE OF CAUSE:** VASILI PHOTSKHVERASHVILI v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** DECEMBER 19, 2018

**JUDGMENT AND REASONS:** BOSWELL J.

**DATED:** APRIL 5, 2019

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