Federal Court  Cour fédérale

Date: 20211006

Docket: IMM-3540-20

Citation: 2021 FC 1036

Ottawa, Ontario, October 6, 2021

PRESENT: Madam Justice Pallotta

BETWEEN:

HARRIET HELENA DAVIS
DANIELLE NAOMI DAVIS

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Harriet Helena Davis and her 24-year-old daughter, Danielle Naomi Davis, are citizens of Barbados who allege a fear of violence and a risk to their lives from Harriet Davis' former common law partner and one of his sons (her stepson). The Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada determined that the applicants are neither

Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. On appeal, the Refugee Appeal Division (RAD) upheld the RPD's determination, finding that the applicants had not established that state authorities in Barbados would be unwilling or unable to provide adequate protection.

[2] On this application for judicial review, the applicants submit the RAD's decision is unreasonable, based on three errors in the state protection analysis. First, the RAD failed to conduct a proper assessment of the operational adequacy of state protection in Barbados, the applicants' own evidence of police inaction, and whether the applicants had made reasonable efforts to obtain state protection. Second, the RAD did not assess the evidence in a manner consistent with the *Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution* [the *Gender Guidelines*]. Third, the RAD overlooked evidence in the country documentation for Barbados that indicates the state does not provide operationally adequate protection for victims of domestic violence.

[3] For the reasons below, the applicants have not established that the RAD's decision is unreasonable. Accordingly, this application is dismissed.

II. **Issues and Standard of Review**

[4] The sole issue on this application for judicial review is whether the RAD's state protection analysis is unreasonable.

[5] Reasonableness review is conducted according to the guidance set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. It is a deferential but robust form of review: *Vavilov* at paras 12-13, 75 and 85. The reviewing court does not ask what decision it would have made, attempt to ascertain the range of possible conclusions, conduct a new analysis, or seek to determine the correct solution to the problem: *Vavilov* at para 83. Instead, the reviewing court must focus on the decision actually made, and consider whether the decision as a whole is transparent, intelligible and justified: *Vavilov* at paras 15 and 83. In this regard, it is not enough for the outcome of a decision to be justifiable; the decision must be justified by the decision maker, by way of the reasons: *Vavilov* at para 86. A reasonable decision is based on an internally coherent and rational chain of analysis and it is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85.

[6] The party challenging the decision bears the onus of demonstrating that it is unreasonable: *Vavilov* at para 100.

III. **Analysis**

[7] At a young age, Danielle Davis was the victim of a sexual assault. The police made an arrest but the criminal trial did not proceed because Danielle chose not to testify, as she did not want to relive the trauma.

[8] After the criminal case was dropped, the applicants sought police protection against persistent threats, harassment, and violence by Harriet Davis' ex-partner and his son. The police

did not assist. The applicants submit that their evidence of police inaction demonstrates that they would not receive adequate state protection in Barbados.

[9] In this regard, the RPD had found that the applicants' evidence of police inaction related to complaints made to the local police station in St. Philip, where another son of the ex-partner worked as a police officer. The RPD found it unreasonable that the applicants would go to the ex-partner's son to ask for protection, and not pursue other options that were available to them. The RPD found that state protection had been available in the past for the sexual assault and another incident, and concluded that state protection would be available to the applicants in Barbados.

[10] On appeal to the RAD, the applicants argued they were following police procedure by reporting to the local police station. Furthermore, they feared a risk of reprisal (including physical harm if their complaints were exposed) as "you can go to another station and find that you are dealing with the same police or someone who knows someone and confidentiality is a major issue".

[11] The RAD found the allegations that the police would expose the complaint or breach confidentiality to be speculative. Furthermore, the RAD did not accept the applicants' statement that they were following police procedure, as there was no evidence of their knowledge of criminal procedure in Barbados. The RAD agreed with the RPD that the applicants had not provided clear and convincing evidence to rebut the presumption of state protection.

[12] The applicants allege that the RAD's decision is unreasonable, based on the following errors.

[13] First, the applicants submit the RAD made reviewable errors in the state protection analysis. The applicants submit the RAD erred by: (i) focusing on the state's efforts to protect its citizens, rather than the real, operational adequacy of state protection (*Lakatos v Canada (Minister of Citizenship and Immigration)*, 2018 FC 367 at para 21 [*Lakatos*]); (ii) considering non-police agencies such as women's shelters as part of the state protection analysis (*Corneau v Canada (Minister of Citizenship and Immigration)*, 2011 FC 722 at para 10; *Katinszki v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1326 at para 15; *Paul v Canada (Minister of Citizenship and Immigration)*, 2017 FC 687 at para 21); and (iii) focusing on the documentary evidence, without adequately considering the applicants' own evidence of police inaction: *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at para 17; *Garcia Aldana Paco Jesus v Canada (Minister of Citizenship and Immigration)*, 2007 FC 423 at para 12; *Lakatos* at paras 22-23; *Aurelien v Canada (Minister of Citizenship and Immigration)*, 2013 FC 707 at para 13; *Olah v. Canada (Minister of Citizenship and Immigration)* 2016 FC 316 at paras 35 and 37. The applicants submit the RAD did not properly consider their unsuccessful attempts to obtain police protection and whether they had taken reasonable steps, and mistakenly believed they had reported the sexual assault to the Bridgetown police rather than the local police station in St. Philip. Given the small size of Barbados and the connections between districts, the applicants allege it was reasonable that they did not escalate the complaint to a supervisor or go to another station after previous complaints had been ignored. Since the RAD did not identify an issue with their credibility, the RAD should have considered

the adequacy of state protection in light of their evidence of police inaction when they were in danger.

[14] Second, the applicants assert that the RAD failed to address their evidence in a manner consistent with the *Gender Guidelines* (*Ahmed v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1494 at para 8), which state that certain forms of "clear and convincing proof" may not be available and, where there is little documentary evidence about state protection for gender-related persecution, alternative forms of evidence should be considered. The applicants contend the RAD was required to consider alternative forms of evidence in this case, such as the applicants' own testimony about failed state protection.

[15] Third, the applicants argue that the RAD's review of the National Documentation Package (NDP) for Barbados improperly focused on government efforts to provide protection. While Barbados has made efforts to combat domestic violence, there remains a gap between the state's efforts and the operational adequacy of protection. The applicants argue that the RAD ignored evidence in the NDP that suggests the government does not provide adequate protection for individuals facing gender-based violence, which corroborates their personal narrative of repeated, unsuccessful attempts to obtain police protection.

[16] In my view, the RAD did not err in its state protection analysis.

[17] A refugee claimant has a legal and evidentiary burden to prove, on a balance of probabilities and with clear and convincing evidence, that state protection is inadequate: *Lakatos*

at para 20; *Flores Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at paras 17-19, 21 [*Flores Carrillo*]. The RAD reasonably determined that the applicants failed to rebut the presumption of state protection, which requires "clear and convincing confirmation of a state's inability to protect": *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at 724, 1993 CanLII 105; *Hinzman v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171 at paras 43-44.

[18] The applicants acknowledge that, because they were self-represented, their appeal submissions to the RAD "were not structured in a traditional way and it is often difficult to understand what aspects of their RPD decision they are challenging". The RAD's reasons must be read in light of the applicants' submissions and how they framed the appeal: *Vavilov* at para 94. In my view, the RAD reasonably identified the alleged errors by the RPD.

[19] The applicants have not established that the RAD erred by focusing on the state's efforts to protect its citizens, rather than the real, operational adequacy of state protection. The applicants had alleged that in Barbados "not all police are trained in domestic abuse", police stations do not have dedicated domestic abuse officers, and police cannot keep tabs on abusers at all times. The RAD found this did not rebut the presumption of state protection. Even accepting that the police function imperfectly, this was an insufficient basis to determine that the state is either unwilling or unable to offer adequate protection.

[20] Similarly, I am not satisfied the RAD erred by considering non-police agencies such as women's shelters as part of the state protection analysis. The RAD's comments regarding

women's shelters in Barbados were responsive to the applicants' arguments on appeal. The RAD found that, even accepting that women's shelters function imperfectly, this was not a basis to find that the presumption of state protection had been rebutted.

[21] The applicants' evidence of police inaction related to the local police station in St. Philip where the ex-partner's son worked. In my view, it was open to the RAD to find that this evidence did not rebut the presumption of state protection, as the applicants had not exhausted all reasonably available avenues of redress: *Canada (Minister of Citizenship and Immigration) v Kadenko*, [1996] FCJ No 1376, 143 DLR (4th) 532 (FCA); *Flores Carrillo* at paras 31-36.

[22] While an applicant is not expected to approach the state for protection when this is objectively unreasonable because protection would not be forthcoming (*Castro v Canada (Minister of Citizenship and Immigration)*, 2006 FC 332 at paras 19-20; *Dieng v Canada (Minister of Citizenship and Immigration)*, 2013 FC 450 at para 32), this was not such a case. In my view, the RAD considered the applicants' evidence of police inaction, and reasonably rejected the applicants' explanations for not doing more.

[23] With respect to the allegation that the RAD mistakenly believed the applicants had reported the sexual assault to the Bridgetown police, I agree with the respondent that it is unclear where the sexual assault was reported. Furthermore, it is not clear to me that the RAD mischaracterized the RPD's finding as the applicants allege, but assuming that it did, the RAD's determination remains adequately supported and this error is not sufficiently serious to render the decision unreasonable: *Vavilov* at para 100. Regardless of whether it was the local police or the

Bridgetown police who responded, the evidence was that the police responded appropriately to the assault, and to another incident.

[24] Turning to the applicants' argument that the RAD failed to address their evidence in a manner consistent with the *Gender Guidelines*, I am not persuaded of any error in this regard. I am not convinced that there was a need for greater reliance on alternative forms of evidence in this case. In any event, the RAD did address the applicants' evidence about police inaction. For the reasons explained above, it was open to the RAD to find that the applicants' evidence did not rebut the presumption of state protection. While the *Gender Guidelines* encourage an approach to the evidence that is sensitive to the context of a gender-based claim, they do not serve to cure all deficiencies in the evidence: *Correa Juarez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 890 at paras 17-18; *Boyce v Canada (Minister of Citizenship and Immigration)*, 2016 FC 922 at para 67.

[25] I am not persuaded of a reviewable error in the RAD's review of the NDP for Barbados. Again, the RAD's reasons must be read in light of the applicants' submissions and how they framed the appeal. The RAD is not required to provide reasons for unchallenged findings, and a statement that it concurs with uncontested findings does not permit an applicant to raise, for the first time on judicial review, alleged errors of the RPD that were unchallenged on appeal: *Dahal v Canada (Minister of Citizenship and Immigration)*, 2017 FC 1102 at paras 30-39. Moreover, I agree with the respondent that the applicants have not pointed to any evidence in the country condition documentation that clearly rebuts the RAD's conclusion. The evidence that the applicants point to raises a question of imperfect protection. State protection does not

need to be perfect; it is sufficient for the protection to be adequate: *Rojas v Canada (Minister of Citizenship and Immigration)*, 2014 FC 946 at para 22.

IV. **Conclusion**

[26] The applicants have not established that the RAD's decision is unreasonable. This application for judicial review is dismissed.

[27] Neither party raised a question for certification, and in my view, there is no question to certify.

JUDGMENT in IMM-3540-20

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question for certification.

"Christine M. Pallotta"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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