Federal Court  Cour fédérale

Date: 20220622

Docket: IMM-4190-20

Citation: 2022 FC 942

Ottawa, Ontario, June 22, 2022

PRESENT: Madam Justice Pallotta

BETWEEN:

SHAKIERA SHADAE RIDDLE
(AKA SHAKIERA SHADAE RIDDLE)
JADANIQUE KELICEA BOWEN
(AKA JADANIQUE KELICEA BOWEN)
(AKA JADANIQUE BOWEN)
GREG ST CLAIR BOWEN
(AKA GREG ST CLAIR BOWEN)

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, Shakiera Shadae Riddle, her spouse, and their daughter, are citizens of Jamaica who arrived in Canada and sought refugee protection the day after they were threatened by Ms. Riddle's step-brothers, who are alleged gang members with access to guns. The

applicants seek to set aside a decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board confirming the Refugee Protection Division's (RPD) determination that they are not Convention refugees or persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The RAD concluded that effective state protection meeting the operational adequacy standard is available in Jamaica, and the applicants had failed to adequately engage the state protection offered by Jamaican authorities.

[2] The applicants submit the RAD's decision is unreasonable based on three alleged errors. First, the RAD misapprehended two pieces of newly-admitted evidence when it assigned them low probative value on the issue of state protection in Jamaica. Second, the RAD erroneously concluded that it could remedy the RPD's error of relying on an outdated National Documentation Package (NDP) for Jamaica by considering the state protection issue in light of the current NDP, when the RAD should have returned the matter to the RPD for a new hearing. Third, the RAD erred in its state protection analysis. The RAD found the applicants had not made sufficient efforts to avail themselves of state protection without accounting for the practical reality of state protection in Jamaica and considering the applicants' actions in view of the practical reality. The applicants state that the RAD's first error in assessing the new evidence also contributed to its third error of a flawed state protection analysis.

[3] In my view, the applicants have not established that the RAD's decision is unreasonable based on the alleged errors. This application is dismissed, for the reasons set out below.

II. **Issues and Standard of Review**

[4] The issues on this application for judicial review are whether the RAD's decision is unreasonable as follows:

A. Did the RAD err in assigning low probative value to the newly-admitted evidence?
B. Did the RAD err in finding it was able to remedy the RPD's error by considering the state protection issue in light of the current NDP?
C. Did the RAD err in its state protection analysis?

[5] In their written memorandum in support of this application, the applicants framed the second issue as a question of procedural fairness: "Did the RAD err in finding that the RPD's questions were not tainted by a faulty or outdated knowledge of country conditions, thus resulting in a breach of procedural fairness?" However, at the oral hearing in this matter the applicants conceded they did not raise an issue with the RPD's questions in their appeal to the RAD. Furthermore, the applicants do not point to tainted questioning by the RPD. The respondent submits the second issue is more accurately framed as a challenge to the reasonableness of the RAD's decision to substitute its own determination for that of the RPD, rather than refer the matter to the RPD for redetermination: ss 111(1)(c) and 111(2) of the *IRPA*. The respondent submits this issue is reviewable on the reasonableness standard: *Ogbonna v Canada (Minister of Citizenship and Immigration)*, 2020 FC 180 at paras 11-14, 24-31, 36-37 [*Ogbonna*]; *Fabunmi v Canada (Minister of Citizenship and Immigration)*, 2020 FC 1009 at paras 4 and 5. At the hearing, the applicants conceded that all three issues in this application for judicial review relate to the reasonableness of the RAD's decision, and I agree.

[6] The reasonableness of the RAD's decision is reviewed according to the guidance set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. Reasonableness is a deferential but robust standard of review: *Vavilov* at paras 12-13, 75 and 85. In applying the reasonableness standard, the reviewing court determines whether the decision bears the hallmarks of reasonableness—justification, transparency, and intelligibility: *Vavilov* at para 99. 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. The party challenging the decision bears the onus of demonstrating that it is unreasonable: *Vavilov* at para 100.

III. **Analysis**

A. *Did the RAD err in assigning low probative value to the newly-admitted evidence?*

[7] The RAD admitted two documents as new evidence on appeal, but assigned them low probative value: 1) an August 25, 2019 New York Times article titled, "How American Gun Laws Are Fueling Jamaica's Homicide Crisis", and 2) a November 6, 2019 Government of Canada travel advisory for Jamaica. The applicants submit that the RAD's failure to give full weight to this evidence is the crux of their case on judicial review, and affects the reasonableness of the RAD's state protection analysis (the third issue). They argue these documents speak directly to their circumstances and show a failure of state protection for violent crimes, and as a result, the RAD misapprehended the documents when it found they do not speak to state protection, and are of low probative value.

[8] Specifically, the applicants submit the RAD overlooked key passages in the article and travel advisory that were not only directly relevant to the operational effectiveness of Jamaica's state protection, but also more closely related to the applicants' specific circumstances than the general information that the RAD relied on. They submit these documents demonstrated that they were particularly susceptible to the types of violence that were not being addressed by police efforts. Furthermore, the applicants submit these documents were directly relevant to the question of whether they had made reasonable efforts to seek state protection from the Jamaican authorities before fleeing the country to claim refugee protection in Canada.

[9] According to the applicants, the New York Times article contradicts the RAD's finding that Jamaica's state protection is operationally adequate. While the RAD cites various efforts by the Jamaican government to tackle corruption and gun violence, this article indicates that some enforcement efforts have aggravated the risk by splintering factions, "leading to more—and more random—violence". The article reports that civilians have a sense that nothing can be done to prevent acts of violence, and the Jamaican government declared a state of emergency and deployed the military, which the applicants contend is a clear acknowledgement that local police cannot provide adequate protection. The applicants submit the RAD's finding that the travel advisory does not address state protection is contradicted by statements in the advisory that violent crime is a problem in large cities despite the presence of police, firearms are widely available, most violent drug- and gang-related crimes involve guns, and there is a risk of becoming a victim of crossfire. The applicants state this is a recognition that the police cannot be relied on to protect individuals from the type of violence they were fleeing.

[10] I am not persuaded that the RAD's assessment of the newly-admitted documents was unreasonable. It is within the RAD's discretion and expertise to assess and evaluate the evidence, and it is not the Court's role on judicial review to reweigh and reassess it: *Vavilov* at paras 125-126. The RAD specifically noted points the applicants say were overlooked—including the prevalence of gun violence and gang violence in Jamaica, the declared state of emergency, and the report that some enforcement efforts directed at organized gangs and the availability of guns have resulted in firearms being used in petty feuds, with the result that small insults and old vendettas have grown more dangerous. While the applicants infer from the article and the travel advisory that state protection is operationally inadequate, the articles do not say so expressly. For example, the authors do not state that the police cannot be relied on to protect individuals from violence. The RAD's observation that "neither document directly addresses the fundamental issue of the appeal, namely: whether the [applicants] have shown, on a balance of probabilities, that adequate state protection would not be available to them" is not, in my view, unreasonable.

[11] Furthermore, the reasonableness of the RAD's decision should be assessed in the context of how the applicants framed their appeal: *Kanawati v Canada (Minister of Citizenship and Immigration)*, 2020 FC 12 at para 13. In their memorandum before the RAD, the applicants did not point the RAD to passages within the newly-admitted documents, explain how their content was relevant to the adequacy of state protection, or take the position that these documents were more relevant to the issue than the documentary evidence of state protection in the NDP or the applicants' evidence of the police response to their own requests for protection. Their submissions about these documents consisted of two points, namely that "they speak to the issue

of violence and the lack of state protection available for such violence in Jamaica", and "[t]he dire situation that Jamaica faces with respect to gun violence is reflected in the national documentation package, as well as the New York Times article and travel advisory provided herein as new evidence."

[12] In analyzing the operational adequacy of state protection, the RAD addressed the newly-admitted evidence, the country condition evidence in the NDP, and the police response to the applicants' requests for protection—which the RAD found to be timely and appropriate. The RAD's reasons engaged with the applicants' submissions and were responsive to them. Ultimately the RAD concluded, reasonably in my view, that the applicants did not make adequate efforts or take reasonable steps to obtain state protection, and they did not demonstrate that adequate state protection would not be forthcoming from the Jamaican authorities.

B. *Did the RAD err in finding it was able to remedy the RPD's error by considering the state protection issue in light of the current NDP?*

[13] The applicants submit that, once the RAD determined the RPD had erred by relying on an outdated NDP for Jamaica, it should have returned the matter to the RPD for a new hearing. They contend that the assessment of the documentary evidence on state protection played a major role in their claim for protection, and it was not possible for the RAD to remedy the RPD's error simply by considering the state protection issue in light of the current NDP. They submit the RAD erred by finding it could do so.

[14] The applicants point to no authority to support this argument. Moreover, in their RAD memorandum, the applicants did not take the position that the RAD was required to remit their

matter for a new hearing, in view of the RPD's error. To the contrary, the applicants specifically asked the RAD to allow the appeal and make the determination that they are Convention refugees or persons in need of protection. They only asked that the matter be referred back to the RPD as alternative relief.

[15] As the respondent correctly notes, the RAD has broad powers to correct errors made by the RPD—it is empowered to confirm the RPD's determination, set it aside and substitute its own determination, or refer the matter to the RPD for redetermination in certain circumstances: *IRPA*, ss 110, 111; *Kreishan v Canada (Minister of Citizenship and Immigration)*, 2019 FCA 223 at paras 41-42; *Ogbonna* at paras 24-31 and 36-37.

[16] In this case, the RAD considered how it should dispose of the appeal, noting that it has authority to correct the RPD's errors with a view to rendering a final decision. The RAD found the applicants' case to be an appropriate one in which to exercise this function. The RAD considered whether the RPD's questioning may have been based on a faulty or outdated knowledge base which may have tainted the proceeding, and held that it was capable of rectifying the RPD's error while preserving procedural fairness by considering the issue of state protection in light of the current NDP. The applicants have not established any reviewable error in the RAD's analysis or conclusion on this issue.

C. *Did the RAD err in its state protection analysis?*

[17] The applicants submit the RAD erred in finding they did not make sufficient efforts to avail themselves of state protection, and failed to explain why their efforts were insufficient.

Claimants are only required to show they have taken all reasonable steps in their personal circumstances, and in the context of the country conditions. Whether they have done so is case-specific, and requires the decision maker to analyze the efforts in light of the evidence: *Lakatos v Canada (Minister of Citizenship and Immigration)*, 2018 FC 367 at paras 22-23; *Aurelien v Canada (Minister of Citizenship and Immigration)*, 2013 FC 707 at para 13 [*Aurelien*]; *Olah v Canada (Minister of Citizenship and Immigration)*, 2016 FC 316 at paras 35, 37; *Leon Davila v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1475 at para 25.

[18] The applicants further submit that the RAD only paid lip service to the principle of operational adequacy, relying on the state's reform efforts without considering whether those efforts have resulted in operationally effective protection in practice: *Dawidowicz v Canada (Minister of Citizenship and Immigration)*, 2019 FC 258 at para 10; *Cervenakova v Canada (Minister of Citizenship and Immigration)*, 2012 FC 525 at para 74; *Balogh v Canada (Minister of Citizenship and Immigration)*, 2014 FC 771 at para 68; *Clyne v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1670 at para 8. They say the entirety of the RAD's consideration of Jamaica's operational adequacy is contained in a single paragraph that lists a number of administrative reforms undertaken by the government, with no explanation of how these translated into more effective protection on a practical level apart from a single citation that a large number of corrupt officers have been removed from the police force. The applicants contend the RAD had a great deal of evidence before it to establish that the reform efforts have not translated into operationally adequate protection—their testimony, various NDP documents they submitted, and other evidence they submitted—all of which the RAD ignored, mischaracterized, or only mentioned in passing. The applicants point to an NDP document

(NDP Item 7.4: United States Overseas Security Advisory Council 2018 Crime and Safety Report) stating that most Jamaican civilians do not report crimes to the police, believing they are corrupt and nothing would come of their reports, and fearing the authorities cannot protect them from organized crime.

[19] The applicants submit the RAD placed undue emphasis on Jamaica being a democratic state, when democracy alone does not guarantee effective state protection: *Katwaru v Canada (Minister of Citizenship and Immigration)*, 2007 FC 612 at para 21. The RAD recognized that Jamaica's history is marked with corrupt and ineffectual policing, and therefore the RAD's statement that a refugee claimant from a democratic country will have a heavy burden to show they should not have been required to exhaust all domestic recourses available is untenable in Jamaica.

[20] The applicants submit that when they sought police protection, the solution was that they should hide indefinitely. When they sought help again later that evening after an escalation in violence, the response remained the same. The applicants say their evidence made clear that the situation with Ms. Riddle's brothers would not settle, that they would remain at risk from the brothers or their gang affiliates if the brothers were arrested, and they would be made to live in fear for the rest of their lives.

[21] The applicants submit it was an error for the RAD to rely on their failure to follow up on their police report once in Canada, as a state protection analysis is only concerned with efforts made prior to a claim for refugee protection. They say they were put in a "catch-22" situation

because the RAD found they had not gone far enough, but if they had followed up with the police, it would have demonstrated their faith in the ability of the authorities to protect them. The applicants submit the events occurred in a short amount of time and there was no evidence to suggest there were official channels to hear their complaint and provide immediate protection in the few hours between the attack and when they made arrangements to flee. Waiting to follow up on their police report would have put their lives at risk, which they were not required to do to establish a lack of state protection: *Aurelien* at paras 9, 13. The RAD had no reasonable basis to conclude that they could have taken more steps or delayed their claim without putting themselves in further danger.

[22] In my view, the applicants have mischaracterized the RAD's reasons.

[23] The RAD's consideration of Jamaica's operational adequacy is not, as the applicants contend, contained in a single paragraph of the RAD's decision. In analyzing the operational adequacy of state protection, the RAD addressed the newly-admitted evidence, the country condition evidence in the NDP, and the police response to the applicants' requests for protection following the brothers' threats. I agree with the respondent that the RAD reviewed the evidence provided, including the evidence that the applicants allege was ignored by the RAD, and assessed it with regard to the operational adequacy of Jamaica's state protection. In addition, the RAD explained how Jamaica's reform efforts have translated into more effective protection.

[24] The RAD's reasons were responsive to the arguments the applicants advanced in their appeal. The RAD acknowledged and considered the NDP documents that the applicants

flagged—in fact, the RAD considered them in detail even though the applicants' submissions on these documents consisted of the statement that this evidence "indicated police in Jamaica are currently not able to protect citizens from gang violence". The RAD's assessment of Jamaica's efforts to address corruption in the police force and the results of those efforts was responsive to the applicants' assertion that the RPD had erred in finding there was adequate state protection, despite evidence about the level of police corruption in Jamaica. Lastly, the RAD did not place undue emphasis on Jamaica being a democracy—this was one factor considered.

[25] The RAD explained why it found that the applicants had not taken all reasonable steps to avail themselves of state protection, in their personal circumstances and in the context of the country conditions. The RAD was mindful of the principle that a claimant need not risk their life to demonstrate the effectiveness of state protection (*Ward v Canada (Attorney General)*, [1993] 2 SCR 689 at 724, [1993] SCJ No 74). However, the RAD found that the applicants were involved in two incidents over a period of several hours and the police responded in an appropriate manner after each incident. The RAD noted that the police response was timely, the officer provided a number to call and encouraged the applicants to call should Ms. Riddle's brothers reappear, and the applicants were encouraged to go to a place of safety to allow the volatile situation an opportunity to "turn around". The RAD found the applicants were given an opportunity to make a police report and pursue the matter through the Jamaican legal system, but they departed for Canada almost immediately after making a report, without following up with the police over the incidents. These findings were open to the RAD, and supported its conclusion that the applicants' efforts fell "well short of a determined effort to seek protection".

[26] The respondent submits the determinative issue in this case is the applicants' failure to meet their onus with clear and convincing evidence of the Jamaican authorities' failure to protect them from Ms. Riddle's brothers, and I agree. In my view, the RAD reasonably found that the applicants had not met their onus to demonstrate that adequate state protection would not be forthcoming from the Jamaican authorities.

IV. **Conclusion**

[27] The applicants have not established that the RAD's decision is unreasonable and accordingly, this application for judicial review is dismissed.

[28] Neither party proposed a question for certification. In my view, there is no question of general importance to certify.

JUDGMENT in IMM-4190-20

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

"Christine M. Pallotta"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4190-20
STYLE OF CAUSE:	SHAKIERA SHADAE RIDDLE (AKA SHAKIERA SHADAE RIDDLE), JADANIQUE KELICEA BOWEN (AKA JADANIQUE KELICEA BOWEN) (AKA JADANIQUE BOWEN), GREG ST CLAIR BOWEN (AKA GREG ST CLAIR BOWEN) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY WAY OF VIDEO CONFERENCE
DATE OF HEARING:	DECEMBER 7, 2021
JUDGMENT AND REASONS:	PALLOTTA J.
DATED:	JUNE 22, 2022

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