
CANADA / JUDGMENT

Elmuratov v. Canada (Citizenship and Immigration)

2026 FC 372

COURT

Federal Court

DECIDED

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Decision Content

Date: 20260319

Docket: IMM-6231-25

Citation: 2026 FC 372

Ottawa, Ontario, March 19, 2026

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

CHAMSHED ELMURATOV

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview [1] This is an application for judicial review of a decision by the Refugee Appeal Division [RAD] dated February 28, 2025 [the Decision], refusing the Applicant's appeal and confirming the decision of the Refugee Protection Division [RPD] to refuse the Applicant's refugee protection claim pursuant to sections 96 and 97 of Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA].

[2] As explained in further detail below, this application for judicial review is allowed as the Decision is unreasonable because, in dismissing the Applicant's appeal based significantly on his failure to provide evidence corroborative of his claim, the RAD relied on the RPD having informed that the Applicant at the hearing of the importance of corroborative evidence, without the RAD analysing whether the Applicant had a basis to understand that he could request permission to present evidence post-hearing.

II. Background [3] The Applicant is a citizen of Kazakhstan. He entered Canada on a visitor visa in September 2017. The Applicant subsequently claimed refugee protection in April 2020, alleging persecution in Kazakhstan due to previous assaults against him and due to his Tajik ethnicity.

[4] The RPD held a hearing on August 26, 2024, following which it issued its decision dated August 26, 2024, refusing the Applicant's claim for refugee protection, with the determinative issue being credibility. The Applicant appealed the RPD's decision to the RAD.

[5] On February 8, 2025, in the Decision that is the subject of this application for judicial review, the RAD dismissed the Applicant's appeal.

III. Decision under Review [6] In the Decision, the RAD confirmed the decision of the RPD that the Applicant is neither a Convention refugee nor a person in need of protection under sections 96 and subsection 97, respectively, of IRPA, with the determinative issue again being the Applicant's credibility.

A. New Evidence Filed on Appeal [7] Applying subsection 110(4) of IRPA, the RAD rejected documents on which the Applicant sought to rely as new evidence before the RAD. These documents consisted of: a medical document dated August 25, 2015; a letter from police dated August 25, 2015; a medical document related to the Applicant's son dated May 20, 2016; a letter from the Applicant's neighbour dated December 18, 2023; a letter from the Applicant's ex-wife dated October 15, 2024 [the Wife's Letter]; and the Applicant's son's Basis of Claim form [BOC] dated May 31, 2023. (The Decision refers to the Applicant's former spouse as both his ex-wife and, more frequently, his wife. As the distinction is not material, I will refer to the Applicant's former spouse as his wife.)

[8] The RAD found that the new evidence, other than the Wife's Letter, clearly arose before the RPD's decision and was therefore inadmissible under section 110(4) of IRPA. With respect to the Wife's Letter, the RPD noted that it referred to people coming to their place between 2016 and 2024, looking for her husband and threatening them with physical violence. While this timeframe could include the period following the RPD's decision, the RAD noted that the Wife's Letter did not identify when in 2024 the alleged threats occurred or that they occurred after the RPD's decision. The RAD concluded that the Wife's Letter was therefore also inadmissible under subsection 110(4) of IRPA.

B. Allegation Against Former Representative [9] The RAD noted the Applicant's allegation that the new evidence he wished to adduce was not provided to the RPD due to the incompetence of his former representative [the Former Representative] and that, as such, he could not reasonably have been expected to provide that evidence to the RPD before its decision. The RAD explained that the test for establishing ineffective assistance by counsel, which can represent a ground for review based on a breach of natural justice, required both that the counsel's acts or omissions constituted incompetence and that a miscarriage of justice resulted. The RAD also noted that the Applicant had given his Former Representative notice of his allegations and that she had provided an affidavit in response.

[10] The RAD concluded that the Applicant had not established his allegation that his Former Representative had advised him that the medical documents, letter from police, and letter from the Applicant's neighbour were not required for his claim. The RAD also found that, as the Former Representative asserted in her affidavit, she had provided to the Applicant a document checklist, which referenced the sort of documentation he should provide to support his claim, including medical documentation and letters from relatives.

[11] The RAD also found not to be credible the Applicant's allegation that he did not provide the relevant documents to the RPD because he was an unsophisticated person who lacked knowledge of Canadian immigration processes. The RAD noted the involvement of the Applicant and other members of his family in several such processes, including his sons having made refugee claims. The RAD also observed that the Minister had notified the Applicant in 2021 of intended intervention in the proceeding on the issue of his credibility, which would have indicated to him the need to provide supporting documents as his credibility was being questioned.

[12] As the Applicant had not established his allegations that his Former Representative was incompetent in the advice provided in relation to the medical documents, letter from police, and letter from the neighbour, the RAD found that those allegations did not support the admission of that documentation as new evidence under subsection 110(4) of IRPA. The RAD also rejected several other allegations of incompetence against the Former Representative.

C. Credibility Concerns [13] The RAD noted that the RPD had found the Applicant's claim not to be credible based on several concerns: (a) he provided vague and evasive testimony about any ongoing threat; (b) his delay leaving Kazakhstan; (c) his timing for bringing a refugee claim in Canada; and (d) a lack of transparency concerning his family. While the Applicant had challenged all these findings on appeal, the RAD stated that it was dismissing his appeal based on findings about the Applicant's vague and evasive testimony and therefore did not consider it necessary to address the RPD's other grounds.

[14] The RAD accepted the Applicant's testimony that he was assaulted in 2015 but agreed with the RPD that this evidence did not suggest that he faced an ongoing threat, because the incident happened during a period of violence in southern Kazakhstan that was no longer ongoing, and there was no allegation that the assailants sought to target the Applicant or continued to pose a threat.

[15] The RAD also considered the 2016 incident involving a physical assault upon the Applicant resulting from a dispute between the Applicant's son and local men. While the Applicant was assaulted, he was not confronted again in the year after the incident until he left Kazakhstan. The RAD found this evidence insufficient to establish that the Applicant faced an ongoing risk.

[16] Noting the Applicant's BOC statements and testimony that his wife told him that men involved in the 2016 assault continued to search for and threaten him, the RAD considered the lack of corroborative evidence to support those allegations. Relying on *Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968 at paragraph 36, the RAD observed that, while corroboration is generally not required in refugee claims, it can be required where:

there is independent reason for requiring corroboration, such as doubts regarding an applicant's credibility, implausibility of the applicant's testimony, or the fact that a large portion of the claims based on hearsay; and

the corroborative evidence could reasonably be expected to be available and, after being given an opportunity to do so, the Applicant failed to provide a reasonable explanation for not obtaining it.

[17] The RAD found that corroboration was required for the Applicant's evidence that his wife told him about ongoing threats, as the Applicant's testimony was entirely based on hearsay evidence. He did not experience any direct contact with the agents of persecution in the year after the incident prior to his departure from Kazakhstan and had not lived there since. The RAD further noted that the Applicant could not explain why the agents of persecution would continue to be interested in harming him for an incident in 2016 that resulted from retribution for an assault on his son.

[18] The RAD concluded that the Applicant had not explained why he did not provide evidence from his wife corroborating his claims of her telling him about ongoing threats. The RAD noted that the Applicant had seven years to obtain supporting evidence from his wife regarding these statements, including in 2020 when the Minister sought to intervene to

address the issue of the Applicant's credibility. The RAD also highlighted that, at the hearing before the RPD, the Applicant was asked why he did not obtain supporting documentation from her, and he stated that he was unaware of the system, which the RAD had previously found (as explained above) to be not credible. The RAD further concluded that the Applicant could not blame his Former Representative for not informing him of the importance of corroborative evidence, as the RPD had communicated this to him directly, and he could have asked the RPD that he be permitted to present such evidence before the RPD issued its decision.

[19] The RAD therefore concluded that the Applicant's allegation that he faced an ongoing threat was not credible and found that the Applicant had not credibly established, on a balance of probabilities, that he faced more than a mere possibility of a forward-facing risk of persecution or that he faced a prospective risk of harm.

[20] The RAD also concluded that the Applicant had provided insufficient objective evidence to support his allegation that he faces a serious possibility of persecution or likely risk harm pursuant to section 97 of IRPA due to his Tajik ethnicity.

IV. Issues and Standard of Review [21] The parties agree, based on the combination of their respective written submissions, that the following issues arise for the Court's determination:

A. Is the Applicant precluded from raising, in this application for judicial review, allegations of incompetence by his Former Representative, because the Applicant did not follow the Court's protocol for raising such allegations?

B. If the Applicant is not precluded from raising such allegations, did the RAD unreasonably find that the Former Representative was not incompetent?

C. Did the RAD unreasonably refuse to accept the Applicant's new evidence?

D. Did the RAD unreasonably assess the Applicant's forward-facing risk?

[22] As is implicit in their articulation, the parties take the joint position that these issues are to be assessed on the reasonableness standard of review, as informed by *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov].

[23] Consistent with that position, I note the explanation in *Moyo v Canada (Citizenship and Immigration)*, 2025 FC 1899 at paragraph 24, that a decision by the RAD not to admit new evidence presented on appeal is reviewable on a standard of reasonableness.

[24] I also note that, in *Rodriguez v Canada (Citizenship and Immigration)*, 2022 FC 774 [Rodriguez] at paragraphs 14 to 20, Justice Strickland considered the standard of review that applies to a judicial review of a RAD decision that itself considered allegations of a breach of procedural fairness (in that case, as in this one, through incompetent representation) in a proceeding before the RPD. Justice Strickland noted that, while the RAD was charged with assessing a breach of procedural fairness, the role of the Court in judicial review was to review that assessment by the RAD on the merits. Following authorities that both pre-dated

and post-dated Vavilov, Justice Strickland concluded that the reasonableness standard applied to the Court's review of that aspect of the RAD's decision.

[25] Consistent with the above reasoning, I will apply the reasonableness standard to all issues raised in the matter at hand.

V. Analysis [26] While I accept the parties' identification of the issues raised by this application, in my view the issues are interconnected and can best be analysed together, as follows.

[27] Ultimately, the Decision involved assessment of the Applicant's forward-facing risk in Kazakhstan. In asserting that the RAD performed an unreasonable assessment of this risk, the Applicant has argued that, although the RAD referred to making findings that the Applicant's testimony was vague and evasive, it did not actually articulate any such findings. I agree with the Applicant's characterization of that aspect of the Decision.

[28] However, the Applicant also submits that the Decision demonstrates that this aspect of the RAD's reasoning can be understood as attributable to the Applicant's failure to provide evidence to corroborate his assertion that his wife had been the recipient of ongoing threats against him. Based on this failure, the RAD found that the Applicant's allegation that he faced an ongoing threat was not credible. Again, I agree with the Applicant's characterization of the Decision. As such, while the Applicant fairly describes the RAD's reference to findings based on vague and evasive testimony as confusing, the RAD's line of reasoning can nevertheless be derived from the Decision, and the confusing nature of this reference to its findings does not itself represent a reviewable error.

[29] As the determinative reasoning in the Decision relates to the lack of corroborative evidence, particularly from Applicant's wife, it is necessary to focus upon the RAD's treatment of that subject. As the Applicant emphasizes, he made an effort to introduce such evidence before the RAD through the Wife's Letter, but the RAD rejected that evidence as failing to meet the test under subsection 110(4) of IRPA. The Applicant challenges that rejection, arguing in part that, while the Wife's Letter did not identify with precision whether the alleged agents of persecution made threats that post-dated the RPD's decision, the RAD should have treated that point as going to the weight to be afforded to that evidence rather than rejecting it as inadmissible.

[30] I find no merit to this argument. As the Respondent submits, *Njikang v Canada* (Citizenship and Immigration), 2024 FC 1763 at paragraph 19, explains that the RAD's discretion to admit or reject new evidence does not permit it to disregard the requirements of subsection 110(4). The RAD's conclusion that the Wife's Letter did not establish that threats had been made after the RPD's decision is a reasonable finding. As such, the RAD's authority to admit that evidence, as having arisen after the RPD's rejection of the Applicant's claim, was not engaged.

- [31] However, subsection 110(4) also applies where a claimant cannot reasonably have been expected in the circumstances to have presented the new evidence at the time of the RPD's rejection of the claim. As the RAD acknowledged, the Applicant had also argued before it that the new evidence he wished to introduce on appeal had not been provided to the RPD due to the incompetence of his Former Representative and was therefore admissible because he could not have reasonably been expected to adduce that evidence before the RPD.
- [32] The RAD's analysis of that argument focused upon the medical documents, the letter from the police, and the letter from the Applicant's neighbour. The RAD concluded that the Applicant had not established his allegations that his Former Representative was incompetent in the advice provided in relation to those documents, finding that the Former Representative had furnished the Applicant with a document checklist that referenced the requirement to provide documents of this sort. The RAD also found, based on the Applicant's involvement in other Canadian immigration processes, that the Applicant lacked credibility in asserting that he did not know how the system for pursuing refugee claims worked. The RAD therefore concluded that the Applicant's allegations of incompetence did not support the admission of the medical documents, police letter, or neighbour's letter as new evidence under subsection 110(4) of IRPA. The Wife's Letter did not figure, at least expressly, in that component of the Decision.
- [33] However, the RAD's subsequent conclusion, that the Applicant's allegation that he faced an ongoing threat was not credible, was based significantly on the Applicant failing to provide evidence from his wife to corroborate his own evidence that his wife told him about such threats. The RAD reasoned that the Applicant had had many years to obtain such evidence, including following the Minister having sought to intervene in the proceeding before the RPD to address the issue of the Applicant's credibility.
- [34] This component of the RAD's analysis turned materially on the fact that, during his hearing, the RPD asked the Applicant why he did not provide a supporting document from his wife. In addition to referencing its rejection of the Applicant's explanation that he did not know how the system for pursuing refugee claims worked, the RAD reasoned that he could not blame his Former Representative for not informing him of the importance of corroborative evidence, because the RPD had told him this directly in the hearing. The RAD found that the Applicant could have then asked the RPD that he be permitted to present corroborative evidence before the RPD issued its decision.
- [35] The Applicant argues that it was unreasonable for the RAD to expect that the Applicant would be aware of the ability to request permission to submit further evidence to the RPD post-hearing. He submits that, even if the Former Representative had provided him with a document checklist (as the RAD found), the Former Representative was still negligent in failing to advise him to provide a letter from his wife following the conclusion of the RPD hearing and to draft the appropriate application to submit post-hearing documents.

[36] As this argument references the Applicant's allegations of incompetence against the Former Representative, I have considered the Respondent's position that the Applicant is precluded from raising those arguments in this judicial review without complying with the Court's protocol for raising such allegations. The protocol to which the Respondent refers is found in paragraphs 49 to 57 of the Court's Consolidated Practice Guidelines for Citizenship, Immigration, and Refugee Protection Proceedings dated December 31, 2025 [the Protocol]. The Respondent relies, in particular, on paragraphs 49 and 50 of the Protocol, which provide as follows:

49. Where an applicant alleges professional incompetence, negligence, or other conduct on the part of his or her former legal counsel or other authorized representative as a ground for relief in an application for leave and judicial review under the IRPA or in an application brought under the Citizenship Act, the guidelines set out below should be followed. For those purposes, "authorized representative" includes an immigration consultant, paralegals, a notary who is a member in good standing of the Chambre des notaires du Québec and a member in good standing of a body designated under subsection 91(2) of the IRPA and subsection 21.1(2) of the Citizenship Act. The purpose of these Guidelines is solely to assist the Court in its adjudication of applications in which such allegations are made.
50. Requisite Steps. Prior to pleading incompetence, negligence or other conduct on the part of former legal counsel or other authorized representative as a ground for relief, current counsel must satisfy him/herself, by means of personal investigations or inquiries, that there is some factual foundation for the allegation. In addition, current counsel must notify the former counsel or authorized representative in writing with sufficient details of the allegations and advise that the matter will be pled in an application described above. The written notice must advise the former counsel or authorized representative that they have seven days from receipt of the notice to respond. Along with this notice, and in cases where privilege may be applicable, current counsel must provide the former counsel or authorized representative with a signed authorization from the applicant releasing any privilege attached to the former representation along with a copy of this Protocol. This practice is strongly encouraged for stay motions time permitting.

[Emphasis added]

[37] The Respondent similarly notes the Protocol's requirement to serve upon the former representative the Court's order granting leave (at para 57). The Respondent submits that, as there is no evidence that the Applicant has complied with any of these requirements under the Protocol, he is not permitted to advance arguments of incompetent counsel in this judicial review.

- [38] In response to this argument, the Applicant submits that the Protocol applies where an application for judicial review alleges incompetence in representation before the tribunal whose decision is under review. The Applicant argues that these are not the circumstances in the case at hand, as he is not arguing that he was deprived of competent representation before the RAD. Rather, the Applicant challenges the RAD's findings surrounding the competence of his representation before the RPD.
- [39] The Applicant also notes that he provided his Former Representative with notice of his appeal to the RAD, including all materials that were filed before the RAD, and that the Former Representative swore an affidavit in response, which was also provided to the RAD. The Applicant submits that he has raised no new allegations of incompetence in this application for judicial review.
- [40] I agree with the Applicant's position on the scope of the Protocol's application. The Protocol expressly states that it is engaged where an applicant alleges professional incompetence as a ground for review in an application for leave and judicial review. In the matter at hand, the Applicant does not allege incompetence as a ground for review but rather alleges that the RAD unreasonably analysed the allegations of incompetence in his representation before the RPD that the Applicant raised in his appeal to the RAD. As the Applicant emphasizes, he is not seeking determinations by the Court on incompetent representation, only as to whether the RAD's analysis of same was reasonable.
- [41] At the hearing of this application, the Court asked counsel for both parties whether they had identified any authority in which the Court had considered whether the Protocol applied in a judicial review involving a fact pattern similar to the matter at hand, i.e., where the allegations of incompetence did not involve representation before the tribunal whose decision was under review, but rather involved representation before a more junior tribunal where the tribunal whose decision was under review had made findings on those allegations. Neither counsel identified any such authority.
- [42] However, I note that Rodriguez did involve such a fact pattern, involving a judicial review of a RAD decision that had considered allegations of incompetent representation in a proceeding before the RPD. Rodriguez is not determinative, as it does not consider the question whether the Protocol (or any predecessor thereto) was engaged by those allegations. However, there is no indication in that authority that the applicant in that matter followed the Protocol or was considered by the respondent or the Court to have been obliged to do so. Rather, in paragraph 26 of that decision, Justice Strickland references only the applicants having provided the RAD with documentation evidencing that they had advised their representative of the allegations of incompetence that were being advanced in the appeal to the RAD. This is comparable to the process the Applicant followed in the matter at hand.

- [43] I have also considered whether the Applicant's submission, to the effect that it was the role of his Former Representative to advise him of the ability to request permission to submit post-hearing evidence, represents a new allegation of incompetence that was not argued before the RAD following notice to the Former Representative. While not raised by the Respondent, I questioned the Applicant's counsel on this point at the hearing of the application, in response to which he emphasized that the materials submitted to the RAD on appeal (and served upon the Former Representative) included the assertion that, had the Former Representative advised the Applicant to provide letters of support, he would have obtained one from his wife as he had done in support of his appeal to the RAD.
- [44] As the Applicant's counsel acknowledged, this assertion does not expressly allege that the Former Representative should have provided such advice following the RPD hearing in particular. However, I am satisfied that, whether pre-hearing or post-hearing, the relevant allegation was advanced before the RAD. Indeed, the manner in which the post-hearing nuance arose, through the RAD's reasoning in the Decision, supports the Applicant's position (canvassed above in relation to the Respondent's argument surrounding the Protocol) that he seeks relief in this application not based on allegations of incompetent representation but rather based on unreasonable decision-making by the RAD.
- [45] I agree with the Applicant that it was unreasonable for the RAD to expect that he would be aware of the ability to request permission to submit further evidence to the RPD post-hearing. The Applicant states that he has a grade 10 education and swore in the Affidavit filed in his RAD appeal that he does not understand English. I do not understand the RAD to have found otherwise. While the RAD rejected the Applicant's assertion that he did not know how the refugee system worked, it did not reference any evidence, or make any finding surrounding the Applicant's experience with immigration processes, supportive of a conclusion that would he would be aware that, following the conclusion of his RPD hearing at which the RPD identified a lack of corroborative evidence, he may be entitled to submit further material to address that deficiency. Particularly in the context of the Applicant's allegations against his Former Representative, it was not reasonable for the RAD to reject his appeal based in part on that premise, without evidentiary support therefor or at least analysis thereof.

VI. Conclusion [46] Based on the above analysis, I find that the Decision is unreasonable and that this application for judicial review should be allowed.

[47] Neither party proposed any question for appeal, and none is stated.

JUDGMENT IN IMM-6231-25

THIS COURT'S JUDGMENT is that:

This application for judicial review is allowed, the Decision is set aside, and this matter is returned to a differently constituted panel of the RAD for redetermination.

No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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march 19, 2026

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