

CANADA / JUDGMENT

Mîra v. Canada (Citizenship and Immigration)

2026 FC 603

COURT

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Citation: 2026 FC 603

Ottawa, Ontario, May 6, 2026

PRESENT: Mr. Justice McHaffie

BETWEEN:

ANTONETA MÎRA

SORIN-MIRCEA SUCIU

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview [1] The Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada [IRB] concluded that neither Antoneta Mîra nor her common-law spouse, Sorin-Mircea Suciu, was entitled to refugee protection in Canada. The RAD found there were reasonable grounds to believe Ms. Mîra had committed a serious non-political crime in her native Romania and was therefore excluded from refugee protection by section 98 of the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA] and Article 1F(b) of the United Nations Convention Relating to the Status of Refugees, Can TS 1969 No 6 [Refugee Convention]. It also found Mr. Suciu had not established a forward-facing risk of persecution or harm and was therefore neither a Convention refugee nor a person in need of protection.

- [2] The RAD's exclusion finding was based on Ms. Mîra's in absentia conviction in 2020 on corruption charges for having authored an expert accountant's report that intentionally undervalued certain state assets. Ms. Mîra does not deny the conviction, but she denies she committed the crime. She claims she was the victim of a fabricated prosecution by corrupt individuals within Romania's National Anticorruption Directorate (known as the DNA) because she refused to collaborate with them by tailoring her expert reports. According to Ms. Mîra, the prosecution and conviction arise from the same background that led to her and Mr. Suciu fleeing Romania in 2018.
- [3] On this application for judicial review, Ms. Mîra and Mr. Suciu challenge both the RAD's exclusion finding and its conclusion that Mr. Suciu did not establish a forward-facing risk. They also challenge the RAD's refusal to admit, on grounds of relevance, new documents on appeal that relate to corruption within the DNA, and in particular the involvement of former DNA Head Prosecutor Laura Kövesi, the prosecutor involved in Ms. Mîra's case.
- [4] For the reasons that follow, I conclude that the RAD's decision is unreasonable. The RAD did not present a transparent, intelligible, and justified analysis in respect of its refusal to admit new documents on grounds of relevance, and in respect of its finding that there were serious reasons for considering that Ms. Mîra had committed the crimes of which she was convicted. The unreasonableness of these central aspects of its reasoning is sufficient to require the decision as a whole to be set aside, both in respect of Ms. Mîra and in respect of Mr. Suciu.
- [5] The application for judicial review is therefore granted and the applicants' appeal is remitted for redetermination by a differently constituted panel of the RAD.

II. Issues and Standard of Review [6] The applicants identify a number of issues on this application for judicial review, each of which falls within one of the following three main questions:

Did the RAD err in refusing to admit the additional evidence tendered by the applicants on appeal pursuant to subsection 110(4) of the IRPA?

Did the RAD err in finding that Ms. Mîra is excluded from refugee protection under section 98 of the IRPA and paragraph 1F(b) of the Refugee Convention?

Did the RAD err in concluding that Mr. Suciú had failed to establish a forward-looking risk and was therefore neither a Convention refugee under section 96 of the IRPA nor a person in need of protection under section 97 of the IRPA?

- [7] Each of these issues is reviewable on the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25; *Okunowo v Canada (Citizenship and Immigration)*, 2020 FC 175 at para 28; *Diaz Castillo v Canada (Citizenship and Immigration)*, 2021 FC 1118 at para 10. The applicants argue that the first issue is a matter of procedural fairness that attracts a correctness standard. I disagree. As argued by the Minister, the RAD's finding that the new evidence was not relevant is a matter going to the merits of the decision rather than the procedure by which it was reached, and is subject to the reasonableness standard: *Okunowo* at para 28; *Idugboe v Canada (Citizenship and Immigration)*, 2020 FC 334 at para 18; *Firooznam v Canada (Citizenship and Immigration)*, 2023 FC 571 at para 26.
- [8] Reasonableness is a deferential, but still robust, standard of review: *Vavilov* at paras 12–13, 67, 75, 85; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 8, 63. It requires the Court to begin with the reasons given by the administrative decision maker, examining them with respectful attention to assess whether they are internally coherent, rational, and justified in relation to the facts and law that constrain the decision maker: *Vavilov* at paras 84–86; *Mason* at paras 8, 58–63.
- [9] If a decision maker has explained their reasons for reaching a decision in a transparent, intelligible, and justified manner, the Court must uphold the decision as reasonable: *Vavilov* at paras 15, 81, 86, 99–100. However, the decision may be unreasonable if it is internally incoherent or irrational, or if the decision maker has failed to transparently and intelligibly justify their decision in light of the facts and the law in a way that undermines the reasonableness of the decision as a whole: *Vavilov* at paras 95–100; *Mason* at paras 65–66. An unreasonable failure to justify a decision may arise where the decision maker has fundamentally misapprehended or failed to account for the evidence, or where they have failed to meaningfully grapple with a key issue or central argument: *Vavilov* at paras 125–128; *Mason* at paras 73–74.

III. Analysis A. The RAD's refusal to admit certain new evidence was unreasonable (1) Legal context [10] Appeals to the RAD from decisions of the Refugee Protection Division [RPD] of the IRB generally proceed on the basis of the record that was before the RPD: IRPA, s 110(3).

However, the IRPA provides that an applicant may present additional evidence on appeal where (i) it arose after the rejection of their claim; (ii) it was not reasonably available; or (iii) they could not reasonably have been expected in the circumstances to have presented it: IRPA, s 110(4).

[11] When assessing whether to admit new evidence on appeal, the RAD must determine whether it falls into one of these explicit statutory categories. In addition, the Federal Court of Appeal has confirmed that evidence should only be admitted where the RAD is satisfied that it is credible, relevant, and sufficiently material that it "may have an impact on the RAD's overall assessment": *Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96 at paras 44–47, 64–65 citing and adapting *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 at paras 13–15. These additional "necessarily implicit" criteria are often referred to as the "Singh factors" or the "Singh/Raza factors" based on their jurisprudential source: *Singh* at para 64.

(2) The applicants' refugee claim [12] The applicants filed their claim for refugee protection in late November 2018. The narrative attached to their original Basis of Claim [BOC] form describes both events related to Mr. Suciuc's former employment and more recent events arising from Ms. Mîra's role as an expert accountant.

[13] With respect to the former, the narrative recounts political pressure and threats that led Mr. Suciuc to resign from his role in the Romanian Intelligence Service (known as the SRI) in 2005. It sets out his belief that he continued to be monitored, smeared, and targeted by the Romanian government since that time. It also describes Mr. Suciuc's fears that he would be targeted if he returned to Romania because he plans to write and release a book regarding these events.

[14] With respect to the latter, the narrative recounts events stemming from a criminal case brought by the DNA in 2014 against a former senior public official, in which Ms. Mîra provided a report as an expert accountant. According to the narrative, other experts in the case demanded that Ms. Mîra change her findings to match the prosecution's case, which she refused to do. This led to conflict in the expert team; the withdrawal of one of the experts; the appointment of a new expert; and renewed pressure on Ms. Mîra to conform. Ms. Mîra refused to comply and provided a report that disagreed with the DNA's findings. This ultimately led to irregularities, including the prosecution attempting to rely on a draft report provided by the new expert rather than the final report; and a physical altercation in which the new expert punched Ms. Mîra and ran away with the final report.

[15] The BOC narrative contends that after Ms. Mîra produced the report, she was targeted and put under surveillance by the DNA. She also received abusive and threatening phone calls. In November 2017, she was summoned to a meeting with DNA prosecutors, who told her she was a suspect in a case related to deliberately misleading the court in providing an

accounting opinion. Shortly thereafter, Ms. Mîra lost her principal job with the Romanian Fencing Federation, being told that this was done at the request of a government minister. The couple left Romania for Canada in May 2018. They were initially hopeful that the situation would “calm down” and they could return, but they received news in August 2018 that men came to their house to arrest Ms. Mîra. Fearing detention and torture if they returned, they filed their refugee claim.

- (3) The Minister’s intervention and subsequent events [16] In October 2020, the Minister filed a Notice of Intent to Intervene in the applicants’ refugee claim, raising Article 1F(b) of the Refugee Convention. The Minister alleged that Ms. Mîra was wanted in Romania on corruption charges and that she was evading criminal prosecution. The Minister provided disclosure that included a Europol report indicating that Ms. Mîra was wanted by Romanian authorities for financial crimes; an initial procedural ruling of the Romanian court; and a 2019 news story involving an announcement by the NDA that they had indicted Ms. Mîra.
- [17] On September 18, 2023, the applicants filed amendments and updates to their BOC narrative. The updated BOC outlined additional concerns regarding the applicants’ fears due to statements and online posts they had made in Romania and while in Canada; additional details regarding some of the meetings and pressure Ms. Mîra had received while working for the DNA; an allegation that the expert retained by the defendant in the case Ms. Mîra was working on had been arrested by the DNA for her work on another file; and additional details regarding the criminal case brought against Ms. Mîra, including the nature of the work Ms. Mîra did and the involvement of Laura Kövesi as the supervising prosecutor in the case.
- [18] The applicants’ amended narrative also indicated that while in Canada, they found out from the internet that Ms. Mîra had been convicted in Romania and had received a sentence of five years in prison and other punishments. They contended that this elevated their risk in Romania, and that this danger was further increased since the prosecutors involved in the case, including Ms. Kövesi, now held high positions in the European Public Prosecutor Office [EPPO]. Ms. Kövesi was appointed head of the EPPO in October 2019, an appointment the applicants allege was the result of a political arrangement of member states of the European Union.
- [19] On October 26, 2023, having considered the applicants’ documentary evidence, the Minister filed with the RPD a withdrawal of the intervention in respect of Article 1F(b).
- (4) The RPD’s decision [20] The RPD held its hearing on November 20, 2023. With the RPD’s consent, the applicants filed written submissions after the hearing, addressing issues of credibility, exclusion under Article 1F(b), the merits of the claim, and the availability of state protection. These submissions included both a submission letter from counsel and two documents with explanations from the applicants themselves, directed to their assertion that Ms. Mîra did not commit the crime of which she was convicted.

- [21] In its decision dated May 7, 2024, the RPD found that Ms. Mîra was not excluded from refugee protection, but that neither Ms. Mîra nor Mr. Suciuc had established they were at risk of persecution or a section 97 harm if they returned to Romania.
- [22] With respect to Ms. Mîra, the RPD found her “generally credible” and in light of her complete denial of involvement in the offence, found that neither the Minister (who had withdrawn) nor the RPD could establish that there was a serious possibility the offence was committed. The RPD therefore found she was not excluded from refugee protection under section 98 of the IRPA and Article 1F(b) of the Refugee Convention.
- [23] Nonetheless, the RPD found that Ms. Mîra had not established that her prosecution was persecutory or corrupt. The RPD described the prosecution as “sophisticated” and “very complex.” The RPD found that Ms. Mîra was “required to raise these issues in Romania and use the structures of the Romanian state and/or the European Union to contest the offences she [was] accused of and her conviction.”
- [24] As for Mr. Suciuc, the RPD noted that his grievances were all linked to Ms. Mîra’s, but that this had not been established. It described Mr. Suciuc’s fears of persecution for what he had posted online as speculation, and concluded he had not established any of the issues he faced in Romania were coordinated or part of an attempt to silence him.
- (5) The appeal to the RAD and the new evidence [25] The applicants appealed the RPD’s decision to the RAD. In doing so, they sought to file as new evidence an affidavit from Mr. Suciuc, together with a DNA press release and 13 news articles attached as exhibits to Mr. Suciuc’s affidavit. With respect to 12 of the news articles, the applicants provided “notes and explanations,” which included explanations of acronyms and identified individuals, as well as more substantive commentary and assertions purporting to link the information in the articles to the applicants’ situation.
- [26] One of the articles was published on April 25, 2024, and thus pre-dates the RPD’s decision of May 7, 2024, by 12 days. One of the articles is undated, although the header shows that it was “[c]onsulted” on June 19, 2024. The remainder of the articles, as well as the press release, are dated between late May and mid-June 2024, and thus post-date the RPD’s decision.
- [27] The new evidence largely relates to allegations and examples of corruption within the DNA, the SRI, and elements of the Romanian judicial system. This includes information regarding two generals, Florian Coldea and Dumitru Dumbravă, who were investigated and indicted in connection with allegations of influence peddling and trafficking, including influence over DNA prosecutors.

- [28] In their submissions to the RAD, the applicants addressed the newness, credibility, relevance, and materiality of the new evidence. On the issue of relevance, the applicants contended that the new evidence supported their allegations of corruption in the judicial system, with a powerful network being used to target those who opposed or uncovered their corruption. They further argued that it supported both their own credibility and their allegations regarding the political motivation behind their prosecution.
- [29] In their submissions challenging the RPD's decision, the applicants relied on the new evidence, as well as evidence in the national documentation package [NDP] for Romania, published by the IRB. They argued that the RPD erred in finding they had not shown the prosecution of Ms. Mîra to be persecutory or corrupt. They noted that the RPD found Ms. Mîra's denial of having committed the crime credible and recognized that there were disputes regarding judicial independence in Romania. In such circumstances, they contended that the RPD's conclusion that she should challenge her conviction in Romania was unreasonable. They further argued that the new evidence supported their contention that they face a forward-looking risk of persecution, asserting that it showed control of the justice system by military intelligence agencies, a relationship between the SRI and the DNA, and the involvement of prosecutors who were involved in Ms. Mîra's case.
- (6) The RAD's notice regarding the Article 1F(b) issue [30] On September 5, 2024, the RAD issued a notice to Ms. Mîra and the Minister, indicating that it would be considering a new issue on appeal, namely exclusion under Article 1F(b) of the Refugee Convention. The RAD gave Ms. Mîra the opportunity to respond to the notice and advised the Minister that any Notice of Intervention had to be provided within seven days. The Minister did not intervene.
- [31] The applicants responded to the RAD's notice by referencing their post-hearing submissions filed with the RAD, which addressed the issue of exclusion.
- (7) The RAD's exclusion of the new evidence [32] The RAD did not admit any of the new evidence proffered by the applicants.
- [33] With respect to Mr. Suciu's affidavit, the RAD considered that it was not new evidence and "would have been better placed in the Appeal Memorandum," effectively treating it as a submission rather than new evidence. The applicants do not directly challenge this conclusion, which appears to be a reasonable one given the nature of the statements in Mr. Suciu's affidavit, which largely consist of summaries of the applicants' prior evidence and arguments regarding purported errors by the RPD.
- [34] The RAD also found that the applicants had not explained why the article dated April 25, 2024, which predated the RPD decision, or the undated article were unavailable to them prior to the RPD's decision. It concluded that the evidence did not meet the statutory requirements of subsection 110(4) of the IRPA.

[35] The RAD found that the remainder of the evidence met the requirements of subsection 110(4) of the IRPA. Turning to the Singh/Raza factors, the RAD accepted that the evidence was not only new but came from credible online news sources. However, the RAD found that the applicants had not shown that the evidence was relevant, applying the following reasoning:

With respect to relevance, the Appellants argue that some of the leaders facing charges in Romania (as covered in the articles) are the same ones with whom the Principal Appellant once worked. The fact that these leaders themselves are facing [prosecution] is evidence that the Romanian state prosecutes those involved with drug trafficking and anti-trust cases, contrary to what the Appellants have argued. The Appellants have not established the relevance of these news items to their claim for refugee protection, the issue of 1F(b) exclusion and forward-facing risk of persecution or harm. I have not admitted these articles as evidence.

(8) The RAD's relevance determination was unreasonable [36] The applicants do not directly challenge the RAD's conclusion that the April 25, 2024, article and the undated article did not meet the statutory requirements of subsection 110(4). Although the April 25, 2024, article predated the RPD's decision by only twelve days, the RAD correctly noted that the applicants had not provided any explanation as to why it was not reasonably available to them or why they could not reasonably have been expected to present it. The applicants had the onus to establish that the new evidence meets the requirements of subsection 110(4): Refugee Appeal Division Rules, SOR/2012-257, s 3(3)(g)(iii); *Thorne v Canada (Citizenship and Immigration)*, 2020 FC 790 at para 8; *Stuart v Canada (Citizenship and Immigration)*, 2024 FC 1741 at paras 12–13. Although the RAD might have reached a different conclusion in respect of the dated article based on the proximity of its publication date to the RPD's decision, I conclude it was reasonable for the RAD to find that the requirements of the subsection were not met for these documents.

[37] However, for the following reasons, I conclude that the RAD's assessment of the press release and news articles was not reasonable. The RAD did not adequately consider the basis for which the evidence was put forward and did not grapple with the contents or relevance of that evidence.

[38] The classic statement of relevance is whether evidence has the tendency to prove or disprove a fact in issue: *R v Grant*, 2015 SCC 9 at para 18, citing *R v Corbett*, 1988 CanLII 80, [1988] 1 SCR 670 at p 715. This applies equally to the question of relevance for the purpose of subsection 110(4), which asks whether evidence is "capable of proving or disproving a fact that is relevant to the claim for protection": *Singh* at paras 38, 43–45, adopting *Raza* at para 13(2).

[39] The RAD asserted that the applicants put the new evidence forward because "some of the leaders facing charges in Romania (as covered in the articles) are the same ones with whom [Ms. Mîra] once worked." This is an inaccurate, and materially incomplete, statement of the applicants' arguments. Ms. Mîra did not state that she worked with the leaders who were

facing charges. There is no indication that Ms. Mîra worked with General Coldea, General Dumbravă, or any other individual identified in the articles as facing charges in Romania for corruption, influence peddling, or drug trafficking.

- [40] Rather, the applicants put the articles forward as new evidence confirming their allegations of corruption within the NDA involving, among others, the lead prosecutor involved in Ms. Mîra's case, Laura Kövesi. Thus, in their memorandum, the applicants submitted that the documents supported their allegations that security bureaucrats were behind many corrupt schemes within the judiciary and that "they target those who oppose or uncover their corruption," linking this to the prosecution of Ms. Mîra, which they allege was politically motivated. Referring to the prosecutors in Ms. Mîra's case, including Ms. Kövesi, the applicants asserted that the new evidence confirmed "all these elements mentioned above," including that the generals and their affiliates were operating in concert as a network of organized crime.
- [41] Having mischaracterized the applicants' arguments, the RAD then addressed the question of relevance with the sole observation that the fact that the leaders were facing prosecution was in itself evidence that the Romanian state prosecutes those involved with "drug trafficking and anti-trust cases, contrary to what the Appellants have argued." The applicants had not in fact argued that Romanian state did not prosecute those involved with drug trafficking or "anti-trust cases" (it is unclear what the RAD is referring to here, as there is no indication in any of the articles that any of the issues involved antitrust cases; presumably the RAD intended to refer to corruption cases). Rather, they had argued that the DNA, while supposedly an anti-corruption organization, was itself corrupt and that prosecutors within the DNA used false prosecutions for personal ends and to punish those who opposed them.
- [42] The RAD's conclusion that all that could be drawn from the new articles was that leaders were facing prosecution fails to grapple with the evidence as it stood and as it was presented. The articles included a number of references to Ms. Kövesi being associated with the generals who were indicted, as well as references to one of the indicted generals, General Coldea, having the role of "influence over the prosecutors" at the DNA, directly explaining to them what needed to be done in a file. In an article from late May 2024, one of the men who denounced General Coldea suggested that Ms. Kövesi inappropriately targeted his company using European prosecutors, and referred to links between General Coldea and Ms. Kövesi. An article from June 2024 refers to allegations that a former police officer was pursued for nine years as a victim of "the duo Coldea-Kovesi," and that another former prosecutor general filed complaints against Ms. Kövesi and others for having fabricated complaints against him.

- [43] The RAD did not engage with any of this evidence, or address how or whether it might tend to prove or disprove the central issue relevant to both the exclusion issue and the applicants' claims, namely whether Ms. Mîra had not in fact committed the crimes of which she was charged, but rather had been the victim of a false prosecution undertaken because she had refused to comply with the DNA's demands to tailor her expert reports to their purposes.
- [44] The Minister contends that the applicants did not properly raise the asserted connection between Ms. Kövesi, the indicted generals, and the case against Ms. Mîra, noting that their memorandum of argument was not particularly clear on this issue. The Minister therefore argues that it was reasonable for the RAD not to have directly addressed that issue. While I agree that aspects of the memorandum could have been more clearly expressed, the asserted connection between the new evidence, the applicants' allegations of corruption at the DNA, and the involvement of Ms. Kövesi in particular, was plainly raised.
- [45] The issue was further underscored in the "notes and explanations" put forward on the new evidence by the applicants, which refer to Ms. Kövesi as a close partner of the two indicted generals in their crimes of bringing false indictments against people. Ms. Kövesi herself is identified as "head of the DNA when the file against [Ms. Mîra] was set-up [and] framed, as presented in the submitted evidence." In this regard, I cannot accept the Minister's contention that the Court should only look at the applicants' memorandum of argument in considering whether arguments were adequately raised before the RAD, particular since the RAD itself noted that it considered Mr. Suciuc's affidavit, which included the "notes and explanations" documents, to be "part of the Appeal Memorandum."
- [46] The Minister also notes that the articles do not indicate that Ms. Kövesi herself has been charged with corruption or other offences. I agree that the applicants may have overstated the evidence in suggesting that it documents "corruption prosecutions of the very officials who orchestrated Ms. Mîra's case." There is nothing in the new evidence referring to a corruption prosecution of Ms. Kövesi, and no allegation in the applicants' narrative that General Coldea or General Dumbravă "orchestrated" the prosecution of Ms. Mîra. However, this overstatement does not itself affect the general thrust of the applicants' arguments regarding the new evidence.
- [47] As a final argument with respect to the new evidence, the Minister contends that even if the RAD erred in refusing to admit the documents, this would not have affected their ultimate conclusion that Ms. Mîra was excluded from refugee protection. I cannot accept this proposition. The relevance, weight, and impact of the evidence was for the RAD to assess. In concluding that the evidence was not relevant, the RAD failed to meaningfully grapple with either the evidence or the basis on which it was presented: Vavilov at paras 125–128. The Court will not speculate on how the RAD might have assessed the evidence, or the ultimate issues of exclusion and risk, had it undertaken a reasonable assessment of the relevance of the new evidence and considered it in the context of the remainder of the evidence and the applicants' submissions: Chaudhry v Canada (Citizenship and Immigration), 2023 FC 785 at para 22. This is not a case where "a particular outcome is inevitable": Vavilov at para 142.

[48] I therefore conclude that the RAD's determination not to admit the new evidence pursuant to subsection 110(4) on grounds that it was not relevant is unreasonable, and that this unreasonableness requires the RAD's decision to be set aside.

B. The RAD's exclusion analysis was unreasonable [49] While the foregoing findings are determinative of this application, I consider it worth also addressing the RAD's exclusion analysis. For the following reasons, I find the RAD's analysis was unreasonable as it did not meaningfully address important aspects of the applicants' arguments, and thereby failed to reach a reasoned and justified conclusion on material issues relevant to the exclusion analysis.

(1) Legal context [50] Section 98 of the IRPA provides that a person referred to in Article 1E or 1F of the Refugee Convention is not a Convention refugee or a person in need of protection, thereby excluding them from refugee protection pursuant to sections 95 to 97 of the IRPA: *Febles v Canada (Citizenship and Immigration)*, 2014 SCC 68 at para 9. Article 1F(b) of the Refugee Convention, relevant for purposes of this application, reads as follows,

F The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

F Les dispositions de cette Convention ne seront pas applicables aux personnes dont on aura des raisons sérieuses de penser :

[...]

[...]

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

b) Qu'elles ont commis un crime grave de droit commun en dehors du pays d'accueil avant d'y être admises comme réfugiés;

[Emphasis added.]

[Je souligne.]

[51] As the Supreme Court of Canada has noted, this article serves one main purpose, namely to exclude persons who have committed a serious crime, as part of the balance between helping victims of oppression and protecting the interests of receiving countries: *Febles* at paras 35–36; *Lai Cheong Sing v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 125 at para 22.

[52] When a potential exclusion is raised under Article 1F(b), the IRB is therefore tasked with assessing whether there are “serious reasons for considering” that a refugee claimant has committed a “serious non-political crime” outside Canada before arriving. The onus to establish this is on the Minister: *Lai Cheong Sing* at para 23, citing *Xie v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 250 at para 23. The “serious reasons for considering” standard is higher than mere suspicion or conjecture, but lower than the civil

balance of probabilities standard: *Ezokola v Canada* (Citizenship and Immigration), 2013 SCC 40 at paras 101–102; *Lai Cheong Sing* at paras 23, 25.

- [53] In assessing whether a crime is “serious” for the purposes of Article 1F(b), consideration must be given to the nature of the act, the actual harm inflicted, the elements of the crime, the mode of prosecution, the penalty prescribed, the facts, and the mitigating and aggravating circumstances underlying the conviction: *Jayasekara v Canada* (Minister of Citizenship and Immigration), 2008 FCA 404 at paras 38–44. Where a maximum sentence of ten years or more could have been imposed had the crime been committed in Canada, the crime will generally be considered serious, but this is not a rigid presumption that is impossible to rebut or that should be applied in a mechanistic, decontextualized, or unjust manner: *Febles* at para 62. For crimes with a large sentencing range, crimes that would fall at the less serious end of the range in Canada should not be presumptively excluded: *Febles* at para 62. In *Febles*, the Supreme Court of Canada adopted the UNHCR’s examples of crimes that would be presumed serious, namely homicide, rape, child molesting, wounding, arson, drugs trafficking, and armed robbery: *Febles* at para 62.
- [54] Whether a crime is political or non-political for purposes of Article 1F(b) is determined by the motivation of the offender at the time of the crime. A crime is political if (a) it is committed for political purpose, that is, with the object of “overthrowing or subverting or changing the government of a state or inducing it to change its policy”; and (b) there is a sufficiently close and direct link between the crime and the alleged political purpose: *Lai Cheong Sing* at para 62. A distinction is to be drawn between the crime itself and any political motive of the prosecution, with Article 1F(b) addressing only the former: *Lai Cheong Sing* at para 63, citing *Gil v Canada* (Minister of Employment and Immigration), 1994 CanLII 3523, [1995] 1 FC 508 (CA) at p 517. When a crime is not accompanied by any stated or identifiable political motive, it is a non-political crime: *Lai Cheong Sing* at para 63.
- (2) The RAD’s exclusion analysis (a) Non-political crime [55] The RAD concluded, in one sentence, that “[t]he crime is financial and not political.” The RAD could certainly have presented a more thorough response to the applicants’ submissions on this point, including their submissions regarding the political nature of the prosecution and international law. However, in the circumstances, I am unable to conclude that the RAD’s conclusion is an unreasonable one, given the jurisprudence on the nature of “political” and “non-political” crimes.
- [56] On this issue, the applicants’ arguments regarding the political motivation of their persecutors in prosecuting Ms. Mîra must fail in light of the binding jurisprudence. As the Minister points out, the Federal Court of Appeal has confirmed that it is the political nature of the crime, not the political nature of the prosecution, that is relevant for determining whether the crime is political or non-political: *Lai Cheong Sing* at para 63. Here, the asserted crime was that Ms. Mîra had deliberately undervalued a state asset in an accounting report. There is no evidence that this was done for a political purpose, such as overthrowing the Romanian government or inducing it to change its policy: *Lai Cheong Sing*

at para 62. Indeed, Ms. Mîra strenuously denies that it was done at all. The fact that the crime at issue pertained to state assets does not turn it from a non-political crime into a political one.

- [57] The applicants' arguments and evidence regarding the political nature of the prosecution are relevant to the question of whether the charges were in fact false, i.e., that the prosecution corruptly pursued false charges and the crime was not committed at all. But if a financial crime has in fact been committed (or there are serious reasons for considering it has), the fact that the prosecution had a political motivation for pursuing a conviction for that crime does not make the crime a political one.
- (b) Serious reasons for considering [58] In discussing the legal framework for its analysis, the RAD correctly identified the relevant standard of "serious reasons for considering," citing the Supreme Court of Canada's decision in *Ezokola*. It then addressed the question of whether there were serious reasons for considering that Ms. Mîra had committed the crime of which she was convicted, doing so under the heading "Elements of the crime" within its analysis of the Jayasekara factors.
- [59] I pause to note an anomaly in this approach. The various Jayasekara factors, including the "elements of the crime," are directed to the question of whether a crime is "serious" for purposes of Article 1F(b), not whether there are serious reasons for considering that the crime has been committed. Addressing the latter in the context of the former could give the impression that a decision maker has already concluded that the crime was committed, and that the only question was therefore whether it was serious, before having assessed and determined that very question. Nonetheless, regardless of the headings used or the location of the analysis, it is clear that the RAD conducted a "serious reasons for considering" analysis.
- [60] I have greater concern, however, with the RAD's analysis itself, which I conclude was unreasonable, for the following reasons.
- [61] The RAD referred to the Minister's evidence and the charges against Ms. Mîra. It then analyzed whether there were serious reasons for considering that she committed the crimes set out in those charges. That analysis consisted of the following two sentences:

The Federal Court has held that it is open to the Board to rely upon an arrest warrant to find that there are reasonable grounds to conclude that a claimant has committed a serious crime outside of Canada.²³ In a country where the rule of law prevails, such as Romania, the Federal Court has held that the Board can reasonably infer that there were reasonable and probable grounds for the police or judicial investigative system to issue a warrant or lay a charge.²⁴

[Emphasis added.]

- [62] The RAD's two footnote references in the foregoing passages are to, respectively, paragraphs 28 and 29 of this Court's decision in *Arevalo Pineda v Canada* (Citizenship and Immigration), 2010 FC 454. That case involved a determination that Mr. Arevalo Pineda was excluded from

refugee protection under Article 1F(b) even though the charges that had been laid against him in Guatemala had been dismissed. In paragraph 28 of her decision, Justice Gauthier (then of this Court), noted that the Federal Court of Appeal had in two earlier decisions recognized that “the RPD can, in a proper context, rely upon an indictment and an arrest warrant to conclude that there are reasonable grounds to conclude that a claimant has committed [a] serious crime outside of Canada”: *Arevalo Pineda* at para 28, citing *Legault v Canada (Secretary of State)*, 1997 CanLII 6270 (FCA) and *Xie* (see paras 18–23).

[63] Justice Gauthier explained the basis for this in paragraph 29 of her decision:

This is based on the premise that in a system where the rule of law prevails, the RPD can reasonably infer that there were reasonable and probable grounds for the police or the judicial investigative system to issue a warrant or lay a charge.

[64] Notably, however, the RAD did not cite either the prior or subsequent paragraphs in Justice Gauthier’s decision, which provide important context for the statements in paragraphs 28 and 29: see *Horvathne Majoros v Canada (Citizenship and Immigration)*, 2025 FC 843 at paras 45–46. In paragraph 27 of *Arevalo Pineda*, Justice Gauthier noted that for the “serious reasons for considering” standard to be “meaningful,” there must be “a proper and objective assessment of the context as well as all the evidence presented by the refugee claimant” [emphasis added]. In the context of the case before her, this included in particular the victim having recanted her allegations, the charges that were being relied on having been dismissed, and the absence of any other evidence in the investigative file: *Arevalo Pineda* at paras 5–7, 27, 31–34.

[65] In paragraph 30 of her decision, Justice Gauthier noted that for the premise she referred to in paragraph 29 to apply, “the RPD must first be satisfied that the issuing authority does respect the rule of law, that is, for example, that it is not dealing with a country known for the filing of false charges as a means of harassment or intimidation” [emphasis added]. Further, in paragraph 38 of *Arevalo Pineda*, Justice Gauthier noted that “given the testimony of the applicant who denied having been involved in any crime, the RPD should also deal with his credibility and the weight given to that evidence.”

[66] I point to these surrounding passages in *Arevalo Pineda* not to suggest that the RAD, or any other decision maker, must necessarily cite every relevant paragraph in pertinent authority. However, these passages are critical qualifications to Justice Gauthier’s statement that the RPD (or the RAD) can “in a proper context” rely on an indictment to conclude that there are serious reasons to consider a claimant has committed a serious crime. Administrative decisions may not always look like “judicial justice,” and a decision maker need not cite every authority or every relevant passage within an authority: *Vavilov* at paras 91–92. However, the requirement that a decision be justified in light of the legal constraints upon it, including relevant jurisprudence, does not allow for reliance on statements from that jurisprudence that are removed from important qualifying context: *Vavilov* at paras 99, 101, 105–106, 112. It is also worth noting that the applicants themselves cited *Arevalo Pineda*,

particularly paragraphs 27 and 38, in their memorandum to the RAD.

[67] As set out above, the RAD relied on the existence of the charges (and, implicitly, the conviction in absentia), together with its conclusion that Romania was “a country where the rule of law prevails.” In doing so, it undertook no “proper and objective assessment” of the other “evidence presented by the refugee claimant” relevant to the issue of whether there were serious reasons for considering that Ms. Mîra committed the crime. This included her evidence regarding the nature of the charges and of the report she prepared, the background to her dispute with the DNA, and her evidence—accepted as credible by the RPD—that she had not committed the crime, i.e., had not deliberately undervalued the shares in her accounting report. The premise discussed in Arevalo Pineda does not relieve the RAD from considering evidence relevant to the central issue. To the contrary, Justice Gauthier confirmed that such an assessment must be undertaken: Arevalo Pineda at para 27; Vavilov at paras 126, 128; see also Botezatu v Canada (Citizenship and Immigration), 2011 FC 917 at paras 5–7, 14; Hernandez Hernandez v Canada (Citizenship and Immigration), 2010 FC 1323 at paras 38–39.

[68] In this regard, this Court’s decision in Qazi v Canada (Minister Citizenship and Immigration), 2005 FC 1204 is instructive. In addressing a similar issue regarding reliance on a foreign charge in an exclusion finding, Justice von Finckenstein stated the following:

The Board has to satisfy itself that there are “serious reasons for considering that [the Applicant] has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee”. Normally the Board does not inquire into the guilt or innocence of an applicant charged abroad [...]. The existence of a valid warrant issued by a foreign country would, in the absence of allegations that the charges are trumped up, satisfy the “serious reasons for considering” requirement.

When, however, as in this case, the Applicant alleges that the charges are fabricated, the Board has to go further. It has to establish whether to accept the allegations or not, i.e. whether the Applicant is credible. If he is found to be credible, then the mere existence of a warrant may not be enough.

[Emphasis added; citations omitted; Qazi at paras 18–19.]

[69] In the present case, the applicants similarly allege that the charges are trumped up, or fabricated. The RPD also found the applicants credible. Yet the RAD did not “go further” than the existence of the Romanian charges and conviction: Qazi at para 19; Vlad v Canada (Citizenship and Immigration), 2007 FC 172 at para 25; Gurajena v Canada (Citizenship and Immigration), 2008 FC 724 at paras 1, 4; Jain v Canada (Citizenship and Immigration), 2023 FC 539 at para 27.

[70] The evidence presented by the applicants also included evidence—both in the record before the RPD and, as outlined above, in the new evidence presented on appeal to the RAD—regarding concerns that the DNA did engage in the filing of false charges for ulterior

purposes. As Justice Gauthier pointed out in Arevalo Pineda, this is pertinent to the ability to rely on charges, or even a conviction, as serious reasons for considering that the crime was committed: Arevalo Pineda at para 30; Hernandez Hernandez at para 40. As was the case in Horvathne Majoros, “no assessment of the issuing authority was ever done”: Horvathne Majoros at paras 53, 61, citing Arevalo Pineda at para 30. While the charges in the present case may not have had the “internal contradictions” or “obvious falseness” at issue in Horvathne Majoros, the other evidence put forward by the applicants meant that an assessment was required: Horvathne Majoros at paras 53, 61.

- [71] On this issue, the Minister points to the RAD’s discussion of Romanian government being “duly elected in free and fair elections” and its associated discussion of country condition evidence indicating that, while “some criminal rings have been found to have links to ‘related dubious practices’ within the judiciary,” there had been “improvements to the judiciary and the integrity of judges and prosecutors.” I do not agree that this amounts to a reasonable assessment of the issuing authority, for three reasons.
- [72] First, this passage appears in a discussion of Mr. Suciu’s claim, long after the RAD’s conclusion that Ms. Mîra was excluded under Article 1F(b). While, as indicated above, the decision must be reviewed as a whole without undue focus on headings, there is no indication that the RAD considered these observations as part of its assessment of whether there were serious reasons for considering Ms. Mîra had committed a crime. In this regard, the focus of the RAD’s discussion in this passage is the protection of minority groups and whistleblowers, matters relevant to Mr. Suciu’s claims of discrimination and fears of harm based on his book exposing Romanian government corruption.
- [73] Second, even if the RAD’s discussion on this issue were considered part of its exclusion analysis, it does not address the issues directly raised by the applicants in respect of the charges against Ms. Mîra, including the allegations that the DNA, and Ms. Kövesi in particular, brought false charges against those who opposed them.
- [74] Third, the RAD’s discussion on this issue refers to evidence from late 2022 referring to positive changes and new improvements with respect to recognized past concerns with the integrity of the judiciary and prosecutors. The relevant issue was not the circumstances in place in 2022 or later, but those in place at the time of the events in question in 2017 to 2019: Hernandez Hernandez at paras 47–48.
- [75] I therefore conclude that the RAD’s analysis of whether there were serious reasons for considering that Ms. Mîra committed the crime of which she was convicted did not address or account for material evidence on the record and did not meaningfully grapple with the applicants’ central submissions on the issue. As this was necessarily a central aspect of the RAD’s exclusion analysis, the Court is not satisfied that its decision was intelligible, transparent, and justified in light of the relevant factual and legal constraints: Vavilov at paras 99–101, 125–128.

(c) Seriousness of the crime [76] Given the foregoing conclusions, I need not address the applicants' arguments regarding the RAD's analysis of seriousness. I do note, however, that the RAD provides little basis for its conclusion that Ms. Mîra would be sentenced to a term closer to the maximum sentences for fraud (14 years) and theft (10 years), particularly in a context where her conviction in Romania led to a sentence on the lower end of the sentencing spectrum (a 5-year sentence for a crime that carried a potential 3 to 10 years of imprisonment). The RAD identified the applicants' submissions on this issue in summarizing the RPD's reasons but then did not address them in its discussion of the penalty prescribed.

[77] The applicants' arguments on this issue, as with the remainder of the Jayasekara factors, are matters appropriately considered by the RAD on reconsideration.

C. The RAD's findings with respect to Mr. Suciu [78] The parties spent limited time on the RAD's conclusion that Mr. Suciu is neither a Convention refugee nor a person in need of protection, each relying primarily on their written submissions on that issue.

[79] In the circumstances, I conclude that the errors identified above are sufficient to require the RAD's decision to be set aside in respect of both applicants, independent of any arguments regarding the RAD's specific findings concerning Mr. Suciu. I reach this conclusion for two reasons.

[80] First, the new evidence was presented as being relevant to both of the applicants' claims. While mostly raising allegations with respect to the DNA and prosecutors involved in Ms. Mîra's case, the applicants claimed that the new evidence showed that security bureaucrats "target those who oppose or uncover their corruption," an assertion relevant to both applicants' refugee claims.

[81] Second, it is clear that Mr. Suciu's claim is connected to Ms. Mîra's, at least to some degree. While he raises some independent grounds, including alleged persecution on grounds of his cultural background, skin colour, ethnicity, and political views, the RPD noted that Mr. Suciu's grievances "are all somehow linked with either [Ms. Mîra's] struggles or undefined figures with no other connection established [...]" and that he "connected [Ms. Mîra's] issues with his."

[82] I therefore find that the unreasonableness of the RAD's decision affects its conclusions with respect to both applicants and that the decision as a whole must be set aside.

IV. Conclusion [83] For the foregoing reasons, the RAD's decision is set aside, and the applicants' appeal is remitted to the RAD for redetermination.

[84] Neither party asked the Court to state and certify a serious question of general importance pursuant to paragraph 74(d) of the IRPA. I agree that no such question arises.

JUDGMENT IN IMM-21730-24

THIS COURT’S JUDGMENT is that

The application for judicial review is allowed. The decision of the Refugee Appeal Division dated October 28, 2024, is set aside and the applicants’ appeal of the Refugee Protection Division’s decision dated May 7, 2024, is remitted for redetermination by a differently constituted panel of the Refugee Appeal Division.

“Nicholas McHaffie”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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