

CANADA / JUDGMENT

Mihalaiche v. Canada (Citizenship and Immigration)

2025 FC 318

COURT

Federal Court

DECIDED

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Mihalaiche v. Canada (Citizenship and Immigration) Court (s) Database Federal Court Decisions Date 2025-02-19 Neutral citation 2025 FC 318 File numbers IMM-13860-23 Decision Content Date: 20250219 Docket: IMM-13860-23 Citation: 2025 FC 318 Ottawa, Ontario, February 19, 2025 PRESENT: Madam Justice Go BETWEEN: Menis MIHALAICHE Georgiana Elizabeta MIHALAICHE RAFAILA Rihanna MARGEL Nicolas Elias MARGEL Applicants and THE MINISTER OF CITIZENSHIP AND IMMIGRATION Respondent JUDGMENT AND REASONS I. Overview [1] Menis Mihalaiche [Principal Applicant], Georgiana Elizabeta Mihalaiche Rafaila [Associate Applicant], and Rihanna Margel and Nicolas Elias Margel [Minor Applicants] are citizens of Romania. Georgiana is Menis's adult child and was born in Ecuador. Rihanna and Nicolas are Georgiana's minor children who are citizens of the United States [U.S.] by birth.

- [2] The Applicants—and three other family members—travelled to Canada, separately, in 2018 and 2019. The Applicants claimed refugee protection on the basis of their fear of persecution as ethnic Roma.
- [3] The Refugee Protection Division [RPD] rejected the Applicants' claims. On appeal, the Refugee Appeal Division [RAD] confirmed the RPD's finding that the Applicants are neither Convention refugees nor persons in need of protection [Decision].
- [4] The RAD first denied the Applicants' request to admit new evidence about Ecuadorian citizenship law and confirmed the RPD's finding that the Associate Applicant is a citizen of Ecuador by birth. The RAD agreed with the RPD that the Applicants had established their Roma identity but found that significant credibility issues in the Applicants' claims and evidence undermine their credibility. Finally, on the basis of the Applicants' particular circumstances and experiences, the RAD found that they have not established that they face a serious possibility of persecution in Romania.
- [5] The Applicants bring this application for judicial review to challenge the Decision. I dismiss the application as I find the Applicants fail to discharge their burden of demonstrating that the Decision was unreasonable. II. Issues and Standard of Review [6] In their written submissions, the Applicants raise several issues, including the RAD's finding that the

Associate Applicant is a citizen of Ecuador. In their oral submissions, the Applicants focused on the following two issues only, and abandoned the rest of the arguments contained in their written submissions: Were the RAD's credibility findings unreasonable? Did the RAD err in finding that the Applicants do not face a serious possibility of persecution in Romania?

- [7] The parties agree that the reasonableness standard applies when reviewing the merits of the Decision: *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [Vavilov]. A reasonable decision is one that displays justification, transparency, and intelligibility with a focus on the decision actually made, including the justification for it: Vavilov at para 15. Overall, a reasonable decision is one that is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision-maker: Vavilov at para 85. III. Analysis A. Were the RAD's credibility findings unreasonable? [8] Before the RPD, the Applicants' claim was joined with that of the Principal Applicant's common law spouse, F.R. The RPD noted several credibility issues throughout the testimonies of the adult claimants, including the Principal Applicant and F.R. These concerns include inconsistencies, omissions, vague and evasive testimony with respect to residence and travel history, alleged attacks, and incidents of discrimination that were not reasonably explained. In addition, the RPD found that after fleeing Romania numerous times over the years, the adult claimants failed to claim or abandoned their claims in Ecuador, Mexico, U.S., Italy, and other countries in Europe, and returned to Romania—the last time allegedly just prior to departing for Canada.
- [9] In the Decision, the RAD rejected the Applicants' arguments challenging the RPD's credibility findings and concluded that the cumulation of significant credibility issues in the Applicants' claims and evidence undermine their overall credibility and the credibility of their allegations.
- [10] Before this Court, the Applicants' main argument is two-fold. First, the Applicants submit that the RAD unreasonably relied on the Applicants' travel history to impugn their credibility. Second, the RAD's findings on reavilment were unreasonable.
- [11] With respect to travel history, the Applicants challenged the RPD decision for merely asserting that the travel and residential histories were relevant and material but did not discharge the board's duty to provide an intelligible and sufficient reasoning. The Applicants submit that the RAD did not address these arguments in detail. The Applicants cite *VIA Rail Canada Inc v National Transportation Agency (CA)*, [2001] 2 FC 25 at para 22, which explains that the obligation to provide adequate reasons is "not satisfied by merely reciting the submissions and evidence of the parties and stating a conclusion."

- [12] Before this Court, the Applicants similarly submit that travel history is not capable of undermining credibility in the way the RPD asserts, as the claim is about the overall condition and treatment of Roma, an ethnic group, over decades. The Applicants assert that it was unreasonable to expect them to recite their travel history over a course of 30 years by heart, without reference to any documentary evidence.
- [13] With respect to the alleged reavailments in Mexico and the U.S., the Applicants submit the RAD unreasonably found Mexico to be a safe country. The Applicants also argue that they were deported from Mexico while trying to cross into the U.S. Further, the Principal Applicant was seriously ill while in the U.S. The Principal Applicant had no healthcare in the U.S. and had no choice but to return to Romania where he had some access to healthcare.
- [14] I reject the Applicants' arguments.
- [15] As a starting point, credibility findings are afforded deference: *Ajibua v Canada* (Citizenship and Immigration), 2022 FC 903 at para 8; *Vavilov* at paras 125-26.
- [16] The Applicants' arguments, which mirror some of their arguments before the RAD, amount to asking the Court to reweigh the evidence and do not point to any reviewable errors.
- [17] Having reviewed the record before me, including the Port of Entry notes and the testimonies of the Principal Applicant and F.R., I conclude that the RAD reasonably found that the Principal Applicant's versions of travel and residential histories were materially different from that of F.R., and these were not peripheral issues.
- [18] I note that the RAD was not only concerned about the inconsistencies in the testimonies with regard to the Applicants' travel history as a standalone issue. The RAD noted that their "travel and residential histories are relevant and material to their immigration status in other countries, as well as the assessment of their alleged subjective fear in consideration of delays in fleeing alleged persecution, delays in claiming protection, and reavailments, as well as the credibility of allegations of past persecution which are alleged to have taken place at a particular place and time which conflicts with the [Applicants'] declarations of their travel and residential history."
- [19] The Applicants' submissions do not acknowledge these findings, let alone undermine their reasonableness.
- [20] I also find the RAD reasonably assessed the Applicants' reavailments. The RAD noted particularly the Applicants' recent sojourn in the U.S. According to the Applicants, they made asylum claims but later moved and did not follow up. The RAD rejected this argument for two reasons. First, it was reasonable to expect genuinely fearful claimants would take steps to pursue their claims. Second, the Applicants' U.S. biometric records do not reflect that they made U.S. asylum claims. Once again, the Applicants' argument does not address these findings. Based on the evidence—or lack thereof—before it, I find that it was open to the RAD to not be satisfied with the Applicants' explanation for not pursuing their claims in the U.S. and returning to Romania.

- [21] With respect to Mexico, I find the Applicants' submission contradicted their testimony before the RPD. The Applicants alleged that they sought asylum in Mexico but left a few days later for the U.S. The Applicants never suggested that they did not seek asylum because Mexico was not a safe country.
- [22] The Applicants added another argument in oral submission during their reply, stating that in assessing the Applicants' credibility, the RAD should not have considered the evidence of F.R., who was not before the RAD and therefore did not have an opportunity to defend her claim.
- [23] I reject the Applicants' new submission for two reasons. First, it was improperly made. Second, it has no merits.
- [24] The Applicants cannot raise an argument for the first time in oral submission: *Coomaraswamy v Canada (Citizenship and Immigration)*, 2002 FCA 153 at para 39; *Kabir v Canada (Citizenship and Immigration)*, 2023 FC 1123 at para 19; *Ali v Canada (Citizenship and Immigration)*, 2021 FC 731 at para 51; *Abdulkadir v Canada (Citizenship and Immigration)*, 2018 FC 318 at para 81; *Dave v Canada (Citizenship and Immigration)*, 2005 FC 510 at para 5. In this case, counsel for the Applicants raised this new argument during his reply, which made it all the more improper.
- [25] In any event, F.R. testified before the RPD at the Applicants' hearing because her claim was joined with that of the Applicants. Whether or not F.R. had further opportunity to respond to the RAD is irrelevant. The Applicants, who were the appellants before the RAD, had the opportunity to make submissions and they did so, including submissions on issues of credibility based on F.R.'s and the Principal Applicant's evidence. B. Did the RAD err in finding that the Applicants do not face a serious possibility of persecution in Romania? [26] In the Decision, the RAD confirmed the RPD's finding that the Applicants do not face a serious possibility of persecution in Romania for several reasons. First, the Applicants were not credible about their allegations of recent attacks in Romania. Second, looking at the Applicants' access to employment, housing, education, healthcare, and religion, and considering the Applicants' personal circumstances and vulnerabilities cumulatively, the RAD found the evidence did not establish that the Applicants face systemic or persistent harm or an insecure future existence in Romania. Third, the Applicants do not face a more than a mere possibility of being victims of racially-motivated violence if they return to Romania.
- [27] The Applicants challenge the RAD's findings on several grounds.
- [28] First, the Applicants submit that past persecution is not a must, even if there were an embellishment about a past attack; past persecutory incidents only inform a future risk analysis, and their lack does not automatically amount to a lack of future persecution: *Salibian v Canada (Employment and Immigration)*, [1990] 3 FC 250 (CA), 73 DLR (4th) 551; *Fernandopulle v Canada (Citizenship and Immigration)*, 2004 FC 415.

- [29] In the alternative, the Applicants argue a positive determination can be reached under section 97 of the Immigration and Refugee Protection Act, SC 2001, c 27, which calls for a purely objective analysis based on country conditions even if the Applicants were not deemed credible.
- [30] The Applicants also take issue with the RAD's analysis of the Applicants' access to employment, housing, healthcare, and education, noting that the Applicants were merely surviving in Romania. The Applicants submit the RAD improperly relied on the Applicants' access to basic services to oust a persecution claim. The Applicants further submit that the RAD erred in trying to compare the Applicants with other Roma living in Romania when the RAD should follow the approach set out under *Fodor v Canada (Citizenship and Immigration)*, 2020 FC 218 [Fodor] at paras 35-43.
- [31] Finally, relying on the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status [UNHCR Handbook], the Applicants submit the RAD erred in finding that the cumulative discrimination that Roma people face does not amount to persecution.
- [32] I reject all of the Applicants' arguments.
- [33] Fodor does not stand for the proposition that the Applicants urge the Court to adopt.
- [34] In Fodor, the Court considered the burden on a claimant to establish a well-founded fear of persecution under section 96. The Court noted at para 38 that to the extent that the claimant relies on generalized evidence of those similarly situated, they must show that that evidence is relevant to them, i.e., that they are sufficiently similarly situated to those described in the evidence. While the Court noted at para 41 that the claimant is not required to show that their risk of persecution is "personalized" or "individualized," in the sense that it is not also faced by other similarly situated persons or other members in a group, the Court went on to explain at para 42:
- [42] In this regard, the "link" or "nexus" to the general evidence will depend on the nature of the generalized evidence. To the extent that the evidence demonstrates that members of a Convention-ground class are persecuted in a particular country—regardless of personal circumstances such as wealth, social position, geographic location or other circumstances—then membership in that class may be sufficient to show that the evidence of persecution applies to the claimant personally. If, on the other hand, the evidence shows that discrimination and persecution in the country is variable depending on other factors, then there will be a greater need for the claimant to demonstrate how or why some or all of the evidence is relevant to them. [Emphasis added]
- [35] In other words, contrary to the Applicants' submission, Fodor confirms the long-established principle that where the country conditions evidence is variable, an applicant will have to demonstrate how the objective evidence is relevant to them and cannot assert a well-founded fear of persecution by merely asserting their membership in a Convention-ground class.

- [36] In this case, the RAD assessed the objective evidence regarding Roma people in Romania. The RAD accepted that there are serious problems for Roma people, and that the Applicants “face some degree of societal and state discrimination and mistreatment as Roma in Romania.” However, the RAD also found that the objective evidence does not indicate that the situation is so severe and widespread that it rises to the level of a serious possibility of persecution for all Roma people. Based on the objective evidence, the RAD considered it necessary to take into consideration the credibility and trustworthiness of the evidence of the Applicants’ past experiences and personal circumstances before finding that they failed to establish they face a risk of discrimination amounting to persecution. The RAD’s analysis was internally coherent and consistent with the jurisprudence, and its reasons were well supported by the evidence before it.
- [37] While the Applicants may disagree with the RAD’s analysis of their personal circumstances, such as their access to housing and employment, and the RAD’s assessment of the objective evidence, mere disagreement does not amount to a reviewable error.
- [38] Finally, the passages that the Applicants cite from the UNHCR Handbook also do not undermine the reasonableness of the Decision. As the UNHCR Handbook states, the decision-maker should take into account the cumulative effect of an applicant’s experience. In the case before me, the RAD did what the UNHCR Handbook suggests. The RAD considered the cumulative effect of the Applicants’ experience and found it to be insufficient to support their claim. I see no basis to interfere with the RAD’s finding. IV. Conclusion [39] The application for judicial review is dismissed.
- [40] There is no question to certify. JUDGMENT in IMM-13860-23 THIS COURT’S JUDGMENT is that: The application for judicial review is dismissed. There is no question to certify. "Avvy Yao-Yao Go" Judge FEDERAL COURT SOLICITORS OF RECORD Docket: IMM-13860-23 STYLE OF CAUSE: Menis MIHALAICHE, Georgiana Elizabeta MIHALAICHE RAFAILA, Rihanna MARGEL, Nicolas Elias MARGEL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION PLACE OF HEARING: TORONTO, ONTARIO DATE OF HEARING: february 13, 2025 JUDGMENT AND REASONS: GO J. DATED: February 19, 2025 APPEARANCES: Oltion Toro For The ApplicantS Alethea Song For The Respondent SOLICITORS OF RECORD: Lewis & Associates LLP Toronto, Ontario For The ApplicantS Attorney General of Canada Toronto, Ontario For The Respondent

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