

CANADA / JUDGMENT

VB9-07285

COURT

Refugee Appeal Division

DECIDED

1 August 2020

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RAD File / Dossier de la SAR : VB9-07285 VB9-07286 Private Proceeding / Huis clos Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXXXXXXXX XXXX Personnes en cause Appeal considered / heard at Ottawa, ON Appel instruit / entendu à Date of decision August 1, 2020 Date de la décision Panel Jillan Sadek Tribunal Counsel for the persons who are the subject of the appeal N/A Conseil des personnes en cause Designated representative N/A Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION OVERVIEW

- [1] XXXX XXXX (the Principal Appellant) and his wife XXXX XXXX XXXX (the Associate Appellant) are citizens of Russia.
- [2] The Appellants are appealing a decision of the Refugee Protection Division (RPD) dated August 27, 2019, in which the RPD determined that their co-claimant, their 31-year-old son, XXXX XXXX was a Convention refugee on the basis of his sexual orientation. However, the RPD rejected the Appellants' claim, determining there was no prospective risk in their case.
- [3] The Appellants were represented by counsel before the RPD but are unrepresented in this appeal. They assert that the RPD made a procedural fairness error which invalidates its decision. They also submit the RPD ignored the fact that they cannot be separated from their son XXXX XXXX, as he is not able to care for himself, they conclude that the RPD decision was therefore distorted by homophobia.
- [4] My role is to look at all the evidence and decide if the RPD made the correct decision.¹
DECISION
- [5] I dismiss the appeal. The RPD's finding that the Appellants are neither Convention refugees nor persons in need of protection was correct. The determinative issue is the lack of prospective risk. NEW EVIDENCE
- [6] With their original appeal record, the Appellants sought to introduce several pieces of new evidence, namely: * An undated letter from the Appellants to the Refugee Appeal Division (RAD) * An undated letter from the Appellants' son, XXXX, to the RAD * A letter from the Associate Appellant's physician dated XXXX XXXX, 2019 in which the physician states that she "became very stressed regarding their future in Canada and all her medical conditions worsened to the extent that she was experiencing daily anxiety, panic attacks, fatigue and

depression. Their sonXXXX XXXX XXXXwas able to obtain a refugee status in Canada and fully depend on his parents in terms of daily activities and unlikely to be able to adapt to a new environment in Canada (sic). He needs daily support and guidance."² * A letter dated XXXX XXXX, 2019 from a Case Manager XXXX XXXX XXXX XXXX in which the author states that the Appellants and their son fled Russia due to their son's homosexuality and because he developed an anxiety disorder, an eating disorder and social phobia. The letter continues that XXXXis completely dependent on his parents and unable to live independently without them. The author adds: "the family members of homosexual people in Russia are persecuted and would be facing social isolation."³ * An employment letter indicating that the Principal Appellant is working for a XXXX XXXX XXXX XXXX XXXX XXXX XXXX dated XXXX XXXX, 2019.

- [7] In order for new evidence to be admitted it must meet the criteria in section 110(4) of the Immigration and Refugee Protection Act (IRPA). This means only evidence that arose after the rejection of the claim, that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection may be admitted. In the present case, the claim was rejected on August 27, 2019. Any new evidence must also meet the tests for newness, credibility and relevance set out in the cases of Singh and Raza.⁴
- [8] All of the new evidence submitted post-dates the rejection of the claim and appears to meet the criteria for admissibility as set out in section 110(4) of IRPA. For the most part, the evidence also meets the tests for newness, credibility and relevance. However, the employment letter is not relevant to any issue to do with the refugee determination process, therefore it is not admitted. Also, certain statements in the letter from the physician and the letter from the Case Manager at the XXXX XXXX XXXX XXXX XXXX appear to be outside of their areas of expertise, or at least those areas of their expertise have not been established. However, as mentioned earlier, as the Appellants are unrepresented for the present appeal and wishing to give the Appellants the fullest opportunity to present their case, I have decided to admit all the other new pieces of evidence, apart from the employment letter. Further new evidence
- [9] The Refugee Appeal Division (RAD), sent the Appellants a notice on June 15, 2020 indicating that the Appellants could submit any document or written submission in support of their appeal without an application within 30 days, noting that the other requirements of Rule 29 and section 110(4) of IRPA would continue to apply.
- [10] On July 13, 2020, the Appellants sent the following new document to the RAD without explaining how it meets either 110(4) of IRPA or Rule 29: * An application to the B.C. Ministry of Social Development and Poverty Reduction for XXXXto be designated as a person with a disability due to his obsessive-compulsive disorder, possible major depressive disorder and general anxiety disorder. This is accompanied by a psychiatric assessment confirming his disorders but which also notes "he has full capacity to make decisions in relation to his care and treatment."⁵

- [11] The XXXX XXXX, 2019 letter from the Associate Appellant's physician was also resubmitted by the Appellants. As indicated earlier, it has already been admitted.
- [12] Rule 29 stipulates that the Appellant must explain how the new evidence not previously provided meets section 110(4) of IRPA. The RAD must also consider the document's relevance and probative value, any new evidence the document brings to the appeal and whether the Appellant, with reasonable effort, could have provided the document or written submission with her original appellant's record.
- [13] While I do not find the psychiatric report about the Appellants' son XXXX to be particularly relevant or probative, as the Appellants are unrepresented and wishing to give the Appellants the fullest opportunity to present their case, I have decided to admit the report.
- REQUEST FOR ORAL HEARING
- [14] The Appellants appear to have indicated in their written statement that they would like the RAD to hold an oral hearing, however, they have not explained why or on what basis they would like an oral hearing held.
- [15] Before I can hold an oral hearing, there must be new evidence, described in subsection 110(4) of IRPA admitted on appeal and the criteria outlined in 110(6) of the IRPA must also be met. This means that the new evidence must raise a serious issue with respect to the credibility of the person who is the subject of the appeal; this serious issue must be central to the decision with respect to the refugee protection claim; and that, if accepted, this serious issue of credibility would justify allowing or rejecting the refugee protection claim.
- [16] In the present case, as the new evidence does not raise any new serious issue with regards to the credibility of the Appellants which would be determinative, I may not hold an oral hearing.

ANALYSIS

- [17] I have attentively listened to the recording of the RPD hearing and I have carefully reviewed the entire record. I agree with the RPD that there is insufficient evidence of any prospective risk. The RPD did not make a procedural fairness error
- [18] The Appellants submit: "the court hearing took place on July 30. But the hearing did not end this day. The judge scheduled the next hearing on August 20. But the court hearing did not take place. And nobody notified us about this. The July 30 court hearing ended with the judge asking the lawyer to provide her information about could I live in Ukraine or not. So the judge understood that I could not return to Russia. The lawyer provided an official document from the Ukrainian embassy that it was impossible for me to obtain Ukrainian citizenship. Therefore, it is not clear, why the court hearing did not take place, and she refused us."6

- [19] Though the Appellants were represented at their hearing before the RPD and had the benefit of full interpretation throughout, it appears they misunderstood what occurred at the end of their hearing on July 30, 2019. During the hearing, it came to light that the Principal Appellant may still have status in Ukraine as well as in Russia; the Principal Appellant indicated that he was unsure about whether he still had status in Ukraine, having left that country with his parents at age 7. The RPD then suggested to Counsel that this issue be researched and that Counsel make his submissions in writing and that the National Documentation Package for Ukraine be added to the RPD file.⁷ The Appellants' Counsel agreed to this proposal and asked when his written submissions were due. The RPD gave Counsel until August 20, 2019 to make these final written submissions.⁸ The Appellants' Counsel provided the written submissions on August 7 and August 8, 2019 -- well in advance of the deadline.
- [20] At no point was a resumption of the hearing ever discussed nor was any date for a resumption settled on. The Appellants are simply mistaken. There is no evidence that the RPD decision was distorted by homophobia
- [21] On their Appeal Form, the Appellants submitted: "My wife told the judge that our son, due to his mental and physical health could not come to Canada without us. And for the same reason he cannot stay here without us. The judge ignored this, so her decision was distorted by homophobia."⁹
- [22] In the letter from the Appellants to the RAD they explain that XXXXhas a strong social phobia, that he barely left his room in Russia for the last 10 years, that even in Canada he does not leave the home unaccompanied, that this state of affairs has undermined the Appellants' health - particularly the Associate Appellant who regularly goes to the Emergency department due to her panic attacks and that XXXXrequires their assistance in daily life as he cannot work.¹⁰
- [23] In the letter to the RAD from XXXX, he states: "I was allowed to live in Canada, but the court was ignore the exceptional nature of our situation (sic). And I actually rejected also. Yes, this is really a rare occurrence - when parents support their gay son and suffer along with him ... And the court is not ready for such situations ... And it's sad. The support of my parents is the foundation of my life. They are my protection against homophobia. Only thanks for them I can feel calm and confident."¹¹
- [24] Certainly, this is a state of affairs which makes the Appellants' situation difficult and also creates difficulties for their sonXXXX XXXX. However, the Convention relating to the Status of Refugees is clear regarding the criteria that must be met to obtain refugee status. The claimant must demonstrate that a serious possibility of persecution exists due to their membership in a particular group or for another Convention ground. Or, the RPD must determine that, on a balance of probabilities, a claimant would face risks described in section 97 of the IRPA. The IRPA does not confer on the RPD or the RAD the power to render decisions based on humanitarian and compassionate considerations such as those

described by the Appellants and their son.

- [25] The Federal Court has stated: "the IRPA objective of family unification is one of a number of objectives the IRPA seeks to advance over a wide variety of contexts. It is not a governing factor when determining if an individual claimant is a Convention refugee or person in need of protection pursuant to sections 96 and 97. Instead the IRPA provides other mechanisms that address the objective of family unification, mechanisms that might well be available to the applicants."¹²
- [26] In this case, the RPD was correct that the considerations submitted by the Appellants with regards to their need to be with their son, while understandable, are not considerations on which refugee protection may be conferred. This does not mean the RPD was homophobic, but rather only reflected the limits of the scope of RPD decision-makers. The RPD's conclusions with regards to lack of prospective risk were correct
- [27] In the Appellants' letter to the RAD they write that the RPD incorrectly rejected their claim, because, while residing in Russia they "were subjected to pressure as supporters of LGBT people and as an opposition to the authorities."¹³
- [28] The Principal Appellant, in his Basis of Claim narrative, raised the issue that he was personally perceived to be a supporter of LGBT rights and that this resulted in him losing work as an XXXX XXXX XXXX. The Principal Appellant stated that his other sonXXXX XXXX XXXXhad a XXXX XXXXin their cityXXXX XXXX XXXXwhich was promoted by the LGBT community and that this drew negative attention to his sonXXXX XXXX. The Principal Appellant also explained that, XXXX XXXX XXXXa well-known gay activist, stayed at his family home for several months after he was injured during an LGBT rally.¹⁴ The Principal Appellant stated that as a consequence of the assistance he gave XXXX XXXX XXXX, he was not paid for some XXXX XXXX XXXXfor his employer XXXX XXXX XXXX. The Principal Appellant also specified that as he was a Jew, originally from the Ukraine and had refused to participate in elections since he disagreed with Putin, these factors also contributed to his dismissal from his work, which was XXXX XXXX XXXX XXXX XXXX XXXX.¹⁵
- [29] At the hearing, the Principal Appellant did not expand on how being Jewish or Ukrainian played into his employer's decision to cease his employment. Nor were these themes elaborated in Counsel's submissions.
- [30] During the hearing, the RPD asked the Principal Appellant to explain what kind of things he said about Putin. The Principal Appellant explained that he did not participate in elections and that he said he was against Putin.¹⁶ When the RPD asked whether there had been any consequences to the Principal Appellant in relation to his anti-Putin beliefs, he replied that he lived under constant strain and fear, that he could not relax and that he had limited social interactions.¹⁷ The RPD noted that Putin has been in power for approximately 20 years and the Principal Appellant had not experienced any problems with the authorities because of his beliefs. The RPD correctly determined that while the Principal Appellant may be against Putin, he does not have a type of public profile which would result in him coming to the

attention of the regime.

- [31] With their appeal materials, the Appellants did submit a letter from the Jewish Family Services which states: "the family members of homosexual people in Russia are persecuted and would be facing social isolation."¹⁸ However, the objective documentation on Russia in the National Documentation Package does not support this assertion, nor did the Appellants submit any objective documentation of this nature. The reports do mention that LGBT rights activists and LGBT individuals can become victims of intimidation and violence and are often discriminated against but there is no mention of family members of LGBT individuals experiencing similar attacks or discrimination.¹⁹
- [32] The RPD correctly determined that, while the Principal Appellant may have lost his position at the XXXX because of his association with XXXX XXXX XXXX, this discriminatory act on the part of one employer, does not amount to persecution. It is also important to note that the Appellants' son XXXX XXXX XXXX who owned XXXX XXXX XXXX and who was the one connected with XXXX XXXX XXXX XXXX has left Russia for the United States. Thus, in returning to Russia the Appellants would no longer be connected with either XXXX XXXX who has status in Canada, or XXXX, which would limit the chances of the couple being perceived as supportive of LGBT rights.
- [33] For the aforementioned reasons, I am satisfied that the RPD did not err in its analysis of prospective risk.

CONCLUSION

- [34] I am satisfied the Appellants would not face more than a mere possibility of persecution should they return to Russia, and that they would not, on a balance of probabilities, face risks as defined in section 97 of the IRPA, should they return to Russia.
- [35] I dismiss the appeal and confirm the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection. (signed) Jillan Sadek
Jillan Sadek
August 1, 2020
Date 1 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145 2 P-2, Letter from XXXX XXXX, Appellants' record, p. 6 3 P-2, Letter from XXXX XXXX XXXX XXXX XXXX, Appellants' record, p. 7 4 Canada (Citizenship and Immigration v. Singh, 2016 FCA 96; Canada (Citizenship and Immigration) v. Raza FC 385 5 P-2, Psychiatric report, supplemental record of the Appellant's, p. 4 6 P-2, Appeal form, Appellant's record, p. 2 7 At minute 2h03 of the recording of the RPD hearing, July 30, 2019 8 At minute 2h09 of the recording of the RPD hearing, July 30, 2019 9 P-2, Appeal form, Appellant's record, p. 2 10 P-2, Letter from Appellants to the RAD, Appellants' record, p.3 11 P-2, Letter from XXXX to the RAD, Appellants' record, p. 4 12 Akinfolajimi, Adebimpe Joyce v. M.C.I. (F.C. no. IMM-5067-17), Gleeson, July 12, 2018; 2018 FC 722. Also see Douillard, Kerlange v. M.C.I. (F.C. no. IMM-4443-18), LeBlanc, March 29, 2019; 2019 FC 390.) 13 P-2, Letter from Appellants to RAD, Appellants' record, p.1 14 RPD-1, BOC narrative of the Principal Appellant, RPD record, p. 18

15 RPD-1, BOC narrative of the Principal Appellant, RPD record, p. 19 16 At minute 1h29 of the recording of the RPD hearing, July 30, 2019 17 At minutes 1h32-1h34 of the recording of the RPD hearing, July 30, 2019 18 P-2, Letter from XXXX XXXX XXXX XXXX XXXX, Appellants' record, p. 7 19 Archive - National Documentation Package, Russia, 29 March 2019, tab 6.6: ?Monitoring of discrimination and violence based on sexual orientation and gender identity in Russia in 2016-2017. Russian LGBT Network. 2018. Archive - National Documentation Package, Russia, 29 March 2019, tab 6.3: ?Russia: A state-led assault on equality. Challenging hate: Monitoring anti-LGBT "hate speech" and responses to it in Belarus, Kyrgyzstan, Moldova, Russia and Ukraine. Article 19. February 2018. Archive - National Documentation Package, Russia, 29 March 2019, tab 6.1: Situation and treatment of sexual minorities; legislation, state protection and support services. Immigration and Refugee Board of Canada. 15 November 2013. RUS104605.E.

RAD File / Dossier de la SAR : VB9-07285 VB9-07286 RAD.25.02 (January, 2020) Disponible en français 2 Immigration and Refugee Board of Canada Refugee Appeal Division Commission de l'immigration et du statut de réfugié du Canada Section d'appel des réfugiés RAD.25.02 (January, 2020) Disponible en français

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Prepared on 28 October 2026 · Esheria