

Federal Court



Cour fédérale

Date: 20250103

Docket: IMM-1799-24

Citation: 2025 FC 19

Ottawa, Ontario, January 3, 2025

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

KASHIF BASHIR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] I am dismissing this application for judicial review. The Applicant, Mr. Bashir, came to Canada from South Korea and asked for refugee protection. The Refugee Protection Division [RPD] denied his claim. The Refugee Appeal Division [RAD] then denied his appeal.

[2] The Applicant now asks this Court to review the RAD's decision. The main question I must answer is: Was it reasonable for the RAD to decide that the Applicant did not show a well-founded fear of persecution in South Korea?

[3] I conclude that the RAD made a reasonable decision when it found that the discrimination faced by the Applicant in South Korea did not amount to persecution. The RAD adequately considered both the Applicant's personal experiences as a member of the LGBT group and the general treatment of sexual minorities in South Korea. It properly concluded that while South Korea's treatment of LGBT people is far from perfect, its democratic institutions, including police and courts, provide adequate protection.

II. Facts

[4] The Applicant was born in Pakistan. In 2005, he became a South Korean citizen and gave up his Pakistani citizenship. He lived in South Korea since 1997, where he ran his own business.

[5] The Applicant identifies as a bisexual Sunni Muslim man. He married a woman in South Korea, but did not tell her about his sexual orientation. During his marriage, he had private relationships with men and went to gay venues in South Korea.

[6] In December 2019, the Applicant was at a hotel bar in Seoul with his boyfriend. When they kissed, a Korean man confronted them and started a fight. The police came and detained the Applicant and his boyfriend. The police made disparaging remarks about their sexual orientation and foreign background. However, after watching security camera footage that

showed the Applicant and his boyfriend were victims of the assault, the police let them go without charges. The police then called the Applicant's wife and told her about his sexual orientation.

[7] Following this incident, the Applicant's wife cut off contact and left South Korea for good. His business also began to fail and he started drinking heavily. The Applicant tried to reconcile with his wife but failed. On February 14, 2020, he came to Canada and asked for refugee protection.

[8] The RPD believed the Applicant was telling the truth about his sexual orientation and experiences in South Korea. However, it found he had not proven that South Korea would fail to protect him. The RPD said that while discrimination certainly exists, the evidence did not show that South Korean authorities were unable or unwilling to protect people like him.

[9] The Applicant disagreed with the RPD's decision and appealed to the RAD. He argued that the RPD was wrong about state protection offered by South Korea and that it had not properly considered evidence showing widespread discrimination against people like him in South Korea.

III. Decision Below

[10] On January 2, 2024, the RAD dismissed the appeal. It started its investigation afresh and assessed whether the RPD made a correct decision based on all the evidence. The RAD explained that persecution, in the context of refugee protection, means that there are repeated or severe violations of human rights. It clarified that these violations must be more serious than

discrimination, as they must threaten a person's "core integrity and future existence." The RAD also noted that while smaller acts of discrimination can add up to persecution, they must show a pattern of harming fundamental human rights.

[11] When looking at state protection, the RAD said that while no country is perfect at protecting its citizens, overall the protection must work adequately in practice. Countries are generally assumed to be able to protect their citizens. To prove that a country cannot do so, applicants must offer clear and convincing evidence. The RAD noted that, in democratic countries like South Korea, even more evidence is needed because such countries usually have more and better ways to help protect citizens.

[12] The RAD found that the RPD had made a mistake by not considering all the evidence, especially about how LGBT people are treated in South Korea. Nonetheless, after the RAD did its own thorough review, it found that while LGBT people and foreigners face discrimination in many areas - like education, jobs, healthcare, media and law - this treatment did not amount to persecution in law.

[13] The RAD made this conclusion after reviewing several key facts about South Korea. First, being gay is not illegal and some laws exist to protect against discrimination. Second, the Korean courts are starting to recognize more LGBT rights, and the police do investigate violence against LGBT people. Third, the country allows pride festivals and provides police protection for them. Importantly, no major human rights organization has found that people with the Applicant's characteristics face persecution in South Korea.

[14] For the Applicant's personal circumstances, the RAD agreed that the Applicant faced discrimination, but found this was not persecution. The RAD made this conclusion because:

- 1) The Applicant had lived somewhat openly about his sexual identity in South Korea since 1997;
- 2) The Applicant often went to gay venues "all over Korea";
- 3) The Applicant could access essential services;
- 4) In the December 2019 police incident, while the Applicant faced discrimination, the police let him go after watching the video evidence; and
- 5) The Applicant's described experiences, though troubling, did not show a pattern of violations of his basic human rights.

[15] The RAD concluded that the Applicant had not shown he would face serious persecution in South Korea as a bisexual foreign-born Muslim man. He also had not proven he would face risk to his life, cruel treatment, or torture if he returned there.

IV. Issue

[16] I am asked to consider the reasonableness of the RAD's decision. The key question is whether the RAD was reasonable when it found that the Applicant's experiences in South Korea, both individually and taken together, showed discrimination but not persecution, and that South Korea could still protect him adequately.

V. Standard of Review

[17] I agree with the parties that standard of review is reasonableness, as articulated by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

VI. Legal Framework

[18] To receive refugee protection under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27, a person must show they have a well-founded fear of persecution based on subjective fear and objective evidence: *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 [*Ward*]. To prove persecution, the person must show that their basic human rights are being violated in a repeated or systematic way, and that the home country has failed to protect them.

[19] Only showing discrimination is not enough to prove persecution. In *Canada (Citizenship and Immigration) v Munderere*, 2008 FCA 84 [*Munderere*] at paras 41-42, the Federal Court of Appeal said we must look at how all the acts of discrimination add up together to see if they create a pattern of rights violations. Specifically, for these discriminatory acts to become persecution, the effect they produce together must be serious enough to make the person reasonably fear for their safety and future well-being: *Machedon v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1104 at para 55; *Akay v Canada (Citizenship and Immigration)*, 2020 FC 950 at para 23.

VII. Analysis

[20] The Applicant says the RAD's decision was unreasonable for three main reasons. First, he says the RAD did not properly consider the system-level consequences of police discrimination, and how these consequences affect South Korea's ability to protect him. Second, he says the RAD was wrong to look for evidence that all people like him face persecution in South Korea, to rely on the lack of findings of such persecutions, and to downplay his own experiences. Third, he says the RAD did not properly add up all his overall experiences with discrimination to see how they together affected him personally, and too rashly decided this was not persecution.

[21] I have carefully considered each of these arguments. I do not agree that they, together or separately, show the RAD made the alleged mistakes that would make its decision unreasonable.

A. *Police incident – The RAD appropriately found adequate state protection*

[22] I agree with how the RAD looked at the December 2019 police incident and what the RAD concluded about South Korea's ability to protect its citizens. The RAD took a balanced approach. It admitted that there were serious problems with how the police acted when they wrongly arrested the Applicant and his partner instead of their attacker, made discriminatory comments, and improperly told his wife about his sexual orientation. But the RAD reasonably found that this one incident, when examined with the other aspects of the Applicant's experience, did not provide the "clear and convincing" evidence needed to show that South Korea cannot protect its people.

[23] The RAD made a strong point about how the system ultimately did work for the Applicant. Even though the police discriminated against the Applicant at first, they quickly released him after seeing on security camera footage that he was the victim, and did not charge him with any crime. As the Supreme Court of Canada said in the case of *Ward*, this is what we mean when we say a country might not be perfect but still works well enough to protect its citizens: the mistakes surrounding the Applicant's detention were caught and promptly fixed.

[24] The RAD also looked at the bigger picture of how South Korea protects LGBT people. It found evidence that police protect pride events, investigate anti-LGBT violence, and respond to discrimination against sexual minorities. Importantly, the RAD noted that in all the Applicant's other dealings with police, they never wrongly detained him. For the RAD, this suggests the December 2019 incident was a one-time problem, not a pattern of police harassment against him or people like him.

[25] The Applicant points to the case of *Molnar v Canada Minister of Citizenship and Immigration*, 2002 FCT 1081 at para 24, to argue that this Court should only look at police responses when deciding if a country can protect its people. This is not what Canadian law says.

[26] *Hinzman v Canada (Citizenship and Immigration)*, 2007 FCA 171, a more recent decision from the Federal Court of Appeal tells us that in democratic countries like South Korea, applicants must try all reasonable ways to get protection from the state, not just from the police.

B. *Personal risk – The RAD properly examined both individual and group evidence*

[27] The Applicant says the RAD was wrong in focusing too much on whether human rights organizations have found that people like him face persecution in South Korea, and not enough on his own experiences. He points to where the RAD said “no major human rights reviewer has concluded that people of your profile generally face persecution in South Korea.” He argues this shows the RAD was too focused on proving that his whole group faces persecution, rather than looking at what actually happened to him.

[28] I disagree with this view of the RAD’s decision. When I read the RAD’s reasons, I see that it started with, and stayed focused on, the Applicant’s own experiences. The RAD looked carefully at everything that happened to him: the police incident in December 2019, his problems at work after people learned about his sexual orientation, and how both Korean and Pakistani-Korean communities pushed him away after learning about his sexual identity. The RAD used these personal experiences as the foundation for examining the risks faced by him.

[29] When the RAD mentioned that human rights organizations have not found persecution of people like the Applicant in South Korea, it did not only use this observation to make its final decision. Regarding treatment of LGBT people in South Korea, the RAD also looked at the country’s laws, how its institutions respond to discrimination, and how its society’s attitudes towards sexual minorities are changing. This is exactly what administrative decision-makers are supposed to do: look at all available evidence about risk, both personal and general. The Applicant’s framing of the RAD’s statement about the lack of findings from major human rights organizations takes it out of its broader context and treats it as a determinative consideration.

C. *Adding Up the Discrimination - The RAD reasonably found there was no persecution*

[30] I disagree with the Applicant that the RAD failed to properly add up all of his experiences with discrimination in making its conclusion. The main question here is whether the RAD correctly assessed how all these experiences combine to determine if they amount to persecution.

[31] The RAD used the correct legal test. It specifically stated that “persecution can arise through smaller cumulative acts.” This means the RAD did its analysis with the understanding that, while each incident alone might not be persecution, together they might be if they happen often enough or are severe enough to threaten someone’s basic integrity or future safety. This approach to evaluation is what the cases of *Ward* and *Munderere* require.

[32] The RAD applied this test properly. It looked at all the Applicant’s experiences and listed specific incidents of discrimination. It explicitly considered positive changes in South Korea, such as new legal protections for LGBT people, police protection of LGBT events, and courts starting to recognize LGBT rights. The RAD also paid close attention to the Applicant’s personal circumstances. It acknowledged how one problem led to another in the Applicant’s life, such as how his wife leaving him affected his business, and how discrimination in one area spread to others.

[33] In the end, the RAD reasonably decided that, even when all these experiences are considered together, they still did not show the kind of systematic violation of basic human rights that would count as persecution under Canadian law. The RAD specifically stated that, despite facing discrimination for being a member of the LGBT group, the Applicant could still do many

important activities in South Korea. He continued to run his business, received healthcare and education, and lived his life as a bisexual man by going to LGBT venues throughout Korea. This shows that while the Applicant faced real personal difficulties, these difficulties did not fundamentally threaten his safety or ability to live his life with core integrity intact.

VIII. Conclusion

[34] The RAD made a reasonable decision. Its reasons appropriately distinguished discrimination from persecution while properly examining both the Applicant's personal experiences and how well South Korean institutions worked in protecting LGBT people. The RAD accurately analyzed the relevant facts, using specific examples of how South Korea as a whole is offering more protection for LGBT groups, and key incidents from the Applicant's personal experiences of dealing with discrimination in the country. When I review the decision, I find that it logically follows from the evidence and the law.

[35] No question was proposed for certification.

IX. Postscript

[36] I wish to compliment the RAD member, Colin Anderson, on his well-written and plain language decision. He begins:

I am dismissing your appeal. In the next several pages, I will explain to you why I am dismissing it. I have attempted to write my decision in the plainest language possible to help you understand.

[37] Mr. Anderson was true to his word – producing an easily understood decision, summarizing the correct legal procedures and tests while citing no judicial authority, and

addressing the decision to the appellant, even though he was represented at the appeal. This approach promotes access to justice and is commendable.

JUDGMENT in IMM-1799-24

THIS COURT'S JUDGMENT is that the application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1799-24

STYLE OF CAUSE: KASHIF BASHIR v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 5, 2024

JUDGMENT AND REASONS: ZINN J.

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APPEARANCES:

Saim Hashmi	FOR THE APPLICANT
Kevin Spykerman	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Anwari Law Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT