

Federal Court



Cour fédérale

Date: 20250409

Docket: IMM-6461-24

Citation: 2025 FC 657

Toronto, Ontario, April 9, 2025

PRESENT: Mr. Justice Diner

BETWEEN:

**NODIR KUDRATOV
ULUGBEK KUDRATOV**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicants, Nodir Kudratov and Ulugbek Kudratov [Applicants], seek judicial review of the negative decision of the Refugee Appeal Division [RAD], which came to the same conclusion as had the Refugee Protection Division [RPD], denying the Applicants' refugee claims on the basis of an internal flight alternative [IFA] in Namangan, Uzbekistan [Decision]. I will grant their application.

I. Background

[2] The Applicants are brothers from Uzbekistan, and they claimed refugee status on the basis of an imputed political opinion. They claim that in March 2014, their other brother was extorted by the local Mahalla for speaking out against government corruption. The Mahalla is an administrative neighbourhood committee which plays a surveillance role in the neighbourhoods they govern, in addition to a semi-policing role, and a social support role.

[3] The Mahalla's Chairman [Chairman] threatened to report the Applicants' brother to the Uzbekistani National Security Service [SNB, or the state police] for his anti-government views. The brother did not fully comply with the Chairman's demands, opting to flee to Canada instead, where he was granted Convention Refugee status in 2015. The Applicants allege that the Chairman reported the brother to the SNB once he fled, and the SNB then visited the family on three occasions following the brother's departure.

[4] In 2021, problems began for the Applicants in Uzbekistan when the Principal Applicant [PA] sold a phone to someone who was subsequently arrested at the airport for having extremist Islamic content on the phone. This person told the authorities that the PA had sold him the phone with the extremist content already on it. According to the Applicants, the local police began an investigation into possible involvement in Islamic extremism and informed the Chairman.

[5] Seeing an opportunity to get back at the family for the brother's failure to pay his extortion money when he fled the country, the Applicants claim that the Chairman extorted the brothers for \$15,000 USD. The Chairman threatened them: if the Applicants did not pay the

funds, the Chairman would fabricate evidence tying them to Islamic extremism and would report them to the SNB.

[6] The Applicants maintain they went to the local police to report the extortion and a few days later, these police took the PA into custody where he claims having been beaten. The local police told him that they were the Chairman's friends, and he needed to pay the Chairman. After having held him for two days, they released the PA upon the payment of a \$2,000 bribe destined to the Chairman, with a promise to pay the outstanding amount thereafter. The Applicants then fled to Canada. Both the RPD, and subsequently the RAD, refused the Applicants' refugee claims on the basis of an IFA.

II. Analysis

[7] The Applicants raise three issues, namely that the RAD erred in finding that the Chairman (i) lacked the motivation to find the Applicants in the IFA, (ii) was not the sole agent of persecution and thus there was, contrary to the RAD finding, a nexus to the Convention ground of political opinion; and (iii) through his threatened conduct, would put their lives at risk. The reasonableness standard applies, such that the decision must be transparent, intelligible and justified (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 15 [Vavilov]).

[8] I find that the dispositive issue for the RAD was the IFA, and that the IFA finding was unreasonable. Thus, I will only address the first issue.

[9] The RAD found that the Chairman lacked the motivation to find the Applicants in the IFA. The Applicants submit that the RAD's "motivation" analysis regarding the Chairman is arbitrary, illogical, and non-transparent, in that the RAD found that the Chairman no longer has the motivation to extort the Applicants because they are no longer in Uzbekistan – yet the RAD advises them to go back to Uzbekistan. The Applicants submit this is incoherent, as the Chairman's motivation would be reignited should they return.

[10] Similarly, the Applicants contend that the RAD's conclusion that the Chairman may well harbour ongoing malice towards the Applicants is incoherent. The Applicants contend that malice constitutes motivation. They maintain that the RAD failed to explain why this malice is insufficient motivation for the Chairman to make good on his threat to report the Applicants as being Islamic extremists, given that the RAD accepts their narrative.

[11] I agree. With respect to the RAD, the Applicants never alleged that the Chairman himself would subject the Applicants to cruel and unusual treatment or punishment. The allegation put forth by the Applicants was that the Chairman would make claims of Islamic extremism to the SNB about them, which is clearly perceptible from the evidence.

[12] Indeed, the Chairman made good on his threat when he extorted the Applicants' brother in 2014 and reported him to the SNB. The SNB then, in turn, sought out the Applicants' brother.

[13] Here, the evidence demonstrated that the Chairman had gone looking for the Applicants and had visited the Applicants' family. At a minimum, the RAD should have addressed this contradictory evidence (*Askari v Canada (Citizenship and Immigration)*, 2023 FC 1318 at para

25). After all, credibility regarding the Chairman, and what actions he had taken previously – including those actions leading to their brother’s successful refugee claim – was not questioned or put into issue by either tribunal vis-à-vis the IFA.

[14] I note that it might have been possible to uphold the RAD’s Decision on the IFA issue if it held that the Chairman did not have the means to locate the Applicants. Despite mentioning means explicitly when summarizing the issues put to the tribunal (at issue #5, per paragraph 6 of the Decision), the RAD failed to undertake any means analysis. I understand that in the event that the motivation analysis would have withstood judicial review, the means analysis would have been unnecessary. Similarly, in the event that the RAD had undertaken the means analysis in conjunction with issue #5 put to it and had dealt with the Applicants’ extensive submissions on the issue, the IFA could have fallen on a determination on the lack of means. However, the RAD chose not to deal with issue #5.

[15] I note that the Applicants, within their challenge to the means finding of the RPD, put before the RAD arguments regarding the RPD’s analysis with respect to the Malhalla’s means to find them, and more specifically the Mahalla’s ability to find out about the Applicants’ hypothetical move to the IFA, given the propiska system, and the Malhalla’s involvement and/or knowledge of that process. The Applicants submitted that the Chairman could have discovered a move to another city because the Malhalla has access to records on account of deregistration for a move into another city in Uzbekistan. This is simply one way in which the RAD fell short in its analysis of the IFA, given the submissions that were put before it on appeal.

[16] This is simply one way the tribunal fell short in its IFA analysis given the written Applicants' submissions in their appeal. Given the reviewable error in the first issue raised in this judicial review, which went to the heart of the dispositive issue of the RAD (the IFA), there is no need for me to address the Applicants remaining issues.

III. Conclusion

[17] For the reasons outlined above, the Application for Judicial Review is granted. No certified question is proposed, and none arises.

JUDGMENT in IMM-6461-24

THIS COURT’S JUDGMENT is that

1. This application for judicial review is granted.
2. The matter is remitted for determination by a different officer.
3. No question of general importance is certified.
4. No costs will issue.

“Alan S. Diner”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6461-24

STYLE OF CAUSE: NODIR KUDRATOV ET AL. v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 26, 2025

JUDGMENT AND REASONS: DINER J.

DATED: APRIL 9, 2025

APPEARANCES:

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Stephen Jarvis	FOR THE RESPONDENT

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