

Federal Court



Cour fédérale

Date: 20250616

Docket: IMM-6178-24

Citation: 2025 FC 1081

Ottawa, Ontario, June 16, 2025

PRESENT: The Honourable Madam Justice Saint-Fleur

BETWEEN:

ZAHIRA AGHAMIR
ASIB MORSHIDI
NIKIN AQA MIR
RIJHAN MORSHIDI
PAIMAN MORSHIDI
IMAN MORSHIDI

Applicants

and

MINISTER OF CITIZENSHIP AND
IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is a judicial review application brought pursuant to subsection 72(1) of *Immigration and Refugee Protection Act*, SC 2001, c. 27 [IRPA]. The Applicant, Zahira Aghamir [Z.A] et al.,

contest a decision by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board, dated March 22, 2024 [Decision].

[2] The RAD upheld the decision of the Refugee Protection Division [RPD], finding the Applicants neither Convention refugees nor persons in need of protection under sections 96 and 97(1) of the IRPA as there is the availability of state protection in the Netherlands.

[3] The Applicants have not demonstrated that the RAD's state protection analysis or the conclusions it reached are unreasonable. For the reasons outlined below, the application is dismissed.

II. Background Facts

[4] The Principal Applicant [PA] and Associate Applicant [AA] separately made successful refugee claims in the Netherlands; the Minor Applicants [MA] were born in that country. The Applicants claim they fear violence from both the PA's ex-husband and the PA's own family, consisting of her brother and his wife, and the PA's grandmother.

[5] In 2006, at the age of 18, the PA was taken to Afghanistan to marry her cousin, MZA. The PA claimed that she was subjected to domestic abuse by MZA. She became pregnant and returned to the Netherlands where she gave birth.

[6] In 2008, the ex-husband, MZA, obtained a visa to the Netherlands to visit his daughter. Once in the Netherlands, MZA subjected the PA, his ex-wife, to more domestic abuse. She reported him to the Dutch authorities, who promptly deported him back to Afghanistan. The PA

claimed that after this deportation she was subjected to abuse by her family members with whom she was living.

[7] The PA divorced MZA in 2011 in the Netherlands.

[8] In 2012, she married AA and fled her family's residence to live in a shelter. She testified that she has not seen or communicated with any member of her family residing in the Netherlands, since 2012.

[9] The PA was moved by police to different shelters, residences, and apartments in public housing in different cities in the Netherlands. Notwithstanding, she claims that each time she was discovered by different members of the Afghan community in the Netherlands. According to her, these persons are affiliated with either her ex-husband or with her family.

[10] In July 2016, the PA was assaulted by unknown Afghan persons, and she was hospitalized for a week. In December 2017, the Applicants were the subject of a home invasion by two Afghan men and one woman, armed with a gun, who threatened the Applicants before leaving, and who, the PA testified, she believed were sent by her ex-husband. Immediately after the home invasion, the PA, the AA, and MA did not report the event to the police but fled to the United States of America, travelling on to Canada in January 2018, before returning to the Netherlands.

[11] In February 2018, the Applicants all returned to Canada and claimed protection in April 2018.

[12] The RPD heard the Applicants' claim over nine sittings between 2018 and 2023. In November 2023, the RPD refused the Applicants' claim. Having considered the totality of the evidence, the RPD found the Applicants had not met their burden to provide clear and convincing evidence that adequate state protection is not available to them in the Netherlands.

[13] The RAD released its decision on March 21, 2024, finding that the RPD did not err in its decision that the Applicants are neither a Convention refugee nor persons in need of protection.

III. Decision Under Review

[14] The RAD held the determinative issue is the availability of state protection in the Netherlands and concluded that the Applicants did not meet their burden of rebutting the presumption that the Netherlands can protect them.

[15] First, at the onset of its analysis, the RAD stated the fundamental principle that in the absence of a complete breakdown of the state apparatus, it should be assumed that states are capable of protecting their own citizens and specified that the test is whether the response of the state is operationally adequate (*Canada (Citizenship and Immigration) v Bellamy*, 2024 FC 166 [Bellamy]).

[16] The RAD explained that the burden of proof on the Applicants is directly proportional to the level of democracy in the state in question: the more democratic the state's institutions, the more the claimant must do to exhaust all the courses of action open to him or her. In this case, the RAD noted that the Netherlands is a constitutional monarchy with a democratically elected legislature and an independent judiciary; thus the bar is materially high.

[17] Second, the RAD concluded that state protection is operationally adequate in the Applicants' circumstances and would be available to them, particularly for the PA – as a woman fearing gender-based violence.

[18] The RAD also found that the burden rests with the Applicants to establish and demonstrate that the state protection available to them on a forward-facing basis is inadequate, which they failed to do. The RAD determined that the Applicants had availed themselves of the services of the police and of the social service apparatus. They had not, however, taken further steps to take advantage of services, open to them as Dutch citizens, to pursue their dissatisfaction with the results of the current level of protection or escalate a complaint up the chain of operations in the complex of state protection services. Thus, the RAD found that the RPD did not err; the Applicants had not exhausted the reasonable resources available to them as Dutch citizens. Nor had the Applicants met their burden of rebutting the presumption that the Netherlands is not capable of protecting them.

IV. Issue

[19] The only issue on this application is whether the RAD's decision is unreasonable.

V. Standard of Review

[20] I agree with both parties that the standard is reasonableness: (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 7, 10, 16-17, 23-25, 48-49, 53-54, [Vavilov]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 7, 39–44 [Mason]). To avoid judicial intervention, the decision must bear the hallmarks of

reasonableness—justification, transparency and intelligibility (*Vavilov* at para 99; *Mason* at para 59). A decision may be unreasonable if the decision maker misapprehended the evidence before it (*Vavilov* at paras 125–126; *Mason* at para 73). Reasonableness review is not a “rubber-stamping” exercise, it is a robust form of review (*Vavilov* at para 13; *Mason* at para 63). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

VI. Submissions

A. *Submissions of the Applicants*

[21] First, according to their submissions, the Applicants are of the opinion that the RAD correctly stated the test for state protection as the adequacy standard but misunderstood the caselaw because it applied a “serious efforts” test with regards to operational adequacy. They understand that perfection is not the standard but submit that efforts must yield actual results and that where claimants consistently sought protection and efforts were made, the actual results yielded are the most important metric. More specifically the Applicants argue that they have always gone to the police, so their willingness to approach the authorities is not at issue. They indicate that while *Bellamy* is a case about the police’s willingness to provide protection, in contrast in their case, the Dutch police showed tremendous willingness to help them. What they take issue with is their ability to protect them. They argue the RAD did not engage with their arguments that Dutch police failed to identify, arrest, charge, or try a single of the many agents of persecution and thus state protection was not operationally adequate.

[22] Second, the Applicants further argue that the RAD misread the jurisprudence relating to the relevance of police oversight organizations in the context of exhausting all reasonable avenues of protection. The Applicants submit that RAD's finding that they have not exhausted all reasonable avenues was contrary to the jurisprudence and ignored the facts. In other words, the RAD erred in determining that they did not exhaust all domestic avenues of protection available to them. According to them, the RAD misunderstood the caselaw on how police complaint mechanisms factor into the state protection analysis. In their opinion, other branches of the state protection apparatus, such as higher-level police services, the public prosecutors' officer, and the national ombudsperson, are capable of providing protection merely because they may be internal processes. They believe the jurisprudence is extremely clear that even internal agencies tasked with taking complaints on police non-action do not equate to state protection.

B. *Submissions of the Respondent*

[23] According to the Respondent, it seems that the Applicants are seeking state protection in removing the threats and eliminating the persecution altogether, but the test is that the Applicants have to demonstrate that the state cannot provide adequate protection. The Respondent submits that the RAD applied the proper test. The RAD did not unreasonably focus on the "serious efforts" made by Dutch police to protect the Applicants. Rather, the essential question of the operational adequacy of the Dutch authorities is partly grounded in the additional resources available to the Applicants as Dutch citizens.

[24] The bodies to which the RAD found the Applicants could appeal were themselves branches of the state protection apparatus: higher-level police services, the public prosecutors' office, and the national ombudsperson tasked with oversight of state protection.

[25] The Respondent argues that the Dutch police addressed the Applicants' situation in a number of different ways including by immediately deporting MZA, subsequently moving the PA from shelter to shelter, and later moving her to different venues of assisted housing in different cities. The RAD took in consideration that she further testified she was given an alarm by the authorities with which she could signal the police in case of danger, and that in this way, she contacted the police who responded multiple times. Contrary to the Applicants' arguments, there is no evidence of the Dutch police's inability to assist or protect them.

[26] The Respondent submits that the RAD did not unreasonably find that the Applicants had failed to exhaust all reasonable resources available to them in the Netherlands as Dutch citizens.

VII. Analysis

A. *The RAD's assessment of the operational effectiveness of state measures is reasonable*

[27] I find the assessment of the operational effectiveness of state measures made by the RAD to be reasonable.

[28] It is trite law that Canadian courts must presume that state protection is available in the country of origin of the refugee claimant, particularly when the state is democratic, as is the case for the Netherlands. Clear and convincing evidence is needed to rebut this presumption of state

protection (*Canada (AG) v Ward*, 1993 CanLII 105 (SCC), [1993] 2 SCR 689 at p 724 [Ward]; *Canada (Minister of Citizenship and Immigration v Flores Carrillo*, 2008 FCA 94 at paras 18, 30 [Carrillo]; *Kotai c Canada (Citoyenneté et Immigration)*, 2020 CF 233 at para 32), and it requires more than showing that state protection is not perfect or not always effective (*Canada (Minister of Employment and Immigration) v Villafranca*, 1992 CanLII 8569 (FCA), [1992] FCJ No 1189 (FCA) (QL) at para 7).

[29] The test for assessing the adequacy of state protection, requires an assessment of not only the efforts of the state, but also the effectiveness of those efforts (*Bledy v Canada (Citizenship and Immigration)*, 2011 FC 210 at para 47; cited in 2024 FC 1615). In this analysis, it is not enough to highlight the efforts made by the authorities of the country in question to ensure protection. Instead, the focus must be on the results or what is generally called the “operational adequacy” of the measures that are actually available (*AB v Canada (Citizenship and Immigration)*, 2018 FC 237 at para 19 [AB]; *Lakatos v Canada (Citizenship and Immigration)*, 2018 FC 367 at para 21; *Burai v Canada (Citizenship and Immigration)*, 2020 FC 966 at para 25 [Burai]; *Cervenakova v Canada (Citizenship and Immigration)*, 2021 FC 477 at para 26; *Whyte v Canada (Citizenship and Immigration)*, 2023 FC 1420 at para 21).

[30] The appropriate method of analysis is set out in Justice Kane’s reasons in *Moya v Canada (Citizenship and Immigration)*, 2016 FC 315 at paragraphs 73-76:

To be adequate, perfection is not the standard, but state protection must be effective to a certain degree and the state must be both willing and able to protect (*Bledy v Canada (Minister of Citizenship and Immigration)*, 2011 FC 210 at para 47, [2011] FCJ No 358 (QL)). State protection must be adequate at the operational level (*Henguva v Canada (Minister of Citizenship and Immigration)*, 2013 FC 483 at para 18, [2013] FCJ No 510

(QL); *Meza Varela v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1364 at para 16, [2011] FCJ No 1663 (QL)).

As noted by the applicant, democracy alone does not ensure effective state protection; the quality of the institutions providing protection must be considered (*Sow v Canada (Minister of Citizenship and Immigration)*, 2011 FC 646 at para 11, [2011] FCJ No 824 (QL) [Sow]).

The onus on an applicant to seek state protection varies with the nature of the democracy and is commensurate with the state's ability and willingness to provide protection (*Sow* at para 10; *Kadenko v Canada (Minister of Citizenship and Immigration)*, 1996 CanLII 3981 (FCA), [1996] FCJ No 1376 (QL) at para 5, 143 DLR (4th) 532 (FCA)). However, an applicant cannot simply rely on their own belief that state protection will not be forthcoming (*Ruszo v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1004 at para 33, [2013] FCJ No 1099 (QL)).

[31] Ultimately, the adequacy of state protection will depend on the evidence in each specific case. Sometimes state protection will be adequate, sometimes it will not (*Ruszo 2018* at para 28; *Olah v Canada (Citizenship and Immigration)*, 2016 FC 316 at para 35; *Molnar v Canada (Citizenship and Immigration)*, 2012 FC 530 at para 105).

[32] In this instance, the Dutch police addressed the Applicants' circumstances in the following ways:

- Immediately deporting her first husband MZA;
- Moving the Applicant from shelter to shelter;
- Moving the Applicant to different venues of assisted housing in different cities; and
- Giving the Applicant an alarm by the authorities with which she should signal the police in case of danger (the Applicant even testified that this system was effective insofar as many times, there were people that would come to my door. But I would press the alarm, and they would flee from that location).

[33] As pointed out by the Respondent a “heavy burden” arises to rebut the presumption when the country in question is democratic (*Odeesh v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 661 at paras 23-26, citing *Ward* at paras 52-59; *Hinzman v Canada (Citizenship and Immigration)*, 2007 FCA 171 at para 57 [*Hinzman*]; *Carrillo*). Notably, this heavy burden has been applied throughout democratic countries in Europe by this Court, including in cases of domestic violence such as in the present case (*Teofilio v Canada (Citizenship and Immigration)*, 2014 FC 783; *Cabral De Medeiros v Canada (Citizenship and Immigration)*, 2008 FC 386; *Da Costa Soares v Canada (Citizenship and Immigration)*, 2007 FC 190).

[34] In my view the Applicants failed to succeed on this point; they simply did not satisfy the heavy burden on them. It is not a case where the RAD made generalizations about the country without considering specific evidence before it, nor did the RAD refer only to efforts or good intentions without considering implementation and actual results. I am instead satisfied that, in its Decision, the RAD stated and used the correct legal test for assessing state protection. Even a cursory reading of the RAD’s reasons demonstrates that it focused not only on the efforts but also on the results of the state’s intervention. In fact, not only did the RAD state the correct test, but it also reviewed recent and relevant case law concerning state protection in the highly democratic countries similar to the Netherlands (*Bellamy*).

[35] I find that the RAD did not consider the efforts of the Netherlands to offer state protection to the Applicants, but the concrete results stemming from the steps undertaken by the Dutch government in terms of investigations, prosecutions, police effectiveness and convictions. The RAD conducted its own analysis and accepted the conclusions of the RPD.

[36] State protection need not be perfect and police are not “required to solve each and every crime”, as such, local policing failures are not adequate to rebut the presumption that state protection is available (*AB*, at paras 17-19; *Burai*, at paras 43, 58; *Mekhashishvili v Canada (MCI)*, 2021 FC 65, at para 32 and *Sokoli v Canada (MCI)*, 2018 FC 1072, at para 15).

[37] Following the last threatening event of December 2017, the Applicants fled to the United States of America and Canada within a week or so without reporting the incident to the police. They waited until they returned briefly to the Netherlands to request protection. In this instance, the RAD agreed with the RPD which found that the police had responded to the Applicants’ situation when they reported the events and threats. According to the evidence on file, even if the attackers were mostly unknown, and the Applicants could not provide police with the information needed to pursue the attackers further, the police did provide protection.

[38] Although state protection in the Netherlands was not perfect, it was operationally adequate and available to the Applicants in their particular circumstances, including protection for the PA as a woman fearing gender-based violence.

[39] The RAD noted that the RPD found there was no evidence that the Applicants were denied state protection by the authorities in the Netherlands, nor that MZA was ever admitted to the Netherlands after his deportation. Although the RAD acknowledged that the PA had been located by individuals likely associated with MZA or his family, in different cities over a period of years, the measures taken by police and government-funded organizations resulted in tangible results that directly protected the Applicants from harm. The RAD also took into consideration objective evidence in the National Documentation Package which indicated that operationally

adequate protection measures are in place to protect children from child abduction in the Netherlands, on a balance of probabilities.

[40] Therefore, I find it was reasonable for the RAD to conclude that the Applicants' circumstances and experience in the Netherlands showed an adequate and efficient response from Dutch authorities and that they have not provided "clear and convincing evidence" to demonstrate that state protection is inadequate in the Netherlands.

B. *The RAD's findings that the Applicants did not exhaust all domestic avenues of protection is reasonable*

[41] As stated by the Federal Court of Appeal in *Hinzman*, "refugee protection is meant to be a form of surrogate protection to be invoked only in those situations where the refugee claimant has unsuccessfully sought the protections of his home state" (at para 41).

[42] This Court's case law underscores that providing state protection is the responsibility of the police and not other organizations. Therefore, refugee claimants cannot be required to approach human rights commissions, ombudsmen or other similar organizations (*Zepeda v Canada (Minister of Citizenship and Immigration)*, 2008 FC 491 at paras 24–25, [2009] 1 FCR 237; *Katinszki v Canada (Citizenship and Immigration)*, 2012 FC 1326 at paras 14–15; *Aurelien v Canada (Citizenship and Immigration)*, 2013 FC 707 at para 16; *Graff v Canada (Citizenship and Immigration)*, 2015 FC 437 at paras 20–25; *Varga v Canada (Citizenship and Immigration)*, 2020 FC 102 at paras 102–103).

[43] I acknowledge RAD's references to the fact that the Applicants have not taken further steps to take advantage of services open to them as Dutch citizens in order to pursue their dissatisfaction with the results of the current level of protection they received or to escalate a complaint up the chain of operations in protection services. However, the bodies to which the RAD and RPD found the Applicants could appeal and from which additional resources were and remain available to them were themselves branches of the state protection apparatus: higher-level police services, the public prosecutors' office. This is the basis on which the RAD found that the RPD did not err, stating that the Applicants had not exhausted the reasonable resources available to them as Dutch citizens. It was open to the RAD to conclude as it did on this point.

[44] When the evidence is considered as a whole, I am not persuaded that the RAD made an error. I am not satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision (*Vavilov*, para 100).

VIII. Certified Question

[45] The Applicants are proposing the following certified question:

Is it reasonable for the RPD or the RAD to determine that state protection is adequate or operational if an applicant repeatedly sought protection from the police, who were willing to assist, but ultimately unable to deter further escalatory persecutory events and did not identify, arrest, charge, or prosecute the agents of persecution?

[46] The Applicants submit that the proposed question meets the test for certification as described by Justice Gascon in *Tesfaye* (2024): that it is dispositive of this application, transcends the interests of the Applicants and contemplates an issue of broad significance or general importance.

[47] The Respondent disagrees and argues that the proposed question does not meet the requirements to be a certified question. The facts do not give rise to support such question since there is no evidence of escalatory and persecutory events in this case.

[48] I find that the proposed certified question is neither useful nor necessary to dispose of the application for judicial review. Moreover, in light of Chief Justice Crampton's decision in *Kaur c Canada (Citoyenneté et Immigration)*, 2021 CF 1219, I am of the view that this question does not raise an issue of importance and that it is not a serious question of general importance (*Mason* at para 37 citing *Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at para 46; *Canada (Citizenship and Immigration) v Laing*, 2021 FCA 194 at para 11). I will therefore not certify this question.

IX. Conclusion

[49] For the above reasons, the RAD's Decision represents a reasonable outcome based on the law and the evidence before it. On a reasonableness standard, it is sufficient, the reasons detailed in the Decision demonstrate that the conclusion is based on an internally coherent and rational chain of analysis, and it is justified in relation to the facts and law that constrain the decision maker. This is the case here. Therefore, I must dismiss this application for judicial review.

JUDGMENT in IMM-6178-24

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. No serious question for general importance is certified.

"L. Saint-Fleur"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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