

Federal Court



Cour fédérale

Date: 20250618

Docket: IMM-7658-24

Citation: 2025 FC 1104

Toronto, Ontario, June 18, 2025

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

**ALIREZA SABERI
SHAFIQ SABERI
ALI YASER SABERI
YOUSEF SABERI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicants, a family from Afghanistan holding Russian citizenship, seek judicial review of a decision by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board, in which their claims for refugee protection were refused.

[2] For the reasons that follow, this application for judicial review will be granted. The RAD unreasonably failed to assess the Applicants' forward-facing risk of persecution in Russia on account of their ethnicity as non-Slavs and their immigration status. The matter should be remitted to a new decision-maker for redetermination.

II. BACKGROUND

A. *Facts*

[3] The Applicants are a family from Afghanistan, who are naturalized citizens of Russia. They are Shia Muslims and are of Hazara ethnicity. The Principal Applicant is Alireza Saberi. His spouse is Shafiq Saberi. Together, they have five sons:

- Mohammad Komail Saberi, age 22;
- Mohammad Saberi, age 18;
- Nasir Ahmad Saberi, age 14;
- Ali Yaser Saberi, age 10; and
- Yousef Saberi, age 3.

[4] Mohammad Komail Saberi is in immigration detention in the United States, and has not been a part of the Applicants' claim for refugee protection in Canada.

[5] The RAD granted the appeals of Mohammad Saberi and Nasir Ahmad Saberi, and found that they are Convention refugees. As such, they are not parties to this application. The RAD rejected the appeals of Alireza, Shafiq, Ali, and Yousef. They are collectively the Applicants in this application.

[6] The Saberi family fled the Taliban in 2018 and 2019, moving to Russia. Alireza had obtained a work permit there, as he had a business importing and reselling goods from China. He subsequently obtained citizenship for himself and his family. While in Russia, Alireza was extorted by the police as a result of his non-Slavic ethnicity and immigration status, being required to pay bribes to the Russian authorities in order to be allowed to work. He was additionally called a “blackhead,” a racial slur for non-Slavic individuals. The children (save Yousef, who was too young to attend) were similarly discriminated against and bullied at school for being non-Slavic and were treated as “second class citizens.”

[7] Male citizens between ages 18 and 30 in Russia are subject to one year of forced conscription. In February 2022, Russia invaded Ukraine, beginning an on-going war of aggression in the region. Although President Putin initially promised that no conscripts would be used in the conflict, this has proven untrue. Mohammad Komail, the Applicants’ eldest son, received a military summons in 2023, which prompted the Saberi family to flee Russia. They travelled through a number of countries before arriving in Canada, including the US. Mohammad Komail was detained in the US and, as noted above, remains in immigration detention in that country. Once in Canada, the Applicants made a claim for refugee protection.

[8] The Refugee Protection Division [RPD] rejected their claims. It did not consider their claims against Afghanistan, as it found that the Applicants could safely return to Russia. The RPD accepted that the Applicants had experienced discriminatory treatment in Russia, but concluded that this did not amount to persecution. The RPD also found that the prospect of compulsory military service in Russia did not amount to persecution. It found the Applicants’

claim that Alireza and his sons are at risk of being conscripted and sent to fight in Ukraine speculative. The Applicants appealed to the RAD.

B. *Decision under Review*

[9] As noted above, the RAD granted the appeals of Mohammad Saberi and Nasir Ahmad Saberi, and found that they were Convention refugees based on their current or proximate eligibility for mandatory military conscription and the likelihood that they would be sent to fight in Ukraine. The RAD rejected the appeals of Alireza, Shafiq, Ali, and Yousef. In arriving at this conclusion, the RAD found that the male Applicants would not be subject to conscription during the conflict, as Alireza was older than the upper limit of conscription age, while Ali and Yousef were young enough that it was “hard to imagine” that there would still be a conflict when they reach the years of mandatory service. As for Shafiq, the RAD noted that women are not subject to conscription.

[10] The RAD further found that the Applicants’ experiences of discrimination due to their ethnic identity and immigration status in Russia did not constitute persecution. It accepted that Alireza had been extorted by the Russian authorities and that the children (save Yousef due to his young age) had been bullied at school, but concluded that these incidents did not rise to the level of persecution. In brief reasons, the RAD found that this treatment was not persecutory because the Applicants’ “physical or moral integrity was not threatened.”

III. ISSUES

[11] The central issue to be determined in this matter is whether the RAD's decision is reasonable. In arguing that the decision was not reasonable, the Applicants makes two arguments:

1. The RAD's assessment of the systemic discrimination faced by the Applicants was deficient and unreasonable
2. The RAD arbitrarily found that the minor claimant Ali (aged 10 years) would not be at risk of future persecution

IV. STANDARD OF REVIEW

[12] The parties do not dispute that the standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [Vavilov]. In conducting a reasonableness review, a court "must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified" (Vavilov at para 15). It is a deferential standard, but remains a robust form of review and is not a "rubber-stamping" process or a means of sheltering administrative decision-makers from accountability (Vavilov at para 13).

V. ANALYSIS

A. *The RAD's assessment of the systemic discrimination issue*

[13] The Applicants submit that the RAD erred in its assessment of the systemic discrimination experienced by the Saberi family in Russia as a result of their immigration status and their non-Slavic ethnicity. As the Applicants point out, the RAD's analysis on this point was quite perfunctory, and hinged on a finding that, while the extortion and bullying the Applicants experienced may have amounted to discrimination, it did not rise to the level of persecution. The RAD stated:

I do not find these acts of discrimination to be persecution, which is defined as “sustained or systemic violation of basic human rights demonstrative of a failure of state protection.” Though the appellants were extorted by the police (actors of state protection), this extortion is not persecutory. The appellants’ physical or moral integrity was not threatened.

[14] Respectfully, I find the RAD's reasoning on this point lacks a rational chain of analysis. The RAD accepted that the Applicants experienced extortion demands from Russian police, which they had to pay in order to work. The RAD accepted that the Applicants were singled out for these extortion payments because of their ethnic and national background. In those circumstances, it was incumbent on the RAD to explain *why* this mistreatment at the hands of Russian state agents did not constitute persecution. The only explanation that the RAD provided was that the Applicants' physical or moral integrity were not threatened, but it is unclear to me how this conclusion is compatible with the acknowledgment that the harm feared by the Applicants is extortion by state officials. Extortion and bribery are crimes that, by definition, involve some combination of threats, force, and coercion: See, for example, the Black's Law Dictionary definition of extortion: “The practice or an instance of obtaining something or compelling some action by illegal means, as by force or coercion.” (Bryan A. Garner et al, eds, *Black's Law Dictionary* (St. Paul: Thomson Reuters, 2024) sub verbo “extortion”)

[15] I recognize that extortion, in itself, does not necessarily constitute persecution:

Ponnuthurai v Canada (Minister of Citizenship and Immigration), 2004 FC 819 at para 6. That said, in assessing whether extortion attempts are persecutory in nature, it is essential to consider factors such as whether those responsible for the extortion are state agents, whether the extortion attempts are repeated, and whether they have a distinct connection to a Convention ground:

Sivaraththinam v Canada (Citizenship and Immigration), 2014 FC 162 at para 68; *Gunaratnam v Canada (Citizenship and Immigration)*, 2015 FC 358; *Sathasivam v Canada (Citizenship and Immigration)*, 2016 FC 408; *Barua v Canada (Citizenship and Immigration)*, 2023 FC 56 at paras 19-21.

[16] Here, the evidence before the RAD was that the police demanded money from Alireza in the workplace because of his non-Slavic ethnicity and his national origin, and it appears that this happened with some regularity. It was these factors that the RAD was obliged to consider, and not merely whether the Applicants' moral or physical integrity were threatened. Of course, the moral or physical integrity of the Applicants are important considerations (*Juric-Civro v Canada (Citizenship and Immigration)*, 2019 FC 1044), but the mere statement that extortion attempts are not persecutory without some consideration of the context is a conclusion lacking in adequate justification: *Packiam v Canada (Citizenship and Immigration)*, 2004 FC 649 at paras 8-9.

[17] The above is dispositive of this application for judicial review. However, I will offer some brief comments on the Applicants' second submission.

B. *The RAD's consideration of mandatory military service in Russia*

[18] The Applicants also submit that the RAD erred by making speculative and arbitrary findings that the minor applicant Ali Yaser Saberi (currently aged 10), would not be at risk due to conscription into the Russian military. As noted above, the RAD found that Ali's older brothers, Mohammad and Nasir, did have a well-founded fear of persecution on the conscription issue. The difference for the RAD lay in the boys' ages and the uncertain duration of Russia's war with Ukraine. The RAD's task on this issue was a difficult one. It acknowledged that ethnic minorities in Russia appear to pay a disproportionate price for the country's military ambitions. Then, looking into an entirely uncertain future, it drew what it viewed as a reasonable line in assessing the relative likelihood that the brothers would be sent to the front lines in Ukraine. The RAD stated:

There is no evidence that the war will end soon though it cannot last for a long time either. I do not know. At best, I know that there is no end in sight in the near future. For this reason, I find that if returned to Russia, appellant MS (aged 17 years) and appellant NAS (aged 13 years) will likely be conscripted during this conflict.

However, it is difficult to imagine that appellant AYS (aged 9 years) and appellant YS (aged 1 year) will be conscripted during the same conflict. I have no evidence that the conflict would continue for approximately a decade.

[19] The Applicants argue that the line drawn by the RAD was an arbitrary one. In oral argument, the Respondent agreed that there was an element of speculation in the RAD's findings. However, the Respondent suggested that the RAD's speculation applied equally to the benefit of the older brothers, as it did to the detriment of the younger brothers. In light of the uncertainty of the Russian conflict in Ukraine, the Respondent argues that the RAD's line

drawing exercise was a reasonable one. While I can certainly understand the Respondent's position, I am not persuaded that speculative findings in support of a grant of refugee protection to some family members can salvage speculative findings relied on to deny refugee protection to other family members.

[20] In any event, my concern with this aspect of the RAD's decision is not so much its attempt to divine the future, but its assessment of the known facts related to Russia's treatment of ethnic and national minorities in its military. The RAD appropriately referred to evidence on the differential treatment of minorities in the Russian military. Given this reality, I believe it was important for the RAD to consider the likelihood that Ali Yaser would experience persecutory treatment in the military generally. More specifically, it was important to assess Ali Yaser's future conscription into the military, not only in the context of the current war, but also in the context of a regime that has almost perpetually been engaged in conflicts around the world and that, by its own admission, has imperial and territorial ambitions beyond those it is currently pursuing in its war of aggression against Ukraine.

VI. CONCLUSION

[21] For the foregoing reasons, I grant this application for judicial review and remit the matter to the RAD for redetermination. The parties did not propose a question for certification, and I agree that none arises.

JUDGMENT in IMM-7658-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The matter is remitted to a different decision-maker for reconsideration in accordance with these reasons.
3. No question is certified for appeal.

"Angus G. Grant"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7658-24

STYLE OF CAUSE: ALIREZA SABERI, SHAFIQ SABERI, ALI YASER SABERI, YOUSEF SABERI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 14, 2025

JUDGMENT AND REASONS: GRANT J.

DATED: JUNE 18, 2025

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