Federal Court  Cour fédérale

Date: 20251024

Docket: IMM-19986-24

Citation: 2025 FC 1721

Ottawa, Ontario, October 24, 2025

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

ADRIAN KALUZA
JADWIGA IGLENIEC

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Adrian Kaluza and Jadwiga Igleniec, are Polish citizens. They left Poland and claimed refugee protection in Canada based on persecution because of their Roma ethnicity. They assert a fear of nationalist and neo-Nazi groups in Poland, abuse and systemic discrimination, and a lack of trust in the Polish government, including police, to protect them.

[2] The Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB] rejected the Applicants' claim because they had not rebutted the presumption of state protection. The Applicants' appeal to the Refugee Appeal Board [RAD] of the IRB also was rejected on the same basis.

[3] The Applicants seek to have the RAD decision [Decision] set aside and their matter redetermined.

[4] The sole issue before the Court in this proceeding is whether the Decision is reasonable. There is no dispute that the presumptive review standard of reasonableness applies. To avoid judicial intervention, the challenged decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility. A decision may be unreasonable if the decision maker misapprehended the evidence before it. The party challenging the decision has the onus of demonstrating that the decision is unreasonable: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 25, 99-100, 125-126.

[5] In the circumstances presented to the Court in the parties' written material and through their oral submissions, I find that the Applicants have not met their onus of showing the Decision is unreasonable. For the reasons below, their judicial review application thus will be dismissed.

II. Analysis

[6] I find that the Decision exhibits the requisite justification, transparency and intelligibility, with the result that the Court's intervention in this matter is not warranted. The Applicants'

arguments amount to asking this Court to reweigh the evidence and arguments that were before the RAD, which is not the role of a reviewing court: *Vavilov*, above at para 125.

[7] The Applicants argue that their credibility was not in issue before both the RPD and the RAD. They submit that the RPD and RAD found the discrimination against the Applicants, and their family and friends regarding housing, education and employment, reaches persecution. Their claims were denied, however, on state protection grounds. According to the Applicants, the case comes down to whether the RAD reasonably assessed the burden of proof to rebut state protection.

[8] The Respondent counters that because the Applicants claim the general population as their agents of persecution, the RAD reasonably found that the Applicants needed to seek protection from the authorities to rebut the presumption of state protection in the case of a high functioning democracy like Poland. The Respondent does not read the certified tribunal record, the basis of claim, nor the Decision, as implicating the police as an agent of persecution.

[9] I disagree with the Respondent insofar as the Decision itself is concerned. The RAD specifically notes (at paragraph 6 of the Decision) the RPD's finding of pervasive discrimination faced by the Applicants because of their Roma identity and the RPD's identification of the agent of persecution as "Polish society as a whole, with particular concern to policing agencies, housing initiatives and educational bodies." (Emphasis added.) Noting that the latter findings were not challenged on appeal, the RAD expresses agreement with the RPD's reasons.

[10] That said, contrary to the Applicants' arguments, they are not absolved from seeking state protection simply because the state is implicated as an agent of persecution. The RAD reasonably observed, in my view, states are presumed capable of protecting their citizens, except in cases of complete state breakdown. Further, the quality of the "clear and convincing" evidence required of an applicant to rebut this presumption is directly proportionate to the level of democracy in a state: see, for example, this Court's decision in *Homenszki v Canada (Citizenship and Immigration)*, 2017 FC 948 at para 12, citing, among others, the Federal Court of Appeal's decision in *Hinzman v Canada (Citizenship and Immigration)*, 2007 FCA 171. As this Court previously has held, "simply asserting a subjective reluctance to engage the state, does not rebut the presumption of state protection": *Ruszo v Canada (Citizenship and Immigration)*, 2013 FC 1004 at para 33.

[11] The Applicants argue that it was an error for the RAD not to consider where Poland landed on the democratic spectrum, particularly at the time when they made their claims. While I do not disagree with the principle, I am of the view that the RAD indeed considered Poland's "level" of democracy: *Lakatos v Canada (Citizenship and Immigration)*, 2018 FC 367 at para 20. For example, the RAD held at paragraph 12 of the Decision: "I find that Poland is a fully functioning democracy, despite facing a few challenges in some of its democratic indicators." I find, in turn, that this is an explicit reference to the level of democracy in Poland - the RAD noted the high democratic functioning, along with some drawbacks. More to the point, I am not convinced that it is an unreasonable finding.

[12] Further, the Applicants' arguments to the effect that the RAD placed a higher burden on the Applicants because of the recent election in Poland that resulted in a seemingly more democratic government is not borne out on a holistic review of the Decision. I find that the Applicants' position on this issue is contradicted by the RAD's consideration of the national documentation package [NDP] and reliance on an earlier version. The Applicants say that the RAD erred by not considering the more recent NDP, but they have not persuaded me that the RAD's reasons for why it relied on the earlier package are unreasonable. This is an example of the Applicants' request for the Court to reweigh evidence considered by the RAD which, as mentioned, is not the Court's role on judicial review. I add that the Applicants did not pinpoint where in the NDP changes occurred relating to the state protection analysis.

[13] The Applicants submit that the RAD failed to consider the Applicants' lack of sophistication. I disagree. The RAD referred to the Applicants' argument on this point at paragraph 16 of its Decision where the RAD acknowledged the Applicants' submissions that they are unsophisticated individuals with low literacy in their language. In particular, the RAD found that there was insufficient evidence to support the Applicants' belief that they would need to complain to higher bodies (than the police) to get state protection or that they would not receive adequate support in filing and navigating such a complaint.

[14] The Applicants say that the RAD did not give proper weight to the experiences of others. I disagree.

[15] The Applicants contend that it was reasonable for them to not go to the police following an attack against the male Applicant that resulted in harm and hospitalization and, thus, it was reasonable for the Applicants to rely on the experiences of their family members and persons in a similar position. I find, however, that the RAD reasonably explained why the experiences of others were not strong enough in this case to rebut the presumption of state protection. Again, the Applicants request that the Court reweigh the evidence that was before the RAD and come to a different conclusion, something that is outside the scope of judicial review.

[16] I add that during the hearing of this matter before the Court, the Applicants' counsel made submissions about the attack against the male Applicant, the length of hospitalization, and whether there was police involvement. These submissions veered into Applicants' counsel giving evidence. For example, in response to a direct question from the Court regarding the length of the male Applicant's hospitalization, counsel indicated that the male Applicant spent ten days to two weeks in hospital. I find, however, that this length of hospital stay is not supported by the record before the Court which points to a significantly shorter stay.

[17] While the Court is sensitive to the heat of the moment and the pressures faced while answering questions during hearings, the Court strongly cautions against counsel giving evidence on behalf of their clients in the guise of arguments, particularly evidence that seemingly is not supported by, or even contradicts, the record before the Court.

III. Conclusion

[18] For the above reasons, the Applicants' judicial review application will be dismissed.

[19] Neither party proposed a serious question of general importance for certification. I find that none arises in the circumstances.

JUDGMENT in IMM-19986-24

THIS COURT'S JUDGMENT is that:

1. The Applicants' judicial review application is dismissed.

2. There is no question for certification.

"Janet M. Fuhrer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-19986-24
STYLE OF CAUSE:	ADRIAN KALUZA, JADWIGA IGLENIEC v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	SEPTEMBER 25, 2025
JUDGMENT AND REASONS:	FUHRER J.
DATED:	OCTOBER 24, 2025

APPEARANCES:

Milan Tomasevic	FOR THE APPLICANTS
Eleanor Elstub	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Barrister and Solicitor Mississauga, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT