

## CITIZENSHIP AND IMMIGRATION

### STATUS IN CANADA

Convention Refugees and Persons in Need of Protection — Judicial review of Immigration and Refugee Board, Refugee Appeal Division (RAD) decision upholding Refugee Protection Division's (RPD) decision rejecting applicants' claims for refugee protection — Determinative issue for RPD, RAD was state protection — Applicants, Ossetian minorities, Georgian citizens — Refugee claims based on fear of persecution from non-state actors on basis of their minority ethnicity, cumulative persecution — While RPD finding applicants credible, rejected claims for protection because of applicants' failure to rebut presumption of state protection — Applicants submitting: a) RAD erring by failing to consider objective country condition information regarding risk applicants facing as members of minority ethnic group in Georgia, cumulative discrimination faced amounting to persecution, inability or unwillingness of Georgian authorities to protect applicants; b) RAD failing to consider principal applicant's unwillingness to seek further state protection due to his past experiences of discrimination, failure of police to offer protection; c) RAD applying incorrect legal test for determining cumulative persecution — Principal applicant, family facing blatant discrimination over mixed ancestry due to ethnic tensions between majority Georgian ethnic group, minority Ossetian population — War between Georgia, Russia in 2008 inflaming longstanding ethnic tensions between ethnic Georgians, ethnic Ossetians — Principal applicant experiencing many problems in Georgia, including serious physical attack, which applicant reported to police — Police taking no action, advising principal applicant to stay away from village where attacked — Applicants coming to Canada in 2015 on visit, but fearing for their safety upon return to Georgia, submitted claims for refugee protection — RAD confirming RPD decision that applicants neither Convention refugees nor persons in need of protection, pursuant to *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, s. 111(1)(a) — Whether RAD failing to properly consider evidence in determining that RPD not erring in its conclusion on state protection; whether RAD failing to properly apply legal test for cumulative discrimination amounting to persecution — With respect to state protection [heading A, p. 8], RAD not erring in its finding on Georgia's level of democracy; not elevating burden of proof on applicants — RAD upholding RPD's conclusion that principal applicant not demonstrating that state protection in Georgia inadequate overall or that principal applicant exhausting course of action to him, including following up with police after attack in Georgia — While test to rebut presumption of state protection well-established, case law establishing that the more democratic state's institutions are, the more claimant having to exhaust all courses of action open thereto — Since Georgia recognized as parliamentary democracy by RPD, RAD, to rebut presumption of state protection, applicants had to demonstrate having exhausted objectively reasonable avenues to obtain state protection or that it would have been objectively unreasonable for them to do so — Thus, assessing whether applicants exhausted course of action available or demonstrated that state protection inadequate not misapplication of test for rebutting state protection — Although RAD's (RPD's) assessment in itself not misapplication of test to rebut state protection, consideration of evidence within assessment concerning country conditions unreasonable — Not reasonable course of action for principal applicant to pursue matter with police after 2015 attack — Not principal applicant's "personal belief" that police would not pursue investigation or charges; was evident in record — Evidence showing lack of operational effectiveness of state protection — Unreasonable for RAD, RPD to have concluded that principal applicant should have followed up with police — Also, RPD, RAD failing to properly consider evidence in other parts of decision assessing country conditions evidence — Therefore, unreasonable for RAD, RPD to find that principal applicant had not exhausted objectively reasonable avenues of obtaining state protection; RAD failing to properly consider country condition evidence in its decision — Furthermore, RAD erring by failing to properly apply test for cumulative discrimination

tantamount to persecution — Although RAD making references to concept of cumulative discrimination amounting to persecution, evident from decision that RAD lacking appreciation for test for cumulative discrimination amounting to persecution, failing to apply test to facts before it — Although reasonable for RAD to point out that some of events that transpired based on principal applicant's speculation involving ethnic discrimination, RAD erring by rendering itself oblivious to fact that some of examples provided were direct results of, or events linked to, previous discriminatory acts or remarks thrust upon principal applicant — Not only RAD failing to properly consider evidence regarding discrimination experienced by principal applicant, but by concluding that examples of discriminatory acts were borne out of principal applicant's "personal beliefs", RAD making no attempt to consider cumulative aspect of such discriminatory experiences — Application allowed.

Nugzarishvili v. Canada (Citizenship and Immigration) (IMM-1304-19, 2020 FC 459, Ahmed J., reasons for judgment dated March 31, 2020, 20 pp.)