

Federal Court



Cour fédérale

**Date: 20210226**

**Docket: IMM-7710-19**

**Citation: 2021 FC 182**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, February 26, 2021**

**PRESENT: The Honourable Mr. Justice Gleeson**

**BETWEEN:**

**SAKINA DRIS**

**Applicant**

**and**

**THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The applicant, Sakina Dris, is an 88-year-old Algerian citizen. Until her arrival in Canada in 2015, she lived alone in Algeria with the help of an assistant. She has a daughter, Lamia, who lives in Canada.

[2] Ms. Dris reports that in April 2015, she discovered that her assistant had stolen her bank card and withdrawn money without her permission. In May 2015, her assistant's sister came to the applicant's home and threatened and abused her. Ms. Dris stated that she intended to file a complaint with the police following this incident. Nevertheless, she did not file such a complaint believing that the police would not protect her because she was an old widow.

[3] Lamia returned to Algeria to help her mother in June 2015. She reports that, while reviewing her mother's bank accounts, she discovered that her mother's assistant had been stealing money from her since 2012. In August 2015, with Lamia's help, Ms. Dris came to Canada and, in January 2016, she made a refugee claim.

[4] There were several hearings before the Refugee Protection Division [RPD]. At the first hearing, Ms. Dris was able to answer the RPD's questions without difficulty. However, after that first hearing, Ms. Dris began to have difficulty understanding and answering questions, which is why she was eventually declared a "vulnerable person" within the meaning of the *Chairperson's Guideline 8: Procedures With Respect to Vulnerable Persons Appearing Before the IRB*. The RPD therefore appointed a representative for her. After the declaration of vulnerability, most of the details supporting the claim were provided by her daughter Lamia.

[5] The RPD rejected the claim for refugee protection, finding that Ms. Dris's and Lamia's testimony was not credible, and that Ms. Dris had not rebutted the presumption of state protection. On November 28, 2019, the Refugee Appeal Division [RAD] confirmed the RPD's

decision. Pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], Ms. Dris is challenging the RAD's decision, arguing that it is unreasonable.

[6] Ms. Dris, because of her age and cognitive difficulties evidenced during her hearing before the RPD, undoubtedly deserves compassion. Despite this, I am not persuaded that the RAD erred in determining that Ms. Dris was neither a refugee within the meaning of the *Convention Relating to the Status of Refugees*, July 28, 1951, 189 UNTS 137, nor a person in need of protection. For the reasons that follow, I find that this application must be dismissed.

## II. Decision under judicial review

[7] The RAD confirmed the RPD's decision to reject the applicant's claim. Like the RPD, the RAD found that the allegations related to the claim were not credible on four subjects. First, the RAD did not believe that Ms. Dris had actually received death threats. The account in her Basis of Claim [BOC] Form did not mention such a threat. Moreover, Lamia's testimony as to the death threats from the sister of Ms. Dris's assistant was based solely on what Ms. Dris had reported to her. Lamia first testified that she had asked the two thieves to pay back the money they had stolen, but then claimed that she had never spoken to the assistant or her sister and that they had not returned any telephone calls.

[8] Second, the RAD did not believe that a complaint had been filed with the police. The RAD agreed with the RPD's finding that Lamia had contradicted herself by initially testifying that she had spoken to the police, but later testifying that she had only spoken with a family member who was a police contact.

[9] Third, the RAD agreed with the RPD that, contrary to Lamia's testimony, the assistant and her sister would not pose a threat to the applicant should she return to Algeria.

[10] Fourth, the RAD agreed with the RPD's finding that there was insufficient credible evidence to demonstrate that the applicant would not have access to adequate care in Algeria. Lamia's explanation of the inability of Ms. Dris's brothers to help her in Algeria was not credible. Furthermore, Lamia testified that she would finance the applicant's accommodation in Algeria, and the applicant offered no evidence to show that Lamia did not have enough money for such an arrangement.

[11] Before the RAD, the applicant alleged that the RPD had failed to give sufficient consideration to the documentary evidence. The RAD rejected this argument, finding that the RPD was correct in concluding that the documentary evidence did not demonstrate that the living conditions of the elderly in Algeria met the threshold necessary to support a fear of persecution.

### III. Issues and applicable standard of review

[12] Ms. Dris submits that the RAD made two errors. First, the RAD unreasonably found that the evidence of death threats from her assistant's sister was not credible. Second, the RAD erred in assessing the documentary evidence regarding the lack of adequate institutional care for the elderly in Algeria.

[13] The applicable standard of review for an assessment of credibility is reasonableness (*Mirzaee v Canada (Citizenship and Immigration)*, 2020 FC 972 at para 46 [*Mirzaee*]). The same

standard applies to the RAD's review of the assessment of documentary evidence. A decision will be reasonable if it is "based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85).

IV. Preliminary issue: style of cause

[14] In the application for leave and for judicial review, the Minister of Immigration, Refugees and Citizenship is incorrectly named as the respondent. The style of cause must be amended to reflect that the respondent is in fact the Minister of Citizenship and Immigration (IRPA, s 4(1); *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, s 5(2)).

V. Analysis

A. *RAD's credibility findings reasonable*

[15] Ms. Dris argues that she and Lamia were credible witnesses with respect to the death threats. The applicant acknowledges that, in her testimony at the initial hearing before the RPD, she did not specify that she had received death threats. However, and contrary to the RPD's conclusion, Ms. Dris argues that she was confused at the first hearing: she did not recall the dates and had difficulty explaining the events. Accordingly, she believes that it was unreasonable to draw a negative inference about her credibility simply because she forgot to testify about the death threats, especially since her dementia was diagnosed a month after she had testified. In addition, Ms. Dris argues that it was unreasonable to require that the death threats be

corroborated by documentary evidence. Finally, she submits that it was unreasonable to reject the testimony in its entirety simply because of a contradiction in Lamia's testimony between her communications with the police and with a person working for the police.

[16] I am not persuaded that the RAD erred in its assessment of the evidence regarding the alleged death threats. It was reasonable for the RAD to rely on Ms. Dris's testimony at the first RPD hearing (including before she was declared vulnerable) in concluding that the evidence regarding the alleged death threats was inconsistent. Moreover, the RAD did not rely solely on Ms. Dris's failure to mention the alleged death threats during her testimony. The RAD further noted that the BOC Form contained no reference to the death threats, that Lamia's testimony was based solely on what Ms. Dris had told her, and that there was no documentary evidence to support the existence of the death threats. Given the inconsistencies identified by the RAD, it was possible to point to the absence of any corroborating evidence (*Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 25).

[17] Lastly, and contrary to Ms. Dris's claims, the RAD did not reject Ms. Dris's and Lamia's testimony as a whole solely because of the inconsistency regarding communications with the police. Rather, the RAD noted a series of inconsistencies and contradictions regarding various elements of Lamia's testimony. In addition, the RAD noted that her testimony was also inconsistent with the relevant documentary evidence. In the face of these inconsistencies, it was not impossible for the RAD to discount Lamia's particular evidence.

[18] Ms. Dris's disagreement with the RAD's factual assessment is not sufficient to justify this Court's intervention. Rather, on judicial review, it must be shown that the factual assessment was unreasonable (*Mirzaee* at para 46).

B. *RAD did not err in considering documentary evidence*

[19] Ms. Dris argues that the RAD did not sufficiently consider the documentary evidence when it concluded that elderly persons in Algeria are not victims of persecution. Again, I disagree.

[20] The RAD assessed all of the documentary evidence and adopted the RPD's reasoning. The RPD noted that the evidence established: (1) that there were unsanitary living conditions for the elderly in one particular nursing home; (2) that Algerians generally care for their elders at home; and (3) that people's financial means can affect the level and quality of care that the elderly receive. In the context of this evidence, the RAD noted that Lamia's testimony suggested that she would be able to fund the necessary care for her mother in Algeria if she returned there.

[21] Based on this evidence, it was entirely reasonable for the RAD to conclude, as it did, that the evidence did not support a real possibility that Ms. Dris would be subject to persecution in Algeria because of her age and medical condition.

VI. Conclusion

[22] The application for judicial review is dismissed .

[23] In making this determination, I have no doubts as to the hardship experienced by Ms. Dris and her family because of her age and health. I note that the IRPA includes alternative remedies that may be better suited to address the difficult circumstances facing Ms. Dris and her family.

[24] There is no question of general importance for certification.



**JUDGMENT in IMM-7710-19**

**THIS COURT’S JUDGMENT is as follows:**

1. The application for judicial review is dismissed.
2. The style of cause is amended to reflect the Minister of Citizenship and Immigration as the proper respondent.
3. No question is certified.

“Patrick Gleeson”

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Judge

Certified true translation  
Michael Palles, Reviser

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-7710-19

**STYLE OF CAUSE:** SAKINA DRIS v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE BETWEEN  
OTTAWA, ONTARIO, AND MONTRÉAL, QUEBEC

**DATE OF HEARING:** DECEMBER 15, 2020

**JUDGMENT AND REASONS:** GLEESON J.

**DATED:** FEBRUARY 26, 2021

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