

Federal Court



Cour fédérale

Date: 20210601

Docket: IMM-4717-20

Citation: 2021 FC 517

[ENGLISH TRANSLATION]

Ottawa, Ontario, June 1, 2021

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

**ALI, KHALID DIB
MAHAMAT, KHALID DIB**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicants, Ali Khalid Dib and his brother Mahamat Khalid Dib, are minors and citizens of Chad. Accompanied by their mother, they came to Canada in 2017 and made refugee protection claims based on their mother's claim.

[2] In the mother's refugee protection claim, she alleged fear of arrest, torture and even death if she returns to Chad. She stated that her husband, the applicants' father, is a construction contractor. Despite several requests, one of her husband's clients refused to pay his debt for the construction of a villa and conspired with the director general of the police to have her husband arrested. He was arrested and imprisoned in July 2017. She was threatened with arrest when she defended her husband and because of her Goran ethnicity.

[3] On December 9, 2019, the Refugee Protection Division [RPD] found that the applicants' mother was credible and granted her refugee protection claim. However, it denied the applicants' refugee protection claims. In particular, the RPD noted that the applicants were never threatened by their mother's persecuting agents, either before or after their father's arrest. It concluded that the applicants did not show that, if they return to Chad, there is a serious possibility that they would be persecuted on any of the Convention grounds or that, on a balance of probabilities, they would face a danger of torture, a risk to their lives or a risk of cruel and unusual treatment or punishment.

[4] On September 3, 2020, the Refugee Appeal Division [RAD] dismissed the applicants' appeal and confirmed the RPD's decision. The RAD began by noting that the RPD's role, like its own role on appeal, is not to make decisions on humanitarian and compassionate grounds or to determine the best interests of the children to remain in Canada. Rather, the RPD's role is to determine whether there is a serious possibility of persecution or whether, on a balance of probabilities, the refugee protection claimant would be exposed to cruel and unusual treatment or punishment or a danger of torture if returned to his or her country of origin. In addition, it

pointed out that the Convention refugee definition does not include the notion of family unity. Although the family is a social group, there must be a link between the persecution of one family member and the persecution of other members of the same family. It added that the principle of family unity alone cannot justify the recognition of refugee status. A refugee protection claimant must demonstrate that there is a reasonable possibility of persecution due to his or her membership in the group to which he or she refers, or for any other Convention ground. Finally, the RAD was of the view that the appeal before it was not the proper forum for determining the applicants' situation since the *Immigration and Refugee Protection Act*, SC 2001, c 27, provides other avenues for regularizing the applicants' situation.

[5] The applicant seek judicial review of that decision.

[6] The parties agree that the standard of reasonableness applies in this case. Where the standard of reasonableness applies, the Court is concerned with “the decision actually made by the decision maker, including both the decision maker’s reasoning process and the outcome” (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 83 [*Vavilov*]). It must ask whether “the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility—and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at para 99). The challenging party has the burden to demonstrate that the decision is unreasonable (*Vavilov* at para 100).

[7] The applicants raise several arguments in their memorandum, but only one is sufficient to dispose of the application for judicial review.

[8] It is recognized that the fact one family member has been persecuted does not make all other family members refugees. However, the Court finds that the RAD's decision is unreasonable because it ignores the objective documentary evidence the applicants filed regarding the risk they raised in their refugee protection claim that was unrelated to their mother's claim. In their refugee protection claims, the applicants alleged that they feared being targeted by child traffickers operating in Chad. They repeated this on a few occasions. The applicants' mother also mentioned that she was afraid for the applicants if they are to return to Chad because of the theft of children. She also testified that the applicants had only her in Chad.

[9] The RAD does not appear to have considered this risk or the objective documentary evidence presented in this regard as its reasons make no mention of it. It was not sufficient for the RAD to rely on the fact that the applicants could regularize their situation, either by applying on humanitarian and compassionate grounds or by being included in their mother's application for permanent residence as dependent children.

[10] While a decision maker is not required to refer to all of the arguments or evidence presented by a party (*Vavilov* at para 128; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16) and that deference is due to RAD decisions, the Court finds that the failure to adequately address this risk results in a

decision that is not justified in light of the relevant factual and legal constraints as required by *Vavilov*.

[11] For these reasons, the application for judicial review is allowed. The decision is set aside, and the matter is referred back to the RAD for reconsideration by a differently constituted panel.

[12] No questions of general importance have been submitted for certification, and the Court finds that none are raised by this case.

JUDGMENT in IMM-4717-20

THIS COURT’S JUDGMENT is as follows:

1. The application for judicial review is allowed.
2. The Refugee Appeal Division decision rendered September 3, 2020, is set aside.
3. The case is referred back to the Refugee Appeal Division for reconsideration by a differently constituted panel.
4. No question of general importance is certified.

“Sylvie E. Roussel”

Judge

Certified true translation
Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4717-20

STYLE OF CAUSE: KHALID DIB ET AL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

DATE OF HEARING: MAY 31, 2021

JUDGMENT AND REASONS: ROUSSEL J.

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