

Federal Court



Cour fédérale

Date: 20220718

Docket: IMM-5258-21

Citation: 2022 FC 1058

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 18, 2022

PRESENT: Mr. Justice Pamel

BETWEEN:

RACHID CHERGUI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Mr. Rachid Chergui, is a citizen of Algeria who claimed refugee protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act]. In his original “Basis of Claim Form” [original BOC Form], Mr. Chergui stated that he feared persecution for participating in the Movement for the Self-Determination of

Kabylia [MAK] and for not practising Islam. Mr. Chergui later amended his BOC Form [amended BOC Form] to include details of his increased involvement in the MAK and to acknowledge that he had submitted a false document describing an alleged attack on him by his neighbour because of his lack of religious beliefs. Mr. Chergui is seeking judicial review of a decision rendered by the Refugee Appeal Division [RAD] on July 12, 2021, in which the RAD, like the Refugee Protection Division [RPD], found that Mr. Chergui's claims were not credible because of omissions, contradictions and inconsistencies between his original BOC Form, his amended BOC Form, his testimony and the evidence.

[2] Mr. Chergui submits that the RAD failed to apply the proper test with respect to section 96 of the Act and erred in its analysis of whether he would be persecuted by reason of his ethnic origin, political opinion or lack of religious beliefs if he were to return to Algeria. However, the determinative issue for the RPD and the RAD was Mr. Chergui's credibility.

[3] For the reasons that follow, I am of the view that the application for judicial review should be dismissed.

II. Background

[4] Mr. Chergui, 48, was born in Boghni, Kabylia, a region of Algeria that is claimed by a Kabyle independence movement. Mr. Chergui states that he has been an MAK activist since 2015. He states that he had to flee Algeria without his wife and eight-year-old son because of his political opinion and because he does not practise any religion.

[5] Mr. Chergui arrived in Canada on January 27, 2018, using a visa for which he allegedly paid a smuggler \$2,500. He filed his refugee protection claim a number of months after his arrival in Canada, in late July 2018. In his original BOC Form, Mr. Chergui states that he fears persecution for religious and political reasons, since he is an MAK sympathizer. He states that he participated in several protest marches and contributed to the MAK by supplying its members with fruits and vegetables from his shop. Mr. Chergui also states that he was shunned by his family and the people of his village because he does not practise Islam. He claims that he was not allowed access to the family's olive and cherry trees and that, unlike his brothers, he was not allowed to cultivate his father's land. Mr. Chergui states that he got into a fight with a neighbour on June 2, 2017, over a religious issue. He allegedly received a blow to the face that broke his nose, and he spent four days in hospital. Also in his original BOC form, Mr. Chergui claims that he filed a complaint against this neighbour with the police on June 22, 2017, and that the neighbour was given a six-month suspended prison sentence at a trial on August 24, 2017, but continued making death threats against Mr. Chergui.

[6] Mr. Chergui later amended his BOC Form. In the amended BOC Form, he states that he filed a complaint against his neighbour with the police on June 6, 2017, when he was discharged from hospital. However, his neighbour never went to trial because Mr. Chergui agreed to withdraw the complaint after the police summoned him on June 22, 2017. He acknowledges that he made a misrepresentation [TRANSLATION] "to have a better chance"; Mr. Chergui states that he is sorry. At the hearing before the RPD, Mr. Chergui acknowledged that the copy of the judgment sentencing his neighbour to six months in prison that he had submitted as evidence was not genuine. He thought that that exhibit would help him obtain refugee status. He also added

details in his amended BOC Form regarding his participation in the MAK. He states that the police intervened when he took part in MAK protest marches, bludgeoning participants, using high-pressure water jets on them and threatening to put them in prison. He further states that, after arriving in Canada, he participated in protests in front of the Consulate of Algeria in Montréal on April 21, 2018, and April 20, 2019, as a member of the North American MAK-Anavad coordination.

[7] The RPD rejected Mr. Chergui's refugee protection claim because of significant contradictions and omissions between his original BOC Form, his amended BOC Form and his testimony at the hearing. First, the RPD concluded that, on a balance of probabilities, Mr. Chergui was a mere sympathizer of the MAK. At the hearing, he gave details that were not in his original BOC Form: he claimed to have put up posters, driven MAK sympathizers and been pressured and intimidated by Algerian security services at a protest in April 2017. Second, the RPD found that Mr. Chergui had sought to change what was central to his refugee protection claim by amending his BOC Form to focus more on his fear of the authorities and less on his fear of his neighbour. Mr. Chergui further stated in his testimony that this neighbour was a Salafist and police informant, information that is also central to the basis of his refugee protection claim. The RPD found that this omission from his BOC forms undermined his credibility with respect to his allegations regarding his neighbour and the Algerian police. The RPD also concluded that Mr. Chergui's admission in his testimony that he had submitted a false judgment seriously undermined his credibility with respect to his allegations in general. In addition, the RPD considered the fact that Mr. Chergui did not claim refugee protection until late July 2018, more than six months after he arrived in Canada. The RPD found this behaviour to be inconsistent

with that of people who fear for their lives. Lastly, given these significant credibility issues, the RPD gave no probative value to the exhibits filed by Mr. Chergui.

[8] The RAD concluded that Mr. Chergui failed to establish that he would face a serious risk of persecution by reason of his membership in the MAK because he omitted details of his participation in the MAK in his original BOC Form and amended BOC Form and because he failed to mention that he had participated in the April 2017 protest. However, the RAD found that the RPD had erred in its analysis of the certificate signed by the former MAK president stating that Mr. Chergui had been an active member from January 2015 to January 2018. Nevertheless, this error was not determinative because the certificate was not sufficient to overcome Mr. Chergui's credibility issues. The RAD then stated that the RPD had not supported its conclusion that Mr. Chergui did not have the profile of a person likely to be targeted by the Algerian authorities. However, after reviewing the objective documentary evidence and substantiating its analysis in its reasons, the RAD concluded that Mr. Chergui had failed to demonstrate that MAK activists are subjected to harassment or repression amounting to persecution in Algeria or that their fundamental rights are systematically violated.

[9] Mr. Chergui also argued before the RAD that the RPD had been biased. The RAD concluded that the RPD had not breached the principles of procedural fairness, since a reasonable and right-minded person would conclude, after a realistic and practical analysis, that the RPD did not demonstrate bias at the hearing. Mr. Chergui is not disputing this conclusion in the context of this judicial review.

III. Issue and standard of review

[10] The only issue in this case is whether the RAD's decision is reasonable. Specifically, Mr. Chergui submits that the RAD erred in its assessment of the applicant's credibility, that it made an unreasonable assessment, that it erred in law in applying the test for a reasonable fear of persecution, and that it failed to consider all of the grounds for the applicant's fear.

[11] I agree with the parties that the findings of the RAD should be reviewed on a reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17 [*Vavilov*]). The role of the Court is therefore to assess the RAD's decision and determine whether it is based on “an internally coherent and rational chain of analysis” and whether the decision as a whole is transparent, intelligible and justifiable (*Vavilov* at paras 85–86).

IV. Analysis

[12] Mr. Chergui acknowledges that the time it took him to claim protection may be an element to be considered by the RAD, but states that this element is not determinative in this case. In any event, one of the determinative issues before the RAD was whether Mr. Chergui was a protester as opposed to a mere sympathizer of the MAK. Moreover, he challenges the fact that the RAD does not believe he put up posters for the MAK and that he transported people to rallies, because these claims did not appear in his original BOC Form.

[13] Although Mr. Chergui acknowledges that the test of reasonableness does not easily allow the Court to review the RAD's findings on this issue, he believes that the problem lies in the RAD's analysis of his involvement with MAK-Anavad since his arrival in Canada. In this

regard, Mr. Chergui submits that the RAD failed to consider in its analysis the documentary evidence he submitted and some of his testimony. Mr. Chergui submitted several photos of himself participating in marches in support of the Kabylia independence movement in Canada and a document attesting that he has been a member of the North American MAK-Anavad coordination since his arrival in Canada in 2018. Mr. Chergui stated before the RAD that a person from the Algerian consulate had insulted the protesters and that people inside the consulate had filmed them.

[14] The RAD considered this evidence and drew the following conclusion:

[52] The appellant alleges that he has been involved in the MAK while he has been in Canada. When the RPD asked him what his role was in the Montréal protests, he testified that he marched but did not speak, and that he helped organize it by distributing vests, banners and flags. The appellant did not allege that he was targeted in any way whatsoever after his arrival or that he had been identified by the Algerian authorities. His situation in Canada does not change my analysis of his risk.

[Emphasis added.]

[15] I accept the possibility that Mr. Chergui demonstrated with the MAK using flags and that people in Algeria could have been imprisoned for similar acts. I accept his testimony that he was filmed while participating in protests in Canada. However, there is no evidence that Mr. Chergui is being targeted by the Algerian authorities, either in Canada or in Algeria, for any involvement in the MAK. Moreover, the RAD concluded that the MAK-Anavad attestation was not drafted on the official letterhead of that organization, which raises doubts about its authenticity, and that in any case, the document merely corroborates the claim that Mr. Chergui was a member of MAK-

Anavad and does not specify his role in the organization. I see nothing unreasonable in the RAD's conclusions about these issues.

[16] Mr. Chergui submits that the RAD failed to apply the proper test with respect to section 96 of the Act and that it erred in its analysis of whether he would be persecuted by reason of his ethnic origin or his political or religious opinion if he were to return to Algeria.

[17] Section 96 of the Act provides that a Convention refugee is a person who has a "well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion" and is unable or unwilling to avail himself of the protection of their country. Mr. Chergui states that the RAD failed to [TRANSLATION] "rule clearly" on what undermined the credibility of his refugee protection claim before concluding that he had failed to establish a serious risk of persecution by reason of his membership in the MAK. He states that the RAD did not [TRANSLATION] "rule on that allegation by the applicant but rather [concluded] that not all MAK activists face persecution". I am of the opinion that the RAD substantiated its conclusions in detail as to what undermined the applicant's credibility.

[18] With regard to the RAD's conclusion that MAK activists may experience harassment and discrimination in Algeria but are not being persecuted by the Algerian authorities, Mr. Chergui submits that the RAD erred in its analysis by applying too high a standard that requires a demonstration of ongoing government repression for persecution to exist. The RAD stated that the test for establishing a serious risk of persecution is not whether the applicant faces a greater risk than any other person in the country "but rather whether the broadly based harassment or

abuse is sufficiently serious to substantiate a claim for refugee protection.” Mr. Chergui cites a resource published by the Immigration and Refugee Board of Canada [IRB] that reads, “To be considered persecution, the mistreatment suffered or anticipated must be serious”. To determine the seriousness, one must examine “what interest of the claimant might be harmed” and “to what extent the subsistence, enjoyment, expression or exercise of that interest might be compromised”.

[19] I am of the opinion that this is exactly the test used by the RAD in its analysis:

[53] To establish the serious risk of persecution he allegedly faces, the appellant can refer to the way in which people in a similar situation are treated in Algeria. In the context of claims derived from situations of generalized oppression, the issue is not whether he is more at risk than anyone else in his country, but rather whether the broadly based harassment or abuse is sufficiently serious to substantiate a claim for refugee protection. Cumulative acts of discrimination or harassment can in some cases constitute persecution. The risk of a serious possibility of persecution must be assessed on a case-by-case basis, taking into account the degree of seriousness of the harm, its repetition or persistence, and whether the cumulative acts of discrimination amount to persecution. Persecution can also be defined as a sustained or systemic violation of basic human rights demonstrative of a failure of state protection.

[Emphasis added.]

[20] Mr. Chergui goes on to quote a few passages from the National Documentation Package regarding arrests and mistreatment of activists by the Algerian authorities. The RAD considered the objective documentary evidence, noting that the Kabyle independence movement was repressed by the Algerian authorities but concluding that this repression did not amount to persecution:

[55] As the appellant alleged, the documentary evidence describes several incidents of violence and arrests in 2017 by the authorities following protests, perpetrated against members of the MAK, whose members are often arrested, detained, questioned and searched. They can be harassed by the Algerian authorities and can be subjected to surveillance, arbitrary arrest and threats. Some of their activities can be prohibited and violently repressed by the police.

...

[59] Based on my analysis of the evidence filed by the appellant, I note that MAK activists can face forms of government repression like arbitrary arrest, but these acts do not prevent them from exercising their right to protest. They are even supported by a broader population that challenges government actions. Although these arrests are concerning from a human rights perspective, I cannot conclude that the government repression cumulatively amounts to persecution.

...

[64] After an exhaustive analysis of the evidence, I conclude that the appellant did not establish that MAK activists are subjected to acts of harassment that cumulatively amount to persecution or that their basic human rights are violated in a sustained or systemic manner, that they can be subjected to harassment that does not amount to persecution, or that they are arbitrarily detained or mistreated by the Algerian authorities through serious acts or an accumulation of acts that constitute a major violation of their basic rights.

[21] Mr. Chergui states that arbitrary arrests constitute persecution within the meaning of the Convention, and the denial of freedom is a violation of basic rights. There is no need to require an “accumulation” of these violations. Moreover, the RAD would require too much evidence, showing that all members of the group are persecuted.

[22] I am not persuaded by Mr. Chergui’s argument. The RAD must consider cumulative acts of discrimination or harassment. In fact, the IRB also states that “[a] given episode of

mistreatment may constitute discrimination or harassment, yet not be serious enough to be regarded as persecution”. I am of the opinion that the RAD considered the cumulative acts of harassment and discrimination and gave detailed reasons for its analysis on this point.

[23] In short, Mr. Chergui submits, without any evidence that he is wanted by the Algerian authorities, that the possible risk he now faces in Algeria for protesting with the MAK in Canada using flags constitutes persecution under section 96 of the Act. I simply cannot agree with this statement. In short, having analyzed the documentary evidence, the RAD concluded that the evidence did not corroborate Mr. Chergui’s allegations regarding the treatment of MAK activists at the hands of the Algerian authorities. I see nothing unreasonable about that conclusion.

[24] In reviewing a *sur place* claim based on political activities in Canada, the RAD must determine whether, on a balance of probabilities, “the alleged activities (i) would become known to the agent of persecution ... and (ii) would evoke a negative response upon the applicant’s return by the agent of persecution” (*Woldemichael v Canada (Citizenship and Immigration)*, 2020 FC 655 at para 33; *Ngongo v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 8885 (FC)). Since Mr. Chergui did not establish that any photographs or videos were brought to the attention of the Algerian authorities or that the Algerian authorities would have the ability or interest to identify him, I am of the opinion that the RAD’s conclusion on this point is not unreasonable.

[25] Lastly, Mr. Chergui submits that the RAD makes no mention of his fear of persecution based on the fact that he is an atheist and does not follow the principles of the Muslim religion in

a deeply conservative country. However, Mr. Chergui changed the allegations in his amended BOC Form to focus on allegations of persecution based on political opinion. The RAD concluded that these changes to important elements central to his refugee protection claim undermined his credibility. Again, I am not persuaded that this conclusion is unreasonable.

V. Conclusion

[26] I will dismiss the application for judicial review.

JUDGEMENT in IMM-5258-21

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. No question is certified.

“Peter G. Pamel”

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5258-21

STYLE OF CAUSE: RACHID CHERGUI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE

DATE OF HEARING: MAY 18, 2022

JUDGMENT AND REASONS: PAMEL J

DATED: JULY 18, 2022

APPEARANCES:

Stéphanie Valois FOR THE APPLICANT

Patricia Nobl FOR THE RESPONDENT

SOLICITORS OF RECORD

Stéphanie Valois, Counsel FOR THE APPLICANT
Montréal, Quebec

Attorney General of Canada FOR THE RESPONDENT
Montréal, Quebec