

Federal Court



Cour fédérale

**Date: 20230405**

**Docket: IMM-2890-22**

**Citation: 2023 FC 458**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, April 5, 2023**

**PRESENT: The Honourable Madam Justice St-Louis**

**BETWEEN:**

**SMAIL CHERIFI, MOHAMED RACIM  
CHERIFI, MOHAMED AMINE CHERIFI,  
SIRINE CHERIFI, LYNDA LOUNES**

**Applicants**

**and**

**THE MINISTER OF IMMIGRATION,  
REFUGEES AND CITIZENSHIP**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] The applicants, Smail Cherifi, his wife Lynda Lounes and their three minor children, all Algerian citizens, are seeking judicial review of the decision by the Refugee Appeal Division [RAD] issued on March 11, 2022. The RAD dismissed the appeal the applicants had filed against

the Refugee Protection Division [RPD] decision and confirmed that the RPD had correctly found that they were not Convention refugees or persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Immigration Act].

[2] Briefly, in its decision, the RAD found that (1) the RPD did not breach procedural fairness or natural justice; and (2) the applicants did not establish a subjective fear of persecution, which is fatal to their refugee protection claim under section 96 of the Immigration Act.

[3] Before the Court, the applicants argue that the RAD (1) did not review the principal applicant's situation according to the requirements of the Immigration Act and (2) did not properly examine the existence of a subjective fear. They therefore ask the Court to set aside the RAD decision and refer the matter back for redetermination by a differently constituted panel.

[4] For the reasons that follow, I conclude that the applicants have not met their burden of showing that the RAD decision is unreasonable and that the Court's intervention is warranted. I will therefore dismiss the application for judicial review.

## II. Background

[5] In 2016, the principal applicant received a multiple-entry visitor visa from the Canadian authorities, valid for 10 years. Ms. Lounes and their three children then each also received a Canadian visitor visa.

[6] On June 30, 2019, the applicants entered Canada as visitors. On August 20, 2019, Ms. Lounes and her daughter returned to Algeria, and on September 18, 2019, they re-entered Canada.

[7] On October 23, 2019, the applicants claimed refugee protection in Canada. They alleged a fear of being persecuted by the authorities of their country and by the Algerian public because Mr. Cherifi is an atheist. Ms. Lounes added that she fears her brother, who does not accept her husband's atheism.

[8] The applicants relied on the narrative that Mr. Cherifi included with his Basis of Claim [BOC] form. In it, Mr. Cherifi noted that he had been an atheist for a long time but kept it secret. He added that he had gotten involved and become a public figure and that, at one point, the Algerian intelligence service had become interested in him considering his public profile. According to Mr. Cherifi's narrative, they found some books about atheism that Mr. Cherifi had on his desk during a tax audit. Mr. Cherifi also stated that on June 19, 2019, he received a call from the Gendarmerie Brigade to become part of a government committee, but instead, he decided to join the HIRAK on the opposition side. In reaction to Mr. Cherifi's refusal, the Brigade officer mentioned his books on atheism and pressured him, and the intelligence service allegedly invited him for a meeting on June 19, 2019. He therefore left Algeria with his family on June 30, 2019.

[9] According to the narrative enclosed with Mr. Cherifi's BOC form, on August 17, 2019, Mr. Cherifi's father-in-law received an anonymous phone call indicating that his daughter was in

danger. His father-in-law then had a stroke, and on August 20, 2019, Ms. Lounes made an emergency return to Algeria with her daughter. While in Algeria, in August 2019, Ms. Lounes allegedly received threats from her brother and was visited by officers at her home. On September 18, 2019, Ms. Lounes returned to Canada with her daughter.

[10] On November 16, 2021, the RPD rejected the applicants' refugee claim. The RPD concluded that the applicants were not credible and, as a result, they were unable to establish the merits of their allegations on a balance of probabilities. The RPD noted that the applicants did not raise section 97 of the Immigration Act and that the evidence did not give rise to its application. The RPD therefore analyzed the application under section 96 of the Immigration Act in regard to religion and noted that the determinative issue was credibility. The RPD examined (1) the contradictions and omissions regarding the threats involving Mr. Cherifi's atheism; and (2) Ms. Lounes's vague testimony, contradiction and return to her country.

[11] In summary, the panel determined, on a balance of probabilities, that the contradictions, omissions and inconsistent behaviour seriously undermined the overall credibility of the allegations. As a result, the panel considered that the applicants were generally not credible and concluded that they had not established, on a balance of probabilities, the truth of their allegations. The RPD noted that its conclusions applied to the claims of the minor children since their claims were based exclusively on that of the principal applicant. Moreover, considering the panel did not believe the principal applicant's alleged problems caused by his atheism, the panel was not convinced, on a balance of probabilities, that he was an atheist.

[12] The applicants appealed the RPD decision to the RAD, alleging that the RPD erred in fact and in law and violated the principles of natural justice and procedural fairness. They essentially raised (1) the lack of reasons or imperfect reasons for the decision and (2) disregard for the evidence.

[13] The RAD dismissed the appeal. In its decision, the RAD first considered that the documents the applicants filed and presented as new evidence were not new and therefore refused to grant them the hearing they were seeking before the RAD. It concluded that (1) the RPD had not breached procedural fairness or natural justice, specifically with regard to the generic allegations of bias brought against the RPD, an applicant's right to be heard and the reasons for the RPD decision; and (2) the applicants had not established a subjective fear of persecution, which was fatal to their claim under section 96 of the Immigration Act.

[14] In relation to the lack of subjective fear of persecution, the RAD accepted that the applicants' fear materialized on August 17, 2019, rather than June 30, 2019. However, the RAD noted (1) the applicants' delay in filing their claim for refugee protection and the return to the country of alleged persecution; (2) the officers' going to the applicants' home in Algeria while Ms. Lounes was there; and (3) Ms. Lounes and her daughter's delay in leaving Algeria. The RAD concluded that the applicants had not established a subjective fear of persecution based on the various elements of their conduct, including Ms. Lounes and her daughter's return to Algeria, the country of persecution; the RAD gave this factor significant weight.

### III. Discussion

[15] Before the Court, the applicants submit that the standard of reasonableness applies. They submit that the RAD erred because it (1) did not review Mr. Cherifi's situation in accordance with the requirements of the Immigration Act; and (2) did not properly examine the existence of Mr. Cherifi's subjective fear.

[16] The applicants submit that the RAD did not review the principal applicant's situation under the requirements of the Immigration Act because it combined the fears of the two adult applicants, did not verify whether the spouses endangered themselves for their spouse's shortcomings and did not consider family loyalty in the assessment of behaviour that was inconsistent with a subjective fear.

[17] They add that the RAD did not properly review whether a subjective fear existed since the RAD did not doubt that Mr. Cherifi was an atheist and the objective evidence supports his fear related to his atheism and since the RAD did not explain how the delay in leaving led to the finding that there was no subjective fear. They ask the Court to set aside the RAD decision and refer the matter back for reconsideration by a differently constituted panel.

[18] The Minister essentially responds that the RAD decision is reasonable.

[19] It is not disputed that the applicable standard of review is reasonableness. Since *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 CSC 65 [Vavilov], the framework for judicial review of the merits of an administrative decision has been based on the presumption that reasonableness is the applicable standard in all cases (Vavilov at para 16). None of the parties is challenging that reasonableness is the applicable standard in this case.

[20] When the applicable standard is reasonableness, the role of the Court is to examine the reasons the administrative decision maker provided and determine whether the decision is based “on an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85). The Court must determine “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, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47, 74 and *Catalyst Paper Corp v North Cowichan (District)*, 2012 SCC 2 at para 13).

[21] It is important to recall that, when a decision is reviewed on a standard of reasonableness, it is not up to the Court to reassess and reweigh the evidence submitted by the applicant at the refugee claim stage (*Singh v Canada (Citizenship and Immigration)*, 2019 FC 727 at para 10 citing *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59; *Bhatti v Canada (Citizenship and Immigration)*, 2021 FC 1386 at para 36). The issue is whether it was reasonable for the RAD to conclude as it did.

[22] As noted by the Minister, in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, the Supreme Court of Canada confirmed that claimants’ fear of persecution has two components: claimants must establish a subjective fear of persecution should they return to their country of nationality, and they must also show that the fear is well-founded in an objective sense. The subjective component is met when the claimants show that, in their minds, they genuinely fear persecution should they return to their country of nationality.

[23] In this case, the RAD considered that the fear had crystalized on August 17, 2019. It noted that, after that date, despite their alleged fear, (1) Ms. Lounes and her daughter returned to the country of persecution; (2) they delayed leaving the country of persecution even after threats by Ms. Lounes's brother and the officers' visit; and (3) once Ms. Lounes and her daughter had returned to Canada, the applicants delayed claiming refugee protection.

[24] The Court's case law confirms that the RAD can assess and conclude that, in light of the behaviour of the applicants, a subjective fear was not shown. To do so, the panel may consider applicants' travel, their efforts to find another job, their attempts to obtain state protection, or the time between the crystallization of the fear and their departure from their country or their claim for protection (*Badihi v Canada (Citizenship and Immigration)*, 2017 FC 64 at para 12; *Rivera v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1292 at para 29; *Chelaru v Canada (Citizenship and Immigration)*, 2012 FC 1535 at para 30; *Garcia v Canada (Minister of Citizenship and Immigration)*, 2012 FC 412 at paras 19–20).

[25] It was therefore reasonable for the RAD to examine the applicants' behaviour and, considering the facts and the evidence, it was also reasonable for the RAD to conclude that Ms. Lounes's behaviour and that of her husband were inconsistent with a subjective fear.

[26] As noted by the Minister, in this case, the RAD clearly detailed all the reasons that led it to conclude that the applicants did not establish a subjective fear of persecution; it noted the delay in claiming refugee protection, the return to the country of alleged persecution and the time



spent in that country. The applicants may certainly have wished for a different outcome, but they did not show that the inferences the RAD drew were unreasonable.

[27] Lastly, the argument that the RAD erroneously combined the fears of husband and wife does not seem valid because the record confirms that the allegations made by Ms. Lounes were based on those of her husband and that her fear of her brother was actually also caused by her husband's atheism.

[28] The RAD decision bears the hallmarks of reasonableness, namely, justification, transparency and intelligibility, and it is justified in relation to the relevant factual and legal constraints that bear on it. The Court's intervention is not warranted.

**JUDGMENT in IMM-2890-22**

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

1. The application for judicial review is dismissed.
2. No question is certified.
3. No costs are awarded.

“Martine St-Louis”

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Judge

Certified true translation  
Elizabeth Tan

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

**DOCKET:** IMM-2890-22

**STYLE OF CAUSE:** SMAIL CHERIFI, MOHAMED RACIM CHERIFI,  
MOHAMED AMINE CHERIFI, SIRINE CHERIFI,  
LYNDA LOUNES v THE MINISTER OF  
IMMIGRATION, REFUGEES AND CITIZENSHIP

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** FEBRUARY 21, 2023

**JUDGMENT AND REASONS:** ST-LOUIS J.

**DATED:** APRIL 5, 2023

**APPEARANCES:**

Alain Vallières FOR THE APPLICANTS

Annie Flamand FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Alain Vallières FOR THE APPLICANTS  
Montréal, Quebec

Attorney General of Canada FOR THE RESPONDENT  
Montréal, Quebec