

Federal Court



Cour fédérale

Date: 20240527

Docket: IMM-3999-23

Citation: 2024 FC 802

[ENGLISH TRANSLATION]

Ottawa, Ontario, May 27, 2024

PRESENT: Mr. Justice Régimbald

BETWEEN:

HOUSSEYN BOUSSAIDI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant is a citizen of Algeria. He seeks judicial review of a decision of the Refugee Appeal Division [RAD], dated March 16, 2023, dismissing his appeal and confirming a decision of the Refugee Protection Division [RPD], dated October 13, 2022, rejecting his claim for refugee protection. The RAD found that the applicant was neither a Convention refugee nor a

person in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The RPD questioned the credibility of some aspects of the applicant's file and concluded that he had failed to rebut the presumption of Algerian state protection. The RAD dismissed the applicant's appeal and confirmed the RPD's decision that the applicant had failed to rebut the presumption of Algerian state protection.

[3] For the reasons that follow, the application for judicial review is dismissed. The RAD's decision is clear, justified and intelligible in relation to the evidence submitted (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8 [*Mason*]; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]). The applicant has failed to discharge his burden of demonstrating that the RAD's decision was unreasonable.

II. Background

[4] The applicant, Housseyn Boussaidi, is a citizen of Algeria. He is seeking refugee protection in Canada, claiming that he fears his brother, Mohammed Elhadi Boussaidi, if he were to return to Algeria.

[5] The applicant alleges that he fears his brother, who has been arrested and convicted by the Algerian authorities a number of times since the age of 16. The applicant's brother blames him for refusing to help pay for a lawyer to defend him and for refusing to pay a fine, which

resulted in his detention in 2018. The applicant later learned from his parents that, during one of their visits to see the brother in prison, the brother had told them that he wanted to kill the applicant. The applicant also has a text message, presented as evidence before the RAD, confirming the brother's desire for revenge.

[6] Alleging that he feared for his life, the applicant applied for a student visa in Canada so that he could leave Algeria. On August 9, 2019, the applicant arrived in Canada on a student visa.

[7] The applicant's brother was allegedly released from prison on November 11, 2020.

[8] On August 16, 2021, the applicant filed a claim for refugee protection.

[9] In its decision dated October 13, 2022, the RPD questioned the applicant's credibility with respect to his subjective fear because he had waited two years after arriving in Canada to claim refugee protection.

[10] The RPD also concluded that the applicant had failed to present clear and convincing evidence to rebut the presumption of Algerian state protection. It considered that the objective evidence on country conditions indicated that Algeria is a democratic country with a functioning government and police force, which the applicant could have tried to approach, especially as his

brother had already been imprisoned, which demonstrated the state's ability to protect its citizens.

III. Impugned decision

[11] In its decision dated March 16, 2023, the RAD confirmed the RPD's conclusion that the presumption of state protection had not been rebutted. The RAD considered that Algerian state protection was operational and effective and that the applicant could reasonably have availed himself of the protection of that state in the circumstances, which he did not try to do.

IV. Standard of review and issues

[12] The only issue before the Court is whether the RAD's decision that the applicant failed to rebut the presumption of Algerian state protection is reasonable.

[13] The applicable standard of review is reasonableness (*Vavilov* at paras 10, 25; *Mason* at paras 7, 39–44). A reasonable 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; *Mason* at para 8); it is justified, transparent and intelligible (*Vavilov* at para 99; *Mason* at para 59). Reasonableness review is not a “‘rubber-stamping’ process”; it remains a robust form of review (*Vavilov* at para 13; *Mason* at para 63). A decision may be unreasonable where the decision maker has fundamentally misapprehended or failed to account

for the evidence before it (*Vavilov* at paras 125–26; *Mason* at para 73). The burden is on the party challenging the decision to show that it is unreasonable (*Vavilov* at para 100).

V. Analysis

A. *Law*

[14] It is settled case law that claimants must demonstrate their state’s inability to protect them in order to meet the definition of “refugee” under sections 96 and 97 of the IRPA. That is, “[a]bsent a situation of complete breakdown of state apparatus, ... it should be assumed that the state is capable of protecting a claimant” (*Canada (Attorney General) v Ward*, 1993 CanLII 105 (CSC), [1993] 2 SCR 689 at 725 [*Ward*]). Therefore, there is a presumption of state protection that the applicant must rebut by adducing “relevant, reliable and convincing” evidence that Algeria is incapable of protecting him (*Canada (MCI) v Flores Carrillo*, 2008 FCA 94 at para 30). It is not enough merely to show that Algerian state protection is imperfect (*Canada (Minister of Employment and Immigration) v Villafranca*, 1992 CanLII 8569 (FCA), [1992] FCJ No 1189 (QL) at para 7).

[15] It is important to note that a state protection finding is determinative of both a section 96 and section 97 claim (*Faundez Vargas c Canada (Citizenship and Immigration)*, 2023 CF 1616 at para 19 [*Faundez Vargas*]; *Bellingy v Canada (Citizenship and Immigration)*, 2015 FC 1252 at para 53).

[16] Claimants also have a high burden of proof. To discharge their burden, they must show that they have exhausted all remedies or protections reasonably available in their own country before applying for refugee protection in another country. In particular, claimants must show that they made reasonable efforts to approach the state and test its resources to provide protection before seeking refugee protection in another state, unless they establish that it was objectively unreasonable in the circumstances to do so because of a well-founded fear of persecution by the state (*Faundez Vargas* at para 20; *Ruszo v Canada (Citizenship and Immigration)*, 2013 FC 1004 at paras 32–34). However, claimants need not risk their lives seeking state protection merely to demonstrate its ineffectiveness, since this would defeat the purpose of refugee protection (*Ward* at 724).

B. *RAD's decision reasonable*

[17] The applicant submits that the RAD erred in its analysis of Algerian state protection. He acknowledges the presumption of state protection in Algeria but argues that he is not required to have sought state protection if there is an objectively reasonable presumption that such protection was not available to him, citing *Ward* at 724 in support of his argument. He submits that this is his case because the police in Algeria do not intervene in family disputes, an argument allegedly made by the applicant before the RAD that the RAD failed to take into consideration. The applicant further submits that the conclusion that Algeria is a democratic country is questionable in light of the documentary evidence.

[18] However, this Court has affirmed that Algeria is a democratic country in which the presumption of state protection applies (*Bagui v Canada (Citizenship and Immigration)*, 2012 FC 1527 at para 17; *Imloul v Canada (Citizenship and Immigration)*, 2023 FC 455 at paras 10, 32 [*Imloul*]). In this case, the RAD considered the objective evidence and reasonably determined that Algeria is a democratic people's republic and a constitutional, representative democracy, even though the country has come under criticism regarding its human rights record. It acknowledged the credible evidence of issues related, for example, to the impartiality of the justice system but noted that this was not enough, since state protection need not be perfect, but rather adequate (*Molnar v Canada (Citizenship and Immigration)*, 2013 FC 296 at para 16).

[19] In addition, the RAD considered the applicant's argument that the police do not intervene in family disputes in Algeria. As the RAD points out at paragraphs 44 and 45 of its decision, the documentary evidence on which the applicant was relying and the objective evidence in the National Documentation Binder deal with specific situations such as forced marriage or violence against women. It was reasonable for the RAD to state that it had not identified any objective documentary evidence to suggest that the police would not intervene in a dispute between two adult men and for the RAD to affirm that no such evidence had been presented to it. The applicant does not refer to any other evidence on this point in his written or oral submissions to this Court.

[20] This Court has also ruled that Algerian state protection was available in the case of some family disputes, namely, when the agents of persecution were an applicant's former brothers-in-

law (*Imloul* at paras 17, 22–23, 32) or the family, specifically the brother, of an applicant’s girlfriend (*Salhi v Canada (Citizenship and Immigration)*, 2023 FC 1619 at paras 3–4, 13–14).

[21] The applicant therefore disagrees with the RAD’s conclusions and is basically asking the Court to perform a *de novo* analysis of the evidence. However, it is not the role of the Court on judicial review to reweigh the evidence and substitute its analysis for that of the RAD (*Vavilov* at paras 124–25).

[22] The applicant has not satisfied me that the RAD’s decision is unreasonable. He has not provided clear and convincing evidence to discharge his burden of rebutting the presumption that he enjoys Algerian state protection.

VI. Conclusion

[23] I am of the opinion that the RAD’s decision as a whole is reasonable and justified in relation to the factual and legal constraints of the case (*Vavilov* at para 99).

[24] For the reasons above, the application for judicial review is dismissed.

[25] No questions of general importance were submitted for certification, and the Court is of the opinion that none arise.

JUDGMENT in IMM-3999-23

THIS COURT’S JUDGMENT is as follows:

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

“Guy Régimbald”

Judge

Certified translation
Vincent Mar

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3999-23

STYLE OF CAUSE: HOUSSEYN BOUSSAIDI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: MAY 13, 2024

JUDGMENT AND REASONS: RÉGIMBALD J

DATED: MAY 27, 2024

APPEARANCES:

Fedor Kyrpichov FOR THE APPLICANT

Larissa Foucault FOR THE RESPONDENT

SOLICITORS OF RECORD:

Fedor Kyrpichov FOR THE APPLICANT
Montréal, Quebec

Attorney General of Canada FOR THE RESPONDENT
Montréal, Quebec