

Federal Court



Cour fédérale

Date: 20240722

Docket: IMM-491-23

Citation: 2024 FC 1140

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 22, 2024

PRESENT: Associate Chief Justice Gagné

BETWEEN:

HAMID TARMOUL

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Hamid Tarmoul is challenging a decision of the Refugee Appeal Division [RAD] in which it analyzed the merits of his refugee protection claim and determined that he is not a refugee or a person in need of protection. The RAD concluded that the evidence does not show

that the applicant would be subjected to reprisals by the Algerian government because of his past political activities or his Berber ethnicity.

[2] There is no dispute that the RAD overturned the conclusion of the Refugee Protection Division (RPD) excluding the applicant from Canada's protection for committing a serious non-political crime in Algeria (under Article 1F(b) of the *United Nations Convention relating to the Status of Refugees*), and this second aspect of the RAD's decision will therefore not be addressed in these reasons.

II. Facts

[3] The applicant is an Algerian engineer who was a public servant in the employ of the Société Nationale de Génie [SNG] from 2015 to 2018.

[4] He came to Canada on a visitor visa from May 2 to June 1, 2018. He returned on June 11, 2019, and claimed refugee protection in October 2019.

[5] In his Basis of Claim Form [BOC Form], the applicant alleges that during his time at the SNG, his superiors forced him, under threat of dismissal, to commit fraud by signing false purchase orders.

[6] In October 2019, police officers allegedly looked for him at his brother's home in connection with this fraud.

[7] The applicant also alleges that he could be targeted in Algeria because of his Berber ethnicity and his support for the Kabyle independence movement.

III. Impugned decision

[8] In addition to the issue of exclusion, and all the sub-issues raised by a potential exclusion, the RAD states that the determinative issue is the applicant's credibility.

[9] The RAD notes that after the first day of the hearing before the RPD, the RPD suspended the hearing to inform the Minister of the allegations of fraud and the possible exclusion. The RAD also notes that between the first and second day, the applicant changed his testimony to downplay the magnitude of the fraud.

[10] The applicant testified on the first day of the hearing that the fraud was for over a million, that he prepared false purchase orders three times, and that he was talking about dollars, not Algerian dinars. In the presence of the Minister, however, he changed his testimony and stated that he was actually referring to Algerian dinars, which would be equivalent to approximately \$10,000. He explained the inconsistency by the fact that he had grown used to Canadian currency in the previous two years, which led to his mistake.

[11] That said, the RAD is of the opinion that the RPD erred in finding that the testimony on the first day was credible while the testimony on the second day was not. Having listened to a recording of the hearing, the RAD does not note any significant difference in how the applicant testified. The RAD considers rather that the applicant's overall testimony with regard to the

amount of the fraud was ambiguous, hesitant, and evolving, with the applicant appearing to agree with the member's suggestions. For the RAD, the amount of \$1,000,000 is no more credible than the amount of \$10,000. It is just as likely that the applicant exaggerated the amount of the fraud on the first day to establish a risk of persecution, as he minimized it on the second day to avoid exclusion.

[12] The RAD determines that the fraud was established (although the amount was not) as the applicant's account was consistent in this regard.

[13] However, the RAD is of the opinion that there is insufficient evidence to conclude that the applicant would be subjected to reprisals by the police, particularly as there is no documentary evidence confirming that a complaint was filed or that an arrest warrant was issued. The evidence does not establish that the applicant would be subjected to a risk to his life or to a risk of cruel and unusual treatment or punishment.

[14] The applicant stated that he feared returning to Algeria because he would be arrested for the fraud in which he was complicit and would be scapegoated for it because of his Kabyle ethnicity. The RAD notes that this fear stems from a text message the applicant received from his brother in October 2019 informing him, in unflattering terms, that the police had visited him in connection with the fraud.

[15] The RAD concludes that the applicant's fear of being brought to justice is probably well founded, but that his testimony is insufficient to establish that he would be scapegoated and that

he would be arrested and tortured. His brother's text message did not establish, on its own or in conjunction with the evidence as a whole, that the applicant has reason to fear for his life or safety.

[16] The applicant did not convince the RAD that he could be targeted for his activism or ethnicity, because his BOC Form was focused primarily on his involvement in defrauding his employer rather than on his view on Kabylia's self-determination.

[17] The RAD concludes that although the applicant did establish some activist activities, his involvement was insufficient for him to be the target of reprisals by the Algerian government.

[18] The RAD therefore dismisses the appeal on grounds other than those invoked by the RPD.

IV. Issues and standard of review

[19] The only issue raised by this application for judicial review is whether the RAD erred in its analysis of the applicant's fear.

[20] The standard of review applicable to the analysis of this issue is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

V. Analysis

[21] It is not disputed that the applicant was involved in committing fraud in Algeria. The determinative issue for this Court is whether it was reasonable for the RAD to conclude that the applicant would not be unjustifiably persecuted if he returned to his country.

[22] The applicant raises two distinct grounds of fear in support of his refugee protection claim: his participation in a fraud against his employer, for which he is wanted by the authorities, and his Berber ethnicity and participation in the Kabyle independence movement.

[23] With respect to the possibility that the applicant would be persecuted by the police, the RAD noted that there is no evidence of a formal charge against the applicant. The only evidence submitted by the applicant is the message from his brother stating that he is wanted for questioning with regard to his involvement in a fraudulent scheme. In the context in which the applicant admits to having participated in the fraud in question, no less is expected from the police. This does not prove that the applicant will be subjected to persecution or will be made a scapegoat because of his ethnicity.

[24] With respect to the applicant's ethnicity and his participation in the independence movement, it was open to the RAD to conclude that the evidence does not demonstrate any commitment by the applicant prior to his arrival in Canada. The RAD considered the documentary evidence to the effect that individuals were persecuted for carrying the Kabyle flag

and for participating in pro-independence protests. However, it noted that the leaders and organizers of those protests are the main targets of persecution.

[25] It was reasonable for the RAD to conclude that the evidence does not establish a serious possibility of persecution of the applicant by reason of his ethnicity should he return to Algeria (see in particular *Chergui v Canada (Citizenship and Immigration)*, 2022 FC 1058 at paras 14–15).

VI. Conclusion

[26] The RAD's decision is reasonable, so the applicant's application for judicial review is dismissed.

[27] The parties have not submitted any questions of general importance for certification, and no such questions arise from the facts of this case.

JUDGMENT IN IMM-491-23

THIS COURT ORDERS as follows:

1. The application for judicial review is dismissed;
2. No question of general importance is certified.

“Jocelyne Gagné”

Associate Chief Justice

Certified true translation
Norah Mulvihill

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-491-23

STYLE OF CAUSE: HAMID TARMOUL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: MAY 9, 2024

JUDGMENT AND REASONS: ASSOCIATE CHIEF JUSTICE GAGNÉ

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