

Federal Court



Cour fédérale

**Date: 20140723**

**Docket: IMM-7118-13**

**Citation: 2014 FC 734**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Ottawa, Ontario, July 23, 2014**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**YOUSSEF BEN CHEIKH BRAHIM, SONIA  
GHALI AND SARAH BEN CHEIKH BRAHIM**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Preliminary remarks

[1] The Court notes that the burden of proof to demonstrate apprehension of bias is a heavy one. The grounds regarding the apprehension must be serious. As this Court recently found in *Tippet-Richardson Limited v Lobbe*, 2013 FC 1258:

[54] An allegation of bias ... is a serious allegation. Indeed, it challenges the integrity of the administration of justice as well as the very integrity of the adjudicator whose decision is in issue. As a consequence, the threshold for establishing bias is high: *R. v. R.D.S.*, [1997] 3 S.C.R. 484, 151 D.L.R. (4th) 193, at para. 113.

## II. Introduction

[2] This is an application for judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), of a decision dated August 1, 2013, of the Refugee Protection Division (RPD) of the Immigration and Refugee Board rejecting the applicants' claim for protection as refugees or as persons in need of protection within the meaning of sections 96 and 97 of the IRPA.

## III. Facts

[3] The applicants are citizens of Tunisia. They fear persecution in their country because they are Christian. The principal applicant converted from Islam to Christianity in 1999 and since that time has reportedly been harassed and questioned by police at his work.

[4] For her part, his wife, the adult female applicant, allegedly experienced persecution as a teacher. She was purportedly shunned and subjected to the sanctions of the parents and the school in which she worked for having taught the Christian faith to the students.

[5] Their minor daughter is also alleged to have suffered at school as a result of her Christian beliefs. She reportedly had to change schools a number of times. Her parents indicated that they sent her to Canada in May 2011 for her psychological well-being. They later joined her in Canada in August 2011.

[6] The family claimed refugee protection on August 19, 2011. Their claim was rejected on October 1, 2013, for the primary reason that there was insufficient evidence that they would face a serious possibility of persecution on the basis of their religious beliefs if they were to return to Tunisia. The RPD concluded that the documentary evidence showed that the current situation in Tunisia was considerably different since the applicants' departure; Christians now practised their religion largely without restrictions in that country. The RPD noted that although the applicants may have been subject to discrimination in the past, there was little evidence that they would be in the future.

#### IV. Analysis

[7] The applicants allege that the RPD made three significant errors in its decision rejecting their refugee protection claim:

- a) It violated their right to a hearing in the language of their choice;
- b) It failed to meet its obligation to consider the evidence in the record and the applicants' testimony;
- c) It exceeded its jurisdiction in a manner that gives rise to a reasonable apprehension of bias.

[8] With respect to the applicants' first argument, the Court finds that there was no violation of their constitutional right to a legal proceeding in the language of their choice.

[9] The applicants submit that their counsel had to make certain submissions in English in order to [TRANSLATION] "accommodate the panel" who was not comfortable in French. They argue that the RPD's failure to provide an interpreter during that part of the hearing caused prejudice to the applicants.

[10] The Court agrees with the respondent that the applicants' argumentation contains serious inaccuracies on this point. It is clear from the hearing transcript that it was the applicants' counsel himself who switched to English of his own volition, preferring to speak English during oral argument because that was the language in which his notes had been written (Certified Tribunal Record at page 712):

*Perhaps I'll move straight into the... just a few references in the documentation which is, my notes, in English.*

[11] The applicants were not in the least deprived of a hearing in French; rather, they waived their right to an interpreter when they consented to their counsel making his submissions in English for that part of his oral argument. The RPD was under no obligation to ask the applicants whether they wanted an interpreter at that time or to elicit from them a specific waiver of their right to an interpreter. This Court has made it clear that a party may implicitly waive the language rights provided to it under the *Official Languages Act*, (RS (1985), c 31 (4th Supp.)) (see *Taire v Canada (Minister of Citizenship and Immigration)*, 2003 FC 877).

[12] As for the applicants' second argument, the Court does not find that the RPD failed to consider relevant evidence or the applicants' testimony. The RPD reasonably concluded that there was insufficient evidence to establish that there was a serious possibility that the applicants would be persecuted if they were to return to Tunisia. The RPD clearly allows us to understand the reasons for its decision, and to determine whether it is within the range of acceptable outcomes (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708). The RPD demonstrated that it was aware of all of the evidence before it, including that adduced by the applicants. Nonetheless, the member preferred to rely on the objective documentary evidence in the record to assess the current situation in Tunisia; and it was reasonably open for her to do so.

[13] When considered as a whole, the documentary evidence shows that there is now a genuine openness among Tunisians towards Christians since the applicants' departure. For example, the report entitled "Tunisia: International Religious Freedoms Report for 2011" (United States Department of State, July 30, 2012), noted that there were no reports of abuses of religious freedom by the Tunisian authorities in 2011.

[14] Lastly, the Court does not find that the RPD's actions raise any reasonable apprehension of bias.

[15] The Court notes that the burden of proof for establishing bias is heavy. The grounds for the apprehension must be serious. As this Court recently found in *Tippet-Richardson*, above:

[54] An allegation of bias ... is a serious allegation. Indeed, it challenges the integrity of the administration of justice as well as the

very integrity of the adjudicator whose decision is in issue. As a consequence, the threshold for establishing bias is high: *R. v. R.D.S.*, [1997] 3 S.C.R. 484, 151 D.L.R. (4th) 193, at para. 113.

[16] In this case, the applicants crafted their allegations of “bias” primarily on the basis of the RPD’s findings. They allege, *inter alia*, that the RPD failed to mention medical evidence regarding the minor female applicant as well as problems she and her mother purportedly experienced at school. The Court is of the view that this is not a matter of “bias”, but rather one that is related to the reasonableness of the decision. The same holds true for comments made by the RPD with respect to secularism in Quebec.

V. Conclusion

[17] For all of the foregoing reasons, the applicants’ application for judicial review is dismissed.

**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES** that the applicants' application for judicial review be dismissed, with no question of general importance to be certified.

"Michel M.J. Shore"

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Judge

Certified true translation  
Sebastian Desbarats, Translator

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

**DOCKET:** IMM-7118-13

**STYLE OF CAUSE:** YOUSSEF BEN CHEIKH BRAHIM, SONIA GHALI  
ET SARAH BEN CHEIKH BRAHIM v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** JULY 17, 2014

**JUDGMENT AND REASONS:** SHORE J.

**DATED:** JULY 23, 2014

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