

Federal Court



Cour fédérale

**Date: 20200422**

**Docket: IMM-3819-19**

**Citation: 2020 FC 545**

[ENGLISH TRANSLATION]

Ottawa, Ontario, April 22, 2020

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

**BETWEEN:**

**ZENADINE MAHAMAT AL-HABIB**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Nature of the matter

[1] On February 24, 2008, the applicant [Mr. Al-Habib] attended the Citizenship and Immigration Canada office in Lacolle, Quebec to make a claim for refugee protection, pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], against Chad, his country of nationality. The Refugee Protection Division [RPD]

allowed his claim for refugee protection. On July 26, 2012, Mr. Al-Habib was granted permanent resident status in Canada. On July 29, 2015, he arrived at Dorval Airport in Montréal from Chad. He admitted having stayed in Chad on two (2) occasions after being admitted to Canada, that is, from February 2013 to March 11, 2014, and from December 13, 2014, to July 29 2015. Mr. Al-Habib was issued a new Chadian passport on December 17, 2013, during his first visit to Chad following his admission to Canada. He used this Chadian passport to return to Chad for the second time in December 2014.

[2] The Minister of Public Safety and Emergency Preparedness [the Minister] made an application to cease refugee protection before the RPD pursuant to paragraphs 108(1)(a) and (d) of the *IRPA* and rule 64 of the *Refugee Protection Division Rules*, SOR/2012-256 [*Rules*].

[3] The RPD has recognized that the Minister must show, on a balance on probabilities, that an individual has voluntarily reavailed themselves of the protection of their country of nationality. However, once the Minister demonstrates that an individual has obtained or renewed a passport from that country, the burden of proof is on the individual to show that they did not actually seek reavilment of the protection of the country from which they had sought refuge (*Seid v Canada (Citizenship and Immigration)*, 2018 FC 1167). To rebut the presumption, the applicant had to show that he was obliged to travel due to exceptional circumstances.

[4] On May 3, 2019, the RPD allowed the Minister's cessation application [the decision]. This is an application for judicial review pursuant to section 72(1) of the *IRPA* against the decision. For the following reasons, I dismiss the application for judicial review.

II. Relevant provisions

[5] The relevant provisions are section 96, subsection 97(1), and paragraphs 108(1)(a) and 108(1)(d) of the *IRPA*, as well as rule 64 of the *Rules*. They are set out in the attached appendix.

III. Issues

[6] Mr. Al-Habib framed the issues as follows:

1. Did the RPD err in failing to make a clear finding of credibility?
2. Did the RPD err in its analysis that Mr. Al-Habib voluntarily reavailed himself of Chad's protection?

IV. Standard of review

[7] The standard of reasonableness applies to each issue in this case: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10 [*Vavilov*]; *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190; *Siddiqui v Canada (Citizenship and Immigration)*, 2016 FCA 134 at para 11. When a court reviews a decision on the standard of reasonableness, it “must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified” (*Vavilov*, at para 15).

V. RPD decision

[8] Mr. Al-Habib claims that in February 2013, he went to Chad to bring his mother to Cameroon, where they stayed until December 2013. He then remained in Chad until he left for Canada in February 2014. The RPD found that during the time Mr. Al-Habib admits to being in Chad, December 2013 to February 2014, he appeared to have gone about his daily activities without difficulty. He was issued a new Chadian passport; was issued a Schengen visitor visa; visited his mother's home village; completed renovations to the bathroom and bedroom of his mother's house in N'Djamena; and entered into a civil marriage. Additionally, there were no stamps on his passport that indicated that he had entered Cameroon and spent the first few months of this visit there.

[9] As for his second visit to Chad, beginning in December 2014, Mr. Al-Habib explained that the main reason he returned was to help his sick mother obtain medical treatment in Egypt. In February 2015, he received a summons to the *Section nationale de recherches judiciaires* and, fearing that he would be intercepted because he had fled the army, he hid in a village until July 2015. For this reason, he was unable to accompany his mother to Egypt in May 2015. Again, the RPD was not convinced of the exceptional nature of this visit. First, the RPD determined that there was no evidence to support that, from December 2014 to February 2015, the applicant kept a low profile in Chad, and concluded that he did not go into hiding while in Chad between February and July 2015. Second, although he said that he went to Chad this second time to accompany his mother to the hospital in Egypt, there was no explanation as to why he arrived in December 2014, six months before his mother's trip to Egypt. Thirdly, the

RPD rejected his explanation as to why his friends were unable to help him leave Chad as soon as possible instead of hiding. Finally, the RPD rejected Mr. Al-Habib's explanation that he was the only one available to help his mother for several reasons: his mother had six children; he claimed at the RPD hearing that he returned to Chad to accompany his mother to Egypt and to see his son, however, the immigration officer's notes stated that he had returned because his wife and son were there; and one of his sisters accompanied his mother to Egypt in 2015.

[10] The RPD found that Mr. Al-Habib had not proven, on a balance of probabilities that he was obliged to return because of exceptional circumstances.

## VI. Analysis

### A. *Did the RPD err in failing to make a clear finding of credibility?*

[11] Mr. Al-Habib argues that the RPD questioned his credibility without explicitly stating it. He cites the guide titled *Assessment of Credibility in Claims for Refugee Protection* of the Immigration and Refugee Board of Canada at page 20:

The Board is required to make clear findings as to what evidence is believed or disbelieved . . . . Ambiguous statements that do not amount to an outright rejection of the claimant's evidence, but only "cast a nebulous cloud over its reliability" are not sufficient to discount the evidence.

[12] Mr. Al-Habib also alleges that the RPD required corroboration in circumstances where it was not necessary (*Dena Hernandez v Canada (Citizenship and Immigration)*, 2010 FC 179 at para 26) and that the RPD excluded or failed to refer to evidence that was contradictory to its conclusion, going against the principle set out in *Cepeda-Gutierrez v Canada (Minister of*

*Citizenship and Immigration* (1998), 157 FTR 35. Finally, Mr. Al-Habib pleads that he produced a letter from his mother, a notice to appear of which he is the subject, and a letter from his brother-in-law, all intended to demonstrate his fear of returning to Chad. The RPD referred only to the notice to appear. Mr. Al-Habib argues that the failure to rule on the credibility of other evidence on this issue is an error: *Martinez Caicedo v Canada (Citizenship and Immigration)*, 2011 FC 749 at para 2.

[13] I reject all of Mr. Al-Habib's claims regarding the issue of his credibility. The RPD conducted a contextual analysis. In a measured, clear and concise decision, the RPD dealt with each of Mr. Al-Habib's claims. The RPD explained why it rejected some items of evidence and accepted others. There was overwhelming evidence to support the RPD's finding as to Mr. Al-Habib's credibility. Its decision in this regard is, in its entirety, "transparent, intelligible and justified" (*Vavilov*, at para 15). The following are some examples:

- At paragraph 11 of its decision, the RPD rejected Mr. Al-Habib's claims about obtaining his passport in Chad, explaining [TRANSLATION] "[Mr. Al-Habib] knew that his passport had expired and that he would have to renew it in order to travel back to Canada, not having any other travel document".
- At paragraph 14, the RPD explained why it had doubts about his visits to Cameroon. It stated, among other things, [TRANSLATION] "[Mr. Al-Habib] did not present his travel documents showing the exact dates he entered and departed from Chad for the period from February 9, 2013, to December 10, 2013. . . . He submitted a photocopy of his mother's passport. This passport did not have any stamps covering the period from February 2013 to December 2013".

- Regarding a letter from a friend, dated November 1, 2018, concerning the applicant's visit to Cameroon, the RPD stated at paragraph 14, [TRANSLATION] "[t]he Panel gives little weight to this letter because it does not exclude the possibility that the Respondent travelled back and forth between Cameroon and Chad during the alleged period of time".
- At paragraph 16, the RPD summarized that Mr. Al-Habib explained that he was unable to attempt to travel to Cameroon instead of hiding, because his brother-in-law's connections made it easier to leave Chad from the airport. The RPD rejected this explanation, finding that it did not justify why his friends and relatives did not obtain an airplane ticket for him to Canada or Cameroon so that he could leave Chad as soon as possible. While Mr. Al-Habib maintains that this constitutes speculation, it should not be forgotten that it was Mr. Al-Habib who testified that his brother-in-law and sister used their "connections" to obtain his passport for him. In light of this evidence, this observation at paragraph 16 does not constitute speculation.
- At paragraph 18, the RPD refers to the fact that Mr. Al-Habib's youngest sister accompanied his mother to Egypt when he [TRANSLATION] "allegedly went into hiding in February 2015". This fact, which Mr. Al-Habib put forth, further demonstrates that the RPD did not speculate when it concluded that someone else in the family could have helped the mother visit the hospital.

[14] Regarding Mr. Al-Habib's claim that the RPD failed to consider evidence that demonstrated his fear of returning to Chad, the risk of persecution is not a relevant factor in relation to cessation of refugee protection (*Abadi v Canada (Citizenship and Immigration)*, 2016 FC 29 at para 20; *Yuan v Canada (Citizenship and Immigration)*, 2015 FC 923 at para 25;

*Balouch v Canada (Minister of Public Safety and Emergency Preparedness)*, 2015 FC 765 at para 19).

[15] Judicial review is not a treasure hunt for error (*Vavilov* at para 102, citing *Communications, Energy and Paperworks Union of Canada, Local 30 v Irving Pulp & Paper Ltd*, 2013 SCC 34 at para 54, [2013] 2 SCR 458 and *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 14, [2011] 3 SCR 708). The reasons for the decision in this case regarding the credibility of Mr. Al-Habib's allow this Court to follow the reasoning of the decision maker. They provide a transparent, intelligible and justifiable analysis.

B. *Did the RPD err in its analysis finding that Mr. Al-Habib voluntarily reavailed himself of Chad's protection?*

[16] Mr. Al-Habib does not dispute that the burden of proof was on him to establish that he did not voluntarily reavail himself of Chad's protection. He submits, however, that he has presented evidence that the RPD dismissed without any reason. First, he argues that the RPD dismissed without explanation his belief that his permanent resident status could protect him in Chad. He argues that a decision maker must consider this subjective intention before concluding that an individual has reavailed themselves of the protection of their country of origin: *Camayo v Canada (Citizenship and Immigration)*, 2020 FC 213; *Cerna v Canada (Citizenship and Immigration)*, 2015 FC 1074 at paras 19–20. Second, he argues that the RPD rejected facts that, according to the case law and the United Nations High Commissioner for Refugees [UNHCR], justified his travel to Chad: *Yuan v Canada (Citizenship and Immigration)*, 2015 FC 923 at para



19. The UNHCR Handbook provides factual contexts that may demonstrate that a person has not availed themselves of state protection, for example, if there is an elderly or ailing relative: *El Kaissi v Canada (Citizenship and Immigration)*, 2011 FC 1234 at para 29. Third, Mr. Al-Habib states that the RPD's conclusion that another family member was able to assist his mother is a personal opinion based on a value system that does not reflect Mr. Al-Habib's reality: *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at para 12.

[17] I conclude that the RPD was reasonable in its approach and decision. The evidence of Mr. Al-Habib's mother's stay in Cameroon, as well as her medical reports, did not show that Mr. Al-Habib was with her in Cameroon; Mr. Al-Habib's passport had no stamps for the period from February 2013 to December 2013 to show that he entered Cameroon. Moreover, it was reasonable for the RPD to conclude that Mr. Al-Habib's main motivation for entering Chad was not to care for his mother, for the following reasons: other family members could take care of her; he did not keep a low profile during his stay; he did not mention to the Canada Border Services Agency that he went to Chad to help his mother, but rather said that he went there to visit his wife and son; and his mother's Egyptian visa indicated that she did not go until May 2015, without any explanation as to why Mr. Al-Habib went to Chad six (6) months earlier in December 2014. It should also be noted that Mr. Al-Habib's sister took care of their mother in May 2015 during Mr. Al-Habib's absence.

[18] It is presumed that the RPD has considered all the evidence before making its decision unless the contrary is established: *Kocsis v Canada (Citizenship and Immigration)*, 2012 FC 737 at para 11; *Xocopa Martell v Canada (Citizenship and Immigration)*, 2008 FC 1029 at para 22;

*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (CA) (QL).

*Vavilov* does not argue against this principle (see *Vavilov* at paras 91, 125–26).

[19] Finally, in response to Mr. Al-Habib’s argument that the RPD did not analyze his subjective intent with respect to his allegation that he believed that his permanent residence in Canada would have protected him in Chad, I note that the RPD’s reasons demonstrate that it did indeed take this argument into account. At paragraph 17, it concluded that in this case, in light of all the evidence, Mr. Al-Habib’s explanation was not sufficient to rebut the presumption:

*Abechkhrishvili v Canada (Citizenship and Immigration)*, 2019 FC 313 at para 25.

## VII. Conclusion

[20] The RPD’s decision is reasonable. The analysis demonstrates transparency, intelligibility and justification. The application for judicial review is therefore dismissed without costs. Neither party has proposed a question for consideration by the Federal Court of Appeal, and no question arises out of the facts or the case law.

**JUDGMENT in IMM-3819-19**

**THIS COURT'S JUDGMENT** is that the application for judicial review is dismissed, without costs. No question is certified for consideration by the Federal Court of Appeal.

**"B. Richard Bell"**

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Judge

## APPENDIX

*Immigration and Refugee Protection Act*, SC 2001, c 27

*Loi sur l'immigration et la protection des réfugiés*, LC 2001, ch 27

**Convention refugee**

**96** A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

**Person in need of protection**

**97 (1)** A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

**Définition de réfugié**

**96** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

**a)** soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

**b)** soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

**Personne à protéger**

**97 (1)** A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

**(a)** to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

**a)** soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

**(b)** to a risk to their life or to a risk of cruel and unusual treatment or punishment if

**b)** soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

**(i)** the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

**(i)** elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

**(ii)** the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

**(ii)** elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

**(iii)** the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

**(iii)** la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

**(iv)** the risk is not caused by the inability of that country to provide adequate health or medical care.

**(iv)** la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

**Person in need of protection      Personne à protéger**

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

...

...

**Rejection**

**Rejet**

**108 (1)** A claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection, in any of the following circumstances:

**108 (1)** Est rejetée la demande d'asile et le demandeur n'a pas qualité de réfugié ou de personne à protéger dans tel des cas suivants :

(a) the person has voluntarily reavailed themselves of the protection of their country of nationality;

a) il se réclame de nouveau et volontairement de la protection du pays dont il a la nationalité;

...

...

(d) the person has voluntarily become re-established in the country that the person left or remained outside of and in respect of which the person claimed refugee protection in Canada; or

d) il retourne volontairement s'établir dans le pays qu'il a quitté ou hors duquel il est demeuré et en raison duquel il a demandé l'asile au Canada;

***Refugee Protection Division Rules (SOR/2012-256)***

***Règles de la Section de la protection des réfugiés (DORS/2012-256)***

**Form of application**

**Forme de la demande**

**64 (1)** An application to vacate or to cease refugee protection made by the

**64 (1)** La demande d'annulation ou de constat de perte de l'asile que le

Minister must be in writing and made in accordance with this rule.

ministre présente à la Section est faite par écrit conformément à la présente règle.

**Content of application**

**Contenu de la demande**

**(2)** In the application, the Minister must include

**(2)** Dans sa demande, le ministre inclut :

**(a)** the contact information of the protected person and of their counsel, if any;

**a)** les coordonnées de la personne protégée et de son conseil, le cas échéant;

**(b)** the identification number given by the Department of Citizenship and Immigration to the protected person;

**b)** le numéro d'identification que le ministère de la Citoyenneté et de l'Immigration a attribué à la personne protégée;

**(c)** the date and file number of any Division decision with respect to the protected person;

**c)** la date et le numéro de dossier de la décision de la Section touchant la personne protégée, le cas échéant;

**(d)** in the case of a person whose application for protection was allowed abroad, the person's file number, a copy of the decision and the location of the office;

**d)** dans le cas de la personne dont la demande de protection a été acceptée à l'étranger, son numéro du dossier, une copie de la décision et le lieu où se trouve le bureau qui l'a rendue;

**(e)** the decision that the Minister wants the Division to make; and

**e)** la décision recherchée;

**(f)** the reasons why the Division should make that decision.

**f)** les motifs pour lesquels la Section devrait rendre cette décision.

**Providing application to protected person and Division**

**Transmission de la demande à la personne protégée et à la Section**

(3) The Minister must provide

(3) Le ministre transmet :

(a) a copy of the application to the protected person; and

a) une copie de la demande, à la personne protégée;

(b) the original of the application to the registry office that provided the notice of decision in the claim or to a registry office specified by the Division, together with a written statement indicating how and when a copy was provided to the protected person.

b) l'original de la demande accompagnée d'une déclaration écrite indiquant à quel moment et de quelle façon la copie de la demande a été transmise à la personne protégée, au greffe qui a transmis l'avis de décision concernant la demande d'asile ou au greffe désigné par la Section.



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

**DOCKET:** IMM-3819-19

**STYLE OF CAUSE:** AL-HABIB v MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** FEBRUARY 6, 2020

**REASONS FOR JUDGMENT AND JUDGMENT:** BELL J.

**DATED:** APRIL 22, 2020

**APPEARANCES:**

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