



Date: 20221024

Docket: IMM-13-22

Citation: 2022 FC 1448

[ENGLISH TRANSLATION]

Ottawa, Ontario, October 24, 2022

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

KHEIR EDDINE AMARA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

ORDER AND REASONS

[1] The applicant, Kheir Eddine Amara, is seeking judicial review of a decision of the Refugee Appeal Division [RAD] dated November 26, 2021, confirming the merits of a decision of the Refugee Protection Division [RPD]. The RPD and RAD determined that Mr. Amara would, on a balance of probabilities, not be personally subjected to a risk within the meaning of

subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2011, c 27 [IRPA], and rejected his refugee protection claim.

[2] Mr. Amara argues that a fatal error taints the RAD's reasoning in that the RAD did not consider the agent of persecution's profile in its analysis of the reasons that led Mr. Amara not to avail himself of the protection of the Algerian state. For the following reasons, I agree with Mr. Amara's arguments and conclude that the application for judicial review should be allowed.

[3] The application for judicial review raises a single issue: Is the RAD's decision reasonable? The appropriate standard of review for an RAD decision is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17 [*Vavilov*]). The Court's role is to consider the administrative decision maker's reasoning process and the outcome to 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).

[4] As a preliminary matter, I note that the applicant identified the Minister of Public Safety and Emergency Preparedness as the respondent in this application. However, as the Attorney General of Canada points out, under subsection 4(1) of the IRPA, the Minister responsible for administering the IRPA is, except as otherwise provided, the Minister of Citizenship and Immigration. Determining whether a refugee protection claim can be allowed is not among the exceptions set out in the following subsections of section 4 of the IRPA and is the Minister's prerogative. Consequently, the style of cause is amended to remove the Minister of Public Safety

and Emergency Preparedness and to add the Minister of Citizenship and Immigration as respondent.

[5] Mr. Amara is a citizen of Algeria. The RPD noted from Mr. Amara's testimony that in May 2018, Mr. Amara's uncle falsely accused Mr. Amara of stealing money that belonged to his grandmother. Mr. Amara's uncle fabricated this incident to claim this money from the applicant's father. Subsequently, the uncle repeatedly uttered death threats against Mr. Amara and turned up at his home with some friends to assault him and extort money from him. The applicant left Algeria to travel to Canada in July 2018 and filed his refugee protection claim on August 6, 2018.

[6] The RPD found that Mr. Amara had not exhausted all reasonable courses of action to obtain state protection in Algeria and that he had not proven that it would have been objectively unreasonable for him to do so. The RPD identified two arguments made by Mr. Amara to justify his decision not to report the situation to the police and not to file a complaint against his uncle: (a) he did not want to cause his whole family harm at a later point; and (b) his uncle has many ties to the neighbourhood's police forces and provides them with information on the local drug trade.

[7] In light of its analysis, the RPD concluded that Mr. Amara's first argument was unreasonable in the circumstances and that his behaviour in this situation was not consistent with that of a person alleging to be subjected to a risk within the meaning of subsection 97(1) of the IRPA. As for the second argument, the RPD determined on the basis of Mr. Amara's allegations

that his uncle did not work for the police and that he was not paid, and that the police did not collaborate with his uncle, but simply used him to gather information. The RAD found that Mr. Amara's explanation was not reasonable and that he could still have sought the help of the police authorities.

[8] On appeal of the RPD decision, the RAD noted that the RPD had deemed Mr. Amara's arguments insufficient to reverse the presumption of the state's ability and willingness to protect its citizens. The RAD also mentioned the written submissions in Mr. Amara's memorandum of appeal, whereby he had wanted to seek state protection but had not been able to do so because of a subjective fear of damaging the family fabric and perhaps making the situation worse, particularly since his uncle is a police informant. In its own analysis of Mr. Amara's case, the RAD provided the following explanation:

Your explanations that you did not want to damage the family fabric and perhaps worsen the situation are irrelevant or, at least, insufficient for the analysis of the protection that your country's authorities are able to provide to you. In other words, your unwillingness to take steps to obtain their protection cannot, in and of itself, rebut the presumption that applies in such matters. You also needed to show that it would have been objectively unreasonable for you to seek protection from your country's authorities, which you did not do.

[9] The RAD thus concluded that the RPD had not erred in finding that Mr. Amara had not rebutted the presumption of protection from the Algerian state and confirmed the RPD's determination.

[10] Mr. Amara argues that it was unreasonable for the RAD to base the analysis on his fear of availing himself of state protection solely on his desire not to damage the family fabric when the

profile of the agent of persecution was a crucial factor in his claim. Mr. Amara contends that the decision does not reveal the grounds that led the RAD not to consider this argument. Mr. Amara claims that, as a result, many alleged facts regarding this issue were not considered by the RAD. These facts include the fact that his uncle receives monetary benefits or favours in exchange for his information from the police, that he twice had Mr. Amara's father's driver's licence suspended for no reason, and that he told Mr. Amara's father that if Mr. Amara returned to Algeria, he would know about it the same day.

[11] Mr. Amara contends that he was found to be credible by both the RPD and the RAD, and that consequently, the RAD should have analyzed this argument, which was essential in supporting his claim. He submits that it was open to the RAD to refute his claims, but that not considering them dealt a fatal blow to the reasonableness of the decision.

[12] I agree with Mr. Amara. The RPD properly identified the two elements that supported Mr. Amara's reluctance to avail himself of state protection, namely, the fear of family conflict and his uncle's ties with the police, and, after analyzing them, deemed them insufficient. In its own analysis, the RAD had to do the same. It is quite possible that the RAD questioned the credibility of Mr. Amara's explanations regarding his fear of the extent of his uncle's influence over the police and the possible consequences of his filing a complaint with the police. But the RAD should have addressed these explanations in its reasons since they were a central argument in Mr. Amara's case.

[13] In light of the above, it is my view that the RAD's decision is not based on an internally coherent and rational analysis that is justified in relation to the facts and law that constrain the decision maker. Consequently, the application for judicial review is allowed.

ORDER in IMM-13-22

THIS COURT orders that:

1. The style of cause is amended to designate the Minister of Citizenship and Immigration as the proper respondent; and
2. The application for judicial review is allowed.

“Peter G. Pamel”

Judge

Certified true translation
Johanna Kratz

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-13-22

STYLE OF CAUSE: KHEIR EDDINE AMARA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MATTER HEARD BY VIDEOCONFERENCE

DATE OF HEARING: SEPTEMBER 20, 2022

ORDER AND REASONS BY: PAMEL J

DATED: OCTOBER 24, 2022

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