

Federal Court



Cour fédérale

Date: 20231229

Docket: IMM-11045-22

Citation: 2023 FC 1767

[ENGLISH TRANSLATION]

Ottawa, Ontario, December 29, 2023

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

SAMIR KHELEFI AND MOKRAME KHELEFI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, Samir Khelifi and Mokrane Khelifi, are a father and his son who is currently 18 years old. They are citizens of Algeria. They seek judicial review of the decision of the Refugee Appeal Division [RAD] rendered on October 19, 2022, rejecting their refugee protection claim and confirming the decision of the Refugee Protection Division [RPD] that the

applicants are not Convention refugees or persons in need of protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Decision].

[2] Mr. Khelifi, his wife, their son Mokrane and their two daughters sought refugee protection in Canada. They claim fear of persecution by their family. In their original refugee protection claim, the wife was the principal claimant and the only person who provided a written account. The wife and the two daughters were granted refugee status because the RPD found that their claims had merit given they were members of the group of women victims of family violence, who are obliged to comply with family traditions of forced marriages in Algeria. The RPD and the RAD concluded that the applicants were unable to establish a personal nexus between their situation and the persecution suffered by the wife and two daughters. The RPD and the RAD also found that the credibility of the fears of abuse expressed by Mr. Khelifi during the hearing was minimal since he did not mention them on his Basis of Claim Form [BOC Form] and since his testimony was very general and devoid of detail.

[3] The applicants submit that the RAD erred and that there is a clear nexus between them and the possible persecution because of their family association. According to the applicants, it was wrong for the RAD to concentrate only on the women. They allege that the allegations in the BOC Form concern all family members. They highlight that the wife's BOC Form uses the word "nous" [we, us] at certain places. Mr. Khelifi asserts that the RAD also erred by not assigning any weight to his testimony, in breach of the presumption of truthfulness.

[4] In turn, the respondent submits that the RAD did not err. Since Mr. Khelifi (i) failed to indicate in his BOC Form's written account that he had been threatened, insulted and assaulted by his family, and (ii) testified without providing specific examples regarding these events, all the while maintaining a general testimony without any detail, the respondent submits that it was reasonable for the RAD to draw a negative inference on credibility and to conclude that Mr. Khelifi did not establish on a balance of probabilities that he had suffered abuse by members of his family.

[5] Having considered the record before the Court, including the parties' written and oral submissions, as well as the applicable law, the applicants have failed to persuade me that the Decision is unreasonable. For the reasons that follow, this application for judicial review is dismissed.

II. Standard of Review

[6] The parties agree that the applicable standard of review is that of reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. A reasonable decision is a decision that is justified in relation to the facts and the law that constrain the decision maker (*Vavilov* at para 85). Reasonableness is a robust and deferential standard of review (*Vavilov* at paras 12–13). Thus, a reviewing court must defer to the findings of fact and the assessment of the evidence. In an application for judicial review, the Court must refrain from reassessing the evidence considered by the decision maker and, unless exceptional circumstances exist, must not interfere with findings of fact (*Vavilov* at para 125).

III. Analysis

[7] As noted above, one issue in this judicial review is credibility. The applicants allege that the RAD's finding regarding credibility is unreasonable because of the presumption of truthfulness.

[8] As my colleagues Justices Simon Fothergill, Shirzad A. Ahmed and Nicholas McHaffie have stated, credibility findings are part of the fact-finding process, and decisions on credibility require deference upon judicial review (*Fageir v Canada (Citizenship and Immigration)*, 2021 FC 966 at para 29 [*Fageir*]; *Tran v Canada (Citizenship and Immigration)*, 2021 FC 721 at para 35 [*Tran*]; *Azenabor v Canada (Citizenship and Immigration)*, 2020 FC 1160 at para 6). Credibility findings lie within “the heartland of the discretion of triers of fact ... and cannot be overturned unless they are perverse, capricious or made without regard to the evidence” (*Fageir* at para 29; *Tran* at para 35; *Edmond v Canada (Citizenship and Immigration)*, 2017 FC 644 at para 22).

[9] I agree with the respondent that the RAD did not commit an error in its evaluation of the credibility of Mr. Khelifi's testimony that he had been threatened, insulted and assaulted by his family. The RAD was justified to make this finding on the basis of the file before it. The RAD understood and took into account the applicants' fear but it nevertheless found that the allegation of abuse had not been established and that it was unlikely that they would face any risk in Algeria. The RAD noted that Mr. Khelili's allegation of abuse was not mentioned in his BOC Form and that during the hearing, his testimony was general and devoid of detail or precise examples.

[10] The RAD reached this finding on the basis of the credibility of the applicants' allegation and in light of the record. Therefore, this finding deserves to be afforded significant deference (*Fageir* at para 29; *Tran* at para 35; *Edmond v Canada (Citizenship and Immigration)*, 2017 FC 644 at para 22). It is well established that, in the absence of exceptional circumstances, reviewing courts must refrain "from reweighing and reassessing the evidence considered by the decision maker" (*Vavilov* at para 125). In my opinion, the applicants are asking the Court to reweigh the evidence and draw a different conclusion.

[11] The applicants submit that the RAD was wrong to concentrate only on the women since, in reality, the allegations in the wife's BOC Form concern all family members. The applicants assert that when the claims are joined, the evidence filed applies to all of them, which was the case with the applicants. They argue that the applicants must be presumed to be facing the same risks as the other members of their family.

[12] The respondent submits that the facts and the evidence are different in the present case because the wife was the victim of family violence based on her gender by her in-laws, and that the two daughters were accepted as refugees because, given their gender, they are at risk of being obliged to comply with family traditions of forced marriage. However, the applicants were unable to establish that persecution had been directed at them, or that there was a clear nexus between them and the persecution of the wife and two daughters should they return to Algeria. The respondent highlights that the RAD found that the applicants also did not establish that, should they return to Algeria, they would be victims of retaliation because the wife and the two daughters were accepted as refugees.

[13] I do not agree with the applicants for two reasons. First, as indicated above, it is not the Court's role in judicial review to reweigh the evidence and draw a new conclusion. In cases when the RAD is called upon to assess and weigh a number of variables, there will generally be room for disagreement regarding the weight to be granted to each piece of evidence. Simple disagreement on these issues is not a ground for judicial review (*Gadiaga v Canada (Citizenship and Immigration)*, 2022 FC 1255 at para 15).

[14] Having carefully considered the evidence submitted before the RAD, including the wife's BOC Form, I am not persuaded that the RAD committed a reviewable error in its analysis. Despite the applicants' criticisms, I am not of the opinion that the RAD committed an unreasonable error either in the analysis of the evidence or in its findings that the evidence did not establish a prospective risk for the applicants in Algeria.

[15] Second, contrary to the applicants' argument, it cannot be presumed that the applicants face the same risks as the other members of their family. As my colleague Justice Sébastien Grammond has stated, a grant of refugee status does not, by itself, entitle the other members of the same family to refugee status—in other words, “each family member must establish the right to refugee status individually” (*Ly v Canada (Citizenship and Immigration)*, 2021 FC 379 at para 13).

[16] The onus is on the applicants to prove the merits of their refugee protection claims. The RAD reasonably concluded, on the basis of the record before it, that the applicants did not establish that, should they return to Algeria, they would be subjected to a serious possibility of persecution or, on a balance of probabilities, to a danger of torture, a risk to their lives or a risk of cruel and unusual treatment or punishment. I find no errors in the RAD's analysis that would warrant this Court's intervention.

IV. Conclusion

[17] For these reasons, I find that the applicants have not established that the Decision of the RAD is unreasonable. The application for judicial review is therefore dismissed. Neither party has proposed a question for certification, and I agree that this case does not raise any.

THIS COURT ORDERS as follows:

1. The application for judicial review is dismissed.

“Vanessa Rochester”

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-11045-22

STYLE OF CAUSE: SAMIR KHELEFI AND MOKRAME KHELEFI v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: OCTOBER 18, 2023

JUDGMENT AND REASONS: ROCHESTER J

DATED: DECEMBER 29, 2023

APPEARANCES:

Mohamed Diaré FOR THE APPLICANTS

Steve Bell FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mohamed Diaré FOR THE APPLICANTS

Attorney General of Canada FOR THE RESPONDENT
Montréal, Quebec