

Federal Court



Cour fédérale

Date: 20150119

Docket: IMM-2102-14

Citation: 2015 FC 73

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, January 19, 2015

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

NABIL HAMITOCHE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), for leave and judicial review of a decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada dated March 12, 2014, by Member José wa Tshisungu Tshisungu, who found the applicant is not a

person in need of protection or a Convention refugee under sections 96 and 97 of the IRPA. The applicant is seeking to have the RPD's decision set aside and the matter returned back to a different member.

[2] For the following reasons, the application will be dismissed.

II. The facts

[3] The applicant is a citizen of Algeria, where he was a police officer until his departure for Canada on April 7, 2012.

[4] On October 17, 2011, the applicant was stationed at a checkpoint for entry into Algeria and was selecting vehicles to be inspected. Back home after work that day, his neighbour told him that two men with beards and wearing Islamic clothing had come to see him at his home. Two days later, a young man wearing a leather jacket over top of his Islamic clothing came to his house, but he did not answer the door. On October 22, 2011, the applicant received a call from an individual who is a member of a terrorist group soliciting his collaboration in letting a vehicle pass the checkpoint without an inspection. The individual in question had confidential information known only by the applicant's colleagues who were present on October 17, 2011, at the vehicle entry checkpoint. The applicant told his superior about his fear and that he would hide at his brother's house for one week. However, on October 27, 2011, he received a phone call in which he was issued death threats, at his brother's house, and his superior was the only one who knew where he was.

[5] Within the five months preceding his departure, the applicant hid at the police station and with a friend who is a police commissioner. On February 28, 2012, the applicant obtained his Canadian visa and on April 7, 2012, the applicant left Algeria. On April 13, 2012, the applicant filed a refugee claim in Canada alleging a fear of persecution by reason of his membership in a particular social group and political opinion and alleging that he faces a risk of cruel and unusual treatment or punishment and a danger of torture.

III. Impugned decision

[6] The RPD stated that the applicant established his identity to its satisfaction and that it did not question his credibility. The RPD also found that the applicant's allegations pertained to "vengeance" and therefore had no nexus to one of the five Convention grounds and thus found that section 96 of the IRPA was not applicable in the case. The RPD therefore examined the applicant's application under paragraph 97(1)(b) of the IRPA. After establishing that framework of analysis, the RPD only focussed on the state protection issue and found that the applicant did not rebut the presumption of state protection. The RPD noted that the police had wiretapped the applicant's phone to protect him, that nothing indicated that the police had stopped those protection activities and that because the applicant abstained from seeking protection from the police when he received the threatening phone call on October 27, 2011, he could not demonstrate a lack of state protection to the RPD.

IV. Issue

[7] The following issue arises in this case:

1. Did the RPD err in assessing state protection?

V. Standard of review

[8] The applicable standard of review is reasonableness, as this is a question of mixed fact and law (*Hinzman v Canada (Minister of Citizenship and Immigration)*; *Hughey v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171 at para 38; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 53 (*Dunsmuir*)). Consequently, this Court will focus on verifying whether the RPD's decision in this case falls within a range of possible outcomes in respect of the facts and law and whether it is justified in a manner that satisfies the requirements of intelligibility and transparency in the decision-making process (*Dunsmuir* at para 47).

VI. Analysis

[9] The applicant maintains that the documentary evidence shows that Algeria is far from an "electoral democracy", that there have been many terrorist attacks against the Algerian authorities, that there are serious problems with the administration of justice and that consequently, the presumption of state protection is not applicable in this case.

[10] The applicant alleges, in the alternative, that he rebutted the presumption of state protection as a result of his testimony, which was accepted as credible by the RPD.

[11] I am of the opinion that the applicant did not rebut the presumption of state protection. The documentary evidence does not support the applicant's claims that the Algerian state is

incapable of protecting its citizens. The authorities put in place measures to protect him when he informed them that he was receiving threats and therefore it would have been reasonable for the applicant to again ask them for help following the threatening call on October 27, 2011. No state protection is perfect; adequate state protection is sufficient. It was also reasonable for the RPD to not give credence to the applicant's suspicions as to the presence of a spy in the police force in the absence of evidence to that effect, despite the applicant having been deemed credible.

[12] In my opinion, the applicant is seeking the reassessment of the evidence by the Court, but that is not the role of the Court (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, at para 61). Otherwise, I see no reviewable error that would justify setting aside the RPD's decision. In short, the RPD rendered a reasonable decision within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

VII. Conclusion

[13] As a result, the application is dismissed. No question is certified.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application is dismissed and no question is certified.

“Peter Annis”

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2102-14

STYLE OF CAUSE: NABIL HAMITOUCHE v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: DECEMBER 10, 2014

JUDGMENT AND REASONS: ANNIS J.

DATED: JANUARY 19, 2015

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