

Federal Court



Cour fédérale

**Date: 20211201**

**Docket: IMM-2013-21**

**Citation: 2021 FC 1328**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, December 1, 2021**

**PRESENT: The Honourable Madam Justice Walker**

**BETWEEN:**

**TOUFIK HADDOUCHE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicant is seeking judicial review of a decision rendered by the Refugee Appeal Division (“RAD”) on March 9, 2021, denying his refugee protection claim and allowing his spouse’s and minor daughter’s refugee protection claims. The RAD found that the applicant did not establish, on a balance of probabilities, a sufficient nexus between his refugee claim and the persecution suffered by his wife and daughter in Algeria.

[2] For the reasons below, the applicant's application for judicial review is dismissed.

I. Background

[3] The applicant and his spouse are citizens of Algeria. They are parents of a daughter born in Algeria on December 12, 2016.

[4] In their marriage, his wife enjoyed some freedom, which was inconsistent with the traditional family values imposed on women by his wife's brother and uncles. As a result, she was a victim of physical and psychological abuse by her family before and after her marriage in 2015. She also faced harassment and surveillance by the applicant's family after the marriage. The applicant's young daughter also suffered mistreatment by both families.

[5] In 2018, the applicant, his spouse and their daughter sought refuge in Béjaïa, Algeria, near the applicant's family. They remained there for six months. Unfortunately, the wife's family found them, and they returned to Algiers.

[6] The applicant and his family left Algeria and arrived in Canada on April 13, 2019, with Canadian visas obtained on August 10, 2017.

[7] On September 23, 2020, the Refugee Protection Division ("RPD") refused the family's refugee protection claims on the principal ground that they were not credible.

[8] The applicant, his wife and their daughter appealed the RPD's negative decision to the RAD.

[9] The RAD allowed the wife's and minor daughter's appeals. However, the RAD dismissed the applicant's refugee claim and affirmed the RPD decision that he was neither a Convention refugee nor a person in need of protection. The RAD noted that the applicant's application was based solely on those of his spouse and daughter. According to the RAD, the applicant was unable to demonstrate a fear of persecution as his membership in the family social group is not sufficient in itself for him to be granted refugee status.

[10] The RAD decision to dismiss the applicant's appeal is the subject of this application for judicial review.

## II. Analysis

[11] The standard of review applicable to this case is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23 (*Vavilov*)). When reviewing a decision based on the standard of reasonableness, the Court must decide whether the decision is justified, transparent and intelligible. To that end, the decision must be "based on an internally coherent and rational chain of analysis" and be "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85).

[12] There is no disagreement between the parties about the principles relevant to the applicant's application. Jurisprudence clearly recognizes family as a social group for the

purposes of protection, but a claimant is required to prove that there is a personal nexus between him or her and the persecution based on one of the Convention grounds being alleged (*Ndegwa v Canada (Minister of Citizenship and Immigration)*, 2006 FC 847 at para 9 (*Ndegwa*)):

[9] That the family is a valid social group for the purposes of seeking refugee protection is well established. Where membership in a family group is the basis for the claim, a personal nexus must be established between the claimant and the alleged persecution on Convention grounds: *Pour-Shariati*. It is not enough to point to the persecution suffered by family members if it is unlikely to affect the claimant directly. In this case, there was a sufficient nexus between the applicant's claim and his wife and daughter's persecution. The applicant is the husband and father of the women and therefore he would directly be at risk resulting from the decision not to allow his daughter's circumcision.

[13] The applicant maintains that there is a sufficient nexus between his refugee claim and the persecution suffered by his wife and daughter. According to the applicant, the physical and psychological abuse suffered by his wife is directly related to the freedom she enjoys in their marriage. This is not a case of indirect persecution. The applicant notes the importance of his role as head of the family and his active participation in several family decisions, including those not to follow traditional marriage values in Algeria and not to register his daughter in Koranic school or have her wear a veil. The applicant thus played an active role in the very decisions that led to the persecution of his wife and daughter by members of both families. He is not just an unwilling spectator of violence against his wife; he risks being persecuted himself (*Granada v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1766 at para 15).

[14] The applicant's arguments are not persuasive in light of the evidence on record, the testimony by the applicant and his wife at the hearing before the RPD, the case law and the careful decision by the RAD. The RAD's analysis and reasons concerning the applicant's risk of

personal persecution if he were to return to Algeria are intelligible and detailed and justify its dismissal of the applicant's refugee claim.

[15] The determinative findings of the RAD are as follows:

- The applicant's refugee claim is based entirely on his wife's claim. The RAD began its analysis of the claim by stating that [TRANSLATION] "at the hearing, [the applicant] testified that he fears for his wife and daughter".
- The RAD also noted that the applicant did not allege that his family or his wife's family would attack him if he were to return to Algeria:

When the RPD asked him what he feared, he replied clearly that he feared for his wife and daughter, not for himself. In the memorandum of appeal, he even argues that the RPD ruled on [translation] "things that had not been asked" by indicating in its summary allegations not expressly formulated in the BOC Form, such as the assertion that the appellants fear being forced by uncles to separate or that they brought dishonour to the family by fleeing Algeria.

- The RAD therefore found that the evidence on record does not support a conclusion that there is a possibility of serious persecution of the applicant based on his membership in the family social group or on any other grounds.

[16] Although family is a social group, the fact that the wife and daughter were persecuted does not confer refugee status on the applicant, as a member of the family (*Theodore v Canada (Citizenship and Immigration)*, 2021 FC 651 at para 8). In this case, the applicant never alleged that he feared reprisals against him by the two families. He always stressed his fear for his wife

and child. At the hearing, the RPD clearly asked him what he feared. The applicant replied unequivocally that he feared for his wife and daughter.

[17] Despite that response, the applicant maintains that he told the RPD that he feared being forced by his wife's uncles to be separated from his family and that one of his wife's uncles visited him and threatened him. The applicant thus maintains that the RAD erred in finding that there was not a sufficient nexus between his refugee claim and the persecution suffered by his wife and daughter.

[18] I disagree with the applicant. His testimony before the RPD is clear. He fears for his wife and young daughter. I agree with the respondent's argument that the applicant is trying to change the grounds that he cited on appeal. Indeed, he is trying to change the nature of the argument he made before the RAD (*Guarjardo-Espinoza v Minister of Employment and Immigration*, [1993] FCJ No. 797 (FCA)). For example, the applicant downplayed the significance of the personal threats received in his memorandum of appeal: [TRANSLATION] "contrary to what the tribunal would believe, the arrival of the uncle and the threats uttered are not significant but are part of the continued tension and threats that the couple has faced for years".

[19] The applicant cites *Ndegwa*. He submits that the threats against him should be considered given his active involvement in the decisions about his wife and daughter and the freedom they enjoy. According to the applicant, the RAD's analysis was insufficient.

[20] In my view, the decision in *Ndegwa* differs from the applicant's case. In that case, the Court indicated that the tribunal had not considered whether the applicant himself risked being persecuted due to his immediate family (*Ndegwa* at para 11). However, in this case, the RAD carefully considered the effects of the spouse and daughter's persecution on the applicant. Although the RAD allowed the claims by his wife and daughter, finding that they were victims of domestic violence, the tribunal found that the applicant was not the subject of threats, despite his role in the family, and faced no risk as a result of his departure from Algeria.

[21] I find that it was open to the RAD to find that the applicant did not establish that he faced a reasonable possibility of persecution in relation to the violence faced by his wife and daughter. Although the applicant's actions played a role in the increased risk of persecution due to his decision to not follow traditions, the fundamental test remains that there must be a fear of persecution, even if it results from a family association. In this case, the applicant made no allegations of threats against him. He always said he feared for his wife and daughter. Having a family relationship is not sufficient in itself.

[22] I also note that the RAD found that the applicant's conduct before leaving Algeria was not that of a person who fears for his life. The applicant and his family obtained a visa for Canada on August 10, 2017. However, the applicant did not leave Algeria until April 2019. During that time, the applicant made no effort to hide. The RAD found that waiting 19 months before being prepared to leave is excessive and that the explanation of his wife's health following childbirth in December 2016 was insufficient. The applicant did not specify what

happened to his wife and did not file any medical evidence to explain what happened during childbirth that would have prevented her from travelling to protect herself for 16 months.

[23] The RAD noted that the applicant is the head of the family and that he clearly explained that he was the one who took steps to obtain the visas. It was the applicant who decided when to leave. The RAD found that “[w]aiting 19 months to leave the country is a determinative factor in the analysis of the male appellant’s fear, and his explanations regarding the female appellant’s medical condition are inadequate.”

[24] The RAD did not err in finding that the applicant’s conduct materially undermines his allegations of fear of personal persecution due to his membership in the family social group. A refugee protection claimant can hardly be considered a refugee without subjective fear of persecution (*Licao v Canada (Citizenship and Immigration)*, 2014 FC 89 at para 52).

### III. Conclusion

[25] The RAD decision is reasonable in light of the applicant’s testimony. The panel’s decision is transparent and intelligible and shows internally coherent reasoning (*Vavilov* at para 105). Accordingly, I dismiss this application for judicial review.

[26] The parties raised no questions for certification, and I agree that none arise.

[27] On the consent of the parties, the style of cause is amended to identify the respondent as the Minister of Citizenship and Immigration.



**JUDGMENT in IMM-2013-21**

**THIS COURT ORDERS as follows:**

1. The style of cause is amended to identify the Minister of Citizenship and Immigration as the respondent.
2. The application for judicial review is dismissed.
3. No question of general importance is certified.

“Elizabeth Walker”

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Judge

Certified true translation  
Francie Gow

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

**DOCKET:** IMM-2013-21

**STYLE OF CAUSE:** TOUFIK HADDOUCHE v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HEARD BY VIDEOCONFERENCE

**DATE OF HEARING:** NOVEMBER 10, 2021

**JUDGMENT AND REASONS:** WALKER J.

**DATED:** DECEMBER 1, 2021

**APPEARANCES:**

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