

Federal Court



Cour fédérale

**Date: 20230328**

**Docket: IMM-1848-22**

**Citation: 2023 FC 430**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, March 28, 2023**

**PRESENT: Madam Justice Walker**

**BETWEEN:**

**LYES SLIMANI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicant, Lyes Slimani, is a citizen of Algeria. He is seeking judicial review of a decision rendered on February 2, 2022, by the Refugee Appeal Division (RAD). In its decision, the RAD confirmed the determination of the Refugee Protection Division (RPD) that the applicant is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

[2] After reading and listening to the parties' arguments and considering the RAD's reasons and the applicable law, I find no grounds for the Court's intervention. I therefore conclude that the RAD's determination was justified in relation to the facts and law that constrain the panel under the framework set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (*Vavilov*). Therefore, this application for judicial review is dismissed.

I. Background

[3] The applicant was born into the Muslim religion, and his family is practising. While growing up, he made a Christian friend who spoke to him about Christianity. In 2015, the applicant began to accompany his friend to church, and on December 25, 2015, he was baptized by a pastor of the Ait Ouacif church. Subsequently, he attended the church in Tizi Ouzou every Saturday until 2017.

[4] On November 18, 2017, as he was leaving the church, the applicant met a stranger who offered him a ride home. During the trip, the driver stopped, and another person boarded the car. They asked him if he was a Christian. The two men then took the applicant to a remote location. The applicant was beaten and required medical attention. After leaving the hospital, the applicant went to the police to file a complaint, but the police officers were unhelpful and told him that there was no place for people like him in Algeria.

[5] After this incident, the applicant no longer attended church. He applied for a visa to France, which was refused. His father asked him to return to Islam to protect himself, but the applicant refused.

[6] The applicant travelled to Canada with his father in October 2018 and claimed refugee protection. He reported a fear of returning to Algeria because of his conversion to Christianity.

[7] On June 10, 2021, the RPD rejected the applicant's refugee protection claim, finding that the allegations underlying his claim were not credible. At the hearing, the panel rejected two objections from the applicant's counsel and his motion for recusal on grounds of bias.

[8] The applicant appealed the RPD's decision to the RAD.

## II. Refugee Appeal Division decision

[9] The RAD first responded to the applicant's allegations of a reasonable apprehension of bias on the part of the RPD. In support of his allegations, the applicant filed the résumé of the RPD member found online. He raised two arguments in support of his contention that the member should recuse himself: (1) the member accused him of cheating by asking twice to verify that the applicant was not using notes or documents during his testimony; and (2) the member was of the Muslim faith, [TRANSLATION] "even a fundamentalist", and a decision to be made by a decision maker for a religious case should be made by that of another religion or an atheist.

[10] The RAD rejected the allegations of bias. It stated that the intrinsic characteristics of an RPD member are irrelevant to the analysis of a reasonable apprehension of bias. As a result, the RAD refused (a) the filing of the member's resume as new evidence and (b) the request for an oral hearing.

[11] The RAD was of the view that both interventions by the RPD were courteous and normal. The RAD rejected the applicant's argument that the member's faith had influenced the hearing. According to the RAD, the applicant's counsel made offensive remarks about the member's physical characteristics, Islam and Muslims around the world. The panel did not identify any prejudice on the part of the member with respect to either the applicant or his conversion.

[12] The RAD then discussed the applicant's challenges to the RPD's negative credibility findings and its analysis under section 96 of the IRPA. The RAD's assessment of the applicant's arguments was detailed and led it to its determinative conclusion, namely, that the applicant did not establish that he would face a serious possibility of persecution for religious reasons if he returned to Algeria. Consequently, the RAD dismissed the applicant's appeal and confirmed the RPD's determination.

### III. Analysis

[13] The issue in this case is whether the RAD's determination is reasonable. In doing so, I will address two questions:

1. Did the RAD draw an unreasonable conclusion by determining the RPD did not show bias at the applicant's hearing?
2. Did the RAD err in concluding that the applicant did not establish that he would face a serious possibility of persecution in Algeria?

[14] The standard of review applicable to RAD decisions on RPD proceedings and the assessment of evidence is a reasonableness standard of review (*Vavilov* at paragraphs 10 and 23; *Hundal v Canada (Citizenship and Immigration)*, 2021 FC 72 at paragraph 16 (*Hundal*); *Ibrahim v Canada (Citizenship and Immigration)*, 2020 FC 1148 at paragraphs 14–18).

[15] The first question concerns the RAD's substantive conclusion that the applicant was not denied procedural fairness before the RPD. In raising this question, the applicant does not allege a breach of procedural fairness by the RAD. Instead, he raises issues of bias before the RPD. This distinction leads me to conclude that both questions in this application for judicial review should be subject to the reasonableness standard.

1. *Did the RAD draw an unreasonable conclusion by determining the RPD did not show bias at the applicant's hearing?*

[16] The applicant argues that the RAD downplayed the accusations made by the RPD member against the applicant and his counsel at the hearing. He also alleges that the RAD erred in rejecting his arguments about the member's religion and the significance of the conflict between the member and his counsel. According to the applicant, the RAD failed to analyze all relevant facts and to consider whether the member had given rise to a reasonable apprehension of bias against the applicant and his counsel.

[17] I respectfully disagree.

[18] The RAD referred to the case law of the Supreme Court of Canada that defines the test for analyzing reasonable apprehension of bias (*Committee for Justice and Liberty v National Energy Board*, [1978] 1 SCR 369 at 394, as cited in *Baker v Canada (Minister of Citizenship and Immigration)*, [1997] 2 SCR 817 at para 46). That test is whether or not an informed person, viewing the matter realistically and practically—and having thought the matter through—would conclude that the RPD, whether consciously or unconsciously, would not decide fairly (*Kidane v*

*Canada (Citizenship and Immigration)*, 2019 FC 1325 at para 21; *Chan v Canada (Citizenship and Immigration)*, 2021 FC 1378 at para 41).

[19] The RAD addressed each of the applicant's arguments regarding the conduct of the RPD member. Its analysis was balanced and detailed. The RAD did not err in clearly and unequivocally rejecting the statements of the applicant's counsel that a very religious decision maker would be predisposed to ignore or reject the circumstances of a person who has departed from their religion. I agree with the RAD's reasons. The alleged religious beliefs of a decision maker are irrelevant to the issue of bias (*Chaudhry v Canada (Minister of Citizenship and Immigration)*, 2005 FC 200 at paras 10–12).

[20] The RAD listened to the recording of the hearing and reviewed the RPD's two requests to show that the applicant was not consulting his notes. According to the RAD, if the RPD had any doubts, it would be normal for the RPD to ask to verify what was in front of the applicant. The RAD described the circumstances of each of the member's interventions and concluded that a "informed person, having thought the matter through, would not conclude that asking someone twice whether a person is reading their notes during a hearing that lasted more than 2.30 hours is excessive". The RAD also concluded that the interventions were courteous and that it was the applicant's counsel who overreacted. Despite counsel's submissions at the end of the hearing, the RAD was not "of the opinion that this raised an issue of procedural fairness for the [applicant] since it occurred after the questioning had finished and his counsel was making his representations". In my view, the RAD did not err in this regard.

[21] The applicant disputes the RPD's reference to its authority to ask for a 360-degree camera view when it suspects that a claimant is using notes or other documents. I agree with the respondent, who points out that the RPD has sole and exclusive jurisdiction over its proceedings (section 162 of the *Immigration and Refugee Protection Act*). It may request that a witness show his or her surroundings when the hearing is held by videoconference.

[22] The RAD then addressed the conflict between the RPD member and the applicant's counsel. After listening to the hearing and reading the appeal memorandum, the RAD noted a conflict between the member and counsel. Once again, the RAD described the atmosphere of the hearing and the RPD's respectful questions about the applicant's path to Christianity, his religious practice in Algeria and the incident in November 2017. According to the RAD, the RPD listened to the applicant and ensured that it understood his responses while proceeding informally and expeditiously. The RAD concluded as follows:

Not only would an informed person not call into question the member's impartiality at the hearing, but also, they would be impressed by his calm in the circumstances. The inappropriate behaviour and hostile environment were the work of the appellant's counsel and not the RPD. Even though the RPD's decision has errors, I have corrected them and the RPD did not have to recuse itself.

[23] Despite the applicant's arguments before this Court, I am of the view that the RAD responded directly to the applicant's arguments and did not downplay the conflict between the RPD member and the applicant's counsel. The circumstances of the hearing and the role of counsel were carefully considered by the RAD, and its reasons fully justify its rejection of the allegation of bias. Its conclusions are intelligible and justified. Counsel's statement that the member was disturbed by his objections and that the member's interventions demonstrate his

negative attitude toward the applicant is not persuasive. The fact that counsel created a confrontational atmosphere at the hearing does not call into question the impartiality of the member, especially on the grounds of his own faith and personal characteristics.

2. *Did the RAD err in concluding that the applicant did not establish that he would face a serious possibility of persecution in Algeria?*

[24] The applicant argues that the RAD did not consider all the objective evidence concerning the situation of Christian converts in Algeria or the case law on what constitutes persecution on religious grounds. He states that if the RAD acknowledged church closures and discrimination against Christians, it could not conclude that the applicant would not be affected. In addition, the applicant challenges the RAD's analysis of his family circumstances and his father's objections to his conversion. He alleges that his family will force him to return to Islam and go to the mosque if he returns to Algeria.

[25] Having carefully considered the applicant's arguments and the RAD's reasons, I am not satisfied that there are grounds for intervening in this case. The RAD conducted a thorough review of the applicant's personal evidence and the objective evidence regarding Algeria. Contrary to the applicant's argument, the RAD considered the objective evidence listed in his memorandum.

[26] As stated by the applicant, the RAD acknowledged that the applicant converted to Christianity in 2015. The RAD also acknowledged that the applicant was attacked in 2017 upon leaving his church but concluded that his failure to report additional threats and acts of



discrimination prior to his departure for Canada in his Basis of Claim Form undermines the credibility of his testimony in this regard.

[27] The RAD then reviewed the applicant's situation, considering the documentary evidence. It noted that the Algerian government has closed some Christian churches since 2017 and that the situation has worsened since 2019. Nevertheless, many churches remain open, and the evidence does not indicate that the applicant would not be able to return to church on Saturdays as he did prior to his departure.

[28] Although Christians in Algeria suffer from intolerance and discrimination in society in general, the RAD concluded that the objective evidence does not support the conclusion that the mere fact of being a Christian in Algeria would subject the applicant to a serious possibility of persecution. The RAD distinguishes between discrimination and persecution, and in doing so, it does not make a reviewable error (*Azzam v Canada (Citizenship and Immigration)*, 2019 FC 1517 at para 2). The RAD's reasons demonstrate that it considered all the evidence. It acknowledged the widespread problems of religious discrimination in Algeria. The applicant's argument that the RAD ignored the objective evidence is simply an invitation to the Court to reassess the evidence.

[29] The applicant states that the RAD concluded that he will not be persecuted in Algeria because he will be [TRANSLATION] "a discreet Christian" and argues that this conclusion is an error of law. I disagree because the applicant has misrepresented the RAD's conclusion. Specifically, the RAD concluded that if the applicant returns to Algeria, there is no indication

that he will not be able to practise his faith. He can attend a Christian church as he used to. Certainly, he would face problems if he engaged in proselytizing, but he clearly testified at the hearing that he never participated in activities to convert individuals.

[30] The applicant also argues that, since the RAD accepted that he was Christian, it had to consider the objective evidence as confirming his risk of persecution.

[31] Documentary evidence of country conditions is not sufficient to establish that an claimant faces more than a mere possibility of persecution upon return (*Sellai v Canada (Citizenship and Immigration)*, 2019 FC 446 at paras 71–73, citing *Balogh v Canada (Citizenship and Immigration)*, 2016 FC 426 at para 19). In *Olah v Canada (Citizenship and Immigration)*, 2017 FC 921 (*Olah*) at para 15, Justice Southcott further explained this principle in dealing with an application for judicial review of a Hungarian Roma family:

[15] I read this reasoning as noting that the jurisprudence surrounding refugee claims by Hungarian Roma does not support a conclusion that the general country conditions are such that all Roma in Hungary face discrimination amounting to persecution. Rather, it is necessary to consider a particular claimant's specific circumstances, in combination with the general documentary evidence, to conclude whether that claimant faces a risk of persecution. The above statement from *Balogh* does not represent a departure from the principles surrounding s 96 upon which the Applicants rely but rather an application of those principles.

[32] A claimant may show a fear of persecution through evidence of the treatment of members of a group to which the claimant belongs, in their country of origin (*Abusamra v Canada (Citizenship and Immigration)*, 2022 FC 917 at para 29); but in this case, the RAD concluded that the objective evidence did not establish that all Algerian Christians face persecution. The

applicant must therefore establish a link between the objective evidence and his specific circumstances (*Olah* at para 15).

[33] The RAD noted that, despite the discrimination against Christians in Algeria, the applicant did not report any acts of discrimination on the part of his community between 2015 and 2018. The attack in 2017 does not constitute persecution. His conversion disrupted his family, but the applicant did not establish any acts of discrimination or hatred on the part of his family. He is not alleging that his right to work or health care or other fundamental rights have been violated. The RAD observed that “[e]ven though his father asked him to return to Islam, and though he testified in writing that he did not [translation] “appreciate” his son’s conversion, the [applicant] did not allege that his family had committed discriminatory or harassing acts”. The applicant’s arguments against these conclusions are not persuasive. I see nothing unreasonable in the RAD’s conclusion that the applicant has not demonstrated a credible link between the documentary evidence and his personal situation.

[34] The applicant alleges that the RAD used the wrong test to establish the risk of persecution. He argues that the RAD failed to analyze his prospective risk of persecution. Again, I disagree. The fact that the RAD considered events prior to his departure from Algeria does not establish that it omitted a prospective analysis of the serious possibility of persecution. On the contrary, the RAD’s detailed analysis clearly demonstrates its assessment of the applicant’s personal circumstances prior to his departure as part of his prospective risk if he returns to Algeria.

[35] Furthermore, the RAD did not require that the applicant be subjected to persecution.

*Naredo v Canada (Minister of Employment and Immigration) (1981)*, 40 NR 436 (FCA)

(*Naredo*) is of no assistance to the applicant, because that decision can be distinguished from the one in this case. In *Naredo*, the member concluded that the applicants did not establish that they “would be subject to persecution” if they returned to their country of origin (*Naredo* at para 2).

In this case, the RAD concluded that the “[applicant’s] risk is a mere possibility and not a serious possibility of persecution risk is a mere possibility and not a serious possibility of persecution”.

[36] For all the reasons above, the RAD’s determination is not unreasonable. The RAD’s reasons reflect transparency and intelligibility. The RAD addressed all the applicant’s objective evidence and personal circumstances in a thorough and careful manner. It did not use the wrong test to establish the applicant’s prospective risk. Its conclusions are reasonable and justified.

There is no reason for the Court to intervene.

[37] The parties have not proposed any questions for certification, and I agree that there are none.

**JUDGMENT IN IMM-1848-22**

**THIS COURT'S JUDGMENT is as follows:**

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

“Elizabeth Walker”

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Judge

Certified true translation  
Michael Palles

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

**DOCKET:** IMM-1848-22

**STYLE OF CAUSE:** LYES SLIMANI v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** NOVEMBER 24, 2022

**JUDGMENT AND REASONS:** WALKER J.

**DATED:** MARCH 28, 2023

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