

Federal Court



Cour fédérale

**Date: 20230830**

**Docket: IMM-4104-22**

**Citation: 2023 FC 1170**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, August 30, 2023**

**PRESENT: The Honourable Mr. Justice Pamel**

**BETWEEN:**

**MAHDI CHAKROUN  
SELIMA CHAKROU  
YESSINE CHAKROUN  
MERIAM BEN HAMMADI**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicants, Mahdi Chakroun, his wife Meriam Ben Hammadi, and their minor children Selima Chakroun and Yessine Chakroun are citizens of Tunisia. They are seeking judicial review of a decision the Refugee Appeal Division [RAD] of the Immigration and

Refugee Board of Canada rendered on April 7, 2022. The RAD confirmed the Refugee Protection Division [RPD] decision that the applicants were neither Convention refugees nor persons in need of protection.

I. Background

[2] Mr. Chakroun has a master's in accounting and before leaving Tunisia, he was the head of finance for a medical supplies sales company. Mr. Chakroun alleges that he fears returning to Tunisia because he had a business dispute with a smuggler and member of the mafia, a certain Mr. Tebai, and his son. More specifically, Mr. Chakroun alleges that in September 2017, he refused to honour a payment for smart phones equal to CAD 10,000 by trying to stop payment on a cheque he had given to Mr. Tebai as collateral, and by emptying his bank account. After a series of threatening incidents that occurred from September to December 2017, Mr. Chakroun, who already had a valid Canadian visa, requested a new visa for himself and his children on December 18, 2017. This new visa was issued on January 2, 2018. Ms. Ben Hammadi already had a valid Canadian visa obtained in 2013, and the family left Tunisia one month later, on February 2, 2018.

[3] The applicants experienced distress for a short period of time, but intensely. In January 2017, Mr. Chakroun met Mr. Tebai, an important smartphone and tablet dealer who works in a market in Tunis. Mr. Chakroun decided to become an associate of Mr. Tebai and find him retailers in exchange for a commission. On September 6, 2017, Mr. Tebai required Mr. Chakroun to issue a postdated cheque for TND 19,350 (equal to CAD 10,000) as collateral for the goods he was giving him and Mr. Chakroun complied. Three days later, Mr. Chakroun

apparently realized that Mr. Tebai had given him counterfeit electronic devices. After trying to contact Mr. Tebai without success, Mr. Chakroun went to Mr. Tebai's business a few days later to tell him the devices were counterfeit. An argument ensued between the two men during which Mr. Tebai denied having given him counterfeit goods. Mr. Chakroun decided to go to the bank to stop payment on the cheque. As the bank refused to stop payment on the cheque, Mr. Chakroun withdrew all of his money from his account to prevent Mr. Tebai from obtaining payment for the goods.

[4] Around October 2, 2017, Mr. Tebai called Mr. Chakroun to tell him that the cheque was NSF and to hurl insults at him. Mr. Tebai continued to harass Mr. Chakroun on the phone, saying that his story about counterfeit devices harmed his reputation at the market, that he wanted his money and that he was going to destroy him. A few days later, Mr. Tebai went to the applicants' home with two men, but Mr. Chakroun was not there. The following day, Mr. Tebai went to Mr. Chakroun's workplace but he was not there. On October 21, 2017, Mr. Chakroun went to Mr. Tebai's business to try and settle their dispute amicably. Mr. Tebai wanted nothing to do with it and gave Mr. Chakroun an ultimatum to return his money within one month or his family would suffer the consequences. Mr. Chakroun did not file a complaint against Mr. Tebai because he was [TRANSLATION] "well connected." At the end of November 2017, Mr. Chakroun's company car was vandalized. He suspected Mr. Tebai and decided to move in with his in-laws at the beginning of December. However, Mr. Tebai continued to call him and go to his place of work.

[5] According to Mr. Chakroun's testimony before the RPD, the trigger event occurred around mid-December 2017: a competitor of Mr. Tebai at the market in Tunis, who was also a smuggler, had heard about what had happened and spoke to Mr. Chakroun at the café to warn him that Mr. Tebai was also in the mafia. Additionally, another smuggler that Mr. Chakroun knew also warned him that he had better pay Mr. Tebai or leave the country; otherwise he would be killed. As I noted above, the family left Tunisia for Canada two months later, in February 2018. Mr. Tebai allegedly went to Mr. Chakroun's parents' home to demand the amounts Mr. Chakroun owed him and to warn them that if he were not paid, he would come after the family.

[6] Mr. Chakroun alleges that he and his family did not have the intention of claiming refugee protection when they left Tunisia. He states that he did not know that they could. When they arrived in Canada, they called an immigration lawyer to help them obtain permanent residence. The lawyer appears to have advised Ms. Ben Hammadi to return to Tunisia and file an application for a study permit in Canada. Ms. Ben Hammadi therefore returned to Tunisia with her children in April 2018 and applied for a study permit in Canada two months later, in June 2018. However, this study permit was denied on July 11, 2018. On July 3, 2018, when Ms. Ben Hammadi was in Tunisia, it appears that Mr. Tebai went to her parents' home seeking information about Mr. Chakroun. Mr. Tebai allegedly warned Ms. Ben Hammadi's parents that if Mr. Chakroun returned to Tunisia, he would not live.

[7] As for Mr. Chakroun, the Canadian lawyer allegedly advised him to go to Cuba to renew his visitor visa, which is what Mr. Chakroun did from July 14 to 20, 2018. When he returned to

Canada, the Canada Border Services Agency [CBSA] intercepted him at the airport. During the secondary inspection with a CBSA officer, Mr. Chakroun stated that he feared returning to his county and claimed refugee protection. Ms. Ben Hammadi returned to Canada with the children on July 26, 2018, and claimed refugee protection at the airport.

[8] A few days prior to the hearing before the RPD, Mr. Chakroun modified his Basis of Claim Form [BOC Form] to add that the bank had initiated legal proceedings against him with regard to the NFS cheque he had issued, an offence punishable by five years' imprisonment. He also added that he feared being imprisoned for 30 years because he is a recreational cannabis smoker. The RPD dismissed the claim for refugee protection, finding that the applicants were not credible because of contradictions in their testimony, their BOC Form and the border services officers' notes. The RPD also found that the applicants' conduct was inconsistent with that of individuals who fear being persecuted.

[9] As for the RAD, it found that the RPD findings about the applicants' credibility were correct, noting that three elements were particularly determinative: the six-month period before the applicants left Tunisia; the five-month period before Mr. Chakroun claimed refugee protection after he arrived in Canada; and the return of Ms. Ben Hammadi and the children to Tunisia for three months. The RAD also noted inconsistencies in Mr. Chakroun's testimony and BOC Form regarding the steps he took with the bank to stop payment on the cheque and the efforts he made to obtain police assistance in Tunisia. Moreover, the RAD agreed with the RPD that Mr. Chakroun did not establish his claims regarding his cannabis consumption since he only mentioned it when he modified his BOC Form a few days prior to the hearing.

II. Analysis

[10] This application for judicial review raises the issue of the reasonableness of the decision. The reasonableness standard applies to the merits of the visa officer's decision (*Musasiwa v Canada (Citizenship and Immigration)*, 2021 FC 617 at para 22; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23).

A. *Was the RAD decision reasonable?*

[11] The applicants contest the RAD findings about their credibility. They allege that despite Mr. Tebai's threats towards them, six months passed before they left Tunisia because although their problems began in September 2017, they intensified in December 2017 and it was at that time that the applicants realized they had no other choice but to leave Tunisia. The RAD found this explanation unreasonable. The threats began in September, but they intensified quickly and dangerously. Additionally, Mr. Chakroun already knew he was dealing with a dangerous smuggler and member of the mafia, and since the applicants already had visas for Canada, they could have left Tunisia to ensure their safety. The RAD found that although this period of time did not in itself justify the rejection of the claim, under the circumstances, Mr. Chakroun's credibility was seriously tainted by his conduct, which was inconsistent with that of someone who feared for his life. In my opinion, I see nothing unreasonable in the RAD's findings on this issue.

[12] As for the period of time before claiming refugee protection in Canada, as I noted above, the applicants' intention was solely to seek permanent residence in Canada, and they did not know how to apply for Canada's protection. They met with a lawyer who specializes in

immigration law, but at no time did he indicate they could claim refugee protection in Canada. It was only upon his return from Cuba, after being intercepted by a border services officer and threatened with exclusion that Mr. Chakroun claimed refugee protection. Mr. Chakroun states in his memorandum that at the port of entry, he first declared that he did not fear returning to his country but that he made this declaration because of his fear, and it was after he was intercepted and threatened with removal to Tunisia by an exclusion order that he declared he could not return to his country because he feared for his life.

[13] The applicants allege that Mr. Chakroun was not in his usual state of mind when he arrived at customs, that he was tired, did not understand what was happening to him and knew nothing about refugee protection, and that it was only when a second border services officer asked him whether he wanted to file a claim for refugee protection that he answered yes. The applicants allege that the decision-makers should not place undue reliance on port of entry statements (*Wu v Canada (Citizenship and Immigration)*, 2010 FC 1102 at para 16), and that the delay in making a claim for protection is not determinative in itself (*Ntatoulou v Canada (Citizenship and Immigration)*, 2016 FC 173 at para 14).

[14] Before me, the applicants reiterated that they arrived in Canada without knowing that they could claim refugee protection and that during the six months they were consulting with a lawyer in Canada, they never discussed the possibility of making a claim for refugee protection. This suggests that they did not inform their lawyer of the reason they fled Tunisia; frankly, it is the first question the lawyer should have asked, as the applicants' lawyer admitted when I asked

him the question. However, at paragraph 29 of the affidavit in support of his application,

Mr. Chakroun stated:

[TRANSLATION]

Here we consulted counsel Sylvio Houle and we talked to him about our situation. He recommended that I stay as a tourist since I could not return to Tunisia and that my wife apply for a study permit. To apply for the study permit, my wife had to return to Tunisia.

[Emphasis added.]

[15] It would seem, therefore, that the applicants did indeed talk with the immigration lawyer about the reasons they left Tunisia, but instead of recommending that they claim refugee protection, that lawyer concocted a plan that required Ms. Ben Hammadi to return to Tunisia and Mr. Chakroun to travel to Cuba. This is very strange, as was Mr. Chakroun's statement that he suddenly discovered the option of requesting protection after being threatened with removal after he returned from Cuba. To me, it seems clear that the applicants' actions were planned out on the advice of an immigration lawyer who likely knew the reason they had left Tunisia but did not mention the possibility of claiming protection in Canada. In my opinion, it is not unreasonable for the RPD or for the RAD to expect the applicants to have planned to seek protection the first time they arrived in Canada and when they spoke with an immigration lawyer. The scenario this lawyer concocted seems excessively complicated to me, particularly if the applicants' claim for protection was truly defensible. The fact the applicants only claimed protection several months after they arrived in Canada and only after Mr. Chakroun was intercepted on his return from Cuba casts doubt on the applicants' story about the reasons they first left Tunisia. In the circumstances, I see nothing unreasonable in the fact the RAD agreed with the RPD finding that the allegations of the refugee protection claimants had serious credibility issues.



[16] As for Ms. Ben Hammadi and her children's return to Tunisia, the applicants allege that they knew it was a risk but they cite *Yusuf v Canada (Minister of Employment and Immigration)* (CA), [1992] 1 FC 629, [1991] FCJ No 1049 (QL) [*Yusuf*], according to which "[t]he definition of refugee is certainly not designed to exclude brave or simply stupid persons in favour of those who are more timid or more intelligent" (*Yusuf* at para 5). This may be the case, but it does not render the RAD's findings unreasonable. The RAD found that by leaving Canada, a country where Ms. Ben Hammadi and her family were safe, in order to return to Tunisia simply to apply for a study permit when she alleges that Mr. Tebai [TRANSLATION] "has eyes everywhere," Ms. Ben Hammadi moved closer to her agent of persecution "and, as a result, demonstrated behaviour that is inconsistent with that of a person who fears for her life" (RAD decision at para 15). In the circumstances, I am not convinced that the RAD decision was unreasonable on this issue.

[17] During the hearing before this Court, the applicants submitted that they could not return to Tunisia because Mr. Chakroun had now admitted that he had issued an NSF cheque and smoked cannabis, two offences that could result in criminal prosecutions in Tunisia. They submit that the RAD did not consider the serious criminal consequences, namely a maximum prison sentence of five years for issuing an NSF cheque and a maximum prison sentence of 30 years for smoking cannabis. According to the applicants, these sentences are cruel and unusual as they would "outrage standards of decency" and "surpass all rational bounds of punishment" (*Canada (Citizenship and Immigration) v Harvey*, 2013 FC 717 [*Harvey*] at para 26), and they are completely disproportionate considering that possession of cannabis is legal in Canada. The

RAD had to question whether these sentences would be imposed “in disregard of accepted international standards” (*Harvey* at para 41).

[18] I admit that the RAD did not consider this specific issue, but the issue was not submitted to it. I cannot blame the RAD for not considering an issue that was not raised before it. The applicants submit that the RAD had the evidence regarding these sentences and it should have raised the issue itself. I cannot agree with this statement. The RAD cannot be expected to consider every piece of evidence and attempt to draw arguments from them to support a claim for refugee protection.

[19] At any rate, the applicants admit that nobody in Tunisia is able to file a complaint against Mr. Chakroun regarding his cannabis consumption. Additionally, the only evidence of a potential criminal complaint regarding the NSF cheque is a letter from Ms. Ben Hammadi’s mother stating that Mr. Tebai’s father had contacted Ms. Ben Hammadi through Facebook and had threatened to take legal action against Mr. Chakroun regarding the NSF cheque he had issued. That said, since Mr. Chakroun stated before the RPD and the RAD that he feared for his life and that Mr. Tebai had threatened to kill him for having issued an NSF cheque, I see nothing unreasonable in the RAD’s finding that, considering Mr. Chakroun’s testimony was not credible, it was reasonable for the RPD to question the credibility of the evidence in support of these allegations and to grant that evidence little weight.

[20] The RAD’s findings were reasonable. The RAD considered the applicants’ explanations regarding the inconsistencies, the contradictions and their behaviour that was inconsistent with

that of people who fear being persecuted. It found, as the RPD did, that these explanations were insufficient. Before this Court, the applicants merely repeated the arguments and explanations they had provided to the RAD. The RAD also considered the evidence submitted to it and it was entitled to grant it little weight.

[21] Lastly, regarding the contradictions and inconsistencies the RAD raised involving Mr. Chakroun's changing stories about whether banks in Tunisia agree to stop funds on cheques—the reason he had to empty his bank account, so that his cheque would not be cashed—and whether Mr. Chakroun had sought police protection with regard to Mr. Tebai's threats against him, I am not convinced that the RAD's assessment was unreasonable.

[22] The application for judicial review must therefore be dismissed.

**JUDGMENT in IMM-4104-22**

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

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

“Peter G. Pamel”

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Judge

Certified true translation  
Elizabeth Tan

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

**DOCKET:** IMM-4104-22

**STYLE OF CAUSE:** MAHDI CHAKROUN, SELIMA CHAKROUN,  
YESSINE CHAKROUN, MERIAM BEN HAMMADI  
v THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** JULY 26, 2023

**JUDGMENT AND REASONS:** PAMEL J.

**DATED:** AUGUST 30, 2023

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