

Federal Court



Cour fédérale

Date: 20230830

Docket: IMM-6870-22

Citation: 2023 FC 1171

[ENGLISH TRANSLATION]

Ottawa, Ontario, August 30, 2023

PRESENT: Mr. Justice Pamel

BETWEEN:

RIADH BENHAMADI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUGEMENT AND REASONS

[1] The applicant, Riadh Benhamadi, is a citizen of Tunisia. He is seeking judicial review of a decision by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada dated July 7, 2022. The RAD confirmed the Refugee Protection Division [RPD]'s decision that the applicant is not a Convention refugee or person in need of protection.

[2] Mr. Benhamadi alleges that he fears being killed by the Tunisian authorities, several Islamist groups and past supporters of the regime of former Libyan president Muammar Gaddafi, because of the fact that between 2007 and 2011 he worked in Libya for a Libyan television network owned by the former Libyan president's son, Saif Al-Islam Gaddafi; Mr. Benhamadi was allegedly very close to Mr. Gaddafi's son and knew everything about him.

[3] Mr. Benhamadi returned to Tunisia in March 2011. As argued by his counsel at the hearing before me, Mr. Benhamadi moved to Kesra, a city far from the capital of Tunis, because he knew as soon as he returned to Tunisia that he was risking his life. A few months later, however, Mr. Benhamadi moved to Tunis to start a new job as a cameraman for a Tunisian television network that enabled him to travel to a number of countries, including France, Belgium, Germany, Spain and Monaco, between 2011 and 2014.

[4] Mr. Benhamadi submits that he received threats from all sides throughout this period. First, he states that he was pressured and harassed by unknown individuals—so-called anti-Gaddafi militants—who wanted to persuade him to join their system and divulge the information he had about Mr. Gaddafi's son. These unknown individuals also harassed his family. Second, he states that in April 2011 he was informed by Libyan friends that his name was on a wanted list in Libya for cooperating with the Gaddafi clan, and he allegedly also received threats in Tunisia from Islamist terrorists supported by Ennahda, a Tunisian political party. Mr. Benhamadi further submits that in April 2013, in Marseille, he encountered two members of the former Libyan regime in France who told him that he was wanted [translation] “on both sides”. Lastly, Mr. Benhamadi alleges that in 2014, following the election

of the new Tunisian president, the Tunisian intelligence service began watching him because it suspected him of being the source of videos sullyng the new president's image by exposing his ties to the Gaddafi regime.

[5] However, there is no evidence that Mr. Benhamadi took precautions while he was living openly in Tunis, holding a very public job, even though he claims that the threats against his life continued throughout the time he was in the Tunisian capital.

[6] Mr. Benhamadi was dismissed from his job without cause in October 2014; he went back to Kesra after that. Following the disappearance of two journalists in Libya and the announcement that they had been executed by armed militias in August 2015, the threats against Mr. Benhamadi intensified, and he was pressured even more by unknown individuals who were sending him messages indirectly, passed on to him by the people around him, to get him to cooperate with them if he did not want to meet the same fate as the murdered journalists. On September 2, 2015, Mr. Benhamadi's sister, who resides in Canada, was threatened during a visit to Tunisia by the same unknown individuals who threatened his parents. According to Mr. Benhamadi, this was the triggering event that led to his decision to leave Tunisia.

[7] The applicant left Tunisia for Montréal in November 2015. However, he did not claim refugee protection in Canada until March 2019.

[8] The RPD accepted that Mr. Benhamadi had worked for the son of former president Gaddafi, but it did not find him credible regarding his allegations relating to his fears

of persecution and those about his family. The RPD found that the testimony provided by Mr. Benhamadi was changing and variable throughout the hearing. He started off stating that he feared Islamist terrorists in Tunisia. Then he testified that these Islamist groups were led by Ennahda. He then testified that he feared Salafi jihadists, and then went on to testify that he feared Daesh. Daesh was not mentioned in his Basis of Claim Form [BOC Form] or in his amended BOC Form. When questioned about this, he stated that he considered Salafists and Daesh to be the same group and considered Ennahda and Daesh part of an Islamist terrorist network. The RPD was not satisfied with this response and drew a negative inference about the applicant's credibility.

[9] Mr. Benhamadi testified that he was assaulted, threatened and slapped in the street after he returned to Tunisia in 2011; however, he did not mention these incidents in his BOC Form. He explained to the RPD that he had not received adequate representation from his former counsel, but even after changing counsel, he failed to include this information in his amended BOC Form. The RPD drew a negative inference from this about his credibility. The RPD also drew a negative inference from the fact that Mr. Benhamadi was unable to identify the agents who threatened his family, apart from stating that they were from the Tunisian intelligence service or Islamists.

[10] The RPD also drew a negative credibility inference based on the following facts:

(1) Mr. Benhamadi did not seek asylum in France, Belgium, Spain or Monaco; (2) he returned to Tunisia several times; and (3) he waited four years after arriving in Canada to claim refugee protection. It did not accept Mr. Benhamadi's explanations that his parents had deterred him

from seeking asylum in France and that he preferred to live in Canada, where French is spoken (the RPD noted that French is spoken in Belgium). It also did not accept his explanation that he never intended to claim refugee protection in Canada and simply wanted to get away from Tunisia until things calmed down but that he claimed refugee protection in 2019 because he no longer had legal status in Canada and wanted to regularize his status until he went back to Tunisia. The RPD considered these actions to be behaviour inconsistent with a fear of persecution.

[11] In Mr. Benhamadi's memorandum of appeal before the RAD, his counsel explained that the groups he allegedly fears are not technically the same group but share virtually the same ideology, that Mr. Benhamadi fears several groups but cannot identify them, and that Mr. Benhamadi was not adjusting his testimony but providing more details. The RAD concluded that the RPD had not erred in stating that the applicant did not know who he feared and that the applicant's explanations for why he had not mentioned Daesh and the Salafists as agents of persecution were not satisfactory or compelling. In addition, the RAD rejected his argument that these omissions were mere details such as those referred to in *Feradov v Canada (Citizenship and Immigration)*, 2007 FC 101 [Feradov]. The RAD noted that Ennahda, while it is an Islamist movement, is an official party that is separate from Daesh, which is one of the most dangerous terrorist groups in the world.

[12] With regard to the threats against Mr. Benhamadi's family, the RAD noted, citing the National Documentation Package, that the Tunisian intelligence service and Islamist terrorists in Tunisia are not part of the same clan and are engaged in a bitter fight. It noted that

Mr. Benhamadi's testimony was vague and evasive. The RAD therefore did not believe that Mr. Benhamadi's family had been threatened. Lastly, the RAD concluded that the RPD was correct with respect to the behaviour inconsistent with a fear of persecution.

[13] This application for judicial review raises the following question: Is the RAD's decision reasonable? The RAD's findings concerning the applicant's credibility must be examined on the reasonableness standard of review (*Pedro v Canada (Citizenship and Immigration)*, 2022 FC 75 at para 7; *Canada (Minister of Citizenship Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 16–17).

[14] Before me, Mr. Benhamadi is disputing the RAD's credibility findings with respect to (1) his omissions and contradictions concerning the identity of his agents of persecution and the agents who threatened his family; (2) the omission of the attacks and threats between 2011 and 2014 from his BOC Form and his amended BOC Form; and (3) his behaviour inconsistent with a fear of persecution.

1. Omissions and contradictions concerning the identity of the agents of persecution and agents who threatened his family

[15] Mr. Benhamadi submits that it was unreasonable for the RAD to draw a negative inference from his testimony about his agents of persecution because he stated in his BOC Form that he fears Islamist terrorists in Tunisia. According to him, there is no contradiction between this allegation and his testimony that he fears Daesh (*Sheikh v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15200 (FC) at paras 23–24). He submits that it was also unreasonable to draw a negative inference from the fact that he does not know the specific

identities of the individuals who threatened his family, since he was able to identify at least two parties: the intelligence service and the Islamists. The indirect nature of the threats (given that Mr. Benhamadi was not present) and the fact that Mr. Benhamadi is someone who is likely to be targeted by several parties because of his past are indicative of his credibility. He should have been given the benefit of the doubt (*Chan v Canada (Minister of Employment and Immigration)*, [1995] 3 SCR 593).

[16] The respondent submits that the findings made by the RAD as to Mr. Benhamadi's credibility based on his inability to identify his agents of persecution were reasonable and that the burden of establishing a connection between the incidents and the persecution group is on the claimants (*Laguerre v Canada (Citizenship and Immigration)*, 2021 FC 701 at paras 53–54). It was also reasonable to ask for corroboration of the alleged threats against his family, given his vague and evasive testimony (*Vargas v Canada (Citizenship and Immigration)*, 2014 FC 484; *Torres Zamora v Canada (Citizenship and Immigration)*, 2022 FC 1071 at para 14).

[17] At the hearing, Mr. Benhamadi added as an argument that neither the RAD nor the RPD considered his profile as a man persecuted for having been close to those in power in Libya and likely to be targeted by several parties because of his past.

[18] I am not satisfied with Mr. Benhamadi's arguments.

[19] As noted by the RAD, Mr. Benhamadi states that he is being targeted by several groups of Islamist terrorists, by supporters of the former Gaddafi regime, by the Tunisian intelligence

service and by the Ennahda party. The RAD also noted that Ennahda is a political party in Tunisia and that Daesh is classified as one of the most dangerous terrorist groups in the world. It cited objective evidence indicating that the intelligence service and Islamist terrorists in Tunisia are engaged in a bitter fight. Moreover, according to Mr. Benhamadi's allegations, the agents who made threats targeted him as well as his family members for different reasons: on one side, the intelligence service believes that he tried to sully the president's image; on the other side, anti-Gaddafi supporters want him to join their cause; and then yet another side, the Islamist terrorists, are after him for cooperating with the Gaddafi regime.

[20] I for one do not see how Mr. Benhamadi's profile helps to explain the omission of any mention of Daesh as an agent of persecution in the BOC Form or amended BOC Form or makes this omission reasonable. Nor does it explain his changing testimony about the agents who threatened his family. The RAD drew a negative inference from the fact that Mr. Benhamadi was unable to identify his agents of persecution and the agents who threatened his family, and I am not persuaded that these conclusions are unreasonable.

2. *Omission of the attacks and threats between 2011 and 2014*

[21] Mr. Benhamadi submits that his failure to mention being attacked when he returned to Tunisia in 2011 was just a minor omission, as in *Feradov* (at para 18). This incident was part of a series of attacks and humiliations he experienced at the Tunisian border in 2011. In bringing up this incident on the day of the hearing, he simply wanted to provide more details and was not trying to add facts. At the hearing before this Court, he added that the threats he received between 2011 and 2014 were part of an accumulation of threats and did not warrant a specific

mention in the BOC Form. He referred to the threats in general, and his testimony did not change; he was only adding minor details at his RPD hearing. Mr. Benhamadi states that it was reasonable to draw a negative inference from the omission of the threats and attacks against him in 2011 (*Ramirez Arroyave v Canada (Citizenship and Immigration)*, 2022 FC 426 at para 27).

[22] I do not agree with Mr. Benhamadi. These incidents were central to the alleged fears. Even though, according to Mr. Benhamadi, the triggering event that led him to leave Tunisia occurred in 2015, the events underpinning his fears clearly date back to 2011, when he had to go into hiding for the first time. The failure to mention all the details related to these events in his BOC Form, with the intention of providing them as minor details at the RPD hearing, is not acceptable. I do not see anything unreasonable about the negative credibility inference drawn by the RAD.

3. *Behaviour inconsistent with a fear of persecution*

[23] Mr. Benhamadi submits that he provided reasonable explanations for the behaviour that is considered inconsistent, that the RAD applied a rigid and strict approach, and that the delay in claiming refugee protection is not in itself determinative (*Huerta v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 271 (FCA) (QL)). Before me, Mr. Benhamadi argued that the RAD should have assessed the credibility of his subjective fear and the consistency of his behaviour only beginning on September 2, 2015, the date of the threat against his sister, which was the triggering event that led him to leave Tunisia.

[24] I am aware of the principles set out in the decisions Mr. Benhamadi cited for me at the hearing, in particular that the failure to make a claim elsewhere is not in and of itself determinative (*Ntatoulou v Canada (Citizenship and Immigration)*, 2016 FC 173 [*Ntatoulou*] at para 14), that a delay in making a claim is not in and of itself determinative (*Ntatoulou* at para 14; *Fu v Canada (Citizenship and Immigration)*, 2017 FC 1074 at para 28; *Ramachandran v Canada (Citizenship and Immigration)*, 2022 FC 548 [*Ramachandran*] at para 34; *Zeah v Canada (Citizenship and Immigration)*, 2020 FC 711 [*Zeah*] at para 61), and that whether there has been delay and its length must be determined with regard to the time of inception of the claimant's fear as determined from the claimant's personal narrative (*Zeah* at para 61).

[25] However, absent a satisfactory explanation to justify not claiming refugee protection earlier, it may be open to a decision maker to conclude that the claimant does not actually fear persecution (*Zeah* at para 61; *Ramachandran* at para 34). I accept the principles stated above, but it is my opinion that this case is distinct. For example, in *Zeah*, the Court agreed that the applicant, a bisexual woman who feared returning to Nigeria, had kept her sexuality secret and that her fear did not crystalize until her ill-advised disclosure of her secret to her cousin (*Zeah* at para 64). However, in the case at hand, Mr. Benhamadi testified that he has feared for his life since March 2011, when he returned to Tunisia from Libya. He immediately went into hiding in the city of Kesra, before going back to Tunis to start a new job between 2011 and 2014, during which time the threats continued. In addition, Mr. Benhamadi's account is already plagued by a number of other credibility problems.

[26] Furthermore, in this case, the RAD, like the RPD, considered Mr. Benhamadi's explanations for why he did not seek asylum in Europe between 2011 and 2014 and waited until 2019, after arriving in Canada, to claim refugee protection. It noted the explanation that Mr. Benhamadi wanted to live in a French-speaking country but that his parents had advised him that France was not safe; it noted that Mr. Benhamadi returned to Tunisia after every trip abroad, despite the threats he continued to receive abroad; and it noted his explanation that he never intended to claim refugee protection in Canada but simply wanted to wait for things to calm down in Tunisia and claimed refugee protection in 2019 in order to regularize his status.

[27] Having considered these explanations and found them unsatisfactory, it was open to the RAD to conclude that the applicant did not actually fear persecution (Zeah at para 61; Ramachandran at para 34). Given the circumstances and explanations presented by Mr. Benhamadi, I see no error in this conclusion.

JUDGMENT in IMM-6870-22

THIS COURT'S JUDGMENT is as follows:

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

“Peter G. Pamel”

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6870-22

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