Federal Court  Cour fédérale

Date: 20231031

Docket: IMM-8669-22

Citation: 2023 FC 1445

Ottawa, Ontario, October 31, 2023

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

ABDELKRIM DJABOUR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Abdelkrim Djabour, is a citizen of Algeria. He seeks judicial review of a decision by the Refugee Appeal Division [RAD], dated August 15, 2022, dismissing his appeal and confirming the decision of the Refugee Protection Division [RPD] rejecting his claim for refugee protection. The RAD concluded that he is not a Convention refugee nor a person in need

of protection under sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Decision].

[2] The Applicant alleges that he fears for his life at the hands of a named individual [Mr. A.] and his gang for having reported Mr. A. to the police for having attacked him. This led to Mr. A. being sentenced to 18 months in prison and a fine. The Applicant submits that he is in danger given the threats and harassment by Mr. A. and his gang following Mr. A.'s arrest by the police. The determinative issue for both the RPD and the RAD is the availability of state protection. The RAD concluded that the Applicant had failed to adduce clear and convincing evidence refuting the presumption that the Algerian state is able to provide adequate protection.

[3] The Applicant submits that the RAD's conclusions on state protection are unreasonable on the basis that it (i) failed to adopt a contextual approach as required when assessing whether he has rebutted the presumption of state protection; (ii) did not reasonably consider the profile of Mr. A.; (iii) failed to give due weight to the security personnel at his workplace having called the police but to no avail; and (iv) unreasonably required that the Applicant exhaust all avenues of protection.

[4] Having considered the record before the Court, including the parties' written and oral submissions, as well as the applicable law, the Applicant has failed to persuade me that the Decision is unreasonable. For the reasons that follow, this application for judicial review is dismissed.

II. Standard of Review

[5] The parties agree that the applicable standard of review is that of reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. A reasonable decision is one that is justified in relation to the facts and the law that constrain the decision maker (*Vavilov* at para 85). Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). As such, the approach is one of deference, especially with respect to findings of fact and the weighing of evidence. A reviewing court should not interfere with factual findings, absent exceptional circumstances, and it is not the function of this Court on an application for judicial review to reweigh or reassess the evidence considered by the decision maker (*Vavilov* at para 125).

III. Analysis

[6] As noted above, the issue in the present judicial review is state protection. The starting point of the analysis of state protection is the presumption that states are capable of protecting their own citizens. The RAD rightly referenced the Supreme Court of Canada in *Canada (Attorney General) v Ward*, 1993 CanLII 105 (SCC), [1993] 2 SCR 689 [*Ward*], where it was confirmed that "[a]bsent a situation of complete breakdown of state apparatus…it should be assumed that the state is capable of protecting a claimant" and "clear and convincing confirmation of a state's inability to protect must be provided" (*Ward* at 724-725).

[7] The test to rebut the presumption of state protection is well established. A refugee claimant seeking to rebut the presumption of state protection must adduce relevant, reliable and

convincing evidence that satisfies the decision maker on a balance of probabilities that the state protection is inadequate (*Flores Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at para 30; *Nugzarishvili v Canada (Citizenship and Immigration)*, 2020 FC 459 at para 32 [*Nugzarishvili*]). In other words, a refugee claimant seeking protection must demonstrate that they have either exhausted all objectively reasonable avenues to obtain state protection or that it would have been objectively unreasonable for them to have done so (*Hinzman v Canada (Citizenship and Immigration)*, 2007 FCA 171 at paras 46, 57; *Arango v Canada (Citizenship and Immigration)*, 2021 FC 1016 at para 14; *Nugzarishvili* at para 34).

[8] As highlighted by counsel for the Respondent during the hearing, the more a state is democratic, the more a refugee claimant must have done to exhaust all the courses of action open to them (*Kadenko v Canada (Minister of Citizenship and Immigration)*, [1996] FCJ No 1376 at para 5 (FCA); *XY v Canada (Citizenship and Immigration)*, 2014 FC 444 at para 26). In the present case, the RAD concluded, based on the objective evidence in the record, that the Algerian state is both willing and able to offer protection to its citizens. The Applicant did not contest this finding on judicial review.

[9] What the Applicant does contest is the RAD's analysis when assessing whether he has rebutted the presumption of state protection. The Applicant submits that the RAD failed to adopt a contextual approach and ought to have considered the factors set out in *Gonzalez Torres v Canada (Citizenship and Immigration)*, 2010 FC 234 [*Gonzalez*] at paragraph 37, namely:

1. The nature of the human rights violation;
2. The profile of the alleged human rights abuser;

3. The efforts that the victim took to seek protection from authorities;

4. The response of the authorities to requests for their assistance; and

5. The available documentary evidence.

[10] The Applicant highlights the profile of Mr. A, the seriousness of the injuries suffered by the Applicant when he was assaulted, the calls to the police by the security personnel at the Applicant's workplace, and the threats made by Mr. A and his gang. The Applicant states that taking into account these particular circumstances, he has succeeded in rebutting the presumption of state protection.

[11] The Respondent submits that the Applicant has simply failed to provide clear and convincing evidence that state protection is inadequate. In particular, the Respondent notes that the Applicant did not report the harassment and threats following Mr. A.'s arrest to the police. The Applicant testified, when asked whether he thought about going back to the police to report the threats, that he "did not think about that" and he "did not go back". The Respondent relies on *Memia v Canada (Citizenship and Immigration)*, 2021 FC 349 [*Memia*] and pleads that the Applicant cannot fault the police for not offering protection when the Applicant did not report the crime. The Respondent further submits that the police have been responsive to the Applicant. When the Applicant filed his police report for the assault, Mr. A was arrested the following day and convicted within months of his arrest.

[12] I agree with the Respondent that state protection cannot be rebutted when it has not been tested (*Camacho v Canada (Citizenship and Immigration)*, 2007 FC 830 at para 9; *Memia* at para

21). In the present case, the RAD emphasized the fact that the Applicant never reported the harassment and threats to the police.

[13] The Applicant submits that the security personnel at his workplace called the police on several occasions and they never came. As such, in the Applicant's view, the RAD should have considered this as if the Applicant himself had called the police. The Applicant had testified that an unnamed person in charge of security had made calls to the police and he had waited 3-4 hours at the office, but no one came.

[14] The RAD did expressly consider the calls by the security personnel but concluded that the Applicant had not provided clear and convincing evidence that explains why he did not personally seek the protection of the police or make a complaint in relation to the threats made by Mr. A. and his gang. The RAD dealt with the Applicant's testimony as to why he did not seek assistance from the police in detail, in the Decision. Having considered the record, in particular the Applicant's testimony and his submissions to the RAD as to why he did not lodge a complaint with the police, I have not been persuaded that the RAD committed a reviewable error in its analysis.

[15] The RAD equally considered all the arguments put forward by the Applicant relating to the documentary evidence, Mr. A.'s profile, his history of recidivism, the nature of the threats, and the severity of the Applicant's injuries arising from the assault. I therefore find that, despite the Applicant's argument to the contrary, the RAD did adopt a contextual approach as set out in

Gonzalez. The RAD dealt with the factors cited above along with the arguments raised by the Applicant.

[16] As indicated above, it is not the Court's role in judicial review to reweigh the evidence and draw a new conclusion (*Vavilov* at para 125). In cases when the RAD is called upon to assess and weigh a number of variables, there will generally be room for disagreement regarding the weight to be granted to each piece of evidence. Simple disagreement on these issues is not a ground for judicial review (*Gadiaga v Canada (Citizenship and Immigration)*, 2022 FC 1255 at para 15).

[17] Having considered the arguments raised by the Applicant, I am not persuaded that the Decision is unreasonable. The Applicant clearly disagrees with the weight given by the RAD to the Applicant's failure to personally seek assistance from the police and his justifications for failing to do so. It was, however, open to the RAD based on the record before it to attribute the weight it did to that evidence. Its resulting analysis is not unreasonable. Furthermore, while the Applicant contends, in the alternative, that it was unreasonable in light of the context to expect him to complain to the police, this again amounts to a simple disagreement with the RAD's analysis of the contextual factors. The Applicant, in my view, has not identified a reviewable error.

[18] For the foregoing reasons, I conclude that the Decision as a whole meets the standard of reasonableness as set out in *Vavilov*. This application for judicial review is therefore dismissed.

No serious question of general importance for certification was proposed by the parties, and I agree that no such question arises.

JUDGMENT in IMM-8669-22

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is dismissed; and

2. There is no question for certification.

"Vanessa Rochester"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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