

Federal Court



Cour fédérale

Date: 20231208

Docket: IMM-13140-22

Citation: 2023 FC 1656

Toronto, Ontario, December 8, 2023

PRESENT: Justice Andrew D. Little

BETWEEN:

ABDALLAH YOUSEF AHMAD HAMAM

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The central issue in this application for judicial review concerns state protection.

[2] In a decision dated November 28, 2022, the Refugee Appeal Decision (“RAD”) concluded that the applicant did not establish, with clear and convincing evidence, that Jordan was unable or unwilling to protect him and his family. The RAD concluded that he was neither a Convention refugee under section 96 nor a person in need of protection under subsection 97(1)

of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“*IRPA*”). The RAD dismissed an appeal from the Refugee Protection Division (“RPD”).

[3] The applicant’s position was that the RAD’s decision was unreasonable and should be set aside, applying the principles in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 SCR 653.

[4] For the reasons below, the application will be dismissed.

I. Facts and Events Leading to this Application

[5] The applicant is a citizen of Jordan of Palestinian descent. He is a non-practising Sunni Muslim.

[6] The applicant based his claim for *IRPA* protection on his fear of being killed or harmed by Islamist extremists because he rejects their religious beliefs. He alleged as follows.

[7] The applicant owned a store in Amman, Jordan. On Friday, October 19, 2018, three unknown men scolded the applicant for keeping his store open during Friday prayers. The men, whom the applicant identified as Islamic extremists or extremist Salafists, demanded that the applicant close his shop. When the applicant refused, one of the men hit the applicant, causing him to lose consciousness. The applicant was hospitalized.

[8] On October 21, 2018, the applicant filed a police complaint after leaving the hospital.

[9] The applicant learned that his store had been ransacked. On October 22, 2018, while cleaning up, the applicant was confronted by a man who told him he knew the police complaint had been filed. The man said that, if the police took any action, the applicant and his family would be killed.

[10] On October 28, 2018, the applicant drove his family to his sister's home in Kerak.

[11] The applicant returned to Amman on October 27, 2018, to take steps to close his business. The applicant asked the police about the status of his complaint.

[12] On December 12, 2018, the applicant arrived in Canada. His family remained in Jordan. He filed a claim for *IRPA* protection in February 2019.

[13] On November 25, 2021, the applicant's wife received threatening text messages from an unknown number. She reported the threats to the police. The police linked this incident with the previous attack and transferred the case to the Criminal Investigations Unit for investigation.

[14] On February 11, 2022, someone shot at the applicant's wife's new residence in Amman. She was unharmed. She filed a police report. The police collected evidence. As of September 2022, the police were awaiting the results of a forensic examination to locate the attackers.

[15] By decision dated July 8, 2022, the RPD dismissed the applicant's claim for *IRPA* protection. The determinative issue was state protection. The RPD found that the applicant did not provide clear and convincing evidence of the state's inability to protect him.

II. The Decision under Review

[16] On appeal, the RAD admitted an affidavit from the applicant sworn on September 5, 2022, as new evidence. It stated that the Jordan police had not contacted his wife regarding the shooting in February 2022, posted guards outside his home, or taken any action to prevent another incident. The applicant advised that his wife and children continued to live in hiding and fear.

[17] The RAD concluded that the RPD erred by failing to examine sufficiently the operational adequacy of state protection in Jordan concerning the applicant's personal circumstances.

[18] The RAD conducted its own analysis and concluded that the applicant had not met his burden of establishing that Jordan would not provide operationally adequate protection to him and his family. Jordan provided operationally adequate protection under the circumstances and therefore the RPD came to the correct conclusion. The RAD dismissed the appeal.

[19] The RAD reached three key conclusions leading to its conclusion on the adequacy of state protection in Jordan.

[20] First, the RAD found that Jordan is a “limited democracy”. The RAD disagreed with the applicant’s submission that Jordan is not a functioning democracy.

[21] Second, the RAD held that the applicant failed to demonstrate that similarly situated individuals in Jordan could not obtain state protection in Jordan. The RAD did not agree with the applicant’s argument that as a non-practising Muslim who kept his business open during prayers on Fridays, his actions could be seen as offending Islam. The RAD found no evidence that merely being a non-practicing Sunni Muslim was a barrier to obtaining operationally adequate state protection in Jordan. The applicant had not shown that he was or would be perceived as committing a religious or moral offence in the eyes of the Jordanian state, or that operating a store on Friday would be considered a crime by police.

[22] The RAD also did not agree with the applicant’s argument that as an ethnic Palestinian, he did not have the same access to state protection as other Jordanian citizens. The RAD found no evidence that Jordanian citizens of Palestinian descent, which made up 70% of Jordan’s population, were disadvantaged in terms of their access to state protection. The applicant and his family did not fall into the category of Palestinians in Jordan who face significant discrimination and there was no evidence anti-Palestinian discrimination was or is a factor in the applicant’s access to state protection.

[23] Third, the RAD held that the applicant failed to demonstrate past personal incidents in which state protection did not materialize. The applicant’s and his family’s three attempts to seek

state protection were not sufficient to show that he had taken all reasonable steps in the circumstances.

[24] The RAD found that the police had launched an ongoing investigation into the attacks and threats experienced by the applicant and his family. The investigation was “apparently elevated in 2021, with the matter being referred to the Criminal Investigation Unit”.

[25] In addition, there was no evidence that the applicant or his wife followed up with the police about the status of their complaints or the investigation, apart from when the applicant called the police less than one week after the first incident in October 2018. The RAD agreed with the RPD that there was no clear and convincing evidence that the police were unable or unwilling to protect him. The RAD agreed that the state protection analysis is concerned with the actual outcome of protection rather than serious efforts. However, the evidence suggested that the police had taken “appropriate and concrete steps commensurate with the attacks and threats experienced by” the applicant and his wife.

[26] The applicant has now challenged the RAD’s conclusions in this judicial review application.

III. Analysis

A. *Legal Principles*

[27] The parties agreed that reasonableness is the standard of review of the RAD's decision. I agree. See e.g., *Ashkar v. Canada (Citizenship and Immigration)*, 2022 FC 1788, at para 8; *Zapata v. Canada (Citizenship and Immigration)*, 2022 FC 1277, at para 13.

[28] Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov*, at paras 12-13 and 15; *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21, at paras 8, 63. The starting point is the reasons provided by the decision maker, which are read holistically and contextually, and in conjunction with the record that was before the decision maker. A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Vavilov*, esp. at paras 85, 91-97, 103, 105-106 and 194; *Canada Post Corp v. Canadian Union of Postal Workers*, 2019 SCC 67, [2019] 4 SCR 900, at paras 2, 28-33, 61; *Mason*, at paras 8, 59-61, 66.

[29] The reviewing court focuses on the reasoning process used by the decision maker: *Vavilov*, at paras 83, 84 and 87. The court does not consider whether the decision maker's decision was correct, or what the court would do if it were deciding the matter itself: *Vavilov*, at para 83; *Canada (Justice) v. D.V.*, 2022 FCA 181, at paras 15, 23.

[30] The reviewing court may not re-assess or reweigh the evidence: *Vavilov*, at para 125. The Court may intervene if the decision maker has fundamentally misapprehended the evidence before it, ignored critical evidence, or failed to account for evidence before it that ran counter to its conclusion: *Vavilov*, at para 126; *Maritime Employers Association v. Syndicat des débardeurs (Canadian Union of Public Employees, Local 375)*, 2023 FCA 93, at paras 115-117; *Walls v. Canada (Attorney General)*, 2022 FCA 47, at para 41; *Hinzman v. Canada*, 2007 FCA 171, at paras 60-61.

[31] A refugee claimant must show that the state from which they are seeking protection is unable to protect them. A state is presumed capable of protecting its citizens, except in situations of complete breakdown. The claimant may rebut the presumption of state protection by adducing clear and convincing evidence of the state's inability to provide adequate protection. See *Canada (Attorney General) v. Ward* [1993] 2 SCR 689, at pp. 692, 717, 724-725; *Ashkar*, at paras 21-23.

[32] The burden on a claimant to rebut the presumption is a "difficult task": *Flores Carrillo v. Canada*, 2008 FCA 94, [2008] 4 FCR 636, at para 25. The burden on a claimant is to provide relevant, reliable and convincing evidence; more is expected of the applicant to show the inadequacy of state protection of fully democratic states: *Hinzman*, at paras 46, 54, 57; *Flores Carrillo*, at paras 26, 30, 38. In *Flores Carrillo*, Létourneau JA described the quality of the evidence that must be adduced by a claimant to rebut the presumption of state protection:

[30] The evidence must not only be reliable and probative, it must also have sufficient probative value to meet the applicable standard of proof. The evidence will have sufficient probative value if it convinces the trier of fact that the state protection is inadequate. In other words, a claimant seeking to rebut the presumption of state protection must adduce relevant, reliable and convincing evidence

which satisfies the trier of fact on a balance of probabilities that the state protection is inadequate.

[Emphasis added.]

[33] This Court’s decisions have established that the adequacy of state protection is assessed on the basis of the “operational” adequacy of the protection, not merely the state’s efforts. While the state’s efforts are relevant to the assessment, they are neither determinative nor sufficient; any efforts must have actually translated into adequate state protection at the operational level for the persons concerned: *Hernandez Gomez v. Canada (Citizenship and Immigration)*, 2023 FC 860, at paras 9-10; *Zapata*, at para 20; *Cervenakova v. Canada (Citizenship and Immigration)*, 2021 FC 477, at para 26; *Moya v. Canada (Citizenship and Immigration)*, 2016 FC 315, [2016] 4 FCR 113, at paras 73, 78 and 80.

[34] The assessment of the adequacy of state protection is highly fact-sensitive: *Ashkar*, at para 29; *Burai v. Canada (Citizenship and Immigration)*, 2020 FC 966, at para 33; *Jaworowska v. Canada (Citizenship and Immigration)*, 2019 FC 626, at para 45.

B. *Was the RAD’s decision reasonable?*

(1) Jordan as a “limited democracy”

[35] The RAD concluded that Jordan is a “limited democracy” with a mix of democratic and undemocratic government institutions, making the burden of proof on the applicant to show inadequate state protection less than it would be for a fully democratic state. The RAD agreed with the RPD’s analysis on this issue.

[36] The RAD stated that Jordan was “on the ‘democracy spectrum’”. Recognizing that the burden on the applicant varied with the level of democratic functioning, the RAD found that the applicant had the burden to provide clear and convincing evidence of the state’s inability or unwillingness to protect.

[37] The applicant argued that the RAD’s analysis was flawed, arguing that the RAD did not identify where Jordan was located on the democratic spectrum and did not consider what was required before it made its state protection assessment. The applicant submitted at the hearing that the RAD should have had much lower expectations for the reasonable steps the applicant needed to take to seek state protection in Jordan, compared with a country such as the United States (as in *Hinzman*).

[38] I am not persuaded that the RAD made a reviewable error on this issue. The applicant did not explain why the omitted additional analysis was necessary in law, or how its absence rendered the RAD’s decision unreasonable. Nor did the applicant seriously challenge the RAD’s conclusion that the burden of proof on him was less than it would be if Jordan were a fully democratic nation. The RAD’s analysis was not inconsistent with the Federal Court of Appeal’s reasons in *Hinzman*.

(2) Similarly situated individuals

[39] The RAD concluded that the applicant failed to demonstrate that similarly situated individuals in Jordan could not obtain state protection in Jordan. In his appeal to the RAD and in this Court, the applicant argued that the objective country evidence relevant to his fear of

persecution in Jordan supported his position that he was targeted for underlying religious and ethnic reasons that also contributed to his inability to obtain state protection. In this application, he argued that the Court should infer that the RAD ignored, or did not grapple with or explain, the significant objective country evidence constraining it and that was contrary to its conclusion (citing *Vavilov*, at paras 125-128; *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, [1999] 1 F.C. D-53, [1998] FCJ No 1425, at para 17; *Martinez Mendez v. Canada (Citizenship and Immigration)*, 2022 FC 816, at para 30).

[40] I am unable to agree. First, the RAD did not ignore the objective country evidence. The RAD found that most of the applicant's submissions about conditions in Jordan (e.g., related to honour killings, persons critical of the government's handling of the COVID-19 pandemic, criminalizing perceived moral crimes committed by women) did not relate to persons similarly situated to the applicant or were not relevant scenarios in the context of state protection. Those conclusions were reasonably open to the RAD.

[41] Second, the RAD addressed the applicant's positions that he would not get state protection as a non-practising Muslim who kept his business open during prayers on Fridays or as a person of Palestinian descent. The RAD engaged with the evidence – and the absence of evidence on some issues. The applicant did not identify evidence that constrained the RAD to reach different conclusions on these issues than it did.

[42] Third, the applicant took issue with the RAD's interpretation of the objective country evidence on the basis that the RAD relied on certain statements without addressing nearby

statements that qualified the evidence it relied on. Even accepting the applicant's submissions on their face, I am not persuaded that the specific examples identified by him rendered the RAD's overall state protection analysis unsound or unreasonable.

(3) The applicant's and his wife's attempts to seek state protection in Jordan

[43] The RAD concluded that the applicant did not take all reasonable steps to seek state protection in the circumstances.

[44] The applicant submitted that he and his family had taken several steps over four years to seek protection without any response from the Jordanian police or action to protect him or his family. There was no evidence that the police actually advanced their investigation into any of the incidents nor evidence of any tangible steps taken by police to protect them, in particular in the six months following the incident in February 2022. The applicant asserted that the RAD's analysis was flawed because on one hand, it found that adequate state protection was available, yet on the other, there was no evidence that the police had actually taken any concrete steps to advance the investigations or to protect them. The applicant argued that the RAD simply assumed that the police took action to move their investigation forward, without any evidence to support that finding. The applicant submitted that the RAD expected too much from the applicant and his family, who had made three requests for help to the police and had received nothing in response for several years.

[45] The applicant also criticized the RAD's reasoning that they had not complained about the police inaction, arguing that the NDP did not support the RAD's views about the availability of a complaint mechanism and that there was no evidence that doing so would have helped.

[46] The respondent's submissions focused on the contents of the RAD's reasoning, arguing that its analysis was grounded in the record. The respondent referred to the police taking reports, conducting investigations and referring the first two incidents to the Criminal Investigation Unit, and to the RAD's findings that the applicant did not sufficiently follow up with the police. The respondent noted that that the applicants themselves had not asked the police for updates on the status of the investigations, but relied on the absence of communications from the police which was not sufficient evidence of inadequate state protection.

[47] For the following reasons, I agree substantially with the respondent's position. The focus must be on the reasoning process used by the RAD to reach its conclusions, which must respect the applicable legal principles and the evidence that constrained the RAD's analysis on the adequacy of state protection. The RAD was aware that the applicant and his wife, combined, made three attempts to seek state protection over approximately three years after the first incident in 2018. The RAD made the following points in its assessment of the availability of state protection and its operational adequacy, based on the applicant's and his family's efforts to seek assistance and protection:

- a) The Jordanian police had launched an ongoing investigation into the attacks and threats experienced by the applicant's and his wife. This finding was open to the RAD on the evidence.

- b) The investigation was “apparently elevated in 2021, with the matter being referred to the Criminal Investigation Unit”. This finding was also open to the RAD. The police report dated November 25, 2021, set out the threatening messages received by the applicant’s wife. The report found that after reviewing the records, officers realized that there was a previous incident involving her husband by a Salafist group and that a complaint had been launched at the time. The report stated that the case “will be transferred and investigated by the special unit of the CID (Criminal Investigations Department).”
- c) There was no evidence that the applicant or his wife followed up with the police about the status of their complaints or the investigation, apart from when the applicant called the police less than one week after the initial incident in October 2018. The RAD recognized that at the time, the police indicated that the complaint would be “processed in turn”. The applicant did not allege that these findings were not factually accurate.
- d) The applicant’s evidence, in his affidavit on appeal to the RAD, was that the police did not follow up with his wife after the February 2022 shooting, nor did they post guards outside his home and took no action to protect his family. The RAD found that it was unclear that the forensic and criminal investigation that the police undertook after the event should have yielded results in six months. The RAD found that the claim that the police took no action was speculative because neither the applicant nor his wife followed up with the police after that incident. The applicant did not challenge the RAD’s finding that the police had commenced a forensic and criminal investigation, nor that he and his wife had not followed up

with the police between February and September 2022. The RAD's finding that they were "merely speculating that the police took no action in this matter" was open to it on the record.

- e) The RAD found that there was no evidence that the applicant or his wife availed themselves of the available mechanisms to complain about police inaction. The applicant contended that there was no evidence that the mechanisms identified by the RAD (complaints to the public prosecutor or the Public Security Directorate) would have been effective. In my view, the RAD's findings were open to it on the record. The applicants did not refer to any evidence that that the complaint mechanisms were not available or reasonably accessible, or that they tried them and found them to be ineffective.
- f) The RAD found that the applicant was speculating or relying on inference when he asserted that the police investigation was corrupt. The applicant has not shown a reviewable error in this conclusion.
- g) The RAD agreed that there was a difference between serious efforts and actual protection by a state. The RAD found that the evidence suggested that the police had taken "appropriate and concrete steps commensurate with the attacks and threats experienced by" the applicant and his wife. Although the applicant argued that there was no factual foundation for this statement, in my view, it was open to the RAD to make this finding given its reasonable findings already described above in paragraphs (a) to (e). It is not the Court's role to agree or disagree with this finding.

- h) The RAD found that the applicant's subjective belief that the state was unable or were unwilling to protect him was insufficient to rebut the presumption of state protection, "in view of a lack of any significant or serious efforts to find out about the status of his complaints or the investigation, or to file a complaint with the public prosecutor or the [Public Security Directorate in Jordan]."

[48] The applicant relied on *Ademi v. Canada (Citizenship and Immigration)*, 2021 FC 366, in which the applicant made three or four attempts to seek help from police, without any response, before leaving Kosovo. The Court set aside the RPD's decision as unreasonable, for its failure to address the "main factor" in the state protection claim – that the applicant went to the police three times before fleeing and his wife went an additional time after he left. Nothing was done to stop the threat and he was told the police could not help him: *Ademi*, at paras 31, 33, 35. In addition, the RPD had conducted its analysis in two silos, instead of conducting an assessment of all the evidence cumulatively: *Ademi*, at para 32. There was no issue as to the applicant's credibility: *Ademi*, at para 30.

[49] The present circumstances are similar in that the applicant and his wife made three reports to the police about three incidents, and the applicant's evidence was not challenged on credibility grounds. However, the reviewable errors that caused the Court to set aside the decision in *Ademi* did not occur in this case. As may be seen from the analysis in paragraph 47 above, the RAD made a detailed and reasonable assessment of the applicant's submissions on state protection, expressly addressed the distinction between state efforts and actual protection in

the applicant's circumstances, and considered all material evidence to reach its conclusions on the issue.

[50] The balance of the applicant's submissions were, in effect, an invitation to the Court to examine the evidence itself and come to its own conclusion on the merits of the adequacy of state protection. That approach is not commensurate with the Court's role on a judicial review application.

[51] Having regard to the applicable legal principles on the adequacy of state protection emanating from *Ward*, and the evidentiary and legal burdens on the applicant when seeking to rebut the presumption of state protection as described in *Flores Carrillo*, I conclude that the applicant has not demonstrated a reviewable error in the RAD's assessment of whether his and his wife's personal efforts to seek police protection demonstrated, with clear and convincing evidence, that he will not be able to obtain state protection from Jordan.

IV. Conclusion

[52] For these reasons, I conclude that the application must be dismissed.

[53] Neither party proposed a question to certify for appeal and none arises.

JUDGMENT in IMM-13140-22

1. The application is dismissed.
2. No question is certified under paragraph 74(d) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-13140-22

STYLE OF CAUSE: ABDALLAH YOUSEF AHMAD HAMAM v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 31, 2023

**REASONS FOR JUDGMENT
AND JUDGMENT:** A.D. LITTLE J.

DATED: DECEMBER 8, 2023

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