Federal Court Cour fédérale

Date: 20240214

Docket: IMM-11517-22

Citation: 2024 FC 246

[ENGLISH TRANSLATION REVISED BY THE AUTHOR]

Ottawa, Ontario, February 14, 2024

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

DJALAL BENBEKHTI
HIDAYAT BOUALI
MOHAMMED WANIS BENBEKHTI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] To be granted refugee status, claimants must have a well-founded fear of persecution throughout their entire country of origin. If they can safely and reasonably relocate elsewhere in their country, they have an internal flight alternative [IFA], which is a bar to refugee status.

[2] The Refugee Appeal Division [RAD] determined that Mr. Benbekhti and Ms. Bouali had an IFA in their country of origin and that they were therefore not refugees. They are seeking judicial review of that decision. I dismiss their appeal, because the RAD considered all of the evidence in concluding that Mr. Benbekhti and Ms. Bouali could reasonably relocate to Algiers.

I. Background

[3] The applicants are Algerian citizens. Their refugee protection claim is based on the fear of being persecuted by the ex-husband of the female applicant, Ms. Bouali, after she decided to leave him to marry the male applicant, Mr. Benbekhti. Between 2015 and 2017, Mr. Benbekhti and Ms. Bouali moved to Algiers to escape the ex-husband's threats. However, they returned to their native region in 2017, before coming to Canada in 2019.

[4] The Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB] dismissed their claim. The RPD concluded that the claimants had an IFA in Algiers and in two other cities, because the ex-husband had neither the means nor the motivation to track them there. The RPD also concluded that it would not be unreasonable for the applicants to move to one of those cities because Ms. Bouali was able to find work when they lived in Algiers, Mr. Benbekhti had the skills that would enable him to find work, and they could use the income from their farming operation in their native region.

[5] The RAD dismissed the applicants' appeal. Its analysis of the IFA focused on the city of Algiers. It agreed with the RPD's conclusions regarding the absence of risk for the applicants in Algiers, particularly because they lived there without any problems for nearly two years. The

RAD also considered the reasonableness of the move to Algiers. It noted that Ms. Bouali had found work when she lived in Algiers. Furthermore, even though Mr. Benbekhti was not able to do so, there is nothing to suggest that he would not be able to find work in the future. The RAD also pointed out that the applicants could use the income from their farm in their native region, which is still operating. Although the RAD acknowledged that Ms. Bouali has post-traumatic stress disorder and that returning to Algeria would be stressful, it concluded that it would not prevent her from working in Algiers, as she did in the past, or from receiving appropriate psychological care. The RAD also rejected the applicants' arguments surrounding the safety situation in Algiers and violence against women in Algeria.

[6] The applicants are now seeking judicial review of the RAD decision.

II. Analysis

[7] I dismiss the application for judicial review. Although the applicants made a wide range of submissions against the RAD's decision in their memorandum, they relied on a single ground at the hearing: the alleged unreasonableness of the RAD's finding regarding the second prong of the IFA test, that is, the reasonableness of their move to Algiers. Contrary to the applicants' submissions, I am of the view that the RAD made a reasonable decision in that regard.

[8] The concept of an IFA is inherent to the definition of the concept of refugee. To be granted this status, a person must have a well-founded fear of persecution throughout their country of origin. The leading decision on IFAs is *Thirunavukkarasu v Canada (Minister of*

Employment and Immigration), [1994] 1 FC 589 (CA) [*Thirunavukkarasu*]. In that judgment, Justice Linden writes at 597–598:

> . . . if there is a safe haven for claimants in their own country, where they would be free of persecution, they are expected to avail themselves of it unless they can show that it is objectively unreasonable for them to do so.
>
> . . .
>
> An IFA cannot be speculative or theoretical only; it must be a realistic, attainable option.

[9] In *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (CA) [*Ranganathan*] at paragraph 15, Justice Létourneau provided the following clarifications:

> We read the decision of Linden J.A. for this Court as setting up a very high threshold for the unreasonableness test. It requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions. The absence of relatives in a safe place, whether taken alone or in conjunction with other factors, can only amount to such condition if it meets that threshold, that is to say if it establishes that, as a result, a claimant's life or safety would be jeopardized. This is in sharp contrast with undue hardship resulting from loss of employment, loss of status, reduction in quality of life, loss of aspirations, loss of beloved ones and frustration of one's wishes and expectations.

[10] In fact, the main takeaway from Justice Létourneau's reasons is that the IFA test is not to be confused with the test applied to applications for relief on humanitarian and compassionate grounds: *Ranganathan* at paragraph 17. This is what is meant by "the threshold is very high".

[11] In this case, the RAD applied the proper test to the evidence before it. Essentially, the applicants are asking the Court to re-assess that evidence and reach a different conclusion. That

is not the role of the Court on judicial review. On such issues, the Court may only intervene if the RAD has "fundamentally misapprehended or failed to account for the evidence before it": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 126, [2019] 4 SCR 653.

[12] First, the applicants challenge the portions of the RAD's reasons related to the possibility of finding work and supporting themselves in Algiers. They stress that Mr. Benbekhti was unable to find work in Algiers when he lived there between 2015 and 2017 and that he had to draw from his savings. They maintain that the RAD was speculating when it stated that this fact was insufficient to demonstrate that Mr. Benbekhti would be unable to find work in the future.

[13] It goes without saying that the analysis is prospective and should focus on the possibility of finding work in the future. Moreover, the burden of demonstrating the unreasonableness of the IFA rests with the applicants: *Thirunavukkarasu*, at 594–595. Given the evidence, particularly the fact that Ms. Bouali was able to find work in Algiers and that the applicants are both university graduates, it was open for the RAD to conclude that the applicants' employment prospects do not make Algiers an unreasonable IFA. The move to Algiers may lead to a worsening of the applicants' economic situation, but as Justice Létourneau stressed in the excerpt quoted above, that is not enough to render an IFA unreasonable.

[14] The applicants also maintain that the RAD's decision is unreasonable because the RAD did not give enough weight to the evidence regarding Ms. Bouali's psychological condition.

According to the psychological report filed in evidence, she has moderate post-traumatic stress disorder. The RAD concluded as follows:

> . . . returning to Algeria would inevitably be stressful for the female appellant. Nonetheless, as noted above, in spite of the difficulties the female appellant experienced in Algeria, she was able to work and support herself. There is no evidence supporting the conclusion that the female appellant would not be able to work in Algiers, given that she has done so in the past. Furthermore, the RAD is of the view that the female appellant has not demonstrated that she would be unable to obtain psychological support, if she wanted it, in Algiers, which is the capital of Algeria and a large city.

[15] It is true that a person's psychological condition is a factor that should be taken into consideration when assessing the reasonableness of an IFA: *Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 at paragraph 43. However, the RAD's decision in this case is reasonable. The RAD took into account not only the psychological report but also Ms. Bouali's ability to work and the possibility of receiving suitable care in Algiers. Having read the psychological report myself, I am of the view that the RAD's finding was reasonably supported by the evidence.

[16] The applicants also assert that the RAD analysed the reasonableness of the IFA in an abstract manner, disregarding the information they presented about crime in Algiers, violence against women in Algeria, honour crimes and child abductions. However, the RAD addressed the applicants' arguments on that front in paragraphs 46 and 47 of its decision. It concluded that the applicants would not be personally subjected to those risks and that the evidence showed rather that Algiers is a relatively safe city. The applicants did not demonstrate in what respect those conclusions were unreasonable. It is not enough to ask the Court to read all of the evidence and reach a different conclusion than the RAD.

[17] Having concluded that the applicants had an IFA in Algiers, the RAD was not required to examine whether the other cities identified by the RPD could also offer an IFA to the applicants.

[18] In short, the applicants did not demonstrate how the RAD fundamentally misapprehended the evidence presented to it. It was reasonable to conclude that the facts submitted by the applicants did not meet the very high threshold for demonstrating the unreasonableness of an IFA.

III. Conclusion

[19] Given that the RAD decision is reasonable, the application for judicial review is dismissed.

JUDGMENT in IMM-11517-22

THIS COURT ORDERS AS FOLLOWS:

1. The application for judicial review is dismissed.

2. No question is certified.

Sébastien Grammond
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-11517-22
STYLE OF CAUSE:	DJALAL BENBEKHTI, HIDAYAT BOUALI, MOHAMMED WANIS BENBEKHTI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
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