



Date: 20231031

Docket: IMM-10299-22

Citation: 2023 FC 1449

[ENGLISH TRANSLATION]

Montréal, Quebec, October 31, 2023

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

MOHAMED AMIR BELHEDI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Mohamed Amir Belhedi, is a citizen of Tunisia. He is applying for judicial review of a decision dated September 27, 2022 [Decision] of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada [IRB]. In its Decision, the IRB rejected Mr. Belhedi's refugee protection claim on the ground that he was neither a refugee nor a person

in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], because he has two viable internal flight alternatives [IFAs] in Tunisia, in the cities of Sfax or Hammamet. The RAD thus confirmed the decision that the Refugee Protection Division [RPD] had made to the same effect.

[2] Mr. Belhedi argues that the Decision is not reasonable since the RAD allegedly erred in its analysis of the IFAs. He is asking the Court to set aside the decision and refer the matter back to the RAD for a new hearing before a differently constituted panel. The only issue is whether the RAD's findings on the IFAs are reasonable.

[3] For the reasons that follow, I will dismiss Mr. Belhedi's application for judicial review. Given the RAD's conclusions, the evidence before it and the applicable law, I see no reason to set aside the Decision, as it contains no serious flaws that would require the Court's intervention.

II. Background

A. *Facts*

[4] Mr. Belhedi arrived in Canada in October 2012 as a student.

[5] In May 2014, he returned to Tunisia to visit his family and loved ones. On July 2, 2014, Mr. Belhedi was in a café in his neighbourhood with two friends, where they were discussing the political situation in Tunisia, specifically the rise of Islamism and the terrorist threat. At that time, an old friend of Mr. Belhedi, Ahmed Chi [Agent of Persecution], who was a member of Ennahdha, an Islamist and Salafist party, approached Mr. Belhedi and his friends. Mr. Belhedi noted that his comments were religious, citing the Qur'an and raising the subject of Islamism and

the Muslim Brotherhood. After Mr. Belhedi said that he rejected acts of terrorism, the Agent of Persecution raised his voice, justifying attacks, crimes and terrorist operations as divine commandments.

[6] One week later, Mr. Belhedi went to the same neighbourhood café alone. While he was seated at a table, the Agent of Persecution invited himself over without being asked. He once again spoke of religion and jihad. Mr. Belhedi felt threatened and asked him to stop talking to him, otherwise he would report him to the police for [TRANSLATION] “defending terrorism”. The Agent of Persecution seized his arm and ordered him to stop criticizing Islam and jihad. Mr. Belhedi replied again that he would go to the police and that he had nothing to do with religion. The Agent of Persecution then punched Mr. Belhedi in the face in front of the café’s customers.

[7] Mr. Belhedi went to the neighbourhood police station that same day to file a complaint against the Agent of Persecution. However, the police refused his complaint because they felt that the situation was not sufficiently serious.

[8] On November 15, 2014, while Mr. Belhedi was preparing to sit down at the same café, he saw the Agent of Persecution for a third time. He told him that he was aware of his visit to the police station and that he would regret his attempt to file a complaint against him. Mr. Belhedi immediately called his father, who then bought him a plane ticket to return to Canada.

[9] Mr. Belhedi returned to Canada in January 2015, when his study permit came into effect. Mr. Belhedi’s student status expired in August 2016, after which he remained in Canada without status. He claimed refugee protection in October 2020.

[10] The RPD rejected Mr. Belhedi's claim. It concluded that Mr. Belhedi's allegations and testimony were credible. However, the RPD identified IFAs in the cities of Sfax and Hammamet in Tunisia. It found that Mr. Belhedi did not establish that the Agent of Persecution would have the motivation to find him again if he had to relocate to one of these cities and that he had not demonstrated a serious possibility of persecution or of being personally subjected to a risk under subsection 97(1) of the IRPA. To support its conclusion, the RPD referred to Mr. Belhedi's testimony stating that neither his family nor his friends have had problems with the Agent of Persecution since his return to Canada in January 2015. In addition, the RPD noted that the incidents all took place in the same neighbourhood café. Because of this, the RPD described the incidents as [TRANSLATION] "chance encounters" and determined that there was no evidence on file showing that the Agent of Persecution would be motivated to seek Mr. Belhedi in the IFAs.

[11] The RPD therefore determined that there was no prospective risk for Mr. Belhedi in the event he returned to Tunisia, even though he is a non-practising Muslim. In light of all the factors analyzed, the RPD concluded that the documentary evidence on the general situation in Tunisia was not sufficient to establish a serious possibility that Mr. Belhedi would be subjected to a serious violation of his fundamental rights.

[12] The RPD also determined that the IFAs were not unreasonable, given the statements made at the hearing by Mr. Belhedi to the effect that, aside from his problems with the Agent of Persecution, he could live and work in the cities of Sfax or Hammamet.

B. *Refugee Appeal Division's decision*

[13] In its Decision, the RAD confirmed the RPD's conclusions and analyzed the two prongs of the test for determining an IFA. In this regard, the RAD also concluded that there was no serious possibility of persecution or, on a balance of probabilities, a risk within the meaning of subsection 97(1) of the IRPA in the proposed IFAs, and that it would not be objectively unreasonable for Mr. Belhedi to take refuge there.

[14] On the first prong of the test, the RAD found that Mr. Belhedi had not discharged his burden of proof of establishing that the Agent of Persecution would have the interest and motivation to find him in the proposed IFAs. According to the RAD, in light of the evidence presented by Mr. Belhedi, all the interactions with the Agent of Persecution occurred in the same neighbourhood café, which suggests that the risk to which Mr. Belhedi may be exposed is limited to the neighbourhood in question.

[15] Furthermore, the RAD concluded that Mr. Belhedi had not demonstrated that his Agent of Persecution would have the ability to find him in the proposed IFAs. The RAD acknowledged that the Agent of Persecution is a member of Ennahdha and therefore may have access to information and contact details disclosed by Mr. Belhedi to the Caisse nationale de la sécurité sociale [national social security fund] in the event he returns to Tunisia. However, the RAD noted that Mr. Belhedi did not provide any evidence regarding the Agent of Persecution's role in Ennahdha or the influence that he may have in it. The RAD therefore found that there was no evidence to establish that the Agent of Persecution may have access to Mr. Belhedi's personal information because of his political affiliation or that he would make efforts to attempt to find Mr. Belhedi even if he had it.

[16] Lastly, the RAD found that there was no serious possibility of persecution at the hands of religious extremists because Mr. Belhedi is a non-practising Muslim, since Mr. Belhedi did not challenge the RPD's conclusions in this regard.

[17] As for the second prong of the IFA test, namely that it would be unreasonable for Mr. Belhedi to seek refuge in the proposed IFAs, the RAD finds that the RPD did not err by finding that Mr. Belhedi had not proven this. Given Mr. Belhedi's representations before the RPD and his university education and language abilities, the RAD found that Mr. Belhedi had not demonstrated that he would be unable to settle in Sfax or Hammamet, support himself, settle there and live safely there. Furthermore, the RAD found that the conditions in the proposed IFAs were not so aberrant that Mr. Belhedi's life or safety would be at risk there.

C. *Standard of review*

[18] It is well known that the RAD's findings as to the existence of a viable IFA are reviewable on a standard of reasonableness (*Rodriguez Sanchez v Canada (Citizenship and Immigration)*, 2023 FC 426 at para 14; *Djeddi v Canada (Citizenship and Immigration)*, 2022 FC 1580 at para 16; *Valencia v Canada (Citizenship and Immigration)*, 2022 FC 386 at para 19; *Adeleye v Canada (Citizenship and Immigration)*, 2022 FC 81 at para 14; *Ambroise v Canada (Citizenship and Immigration)*, 2021 FC 62, at para 6; *Singh v Canada (Citizenship and Immigration)*, 2020 FC 350 [*Singh*] at para 17; *Kaisar v Canada (Citizenship and Immigration)*, 2017 FC 789 at para 11).

[19] The focus of the reasonableness review is on the decision made by the decision maker, including both the reasoning process and the outcome (*Canada (Citizenship and Immigration) v*

Vavilov, 2019 SCC 65 [*Vavilov*] at paras 83, 87). A reasonable decision is one that is justified by transparency and intelligibility, based on an internally coherent reasoning (*Vavilov* at paras 86, 99). The reviewing court must consider the factual and legal constraints on the decision maker (*Vavilov* at paras 90, 99), without “reweighing and reassessing the evidence considered” by it (*Vavilov* at para 125). Rather, the court must adopt a restrained approach and intervene only “where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process” (*Vavilov* at para 13).

[20] The party seeking judicial review bears the burden of showing that a decision is unreasonable. For a reviewing court to set aside an administrative decision, it must be satisfied that there are sufficiently serious shortcomings to make the decision unreasonable (*Vavilov* at para 100).

III. Analysis

[21] The sole issue is the reasonableness of the Decision in respect of the RAD’s findings on the IFAs.

[22] Mr. Belhedi submits two grounds for impugning the reasonableness of the Decision.

[23] First, Mr. Belhedi is of the view that the RAD erred by concluding that the Agent of Persecution would not have the interest or motivation to seek him out. In this regard, Mr. Belhedi submits that the RAD failed to consider the evidence filed, particularly the testimony from one of his friends stating that the Agent of Persecution is still seeking Mr. Belhedi and that the Agent of Persecution still makes hateful, dangerous and violent remarks against him. Mr. Belhedi also

submits that the RAD did not consider his affidavit, which states that the Tunisian state refuses to protect him, given that the police did not take his complaint seriously and that the Agent of Persecution planned to find him and kill him, according to the remarks reported by his friend. Mr. Belhedi states that this evidence shows the Agent of Persecution's interest in and motivation to find him.

[24] Second, Mr. Belhedi maintains that the RAD erred by concluding that the Agent of Persecution would not have the ability to find him. According to Mr. Belhedi, the RAD ignored his explanations regarding the Agent of Persecution's ability to find him through the Caisse nationale de la sécurité sociale because of his ties to Ennahdha.

[25] I am not persuaded by Mr. Belhedi's arguments.

[26] The test for determining whether a viable IFA exists is well established. It has its roots in *Rasaratnam v Canada (Minister of Citizenship and Immigration)*, [1992] 1 FC 706 (CA) and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA) [*Thirunavukkarasu*], where the Federal Court of Appeal identified two criteria to be met to find an IFA reasonable:

- 1) There must be no serious possibility, on a balance of probabilities, that the claimants would be persecuted in the part of the country in which the IFA exists; and
- 2) It must not be unreasonable for the claimants to seek refuge in the IFA, given all the circumstances, including those that are specific to the claimants' situation.

[27] In *Singh*, the Court recalled that "the analysis of an IFA is based on the principle that international protection can only be offered to refugee protection claimants in cases where the

country of origin is unable to provide adequate protection everywhere within their territory” (*Singh* at para 26).

[28] If an IFA is established, it is then up to the refugee protection claimants to demonstrate that the IFA is inadequate and that it is unreasonable to settle there (*Thirunavukkarasu* at para 12; *Salaudeen v Canada (Citizenship and Immigration)*, 2022 FC 39 at para 26; *Manzoor-Ul-Haq v Canada (Citizenship and Immigration)*, 2020 FC 1077 at para 24; *Feboke v Canada (Citizenship and Immigration)*, 2020 FC 155 at paras 43–44). In addition, case law teaches that an IFA finding is determinative and is sufficient to reject a refugee protection claim (*Ojeda Escobar v Canada (Citizenship and Immigration)*, 2022 FC 1453 at para 6).

[29] With respect to the testimony of Mr. Belhedi’s friend, there is no indication that the RAD failed to consider this relevant evidence. Quite the contrary, the RAD specifically refers to this testimony at paragraph 30 of the Decision. The RAD was therefore well aware of this testimony and simply determined, at the end of its analysis, that the meeting between Mr. Belhedi’s friend and the Agent of Persecution was by chance, considering that these individuals all lived in the same neighbourhood near the café frequented by the Agent of Persecution. Given such a factual framework, the RAD was completely free to find that Mr. Belhedi had not demonstrated that the Agent of Persecution would be actively seeking him or that he would have the interest or motivation to seek him out in the proposed IFAs.

[30] In light of the facts before it, the RAD could reasonably conclude that Mr. Belhedi had not demonstrated that the risk to which he would be subjected would extend beyond the neighbourhood. Moreover, Mr. Belhedi did not submit any evidence indicating that the Agent since his departure in January 2015—a period of seven years—or even after the incident with his

friend in January 2022. Rather, all the evidence supports the conclusion that the Agent of Persecution was not motivated to find Mr. Belhedi in either of the proposed IFAs.

[31] I note that, according to case law, the RAD is presumed to have analyzed all the evidence before it, unless there is evidence to the contrary (*Khelili v Canada (Public Safety and Emergency Preparedness)*, 2022 FC 188 [*Khelili*] at para 29, citing *Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 at para 36 and *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) (QL) at para 1). In this case, there is no evidence that the RAD would not have considered the evidence filed.

[32] Moreover, contrary to what Mr. Belhedi submits, there is also no indication that the RAD ignored Mr. Belhedi's explanations as to the Agent of Persecution's ability to find him through the Caisse nationale de la sécurité sociale, given his membership in Ennahdha. In fact, once again, the RAD specifically referred to this possibility at paragraph 32 of the Decision. However, the RAD then determined that Mr. Belhedi did not provide any evidence as to the role played by the Agent of Persecution in this party or the influence that he may have in it. Contrary to what Mr. Belhedi suggested during the hearing before the Court, the mere fact that he is a member of a political party that is akin to a terrorist group is insufficient to conclude that this person presents a threat throughout the entire country. It was up to Mr. Belhedi to prove that this was the case regarding his Agent of Persecution, but he failed to do so.

[33] Furthermore, there was no evidence to establish that, even if he could gain access to the information in the Caisse nationale de de sécurité sociale, the Agent of Persecution would be motivated to take the necessary steps to obtain Mr. Belhedi's contact information and try to find him. In *Leon v Canada (Citizenship and Immigration)*, 2020 FC 428 [*Leon*], cited by the

Minister, the Court states “that there is a difference between a persecutor’s *ability* to pursue an individual throughout a country and his *desire* to do so or interest in doing so. The fact that a persecutor is able to pursue an individual is not decisive evidence that he is motivated to do so. If the persecutor has no desire to find, pursue and/or persecute an individual, or interest in doing so, it is reasonable to conclude that there is no serious possibility of persecution” (*Leon* at para 13). This is the case here.

[34] A reasonable decision is one that is justified in light of the facts (*Vavilov* at para 126). To this end, “[t]he decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it” (*Vavilov* at para 126). In this case, it is clear that the RAD considered all the evidence, including the testimony of Mr. Belhedi’s friend and Mr. Belhedi’s representations regarding the Caisse nationale de la sécurité sociale, and drew reasonable conclusions from it during its analysis.

[35] In addition, given the total absence of evidence regarding the efforts that the Agent of Persecution may make to find Mr. Belhedi, the RAD could reasonably infer from the submitted evidence that the Agent of Persecution did not have the required motivation to pursue him (*Leon* at para 18).

[36] In summary, given the evidence before it, the RAD could legitimately conclude that Mr. Belhedi had not demonstrated, on a balance of probabilities, that his Agent of Persecution would have the motivation or interest to pursue him in the proposed IFAs.

[37] With respect to the second prong of the test, the Minister argues that Mr. Belhedi did not challenge the RAD's finding in this regard and that it should then be taken as proven. I share that view. Incidentally, during his hearing before the RPD, Mr. Belhedi himself stated that aside from his problems with the Agent of Persecution, he could live and work in the cities of Sfax and Hammamet. Therefore, the RAD reasonably concluded that Mr. Belhedi could find refuge in the proposed IFAs. At the hearing before the Court, counsel for Mr. Belhedi confirmed that he was not challenging the RAD's findings on the second prong of the test.¹

[38] In the end, Mr. Belhedi's arguments instead manifest his disagreement with the RAD's assessment of the evidence and suggest that the Court adopt an assessment that differs from that of the administrative decision maker. However, it is well established that this is insufficient for the Court to intervene (*Khelili* at para 25). Mr. Belhedi did not identify any serious shortcomings in the Decision and, in such a situation, the Court must avoid interfering with the findings of the RAD (*Vavilov* at para 100). The RAD's expertise in immigration matters requires the Court to show great deference to its findings of fact on the IFA test (*Singh* at para 32). In this case, I am of the opinion that the Decision has the attributes of intelligibility, transparency and justification that are required under the reasonableness standard and that there is no reason that may justify the Court substituting its opinion for that of the RAD.

IV. Conclusion

[39] For the above reasons, Mr. Belhedi's application for judicial review is dismissed.

[40] Neither party proposed any questions of general importance for certification, and I agree that there are none.

JUDGMENT in IMM-10299-22

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed, without costs.
2. There are no questions of general importance to be certified.

“Denis Gascon”

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

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