Federal Court Cour fédérale

**Date: 20231025**

**Docket: IMM-2571-22**

**Citation: 2023 FC 1413**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, October 25, 2023**

**PRESENT: Mr. Justice McHaffie**

**BETWEEN:**

**NAIMA AIT AISSA**
**RAYANE GHILAS DEMANE**
**MOULOUD DEMANE**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] Ms. Naima Ait Aïssa, Mr. Mouloud Demane and their minor son are claiming refugee protection in Canada because they fear Mr. Demane's family in Algeria. Mr. Demane's family was opposed to their marriage and wanted Ms. Ait Aïssa, who is from a progressive family, to

strictly follow the principles of Islam, in particular that she wear a hijab and show modesty. The Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada [IRB] dismissed their claims for refugee protection on the ground that they did not establish that they would face a serious possibility of persecution or threat to their life should they return to Algeria.

[2] For the following reasons, I find that the RAD decision was reasonable. Contrary to the applicants' arguments, the RAD reasonably analyzed the child's situation in light of the evidence and the applicants' arguments. It also reasonably assessed the evidence supporting the danger Ms. Ait Aïssa would face should she return to Algeria.

[3] The application for judicial review is therefore dismissed.

II. Issue and standard of review

[4] The applicants' arguments focus exclusively on the validity of the RAD's decision. The applicable standard of review for this issue is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25; *Weche v Canada (Citizenship and Immigration)*, 2021 FC 649 at para 8.

[5] Therefore, the only issue is to determine whether the RAD decision is reasonable. A reasonable decision is one that is based on coherent reasoning and is justified in light of the legal and factual constraints that bear on the decision: *Vavilov* at paras 99–107. When reviewing a decision on a standard of reasonableness, the Court does not conduct its own examination of the evidence to draw its own findings of fact: *Vavilov* at para 125. It can only set aside the tribunal's

decision if the decision has sufficiently serious shortcomings such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency: *Vavilov* at para 100.

## III. Analysis

### A. *The Applicants' Refugee Protection Claim*

[6] Ms. Ait Aïssa and Mr. Demane married against the will of their respective families, who are from two different ethnic groups. Ms. Ait Aïssa's family did not appreciate that Mr. Demane had a religious divorce from his former wife but no civil divorce. Mr. Demane's family is more conservative and feels that Ms. Ait Aïssa does not practise Islam strictly enough. Mr. Demane's family wishes that Ms. Ait Aïssa would wear a hijab, dress more modestly, submit to men and pray.

[7] In November 2014, an incident arose, during which Mr. Demane's brother caused Ms. Ait Aïssa to fall from a tree. She had climbed the tree, without a veil and wearing pants, to harvest olives. The brother saw her and insisted that she come down, stating that women should only collect olives on the ground. When she refused, the brother climbed the tree to get her to come down. This scared Ms. Ait Aïssa and she lost her balance and fell. She suffered serious injuries to her arm and shoulder that required several operations.

[8] Ms. Ait Aïssa and Mr. Demane's son was born in 2018. In her Basis of Claim Form, Ms. Ait Aïssa said that she feared her parents-in-law would kidnap their son because they wanted him to be raised according to the traditions of Islam and did not want him to grow up with her.

During the hearing before the Refugee Protection Division [RPD], Ms. Ait Aïssa testified that when her son was born, her in-laws informed her that she was to bring him to their home so they could ensure his education, but she refused. However, the applicants' testimony does not indicate that the family attempted to kidnap their son during the 18 months between his birth and the applicants' departure for Canada.

[9] The RPD concluded that the applicants had not shown that they would face a serious possibility of persecution or a risk to their lives, a danger of torture or a risk of cruel and unusual treatment or punishment should they return to Algeria. The RPD acknowledged the credibility of Ms. Ait Aïssa and Mr. Demane. However, it noted that they did not testify that Mr. Demane's family had threatened to use violence to separate them. The RPD concluded that should the applicants return to Algeria, Mr. Demane's family would likely continue to push them to separate but that this type of psychological pressure was not the equivalent of persecution or a threat to their life. The RPD also acknowledged that the November 2014 incident was a difficult challenge for Mr. Ait Aïssa, but it concluded that it was an accident that did not show that the brother had an intent to injure, and it was unlikely that such an incident would occur again in the future.

[10] The RPD also analyzed Ms. Ait Aïssa's allegations regarding her interest in Christianity. The RPD noted that Ms. Ait Aïssa had testified that she did not have any fears regarding this interest in Algeria and it concluded that Ms. Ait Aïssa had not shown a subjective fear linked to her religious practice or an objectively well-founded fear of persecution.

[11] The RPD did not draw any conclusions on the risks for the son and did not address the parents' fear that he would be kidnapped.

B. *The RAD Decision*

[12] The applicants appealed the RPD decision to the RAD. They submitted that the RAD erred (1) by not considering IRB Guideline 4 in effect at the time, regarding Women Refugee Claimants Fearing Gender-Related Persecution; (2) by not reviewing the alleged fear that their son would be kidnapped; and (3) by drawing erroneous conclusions about the November 2014 incident and prospective risk. They then submitted a psychotherapy assessment report for Ms. Ait Aïssa as additional evidence as well as several references to the IRB's National Documentation Package for Algeria and to international conventions.

[13] The RAD concluded that the RPD had erred in certain areas, namely its analysis of Ms. Ait Aïssa's testimony and by neglecting to review the fear of kidnapping. However, after conducting its own analysis of the claim, the RAD concluded, as the RPD had, that the applicants had not shown that they would face a serious possibility of persecution, a threat to life, a danger of torture or a risk of cruel and unusual treatment or punishment should they return to Algeria.

[14] The RAD summarized the applicants' testimony in detail, with several references to the recording of the hearing before the RPD. It concluded that the applicants' arguments that Mr. Demane's family would use violence were completely speculative. The RAD noted that these arguments were not supported by the evidence considering that the family had not

physically attacked the applicants since the 2014 incident. It also considered that the objective evidence does not lead to the conclusion that Algerian women who refuse to wear a veil and who work are victims of persecution for that reason. The RAD noted that “[t]he fact that the in-laws asked the male appellant to have his wife obey him does not constitute persecution.”

[15] The RAD examined the evidence regarding the 2014 incident, the only event during which a member of Mr. Demane’s family physically went after Ms. Ait Aïssa. The RAD concluded that it was not clear if the brother had intended to make her fall or if it was an accident, but it was an isolated physical act of violence that did not occur again after that. The RAD acknowledged that Ms. Ait Aïssa had suffered serious injuries that infringed on one of her fundamental rights, but it concluded that with no other act of physical violence during the almost five years that followed, the fear that the family would attack her again was not supported by the evidence.

[16] The RAD also accepted that psychological violence is an act of violence against women, in particular in family violence situations. However, in analyzing the psychological report the applicants submitted, the RAD noted that the author of the report did not indicate her qualifications and she identified herself as a “clinical sexologist and psychotherapist” without indicating any expertise in assessing post-traumatic conditions. It also noted that the report does not mention any objective test and the author’s final recommendation was simply for Ms. Ait Aïssa to continue psychotherapy, with a favourable prognosis. It therefore granted this report little weight. The RAD then concluded that the acts of Mr. Demane’s family were unacceptable and discriminatory. However, considering the seriousness of the harm, the

repetition and persistence of the acts as well as the psychological impacts on Ms. Ait Aïssa, the RAD determined that these factors were insufficient to establish a serious possibility of persecution.

[17] The RAD concluded that the RPD had erred by neglecting to respond to the applicants' fear that their son would be kidnapped. That said, the RAD concluded that the threats to kidnap the child were only hypothetical and not supported by the facts. In particular, the RAD noted that Mr. Demane's family did not go after Ms. Ait Aïssa or the child between his birth and their departure in 2019, and did not threaten to do so either. The RAD noted that the applicants had the opportunity to address the issue of the kidnapping fear at the hearing before the RPD. Nonetheless, according to the RAD, the applicants "submitted no evidence in this regard" and nothing in the file would lead to the conclusion that the family could be kidnapped by Mr. Demane's family should the applicants return to Algeria.

[18] The RAD therefore was of the opinion that the RPD's finding regarding the lack of a prospective risk should they return to Algeria was correct and it dismissed the applicants' appeal.

### C. *The RAD Decision was Reasonable*

#### (1) Fear that the son would be kidnapped

[19] The applicants submit that the RAD's finding that they had the opportunity to address the issue of the fear of kidnapping at the hearing was unreasonable. They propose that during the hearing before the RPD, it was the RPD that asked most of the questions. They allege that the

RPD has a duty to protect children and once it heard there was a risk of kidnapping, it should have [TRANSLATION] "dug" deeper into the subject.

[20] I do not accept this argument. Even if the RPD leads the examination during a hearing, the claimant has the burden of establishing the merits of his or her refugee protection claim: *Gill v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1498 at para 25. As noted by Justice Simon Noël, "[i]t is not the panel's responsibility to establish the [claimant]'s evidence for him [or her]": *Gill* at para 25; *Memia v Canada (Citizenship and Immigration)*, 2021 FC 349 at para 19. At any rate, the evidence before the RPD did not show that the son was at risk of being kidnapped. On the contrary, even though the applicants stated that they were afraid such a kidnapping would happen, the evidence available did not allow this fear to be considered well founded. The applicants thus expressed a subjective fear, but they did not present evidence to support this fear objectively, and they were represented at the hearing: *Chan v Canada (Minister of Employment and Immigration)*, [1995] 3 SCR 593 at para 74; *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at 723. Moreover, if the applicants felt they could not reasonably present evidence on this subject before the RPD, they should have asked the RAD for authorization to submit additional evidence pursuant to subsection 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], which they did not do. It is also difficult to understand what additional evidence the RPD should have sought, considering the applicants admit that there is no evidence that the family tried to kidnap the child.

[21] The applicants also allege that it was unreasonable for the RAD to rely on the fact that the family did not try to kidnap the child during the 18 months of his life. They argue that the

family was concerned with the child's education, which does not start at such an early age, and the risk of kidnapping had also increased following their departure from the country. I agree with the tribunal that this is mere speculation. The applicants essentially rely on the fact that Mr. Demane's family had asked to raise the child. It was reasonable for the RAD to conclude that this evidence did not establish a serious possibility of kidnapping. The RAD's findings on this are reasonable and it is not the role of the Court to reassess the evidence considered by the RAD: *Vavilov* at para 125.

(2) Prospective risk for Ms. Ait Aïssa

[22] The applicants allege that the RAD's analysis and findings regarding the risks Ms. Ait Aïssa would face should she return to Algeria were unreasonable. They rely on the 2014 incident during which she was injured, the cultural discord within the family, the documentary evidence about Algerian culture and the psychotherapy report. They submit that the RAD incorrectly assessed this evidence and the facts indicate that Ms. Ait Aïssa would be in danger should she return to Algeria.

[23] I do not agree. In my opinion, the appellants' arguments only ask the Court to reassess the evidence that was before the RAD. Despite the applicants' criticism, I do not see any unreasonable error in the RAD's analysis of the evidence or in its findings that the evidence did not establish a prospective risk.

[24] I do not accept the applicants' argument that the RAD considered that the only risk the applicants were facing was from Mr. Demane's family, who asked that he "have his wife obey

him." The RAD assessed the prospective risk of violence, both physical and psychological, in the context of the evidence before it, and it found that the applicants had not established a prospective risk pursuant to sections 96 and 97 of the IRPA. The RAD's decision is justified in relation to the relevant factual and legal constraints that bear on the decision and there is no reason for this Court to modify its findings.

(3) Other arguments

[25] In their memorandum of fact and law, the applicants presented two other arguments on which they did not insist during the hearing. Neither of these is convincing.

[26] First, the applicants submit that the RAD did not properly analyze the RPD decision. That said, the applicants did not specify the manner in which the RAD had allegedly incorrectly conducted this analysis. In fact, the RAD decision is detailed and includes a thorough review of the RPD decision, including its errors.

[27] Second, the applicants submit that the RAD's grounds are not sufficiently clear to allow them to understand its reasoning. Specifically, they allege that the RAD frequently noted that the RPD had made errors that it would have corrected, without specifying the nature of these corrections. I do not agree. The RAD clearly noted that the RPD erred by (i) not implementing IRB Guideline 4; (ii) not mentioning the evidence on family violence against women in Algeria; and (iii) not making findings about the risks for the child. The RAD remedied these shortcomings by analyzing the evidence while taking into consideration the guidelines, considering the documentary evidence on family violence and directly assessing the alleged risk

that the child would be kidnapped. The RAD decision meets the requirements of justification, intelligibility and transparency: *Vavilov* at para 100.

## IV. Conclusion

[28] For these reasons, I find that the applicants have not established that the RAD decision is unreasonable. The application for judicial review is therefore dismissed.

[29] No party has proposed a question for certification and I agree that none arises in this case.

[30] Lastly, for uniformity and in accordance with subsection 4(1) of the IRPA and rule 5(2) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, the style of cause is amended to designate the Minister of Citizenship and Immigration as the respondent.

**JUDGMENT in IMM-2571-22**

**THIS COURT'S JUDGMENT is as follows:**

1. The application for judicial review is dismissed.
2. The style of cause is amended to designate the Minister of Citizenship and Immigration as the respondent.

"Nicholas McHaffie"

Judge

Certified true translation
Elizabeth Tan

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-2571-22 |
| **STYLE OF CAUSE:** | NAIMA AIT AISSA ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | MONTRÉAL, QUEBEC |
| **DATE OF HEARING:** | APRIL 12, 2023 |
| **JUDGMENT AND REASONS:** | MCHAFFIE J. |
| **DATED:** | OCTOBER 25, 2023 |

**APPEARANCES:**

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| Steve Bell | FOR THE RESPONDENT |

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