

Federal Court



Cour fédérale

**Date: 20121121**

**Docket: IMM-8575-11**

**Citation: 2012 FC 1341**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Ottawa, Ontario, November 21, 2012**

**PRESENT: The Honourable Mr. Justice Lemieux**

**BETWEEN:**

**ABDELKADER KEBCHE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Introduction and facts**

[1] This is an application for judicial review by the applicant Abdelkader Kebche, a citizen of Algeria, against the decision rendered on October 28, 2011, by a member of the Refugee Protection Division (the panel) that he was not a Convention refugee or a person in need of protection.

[2] The applicant testified that the people he is afraid of are members of the Salafist Group for Preaching and Combat, now known as Al-Qaeda in the Islamic Maghreb (the Group), because he refused to finance its activities and reported the Group to the authorities.

[3] The panel finds the applicant credible and it follows that he established, on a balance of probabilities, the main allegations supporting his application but did not establish a relationship between the harm feared and a Convention ground nor did he demonstrate that he would face a risk to his life or be at risk of cruel and unusual treatment or punishment .

[4] The panel summarizes the alleged facts found in the applicant's Personal Information Form (PIF) as follows:

The claimant had been the owner of a mid-sized construction company since 2004. In October 2007, a group of masked men claiming to be helping the Mujahidin extorted him for 500,000 Algerian dinars. About 18 months later, in March 2008, a group of men showed up again and demanded 800,000 dinars, which the claimant refused to pay. He was taken to a deserted spot in the mountains, where he was tortured for three days. On March 20, he said he would make the payment if they released him and allowed him to collect the money from friends, which they did. The claimant immediately informed the national police and then fled to Algiers, the capital, approximately 200 km from his home in Chleff. Taking advantage of an international forum being held in the city of Québec, he obtained a business visa on April 14, 2008, and travelled to Canada on May 16, 2008. Three months later, he claimed refugee protection, alleging a fear of being killed if he returned to his country.

[Emphasis added]

## II Panel's decision

[5] The panel based its decision on three reasons:

- a. The applicant is not a Convention refugee; he has not established that section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), applied to the circumstances of his case. Section 96 of the IRPA states:

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

- b. The applicant is not a person in need of protection under section 97 of the IRPA because he is covered by subparagraph 97(b)(ii); the risk he faces is a generalized risk.

Section 97 of the IRPA reads as follows:

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

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|---|--|
| (a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or                       | a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;                                    |
| (b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if  | b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :   |
| (i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,   | (i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,  |
| (ii) <u>the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,</u>          | (ii) <u>elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,</u>                                  |
| (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and                            | (iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,         |
| (iv) the risk is not caused by the inability of that country to provide adequate health or medical care.  | (iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.   |
| (2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection. | (2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection. |

[Emphasis added]

- c. Alternatively, the applicant has not established that there was no possibility of an internal flight alternative (IFA).

(a) The criterion for assessing an IFA

[6] I find it useful to first address the issue of whether the applicant demonstrated that, on a balance of probabilities, there was no IFA for him in Algeria.

[7] It is well established that the existence of an IFA is in itself sufficient to reject a refugee claimant (see *Judge v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1089, and *Ali v Canada (Citizenship and Immigration)*, 2006 FC 1360, para 2).

[8] It is also well established that the existence of an IFA has two aspects: (1) Is there a serious possibility that a claimant may be persecuted in the suggested IFA locations? and (2) Would it be unreasonably harsh in all the circumstances for the claimant to move to an IFA location? (See *Chowdhury v Canada (Minister of Citizenship and Immigration)*, 2008 FC 18.)

[9] Justice O’Keefe stated in *Sokol v Canada (Citizenship and Immigration)*, 2009 FC 1257, at paragraph 38:

Did the Board err in determining that an IFA was available?

The test to be applied in determining whether there is an IFA is two-pronged: (i) there is no serious possibility of the claimant being persecuted or subjected, on a balance of probabilities, to persecution or to a danger of torture or to a risk to life or of cruel and unusual treatment or punishment in the proposed IFA area, and (ii) conditions in the IFA area must be such that it would not be unreasonable, in all the circumstances, for the claimant to seek refuge there (see *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589, [1993] FCJ No 1172 (CA) (QL)).

[10] Justice Boivin in *Guerilus v Canada (Citizenship and Immigration)*, 2010 FC 394, stated the following at paragraph 20:

The applicants had the onus of demonstrating why, on a balance of probabilities, there is a serious possibility that they would be persecuted in another part of the country where an internal flight alternative might be available (*Thirunavukkarasu*). The applicants must meet a very high threshold in order to show that the IFA is unreasonable. As explained in *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164, 266 NR 380 (FCA) below at paragraph 15,

“... 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 ...”

(b) The panel’s decision on the IFA:

[11] According to the panel, the applicant was asked to list the reasons he could not “relocate to a big city elsewhere in the country where, according to the documentary evidence, the security forces are essentially able to restrain terrorist activities, despite some dramatic attacks. The panel suggested the city of Annaba. In response, the claimant cited the terrorists as an obstacle. They allegedly told his brother that they intended to bring back the claimant’s head, no matter where he hid. He stated that they have a network that spans the country and even extends outside the country. They always manage to find the person they are looking for, which is why he fears that he will eventually be tracked down and killed, no matter where he goes in the country. He described ... the experiences of other people, who were decapitated for betraying the Terrorists. As an example, he mentioned the

director of the teaching college in his village, who fled to his sister's home in the south of the country and was found and killed four or five months later in 2005."

[12] The panel stated that when the applicant was asked to explain what interest they would have in searching for him throughout the country then deploying resources to eliminate him if they ever found out where he was living, the applicant answered "their credibility." In their view, he betrayed them, which is motive enough to explain a death sentence, sooner or later.

[13] However, the panel felt that

...[T]he Terrorists would have other concerns than to be interested in the claimant, in Annaba, today. In other words, the claimant did not establish that they would have an interest in tracking him down and targeting him in that city. In arriving at this determination, the panel took into account the overall context of terrorism in the country, as well as the claimant's particular circumstances, including the following:

- i. The fact that the city of Annaba is located outside the usual areas of operations of the terrorist groups. For one thing, most terrorist attacks occur in rural areas or outside the major cities. For another, the areas most affected by these activities are Kabylia and the southern part of the country. In arriving at this finding, the panel took into account the fact that the media do not report all incidents involving terrorist groups. However, given the multitude of sources included in the documentary evidence referred to in this analysis, the panel is of the opinion that the documentary evidence as a whole supports the factual basis for this finding.
- ii. The fact that Annaba is one of the largest cities in the country, with a population of several hundred thousand people.
- iii. The distance of several hundred kilometres between Annaba and the place where the claimant was living, in Chleff.
- iv. The fact that the claimant has never had any association with that city.

- v. The fact that the claimant did not establish that he has a particularly significant profile or a profile that—because of his family or other factors, including the fact that the family is known in the small town where they live—would make him easy to find in a country of over 30 million people or would make him valuable enough to the Terrorists to be worth the effort of tracking him down.
- vi. The fact that the claimant did not establish that he has a particular profile in Algeria that would plausibly justify the Terrorists pursuing him. On this subject, the documentary evidence states that i) these groups regularly extort people in order to finance their operations, and ii) their primary targets are the authorities, and the security forces in particular, with whom they are at war (whereas the claimant did not even perform his military service).
- vii. The fact that the claimant did not establish that he presents a threat to the Terrorists or that he is an obstacle to them achieving their political or ideological aims.
- viii. The fact that the Terrorists do not receive significant support from the population and that the claimant is, in fact, one person among thousands of others who are or have been in conflict with these terrorist groups because they refused to give in to their demands or made a report about them.
- ix. The deterrent of the police authorities, who are generally described as being effective at maintaining order, despite government corruption problems.
- x. The reduced striking power of the terrorist groups, particularly in the major cities, as a result of the authorities' successful campaign against them. The panel is aware that the terrorists continue to be a significant concern in Algeria. They continue to commit attacks, regularly and primarily targeting Algerian authorities, in particular the security forces who combat them. However, although domestic terrorism has not been completely eliminated, all the documentary evidence reports that the authorities have significantly reduced the capacity of the terrorist groups to operate in the country, in particular in the major cities like Annaba. These results have been achieved in part because of operations led by the security services and because of the policy of reaching out to those willing to renounce terrorism. In recent years, the government has committed firmly and unequivocally to combatting these groups, and its efforts have produced a substantial improvement in the country's security situation since the civil war from 1992 to



2000. This improvement can be seen in the decrease in incidents and casualties and in the markedly narrower geographical distribution of incidents. Considerable resources have been deployed in this fight, and the country, which is a leader in the region in this respect, is making substantial efforts to maintain national security. Moreover, it is achieving concrete results: those suspected of belonging to a terrorist group are arrested, detained, charged and brought to trial. Others are killed in clashes with security forces—nearly 500, according to some sources, in 2010.

- x. The fact that, despite the changes in the Maghreb region, the claimant did not establish that the country is heading toward a situation where its authorities would become disinterested in combatting, or would not be able to effectively combat, the terrorist threat.
- xii. The time that has elapsed since the last time the terrorists showed any interest, in mid-2008, over three years ago.
- xiii. The fact that the terrorists have shown no interest in the claimant's family since that time, although the family is still living in the same home.

[14] The panel found

... that the claimant did not discharge his burden of establishing that he would face a serious possibility of persecution on a Convention ground if he were living in Annaba, or a risk to his life, a risk of cruel and unusual treatment or punishment, or a danger of torture should he relocate there today.

[15] As to the second aspect of the IFA analysis, the panel pointed out that Mr. Kebche raised no problems other than his fear of the terrorists; he did not show that the town of Annaba would be an unrealistic, inaccessible or objectively unreasonable place for him.

[16] The panel also noted the high rate of unemployment, a culture of clientelism and expensive housing that feed into the discontent of young people. However, it noted the following:

However, this documentary evidence does not establish that these obstacles cannot reasonably be overcome, in particular by a person with the claimant's profile. He does not belong to a vulnerable or marginalized segment of society. He is a 32-year-old unmarried Muslim man with no children; he speaks several languages, has 14 years of formal education, has work and business experience and has a large family in the country. He did not allege or establish that he is physically or mentally unable to work, and the panel found him to be an intelligent and resourceful man.

[17] The panel ended its decision by writing:

[20] For all the foregoing reasons, even if the panel were to accept that the claimant had established a well founded fear, risk or threat in relation to living in his city of origin (which is not the case), it is of the opinion that he has not established the absence of an IFA in his country.

[Emphasis added]

### III. Parties' arguments regarding the IFA

#### (a) Those of the applicant

[18] The applicant submitted that he had no IFA in Algeria and that the members of the Group, a large terrorist organization, would find him anywhere in Algeria. He compared Annaba to the capital Algiers, where he sought refuge after leaving his region.

[19] He pointed out that Algiers, as the seat of government, appeared to be the safest since the largest number of military and police are located there. The documentary evidence shows that Algiers is the safest city in Algeria. In his affidavit filed in support of his application for judicial review, he stated that he was afraid in Algiers, faced with the large number of Islamists and [TRANSLATION] "I was afraid because I had reported the Group". The applicant stated that if he could not relocate to the capital without fear of persecution, he could not relocate to Annaba either.

[20] The applicant stated that it was important that the RPD consider the nature of the persecuting group—an extremely violent and mobile terrorist group—and it is difficult to reconcile the fact that the RPD’s could acknowledge the truth of the applicant’s allegations with the refusal to give him protection based on speculation that their interest and motivation cannot be understood.

(b) Those of the respondent

[21] The respondent argued that the defendant had the burden of showing, on a balance of probabilities, that he had a serious and personal risk of being persecuted everywhere in Algeria and that it was objectively unreasonable for him to avail himself of an internal flight alternative. He referred to *Guerilus* at paragraph 20, which I have already reproduced in these reasons.

[22] He noted that the applicant did not submit any objective evidence that he would be threatened in Annaba. The fact that the panel found him credible is not sufficient to deny the existence of an IFA.

IV. Analysis and conclusion

(a) Standard of review

[23] The standard of review is reasonableness since the issue of the existence of an IFA in this case is based on an assessment of the facts by the panel; *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, para 47:

Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

(b) Conclusion

[24] I find that this application for judicial review must be dismissed. The applicant had the burden of showing that the panel had erred in assessing the evidence before it when it found the existence of an IFA in Annaba. The comparison of Annaba with Algiers does not help his case. There was no evidence before the panel that the Group was looking for him in Algiers when he was living there. I find as the panel saw it; his fear of being found in Annaba was not objectively reasonable. Moreover, the panel was aware of the nature of the Group.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** this application for judicial review is dismissed. No question of general importance was proposed.

“François Lemieux”

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Judge

Certified true translation

Catherine Jones, Translator

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

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