

Federal Court



Cour fédérale

Date: 20121220

Docket: IMM-3820-12

Citation: 2012 FC 1527

[UNREVISED ENGLISH CERTIFIED TRANSLATION]
Montréal, Quebec, December 20, 2012

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

MILOUD BAGUI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision by the Refugee Protection Division (RPD) of the Immigration and Refugee Board dated March 28, 2012, under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [the IRPA]. The RPD determined that the applicant is neither a Convention refugee under section 96 of the IRPA nor a person in need of protection within the meaning of section 97 of the IRPA.

I. Facts

[2] The applicant is a 64-year-old citizen of Algeria. He has been a construction contractor since the year 2000. In 2005, he won a contract to carry out work on the courthouse in Sidi Bel-Abbès.

[3] In the month of September 2007, a terrorist group allegedly contacted him by telephone and asked him to stop working on the courthouse.

[4] Since he did not respond to the threat and continued working, members of the terrorist group went to his home and warned him that if he did not stop work, he would have to pay them 300 million dinars. He was warned not to contact the police.

[5] The applicant then went to live with his cousin, a police officer who lives in El Bayed, a highly secure part of town.

[6] One week after their first visit, a number of individuals allegedly came to his home a second time and threatened his wife and children.

[7] The applicant therefore contacted his brother in Canada to obtain a “certificat d’hébergement” (proof of accommodation). He left Algeria for Canada on April 15, 2008, and claimed refugee protection on December 29, 2008, leaving his family behind.

II. Decision under review

[8] The RPD found the applicant to be credible regarding his story. It analyzed the documentary evidence relating to the protection Algeria provides against terrorist groups, particularly Al-Qaeda, as well as the evidence filed by the applicant.

[9] The RPD concluded that the applicant's decision not to seek state protection was unjustified in the circumstances and that he could therefore not obtain refugee status. Moreover, the evidence did not show that the applicant would face a personalized risk if he returned to Algeria.

III. Applicant's position

[10] The applicant submits that the RPD erred in concluding that the applicant could avail himself of the protection of the Algerian authorities. He submits that he filed evidence, namely, newspaper articles, establishing that the Algerian government is unable to control acts of terrorism, and he testified to the effect that only wealthy individuals are given protection.

[11] According to the applicant, it was therefore reasonable in the present case not to seek state protection, and he provided a clear and convincing explanation for his refusal to seek that protection, especially since the terrorist group threatened him and warned him not to go to the police. He consulted a lawyer, but his police-officer cousin could not help him file a complaint, given that it had to be filed in Sidi Bel-Abbès, where the incidents took place.

[12] Finally, the applicant submits that the RPD erred in determining that he is not a “person in need of protection” because, he argues, he would face a personalized risk if he returned to Algeria. Indeed, he submits that he is a member of a group that faces a risk not generally faced by people in Algeria, as the fact that he was working for a court could cause him to be viewed as a supporter of the Algerian authorities.

IV. Respondent's position

[13] The respondent argues that the RPD’s decision is reasonable. First, the applicant did not avail himself of the protection of the Algerian state even though it would have been reasonable for him to do so in the circumstances, given that the presumption of state protection applies to Algeria. Moreover, the applicant’s subjective belief that the State cannot protect him adequately is not enough to justify his refusal to seek protection.

[14] In addition, regarding the RPD’s section 97 analysis, the respondent submits that the RPD validly determined that the applicant is not a “person in need of protection”, given that Algeria offers effective state protection and that the evidence indicates that, should he return to Algeria, the terrorist group would not try to threaten him.

V. Issues

(1) Did the RPD err in concluding that state protection is available to the applicant in Algeria?

(2) Did the RPD err in determining that the applicant is not a “person in need of protection” within the meaning of section 97 of the IRPA?

VI. Standard of review

[15] The standard of review that applies to both questions is reasonableness, as these are questions of mixed fact and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraphs 164-66, [2008] SCR 190).

VII. Analysis

(1) Did the RPD err in concluding that state protection is available to the applicant in Algeria?

[16] The RPD’s decision is reasonable, and the Court’s intervention is not required in the circumstances.

[17] The RPD validly concluded that Algeria is a democratic state. The RPD considered the documentary evidence regarding the protection offered by the Algerian authorities and the evidence filed by the applicant regarding terrorist acts committed in Sidi Bel Abbès and in Algeria, as well as the applicant’s testimony. It rightly concluded that although the protection is not perfect, Algeria has taken concrete action to counter acts of terrorism, and the Algerian state is therefore generally able to offer its citizens effective protection.

[18] It was established in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, 103 DLR (4th) 1, that when a state is considered to be democratic, the applicant must provide a clear and convincing justification for not seeking state protection.

[19] The RPD reasonably concluded that the applicant's refusal to seek state protection was unjustified. This Court has established on many occasions that an applicant who cannot show that he or she has made practical efforts to obtain state protection cannot seek protection from a third state by claiming refugee protection (*Ballesteros v Canada (Citizenship and Immigration)*, 2009 FC 352 at paragraphs 15-17, 2009 CarswellNat 2469). The applicant has not filed any evidence that the RPD has found to be satisfactory and specific to his situation, and he bases his refusal solely on a belief that the Algerian authorities only help [TRANSLATION] "foreigners and officials".

[20] Therefore, the RPD's conclusion that the applicant has not established the essential elements of a claim for refugee protection is well founded.

(2) *Did the RPD err in determining that the applicant is not a "person in need of protection" within the meaning of section 97 of the IRPA?*

[21] The RPD's determination that the applicant is not a "person in need of protection" is reasonable, in light of the evidence filed by the applicant.

[22] The RPD considered that the fact that the applicant had no further problems after moving in with his cousin, and that his wife and children, now having moved, had not been threatened

since the events in question. Furthermore, the documentary evidence is to the effect that, in general, the Algerian state is able to provide its citizens with adequate protection. The RPD's analysis of a state's ability to protect its citizens has the same bearing on the assessment of the merits of an individual's claim for refugee protection as it does on the determination of whether that individual is a "person in need of protection" (*Arellano v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1265 at paragraph 41, 2006 CarswellNat 3469). It was therefore reasonable to conclude that the applicant would probably not face a personalized risk if he had to return to Algeria.

[23] The parties were asked to submit a question for certification, but no question was submitted.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed, and no question will be certified.

“Simon Noël”

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3820-12

STYLE OF CAUSE: MILOUD BAGUI and MCI

PLACE OF HEARING: Montréal, Quebec

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**REASONS FOR JUDGMENT
AND JUDGMENT:** SIMON NOËL J.

DATED: December 20, 2012

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