

Federal Court



Cour fédérale

**Date: 20140227**

**Docket: IMM-3803-13**

**Citation: 2014 FC 191**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Ottawa, Ontario, February 27, 2014**

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

**BETWEEN:**

**Najoua KHEMIRI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The applicant arrived in Canada from Tunisia on February 25, 2010. Less than two months later, she married a Canadian citizen. It was not until February 14, 2012, that she claimed refugee protection.

[2] This is an application for judicial review by the applicant of the decision by the Refugee Protection Division of the Immigration and Refugee Board (RPD), dated April 11, 2013, to reject

her claim under sections 96 and 97 of the *Immigration and Refugee Protection Act*, RSC (2001), c 27 (Act). For the brief reasons that follow, I am of the view that the application for judicial review filed pursuant to section 72 of the Act must also be dismissed.

[3] Essentially, what the applicant complains of is a certain number of incidents that occurred in Tunisia and that apparently started in July 2008. She was purportedly assaulted because of her dress and conduct (she was wearing a sleeveless dress, she was smoking cigarettes, she was attacked with an iron bar, her car was vandalized) over a period of eighteen months. The applicant claims that five incidents involving her occurred.

[4] The RPD found the applicant's allegations deficient and rejected her claim, essentially on the basis that her allegations were not credible. The RPD found that the documentary evidence "[was] mostly statements of fringe *Salafist* elements in the country." It appears that the Tunisian government prohibited the wearing of veils in public institutions in 2010. It is clear that the applicant's allegations relate to conduct that would not satisfy fundamentalists, who disapprove of certain conduct and who encourage, among other things, the wearing of a veil. Furthermore, no details were provided with respect to those allegations, which certainly made the RPD suspicious. In other words, the allegations are generic and they do not make it possible for their truthfulness to be reviewed.

[5] The parties seem to agree that the standard of review is reasonableness in that the matter was argued on that basis. There is nothing in this case that makes it possible to depart from the

rule in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, (*Dunsmuir*) that the reasonableness standard must apply.

[6] The applicant merely claims that erroneous findings of fact mean that the RPD's decision is unreasonable. I do not believe that that is the case. In fact, the reasonableness standard allows for various interpretations of the facts. It is only when assessments are unreasonable that judicial intervention can take place. As frequently stated, paragraph 47 of *Dunsmuir* is authoritative, and it is helpful to reproduce it here:

[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.

[7] Here, the applicant simply disagrees with the RPD's findings. Those findings seem perfectly reasonable to me under the circumstances. I agree with the applicant that a lack of credibility need not necessarily be fatal (*Rathnavel v The Minister of Citizenship and Immigration*, 2013 FC 564). But there still must be other credible evidence sufficient to establish the elements necessary for a successful refugee protection claim. A person who claims refugee protection more than two years after her arrival in Canada on the basis of a visitor's visa must be

convincing. Allegations that lack detail and that therefore cannot be reviewed objectively are open to criticism in terms of their credibility. In fact, those allegations of mistreatment do not align with the situation in Tunisia where, for example, wearing a veil was prohibited.

[8] The applicant argued at the hearing that the RPD committed an error in law, reviewable on the standard of correctness, by not assessing the documentary evidence provided. That documentary evidence consists essentially in what appears to be articles from the Internet. When questioned to that effect, counsel for the applicant was unable to shed light on their source and, therefore, to give them weight despite the fact that they constitute hearsay, at best.

[9] I read the said exhibits. They all pertain to concerns with respect to the possible rise in fundamentalism in Tunisia, with a certain focus on what are called “*salafist* groups”. The articles all predate the applicant’s testimony during which she expressed fear of those groups that she cannot say much about.

[10] In my opinion, the fact that that material was not analyzed does not constitute a selective analysis of the evidence. Their weight with respect to the issues to be determined was negligible at best. The existence of those exhibits was not disregarded by the RPD. The RPD noted their existence at the hearing. However, with respect, their weight is limited in relation to the burden resting on the applicant. Moreover, during the hearing, the RPD noted that sporadic incidents may occur, but that what is necessary is to evaluate the person claiming refugee protection.

[11] It is now settled law that adequacy of reasons is not a basis for quashing a decision (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 at paragraph 14). Similarly, reasons may not include all the arguments or details (paragraph 16). Finally, the following was decided by the Supreme Court of Canada:

[16] . . . if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

[12] In this case, in the course of the hearing, the RPD mentioned the articles that the applicant wanted to discuss and noted that the articles identified proceed from unrelated facts. The RPD also noted the applicant's ultimate claim that [TRANSLATION] "the country as a whole is governed by fundamentalists or there are quite a lot of fundamentalists". In its decision, the RPD directly addressed the claim that fundamentalists are everywhere. It refused to accept the applicant's claim along those lines and was justified in doing so in the face of the facts in evidence. I see no reviewable error.

[13] Regarding the applicant's fear of returning to her country of origin because she now has a Christian husband, the applicant provides only the assault by the extremists in support of that allegation. In my view, the RPD was correct in finding that no "reasonable evidence regarding the consequences of marrying a non-Muslim" was submitted (paragraph 20 of the decision). Consequently, the application for judicial review is dismissed. There is no question for certification.

**JUDGMENT**

The application for judicial review of the decision dated April 11, 2013, by the Refugee Protection Division of the Immigration and Refugee Board is dismissed. There is no question for certification.

“Yvan Roy”

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Judge

Certified true translation  
Janine Anderson, Translator

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

**DOCKET:** IMM-3803-13

**STYLE OF CAUSE:** Najoua KHEMIRI and THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** February 19, 2014

**REASONS FOR JUDGMENT  
AND JUDGMENT:** Roy J.

**DATED:** February 27, 2014

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