

Federal Court



Cour fédérale

**Date: 20150128**

**Docket: IMM-2735-14**

**Citation: 2015 FC 109**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Montréal, Quebec, January 28, 2015**

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

**BETWEEN:**

**SALIM RAMOUL  
LAMIA BOUKERMA  
MOHAMED SALAH RAMOUL  
MOHAMED ISLEM RAMOUL  
MOHAMED RANI RAMOUL**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**ORDER AND REASONS**

**WHEREAS** this is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act], of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board, dated March 14, 2014, which

determined that the applicants were neither Convention refugees nor persons in need of protection under sections 96 and 97 of the Act;

**UPON REVIEWING** the parties' memoranda and the Tribunal Record;

**UPON HEARING** the arguments of the parties;

**WHEREAS** the applicants (Salim Ramoul, his spouse, Lamia Boukerma, and their three children, Mohamed Salah Ramoul, Mohamed Islem Ramoul and Mohamed Rani Ramoul) are Algerian citizens;

**WHEREAS** the RPD did not question the applicants' credibility, but found that they had failed to rebut the presumption of state protection in Algeria;

**WHEREAS** the issue raised in the present application is as follows: was the RPD's decision rejecting the applicants' claim for refugee protection on the grounds that they had failed to rebut the presumption of state protection in Algeria reasonable?

**WHEREAS** questions of state protection are reviewable on a standard of reasonableness as they are questions of mixed fact and law that fall within the expertise of the RPD (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paras 51-55 [*Dunsmuir*]; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339, at para 25; *Ruszyak v Canada (Minister of Citizenship and Immigration)*, 2014 FC 255, at para 23; *Ruszo v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1004, 440 FTR 106, at para 22 [*Ruszo*]).

**WHEREAS** that the applicants' application for judicial review must be dismissed for the following reasons:

[1] Mr. Ramoul fears reprisals against himself and his family from an influential businessman who took exception to being the subject of a tax audit initiated by the directorate headed by Mr. Ramoul when he was employed by the Algerian government agency tasked with tax collection. This businessman tried, unsuccessfully, to avoid being audited by attempting to intimidate Mr. Ramoul with the help of his two sons and by exerting his influence. Prosecuted by the government for unpaid income tax, he ended up in prison for insolvency and he and his sons [the agents of persecution] stepped up their threats against Mr. Ramoul. These incidents are alleged to have occurred between January and July 2012, the date on which Mr. Ramoul and his family left Algeria to seek refuge in Canada.

[2] Mr. Ramoul acknowledges not having sought state protection in Algeria against these threats, as he was of the view that such protection would not have been of any assistance in keeping him safe, given the level of corruption in that country's judicial and policing institutions, and the influence his agents of persecution had with public authorities.

[3] The RPD rejected the applicant's claim for refugee protection on the basis that they had failed to provide clear and convincing evidence to rebut the presumption that Algeria would be capable of ensuring their protection. Furthermore, it found that refusing to make a complaint on the ground that it would not be taken into consideration is not sufficient to rebut the presumption referred to above, as such evidence does not establish that judicial and policing institutions leave criminal acts unpunished when they are informed of such acts.

[4] In their memorandum, the applicants contend that Algeria is not a democratic state within the meaning established by the Supreme Court in *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 [*Ward*], and that they therefore do not have to rebut the presumption of state protection in this case. At the hearing, counsel for the applicants adopted a more nuanced position by acknowledging that the presumption did apply to Algeria, but that corruption was still so rampant in the country that it effectively reduced the applicants' burden of rebutting that presumption. She contends in this regard that the applicant's testimony on his previous experiences with Algerian authorities and on his knowledge of the prevailing legal and procedural framework with respect to law enforcement in that country constituted, following *Ward*, above, sufficient evidence for the RPD to have concluded that the Algerian state was incapable of protecting the applicants and that seeking protection from its authorities was futile.

[5] I cannot accept that argument. According to *Ward*, above, at 725, absent a complete breakdown of the state apparatus, a state must be presumed to be capable of protecting its citizens. The applicants are not claiming that Algeria's state apparatus has broken down. To claim otherwise would have been surprising, in light of recent judgments of this Court regarding refugee claimants from that country, in which it was determined that the presumption of state protection fully applied (*Amrane v Canada (Minister of Citizenship and Immigration)*, 2013 FC 12, 424 FTR 255, at paragraph 30; *Bagui v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1527, a paragraph 17; *Baraka v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1118, at paragraph 11).

[6] In this context, the onus was on the applicants to submit "clear and convincing" evidence of the state's inability to provide them protection. They had to establish that, in their case, it

would have been “objectively unreasonable” for them to have sought the protection of their country of origin (*Ward*, above, at page 724). It is important to remember here that security of nationals is the essence of sovereignty, and that the presumption of state protection serves to reinforce the underlying rationale of international protection as a surrogate, coming into play where no alternative remains to the claimant, and not for the purpose of seeking out better protection than that from which he or she benefits already (*Ward*, above, pp. 725-726).

[7] In this case, the applicants, as indicated earlier, made no attempt to seek the protection of the Algerian state from the actions of the agents of persecution. They justified their reluctance to do so by a lack of confidence in Algerian institutions and by the influence that their agents of persecution appeared capable of exercising over those institutions.

[8] It is settled law that doubting the effectiveness of state protection without reasonably testing it, or simply asserting a subjective reluctance to engage the state, does not rebut the presumption of state protection (*Ruszo*, above, at paragraph 33; *Ramirez v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1214, at paragraph 28; *Kim v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1126, at paragraph 10; *Huntley v Canada (Minister of Citizenship and Immigration)*, 2014 FC 573, at paragraph 136). Such reluctance, as we have seen, must be “objectively reasonable”.

[9] As Chief Justice Crampton held in *Ruszo*, above, at paragraph 51:

... a subjective perception that one would simply be wasting one’s time by seeking police protection or by addressing local police failures by pursuing the matter with other sources of police protection, would not constitute compelling or persuasive evidence, unless the applicant had unsuccessfully sought police protection on

multiple occasions, as in *Ferko v Canada (Citizenship and Immigration)*, 2012 FC 1284, at para 49.

[10] Mr. Ramoul's testimony about his previous experiences with the Algerian authorities and on his knowledge of the effectiveness of the prevailing legal and procedural framework with respect to law enforcement in that country does not meet the objectively reasonable criterion. There is nothing in the evidence to suggest that these experiences and this knowledge result from unsuccessful attempts at obtaining the protection of the police. This evidence remains largely subjective and, to say the least, contradictory in light of the fact that the applicants' primary agent of persecution, the businessman who was audited, was, despite all of the influence the applicants' attributed to him, judged and sanctioned by the Algerian authorities, to the point of receiving a prison sentence.

[11] The onus was on the applicants to provide clear and convincing evidence of their inability to obtain adequate protection from the Algerian state. This inability must be "objectively reasonable" and not purely subjective. The RPD found that this burden had not been met. In light of all the circumstances of this case, I am of the view that this conclusion falls within the "range of acceptable outcomes which are defensible in respect of the facts and law" and that it is therefore reasonable (*Dunsmuir*, above, at paragraph 47).

[12] Neither party sought the certification of a question for the Federal Court of Appeal, as provided for in paragraph 74(d) of the Act.

**ORDER**

**THIS COURT ORDERS that**

1. The application for judicial review is dismissed;
2. No question is certified.

“René LeBlanc”

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Judge

Certified true translation  
Sebastian Desbarats, Translator

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

**DOCKET:** IMM-2735-14

**STYLE OF CAUSE:** SALIM RAMOUL ET AL. v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** JANUARY 26, 2015

**ORDER AND REASONS:** LEBLANC J.

**DATED:** JANUARY 28, 2015

**APPEARANCES:**

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