Federal Court  Cour fédérale

Date: 20200618

Docket: IMM-3100-19

Citation: 2020 FC 708

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Montréal, Quebec, June 18, 2020

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

MAHAMAT MAHAMAT SOULEYMAN
BACHIR ADAM MAHAMAT CHIMA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, Mahamat Souleyman and his spouse, Bachir Adam Mahamat Chima, are citizens of Chad. They are appealing against a decision of the Refugee Appeal Division [RAD] dated April 23, 2019 [Decision], confirming the rejection by the Refugee Protection Division

[RPD] of their claim for refugee protection and confirming the RPD's determination that they are not refugees or persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Whereas the RPD had rejected the claim on the ground that the applicants lacked credibility, the RAD rejected the claim on the ground that Mr. Souleyman and his spouse have a viable internal flight alternative [IFA] in Moundou, a city that is 400 kilometres from N'Djamena, the capital of Chad.

[2] Mr. Souleyman and his spouse are now applying to this Court for judicial review of the Decision. They submit that the Decision is unreasonable and that the RAD erred in finding that they had a viable IFA in Moundou, a city that is unfamiliar to them and where they believe their agents of persecution could easily trace them. They are asking the Court to set aside the Decision and refer the matter back to the RAD for a new hearing before a differently constituted panel.

[3] The sole issue is the reasonableness of the RAD's conclusions on the viability of an IFA in Moundou.

[4] For the reasons below, I will allow Mr. Souleyman and his spouse's application for judicial review. Given the evidence before it and the applicable law, I am not persuaded that the RAD's reasons for concluding that it was reasonable for the applicants to seek refuge in Moundou have the qualities that make its reasoning logical and consistent in relation to the relevant legal and factual constraints. In the circumstances, this is sufficient to warrant the Court's intervention.

II. Factual background

A. *Facts*

[5] Mr. Souleyman and his spouse are citizens of Chad and belong to the Gorane ethnic group and the Muslim religion. They were living in Saudi Arabia, where their parents reside as Chadian migrant workers.

[6] In 2012, the applicants fell in love, and Mr. Souleyman's family presented a marriage proposal to the family of his future spouse, Ms. Chima. After a few months, in October 2012, the proposal was rejected because, ostensibly, Mr. Souleyman is from the blacksmith caste, which is considered to be a lower caste.

[7] In January 2013, Mr. Souleyman moved to Chad and worked to save money so that his future spouse could join him there. During that time, he worked as a salesman in his uncle's shop in N'Djamena. Ms. Chima joined Mr. Souleyman in Chad in September 2015, without her family's consent. The applicants were married that same month in a mosque in N'Djamena, without their families' knowledge.

[8] When Ms. Chima's uncles learned of the marriage, they tried to find the newlyweds in Chad to annul the union. Fearing death at the hands of Ms. Chima's family, the applicants fled to Canada in January 2016, by way of the United States.

[9] In February 2016, they filed their refugee protection claim with the Canadian authorities. They alleged that they could not return to Chad or Saudi Arabia, although their Basis of Claim forms indicated a risk of serious harm in Chad only. The applicants stated that Mr. Souleyman's employer in N'Djamena, his uncle, had allegedly been threatened by his spouse's parents for having helped them to flee Chad.

[10] In a March 2017 decision, the RPD found that the applicants had not met their burden of establishing a serious possibility of persecution if they were to return to Chad. In particular, the RPD identified a number of omissions and contradictions in the applicants' testimony and account. The applicants appealed against that decision to the RAD, alleging that the RPD's decision contained numerous errors in the assessment of their credibility.

B. ***Decision of the Refugee Appeal Division***

[11] Before rendering the Decision, the RAD asked Mr. Souleyman and his spouse to address two new issues: whether there was a viable IFA in Moundou and whether there was sufficient evidence in the record of a serious possibility of persecution if they were to return to Chad.

[12] In a short affidavit of only a few paragraphs, Mr. Souleyman stated that he and his spouse could not be safe in Moundou because Ms. Chima's family was still looking for them, and the birth of their daughter in Canada had made their situation even more difficult. In support of the affidavit, the applicants simply submitted two short Wikipedia articles about Mr. Souleyman's tribe, the Haddad people. The RAD accepted the documents under subsection 110(4) of IRPA.

[13] In the Decision, the RAD dismissed the appeal and confirmed the RPD's determination that the applicants are neither Convention refugees nor persons in need of protection. However, the RAD's reasons for doing so were different from the RPD's. The RAD initially agreed with most of the applicants' arguments that the RPD's analysis of their credibility was flawed. However, the RAD concluded that Mr. Souleyman and his spouse had a viable IFA in Moundou, Chad's second largest city, with a population of over 100,000. As for the risk and serious possibility of persecution in that city, the RAD determined that Ms. Chima's family did not show the motivation or ability to locate the applicants in Moundou. The RAD was also of the opinion that it was not unreasonable for the applicants to seek refuge in Moundou, given that Mr. Souleyman is educated and had settled alone in N'Djamena, where he had found a job as a sales representative. The RAD also pointed out that, apart from the commercial focus of the city, the applicants did not allege any specific difficulties related to daily life in Moundou.

C. *Standard of review*

[14] It is settled case law that the Court should apply the reasonableness standard when reviewing the RAD's findings regarding the existence of a viable IFA (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35; *Kaisar v Canada (Citizenship and Immigration)*, 2017 FC 789 [*Kaisar*] at para 11). With the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the standard of review analysis now begins with a presumption that reasonableness is the applicable standard in all cases. This presumption can be rebutted in only two types of situations. The first is where the legislature has prescribed the applicable standard of review or provided a statutory

appeal mechanism from an administrative decision to a court; the second is where the question on review falls into one of the categories of questions that the rule of law requires be reviewed on a standard of correctness (*Vavilov* at paras 10, 17; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post Corp*] at para 27).

[15] None of the situations justifying derogation from the presumption of reasonableness review applies in this case. The RAD decision is therefore reviewable on a standard of reasonableness. The parties do not dispute this.

[16] As for the substance of the reasonableness standard itself, *Vavilov* is consistent with the form of reasonableness review set out in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*], and subsequent cases. Where the applicable standard of review is reasonableness, the role of a reviewing court is to consider the reasons given by the administrative decision maker and determine whether the decision is based on "an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85; *Canada Post Corporation* at paras 2, 31). To make this determination, the reviewing court asks "whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility" (*Vavilov* at para 99, citing *Dunsmuir* at paras 47, 74, and *Catalyst Paper Corp v North Cowichan (District)*, 2012 SCC 2 at para 13).

III. Analysis

[17] The test for establishing the viability of an IFA is two-pronged. The first prong consists of ensuring that there is no serious possibility, on a balance of probabilities, of the claimant being persecuted in the proposed IFA. The second prong requires that the conditions in the proposed IFA be such that it would not be unreasonable, upon consideration of all the circumstances, including of the claimant's personal circumstances, for the claimant to seek refuge there (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA), 109 DLR (4th) 682 [*Thirunavukkarasu*] at para 12; *Rasaratnam v Canada (Minister of Citizenship and Immigration)*, [1992] 1 FC 706 (CA), 140 NR 138 at para 47; *Singh v Canada (Citizenship and Immigration)*, 2020 FC 350 at paras 10, 26; *Mora Alcca v Canada (Citizenship and Immigration)*, 2020 FC 236 at para 5).

[18] This two-pronged test ensures that Canada complies with international standards for IFAs. As I stated in *Kaisar*, the underlying principle of an IFA analysis is that international protection can only be offered if the country of origin cannot offer adequate protection throughout its territory to the person claiming refugee status. It is well established that international protection is a measure of last resort; a refugee protection claimant must first seek protection in their own country and, if necessary, relocate within their country before seeking the protection of a third country. The onus is on the claimant to show that, on a balance of probabilities, they face a serious risk of persecution throughout their country of origin and it is unreasonable for them to settle in an IFA (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164, 266 NR 380 [*Ranganathan*] at para 13; *Thirunavukkarasu* at

para 2). In the Decision, the RAD makes explicit reference to this well-established test for determining the viability of an IFA, and it cannot be criticized for the legal test it uses in its analysis.

[19] However, the applicants submit that the RPD erred in its assessment in both prongs of the test.

[20] In the first prong, the applicants criticized the RAD for downplaying the fear raised in Mr. Souleyman's affidavit in response to the RAD's questions. In his affidavit, Mr. Souleyman stated that his spouse's family visited his uncle and threatened him. Mr. Souleyman's words are as follows:

> [TRANSLATION]
>
> They tell me that my wife's family always comes to my house, where my uncle lives, to ask about me and to find out where we are.
>
> . . .
>
> Her family members say, if my wife doesn't go back and they see us, we will pay because this relationship has brought shame on them. They say we will be punished and they will give my wife to another man. I fear for my life.
>
> My wife and I are from N'Djamena. However, we cannot be safe in Moundou. It is a small industrial town, a commercial town. The Goranes are great traders, and it is certain that, sooner or later, someone will recognize us and tell her family.
>
> I am enclosing articles describing the situation of blacksmiths.

[21] In its analysis of the first prong, the RAD noted that Ms. Chima's family never searched for the applicants outside N'Djamena. It also noted that there was no communication between

the applicants and Ms. Chima's family in Saudi Arabia, that Ms. Chima's mother was ambivalent, and that there were no reports of threats or targeted violence in the record. The RAD also referred to the passage in Mr. Souleyman's affidavit that his spouse would be given to another man. It concluded that the threats against the applicants were too vague and general to represent a serious possibility of persecution, and that Ms. Chima's family members would not have the motivation or interest in locating them.

[22] The applicants submit that the RAD failed to consider the recent threat raised in the affidavit and focused instead on past threats. In addition, the applicants challenge the RAD's assertion that the threats raised were vague and general. They argue that the RAD turned a blind eye to the assertions in Mr. Souleyman's affidavit referring to the ongoing threats, his fear for his life, and the very real threat to make them pay, to punish them, and to give his spouse to another man.

[23] I can understand Mr. Souleyman and his spouse's view that the evidence they submitted indicates an ongoing interest on the part of Ms. Chima's family in locating them and ongoing threats against them from agents of persecution. However, having carefully read the Decision, I am satisfied that the RAD considered the various assertions in Mr. Souleyman's affidavit and was able to conclude that the threats raised by the applicants were vague and general and lacking in detail. Although I agree that the RAD could have elaborated, I do not believe that it ignored the evidence before it. Ultimately, the applicants' arguments express, first and foremost, their disagreement with the RAD's assessment of the evidence in the first prong of the assessment of

the IFA, and in fact call upon the Court to prefer their opinion and their reweighing of the evidence to the analysis by the RAD. This is not the role of a reviewing court in judicial review.

[24] The reasonableness standard of review means that the Court owes deference to the factual findings of the RAD, where they are supported by the evidence (*Vavilov* at paras 125–26). This implies that it is not for me to evaluate the RAD's decision against the decision I might have made had I been in its place. In this case, I can understand on what evidence the RAD relied to make the finding that it made regarding a serious possibility of persecution of the applicants in Moundou. I therefore disagree with the applicants that the conclusions of the RAD in the first prong of the IFA analysis are unreasonable.

[25] The analysis of the second prong of the IFA viability test is more problematic however. The RAD's decision here is considerably terser—a single paragraph. In only a few lines, the RAD concludes that it is not unreasonable for the applicants to seek refuge in Moundou given the city's relatively large population, Mr. Souleyman's experience in N'Djamena, and the absence of specific difficulties identified by the applicants regarding settling in Moundou. The short passage of the Decision in this regard reads as follows:

> I conclude that it is not unreasonable for the appellants to seek refuge in Mondou [*sic*]. It is the second largest city in Chad, with over 100,000 inhabitants. The male appellant is educated and moved to N'Djamena alone, where he landed a job as a sales manager. The appellants did not allege any specific hardship regarding daily life in Mondou [*sic*], aside from the fact that it is a small, trade-oriented town. In these circumstances, I conclude that it is not unreasonable to require that the appellants move to Mondou [*sic*].

[26] Mr. Souleyman and his spouse claim that the SAR erred in concluding, without explanation, that it was not unreasonable to ask them to seek refuge in a city where they have no ties and no one to help them, in ignoring the difficulties they would face because of Mr. Souleyman's ethnic origin and the commercial focus of the city, and in stating that Mr. Souleyman had settled alone in N'Djamena.

[27] I agree with the applicants. With respect to the second prong of the IFA test, I believe that the RAD's analysis is flawed in two respects. First, the RAD misunderstood some of the evidence before it and failed to consider some of the evidence in the record. Second, the RAD failed to explain how the evidence before it could lead it to draw the conclusion that it drew.

[28] There is no doubt that, according to the evidence in the record, Mr. Souleyman received help from his uncle to settle in N'Djamena, that his uncle found him work and that he was his employer in N'Djamena. Therefore, the RAD's assertion that Mr. Souleyman settled alone in the capital of Chad finds no factual basis in the evidence. On this point, it is clear that the RAD fundamentally misunderstood the evidence before it. Moreover, the RAD seems to reject out of hand the fact that Moundou is focused on commerce. However, according to the applicants, the fact that Moundou is focused on commerce means that they could easily be found there as members of the Gorane ethnic group, an ethnic group of traders, and that it was therefore unreasonable for them to think that they could settle there safely. There is every indication in the reasons for the Decision that the RAD did not consider the relevance of these elements or at least did not explain why they did not merit any weight.

[29] I agree that Mr. Souleyman's affidavit lacks details about the difficulties the applicants could face in Moundou. It would certainly have been desirable for Mr. Souleyman to have elaborated on his remarks more forcefully and clearly. However, here the RAD's reasons are equally weak and do not address the merits of the arguments raised by the applicants. Given the evidence about the assistance Mr. Souleyman received in N'Djamena and the commercial focus of Moundou, which makes it more likely that people of Gorane ethnicity can be found, I must conclude that I do not find these reasons sufficient to understand how the RAD came to its conclusion, based on the facts in the record, that it was not unreasonable for the applicants to relocate to Moundou. Applying the standard of reasonableness to the facts and circumstances of this case, I am therefore of the opinion that the Court should intervene and set aside the decision of the RAD.

[30] I do not dispute that the onus is on refugee protection claimants to show that an IFA is unreasonable in a given case and that the burden is very onerous (*Singh* at para 42; *Jean Baptiste v Canada (Citizenship and Immigration)*, 2019 FC 1106 at para 21; *Pineda v Canada (Citizenship and Immigration)*, 2019 FC 1446 at para 14; *Molina v Canada (Citizenship and Immigration)*, 2016 FC 349 at para 14). Indeed, they must demonstrate that conditions where they might relocate would jeopardize their lives and safety, and must provide actual and concrete evidence in this regard (*Ranganathan* at para 15; *Siliya v Canada (Citizenship and Immigration)*, 2015 FC 120 at para 8). I also concede that the articles provided by Mr. Souleyman are not very detailed and that the evidence provided is rather sparse. Nevertheless, the applicants filed evidence and arguments that contradict the two reasons that the RAD ultimately gives for its

determination that Mr. Souleyman and his spouse could reasonably be expected to seek refuge in Moundou.

[31] The RAD was required to explain its decision with respect to this second prong of the IFA viability test, and I am not convinced that it did so. In short, I am not satisfied on the basis of the RAD's terse reasons that the RAD specifically considered the particular circumstances of the applicants, and that it adequately analyzed their claims and fears. When I read the reasons in conjunction with the record, I am unable to understand the RAD's reasoning regarding a central point of the Decision (the second prong of the IFA viability test), and I do not see a logical flow from the evidence to the outcome. Based on the record before it, I am not satisfied that the RAD reasonably addressed the particular risk to which Mr. Souleyman and his spouse would be exposed by settling in Moundou.

[32] In the wake of *Vavilov*, special attention must now be paid to the decision-making process and the justification for administrative decisions. One of the objectives advocated by the Supreme Court of Canada in the application of the reasonableness standard is to "develop and strengthen a culture of justification in administrative decision making" (*Vavilov* at paras 2, 143). It is not enough for a decision to be justifiable. Where reasons for a decision are required, the decision "must also be justified, by way of those reasons, by the decision maker to those to whom the decision applies" (*Vavilov* at para 86). In the end, a reviewing court must "develop an understanding of the decision maker's reasoning process" and determine "whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility" (*Vavilov* at para 99). In the wake of *Vavilov*, reasons provided by administrative decision makers are the

primary mechanism by which administrative decision makers show that their decisions are reasonable—both to the affected parties and to the reviewing courts (*Vavilov* at para 81). They "explain how and why a decision was made"; they show that "the decision was made in a fair and lawful manner"; and they shield against "the perception of arbitrariness in the exercise of public power" (*Vavilov* at para 79). In short, it is the reasons that justify the decision.

[33] However, in the case of Mr. Souleyman and his spouse, I am of the opinion that the RAD's reasons do not justify the Decision with respect to the second prong of the IFA viability test in a transparent, intelligible manner. On the contrary, they show that the RAD seems to have disregarded the evidence in the record and the relevance of the applicant's arguments, that it did not follow a rational, coherent and logical line of reasoning in its analysis, and that the Decision does not conform to the relevant legal and factual constraints that bear on the outcome and the issue at hand (*Canada Post Corporation* at para 30; *Vavilov* at paras 105–7).

[34] I recognize that, on judicial review, the court is not permitted to reweigh the evidence or substitute its own assessment of the facts for that of the administrative decision maker. Deference to an administrative decision maker includes deferring to their findings and assessment of the evidence (*Canada Post Corporation* at para 61). In the same vein, I acknowledge that the reasonableness of reasons is not measured by weight. The reasons for a decision need not be exhaustive. However, they must be intelligible and justified. Regardless of how many words the decision maker used or how concise the decision is, the test remains the same: the reasons must be justified, transparent and intelligible, and must explain to the Court and the parties why the decision was made. The problem here is that the evidence in the record,

sparse as it is, does not support the RAD's terse analysis and conclusions that it would not be unreasonable for Mr. Souleyman and his spouse to settle in Moundou, and that its reasons do not explain why and how it came to that outcome. That is enough, in my view and in the very particular circumstances of this case, to set aside the decision of the RAD and refer the matter back to it for reconsideration.

IV. Conclusion

[35] For the reasons above, Mr. Souleyman and his spouse's application for judicial review is allowed. Neither party proposed a question for certification. I agree that there is no basis for doing so in this case.

JUDGMENT in IMM-3100-19

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is allowed.
2. The decision of the Refugee Appeal Division dated April 23, 2019, rejecting the applicants' refugee protection claim is set aside, and the matter is referred back to a differently constituted panel for reconsideration based on these reasons.
3. No question is certified.

"Denis Gascon"
Judge

Certified true translation
This 6th day of July 2020.

Johanna Kratz, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

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