

Federal Court



Cour fédérale

**Date: 20211220**

**Docket: IMM-4069-21**

**Citation: 2021 FC 1446**

**Ottawa, Ontario, December 20, 2021**

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

**BETWEEN:**

**OURIDA GHARBI  
BASIL O A ALABADILAH**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicants, Ms. Ourida Gharbi (“Ms. Gharbi”) and her husband, Mr. Basil Alabadilah (“Mr. Alabadilah”), seek judicial review of a decision of the Refugee Appeal Division (“RAD”) dated June 2, 2021, confirming the determination of the Refugee Protection Division (“RPD”) that the Applicants are neither Convention refugees nor persons in need of

protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] The Applicants submit that the RAD erred in its finding that Morocco is a country of former habitual residence for Mr. Alabadilah and that the RAD's findings concerning credibility are unreasonable.

[3] For the reasons that follow, I find that the RAD's decision is reasonable. I therefore dismiss this application for judicial review.

## II. **Facts**

### A. *The Applicants*

[4] Ms. Gharbi is a 47-year old citizen of Tunisia. Her father and her brothers, Moncef and Wannes, were members of the Tunisian military. Her father and her brother Moncef are deceased.

[5] Mr. Alabadilah is a 52-year old Palestinian, born in Saudi Arabia. In Saudi Arabia, Mr. Alabadilah was required to have a sponsor, and renew his temporary resident status each year. His sponsors allegedly kept a large portion of his salary and exerted considerable control over his livelihood.

[6] The Applicants allege female family members of the Tunisian military are not permitted to marry non-Tunisians. Ms. Gharbi married Mr. Alabadilah in Tunisia in 1996, with only her sisters and mother in attendance at the wedding. Ms. Gharbi claims that while her father consented to the marriage, her brothers tried to prevent the marriage from taking place and demanded a sum from Mr. Alabadilah.

[7] After the wedding, Ms. Gharbi moved to Saudi Arabia with Mr. Alabadilah, where they lived for over 20 years.

[8] In 2001, Ms. Gharbi returned to Tunisia for a three-week stay to visit her sister, Zohra. Ms. Gharbi claims that when her brother found out she was in Tunisia, he tried to arrange for a divorce, verbally abused her, and threatened to kill her and her husband if they ever returned to Tunisia. Ms. Gharbi subsequently made several trips to Tunisia to visit her sister in 2013, February 2014, June 2015, November 2017, and October 2018.

[9] Between November 2015 and December 2018, Mr. Alabadilah travelled to Morocco eight times for a work project. The shortest visit was one week long, and most periods spent in Morocco ranged from two and a half months to just over four months at a time.

B. *The RPD Decision*

[10] In a decision dated February 14, 2020, the RPD determined that the Applicants were not Convention refugees or persons in need of protection.

[11] The RPD found that Ms. Gharbi had returned to Tunisia on at least six occasions since her marriage, and that this undermined her allegation that she had a well-founded fear of persecution in Tunisia. The RPD also noted that there was no credible evidence that the Applicants' marriage is or was opposed by Tunisian authorities. The RPD further noted that there was no evidence that Ms. Gharbi's family continued to target her after 2001, or that the Applicants' relationship was harmful to her brothers' military careers.

[12] The RPD considered evidence of the Applicants' social media accounts. The RPD noted that Ms. Gharbi was "friends" on Facebook with "G.H Monsef," her now deceased brother, and that Mr. Alabadilah was friends with "Wannes Gharbi," Ms. Gharbi's other brother. The RPD found that the lack of a credible or consistent explanation for why the Applicants are Facebook friends with at least some of the alleged agents of persecution significantly undermines their credibility. The RPD also noted that there is no evidence that the Applicants took precautions on social media to prevent Ms. Gharbi's brothers from discovering information about them.

[13] The RPD also determined that Morocco is a country of former habitual residence for Mr. Alabadilah, noting that he had resided there for a period of roughly 18 months since November 2015, along with his wife. The RPD also considered that he had a three-year renewable Moroccan residence card ("Carte d'Immatriculation") expiring on January 17, 2021, and that Mr. Alabadilah had indicated to US authorities that he was a permanent resident of Morocco. As there was no evidence that Mr. Alabadilah would face a serious possibility of persecution in Morocco, the RPD found he was neither a Convention refugee nor a person in need of protection.

C. *The RAD Decision*

[14] On June 2, 2021, the RAD upheld the RPD's decision. The RAD affirmed the RPD's finding that Ms. Gharbi's trips to Tunisia diminished the credibility of her claim. The RAD also found that the RPD was correct in concluding that the Applicants were friends on Facebook with two of the alleged agents of persecution, and that this undermines their credibility. Finally, the RAD found that the RPD was correct in concluding that Morocco was a country of former habitual residence for Mr. Alabadilah, and since he made no allegations that he feared returning to Morocco, the RAD held that he is neither a Convention refugee nor a person in need of protection.

III. **Issue and Standard of Review**

[15] The sole issue in this case is whether the RAD's decision is reasonable.

[16] Both parties submit that the standard of review is reasonableness. I agree (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("Vavilov") at paras 10, 16-17).

[17] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85).

Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[18] For a decision to be unreasonable, an applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). A reviewing court must refrain from reweighing the evidence that was before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125).

#### IV. Analysis

##### A. *Morocco as a Country of Former Habitual Residence*

[19] The Applicants argue the RAD erred in finding that Morocco was a country of former habitual residence for Mr. Alabadilah. The Applicants rely on *Maarouf v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3021 (FCA), [1994] 1 FC 723, in which the Federal Court of Appeal states:

[T]he concept of "former habitual residence" seeks to establish a relationship to a state which is broadly comparable to that between a citizen and his or her country of nationality.

[20] In its analysis of whether Morocco was a country of former habitual residence for Mr. Alabadilah, the RAD noted that Mr. Alabadilah indicated he lived in Casablanca, Morocco on

his Facebook page, that he indicated he was a permanent resident of Morocco on his US visa application, and found that he was:

[...] admitted into Morocco for the purpose of continuing residence of some duration within the meaning of the *Maarouf* case, as evidenced by the three-year renewable card that he was issued and his multiple entries into that country allowing him to work and live with his spouse there, irrespective of what he wrote on the American visa application form and his Facebook page which tend toward the same conclusion.

[21] The Applicants also rely on *Al-Khateeb v Canada (Citizenship and Immigration)*, 2017 FC 31 (“*Al-Khateeb*”), in which this Court clarifies that the word “habitual” in the phrase “former habitual residence” is defined as “regular, continual, or usual” and suggests “a normal uninterrupted lifestyle” (at para 19). The case of *Al-Khateeb* concerned a Palestinian applicant who was born in Gaza and lived there until he was six months old. This Court found that the RAD erred in finding that six months could not be characterized as habitual, and determined that in this case, the six-month period constituted a “normal uninterrupted lifestyle” as the applicant had “lived with his family, and ate and slept as infants do” (at para 19).

[22] The Applicants submit that in contrast to the applicant in *Al-Khateeb*, Mr. Alabadilah travelled to Morocco eight times, spread out over a three-year and one-month period, for an average of 2.7 months per visit, and always returned to his home in Saudi Arabia, where he was born and had lived his entire life. The Applicants contend that Mr. Alabadilah’s time in Morocco is far from being a “normal uninterrupted lifestyle” and is by no means comparable to that of a citizen in their country of nationality.

[23] I am of the view that *Al-Khateeb* is in fact analogous to the Applicants' case. I find the case supports the Respondent's argument that the duration of time is not indicative of the significance of Mr. Alabadilah's stays in Morocco, and that shorter periods of time spent in a country do not preclude it from being properly considered a country of former habitual residence. At paragraph 20 of *Al-Khateeb*, this Court states:

Because there is no minimum period for a [country of former habitual residence], significance must be capable of meaning something other than a substantial period of time. It follows that a short period can be significant.

[24] Like the applicant in *Al-Khateeb*, who had a right to return and reside in Gaza, Mr. Alabadilah was able to obtain a renewable residence card, had a right to return to Morocco, and was able to live comfortably there with his wife.

[25] Finally, the Applicants rely on *Qassim v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 226 ("*Qassim*"), which states, "the issuance of travel documents is not, on its own, proof of a [country of former habitual residence]" (at para 38). In *Qassim*, the applicant visited Iraq twice, once in 1997 for a period of eight weeks, and once in 2001 for a period of five weeks. This Court held it was reasonable for the RPD to conclude that this did not amount to significant periods of *de facto* residence, given that – unlike the facts in *Al-Khateeb* – the applicant had never resided in Iraq (*Qassim* at paras 40-41).

[26] The Respondent submits the determination of a country of former habitual residence is a finding of fact that is owed a high degree of deference (*Alkurd v Canada (Citizenship and*



*Immigration*), 2019 FC 298 at para 32). The Respondent also relies on *Cehade v Canada (Citizenship and Immigration)*, 2017 FC 282 to argue that even if the Applicants cannot now return to Morocco, this does not permit them to meet the Convention definition (at para 35). In other words, since the Applicants did not leave Morocco for fear of persecution there, the issue of whether Mr. Alabadilah still has a right of return does not affect his claim.

[27] With respect to the Applicants' argument that Mr. Alabadilah's status in Morocco was contingent on a temporary work project, counsel for the Respondent drew my attention to Mr. Alabadilah's testimony before the RPD, in which he explained that he had discovered he would be able to access permanent residence status in Morocco, but found the process to be too costly:

COUNSEL: Mm-hmm. Did this residency card give you any possibility of permanent status in Morocco?

PERSON CONCERNED 2: Okay. It could turn into a permanent residency if I had a project to work on or, or invest in something. Okay. This registration card was issued for a reason. Okay. So if I like living in Morocco and if I had an income, yes, I will be able to get the residency or permanent residency in Morocco and can stay there. But that's -- I don't have that capability.

COUNSEL: Mm-hmm. Okay. So did you look into, into that? Into the prospect of staying permanently in Morocco?

PERSON CONCERNED 2: I, I went and asked how, how it's possible to get the permanent residency in Morocco.

COUNSEL: Mm-hmm.

PERSON CONCERNED: I just asked. Because life there is -- was good. And it was really close to Tunisia for my wife. But to get that residency, I had to have a, a lots of money, and I don't have that capability.

[28] I further note that during the RPD hearing, when Mr. Alabadilah was asked why he did not remain in Morocco for the duration of his work project, he stated that he could not stay outside Saudi Arabia for more than four months:

COUNSEL: Mm-hmm. Okay. And why not just live in Morocco throughout the whole project? Why did you travel there for a few months at a time and return to Saudi Arabia?

PERSON CONCERNED 2: As a resident of Saudi Arabia, I cannot stay outside Saudi Arabia for more than four months.

COUNSEL: Mm-hmm.

PERSON CONCERNED 2: So if I stayed in Morocco for more than four months, I would lose my residency in Saudi Arabia.

[29] However, as the record and the Applicants' submissions indicate, Mr. Alabadilah's longest stay in Morocco was over four months, from April 13, 2016, to August 24, 2016.

[30] As counsel for the Respondent pointed out during the hearing, Mr. Alabadilah spent 21.33 months out of 37 months in Morocco: more than half the time of the three-year and one-month work period. Mr. Alabadilah also possessed a three-year renewable residence card, was joined in Morocco by his wife, indicated to US authorities that he was a permanent resident of Morocco, and indicated on his Facebook page that he lived in Morocco. While I find that indicating a place of residence on Facebook is not legally conclusive on its own, it does corroborate the other evidence to suggest that Morocco is a country of former habitual residence for Mr. Alabadilah.

[31] I therefore find that it was reasonable for the RAD to determine that Morocco is a country of former habitual residence for Mr. Alabadilah.

B. *Lack of Subjective Fear and Credibility*

[32] The Applicants submit that there is no basis for the RAD's finding that the Applicants lack credibility, and in particular that the RAD unreasonably relied on the Applicants' Facebook activity by focusing on the fact that the Applicants were Facebook "friends" with one or more of the feared agents of persecution.

[33] With respect to the fact that Mr. Alabadilah and Wannes are Facebook friends, the RAD stated:

The fact remains that by accepting this brother as a friend, he made some aspects of his life visible to him, thus making both Appellants more vulnerable, whenever he posted information such as where the family lives, by way of example.

[34] The RAD also noted that Moncef had "liked" a picture posted by Mr. Alabadilah representing the Applicants' marital union, and found:

This is clear evidence that this brother liked a picture of [Mr. Alabadilah] and further likely that he approves of the union of the two flags, which is inconsistent with the allegation that he does not want to be seen as approving of his sister's marriage to a Palestinian which is problematic because of his military rank.

[35] The Applicants contend that there is no evidence of “substantial communication” between the Applicants and Ms. Gharbi’s brothers. One of the brothers, Moncef, died three years ago, and the Applicants submit that Wannes’ 16-year-old son was in fact using Wannes’ Facebook. Further, the Applicants submit that since they lived in Saudi Arabia, there was no risk associated with being friends on Facebook with individuals who were in another country.

[36] As noted by counsel for the Respondent during the hearing, there were inconsistencies in the Applicants’ testimonies when asked whether Wannes knew his son was using his Facebook account to communicate with the Applicants. In his testimony, Mr. Alabadilah stated:

COUNSEL: [...] Why do you think Wannes would allow his son to communicate with you through Facebook.

PERSON CONCERNED 2: Personally, I don’t think Wannes knows what’s going on.

COUNSEL: Okay. Why do you think that?

PERSON CONCERNED 2: Okay. He’s -- my wife tells me that Wannes doesn’t know that his son is, is in contact on Facebook with us.

[37] Yet in her testimony, Ms. Gharbi stated:

PERSON CONCERNED 1: [...] Wannes said that I don’t have any problem that my son communicate with his aunt. There is no problem that the children can, there will be no problem if the children communicate with their aunt.

MEMBER: Okay. Can you explain why your husband gave us a very different account. He said that as far as he believes, Wannes does not know about this and would not want it. Why are you on totally separate pages about it?

PERSON CONCERNED 1: My, my nephew tells me that his dad knows. Maybe just, just not to create any problems in this case.

[38] The RAD also found that Ms. Gharbi's six trips to Tunisia diminished the credibility of the claim. In her Basis of Claim form ("BOC"), Ms. Gharbi states that she visited Tunisia for three weeks in 2001, one week in 2013, about 11 days in 2014, and "short visits" in June 2015, November 2017 and October 2018. In particular, three of these visits took place after she publicly posted a travel picture on Instagram on October 24, 2014. The RAD found:

[...] one of the travel pictures that she posted on Instagram on October 24, 2014, was taken in Sousse, 150 kilometres from Tunis, where her agents of persecution live. This suggests that she did not take the precaution of hiding in Tunis or limiting her travel to that city and avoiding the area where her agents of persecution live on at least one occasion.

[39] The Applicants contend that photos of Ms. Gharbi's trips to Tunisia were posted to Facebook only after she had safely returned to Saudi Arabia and that it was therefore unreasonable for the RAD to find that these trips undermined her subjective fear.

[40] The Respondent relies on the recent decision in *Abdelgadir v Canada (Citizenship and Immigration)*, 2021 FC 58, in which this Court assessed whether the applicant's single trip to his home country was diminishing proof of his subjective fear. At paragraph 15, this Court states:

[...] the case law clearly establishes that a voluntary return to the country of origin can be a significant impediment to proving a subjective fear of persecution: *Forvil v Canada (Citizenship and Immigration)*, 2020 FC 585, at paragraph 59; *Sainnéus v Canada (Citizenship and Immigration)*, 2007 FC 249, at paragraph 12;

*Houssou v Canada (Minister of Citizenship and Immigration)*,  
2006 FC 1375, at paragraph 3.

[41] I agree with the Respondent's submission that regardless of the nature or length of the trip, taking six trips to Tunisia is not consistent with the claim of someone who truly believes their life is at risk.

[42] Furthermore, as noted by the Respondent, while the Applicants submit that Ms. Gharbi only informed her sister of her visits and did not disclose her presence in Tunisia to the rest of her family, Ms. Gharbi's BOC demonstrates that her brother was aware of her presence in Tunisia when she visited in 2001. Ms. Gharbi's BOC states:

While I was there my brother found out that I was visiting Tunisia and contacted a lawyer to try and arrange a divorce between me and my husband. They subjected me to verbal abuse during this visit and accused my husband of forcing me to marry him and living in Saudi Arabia. They threatened to stop my husband from ever coming to Tunisia, and also threatened to kill both of us if we were ever to return to Tunisia.

[43] I find that there does not have to be "substantial communication" between the Applicants and the agents of persecution to reach the conclusion the RAD did on subjective fear. I also find it was reasonable of the RAD to determine that Ms. Gharbi's visits to Tunisia and the photos she posted on social media of her trips undermine the Applicants' claim. As the Respondent highlights, alerting the agents of persecution that she had returned to Tunisia by posting photos after she returned to Saudi Arabia is not consistent with her stated fear. I therefore find the RAD's findings on credibility and subjective fear to be reasonable.

V. **Conclusion**

[44] For the above reasons, I find that the RAD's decision displays a rational chain of analysis and that it is justified in light of the evidence, and is therefore reasonable. This application for judicial review is dismissed.

[45] No questions for certification were raised, and I agree that none arise.

**JUDGMENT in IMM-4069-21**

**THIS COURT'S JUDGMENT is that:**

1. This application for judicial review is dismissed.
2. There is no question to certify.

"Shirzad A."

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Judge



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

**DOCKET:** IMM-4069-21

**STYLE OF CAUSE:** OURIDA GHARBI AND BASIL O A ALABADILAH v  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** BY VIDEOCONFERENCE

**DATE OF HEARING:** NOVEMBER 3, 2021

**JUDGMENT AND REASONS:** AHMED J.

**DATED:** DECEMBER 20, 2021

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