

Federal Court



Cour fédérale

**Date: 20230731**

**Docket: IMM-5515-22**

**Citation: 2023 FC 1041**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, July 31, 2023**

**PRESENT: Mr. Justice Gleeson**

**BETWEEN:**

**IMEDEDDINE SERIR**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The applicant, Imededdine Serir, is a citizen of Algeria. The Refugee Protection Division [RPD] rejected his refugee protection claim.

[2] In a decision dated May 27, 2022, the Refugee Appeal Division [RAD] dismissed his appeal, determining that he had failed to rebut the presumption of state protection in Algeria.

[3] The applicant is seeking judicial review of the RAD's decision and is raising several issues. However, I am of the view that the RAD's state protection analysis is determinative.

[4] I am not satisfied that the RAD made a reviewable error in its state protection analysis or that its conclusion was unreasonable. The application is therefore dismissed for the reasons that follow.

## II. Background

[5] When the applicant was a university student, he began a romantic relationship outside of marriage with another student. According to the applicant's written account, his new girlfriend's brother learned of the intimate relationship. The girlfriend's family did not accept the relationship because the applicant is not Berber and pressed the couple to end the relationship.

[6] Then, the girlfriend's brother came to the applicant's home armed with a knife. Following a heated discussion with the applicant's father, a fight broke out and a crowd gathered. When he left, the brother warned that he would be back for the applicant. The applicant did not complain to the police.

[7] The applicant left Algeria and arrived in Canada on August 2, 2021. The applicant alleges that he fears being killed by his ex-girlfriend's family because he tarnished her honour. He is seeking protection from this risk and from honour crime.

[8] The RPD found that the above risk had no nexus to a ground of persecution set out in the *United Nations Convention Relating to the Status of Refugees* [Convention] and considered the applicant's claim under paragraph 97(1)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The RPD concluded that the applicant had failed to rebut the presumption of state protection.

### III. The RAD's decision

[9] Before the RAD, the applicant alleged that the RPD erred in its conclusions regarding state protection.

[10] The RAD agreed with the RPD's conclusions with respect to the Convention and found that the RPD had not erred in concluding that the Algerian state was able and willing to protect its citizens.

[11] Before concluding that the applicant failed to provide a satisfactory answer as to why he had not sought state protection, the RAD re-examined the explanations provided by the applicant: (1) that, because of the dominance of Islam, not only could the applicant not count on the police's protection, he was also at risk of being oppressed by it himself; and (2) that no witness would dare testify against his girlfriend's brother. The RAD found that the RPD had

erred in suggesting that the applicant could have hidden his non-marital relationship with his girlfriend from the police.

[12] Noting the RPD's error, the RAD conducted its own analysis of the documentary evidence: it determined that it was not possible to conclude that the Algerian police would refuse to protect the applicant or that he himself would be targeted for having a relationship outside marriage. The RAD rejected the applicant's first explanation, and in considering the second explanation, noted that "the fact that there are no witnesses does not mean that the police would have refused to receive the [applicant's] complaint". In sum, the RAD confirmed the RPD's decision in its entirety.

#### IV. Procedural history

[13] In March 2023, the application for judicial review hearing was postponed for medical reasons with the respondent's consent. On the day of the postponed hearing, June 20, 2023, counsel for the applicant failed to appear in court. Contacted by phone at the start of the hearing, counsel for the applicant explained that he had not received the order stating that the hearing had been postponed, and that he was working on another case and, for professional reasons, could not appear before the Court in person until September 26, 2023.

[14] Counsel for the respondent objected to a second adjournment. She stated that she had received the order setting a new hearing date, which had been sent to the parties' email addresses by the Court registry. Counsel for the applicant was unable to confirm that the notice of order

was not in his email inbox. Thus, the respondent asked the Court to decide on the matter relying only on the record and the written representations since the issues were relatively simple.

[15] Given the previous adjournment; counsel for the applicant's actions and his lack of availability; counsel for the respondent's objection to further postponing the hearing; and the nature of the issues raised in this dispute, I informed the parties that the matter would be determined solely on the basis of the written representations.

V. Issues and standard of review

[16] The application raises only one issue: was the RAD's analysis of the presumption of state protection in Algeria reasonable in this case?

[17] The parties submit, and I agree, that the applicable standard of review for the decision is reasonableness.

[18] A reasonable decision is one that is justified in relation to the facts and law that constrain the decision maker (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]). The burden is on the applicant to show that the decision is unreasonable (*Vavilov* at para 100). For the reviewing court to intervene, the party challenging the decision must satisfy the court that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency", and such alleged flaws or shortcomings "must be more than merely superficial or peripheral to the merits of the decision" (*Vavilov* at para 100).

## VI. Analysis

### A. *General*

[19] In his memorandum, the applicant raises arguments related to the issue of credibility. However, that issue was addressed only by the RPD. The RAD's analysis focused almost exclusively on the issue of state protection. The applicant alleges that the RAD made a negative credibility finding in that analysis. I disagree. The RAD did not question the credibility of his refugee protection claim in assessing the arguments regarding the Algerian state's ability and willingness to protect its citizens.

### B. *The RAD's analysis of the presumption of state protection in Algeria is reasonable*

[20] Absent a situation of complete breakdown of state apparatus, it should be assumed that the state is able to offer effective protection (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at p 725). Hence, the burden is on the applicant to provide clear and convincing evidence of the state's inability to protect him. The evidence must be "relevant, reliable and convincing" and must satisfy the trier of fact on a balance of probabilities that the state protection is inadequate (*Flores Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at para 30). Although applicants' lives do not have to be at risk, they usually have to show "that they sought, but were unable to obtain, protection from their home state, or alternatively, that their home state, on an objective basis, could not be expected to provide protection" (*Hinzman v Canada (Citizenship and Immigration)*, 2007 FCA 171 at para 37).

[21] Keeping these principles in mind, I will now consider the applicant's main argument, namely, that the RAD erred in assessing the adequacy of state protection by confusing state protection against drug trafficking with state protection against honour crimes.

[22] This argument was also put forward before the RAD, which expressly rejected it on the ground that the RPD had considered "the documentary evidence on criminal and murder cases handled by the Algerian police, as well as measures put in place to ensure the safety of citizens". The RAD also noted that the RPD took into account the applicant's newspaper articles dealing with honour crimes and not only those dealing with drug trafficking. Furthermore, the RAD noted that the RPD had stated that his girlfriend's brother was a drug trafficker known to the police. The applicant's submissions do not explain why the decision is unreasonable or identify an error warranting the Court's intervention. The submissions simply show that the parties disagree.

[23] I am not satisfied that the RAD erred in rejecting the applicant's explanation concerning the fact that he had not filed a complaint with the Algerian police. Once again, the applicant is asking the Court to reconsider the evidence that has already been considered by the RAD. It is well established that such a request must be rejected on judicial review.

[24] In determining that it was not possible to conclude that the Algerian police was unable or unwilling to protect the applicant, the RAD correctly interpreted the case law principles, provided clear explanations and proper reasons. The RAD acknowledged that the RPD erred

partially in arguing that the applicant could have avoided disclosing his non-marital relationship to the police.

VII. Conclusion

[25] Since the RAD's decision is reasonable, the application for judicial review is dismissed.

There is no question of general importance to be certified.



**JUDGMENT in IMM-5515-22**

**THE COURT’S JUDGMENT is as follows:**

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

“Patrick Gleeson”

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Judge

Certified true translation  
Margarita Gorbounova

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

**DOCKET:** IMM-5515-22

**STYLE OF CAUSE:** IMEDEDDINE SERIR v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL

**DATE OF HEARING:** JUNE 20, 2023

**JUDGMENT AND REASONS:** GLEESON J

**DATED:** JULY 31, 2023

**APPEARANCES:**

Fedor Kyrpichov FOR THE APPLICANT

Annie Flamand FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Counsel FOR THE APPLICANT

Attorney General of Canada FOR THE RESPONDENT