

Federal Court



Cour fédérale

Date: 20251110

Docket: IMM-8909-24

Citation: 2025 FC 1802

Ottawa, Ontario, November 10, 2025

PRESENT: The Honourable Madam Justice Tsimberis

BETWEEN:

SERAJ ESSAADI EL FERJANI AHMED

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Seraj Essaadi El Ferjani Ahmed, is a citizen of Libya. Mr. Ahmed seeks judicial review of the May 2, 2024 decision of the Refugee Appeal Division [RAD] confirming the refusal of his refugee claim by the Refugee Protection Division [RPD], for other reasons. The RAD found that Mr. Ahmed had not established either a well-founded fear of persecution under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27

[IRPA] or that, on a balance of probabilities, Mr. Ahmed would personally be subjected to a risk to life or a risk of cruel and unusual treatment or punishment or a danger of torture upon return to Libya pursuant to section 97 of the IRPA.

[2] The only issue on judicial review before the Court is whether the RAD Decision is unreasonable considering the evidence before the Officer.

[3] Mr. Ahmed submits that the RAD solely relied on a few selected passages from the National Documentation Package [NDP], disregarded his written narrative and testimony, and failed to properly assess the forward-looking risks awaiting him upon his return to Libya as a member of Colonel Muammar Gaddafi's extended family when other members of his family were targeted in the past.

[4] In response, the Minister of Citizenship and Immigration [Minister] submits that Mr. Ahmed's arguments before this Court essentially reiterate the arguments made before the RAD and invite this Court to reweigh the evidence before the RAD.

[5] For the reasons that follow, this Court allows this application for judicial review.

II. Background

A. *Factual Background*

[6] Mr. Ahmed claimed refugee protection due to his fear that he will be at risk in Libya because he is a member of Colonel Gaddafi's extended family. Members of Colonel Gaddafi's

extended family were targeted in the past and Mr. Ahmed fears persecution in Libya for this reason.

[7] Mr. Ahmed was born in 1995. He and his family fled Libya in August 2011 during the violent downfall of Colonel Gaddafi's regime and then went to Egypt. In 2014, Mr. Ahmed went to South Africa to pursue his aviation career. He then returned to Libya in August 2015 to get his passport issued, and in the same year, returned to Egypt to see his family and remained there as a student until 2017.

[8] Mr. Ahmed entered Canada in December of 2017 on a study visa to study aviation. On December 30, 2020, he signed his Basis of Claim Form [BOC] and claimed refugee protection in Canada.

B. *Procedural History*

[9] On June 27, 2022, Mr. Ahmed had a hearing before the RPD. On November 18, 2022, the RPD dismissed his claim, finding that the determinative issue was Mr. Ahmed's access to citizenship in Sudan, considering his father was born in that country.

[10] On June 7, 2023, the RAD dismissed Mr. Ahmed's appeal, as the RAD agreed that the determinative issue was Mr. Ahmed's access to citizenship in Sudan and his failure to establish that he faced a forward-looking risk in Sudan.

[11] Mr. Ahmed filed a judicial review of the June 7, 2023 RAD decision. On October 20, 2023, Justice Gascon issued a judgment on consent and sent back the RAD's decision for

redetermination, due to procedural fairness issues related to the inadequate representation of Mr. Ahmed's former counsel.

[12] On January 12, 2024, Mr. Ahmed filed a supplementary record and submitted new evidence to the newly constituted RAD panel.

[13] On April 3, 2024, the RAD Member invited the parties to make submissions on the new issues identified in a notice sent to the parties, namely:

- Whether Mr. Ahmed could access state protection or an internal flight alternative in Sudan;
- Whether Mr. Ahmed can establish an ongoing risk in Libya under sections 96 or 97 of the IRPA; and
- Whether Mr. Ahmed could access state protection or an internal flight alternative in Libya.

[14] On April 16, 2024, Mr. Ahmed provided additional written submissions in response to the RAD's directions.

III. Decision Under Review

[15] By decision dated May 2, 2024 [Decision], the RAD accepted the new evidence filed by Mr. Ahmed on appeal. However, the RAD found that it had no jurisdiction to hold an oral hearing because none of the evidence raises a serious credibility issue for Mr. Ahmed, is central to the Decision, or would justify allowing or rejecting Mr. Ahmed's claim.

[16] The RAD found Mr. Ahmed's new evidence in the forms of the birth certificate of his father, the letter from his father, the proof of citizenship for his father and the death certificate of his grandfather to be admissible. The RAD found Mr. Ahmed's affidavit dated January 12, 2023 inadmissible, because it was a reiteration of his allegations but indicated that it would be considered as part of his memorandum of argument.

[17] At the outset of its decision, the RAD found that Mr. Ahmed had access to citizenship in Sudan but would face a risk in Sudan. Mr. Ahmed has not challenged these findings before this Court.

[18] What has been challenged in this judicial review are the RAD's findings that Mr. Ahmed has not established that he has a well-founded fear of persecution or a risk to his life in Libya. A summary of the RAD's findings are as follows:

- The RAD accepted that Mr. Ahmed is distantly connected to the Gaddafi family through a connection to the same tribe, rather than a direct family relation (Decision at para 37);
- The NDP shows that those who were, or are perceived to have been, high-ranking officials in the Gaddafi regime or who had close associations with his family or with security forces during the 2011 conflict in Libya are the ones who face a high risk of societal and official discrimination throughout Libya and could be illegally detained, beaten, tortured, threatened together with their families, and/or killed (Decision at para 38);
- The evidence also indicates that a Libyan with a low-level association with the regime would not face harm as a result of that association because the same source notes that the majority of the population in Libya had either worked for, had some association with the regime during the 42 years Gaddafi was in power (Decision at para 38);
- Mr. Ahmed had not established that being a member of the same tribe as Gaddafi or that being an international student, who did not complete his studies with the support of the Gaddafi regime, would put him at risk (Decision at paras 38-39);
- Simply because Mr. Ahmed met Gaddafi on a handful of occasions and his family fled in 2011, when many were at risk, does not establish that he faces a risk if he were to return to Libya today (Decision at para 40);

- Mr. Ahmed also does not fit into the profile of a tribe member deemed to be a Gaddafi loyalist or supportive of the Gaddafi regime. Mr. Ahmed never alleged that he or any of his family members were part of the Gaddafi regime or supporters of it now (Decision at para 41);
- Other groups at risk include human right activists, and Mr. Ahmed did not put forward any evidence that he has been critical of the government or militias or that he maintains a presence on social media (Decision at para 42).

[19] The RAD thus confirmed the decision of the RPD, for other reasons, that Mr. Ahmed is neither a Convention refugee nor a person in need of protection.

IV. Issue and Standard of Review

[20] There is only one issue before the Court: whether the Decision is unreasonable considering the evidence before the Officer. More specifically, the live issue is whether the RAD erred in assessing Mr. Ahmed's forward-looking risk of persecution in Libya because of his family's association with the toppled Libyan dictator Colonel Gaddafi.

[21] The parties agree that the merits of the Decision are reviewable on the presumptive standard of reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 10, 25.

[22] To avoid intervention on judicial review, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility: *Vavilov* at para 99. A reasonable decision will always depend on the constraints imposed by the legal and factual context of the particular decision under review: *Vavilov* at para 90.

[23] The Court must avoid reassessing and reweighing the evidence before the decision maker; a decision may be unreasonable, however, if the decision maker “fundamentally misapprehended or failed to account for the evidence before it”: *Vavilov* at paras 125-126.

[24] The party challenging the decision bears the onus of demonstrating 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 that the alleged flaws must be “more than merely superficial or peripheral to the merits of the decision”: *Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36. The reviewing court must ultimately be satisfied that the decision maker’s reasoning “adds up”: *Vavilov* at para 104.

V. Analysis

[25] In my view, the Decision is unreasonable considering the evidence before the Officer.

[26] In its Decision, the Officer made the following findings at paras 36, 38 and 40:

[36] I have carefully considered the parties’ arguments along with the most recent country condition evidence. **I acknowledge that the situation in Libya is volatile and that the UNHCR is encouraging countries to suspend returns to Libya until the security situation improves.** The Appellant cites several documents in the National Documentation Package (NDP) indicating that **the Libyan government and armed militias continue to commit human rights violations throughout the country.** Many disappearances that occurred during the civil war in 2011 remain unsolved.

[...]

[38] **A source in the NDP explains that those who were, or are perceived to have been high-ranking officials in the Gaddafi regime, or who had close associations with his family or with security forces during the 2011 conflict are the ones that face a high risk of societal and official discrimination throughout Libya, and could be illegally detained, beaten, tortured or threatened together with their families and/or killed.** However, this same source notes that the Gaddafi regime was in power in Libya for 42 years, during which the majority of the population would have either worked for, had some association with, or had a member of the family who worked for, or had an association with the regime. **It is unlikely that a Libyan with a low-level association with the regime would face harm as a result of this association.** Further, the Appellant has not established that simply being a member of the same tribe as Gaddafi would put him at risk.

[...]

[40] Hence, I find insufficient evidence that he would face a serious risk of persecution or a section 97(1) harm because he is a failed refugee claimant or a former international student, or because his family is distantly connected through tribal relations to the Gaddafi family. **Simply because the Appellant met Gaddafi on a handful of occasions and his family fled in 2011, when indeed many were at risk, does not establish that he faces a risk if he were to return today.**

[Emphasis added.]

[27] Mr. Ahmed argues that the RAD solely relied on some selected passages from the NDP, disregarded Mr. Ahmed's written narrative and testimony and erred in assessing whether his allegations of fear of persecution if he returns to Libya were well founded. Mr. Ahmed's fear stems from his family being perceived as close enough to the former Libyan dictator Gaddafi such that his home was vandalized and destroyed. Mr. Ahmed explained he moved to his uncle's home which later was vandalized and attacked, and a few of his family members were killed during the civil war that erupted in 2011.

[28] Mr. Ahmed argues that the RAD did not reference in its Decision his written narrative, which the RPD's prior decision summarized as follows:

ALLEGATIONS

[2] The claimant's reasons for making a refugee claim are succinctly stated in his Basis of Claim Form (BOC) and in oral testimony. He alleged the following. He is a man born in 1995.

The claimant's immediate family had to leave their family farm in Libya while exposed to bullets. This was during the violent downfall of the Gaddafi regime, in August 2011. They fled the farm and went to the uncle's house in southern Libya. The uncle's house was destroyed with the heavy weapons in the downfall of the Gaddafi regime in the fall of 2011. They left Libya with almost nothing and went to Egypt. The claimant went to South Africa in 2014 to pursue his aviation career. He returned to Libya in August 2015 to get his passport issued. He returned to Egypt to see his family and remained there as a student from 2015 to 2017. He came to Canada on a study visa in 2017 to study aviation.

[3] He is a member of Colonel Muammar Qaddafi's (Gaddafi) extended family and fears persecution in Libya for this reason.

[29] The record shows that a USB stick (Exhibit B of the Affidavit of Josef Brown, Applicant's Record at 39) was filed with the RAD containing a video of an attack on Mr. Ahmed's uncle's house. The USB also contained "*pictures of my uncle with Gaddafi*", with handwritten references to "*Uncle Mansour*" above a man who was later referred to as Mansour Daou, a former Gadhafi Security Counsel in a picture from CCN. The USB stick also included pictures allegedly showing a "*residential building where my cousin, Ahmed Hamad Al-Ferjani, was staying*", and a description that this cousin "*was attacked and killed, The building was completely destroyed while he was inside it, that was in the city of Sabha in the south of Libya by one of the tribes 'awlad Sulayman' who are known for their loyalty to the 'revolution' during attacks on the homes of the Qadadfa tribe on the 19/11/2016*".

[30] The Minister argues that there is no indication the RAD ignored Mr. Ahmed's testimony or narrative as alleged. The Minister submits that the RAD in fact engaged with Mr. Ahmed's evidence throughout its reasons and applied his evidence-based profile to the objective country condition evidence, but ultimately found that Mr. Ahmed had failed to establish a link between his profile and the country condition documents.

[31] I must disagree with the Minister. The Decision does not explain how the RAD concluded that Mr. Ahmed is "a Libyan with a low-level association with the regime" given Mr. Ahmed's narrative and his testimony regarding his and his family's experiences in Libya, and corresponding supporting evidence (the uncle's pictures with Colonel Gaddafi or the destructions of houses of the uncle and cousins). Given the RAD did not impugn Mr. Ahmed's credibility or that of his documentary evidence, the Decision does not explain how Mr. Ahmed does not fall within the NDP article's characterization of "**those (...) who had close associations with [Gaddafi's] family (...)** are the ones that face a high risk of societal and official discrimination throughout Libya, and could be illegally detained, beaten, tortured or threatened together with their families and/or killed." The Decision does not contain any indication that the RAD assessed Mr. Ahmed's evidence, which gives rise to an inference that the evidence was overlooked: *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC), [1998] F.C.J. No. 1425 [*Cepeda*] at para 17.

[32] Without reference to the BOC and the above evidence and without any associated analysis, the RAD's findings that Mr. Ahmed is not one of "those (...) who had close

associations with [Gaddafi's] family” and is rather “a Libyan with a low-level association with the regime” are unreasonable in the circumstances.

[33] There is no engagement in the Decision with Mr. Ahmed's evidence. This includes evidence showing his alleged Uncle Mansour being a former Gadhafi Security Counsel and his uncle's numerous pictures with Colonel Gaddafi. It also includes the evidence relating to the death of the cousin, Ahmed Hamad AI-Ferjani. Given that the evidence of Mr. Ahmed was omitted from the Officer's reasons and that it appears to squarely contradict the Officer's aforementioned findings, the RAD was required to justify its conclusion or to justify why it was not able to accept Mr. Ahmed's testimony on the basis of sufficiency or on the basis that Mr. Ahmed has no direct knowledge that what he is saying is true (for example, *Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 at paras 25-26). The reasons read in conjunction with the record do not make it possible to understand the Officer's reasoning on this critical point (*Vavilov* at para 103).

[34] A tribunal's silence on contradictory evidence, such as the evidence of Mansour Daou being both the former Gadhafi Security Counsel and being Mr. Ahmed's “Uncle Mansour”, justifies the Court's intervention and infer the tribunal overlooked the contradictory evidence: *Aghaalkhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 at paragraph 24. The Decision is not justified in light of the factual record and unreasonable as it lacks a rational chain of analysis: *Vavilov* at para 102.

[28] In my view, this error is sufficiently central to the Decision to render it unreasonable: *Vavilov* at para 100; *Yani v Canada (Citizenship and Immigration)*, 2024 FC 73 at para 10, citing *Moradbeigi v Canada (Citizenship and Immigration)*, 2023 FC 1209 [*Moradbeigi*] at para 16). Given the above error is sufficiently central to the Decision to render it, in my view, unreasonable and that the above analysis is determinative of the matter at hand, the Court has not considered the other alleged errors: *Moradbeigi* at para 23.

VI. Conclusion

[35] The application for judicial review is granted. The matter will be remitted for redetermination by a visa officer not previously involved in this matter.

JUDGMENT in IMM-8909-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The matter will be remitted for redetermination by a visa officer not previously involved in this matter.
3. There is no question for certification.

"Ekaterina Tsimberis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

GÖKHAN TOY	FOR THE APPLICANT
NEETA LOGSETTY	FOR THE RESPONDENT

SOLICITORS OF RECORD:

LEWIS & ASSOCIATES LLP TORONTO, ON	FOR THE APPLICANT
ATTORNEY GENERAL OF CANADA TORONTO, ON	FOR THE RESPONDENT