

CANADA / JUDGMENT

MB9-07737

COURT

Refugee Appeal Division

DECIDED

3 February 2020

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RAD File No. / No de dossier de la SAR : MB9-07737 MB9-07738 Private Proceeding / Huis clos
Reasons and Decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXXXXXX XXXX XXXX Personnes en cause Appeal considered / heard at Montréal, Quebec
Appel instruit / entendu à Date of decision February 3, 2020 Date de la décision Panel Me Toni
Jedid Tribunal Counsel for the persons who are the subject of the appeal Me Rachel Benaroch
Conseil des personnes en cause Designated representative XXXX XXXX Représentant(e)
désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION
OVERVIEW

- [1] XXXX XXXX (the principal appellant) and his minor daughter XXXX XXXX XXXX (the associate appellant), citizens of Algeria, are appealing against a decision of the Refugee Protection Division (RPD) rejecting their refugee protection claims because of a lack of credibility.
- [2] The appellants allege a fear of returning to Algeria because of a complaint filed by the principal appellant against a drug dealer.
- [3] The determinative issue is whether the RPD erred in its assessment of the appellants' credibility.
- [4] I find that the appellants are not credible, conclude that the RPD's determination is correct and dismiss the appeal. FACTUAL BACKGROUND
- [5] The principal appellant alleged that in February 2014, while he was on his way home, strangers approached him from behind and violently assaulted him. He suffered head and back injuries, and a fractured leg. His daughter was traumatized. He alleged that his agents of persecution are involved in drug trafficking. They allegedly attacked the principal appellant because they thought he was his brother, a XXXX XXXX who had previously arrested one of the men. He filed a complaint and was summoned by the prosecutor of the Republic. Following death threats, he decided to withdraw that complaint, but the prosecutor of the Republic pursued the matter. Meanwhile, the agent of persecution filed a complaint against the principal appellant, and that same day, also decided to withdraw his complaint. On July 13, 2014, the agent of persecution was sentenced to two years in prison and a fine. On January 10, 2016, the principal appellant was sentenced to pay a fine. Between

2014 and 2017, the principal appellant travelled several times to France, England, the United States and other destinations. In April 2017, he received an anonymous death threat over the telephone, and many calls in the following months. He filed several complaints with the police and changed his place of residence. Fearing for his life, he left Algeria for the United States. His family joined him in XXXX 2017. They crossed the United States-Canada border together to claim refugee protection. ROLE OF THE REFUGEE APPEAL DIVISION

- [6] I have conducted my own review of all of the evidence, including the audio recording of the hearing, and I have applied the correctness standard, in accordance with Huruglica¹ and Rozas del Solar.²

ANALYSIS

Incident of February 13, 2014

- [7] The RPD believed that the principal appellant was assaulted on February 13, 2014, and found credible his explanation that the agent of persecution thought he was his brother. However, in the RPD's view, the resemblance between the two brothers could not have resulted in threatening calls made by mistake against the principal appellant rather than against his brother, a XXXX XXXX. The RPD concluded that, in its opinion, the evidence did not establish that the principal appellant's resemblance to his brother, a XXXX XXXX, poses a perpetual risk to him, as the principal appellant suggested in his Basis of Claim Form (BOC Form). The RPD noted that the principal appellant and the agent of persecution withdrew their complaints and the prosecutor of the Republic continued to hear and argue the case.
- [8] In his appeal memorandum, the principal appellant submits that he provided two motives for the assault of February 13, 2014: his resemblance to his brother or revenge against him. He argues that the RPD could therefore not conclude that his fear is no longer justified because the anonymous telephone calls could not be explained away by the resemblance with his brother. The RPD erred in concluding that the withdrawal of the two complaints meant the end of the problems. It failed to consider that although the complaints were withdrawn, the agent of persecution was found guilty and sentenced to two years in prison without parole and a fine. The RPD seems to believe that the agent of persecution is a reasonable man, not a mafia-type criminal seeking revenge. The principal appellant was attacked because his brother, a XXXX XXXX, arrested the agent of persecution. The RPD's conclusions are arbitrary and drawn from the evidence in a capricious manner.
- [9] I agree with the principal appellant, and I am of the opinion that the incident may have occurred as a result of the resemblance between the principal appellant and his brother (a police officer) and the revenge mentioned in his written account and the letter from his brother.³ However, I am of the opinion that the RPD's error is not fatal, given its other determinative findings regarding the principal appellant's credibility.

- [10] At his hearing before the RPD, the principal appellant testified that a judgement was issued against him in 2014. When asked whether he attended that hearing, he replied in the affirmative: [translation] "I went to the hearing; I truly did not do anything". He testified that he appealed this judgment towards the end of 2014. However, I note that the evidence on the record, namely the appeal certificate,⁴ shows that the judgment was appealed on January 10, 2014, contrary to the principal appellant's allegations. Moreover, when he was confronted with the judgment by default issued against him,⁵ the principal appellant changed his testimony and stated that he did not attend the hearing, which is why a judgment by default was issued. The RPD therefore asked him whether the judgment was indeed issued in 2014 and whether he attended the hearing. The principal appellant replied: [translation] "I did not attend." Therefore, I am of the opinion that the principal appellant gave two contradictory versions about his attendance to the panel during the hearing. First, he testified that he attended the hearing because he was innocent; then, he stated that he did not attend. In my opinion, the evidence submitted does not establish the principal appellant's allegations in his written account. Threatening calls and behaviour of the principal appellant
- [11] The RPD alluded to the lack of evidence about the threatening calls. The RPD believed that the principal appellant travelled to England in XXXX 2017 without claiming asylum there. The RPD noted that the principal appellant did not claim asylum in the United States, although he travelled there twice. In the RPD's opinion, the principal appellant's failure to claim asylum is not the behaviour one would expect from a person whose life is at risk in his country. The RPD believed that the principal appellant's failure to claim asylum on many occasions during his travels abroad, between XXXX 2014 and XXXX 2017, raises serious questions about the credibility of the reasons why he allegedly fears for his life. The RPD concluded that the principal appellant failed to substantiate those reasons and the death threats against him.
- [12] In his appeal memorandum, the principal appellant submits that the RPD failed to consider his explanations and the chronology of events. The RPD reached its conclusions about his behaviour without considering the evidence in the record.
- [13] As for the death threats by telephone, the principal appellant testified at the hearing that he received a call threatening him and his family in April 2017. He immediately notified his brother who lived in another location. He testified that he travelled to England for business in XXXX 2017. Upon his return, he began to receive many anonymous threatening calls and, in July 2017, he filed complaints at the local police station, but to no avail. When he was asked why he did not claim asylum in England, he replied: [translation] "I thought the threats meant nothing and my family was there".⁶ I must point out that the principal appellant was allegedly the victim of an armed assault on February 13, 2014. He was threatened with death unless he withdrew his complaint. He finally agreed to withdraw the complaints as a result of those threats and his family's recommendations. Following this incident, he allegedly travelled to France three times in 2014; he stayed there for 15 days, 21 days and 2 months, respectively. When he was asked why he did not claim asylum in France,

he replied that he believed that the matter had been settled.⁷ The principal appellant allegedly travelled to the United States in XXXX and XXXX 2016 in order to work there. He testified at the hearing that he did not feel the need to claim asylum there.⁸ In my opinion, the principal appellant's explanations are not convincing, and his behaviour was inconsistent with that of a person fearing for his life. First, in June 2016, he allegedly filed an appeal against the judgment ordering him to pay a fine. His agent of persecution also filed an objection against the judgment sentencing him to two years in prison and a fine. The principal appellant was threatened with death in 2014; however, he did not claim asylum in the United States during his two trips in 2016. He was also allegedly threatened with death in April 2017; however, he did not claim asylum in England during his trip in May 2017.

- [14] In his appeal memorandum, the principal appellant provided explanations for his failure to claim asylum in France. I acknowledge that during his first trip in XXXX 2014, he believed that his case was settled because the complaints were withdrawn. He argues that at the time of his second trip in XXXX 2014, the final judgment was not yet rendered against the agent of persecution. With respect, I disagree with the principal appellant, given that the agent of persecution was sentenced on July 13, 2014, as indicated by the judgment entered into evidence.⁹ His third trip to France took place in XXXX 2014.¹⁰ The judgment dismissing the principal appellant's objection was rendered on November 23, 2014,¹¹ i.e., before the principal appellant's trip. In my opinion, the RPD's conclusion about the principal appellant's inconsistent behaviour, namely his failure to claim asylum, is correct.
- Threatening calls ? Evidence
- [15] The RPD concluded that the principal appellant failed to establish, on a balance of probabilities, the truthfulness of his allegations about the anonymous death threats against him and his family that began in April 2017.
- [16] In his appeal memorandum, the principal appellant maintains that the anonymous calls cannot be entered into the panel's record as long as there is no evidence about the author of those calls. The objective evidence indicates that the copy of a complaint is available once the court has set up the record. The evidence was not available because of the rules of the Algerian police.
- [17] I note that the principal appellant refers to the evidence filed showing that his situation worsened after he returned from England in 2017. I note that the RPD questioned the principal appellant about the existence of evidence, such as copies of the complaints, which can demonstrate that he was threatened on many occasions. He replied that this is not feasible in Algeria. I note that he did not receive any threatening calls between the assault on February 13, 2014, and March 2017. He allegedly received the first threatening call only in March 2017 and, following his return from England, he began to receive many threatening calls, but was unable to identify the callers. He even changed his residence and telephone number; these allegations are not included in his written account. At the hearing, he testified that he changed residence and went to live with his in-laws, after receiving the death threats. However, in reply to Question 2(d) in the BOC Form, "Did you move to another

part of your country to seek safety?" the principal appellant answered "no" and added the following: [translation] "This is due to my financial means because I was living with my mother." In my opinion, the principal appellant failed to establish, on a balance of probabilities, that he received threatening calls after April 2017, which forced him to leave his country. The principal appellant filed evidence concerning the assault on February 13, 2014, including a written statement from his brother. The principal appellant claims that it has been impossible for him to obtain a copy of one of the complaints he filed with the police since May 2017. However, I note that the letter from his brother, a police officer, does not mention the threats against the principal appellant, nor the complaints filed by the latter. Fear of the minor child

- [18] At the hearing, the principal appellant testified about his fear that his daughter would be kidnapped and killed. The evidence before the RPD shows that the rates for kidnappings, assaults and homicides per 100,000 people are lower in Algeria than in Canada.¹² The RPD concluded that it has not been established that the minor child would be personally subjected to a danger of torture, a risk to her life or a risk of cruel and unusual treatment or punishment, if she was to return to Algeria.
- [19] In his appeal memorandum, the principal appellant submits that the death threats against him also targeted his entire family. He maintains that even if the non-credibility findings are not justified, nevertheless his minor daughter and his entire family have a well-founded fear of persecution by reason of their membership in a particular social group, i.e. the family.
- [20] Although the RPD's conclusion about kidnapping is not challenged by the principal appellant, I wish to point out that the associate appellant's refugee protection claim is based on the allegations in the principal appellant's BOC Form. I cannot accept the principal appellant's argument that his daughter is a member of a particular social group, namely the family, under section 96 of the Immigration and Refugee Protection Act (IRPA), because he was unable to establish the credibility of his allegations about the death threats against him and his family. The principal appellant did not have any problems for approximately three years, between 2014 and 2017. During that period, he travelled several times to various destinations, without his family being targeted by anyone.
- [21] For all of the above reasons, I am of the opinion that the RPD's negative finding with respect to the appellants' credibility is correct.
- [22] The RAD confirms the RPD's determination, namely that the appellants failed to establish that there is a serious possibility of persecution on a Convention ground or that, on a balance of probabilities, they would be personally subjected to a risk within the meaning of subsection 97(1) of the IRPA.

CONCLUSION

[23] The RAD dismisses the appeal and confirms the RPD's determination that the appellants are neither Convention refugees nor persons in need of protection. Toni Jedid Me Toni Jedid February 3, 2020 Date IRB translation Original language: French 1 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93 (CanLII). 2 Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145 (CanLII) and supra, endnote 1. 3 Refugee Protection Division (RPD) record, list of the refugee protection claimant's documents, Exhibit P-11: Written declaration from the brother. 4 RPD record, list of the refugee protection claimant's documents, Exhibit P-7: Appeal certificate. 5 RPD record, list of the refugee protection claimant's documents, Exhibit P-6: Judgment by default. 6 Audio recording of the hearing, 00:43:30. 7 Audio recording of the hearing, 00:32:38. 8 Audio recording of the hearing, 01:22:33. 9 RPD record, list of the refugee protection claimant's documents, Exhibit P-5, judgment. 10 Ibid. 11 RPD record, principal appellant's Basis of Claim Form, Question 2(d), page 4 of 10. 12 RPD record, list of documents: Document 3 - National Documentation Package on Algeria, March 29, 2019, Tab 7.3: Response to Information Request DZA105847.FE. Immigration and Refugee Board of Canada. August 21, 2017.

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Commission de l'immigration et du statut de réfugié du Canada Section d'appel des réfugiés
RAD.25.02 (April 4, 2019) Disponible en français

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