



**RAD File No. / N° de dossier de la SAR : MB3-04509**

*Private Proceeding / Huis clos*

## Reasons and Decision - Motifs et décision

<b>Appellant</b>	<b>XXXX XXXX</b>	<b>Appelant</b>
<b>Appeal considered / heard at</b>	Montréal, Quebec	<b>Appel instruit à</b>
<b>Date of Decision</b>	January 27, 2014	<b>Date de la décision</b>
<b>Panel</b>	Normand Leduc	<b>Tribunal</b>
<b>Counsel for the Appellant</b>	M <sup>c</sup> Odette Desjardins	<b>Conseil de l'Appelant</b>
<b>Designated Representative</b>	N/A	<b>Représentant désigné</b>
<b>Counsel for the Minister</b>	N/A	<b>Conseil du Ministre</b>

## REASONS AND DECISION

### INTRODUCTION

[1] XXXX XXXX, a citizen of Algeria, is appealing against a decision of the Refugee Protection Division (RPD) rejecting his claim for refugee protection.

### DETERMINATION OF THE APPEAL

[2] Pursuant to subsection 111(1) of the *Immigration and Refugee Protection Act* (IRPA), the Refugee Appeal Division (RAD) confirms the determination of the RPD, namely, that XXXX XXXX is neither a “Convention refugee” under section 96 of the IRPA nor a “person in need of protection” under section 97 of the IRPA.

### BACKGROUND

[3] The appellant alleged before the RPD that he is XXXX XXXX XXXX XXXX XXXX XXXX. He alleged that he did XXXX XXXX XXXX XXXX XXXX in XXXX 2012 that had been commissioned by clients.

[4] The appellant alleged that he was arrested at his workplace in the city of XXXX on XXXX XXXX XXXX 2012, by Algerian security services and was detained, tortured and threatened because of the XXXX XXXX XXXX XXXX, before being released. He alleged that he moved to the city of Algiers, where the security services apparently destroyed XXXX XXXX, hit him and threatened him, again for the same reasons.

[5] The appellant left his country on XXXX XXXX, 2013, for Canada, where he claimed refugee protection on July 24, 2013.

[6] The RPD rejected his claim for refugee protection on the ground that the appellant’s key allegations were not credible.

[7] Before the RPD, the appellant submits that the RPD erred in its assessment of his credibility, for reasons that will be set out in the “Analysis” section below.

[8] For these reasons, the appellant requests that the RAD set aside the determination of the RPD and grant him refugee protection.

### **STANDARD OF REVIEW**

[9] The IRPA does not expressly set out the standard of review that the RAD should apply when it reviews decisions rendered by the RPD, nor is that standard of review directly set out in the case law. The appellant also does not specifically propose in his memorandum what standard should be applied.

[10] In the 2008 *Dunsmuir* decision,<sup>1</sup> the Supreme Court of Canada revisited the foundations of judicial review and the standards of review applicable in various situations. In order to simplify the analysis, the Supreme Court determined that there should now be only two standards of review: correctness and reasonableness.

[11] Although the RAD does not conduct judicial reviews of RPD decisions, but rather acts as an appellate body within the same administrative tribunal, the IRB, I am of the opinion that, absent more direct guidance from the higher courts, the principles developed in *Dunsmuir* can be applied to the RAD.

[12] At paragraph 51 of its decision in *Dunsmuir*, the Supreme Court writes that “...questions of fact, discretion and policy as well as questions where the legal issues cannot be easily separated from the factual issues generally attract a standard of reasonableness....”

[13] In the case at hand, the issue of whether or not the RPD erred in its assessment of the appellant’s credibility is a question of fact. I will therefore apply the standard of reasonableness.

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<sup>1</sup> *Dunsmuir v. New Brunswick*, 2008 SCC 9, (2008) 1 SCR 190.

[14] At paragraph 47 of *Dunsmuir*, the Court states that reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process but is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. Judicial deference is therefore required, and deference must be given to the RPD decision.

## ANALYSIS

[15] The issue in this case is whether or not the RPD erred in its assessment of the appellant's credibility.

[16] In its written reasons, the RPD [translation] "accepts," therefore finds credible, that the appellant is XXXX XXXX XXXX XXXX XXXX XXXX. However, the RPD did not find credible the appellant's allegations about the incidents which he stated he experienced and on which he based his refugee protection claim, for the following reasons.

[17] First, the RPD analyzed the appellant's testimony regarding the XXXX XXXX XXXX XXXX XXXX and that were at the root of his problems with the authorities. The RPD was of the opinion that this testimony was vague and imprecise because the appellant was unable to be specific about the XXXX XXXX XXXX XXXX, even after the RPD asked him several times to do so (see paragraphs 13 and 14 of the RPD's reasons).

[18] The appellant submits in his memorandum that the RPD erred in finding that his credibility was undermined by that testimony because he gave a description of the XXXX XXXX XXXX XXXX XXXX XXXX to an Algerian, and because the RPD did not take into consideration the political situation in Algeria.

[19] In my opinion, it was open to the RPD to draw negative inferences from the appellant's testimony. The RPD found that the appellant was unable to describe exactly what he had allegedly XXXX and that he simply made a general statement about the social or political problems that these XXXX XXXX XXXX. In my opinion, the appellant did not demonstrate that he gave a XXXX XXXX XXXX XXXX XXXX as the RPD would have expected him to do and



[24] The appellant submits that the RPD erred on this issue because he clearly explained that he usually XXXX XXXX XXXX but that he had not in the case of the XXXX XXXX XXXX XXXX XXXX XXXX XXXX. In fact, in my opinion, it would not have been reasonable for the RPD to find that the appellant was not credible regarding the very existence of these XXXX based on the simple fact that there were no XXXX XXXX XXXX XXXX XXXX, but given the RPD's previous findings mentioned above regarding the appellant's testimony, I am of the opinion that this error is not sufficient to render the RPD's findings in this regard unreasonable.

[25] Further to the very existence of these XXXX, the RPD found later in its reasons that the appellant's credibility was undermined because of his knowledge of the problems that a XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX. The RPD was of the opinion that it was inconsistent that the appellant took the chance of XXXX XXXX when he knew the problems that may cause, even though the appellant explained that in his case, the XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX (see paragraph 22 of the RPD's reasons).

[26] The appellant submits that the RPD erred in this finding and that his explanation that the XXXX XXXX XXXX XXXX XXXX XXXX is reasonable. In my opinion, the RPD's finding is just as reasonable, since it explained in particular that it was of the opinion that it was inconsistent that the appellant took the chance that XXXX XXXX XXXX XXXX XXXX XXXX would land in the hands of the authorities.

[27] The RPD also found that the appellant's credibility was undermined because of his vague and imprecise testimony about the building where he was allegedly taken during his first arrest in XXXX and about the street on which the building is supposedly located, which the appellant stated was known to everyone (see paragraphs 18 to 20 of the RPD's reasons).

[28] The appellant submits that the RPD erred on this issue because he did in fact respond to the panel's questions. In my opinion, it was open to the RPD to conclude as it did. In its opinion, the appellant's testimony when describing the building and the premises was hesitant and

imprecise, and he should have been able to name the street where the building was located, since he stated that it was known to everyone in his city.

[29] The RPD then found that the appellant was not credible when he alleged that he is wanted by the Algerian authorities, since he was able to leave his country without any difficulty, and in possession of his valid passport, considering that the appellant testified that there are security controls at the airport and considering that the appellant was apparently found by the security services only a few hours after he moved to Algiers. The RPD found it implausible that the appellant could have left his country if he was really wanted (see paragraph 21 of the RPD's reasons).

[30] The appellant submits that this finding by the RPD is erroneous because there is no link between the fact of being wanted and the fact of being able to leave his country without difficulty. In my opinion, it was open to the RPD to draw negative inferences as it did, for the reasons that it explains well in paragraph 21 of its reasons, especially since the appellant gave no explanation in this regard and simply recounted how he left his country without any difficulty, despite the security controls.

[31] The RPD also found that the appellant's credibility was undermined because of his hesitant testimony about his fear of returning to Algeria, especially since he testified that he did not know what the Algerian authorities were accusing him of. The RPD was of the opinion that it would be reasonable to expect the appellant to be able to explain spontaneously what he fears and why (see paragraph 25 of the RPD's reasons).

[32] The appellant submits that the RPD erred in this finding because he was not required to explain the actions or behaviours of other individuals, in this case, the authorities who are allegedly looking for him. Although I agree with this principle, it is my opinion that it was nevertheless open to the RPD to draw negative inferences because of how the appellant testified, namely, in a hesitant manner, according to the RPD.

[33] I am not saying that I would have come to the same conclusions as the RPD, but I am of the opinion that, overall, the RPD's decision is reasonable because it is transparent and intelligible

and falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[34] Therefore, I will not need to further assess the error alleged by the appellant regarding the RPD's finding that his credibility was undermined because of his delay in claiming refugee protection in Canada, which is in no way determinative to the claim for refugee protection.

### **REMEDIES**

[35] For these reasons, I confirm the determination of the RPD, namely, that **XXXX XXXX** is neither a "Convention refugee" nor a "person in need of protection."

[36] The appeal is dismissed.

*Normand Leduc*

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**Normand Leduc**

*January 27, 2014*

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**Date**

IRB translation

Original language: French