

Federal Court



Cour fédérale

Date: 20160401

Docket: IMM-3920-15

Citation: 2016 FC 369

Ottawa, Ontario, April 1, 2016

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

JAMILE BNAITI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [IRB]. The RAD dismissed the applicant's appeal from the Refugee Protection Division [RPD] of the IRB where the RPD rejected the applicant's refugee claim after determining she was neither a Convention refugee nor a person in need in protection pursuant to sections 96 and 97 of the IRPA respectively.

[2] For the reasons that follow the application is dismissed.

I. Background

[3] The applicant is a Syriac Orthodox Christian widow born in Syria who, after marrying her Lebanese husband in 1967, became a national and citizen of Lebanon. She has lived in Beirut for “a long time” and began to experience problems when the manager of her apartment building was replaced. The new building manager was of the Muslim faith and did not like Christians. The manager and men he associated with began harassing the applicant in 2014. The harassment involved name calling, and throwing things on her balcony.

[4] In April of 2014 the harassment escalated. The applicant was apprehended by three men on her return from church. She was called an infidel and told she must leave the building and city. The applicant left Lebanon to visit her son-in-law in the UAE but upon her return to her building in Beirut the harassment continued and she feared for her life.

[5] With the assistance of her brother, who lives in Canada, the applicant obtained a visa to visit Canada in September of 2014 and subsequently made a claim for refugee protection in October of 2014. The applicant fears continued harassment from Muslims in her neighbourhood as result of her Christian faith and also fears that ISIS and/or Al Nusra will enter Lebanon or will have enough ability and support within Lebanon to target and harm her as a Christian.

[6] The RPD refused the applicant’s refugee claim on March 24, 2015 and the applicant appealed to the RAD.

II. Decision under Review

[7] In dismissing the applicant's appeal of the RPD's decision refusing her claim, the RAD considered its role, relying on the Justice Michael Phelan's decision in *Huruglica v Canada (Minister of Citizenship and Immigration)*, 2014 FC 799 at paras 54-55, 30 Imm LR (4th) 115.

[8] The RAD notes that it had reviewed the audio recording of proceedings before the RPD and that it concurs with the RPD's finding that the applicant's subjective fears lacked an objective basis. The RAD notes that the applicant described situations that were speculative and did not relate to her specifically, the exception being the situation with the building manager. In respect of the building manager, again the RAD concurs with the RPD finding that the applicant had made no effort to address the matter with police and further holds that while the applicant may have been harassed she had not experienced persecution.

[9] The RAD then considers the question of an Internal Flight Alternative [IFA], a matter that the RPD considered in the alternative to its determination that the applicant did not face harassment amounting to persecution from her building manager or those associated with the building manager. The RAD determines that the RPD correctly applied the two prong test (*Rasaratnam v Canada (Minister of Employment & Immigration)*, [1991] FCJ No 1256, 140 NR 138 (CA) and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 1172, 22 Imm LR (2d) 241 (CA) [*Thirunavukkarasu*], concurring with the RPD's finding that a viable IFA in another neighbourhood in Beirut is available to the applicant. The RAD further concludes that the applicant's reasons for being unable to relocate within Beirut

lacks merit given that she is being financially supported by her siblings and children, has a daughter in Beirut and her building manager will not pursue her to another location “as he allegedly just wants her to move out.” (RAD Decision at para 25)

[10] Finally, the RAD found the applicant’s argument that the Muslims are everywhere in Beirut is speculative in terms of targeting the applicant.

III. Applicant’s Position

[11] The applicant submits that the RAD erred in finding that her subjective fear was not objectively well-founded as it failed to consider relevant contradictory evidence. The applicant argues that the RAD:

- A. failed to adequately examine country condition reports documenting incidents of religious violence demonstrating that Christians are not free from persecution in Lebanon and that there has been an increase in violent incidents against Christians;
- B. misconstrued the evidence relating to the nature of the applicant’s religion by considering Christians as a general group in Lebanon, failing to recognize that the applicant is a Syriac Orthodox Christian, a minority Christian group. The applicant submits that the documentary evidence demonstrates the Syriac Christians are discriminated against based on the lack of ministerial representation of this Christian group in government; and

- C. failed to consider evidence showing escalating and increased incidents of violence involving ISIS, contradicting the finding that any threat posed by ISIS was speculative.

[12] On the issue of state protection, the applicant argues that a claimant need not risk her life in seeking protection but need only demonstrate ineffectiveness. The applicant argues that the ineffectiveness of the police in Lebanon is common knowledge and that this view was supported by the documentary evidence. As such, the applicant argues the RAD erred in finding that the applicant made no effort to address the situation with the police.

[13] Finally the applicant submits that the RAD unreasonably found that another neighbourhood in Beirut could constitute a viable IFA. The RAD failed to properly analyze the country condition documents which show widespread persecution and failed to consider that the applicant had suffered an attack in Beirut making it unlikely that another neighbourhood in Beirut could be a viable IFA.

IV. Respondent's Position

[14] The respondent argues that the RAD considered the documentary evidence on which the applicant relies relating to the treatment of Christians in Lebanon and the risk posed by ISIS. The RAD acknowledged reports of violence and of ISIS activity in the region. The respondent argues that the RAD did not err in weighing the evidence or in determining that the applicant's fears of ISIS are not objectively well-founded.

[15] The respondent further submits that the applicant based her risk allegations on being a Christian, not her minority status as a Syriac Orthodox Christian and did not identify any evidence that Syriac Orthodox Christians are more at risk than other Christians in Lebanon. Evidence of under-representation of Syriac Christians in government does not demonstrate an increased risk or contradict the RAD's conclusion that the applicant's risk was not objectively well-founded.

[16] The respondent argues that the RAD reasonably concurred with the RPD's finding that the harassment the applicant experienced from her building manager and neighbours did not amount to persecution. In addition, the RAD reasonably concurred with the RPD's finding that, in the alternative, another neighbourhood in Beirut is a viable IFA as there was insufficient evidence to establish the applicant's risk allegations. The respondent also argues that support from siblings and children coupled with the presence of the applicant's daughter in Beirut all point to the reasonableness of another neighbourhood in Beirut being a viable IFA.

[17] On the issue of state protection, the respondent submits that the RAD's finding that the applicant did not make an effort to address the incidents involving the building manager with the police was not a determinative finding. The respondent submits that neither the RPD nor the RAD conducted a state protection analysis and thus the applicant is challenging a finding not made.

V. Issues

[18] The application raises the following issues:

- A. did the RAD err in its assessment of the documentary evidence relating to the treatment of Christians in Lebanon, including the risks that ISIS poses;
- B. did the RAD err in failing to consider the applicant's religious identity as a Syriac Orthodox Christian for the purpose of her claim rather than simply considering her identity as a Christian;
- C. did the RAD reasonably conclude that the applicant's personal experiences with her building manager and others did not rise to the level of persecution;
- D. did the RAD err in finding that another area in Beirut would constitute a viable IFA for the applicant; and
- E. did the RAD err in addressing the question of state protection?

VI. Standard of Review

[19] The issues raised relate to findings of fact and mixed fact and law, including the assessment of the documentary evidence before the RAD. The applicable standard of review is reasonableness (*Ngandu v Canada (Minister of Citizenship and Immigration)*, 2015 FC 423 at para 12, 34 Imm LR (4th) 68).

VII. Analysis

A. *Assessment of the Evidence was Reasonable*

[20] I am of the opinion that the RAD did not err in considering the documentary evidence relating to the treatment of Christians in Lebanon or the nature and scope of the ISIS threat in Lebanon.

[21] A review of the record discloses that there are religious tensions between Christians and Muslims and that some incidents had occurred in Beirut. However, most of the incidents relating to tensions between Christians and Muslim, including outbreaks of violence, had occurred in Tripoli and areas of Lebanon other than Beirut. The evidence also demonstrates that “Christians – as a collectivity – in Lebanon did not face targeted violence [from 2011 to 2013] because of their religious affiliation. The Christians who died because of the security incidents during that period were not targeted in particular, but happened to be in the wrong place at the wrong time.” (Applicant’s Record at page 86).

[22] I am further of the view that the RAD did not misconstrue evidence relating to minority Christian groups and specifically Syriac Orthodox Christians. Syriac Orthodox Christians are one of a number of recognized Christian groups in Lebanon, and the constitution of Lebanon provides that Christians and Muslims must have equal representation in parliament, cabinet and high level civil service positions (Certified Tribunal Record, Vol 1 at pages 11 and 12). The applicant points to the absence of Syriac Orthodox Christian representation at the ministerial level in the Lebanese government to support her position. I am persuaded by the respondent’s

view on this issue, this evidence at best amounts to evidence of discrimination and the failure to refer to that evidence does not render the RAD's decision unreasonable.

[23] I also note that the applicant did not raise her religious identity as a Syriac Orthodox Christian in her claim. Although the applicant noted being from Syria when discussing the issue of persecution based on religion in her Basis of Claim [BOC] and in her submissions to the RPD, as well as the RAD, the focus of her claim was on her religious identity as a Christian and the situation of Christians in Lebanon. It was on this basis that the RPD and the RAD reasonably assessed her claim. The applicant cannot now argue on judicial review that the RAD and the RPD erred on an issue that the applicant never raised (*Brown v Canada (Customs and Revenue Agency)*, 2007 FCA 26 at para 3, 155 ACWS (3d) 326; *Canada (Minister of Public Safety and Emergency Preparedness) v Philistin*, 2014 FC 762 at para 10, 460 FTR 239) and did not arise from the evidence submitted (*Canada (Minister of Citizenship and Immigration) v Nwobi*, 2014 FC 520 at paras 18-19, 456 FTR 30).

[24] Similarly, I am of the view that the RAD's concurrence with the RPD conclusion that the applicant does not face more than a mere possibility of persecution from ISIS or affiliated groups in Lebanon is a conclusion that was reasonably available to the RPD and the RAD after weighing the evidence. Specifically, the objectives and activities of ISIS and affiliated groups are acknowledged but this evidence is considered in light of evidence that these groups do not exercise exclusive control over any area in Lebanon and do not constitute a real threat against Christians or other non-Sunni constituents in Lebanon (Applicant's Record at page 88).

B. *Reasonable to conclude that the conduct of the building manager and others does not rise to the level of persecution*

[25] As noted by Justice Near in *Mallampally v Canada (Minister of Citizenship and Immigration)*, 2012 FC 267 at paragraph 24, the distinction between harassment and persecution is often difficult to establish, engaging questions of law and fact. Such decisions should only be interfered with where it is demonstrated that the conclusion was capricious or unreasonable.

[26] In this case the RAD determined that the conduct of the building manager and others did not rise to the level of persecution. Although it appears the RAD misapprehended the evidence as it related to the applicant's continued attendance at church, I am satisfied that this does not render the finding unreasonable. The applicant acknowledges that the harassment was intended to have her vacate her apartment and there was little other evidence advanced by the applicant to suggest the harassment would not have ceased had she done so.

C. *The IFA analysis was reasonable*

[27] The two part test for an IFA was established in *Thirunavukkarasu* which provides: (1) the Board must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the proposed IFA; and, (2) conditions in the proposed IFA must be such that it would not be unreasonable, upon consideration of all the circumstances, including consideration of a claimant's personal circumstances, for the claimant to seek refuge there (Recently restated in *Pidhorna v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1 at para 40).

[28] Having determined that the RAD: (1) reasonably concluded that the applicant did not experience persecution in her neighbourhood; and (2) that the evidence demonstrating that ISIS posed a risk of widespread persecution in Beirut to the applicant in particular and Christians generally did not rise above the level of speculation, there is no need to address the IFA issue. Despite this, I am of the opinion that the alternative analysis undertaken in respect to the IFA was reasonable.

[29] The applicant relies on the decision of Justice Danièle Tremblay-Lamer in *Thevasagayam v Canada (Minister of Citizenship and Immigration)*, [1997] FCJ No 1406 at paras 11-12, 75 ACWS (3d) 522 (TD), to argue that the second prong of the test was not satisfied as the applicant had experienced detention and torture in the very city identified as the IFA. I disagree. In this case the RAD considered the nature of the alleged persecution, where it had occurred and the evidence indicating that it was the occupancy of the apartment that triggered the alleged persecution. There was little evidence to suggest the alleged persecution would continue in another part of the city. Similarly the RAD considered the applicant's personal circumstances, identifying that support was being provided by siblings and children that would assist in any increased cost of accommodation and that the applicant's daughter resides in Beirut.

D. *State Protection*

[30] On the issue of state protection I adopt the view of the respondent; the RAD did not make a finding on state protection notwithstanding that it noted that the applicant did not attempt to address her situation with the police. Instead the RAD's decision stands on the findings that (1) the applicant's personal experiences did not amount to persecution, (2) another neighbourhood of

Beirut constitutes a viable IFA and (3) the applicant failed to support her subjective fear of ISIS/Al Nusra with objective evidence. The use of the title “State protection” in the RAD’s decision appears to have been an error but it does not detract from the transparency and intelligibility of the above-referenced decision (*Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, [2011] 3 SCR 708 at para 18).

VIII. Conclusion

[31] Recognizing that there is a presumption that an administrative decision-maker has considered all of the evidence before it and that a decision-maker is not obligated to address all evidence that is contrary to its findings (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 at paras 15-17, 157 FTR 35 (TD)), I am satisfied that the RAD decision is reasonable.

[32] The parties have not identified a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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