

Federal Court



Cour fédérale

Date: 20160614

Docket: IMM-3955-15

Citation: 2016 FC 660

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, June 14, 2016

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

**ATEF ASSAF
SUZANNE GHORAYEB
CHRISTIANNE ASSAF
GIO ASSAF**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, Atef Assaf, his wife Suzanne Ghorayeb, and their children Christianne Assaf and Gio Assaf, are Lebanese citizens from Beirut. They are contesting a

decision rendered on March 5, 2015, by the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada (IRB), which rejected their claim for refugee protection because they neither had Convention refugee status nor were persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] Mr. Assaf and his family made a claim for refugee protection because they feared they would be persecuted by “Syrian elements” or suffer harm should they return to Lebanon. In Beirut, Mr. Assaf worked as a goldsmith and a medical technician and also ran a cell phone store. From December 2013 to March 2015, Mr. Assaf and his family were allegedly targeted by Syrian individuals apparently connected to the Hezbollah. These individuals apparently demanded discount phones, then assaulted and robbed Mr. Assaf, then threatened Mr. Assaf and his family, even after Mr. Assaf changed his phone number and closed his phone store.

[3] The RPD rejected the claim for refugee protection submitted by Mr. Assaf and his family because their fear of persecution and their allegations were not credible, they did not describe a personalized risk, and in any case, they had a viable internal flight alternative [IFA] in Jounieh, Lebanon. Mr. Assaf and his family are claiming that the RPD's decision is unreasonable, since it wrongly concluded that they had a viable IFA, it had no reason to doubt their credibility, and their risk was not simply general. They are requesting a judicial review of the RPD's decision and asking this Court to set aside this decision and order another RPD panel to re-examine their application.

[4] Having examined the evidence available to the RPD and the applicable legislation, I see nothing that allows me to set aside the RPD's decision. In its decision, the RPD took into account the evidence, and its conclusions are justifiable based on the facts and law and clearly fall within the range of possible, acceptable outcomes under the circumstances. For the following reasons, I find that the RPD reasonably concluded that there is an IFA for Mr. Assaf and his family, and this conclusion is decisive in this case. Consequently, I must dismiss the Assaf family's application for judicial review. Since the conclusions on the existence of a viable IFA are sufficient to dismiss the application for judicial review made by Mr. Assaf and his family, the other reasons suggested by Mr. Assaf and his family for the rejection of the RPD's decision do not need to be examined.

II. Background

A. *The Facts*

[5] In December 2013, five young men, including two individuals named Abou Tarek and Abou Steif, allegedly entered Mr. Assaf's store and demanded that he sell them discount phones. An altercation followed between Mr. Assaf and one of the men and was stopped only by the arrival of curious neighbours. The police apparently advised Mr. Assaf not to file a complaint because they were unable to protect him from these individuals who were from Syria and apparently connected with Hezbollah.

[6] In January 2014, Mr. Assaf was allegedly intercepted while driving. Two cars blocked the road and several individuals got out, including Mr. Tarek and Mr. Steif, who violently beat Mr. Assaf and stole money and cell phones from him. Afterward, Mr. Assaf says he received threatening phone calls, which continued even after he changed his phone number and closed his phone store. In March 2014, threats were allegedly uttered against his family.

[7] In June 2014, Mr. Assaf moved into his mother's home with his family, then they left Lebanon for the United States at the end of the month. In July 2014, Mr. Assaf and his family made a claim for refugee protection at the Canadian border.

B. *The RPD's decision*

[8] The RPD rejected the claim for refugee protection because there was no serious probability of Mr. Assaf and his family being persecuted in Lebanon. The RPD does not find it credible that Mr. Assaf and his family were threatened after Mr. Assaf's phone store was closed in February 2014, although there is no doubt about the plausibility of the altercations that occurred in December 2013 and January 2014. First, the RPD finds that the time Mr. Assaf and his family waited before leaving their family home in Beirut suggests there was no serious threat. Second, the RPD has doubts about the late complaint Mr. Assaf filed with the Lebanese police, just three days before Mr. Assaf and his family left the country, when they already had their American visas. What is more, the complaint makes no mention of the January 2014 incident or of the threats to kidnap two of the family's children. Third, the RPD does not believe that the "Syrian elements" had sufficient motivation to threaten the Assaf family outside Beirut and notes that there is no evidence that Mr. Assaf's attackers were members of Hezbollah.

[9] The RPD also finds that there is no prospective risk under paragraph 97(1)(b) of the IRPA since, should the Assaf family return to Lebanon, the risk would be general and not personal. The RPD noted the situation in Lebanon, where Syrian refugees now make up over a quarter of the population. This massive arrival of thousands of Syrians is often used to explain the significant increase in criminal activity observed in Lebanon recently. The RPD notes therefore that Mr. Assaf was a victim of criminal acts simply because he sold a highly desirable commodity.

[10] Fourth, the RPD is of the opinion that the Assaf family has a viable IFA in the city of Jounieh, where Mr. Assaf's sister lives. According to the RPD, there is no evidence that the "Syrian elements" would have the means to find the Assaf family in Jounieh. Additionally, it is not unreasonable to suggest that the Assaf family move to Jounieh, where they could live with Mr. Assaf's sister or buy a house, and where Mr. Assaf could easily find work given his experience in three different fields.

C. *Standard of review*

[11] It is well established that the standard of reasonableness applies to the RPD's conclusions on the existence of an IFA (*Emezekie v Canada (Citizenship and Immigration)*, 2014 FC 922 at paragraph 24; *Singh v Canada (Citizenship and Immigration)*, 2014 FC 269 at paragraph 8; *Smirnova v Canada (Citizenship and Immigration)*, 2013 FC 347 at paragraph 19). This standard also applies to credibility (*Ramirez Martin v Canada (Citizenship and Immigration)*, 2010 FC 664 at paragraph 11) and the analysis of the present or future objective risk (*Llorens Farfan v Canada (Citizenship and Immigration)*, 2011 FC 123 at paragraph 12) and whether it is

generalized or personal (*Fenek v Canada (Citizenship and Immigration)*, 2012 FC 178 at paragraph 14).

[12] In judicial review, the standard of reasonableness requires the decision to be justifiable, intelligible and transparent and to fall within the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at paragraph 47).

III. Analysis: was the RPD wrong to conclude that the Assaf family had a viable IFA in Jounieh?

[13] The Assaf family states that, according to the evidence, the “Syrian elements” are connected to Hezbollah and are therefore able to find them anywhere in Lebanon. They remind us that Lebanon is a small country and that they would have to live in hiding to avoid being found. They are therefore claiming that the RPD was wrong to conclude that there is a viable IFA in Jounieh and failed to correctly apply the two-pronged test established in the case law for this question (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (FCA) [*Thirunavukkarasu*]).

[14] I do not agree with the Assaf family's arguments.

[15] The existence of an IFA can be a determining factor for a claim for refugee status (*Fedonin v Canada (Minister of Citizenship and Immigration)*, [1997] FCJ No 1684 at paragraph 2; *Singh Multani v Canada (Citizenship and Immigration)*, 2012 FC 734 at

paragraph 13; *Thaneswaran v Canada (Citizenship and Immigration)*, 2007 FC 189 at paragraph 32). The conclusion that an IFA exists can indeed be enough to deny an application for judicial review (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (FCA) [*Rasaratnam*] at paragraph 8). This is the case here.

[16] The concept of an IFA is based on a two-pronged test. First, the RPD must be convinced, based on a balance of probabilities, that there is no serious risk of the claimant being persecuted in the part of the country where there is an IFA; in other words, the situation in the part of the country where the claimant could have sought refuge must be safe enough for him or her to enjoy fundamental human rights. Second, the situation in that part of the country must be such that it is not unreasonable for the claimant to seek refuge there, given all of the circumstances and his or her situation (*Rasaratnam* at paragraph 10; *Thirunavukkarasu* at paragraph 12).

[17] As I indicated in *Deb v Canada (Citizenship and Immigration)*, 2015 FC 1069 at paragraphs 14–15, an IFA analysis is that international protection can only be provided if the country of origin cannot offer adequate protection throughout its territory to the person claiming refugee status. The onus rests upon the applicants to prove, on the balance of probabilities, that they risk a serious possibility of persecution throughout their entire country of origin.

[18] To establish the merit of their claim for Convention refugee status, Mr. Assaf and his family had to demonstrate that there was a serious possibility of them being exposed to persecution anywhere in their country of origin, and not only in part of Lebanon. The burden of proof therefore fell to Mr. Assaf and his family to establish that it was objectively unreasonable

for them to seek refuge in Jounieh, the area designated as safe by the RPD. This is a heavy burden, and it requires evidence of adverse conditions that would jeopardize the life and safety of the Assaf family if they moved to Jounieh (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (FCA) [*Ranganathan*] at paragraph 15; *Iqbal v Canada (Citizenship and Immigration)*, 2014 FC 415 at paragraph 18). However, in this case, I am of the opinion that the RPD was right to conclude that the Assaf family failed both prongs of the test described in *Thirunavukkarasu*.

[19] As for the first prong, the RPD concluded that nothing proved that the “Syrian elements” would look for the Assaf family in Lebanon outside of Beirut. In addition, the RPD determined that, since the Assaf family has now left Beirut and Mr. Assaf no longer has his store, it would not be logical for the persecutors (who really just wanted low-price cell phones) to pursue them. Under these circumstances, it is entirely possible for the RPD to conclude that the activities of the presumptive persecutors of the Assaf family are more on a local scale and that they would not have the resources or contacts to pursue Mr. Assaf and his family in Jounieh.

[20] As for the second prong, I am of the opinion that it was reasonable for the RPD to expect Mr. Assaf and his family to move to Jounieh, seeing as they have family there (Mr. Assaf's sister) and Mr. Assaf could easily find a job given his three areas of expertise. I also note (as did the Minister) that Lebanon's small size is not a barrier to the existence of a viable IFA (*Mohamad Jawad v Canada (Citizenship and Immigration)*, 2012 FC 232 at paragraphs 43–44). For the second prong, the RPD examined the Assaf family's personal situation and concluded that it would not be unreasonable for them to move to Jounieh. The RPD saw no concrete evidence that

the “Syrian elements” identified by Mr. Assaf are in fact associated with Hezbollah. In the RPD’s finding based on the evidence available to it, there is nothing that allows me to conclude that the RPD’s decision is not within the range of possible, acceptable outcomes under the circumstances.

[21] Additionally, humanitarian and compassionate reasons, such as the loss of a job, a reduction in the quality of life or the loss of aspiration do not suffice to conclude that there is no IFA. These reasons, whether considered alone or with other factors, cannot constitute a risk of persecution unless they cause conditions that would jeopardize the life or safety of an individual (*Ranganathan* at paragraph 15; *Thirunavukkarasu* at paragraph 14). I agree with the RPD that the Assaf family’s arguments about the difficulties they would face were they to move to Jounieh fail to demonstrate that taking refuge there would be in any way unreasonable. There is no evidence that their life or safety would be at risk there.

[22] The question this Court must decide on is whether the RPD’s decision on the IFA was reasonable. This means that the role of this Court is not to re-examine the evidence available to the RPD nor to replace the RPD’s conclusions with its own. We must defer to the conclusions of the RPD, since when it decides whether an individual is a Convention refugee or a person in need of protection under sections 96 and 97 of the IRPA, this decision is part of its field of expertise. This Court therefore has a limited role, and in this case, this Court can only rule on the existence of an IFA if the RPD’s conclusion on this matter lacks justification, transparency or intelligibility or does not fall within the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir* at paragraph 47).

[23] In my opinion, Mr. Assaf and his family have not demonstrated that the RPD's conclusion that there is an IFA meets these stringent criteria established in the case law or that the RPD made an error requiring the intervention of this Court.

IV. Conclusion

[24] For all of these reasons, the RPD's decision is a reasonable outcome based on the law and the evidence. Based on the standard of reasonableness, the decision under judicial review must only be intelligible and transparent and fall within the range of possible, acceptable outcomes which are defensible in respect of the facts and law. This is the case here. Consequently, I must dismiss this application for judicial review.

[25] None of the parties suggested a question of general importance to be certified. I agree that there is none.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed without costs.
2. There is no question of general importance to be certified.

“Denis Gascon”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3955-15

STYLE OF CAUSE: ATEF ASSAF, SUZANNE GHORAYEB,
CHRISTIANNE ASSAF, GIO ASSAF v THE
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APPEARANCES:

Stéphanie Valois FOR THE APPLICANTS

Guillaume Bigaouette FOR THE RESPONDENT

SOLICITORS OF RECORD:

Stéphanie Valois FOR THE APPLICANTS
Barristers & Solicitors
Montréal, Quebec

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada
Montréal, Quebec