

Federal Court



Cour fédérale

Date: 20161207

Docket: IMM-2774-16

Citation: 2016 FC 1353

[ENGLISH TRANSLATION]

Ottawa, Ontario, December 7, 2016

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

**KARAKOUS MOURAD
SOUNYA ARAKILIYAN**

Applicants

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP**

Respondent

JUDGMENT AND REASONS

[1] The applicants are challenging the reasonableness of the decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada to confirm the decision of the Refugee Protection Division (RPD) that the applicants are not Convention refugees or persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The applicants, a husband and wife who are 76 and 61 years of age respectively, are dual citizens of Syria and Armenia. Until 2015, the couple, who are of Christian faith, lived in Damascus with their son. In March 2015, while the couple was out, their house was hit by a shell. When they returned home, the applicants were horrified to see the response team cleaning up debris, not knowing if their son was still inside. After this incident, they decided to leave Syria. The applicants allege that they considered settling in Armenia, but decided against it given that they have never lived there and have no family who they could count on there. In April 2015, the applicants arrived in Canada to join their daughter and claimed refugee protection on June 4, 2015. Because returning to live in Syria was out of the question, the applicants argue, in their claim, that they cannot settle safely in Armenia because they fear persecution and discrimination by reason of their Syrian origin and fear for their lives because of the very difficult conditions in that country. The RPD and RAD rejected their refugee protection claim.

[3] Because the applicants did not establish the fears or risks of persecution in Armenia, the alleged risks associated with Syria were not examined by the RPD or the RAD. The issue here is whether the RAD committed a reviewable error by confirming the RPD's decision given the evidence in the record and the applicable legislation. In accordance with the principles established by the Federal Court of Appeal in *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93, [2016] FCJ No 313 [*Huruglica*], the RAD reassessed the evidence in the record to determine whether the RPD's decision was well founded. On judicial review of RAD decisions, this Court must apply the standard of reasonableness and can intervene only if

the findings in the RAD decision fall outside the range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[4] For the following reasons, this application for judicial review is dismissed.

[5] First, it is important to note that on August 21, 2015, the RPD found that the risks alleged by the applicants did not meet the requisite threshold for persecution established in the case law. While the documentary evidence shows violence towards Syrian-Armenians, attacks are sporadic and target Syrian merchants. The applicants are both retired. Moreover, the fact that they do not have family or assets in Armenia does not meet any of the grounds of persecution set out in section 96 of the IRPA. Regarding the fears provided for in section 97 of the IRPA, the documentary evidence in the record indicates that poverty and limited access to health care affect all Armenian citizens, not only Syrian newcomers. The RPD also noted that the Armenian government has put in place several special measures to accommodate newcomers—for example, the creation of a community called [TRANSLATION] “new Aleppo”, in which the government or charity associations will cover half of the cost of rent for Syrian residents. Finally, the RPD found that the applicants did not demonstrate that their daughter could not support them financially in Armenia. While sensitive to the particular situation of the applicants, the RPD found that they did not establish a serious possibility of persecution in Armenia or a risk that they would face the hardship set out in section 97 of the IRPA.

[6] On appeal of that decision, the applicants first contended that the RPD confused the criteria set out in sections 96 and 97 of the IRPA, thus imposing too high a burden of proof on

them. Furthermore, the RPD apparently analyzed only the documentary evidence from the perspective of section 96 of the IRPA, while the applicants' claims were more based on the risks set out in section 97 of the IRPA.

[7] After a review of the evidence in the record, the RAD rejected all of these arguments and confirmed the RPD's findings. Given their Syrian-Armenian dual citizenship, the RAD determined that the applicants could relocate to Armenia safely without a risk of persecution or a threat to their lives. While the documentary evidence on the situation in Armenia was used as, in a way, the common core for the analysis of sections 96 and 97 of the IRPA, the RPD had a clear understanding of the applicable tests for each provision. The RAD stated that, under section 97 of the IRPA, it was up to the applicants to prove that their fear was personal and different from that of other citizens in Armenia. However, the documentary evidence instead shows that the socio-economic challenges raised by the applicants affect the general population of Armenia, which is currently grappling with unemployment and a difficult economic situation. The RAD also acknowledged efforts made by the Armenian government to welcome Syrian nationals. As a result, the RPD's findings under section 97 of the IRPA were well founded. Concerning the fears of persecution under section 96 of the IRPA, the RAD came to the same conclusions as the RPD, that is, that the sporadic violence noted in the documentation targets "Syrian merchants" in particular, which the applicants are not. Consequently, the fear of persecution was not accepted by the RAD. Lastly, the RAD noted that the evidence in the record does not sufficiently demonstrate that the applicants' daughter cannot continue to support them financially in Armenia. The RAD thus dismissed the applicants' appeal.

[8] Before this Court, the applicants are basically reiterating all of the arguments that they unsuccessfully made before the RPD and the RAD. To that effect, they point out to the Court that they cannot settle safely in Armenia because of their fear of persecution and discrimination by reason of their Syrian origin, and that they could not support themselves in Armenia because of their age and their limited financial resources. In addition, the applicants question the reasoning and findings of the RAD to dismiss the appeal of their refugee protection claim, but do not demonstrate how the RAD committed a reviewable error in its analysis that could be determinative. The applicants instead simply state, without elaborating, that the RAD erred in its analysis of the concept of state protection. Lastly, the applicants argue that the RAD also erred by incidentally considering in its analysis that the applicants' daughter would be able to support them financially in Armenia. On this point, the Court notes that the RAD decision must be read as a whole. Moreover, any error made by the RPD or the RAD in this regard, if any, is not determinative.

[9] After reviewing the applicants' claims, the Court does not see any issue that could be successful in judicial review. In fact, disagreeing with the analysis of the RAD is not sufficient to obtain judicial review. It is clear that the situation in Armenia is far from ideal for Syrian newcomers. That said, in its analysis, the RAD considered various reliable information sources that supported its finding that the applicants do not fit the profile of at-risk individuals, as their fear of not receiving adequate health care is shared by the general population of Armenia.

[10] The applicants' refugee protection claim, which is based on sections 96 and 97 of the IRPA, is not a request for an exemption under section 25 of the IRPA from having to apply for a

permanent resident visa from outside Canada. As the RPD noted, while it was sensitive to the applicants' particular situation, it does not have jurisdiction to rule on humanitarian and compassionate considerations, nor does the RAD on appeal. Furthermore, the RPD clearly stated that [TRANSLATION] "the Armenian government, with the help of the Armenian diaspora and population, is helping Syrian-Armenians resettle, providing health care to the most vulnerable and helping to find housing".

[11] In conclusion, the RAD's decision is reasonable. The application for judicial review is therefore dismissed. No question of general importance is raised in this case.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question for certification.

“Luc Martineau”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2774-16

STYLE OF CAUSE: KARAKOUS MOURAD, SOUNYA ARAKILIYAN v
THE MINISTER OF IMMIGRATION, REFUGEES
AND CITIZENSHIP

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