

Federal Court



Cour fédérale

Date: 20170123

Docket: IMM-3075-16

Citation: 2017 FC 83

Toronto, Ontario, January 23, 2017

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

**MAHMOUD SALEM ABDELKHALEK
ALNAGGER**

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Background

[1] Mahmoud Salem Abdelkhalek Alnagger [Applicant] has applied for judicial review of a decision [Decision] of the Refugee Protection Division [RPD or Board] dated June 21, 2016 finding that the Applicant is not a Convention refugee or person in need of protection. This

application is brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The Applicant is a 25 year old high-school educated Palestinian man who was born in Kuwait City, Kuwait. Although he is of Palestinian descent, he has never been to Palestine. He grew up in Kuwait and has spent the majority of his life there. Stateless Palestinians residing in Kuwait do not have citizenship rights; they have residency rights, which require yearly sponsorship by a Kuwaiti national.

[3] When Iraq invaded Kuwait in 1990, the Palestinian Authority supported the invasion. As a result, although the situation is improving and the embassy has reopened, there continues to be animosity against Palestinians in Kuwait.

[4] In November or December 2013, the Applicant began work as a clerk with Al-Shualah Travels, a travel agency in Kuwait City.

[5] In March 2014, the Applicant met and assisted a young woman in her early 20's by the name of Alaa Al Sabah [Alaa or the Princess] with arrangements for travel to London. She was planning to travel unchaperoned with a group of girlfriends. Alaa is a member of Kuwaiti royal family. Her mother is a daughter of the Crown Prince, so she is a granddaughter to the Crown Prince. He is the brother of the current Amir, and is his heir apparent.

[6] Upon her return from London, Alaa brought the Applicant a bottle of scent. Thereafter, they stayed in contact via telephone and social media.

[7] By March 2015, they were in a romantic relationship, which they knew had to be kept secret. The Applicant's sister was the only person the Applicant told about the relationship.

[8] During their relationship, which lasted one year, the Applicant and Alaa went to parks for walks, to parties, and to places of entertainment on the waterfront where they would take boat rides and water ski. They also met for private time every 2 weeks in a rented room at a tourist property outside Kuwait City.

[9] In March 2016, Alaa stopped communicating with the Applicant.

[10] On or about March 13, 2016, the Applicant received a phone call from an unidentified male caller threatening to kill the Applicant for having dated Alaa. The Applicant later learned from his sister (whom Alaa had called) that the caller was Prince Thamer Al Sabah [the Prince or Thamer], Alaa's brother. Fearing for his life, the Applicant went into hiding at his friend Ahmad Sadek's home [the Friend].

[11] On March 16, 2016, the Prince and others entered the Applicant's mother's house and looked for him. He was not present. The Prince also looked for the Applicant at his office.

[12] On or about March 28, 2016, the Applicant left Kuwait without incident and traveled to the United States. He had already obtained a US visa in relation to his work at the travel agency. He stayed with relatives in Buffalo, where he arranged to travel to Canada. On or about April 6, 2016, the Applicant arrived in Canada as an exception to the *Safe Third Country Agreement* and made a refugee claim.

II. The RDP Decision

[13] The RPD declined to undertake a s. 96 analysis as it found that the Applicant's fear had no nexus to an established Convention ground.

[14] The RPD then found the Applicant's story to be implausible as a whole, on the basis that Kuwait is a conservative Muslim nation where women have little freedom and Palestinians are disliked. Specifically, the Board took issue with the following aspects of the Applicant's narrative:

- the Princess would personally retain the services of a travel agent, as opposed to family staff;
- the Princess would retain the services of a Palestinian, as opposed to a Kuwaiti;
- the Princess would travel to London without a male chaperon;
- the Princess would provide a gift to the Applicant;
- the Princess would be seen in public with the Applicant;
- the Prince would warn and seek revenge personally on the Applicant;
- the Applicant's family would be left unaffected by negative consequences; and
- the Applicant was able to leave the country without hindrance.

[15] The Board also reviewed a genealogy document and saw no mention of a Princess Alaa or Prince Thamer, thus drawing an adverse inference about their existence.

[16] The Board noted that the Applicant's testimony was at times vague and non-responsive.

[17] Turning to the letters from his mother, friend and sister [the Letters], the Board decided to give them little weight.

III. The Issues

1. Nexus
2. The Plausibility Findings
3. The Letters
4. The Genealogy

IV. The Standard of Review

[18] For issues 1 – 3, the standard of review is reasonableness. Issue 4 raises a question of natural justice, so the standard is correctness.

V. Discussion and Conclusions

- I. *Nexus*

[19] The Applicant submits that the RPD's determination that there was no nexus between his fear and an established convention ground was unreasonable. The Applicant correctly states that the Board took no issue with his identity as a stateless Palestinian.

[20] The Applicant argues that while his fear of persecution is inextricably linked to Thamer's threats, the motivating factor for the Prince's severe displeasure towards the Applicant's relationship with Alaa is the Applicant's Palestinian nationality. In other words, he says that his nationality was the reason Thamer made him a target.

[21] The Applicant points to his amended Basis of Claim form, where he stated that the royal "[...] family would be angry if they discovered she was seeing a Palestinian who is not a Kuwaiti". He also testified that, had he been a boy from Kuwait, Alaa's family would have handled their relationship differently. Lastly, he points to the documents which show that Palestinians are disliked in Kuwait.

[22] In spite of the Applicant's subjective belief, the RPD did not accept that the Applicant was targeted because he was Palestinian. The Board concluded that he was targeted by the Prince because he was dating his sister unchaperoned and without the permission of her family. In my view, this was a reasonable conclusion.

2. *Plausibility*

[23] The RPD relied on its expertise to conclude that the Applicant's story about a year long affair with a Kuwaiti Princess is not plausible. The Board was aware that Kuwait is a

conservative, traditional Muslim nation in which women do not have unescorted freedom of movement. There was no documentary evidence to suggest that the situation has changed or that members of the Royal Family do not follow traditional norms. In these circumstances, it was not plausible that for a year, the Applicant and the unescorted Princess regularly appeared together in public places.

[24] The Applicant testified that Alaa's family was non-traditional, but since her grandfather is in line to become the next Amir, this was not accepted.

[25] The Applicant's explanations for the specific implausibility findings were also rejected and in my view, the Board's conclusions were reasonable.

3. *The Letters*

[26] While it was unreasonable of the RPD to criticize the Letters for not being sworn and for emanating from relatives and a friend, these errors are, in my view, not material.

[27] If there was no relationship with the Princess, as the RPD concluded, it follows that there was no visit by the Prince to the Applicant's office or to his mother's home, and while the Applicant may have visited his friend Ahmad, he did not hide with him for fear of the Prince.

[28] The implausibility of the relationship was the underlying problem which caused the RPD to reject the Letters. The RPD did not accept that the events they describe had occurred, and I have concluded that this was reasonable.

4. *Genealogy*

[29] The Applicant provided the RPD with a 6 page article from Wikipedia about the Kuwaiti Royal Family [the Article]. It included 17 footnotes. Footnote 9 refers to a document titled “Royal Ark” and provides its internet address. It is a lengthy genealogy of the rulers of Kuwait and their relatives from the 1700’s. At paragraph 32 of the Decision, the RPD says it has reviewed a 14 page genealogy of the Kuwaiti royal family, and found no reference to Princess Alaa or Prince Thamer, who should appear as grandchildren of the Crown Prince.

[30] I have the following concerns about this conclusion:

- i. The genealogy is not in the Certified Tribunal Record, nor is it attached to the Decision. Accordingly, while I think I have located on the internet the material to which the RPD makes reference, I cannot be sure.
- ii. I am further concerned because the relevant material from the Royal Ark website is one page, not 14, as the Decision states. However, it is the 14th document in the package of material, so that may be what the Decision meant to say or it may have meant page 14 because 14 appears at the bottom of the page.
- iii. I have attached the page from the genealogy to which I made reference as Annex “A”. It shows as item 6 that the Crown Prince Shaikh Nawaf bin Ahmad Al-Jabir Al-Sabah had four sons and one daughter. The sons are listed together with their children, who are the grandchildren of the Crown Prince. However, the evidence is that Aala is a granddaughter of the Crown Prince because she is the daughter of the Crown Prince’s daughter. His daughter is Shaikha Shekha bint Nawaf Al-Sabah and

her children, 3 sons and 1 daughter are mentioned, but not named in the genealogy. The note “see above” beside the reference to the children is not helpful. This means that Alaa and Thamer could well exist, but are not named.

[31] I find that it was unreasonable of the RPD to rely on the genealogy because the grandchildren of the Crown Prince’s daughter were not listed by name.

[32] In the alternative, if I have misunderstood or misread the genealogy and the Board’s conclusion is correct, the Applicant also said that it was unreasonable of the Board to consult footnote 9 in the Article and conclude that Alaa and Thamer did not exist without giving him an opportunity to respond.

[33] In my view there was no breach of natural justice. The Article was presented to the Board by the Applicant, and it was reasonable to expect the Board to assess and verify its reliability by checking the footnotes. The footnote was not “buried” as the Applicant suggests. There were only 17 footnotes and both 9 and 10 refer to the genealogy. Further, the Crown Prince’s grandchildren are listed on one page.

[34] In these circumstances, if footnote 9 had in fact shown all the Crown Prince’s grandchildren and had not listed Alaa and Thamer, the Applicant should have known that in advance and should have been prepared to explain the omission when the Article was presented to the Board.

VI. Conclusion

[35] The Decision is flawed in that some of the reasons given for disregarding the Letters are errors, and it was not reasonable to rely on the genealogy when the relevant children were not named. However, these are peripheral matters and the basis for the Decision is reasonable. It is simply not plausible that in a traditional Muslim country, a Kuwaiti Princess who knew the relationship had to be kept secret would spend a year taking walks in public parks, boating, water skiing, and going to parties unescorted with a young man her family did not know.

[36] For these reasons, the application will be dismissed.

VII. Certification

[37] No question was certified for appeal.

JUDGMENT

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

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3075-16

STYLE OF CAUSE: MAHMOUD SALEM ABDELKHALEK ALNAGGER v
THE MINISTER OF CITIZENSHIP AND
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ANNEX A

KUWAIT



Al-Sabah Dynasty

GENEALOGY

continued from the previous page.

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H.H. Shaikh Ahmad I bin Jabir Al-Sabah, Shaikh of Kuwait and dependencies, KCSI, KCIE, had further issue:

- 6) H.H. Shaikh Nawaf bin Ahmad Al-Jabir Al-Sabah. *b.* 25th June 1937 (*s/o* Yamama). Governor of Hawali 1962-1978, Minister for the Interior 1978-1988 & 2003-2006, Defence 1988-1991 & 1992-1994, Social affairs & Labour 1991-1992, Deputy Chief of the National Guard 1994-2003, First Deputy Prime Minister 2003-2006. Appointed as Heir Apparent with the title of Crown Prince and style of *His Highness*, 7th February 2006. *m.* 195x, H.H. Sharifa bint Sulaiman Al-Jasem, daughter of Sulaiman Al-Jasem. He had issue, four sons and one daughter:
 - a) H.E. Shaikh Ahmad bin Nawaf Al-Sabah. *b.* 1956, *educ.* Kuwait Univ (BA). Head of Personel Dept, Minister for Information. *m.* Shaikha Basma bint Mubarak (*b.* December 1959), daughter of Lieutenant-General H.E. Shaikh Mubarak bin 'Abdu'llah Al-Sabah. He has issue, two sons and three daughters:
 - i) Shaikh Nawaf bin Ahmad bin Nawaf Al-Sabah. *b.* 12th November 1982.
 - ii) Shaikh Mubarak bin Ahmad bin Nawaf Al-Sabah.
 - i) Shaikha Hind bint Ahmad bin Nawaf Al-Sabah. *b.* March 1981.
 - ii) Shaikha Mariam bint Ahmad bin Nawaf Al-Sabah.
 - iii) Shaikha Shuq bint Ahmad bin Nawaf Al-Sabah.
 - b) H.E. Shaikh Faisal bin Nawaf Al-Sabah. *b.* January 1957, *educ.* Kuwait Univ (BA 1982), and Kuwait Police Coll. *m.* 1984, Hana'an, née Al-Badr. He has issue, two sons and two daughters:
 - i) Shaikh Mubarak bin Faisal bin Nawaf Al-Sabah.
 - ii) Shaikh Nawaf bin Faisal bin Nawaf Al-Sabah.
 - i) Shaikha Yamama bint Faisal bin Nawaf Al-Sabah. *b.* 1985.
 - ii) Shaikha Nashimiya bint Faisal bin Nawaf Al-Sabah.
 - c) H.E. Shaikh 'Abdu'llah bin Nawaf Al-Sabah. *b.* 1958, *educ.* Kuwait Univ. He has issue, four daughters:
 - i) Shaikha Shekha bint 'Abdu'llah bin Nawaf Al-Sabah.
 - ii) Shaikha Sharifa bint 'Abdu'llah bin Nawaf Al-Sabah.
 - iii) Shaikha Mariam bint 'Abdu'llah bin Nawaf Al-Sabah.
 - iv) Shaikha Amthal bint 'Abdu'llah bin Nawaf Al-Sabah.
 - d) H.E. Shaikh Salim bin Nawaf Al-Sabah. *b.* 1960, *educ.* Kuwait Police Coll. He has issue, two sons and two daughters:
 - i) Shaikh Fahad bin Salim bin Nawaf Al-Sabah.
 - ii) Shaikh Khalifa bin Salim bin Nawaf Al-Sabah.
 - i) Shaikha Bibi bint Salim bin Nawaf Al-Sabah. Copyright© Christopher Buyers
 - ii) Shaikha Lulwa bint Salim bin Nawaf Al-Sabah.
 - a) H.E. Shaikha Shekha bint Nawaf Al-Sabah. *m.* Shaikh Jabir bin Duaj Al-Sabah, son of Shaikh Duaj bin Ibrahim Al-Sabah. She has issue, three sons and one daughter – see above.
- 7) Lieutenant-General H.E. Shaikh Misha'al bin Ahmad Al-Jabir Al-Sabah. *b.* 1938 (*s/o* Mariam), *educ.* Mubarakiya Sch, Kuwait Police Coll, Kuwait City, and the Metropolitan Police Coll, Hendon, Middlesex. Joined Ministry of the Interior, prom Col 1967, Head of Kuwait Security Force 1980, Deputy Chief of Staff of the Kuwait National Guard (KNG) (with the personal rank of Minister) since 2004. Dir Ahmad Al-Jabir Inheritance Trust. Mbr Kuwait Army Kuwait Officer's Club, and National Guards (KNG) Officer's Club. *m.* (first) Shaikha Nuria bint Sabah III Al-Sabah, former wife of H.E. Shaikh Jabir bin 'Ali Al-Sabah, sometime Deputy Prime Minister, and daughter of H.H. Shaikh Sabah III bin Salim Al-Sabah, Amir of the State of Kuwait, KCMG, by his wife, Shaikha Nuria bint Ahmad Al-Sabah, daughter of H.H. Shaikh Ahmad I bin Jabir Al-'Ali Al-Sabah, Shaikh of Kuwait and dependencies, KCSI, KCIE. *m.* (second) ... He had issue, four sons and seven daughters:
 - a) Shaikh Ahmad bin Misha'al Al-Sabah. He has issue, a daughter:
 - i) Shaikha Nouriya bint Ahmad bin Misha'al Al-Sabah.
 - b) Shaikh Talal bin Misha'al Al-Sabah.
 - c) Shaikh Fahad bin Misha'al Al-Sabah.
 - d) Shaikh Jabir bin Misha'al Al-Sabah.
 - e) Shaikh 'Ali bin Misha'al Al-Sabah.
 - a) Shaikha Muhassin bint Misha'al Al-Sabah. *m.* H.E. Shaikh Fawaz bin Saud Al-Nasir Al-Sabah, KCVO, Under-Secretary for Economic and Political Affairs at the Amiri Diwan, son of H.E. Shaikh Saud bin Nasir Al-Saud Al-Sabah, sometime