Federal Court  Cour fédérale

Date: 20170317

Docket: IMM-2417-16

Citation: 2017 FC 285

Ottawa, Ontario, March 17, 2017

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

HASSEN ALKHAIRAT, ANDALIB ALKAIRAT, and HAYA ALKHAIRAT

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Hassen Al Khairat [Mr. Al Khairat], Andalib Al Khairat [Ms. Al Khairat], and Haya Al Khirat [the Applicants] are Syrian refugees. The family applied for permanent resident status in Canada while in Jordan using private sponsorship under the Syrian Refugee Resettlement Project. After two in-person interviews, the Applicants were notified in a letter dated April 19,

2016, that their application for a permanent resident visa in Canada was rejected. The immigration officer writing the decision found the evidence presented by the Applicants was not credible and therefore it could not be determined whether they were inadmissible. For the reasons that follow, I find the officer's determination was reasonable.

A. *Style of Cause*

[2] After discussion at the hearing, the Style of Cause in this matter must be amended. The Applicants confirmed the English spelling of their names in their respective passports as: Hassen Al Khairat, Andalib Al Khairat, Haya Al Khirat and yet in Arabic their last names would all be the same (Al Khairat). The Applicants indicate that this is a translation error. For consistency with their passports, I will amend the Style of Cause to reflect the English version and where applicable refer to them as such in this decision.

II. Background

[3] While living in Syria, Mr. Al Khairat worked as a manager of the Syrian-Jordan Free Zone managing the transit of goods between the two countries. The allegations are that after the outbreak of civil war he spoke publicly against the government's use of chemical weapons. The Applicants claim that Mr. Al Khairat's brother was kidnapped and members of the Free Syrian Army [FSA] – a rebel group – twice contacted Mr. Al Khairat demanding financial aid and threatening Mr. Al Khairat.

[4] The Applicants fled Syria in July of 2012 after civil war broke out and settled in Jordan. They applied for refugee status in Canada on October 31, 2015, subsequent to an announcement

by the Canadian government to resettle Syrian refugees. They were sponsored by Mr. Al Khairat's nephew and the Mennonite Central Committee Canada.

[5] The Applicants were interviewed twice in Jordan during the application process: first on January 24, 2016 and second on February 22, 2016. The first interview involved six members of the Al Khairat family. Three of those applicants have since been granted refugee status in Canada. Mr. Al Khairat was the sole person present at the second interview.

[6] The secondary interview was held at the request of Canada Border Services Agency [CBSA] to inquire further about Mr. Al Khairat's association with Moosa Ahmad Al Masalma. Mr. Al Masalma is a CBSA person of concern to whom the Applicants referred in the first interview.

[7] After the second interview, the immigration officer was not satisfied that Mr. Al Khairat was truthful and forthcoming with his information. The officer determined that there remained insufficient evidence to satisfy him that Mr. Al Khairat was not inadmissible to Canada under sections 11 and 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

III. Standard of Review

[8] The applicable standard of review to the officer's decision is that of reasonableness (*Wang v Canada (Minister of Citizenship and Immigration)*, 2008 FC 798 at para 11). The officer is entitled to deference in his fact-finding and his assessment of an applicant's credibility (*Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*]).

IV. Analysis

[9] If an applicant is not honest and forthcoming it can affect the reliability of their whole testimony. An officer may be left with insufficient information to conclude that they are not inadmissible under section 11(1) of the Act. The officer does not need to make a specific finding of inadmissibility. A failure by the applicant to provide a complete picture of their background may result in an inability by the officer to determine that an applicant is not inadmissible (*Ramalingam v Canada (Citizenship and Immigration)*, 2011 FC 278 at para 37 [*Ramalingam*]).

[10] This case turns on whether the officer's credibility finding was reasonable and was within the range of acceptable outcomes defensible in respect of the facts and the law (*Dunsmuir*, above, at para 47). The officer's credibility findings are determinative regardless of whether the matter is considered under sections 11, 16 or 34 of the Act.

[11] The burden is on an applicant to satisfy a visa officer that he or she has met the requirements for immigration to Canada (*Muthui v Canada (Minister of Citizenship and Immigration)*, 2014 FC 105 at para 33). In the officer's opinion, Mr. Al Khairat failed to meet this burden.

[12] The Applicants argue that the officer's findings fail to provide a reasonable basis to disbelieve their evidence. Furthermore, they submit that the officer erroneously found their story implausible based on his own speculation. The Applicants take issue with the following three aspects of the findings.

[13] First, the Applicants submit it was unreasonable for the officer to find that Mr. Al Khairat's evidence changed regarding his financial support of an armed group. The Applicants argue that Mr. Al Khairat never denied there was a request for support but Mr. Al Khairat consistently denied that he provided financial support to the FSA.

[14] Second, the Applicants submit that the officer made unreasonable findings based on the nature of the FSA threats and demands. They suggest that support could mean a number of things including a public statement of support or money which the officer failed to appreciate. Their position is that Mr. Al Khairat was unable to relate how much money was demanded as no specific amount was mentioned. Mr. Al Khairat explained to the officer the full range of threats and demands and the officer should not have required a specific threat or demand as it could not be his fault that Mr. Al Masalma did not specify what type of support he desired or the amount he was seeking or the specifics of the threats.

[15] The third unreasonable finding the Applicants argue is Mr. Al Khairat's alleged lack of credibility surrounding his brother's kidnapping. The Applicants submit that Mr. Al Khairat's evidence on the kidnapping was consistent and never varied. The basis for this finding was because the kidnapping did not happen the way the officer thought a reasonable kidnapper would behave. The Applicants say it was impossible for Mr. Al Khairat to explain the motives and methods of the kidnappers and it was an error of the officer to assume the kidnappers would act reasonably. The Applicants claim this was a plausibility finding rather than a credibility finding; as such, it is an entirely plausible scenario and that negative plausibility findings should only be made in the clearest of cases.

[16] I disagree with the Applicants' characterization of the officer's findings. The officer's reasons for his decision are found in the contemporaneously produced Global Case Management System [GCMS] notes and the notes from both interviews. In contrast, Mr. Al Khairat's affidavit now explains in great detail each of his answers and provides context that does not appear in the GCMS notes. It is trite law that a judicial review will proceed on the material that was before the decision maker. The onus is on the applicant to put their best foot forward at the time. Given he had two interviews in which to tell the Canadian official about his dealings with Mr. Al Masalma, little weight will be given to evidence not before the decision maker at the time.

[17] In the visa officer's affidavit the process for entry into the GCMS is explained. The officer's evidence is that in his normal course of business his notes are typed into a computer word processing program and this is facilitated by the time needed for the translation. After the hearing he edits for spelling and form. Then the officer pastes the notes into to the GCMS which date stamps and initials the entry. The notes cannot be changed after they are entered. The GCMS notes confirm that on February 22, 2016, notes with the officer's initials were entered and the refusal letter emailed to Mr. Al Khairat on April 21, 2016.

[18] In this case the officer told Mr. Al Khairat directly in the second interview his concerns about credibility. He then gave Mr. Al Khairat an opportunity to respond to those concerns. However, Mr. Al Khairat's response did not address the officers concerns.

[19] When the notes from both interviews are reviewed there are many discrepancies in Mr. Al Khairat's evidence, some of which are noted by the officer and some that are not contained in

his reasoning. To determine if the decision is reasonable is of course different than if my role was to make a decision de novo. I must only look at what was before the decision maker and determine if it was reasonable. Justice Reed cautioned in *Khan v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 13, 1999 CarswellNat 42 at paragraph 1: "I am also mindful that one should not be too 'picky', if I may use a colloquial expression, when reading CAIPS notes."

[20] Unlike a Refugee Protection Division hearing that has a transcript contained in an often large Certified Tribunal Record, in this case we only have the GCMS notes and no transcript of the interview. This leads the Applicants to microscopically dissect the notes to prove the decision was unreasonable. Just as I am not to conduct a line-by-line treasure hunt for errors, it is not for the Applicants to do so either (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54).

[21] Though the officer may have made minor errors, such as referring to Mr. Al Khairat's brother-in-law instead of his brother. In Ms. Al Khairat's interview she described her brother-in-law (ie Mr. Al Khairat's brother) who was kidnaped, thus explaining the potential confusion. This was not a material error that affected the determination.

[22] Deference must be given to the officer that "had the benefit of a direct contact with the Applicant who had also been forewarned that he would be interviewed" (*Ramalingam*, above, at para 47).

[23] I find that the Applicants being given two interviews, told of the credibility concerns and then given an opportunity to respond is more procedural fairness than would normally be asked of or expected from a visa officer in this kind of situation. Particularly with the local expertise of the officer who interviewed the Applicants in person, as well as having notes from another officer who also gave an in person interview. Given this additional opportunity the Applicants still could not convince the officer. The officer's credibility findings were supported by evidence making the determination reasonable. Although there may be slight issues with the officer's reasons, its cumulative effect reasonably concludes that the officer could not determine that the Applicants were not inadmissible (*Sellan v Canada (Citizenship and Immigration)*, 2008 FCA 381 at paras 3-4). I find that the decision when read as a whole is reasonable.

[24] Nor will any weight be given to the Applicants' argument regarding possible translation issues given the detailed instructions concerning translations noted in the GCMS notes and the fact nothing was said at the time concerning misunderstandings.

[25] Reasonableness requires that the decision must exhibit justification, transparency and intelligibility within the decision making process and also the decision must be within the range of possible, acceptable outcomes, defensible in fact and law (*Dunsmuir*; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12). I find that this decision is reasonable and will dismiss the application.

[26] Neither party presented a certified question and none arose from the facts.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The style of cause is to be amended to : (Hassen Al Khairat, Andalib Al Khairat, Haya Al Khirat);

2. The application is dismissed;

3. No question is certified.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2417-16
STYLE OF CAUSE:	ALKHAIRAT ET AL V MCI
PLACE OF HEARING:	EDMONTON, ALBERTA
DATE OF HEARING:	JANUARY 16, 2017
JUDGMENT AND REASONS:	MCVEIGH J.
DATED:	MARCH 17, 2017

APPEARANCES:

Mr. Evan C. Duffy	FOR THE APPLICANTS
Ms. Maria Green	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Parlee McLaws LLP Edmonton, Alberta	FOR THE APPLICANTS
William F. Pentney Deputy Attorney General of Canada Edmonton, Alberta	FOR THE RESPONDENT