

Federal Court



Cour fédérale

Date: 20171018

Docket: IMM-1224-17

Citation: 2017 FC 930

Toronto, Ontario, October 18, 2017

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

**MAJEEDA SAEED ALRASHIDI
BAYLISAN SALEH ALMENHALI
ORJUWAN SALEH S. ALMANHALI
NOOR SALEH S. ALMANHALI
RGAD SALEH S. ALMENHALI
RAHAF SALEH S. ALMENHALI
LYAN SALEH S. ALMENHALI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review of a negative refugee decision. The Applicants, citizens of Saudi Arabia, claim a fear of persecution at the hands of the Saudi Arabian government due to their gender and tribal affiliation. Both the Refugee Protection Division [RPD] and then the Refugee

Appeal Division [RAD] rejected the Applicants' claim on the basis of credibility. I conclude below that the RAD applied the correct standard of review to the RPD decision and made reasonable findings based on the evidence before it. Accordingly, this Application for judicial review is dismissed.

I. Background

[2] The Applicants, a mother and her six daughters, are all citizens of Saudi Arabia. The mother was born in the Al Rashidi tribe, but upon her marriage, became a member of the Al Menhali tribe. The Applicants claim that the Saudi Arabian government has stopped issuing identification [ID] cards to Al Menhali women, and that without ID cards, women cannot work, study, marry or access basic services. The Applicants also fear forced marriage, among other forms of gender persecution.

[3] The RAD, applying *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 [Huruglica], reviewed the RPD record and independently assessed the evidence. Quite apart from the credibility issues, the RAD found that the objective evidence did not support the Applicants' assertions that the Saudi government had refused to issue ID cards. The Applicants' claims failed under both sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] in the RAD's decision, dated February 27, 2017 [Decision].

II. Analysis

[4] The RAD is to review RPD decisions applying the correctness standard (*Huruglica* at para 103). Factual RPD findings regarding credibility, on the other hand, may be owed deference, such as when the RPD has enjoyed a meaningful advantage regarding factual findings, including on credibility issues (*Huruglica* at para 70).

[5] As for this Court, because no procedural fairness issues were raised, I am to review the RAD's assessment of the evidence, and findings of mixed fact and law, on a standard of reasonableness (*Huruglica* at para 35; *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47, 51, 54, and 57).

[6] Although the Applicants' counsel admirably reviewed the evidence and did the utmost to assert that the RAD made reviewable errors, I am not persuaded that the RAD (and previously, the RPD) failed to properly assess the evidence, or otherwise erred in making credibility findings. On the contrary, the findings were all open to the RAD, including in particular, those findings relating to the Applicants' long delay in claiming status, and explanations given in that regard. That the mother was illiterate, uneducated, and under the guardianship of her husband, does not obviate the requirement to demonstrate subjective fear of persecution. It was open to the RAD to find the 20-month delay in claiming status after her arrival in Canada was an undue delay. This factor alone is a sufficient basis upon which to uphold the decision (*Haseeb v Canada (Citizenship and Immigration)*, 2017 FC 711 at para 12).

[7] The ID card finding, likewise, was open to the tribunals, given the totality of the evidence: the RAD was not convinced that the Applicants could not obtain ID cards, based both on the documentation the Applicants presented (a 2015 petition and 2013 news article), along with the lack of supporting country condition evidence.

[8] Given my conclusions on the above two issues, I will comment only briefly on the other issues raised, namely (i) the basis upon which the RAD gave little weight to the written opinion of Ms. Nora Doaiji, a teaching assistant and graduate student at George Washington University, who the Applicants held out as an expert on Saudi Arabia's country conditions, including with respect to gender and ethnic issues, and (ii) the RAD's finding that those conditions amounted to discrimination, not persecution. These two findings were reasonable, as well as squarely in the heartland of the RAD's expertise.

[9] First, regarding Ms. Doaiji's opinion, given her credentials, the RAD had the discretion to apply *Fadiga v Canada (Citizenship and Immigration)*, 2016 FC 1157 and give her purported expert opinion minimal weight.

[10] Second, it was incumbent on the RAD to assess whether the discrimination — which it noted — reached the level of persecution (*Frigyik v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 649 at para 18). The RAD's discrimination analysis included an appropriate consideration of gender inequalities for women in Saudi Arabia, and the guardianship issues raised by the Applicants.

[11] Finally, the Applicants challenge the RAD's findings on gender- and marriage-related issues. While others may not necessarily agree with the RAD's assessment of the evidence, that does not render the RAD's findings unreasonable.

III. Conclusion

[12] Despite able efforts by counsel, there is no basis for the Court to interfere with the RAD's Decision. In my view, the Applicants are essentially asking this Court to substitute an outcome preferable to them through a reassessment and reweighing of the evidence. That is not this Court's role. I find that the RAD's Decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

JUDGMENT in IMM-1224-17

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. Counsel presented no questions for certification, nor do any arise.
3. There is no award as to costs.

"Alan S. Diner"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-1224-17

STYLE OF CAUSE: MAJEEDA SAEED ALRASHIDI, BAYLISAN SALEH ALMENHALI, ORJUWAN SALEH S. ALMANHALI, NOOR SALEH S. ALMAN HALI, RGAD SALEH S. ALMANHALI, RAHAF SALEH S. ALMENHALI, LYAN SALEH S. ALMENHALI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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DATED: OCTOBER 18, 2017

APPEARANCES:

David Yerzy FOR THE APPLICANTS

Suzanne Bruce FOR THE RESPONDENT

SOLICITORS OF RECORD:

David Yerzy FOR THE APPLICANTS
Barrister and Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario