

Federal Court



Cour fédérale

**Date: 20180420**

**Docket: IMM-4421-17**

**Citation: 2018 FC 426**

**Toronto, Ontario, April 20, 2018**

**PRESENT: The Honourable Madam Justice Simpson**

**BETWEEN:**

**SALLY SABAH MARROGI  
MARTIN KARIM  
RIVEL KARIM**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**(delivered orally from the Bench on April 18, 2018)**

[1] The Applicants have applied for judicial review of a decision [the Decision] of the Refugee Protection Division [RPD] in which it concluded that they are not *Convention* refugees or people in need of protection because their identities were not established. The Decision is dated September 28, 2017. This application is brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

I. Background

[2] The Applicant who is a 47 year-old widow, and her two sons, aged 15 and 13 [the Minor Applicants] are citizens of Iraq. They entered Canada on July 7, 2012 and made a claim for refugee protection. They fear persecution in Iraq because of their Christian faith. In April 2007 the Applicant, her husband and her children received threats from Muslim groups in Iraq; they were told to leave their home and convert to the Muslim faith. Later in the same month three masked men physically attacked the family in their home and told the Applicant's husband to close his store, where he was selling alcoholic beverages. On May 5, 2007 three masked men again arrived at their home and kidnapped the Applicant's husband. They also threatened to rape and kill the Applicant. The Applicant's mother was present. The Applicant and the Minor Applicants travelled to northern Iraq to stay with relatives. They subsequently heard that the Applicant's husband had been killed.

[3] On June 2, 2007, the Applicant, the Minor Applicants and the Applicant's mother arrived in Turkey with the help of a smuggler. The Applicant's mother left Turkey on January 25, 2008 and had no contact with the Applicants for the following 4 1/2 years. She was accepted as a refugee in Canada on May 10, 2010 without a hearing. The Applicants remained in Turkey, without status, until they left for Canada in 2012.

II. Decision

[4] The determinative issue before the RPD was the identity of the Applicants. The RPD found that they did not establish their personal identities and nationalities pursuant to section 106 of the IRPA. It reads as follows:

106 The Refugee Protection Division must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation.

106 La Section de la protection des réfugiés prend en compte, s'agissant de crédibilité, le fait que, n'étant pas muni de papiers d'identité acceptables, le demandeur ne peut raisonnablement en justifier la raison et n'a pas pris les mesures voulues pour s'en procurer.

[5] The Applicants provided the following documents to establish their identities:

1. Iraqi national identification cards dated 2008 [the 2008 ID Cards], which include photographs overlaid by holographs.
2. Birth and baptismal certificates issued by their church in Iraq [the Birth Certificates].
3. Identity documents submitted with the Applicant's mother's refugee claim, her Personal Information Form [PIF] and a refugee document numbered IMM-5500.

III. Identity cards

[6] When she left Iraq in 2007 the Applicants ID cards for 2007 were current. They had not yet been renewed for 2008. My review of the transcript shows that the Applicant's testimony was unclear and inconsistent concerning the location of the 2007 identity cards when she left Iraq. The Applicant first testified that they were in her possession. Then she corrected her evidence

and said that they were with her father-in-law in the north. Finally, she said they were with the renewal office in Basra because they had been turned in when application was made for the 2008 ID Cards.

[7] The Applicant's evidence was also inconsistent about how she came into possession of the 2008 ID Cards. She first said that her landlord in Turkey travelled to Iraq and collected them from her mother's aunt at her home in Telkif. She later said that her father-in-law picked them up in November 2008 and although she did not say so, the inference was that he brought them to Ankara in Turkey, where he then lived, and that she collected them from him there.

[8] The RPD understood the evidence slightly differently but nothing turns on the differences. What is clear is that the testimony was confusing and internally inconsistent. Accordingly, even though there was nothing apparently wrong with the 2008 ID Cards on their face, the RPD concluded it is "more likely that the claimant could not tell the panel how the documents were obtained because they were not obtained in a regular or legal fashion and are unreliable." In other words, the 2008 ID Cards were found to be fraudulent because the Applicant could not describe how she acquired them.

#### IV. Birth Certificates

[9] The Applicant provided the RPD with Birth Certificates for herself and the Minor Applicants. The RPD observed that such documents are not inherently reliable because they have no security features, are not issued by a state authority, and do not include photographs. The

RPD concluded that the Minor Applicants' Birth Certificates were fraudulent because they lack register numbers and bear identical signatures.

[10] The Applicant also provided her own Birth Certificate. It is signed by the same priest who signed the Minor Applicants' certificates; however, the signature is different. Her document contains the register number which was missing on the Minor Applicants' certificates. With respect to this document the RPD concluded:

However, this form suffers from the same inherent lack of reliability noted, and, as the claimant provided the exact same document for the two minor claimants that, in the panel's view, is likely fraudulent, if [*sic*] follows that the panel cannot rely on the mirror document for the principal claimant.

V. Mother's documents

[11] The RPD considered the identity documents submitted with the Applicant's mother's claim for refugee protection: an Iraqi identity card and a birth/baptismal certificate. The RPD noted that these documents do not establish the identity of the Applicants and provide no reliable evidence to establish their familial relationship. The RPD concluded that those documents were insufficient to establish the Applicants' identities.

[12] However, the RPD also had the Applicant's mother's PIF dated in 2008 which listed the Applicant as her daughter and stated that the Applicant is a citizen of Iraq who lives in Turkey. The RPD Decision did not mention that this document states the Applicant is a citizen of Iraq and did not refer to the Applicant's mother's Refugee Document IMM-5500 which also describes the Applicant as an Iraqi citizen.

VI. No evidence of residence in Turkey

[13] The Applicants stated that they lived in Turkey from 2007 until 2012 but they provided no documentary evidence to corroborate this claim. The Applicant testified that the family did not register with the United Nations [UN] as refugees in Turkey. The Applicant explained she was afraid to register because she had travelled to the country illegally. The RPD noted that there was no evidence to support her claim that she could be deported from Turkey if she registered with the UN. The RPD also rejected the explanation that the Applicants had no evidence of their time in Turkey. The RPD found it illogical that the Applicant would have no documents given that she had a landlord, interacted with two Canadians in Turkey, and raised and cared for two small children. Based on the lack of evidence about their residence in Turkey, the RPD concluded that “the claimant is likely being less than forthcoming about her whereabouts, as the panel would expect someone living in a country with two children for many years would have some record of those living arrangements.”

[14] The RPD acknowledged that the Applicant’s mother stated that the claimants were in Turkey in her PIF, in 2008 but the RPD found this one consistency was insufficient to offset the entire lack of evidence of Turkey being the Applicant’s home for 5 years.

[15] Finally, the Applicant testified that a smuggler arranged all their travel and accompanied the Applicants on their trip to Canada. The Applicant was unable to state which travel documents were used, what was said to authorities, or which countries she transited through en route to Canada. The Applicant testified that when she arrived in the United States she believed she was

in Canada. The RPD concluded she was “deliberately obfuscating the route by which she went to the U.S.A. in order to hide her and her children’s true identities.”

VII. Issues

1. Did the RPD adequately assess the Applicant’s Birth Certificate?
2. Did the RPD unreasonably fail to refer to the Applicant’s mother’s PIF and Refugee Document which state that the Applicant is a citizen of Iraq?

VIII. Discussion

[16] In my view, these issues must be considered in context. That context includes the following:

1. The Applicant could not establish that she had lived in Turkey for 5 years.
2. The Applicant could not account for her trip to Canada.
3. The Applicant submitted fraudulent Birth Certificates for the Minor Applicants.
4. The Applicant could not account for how she acquired the 2008 ID Cards.
5. The Applicant could not say where the 2007 ID Cards were located when she left Iraq.
6. The Applicant’s mother’s PIF and Refugee and Identity documents were never tested.
7. The Applicant’s Birth Certificate was not an inherently reliable document.

IX. Conclusion

[17] In my view, it was reasonable in this context for the RPD to reject the Applicant's Birth Certificate and it was also reasonable of the RPD to not mention the Applicant's mother's statement in her PIF and Refugee Document to the effect that the Applicant holds Iraqi citizenship.

X. Certification

[18] No question has been posed for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is hereby dismissed and the style of cause is amended on consent to make the Minister of Citizenship and Immigration the sole Respondent.

“Sandra J. Simpson”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4421-17

**STYLE OF CAUSE:** SALLY SABAH MARROGI, MARTIN KARIM, RIVEL  
KARIM v THE MINISTER OF IMMIGRATION,  
REFUGEES AND CITIZENSHIP

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 18, 2018

**JUDGMENT AND REASONS:** SIMPSON J.

**DATED:** APRIL 20, 2018

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