Federal Court  Cour fédérale

Date: 20191127

Docket: IMM-2971-19

Citation: 2019 FC 1517

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, November 27, 2019

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

MOHAMAD AZZAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Preface

[1] A judge must interpret—and therefore apply the law—realizing that he or she must respect the separation of powers of the three branches of government, each being distinct. This is at the very heart of the rule of law.

[2] A judge is obliged under the law originating from the International Refugee Convention to distinguish between discrimination and persecution. It is the duty of a judge to interpret the law and not to legislate. The law, as conceived by the legislator and enforced by the executive branch, should not be transformed by the judge who must realize that his or her role is to judge and not to interfere in the formulation of the law. Interpretation and wording come from two distinct roles.

[3] One of the tragedies of the last hundred and fifty years emanates from refugee camps and the desperation felt by human beings without a place to call home. Knowing that a judge must decide case by case, each time according to the wording of each law. So a judge cannot empty the refugee camps.

[4] The distinction between discrimination and persecution is very slight, but it is not theoretical according to the letter of the law, therefore, according to the case law. What may appear as a mere semantic distinction is in fact the result of international policy choices. Some countries of good faith would like to solve the problem, but can only do so with a global consensus to resolve this plight with the help of country by country quotas.

[5] Calling attention to something is sometimes, and unfortunately, the full extent of a judge’s power. A judge must, however, realize where his or her jurisdiction begins and where it ends. That is the case here.

II. Nature of the matter

[6] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision rendered on March 29, 2019, whereby the Senior Immigration Officer [the Officer] rejected the applicant's pre-removal risk assessment (PRRA).

III. Facts

[7] The applicant is a Palestinian stateless person born in Lebanon in 1994, where he is registered with the United Nations Relief and Works Agency for Palestine Refugees in the Near East. During the first three years of his life, the applicant lived in the Palestinian refugee camp Ain al-Helweh. In 1997, he moved with his parents to Abu Dhabi, in the United Arab Emirates [UAE].

[8] On August 12, 2002, the applicant's mother filed a refugee protection claim in which the applicant was included as an accompanying minor. On October 25, 2002, the applicant's mother withdrew their applications.

[9] The applicant lived in the UAE until his departure for Lebanon in the summer of 2012 to pursue studies at the American University of Beirut. In 2014, the applicant left Lebanon for the United States where he remained on a student visa valid until December 2017. In the meantime, his father's employer terminated his father's employment in 2016.

[10] On December 19, 2017, the applicant, fearing a return to Lebanon, travelled to Canada to seek refugee protection. Given the first retracted request in 2002, his application was deemed inadmissible. On January 8, 2018, the applicant was informed of the possibility of submitting a PRRA application. As a result, on January 22, 2018, the applicant made his PRRA application.

IV. Impugned decision

[11] In his PRRA application, the applicant essentially alleges the following facts:

a) The security and freedom of the applicant would be at risk if he were to return to Lebanon as a stateless Palestinian and refugee;

b) Given the laws in place in Lebanon, the applicant could only live in the country's refugee camps;

c) The applicant's life would be in danger given the frequent violent conflicts between Fatah and Islamic groups;

d) As a Palestinian, the applicant would suffer systemic discrimination across the country. The Lebanese authorities cannot protect him, he cannot own a building outside the refugee camps and he cannot get a job as a skilled worker.

[12] In his decision, the Officer refused the PRRA application primarily for two reasons. First, the Officer concluded that the Palestinians are discriminated against in Lebanon, but that this cannot be considered persecution under the IRPA. Then, the Officer concluded that the applicant had not demonstrated how his personal situation is different from other Palestinian refugees in Lebanon, nor how his profile would make him more at risk of being in danger. In sum, the applicant had not demonstrated by more than a slight possibility that he would be subject to

persecution under section 96 of the IRPA. Similarly, the applicant had not demonstrated on the balance of probabilities that there was a danger of torture, a threat to his life or a risk of cruel and unusual treatment or punishment under section 97 of the IRPA.

V. Issues

[13] There are three issues:

1) What is the appropriate standard of review?
2) Did the Officer err in concluding that Palestinians are not being persecuted in Lebanon?
3) Did the Officer apply the wrong test to the analysis under section 96 of the IRPA?

VI. Relevant provisions

Convention refugee	**Définition de « réfugié »**
96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	**96** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	*a*) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(*b*) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that	*b*) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne

fear, unwilling to return to that country.

veut y retourner.

Person in need of protection

Personne à protéger

97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

97 (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A person in Canada who is

(2) A également qualité de

a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.	personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

VII. Analysis

A. *Standard of review*

[14] Jurisprudence has established that PRRA applications involve mixed questions of facts and law and, therefore, are assessed on a standard of reasonableness (*Canada (Citizenship and Immigration) v Flores Carrillo*, 2008 FCA 94 at para 36, *Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 at para 10).

[15] The applicant submits that the Officer applied the wrong legal test in his analysis of sections 96 and 97 of the IRPA. On this issue, the applicant submits that the standard of correctness must apply. In *Azzam v Canada (Citizenship and Immigration)*, 2019 FC 549, the applicant's sister made essentially the same argument. In his decision, Justice Sébastien Grammond rejected this interpretation of the applicable standard of review:

> [9] Nevertheless, Ms. Azzam argues that the PRRA officer's articulation of the legal test must be reviewed on a correctness standard. In other words, the officer had to apply the correct test. For that proposition, Ms. Azzam relies on a number of recent decisions of our Court striking down decisions that applied the "wrong test," which appear to suggest that correctness is the standard in those circumstances: see, for example, *Conka v Canada (Citizenship and Immigration)*, 2018 FC 532 at paragraph 11; *Sokoli v Canada (Citizenship and Immigration)*, 2018 FC 1072 at paragraph 12; *Cerra Gomez v Canada (Citizenship and*

Immigration), 2018 FC 1233 at paragraph 13; *Rodriguez Cabellos v Canada (Citizenship and Immigration)*, 2019 FC 40 at paragraph 16; *Sallai v Canada (Citizenship and Immigration)*, 2019 FC 446 at paragraph 31.

[10] The phrase "wrong test" may be useful shorthand for describing the outcome of those cases. However, the use of that language should not lead one to believe that reasonableness is no longer the standard of review, or that correctness applies to certain categories of issues. Indeed, if we push this logic to its conclusion, this would mean that correctness is the standard for questions of law, which would run contrary to the thrust of the Supreme Court of Canada's jurisprudence since *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*]. Rather, what really happens in those cases is that there is only one reasonable outcome. Let me explain.

[11] Tribunals and administrative decision-makers are bound to follow the law, which includes the common law or judicial interpretations of legislation. At the same time, tribunals and administrative decision-makers are recognized a margin of appreciation in their own interpretation of the law, which, again, includes the manner in which they apply judicial precedent: *Céré v Canada (Attorney General)*, 2019 FC 221 at paragraphs 36-43. This may be particularly so where they decide whether to adapt the common law to a particular statutory context: *Nor-Man Regional Health Authority Inc v Manitoba Association of Health Care Professionals*, 2011 SCC 59, [2011] 3 SCR 616; see also Paul Daly, "The Principle of Stare Decisis in Canadian Administrative Law" (2015) 49 RJTUM 757.

[12] Nevertheless, the manner in which a particular statutory provision is understood by the judges of a court of first instance may coalesce towards a consensual interpretation. An appellate court may also formulate a test, or an analytical method, that guides the application of a provision. In those cases, it may well be that a tribunal or administrative decision-maker may not reasonably depart from that test or interpretation. If it does so, we say that it applied the "wrong test." Indeed, several decisions of the Supreme Court of Canada rendered after *Dunsmuir* struck down decisions that had applied the "wrong test" or employed similar language to describe the grounds for review: *Lake v Canada (Minister of Justice)*, 2008 SCC 23 at paragraph 49, [2008] 1 SCR 761; *Alberta (Education) v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 SCC 37 at paragraph 37, [2012] 2 SCR 345; *Saskatchewan (Human Rights Commission) v Whatcott*, 2013 SCC 11 at paragraph 194, [2013] 1 SCR 467. A careful reading of

> those cases, however, shows that the Court never intended to change the standard of review from reasonableness to correctness.
>
> [13] To summarize, reasonableness is the standard of review with respect to all issues dealt with by a PRRA officer. Where a PRRA officer does not apply the legal test or analytical method established by this Court's jurisprudence, however, this may well render the decision unreasonable.

[16] At the same time, the applicant submits that the Officer failed to exercise his jurisdiction by failing to conclude on a decisive issue. This issue will be reviewed under a standard of correctness. In support of this submission, the applicant cites *Kandel v Canada (Citizenship and Immigration)*, 2014 FC 659 [*Kandel*], where Justice Simon Noël writes that a decision-maker's decision not to rule on a reason would constitute a failure to exercise its jurisdiction and be reviewable on a standard of correctness.

[17] In this case, the applicant wrongly attempts to characterize what he considers to be an omission in the respondent's analysis as a failure to exercise his jurisdiction. In the *Kandel* decision, above, there was one of the bases of the PRRA application that had simply not been analyzed. It is clear from the Officer's reasons that he addressed all of the issues raised by the applicant. However, a problematic omission in the analysis is not a failure to exercise jurisdiction. If the Officer was able to omit important facts from his analysis, this error is reviewable under the standard of reasonableness.

[18] To summarize, only the standard of review of reasonableness is applicable to the issues in this case.

B. *Officer's conclusion on the status of stateless Palestinian persons in Lebanon*

[19] The applicant submits that the Officer made a reviewable error in his analysis of the applicant's fear of persecution with respect to his Palestinian refugee status in Lebanon. The applicant alleges that the Officer downplayed the importance of the documentary evidence which, in his view, reveals the [TRANSLATION] "situation of widespread oppression experienced by the Palestinians in Lebanon". Thus, according to the applicant, the systemic attack by the Lebanese State on the fundamental rights of the Palestinians cannot be reduced to mere discrimination. To that end, the applicant considers that the Officer failed to deal with all of the documentary evidence to which he had access that would demonstrate systemic discrimination against stateless Palestinians in Lebanon.

[20] On this issue, the applicant alleges that this is an omission to deal with the combination of facts, which amounts to a refusal to exercise his jurisdiction. As mentioned earlier, it is instead a reviewable matter under the standard of reasonableness.

[21] First, it was not the duty of the Officer to conduct a comprehensive analysis of the National Documentation Package (*Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14, at para 79).

[22] The Officer then conducted the required analysis and discussed the situation of stateless Palestinians in Lebanon. His findings of fact in this regard are quite reasonable and consistent with the jurisprudential definition of persecution that requires a significant and systemic attack

on fundamental human rights (See, for example, *Rajudeen v Canada (Minister of Employment and Immigration)* (FCA), [1984] FCJ No. 601, 55 NR 129, at 133).

C. *Officer's conclusion pursuant to section 96 of the IRPA*

[23] The applicant submits that, on reading the reasons as a whole, it appears that the Officer erroneously confused the criteria of sections 96 and 97 of the IRPA. Indeed, the applicant alleges that the Officer was seeking a [TRANSLATION] "degree of personal risk" for the applicant, which would outweigh the risk for other Palestinian refugees in general.

[24] In *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, the Supreme Court warns courts not to isolate certain sentences from the reasons in order to empty them of their context and twist the decision-maker's analysis. Admittedly, the Officer appears to have jointly drafted his reasons for sections 96 and 97 of the IRPA. That being said, we cannot conclude that he applied the wrong legal test.

[25] Indeed, the Officer's reasons show that he first made a general analysis of the situation of the Palestinians in Lebanon and then concluded that the applicant's personal situation was not different from that of other Palestinians. This second conclusion does not support the proposition that the Officer imported the personalized risk test into the analysis of section 96 of the IRPA analysis. Rather, this statement must be viewed as a factual conclusion that serves as an analysis under section 97 of the IRPA. In this case, it is the most charitable and reasonable reading of the reasons presented.

[26] In short, the Officer's decision on this issue is entirely reasonable and does not require the intervention of this Court.

VIII. Conclusions

[27] For the reasons given above, this application for judicial review is dismissed.

JUDGMENT in IMM-2971-19

THIS COURT STATES THAT the application for judicial review is dismissed. There is no question of general importance to be certified.

"Michel M.J. Shore"
Judge

Certified true translation
This 9th day of December, 2019.

Daniela Guglietta, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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