

Federal Court



Cour fédérale

**Date: 20191203**

**Docket: IMM-421-19**

**Citation: 2019 FC 1542**

**Ottawa, Ontario, December 3, 2019**

**PRESENT: The Honourable Mr. Justice Ahmed**

**BETWEEN:**

**BOUTROS MASSROUA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] This case concerns the decision of the Refugee Appeal Division (“RAD”) (the “RAD Decision”) to dismiss the Applicant’s appeal and affirm the decision of the Refugee Protection Division (“RPD”). The RPD and RAD found that the Applicant was excluded from refugee protection for being complicit in crimes against humanity pursuant to section 98 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”) and Article 1F(a) of the *United Nations Convention Relating to the Status of Refugees* (the “Refugee Convention”).

[2] The Applicant is a citizen of Lebanon who fears persecution of harm from the Islamic State in Iraq and Syria (“ISIS”) or Da’esh and Hezbollah (terms of ISIS and Da’esh will be used interchangeably). The Applicant is a Christian from Zahle, located near the Syrian border where he lived with his wife and worked as a mechanic. The Applicant was approached by ISIS to repair vehicles. In the beginning, unaware that they were ISIS, the Applicant fixed vehicles that the ISIS member would bring over to his shop. After a few weeks, the Applicant was offered a higher pay to work after-hours at a different location, and the Applicant accepted this offer. Over the course of a few months, the Applicant repaired vehicles and oversaw other mechanics at a hangar, which belonged to ISIS.

[3] Eventually, the Applicant realized that this organization was ISIS, and he began to make excuses not to go work. He was taken back to the hangar and other locations to repair vehicles a few more times. According to the Applicant, he was also approached by Hezbollah. The Applicant was initially ordered not to work for ISIS, but then was approached again to act as a spy for Hezbollah against ISIS. Subsequently, the Applicant sought arrangements to visit his wife’s sister in Canada. Visas for the Applicant and his wife were approved a few weeks later. When the Canadian visas became ready, the Applicant and his wife travelled to Beirut to stay with family for a week until the issuance of their visa. The Applicant and his wife left Lebanon and travelled to Canada on May 23, 2015, and submitted their refugee claim on September 4, 2015.

[4] On May 4, 2016, the Immigration Division (“ID”) held an admissibility hearing and found that the Applicant and his wife were admissible to Canada pursuant to s.34(1)(f) of the

*IRPA*. On October 12, 2016, the RPD rendered a decision denying the Applicant's refugee claim on the basis that he is excluded under section 98 of the *IRPA* and Article 1F(a) of the Refugee Convention. The Applicant's wife was granted refugee protection. The RPD's decision of the Applicant was appealed and on December 21, 2018, the RAD upheld the RPD's decision.

[5] On this application for judicial review to this Court, the Applicant argues that the RAD's plausibility findings were not supported by the facts giving rise to a "clearest of cases" circumstance; the RAD failed to consider the Applicant's wife's credible testimony; and the RAD's finding of voluntariness was unreasonable because there was no safe avenue of escape in Lebanon and the Applicant was under duress. The Applicant thus argues that the RAD Decision is unreasonable.

[6] At the outset I wish to state the written decision by the RAD is precise and clear. For the reasons set out below, this application for judicial review is dismissed.

## II. **Facts**

### A. *The Applicant*

[7] Mr. Boutros Massroua (the "Applicant") is a 54-year old citizen of Lebanon. The Applicant is a Christian from Zahle, located near the Syrian border where he lived with his wife, Mirna Ajaj. While in Lebanon, the Applicant worked as a mechanic for a small company.

[8] In December 2014, a new customer, Abu Mohamad, came to the shop where the Applicant worked, and requested that the Applicant fix his SUV. The Applicant notes in his basis of claim (“BOC”) narrative that he is a specialist in difficult repairs and his skills are above those of the other mechanics. Over the next few weeks, Abu Mohamad brought several vehicles for the Applicant to repair. Then, Abu Mohamad approached the Applicant and told him that he would pay the Applicant more than the regular rate if he did work after his regular working hours. The Applicant accepted the offer, and for several weeks, he worked at a location approximately 30-40 minutes away. At those locations, he was required to repair vehicles or oversee and instruct other mechanics doing work on a variety of vehicles.

[9] Towards the end of February or early March 2015, the Applicant was taken in the evening to a different location operated by another man named Abu Arafat. This was an enclosed location about the size of a 20-car parking lot, with good artificial lighting. For whatever reasons, the Applicant refers to this place as a *hangar*. The Applicant observed that the men had long beards, and spoke in a non-Lebanese accent. They were installing heavy metal on the floor of the trucks to strengthen them, and the Applicant testified that the metal bars and casing had no other use than for military purposes. The Applicant also testified that he saw bullet holes on some vehicles. Abu Arafat asked the Applicant to repair a large truck with no license plates, and paid the Applicant for the job.

[10] The Applicant was driven to this hangar location several times, always at night. According to the Applicant, each time he entered the location, he was patted down, and his cross

and cell phone were taken away. The Applicant was happy to comply because he was paid good wages and the men were happy with his work.

[11] On the third visit, the Applicant was repairing a vehicle at the hangar when he touched wet blood inside the vehicle. The Applicant notes that this was the first time he felt afraid. Following this incident, the Applicant made excuses not to return to the hangar, but he felt pressured to return because men carrying side weapons came to his home and took him to the location on five or six other occasions.

[12] On one occasion in March 2015, three people came to his house, took his passport, and put a Chinese visa in it. He was told that he should be prepared to travel to China as they wanted him to buy something for them.

[13] The Applicant was taken into Syria on three occasions to do repairs at a different location where he could see shelling. The Applicant asserts that he was convinced at this point that the group he had been interacting with was ISIS. Then, Abu Al Hassan from Hezbollah visited the Applicant and accused him of working with ISIS, and told him that he had a week to stop working for ISIS. The Applicant attempted to reach his ISIS contact, Abu Mohamad, to communicate his desire to stop working for them. Unable to reach Abu Mohamad, the Applicant and his wife decided to make arrangements to visit his wife's sister in Canada. Ms. Ajaj's sister sent a letter of invitation on April 22, 2015.

[14] According to the Applicant, on April 26, 2015, members of ISIS returned, and pressured him to go to the hangar for an important job. The Applicant fixed a vehicle and was returned home. One week later, members of Hezbollah returned to the Applicant's home and accused him of lying to them, as they knew that the Applicant had worked for ISIS again. The Applicant explained to Hezbollah that he was forced to go. The Applicant notes that Hezbollah members then threatened him.

[15] On May 5, 2015, members of ISIS returned to the Applicant's home. They woke the Applicant from bed while he was still in his pyjamas, and took him to Syria. However, the trip was cut short due to a flat tire, and the Applicant was brought home without performing any work.

[16] The Applicant was visited by Abu Al Hassan and two members of Hezbollah at work. They expressed their interest for the Applicant to act as a spy for Hezbollah when he returned to Syria with Da'esh. He was promised \$1,000 per night for this job.

[17] That night, Da'esh came to the Applicant's home and the Applicant was brought to the hangar in Lebanon. The Applicant expressed his willingness to go to Syria if they paid him more money. The Applicant was taken to Syria that night to repair an SUV. The Applicant notes that he tried to prolong the repair, as per Hezbollah's instructions, but the repair was a simple one. He returned home around 2:00 am.

[18] On May 5, 2015, the Applicant received an email indicating his Canadian visa was approved. He went to the embassy to complete the fingerprinting.

[19] Around May 10, 2015, Abu Arafat called up the Applicant to go to a different location, where the Applicant was met by men in a SUV with machine guns. The Applicant was notified that he should be ready to travel to China. He was also brought to Syria for vehicle repairs. The next day, Hezbollah told the Applicant that they would plant a wire on him, and also threatened to kill the Applicant and his wife if he did not comply.

[20] On May 15, 2015, the Applicant was notified that his Canadian visa was ready. On May 16, 2015, the Applicant and his wife travelled to his in-laws' house in Beirut, and stayed there until their visas were issued on May 22, 2015. The Applicant and his wife travelled to Canada on May 23, 2015.

B. *Procedural Background*

[21] The Applicant and his wife submitted their refugee claims on September 4, 2015. On October 20, 2015, the Applicant was interviewed by a Canada Border Services Agency ("CBSA") Hearing Advisor to address possible reasons for inadmissibility under the *IRPA*. On November 2, 2015, the RPD heard the case. Before a final decision was rendered, the Minister requested that the proceeding be suspended to call an admissibility hearing.

[22] On December 11, 2015, the Minister intervened before the RPD, and raised the issue of exclusion pursuant to section 98 of the *IRPA* and Article 1F(a) of the Refugee Convention, on

the basis that there were serious reasons for considering the Applicant to be complicit in crimes against humanity for his involvement with ISIS. On May 4, 2016, the ID held an admissibility hearing, and found that the Applicant and his wife were admissible to Canada under section 34(1)(f) of the *IRPA*.

[23] The RPD hearing resumed on September 22, 2016. By way of decision rendered on October 12, 2016, the RPD granted refugee protection to the Applicant's wife, but rejected the Applicant's claim on the basis of exclusion pursuant to s.98 of the *IRPA* and Article 1F(a) of the Refugee Convention. The RPD found that there are serious reasons for considering the Applicant to be complicit in crimes against humanity because he voluntarily made a significant and knowing contribution to ISIS by repairing vehicles used to further the purpose of the organization. The RPD rejected the Applicant's arguments that his involvement with ISIS was short, he was unable to dissociate himself once he understood the nature of the organization, and he was under duress to continue working for ISIS.

[24] On December 14, 2018, the RAD upheld the RPD's decision, and on its own analysis of the record, found that the RPD did not err in finding the Applicant voluntarily made a knowing and significant contribution to ISIS/Da'esh and was thus excluded from refugee protection.



### III. Relevant Provision

[25] Section 98 of the *IRPA* reads as follows:

#### **Exclusion — Refugee Convention**

**98** A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.

#### **Exclusion par application de la Convention sur les réfugiés**

**98** La personne visée aux sections E ou F de l'article premier de la Convention sur les réfugiés ne peut avoir la qualité de réfugié ni de personne à protéger.

[26] Pursuant to section 98 of the *IRPA*, Article 1F(a) of the Refugee Convention excludes individuals from refugee protection when there are serious reasons for considering that they have committed crimes against peace, a war crime, or a crime against humanity. The Supreme Court of Canada in *Ezokola* clarified the test for complicity under Article 1F(a) (*Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40 (CanLII) [*Ezokola*]). A claimant may be excluded from the definition of “refugee” when there are serious reasons for considering that the claimant has *voluntarily* made a *significant* and *knowing* contribution to the organization’s crime or criminal purpose (*Ezokola*, para 84).

[27] As the RAD correctly notes, the evidentiary burden to demonstrate the test for complicity is a “serious reasons for considering” standard. This standard is less than the civil standard of “balance of probabilities” but higher than “reasonable grounds for suspecting” (*Ezokola*, para 101).

IV. **Issue**

[28] The issue that arises on this application for judicial review is whether the RAD Decision is reasonable, particularly whether:

1. the RAD erred in finding that it was implausible the Applicant did not recognize the organization as ISIS/Da'esh on his first visit to the hangar;
2. the RAD erred in finding the Applicant's work for ISIS/Da'esh was voluntary; or
3. the RAD failed to consider the Applicant's wife's testimony.

V. **Analysis**

A. *The RAD's Plausibility Finding*

[29] The RAD upheld the RPD's finding that it was implausible for the Applicant to not have recognized that he was working for ISIS on his first visit to the hangar. The RAD Decision addresses this in the context of one of the *Ezokola* factors, namely the length of time the refugee claimant was in the organization, particularly after acquiring knowledge of the group's crime or criminal purpose.

[30] The Applicant submits that the RAD's conclusions are based on plausibility findings that are unreasonable as the Applicant's BOC narrative and sworn testimony shows the Applicant only first suspected the group's criminal purpose on his third visit to the hangar. The Applicant cites *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 (CanLII) and *Chen v Canada (Citizenship and Immigration)*, 2015 FC 225 (CanLII) for the proposition that plausibility findings must be made only in the "clearest of cases" because these findings are

inherently subjective assessments, dependent on the board member's perception of what constitutes rational behaviour.

[31] The Applicant submits that the RPD and RAD Members did not consider the cultural context in which the plausibility finding was made. The sequence of events that occurred at the hangar, i.e., being patted down, and his cell phone and cross being taken away, was not a strange occurrence in Lebanon where there is presence of armed religious conflict, although it may be suspicious in Canada. The Applicant testified that being patted down, for example, was not unusual where there is a high level of security. As such, the Applicant submits that the accuracy of his account and own understanding of the events was plausible, and the facts do not support the "clearest of cases" criteria.

[32] The Respondent submits that the RAD's plausibility findings were reasonable because the RAD analyzed a wide range of both subjective and objective evidence in support of its decision to uphold the RPD's plausibility finding. I agree with the Respondent's position. The RAD's focus was not simply on the Applicant's testimony that he was taken to an area at night, patted down, and asked to remove his cross and phone—the RAD engaged in a factual analysis of several other factors as well. The RAD notes the following in explaining its plausibility findings, with my emphasis added:

The RPD reached this finding based on several factors:

-ISIS had penetrated the Beqaa valley in Lebanon, a region where the Appellant was living. The RPD noted that objective evidence indicates that in 2015, this region was often penetrated by various Sunni Islamic groups from Syria, especially ISIS.

-The OSAC Crime and Safety Report notes that ISIS operates and is based in Lebanon. Lebanon is noted to have poor security, easy access to weapons with numerous areas of non-governmental control and is a perfect ideal environment for terrorist organizations like ISIS to transit or prepare for operations.

-Reports document that ISIS posts videos on the internet showing the beheading of Lebanese soldiers taken hostage in fighting around the Lebanese border area, in the region where the Appellant lived. The border area was briefly seized by ISIS who penetrated into Lebanon.

-There is an ongoing war with Syria next to Lebanon where ISIS is a key player. The Appellant testified that he watched ISIS on TV and knows about ISIS. He described their goals, what they wear, their long beards and hatred for Christians. The Appellant said that he knew that ISIS was in the border area where he works and lives. He said that ISIS is working from Lebanon to penetrate Syria.

-The first time he went to the hangar, the Appellant knew that he was brought there because no one else could repair the vehicles.

-The Appellant provided important details about his first trip to the hangar. He was driven into a Sunni area at night; he was required to remove his cross; his phone was taken away and he was patted down to make sure he had no weapons. The RPD found that such an introduction to the business put the Appellant on alert that he was involved in a criminal operation even before he entered the hangar that first night.

-On his first night in the hangar, he saw 15-20 jeeps or 4x4 vehicles being repaired which are the types of vehicles used by ISIS.

-On his first night, he observed that these vehicles had their license plates removed. The vehicles were repainted and he said that metal bars were installed which could only be used for the purpose of reinforcing the vehicle for military conflict.

-The Appellant was paid a lot of cash, far exceeding his regular monthly salary as a mechanic.

-The RPD determined that the Appellant's own evidence of his first trip to the hangar is such that he must have known that he was not just assisting criminals who bought and sold cars.

Rather, he would have known that he was assisting criminals involved in military operations.

-Moreover, the RPD determined that the Appellant's testimony also reveals that this was an illegal military group. The Appellant who knew that ISIS had infiltrated into Lebanon from Syria, was brought to the hangar at night, in a clandestine manner. He observed that the men spoke in Arabic in a dialect which was not Lebanese. He identified the accent as Syrian or possibly Iraqi. He said the men in the hangar had long beards which is another sign that they were a militant Sunni group. He also said that the people were not Sunnis from the area but rather foreigners.

-The RPD concluded that on a balance of probabilities, the Appellant knew after his first visit to the hangar, that he was involved with ISIS and with this knowledge continued to voluntarily return to work for the organization.

[33] The cumulative effect of the RPD's determinations point to the fact the Applicant acquired knowledge that he was working for ISIS when he first visited the hangar. The Applicant did not provide any explanations as to what the organization could have been, if not ISIS/Da'esh. Although the Applicant's counsel noted there were various militant groups in the area, I reiterate that the country condition documentation points to the fact there were "various Sunni Islamic groups from Syria, especially ISIS." ISIS had a very strong presence in Lebanon, especially near the Beqaa Valley area. They had penetrated the area and were very active. The Applicant had even testified to the fact that he had watched ISIS on television, and knew that they were in the border area where the Applicant lived and worked. It was reasonable for the RAD to infer that those living in the Beqaa Valley were aware of and exposed to ISIS and its work. The Applicant was not living in an isolated area.

[34] The Respondent also notes that the RAD considered the evidence of the Applicant's wife regarding their observations. Ms. Ajaj had testified that she concluded the group was ISIS based on several observations. Other than having seen and touched the blood on the third visit to the hangar, other observations were made by the Applicant on the first visit to the hangar.

[35] During the hearing, the Applicant's counsel noted the Applicant was not suspicious of Abu Arafat when he was introduced to him because of the Applicant's relationship with Abu Mohamad. I am not persuaded considering the Applicant only knew Abu Mohamad for a short period of few weeks, and most certainly not long enough to form any kind of trust-bearing relationship. At most, it was a surficial transactional relationship. The Applicant's counsel also appeared to backtrack her own argument by stating that we, in Canada, also make individuals take off their religious symbols, contrary to her written submissions in which she argued that such behaviour would raise suspicions in Canada.

[36] The RAD summarizes its conclusions in this way [emphasis added]:

Turning to the present case, the RPD deemed the Appellant's testimony that he did not know that he was working for ISIS until after his third trip to the hangar, entirely implausible. The RPD did not base this conclusion on a subjective opinion, far removed from Lebanon. Rather, the Panel member considered the Appellant's evidence implausible based on a multitude of factors including documentary evidence regarding ISIS; the Appellant's knowledge of ISIS; the Appellant's knowledge that ISIS was present in border towns in 2015 and infiltrated Lebanon and Syria; and the Appellant's own description of his personal observations on his, first trip to the hangar.

[37] In my view, the Applicant must have known about the identity of the organization on his first visit to the hangar, but remained willfully ignorant and suppressed his aroused suspicions

because he was being paid a generous sum of money for his work. The evidence shows that the Applicant's resistance against Hezbollah was greater than what he exercised against ISIS/Da'esh. As a result of his wilful ignorance and greed—which manifested in the form of very well-functioning vehicles for Da'esh—the cruel objectives of Da'esh were furthered and innocent lives were most likely lost. However short Mr. Massroua's involvement may have been, it does not lessen his significant contribution to the criminal purpose of Da'esh. The Respondent aptly cites *Hadhiri v Canada (Citizenship and Immigration)*, 2016 FC 1284 (CanLII) [*Hadhiri*] for the proposition that even without wilful blindness, a form of recklessness can support a finding of knowing contribution to an organization. Citing *Ezokola in Mata Mazima v Canada (Minister of Citizenship and Immigration)*, 2016 FC 531 (CanLII), the Court in *Hadhiri* notes at para 20:

An individual can be complicit without being present at the crime and without physically contributing to the crime if the individual made at least a significant contribution to the group's crime or criminal purpose (at paragraph 77). This contribution to the crimes committed need not be essential or substantial, but to be significant, it must be something other than an infinitesimal contribution (at paragraphs 56-57). Specifically, the contribution does not have to be "directed to specific identifiable crimes." It is sufficient that it be directed to wider concepts of common design, such as the accomplishment of an organisation's purpose by whatever means are necessary including the commission of war crimes (at paragraph 87).

[38] At a minimum, the Applicant was reckless for the purposes of economic gain by fattening his pockets. Whether it be recklessness or wilful blindness, the totality of the evidence points to the Applicant having obtained knowledge of ISIS' identity very early in his interaction with them. Perhaps the Applicant wished to turn a blind eye and quietly tuck away his suspicions on who this organization may be. However, ignorance bred out of greed is no excuse for the participation in a terrorist organization that commits crimes against humanity. Thus, the RAD's

plausibility findings were entirely reasonable and well-supported by subjective and objective evidence. The RAD did not fail to consider the cultural context, but delved deep into the country conditions and political climate in Lebanon, especially of the area in which the Applicant had resided and worked.

[39] Briefly, I wish to comment on a matter raised during the hearing. The Applicant's counsel submitted that the two different findings of fact made by the ID, and by the RPD and RAD create a conflict that brings into question the RAD's plausibility finding. For example, the ID found that when the Applicant began to perform mechanic work for Abu Arafat, he was not aware that he was working for Da'esh, and the ID concluded it was significant that when the Applicant did come to this realization later on, he tried to distance himself. On the contrary, the RPD and RAD came to different conclusions. The Applicant's counsel submitted that this undermines the RAD's plausibility finding and shows that the RAD's finding of the Applicant's voluntariness was not one of "clearest of cases". The Applicant's counsel wished to rely on *Johnson v Canada (Citizenship and Immigration)*, 2014 FC 868 (CanLII) [*Johnson*] for the proposition that some interplay exists between the ID and RPD in the use of factual findings.

[40] However, I find that this case is of no particular help for the Applicant. In *Johnson*, the issue before the Court was whether the immigration officer erred by adopting the RPD's conclusions without carrying out her own analysis of the admissibility question (*Johnson*, para 17). In her analysis, Justice Mactavish notes that findings of fact made by the RPD in an exclusion proceeding are to be considered as conclusive findings of fact in an admissibility determination under s.35 of *IRPA* (*Johnson*, para 24). She further elaborates, "[T]he task of



immigration officers making admissibility determinations is to take the findings of fact that have been made by the Board and consider them in light of the provisions of section 35 of *IRPA* in order to determine whether or not the individual in question is admissible to Canada.”

[41] The interplay between the ID and RPD discussed in Johnson is restricted to how the findings of the RPD affect the subsequent determination at the ID level, not the other way around. Furthermore, as the RAD correctly notes, the RPD hearing is a different process from the ID determination, and the RPD is required to perform its own assessment based on the evidence before it and form its own conclusions.

B. *The RAD's Finding on Voluntariness*

[42] The Applicant submits that the RAD erred in finding the Applicant's work for ISIS was voluntary because he did not have a safe avenue of escape within Lebanon, and asserts that this conclusion is not supported by documentary evidence. The Applicant points to documentary evidence which states that ISIS has operations within Lebanon; there have been a growing number of Lebanese nationals joining ISIS; in November 2015, ISIS detonated a bomb in Beirut where the Applicant's in-laws live; the small geographic size of Lebanon and difficulty of remaining anonymous; ISIS's genocide against Christians; and the Applicant's wife's testimony on the prospects of fleeing internally.

[43] The Applicant submits that he tried to distance himself from ISIS until he could find a way of seeking permanent safety in Canada. The Applicant argues that given the circumstances, he made immediate steps to leave the country at his earliest opportunity. I am not persuaded by

the Applicant's position. In my view, the Applicant did have a safe avenue of escape, but did not employ it.

[44] The Respondent submits that the RAD performed a detailed and contextual analysis of the evidence and properly assessed evidence relevant to the determination of the Applicant's voluntariness and claim of duress. The factors underlying the claim of duress included: the extent of threats made against the Applicant; whether the Applicant acted to avoid this threat; and whether the Applicant had a safe avenue of escape.

[45] As the Respondent correctly notes, the Applicant testified that he was never physically harmed or subject to threats from ISIS. The Applicant did not show much resistance to working for ISIS even when he "realized" the identity of the group, namely ISIS/Da'esh. It is only under the direct threat of Hezbollah that the Applicant tried to then find Abu Mohamad in hopes of disassociating himself from the organization. Prior to Hezbollah's involvement, it is unclear whether the Applicant felt the need to dissociate himself or flee from ISIS—his lucrative income source.

[46] Although the Applicant began to make excuses to avoid working for ISIS, he made no attempts to flee from ISIS. He had the freedom to go about his daily activities, and was not being held captive by ISIS. The RAD notes the RPD's findings that the Applicant also had the means to go live with family members in Beirut or Tripoli as there were no roadblocks, he owned two vehicles, and he had the financial resources. It is difficult to accept that someone who had the immediate resources to leave his town would stay put while being "coerced" to

work for a terrorist organization such as ISIS/Da'esh. Desperate times call for desperate measures, but the Applicant did not act on anything because there was nothing desperate about his situation—he was fixing vehicles for ISIS and earning more money. He simply stayed put in the comforts of his own home. The RAD further notes:

[...] I have considered whether the [Applicant] continued to work with ISIS on the belief that there existed an implied threat of death or bodily harm from ISIS if he did not comply.

After reviewing the evidence, I cannot give any weight to this defense because the [Applicant] continued to remain in his home knowing that ISIS would return whenever they needed him to repair their cars, even though he had a safe avenue of escape. In fact, when he finally left Zahle in mid-May 2015, he simply drove his car to Beirut without difficulty where he stayed with extended family until he finalized his Canadian visa.

[47] The Applicant's counsel submitted during the hearing that the fact the Applicant was able to drive to Beirut to his in-laws without facing any roadblocks and stay there for a week does not equate to having a permanent safe solution for his escape. The Applicant's counsel noted that the Applicant was in hiding, and purchasing and cancelling flight tickets each day in anticipation of their Canadian visa being issued.

[48] During the hearing, the Court brought into question as to why the Applicant had not gone into hiding when he realized that ISIS knew of his address. The Applicant's counsel responded the Applicant had stayed home until he was able to secure a safe location, and noted that Hezbollah became involved soon after. Given the reach of Hezbollah throughout the country, the Applicant did not believe he could flee from the reach of Hezbollah.

[49] However, the fact of the matter is that the Applicant had an earlier chance to remove himself safely from his hometown and at least temporarily stay with family members in Beirut or Tripoli until he could figure out a permanent solution for himself, but chose not to act until many weeks later. Even after the third visit to the hangar, when the Applicant allegedly realized that he had been working for ISIS, he did not act to extricate himself from the circumstances. Some time between the initial trips to the hangar and before the subsequent involvement of Hezbollah, the Applicant could have made the trip north to his brother's home where he believed ISIS did not have influence, but did not do so.

[50] As noted above, ISIS was not holding the Applicant captive, and the Applicant had the means to go to a different location without interference. There is no evidence that ISIS was tracking his daily movements. The Applicant had a safe avenue of escape available to him before circumstances escalated with the involvement of Hezbollah, and the chance to stop working for ISIS, but he did not escape.

[51] Based on the evidence, it was reasonable for the RAD to find that the Applicant's participation in ISIS was voluntary and that he did not establish a defence of duress.

C. *Consideration of Ms. Ajaj's Testimony*

[52] The Applicant submits that the RAD did not consider the testimony of the Applicant's wife. Ms. Ajaj's testimony was found to be credible by the RPD. The Applicant argues the RAD failed to consider Ms. Ajaj's testimony that the Applicant did not conclude the group to be ISIS on his first visit, and that he was forced to return to work for ISIS.

[53] Conversely, the Respondent submits there is no indication that the RAD did not account for Ms. Ajaj's testimony. Ms. Ajaj had testified as to the Applicant's conclusions of ISIS based on many observations, and the RAD assessed her testimony in light of the whole of the evidence. Furthermore, the Respondent argues the Applicant is asking this Court to reweigh the evidence. I agree with the Respondent that the Applicant's disagreement with the weight of the evidence against the RAD's findings is not an error and is not permissible upon judicial review. The RAD may arrive at a reasonable conclusion on the evidence before it.

VI. **Certified Question**

[54] Counsel for each party was asked if there were any questions requiring certification. They each stated that there were no questions for certification and I concur.

VII. **Conclusion**

[55] The RAD Decision is reasonable and does not warrant this Court's intervention. Therefore, this application for judicial review is dismissed.

**JUDGMENT in IMM-421-19**

**THIS COURT'S JUDGMENT is that:**

1. The Application for judicial review is dismissed.
2. There is no question to certify.

"Shirzad A.  
\_\_\_\_\_  
Judge

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

**DOCKET:** IMM-421-19

**STYLE OF CAUSE:** BOUTROS MASSROUA V THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** SEPTEMBER 23, 2019

**JUDGMENT AND REASONS:** AHMED J.

**DATED:** DECEMBER 3, 2019

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