Federal Court  Cour fédérale

Date: 20200128

Docket: IMM-4362-19

Citation: 2020 FC 153

Vancouver, British Columbia, January 28, 2020

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

RAGHAD MAJID YAKOB ALKHOURY
AND JUDE SINAN GEORGE

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Raghad Alkhoury, the Principal Applicant [PA] in this matter, seeks judicial review of a decision of the Refugee Protection Division (RPD) that dismissed her refugee claim, as well as that of her son, Jude George, because it found that she had an internal flight alternative (IFA) in the city of Dohuk, in the Kurdistan region of Iraq.

[2] The PA claims that the RPD decision should be overturned because it failed to take into account the full basis of her claim of refugee status, it did not analyze the situation in the IFA

from the perspective that she was an internally displaced person (IDP), and because the RPD denied her procedural fairness by not indicating it was specifically considering the city of Dohuk as an IFA, thus denying her the opportunity to lead evidence or make submissions regarding whether it was a safe place for her and her son.

[3] For the reasons set out below, I am dismissing this application.

[4] The relevant facts of this case are not in dispute, and can be summarized quickly. This will be followed by an analysis of the arguments advanced by the PA against the RPD decision. At the outset, it should be noted that this decision involves a consideration of whether the RPD decision was reasonable at the time that it was made. The situation has evolved and continues to evolve in Iraq, and while that may be relevant to any potential future decisions about the removal of the Applicants, it does not affect the review of the RPD decision.

[5] The PA was born in Iraq, and lived there for most of her life. She is a Syriac Orthodox Christian, and she says that she and her family faced many experiences of threats and harassment because of their religious beliefs while they lived in Mosul. These experiences caused them to move to the city of Dohuk, in the Kurdistan region of Iraq, in 2007. The PA left Iraq to pursue a Masters degree in Lebanon from 2008 until 2011. When she returned to Dohuk in 2011, she started to work at SALT, a non-governmental organization that assists Christians. The PA wrote reports about the persecution of Christians and visited displaced persons' camps; she also went to other countries to speak about the ongoing discrimination against Christians in Iraq. In 2013, she moved to Erbil to continue her work.

[6] In 2017, the PA married a man working in Erbil; her husband has Dutch citizenship. Following more threats against her, and in particular, one threat that happened while she was pregnant, the PA decided to leave Iraq and she moved to the United States, where her son was born. Her husband was unable to get a visa to the United States, so instead he came to Canada. In September 2018, the PA and her son also came to Canada, and claimed refugee status.

[7] The RPD decision deals with several issues associated with this history, and the fact that the PA could have claimed refugee status elsewhere. These issues are no longer relevant, and so I will not address them further. The RPD found the PA to be credible and to have presented a reasonable explanation for her fear of persecution as a Christian living in Iraq.

[8] However, the RPD found that the documentary evidence showed that religious persecution did not occur in the Kurdistan region of Iraq. It noted that Christians from Iraq have typically fled to Kurdistan to seek safety from the persecution they faced elsewhere in the country. The PA had in fact done this when she moved from Mosul to Dohuk in 2007. She was therefore familiar with that city. Although discrimination against Christians did exist in Dohuk, it did not rise to the level of persecution. In the end, the RPD dismissed the refugee claim because it found that the PA could have escaped the persecution and discrimination she faced as a Christian in Iraq by relocating to Dohuk.

[9] The determinative issues in this case are: (i) whether the RPD denied the PA procedural fairness by failing to indicate that it was specifically considering Dohuk as an IFA, thus denying her the opportunity to address this during the hearing; and (ii) whether the RPD’s analysis of the IFA issue was reasonable in the circumstances of this particular case.

I. Did the RPD breach procedural fairness by failing to identify a specific city as an IFA?

[10] In examining questions of procedural fairness, the approach aligns most closely with a correctness standard of review. In reality, I must determine "(w)hether the procedure was fair having regard to all of the circumstances." (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

[11] The PA points to case-law in which it was found that the RPD acted unfairly by failing to give notice to the applicant of the particular area of the country it was looking at as a potential IFA, or by making vague findings regarding the area in the country where the person could take refuge: *Valdez Mendoza v Canada (Citizenship and Immigration)*, 2008 FC 387 at paras 17-18. On the other hand, the Respondent points to *Navarro Linares v Canada (Citizenship and Immigration)*, 2010 FC 1250 at paras 37-43, in which the Court found that an applicant could not complain about a determination that a place where they had previously lived in safety was, in fact, an IFA.

[12] Issues of procedural fairness are inherently fact-based. The question is whether, in light of all of the circumstances, the person was treated fairly. Usually this involves consideration of whether the person had reasonable notice of the key issues in question, and whether they had a fair opportunity to make their case.

[13] In this case, I am not persuaded that the PA was denied procedural fairness. First, it is important to recall that the question of whether the refugee claimant had an IFA is always an issue in a refugee hearing. It is integral to the determination of whether the person needs the last

refuge that the *Refugee Convention* was meant to provide (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689). This is part of the definition of refugee as reflected in Canadian law through the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. Second, it is important to mention that the PA was represented by counsel at the hearing.

[14] I agree with the PA that an IFA determination is significant because of its impact on the refugee claimant. The IFA finding imposed a significant onus on her to demonstrate through "actual and concrete evidence" that the conditions in Dohuk would jeopardize her "life and safety" (*Ranganathan v Canada (Citizenship and Immigration)* [2001] 2 FC 164 at para 15). Thus, the RPD had to ensure that the PA was aware that IFA was an issue, and had to identify it with sufficient precision so that the hearing would be fair.

[15] A review of the transcripts of the hearing makes clear that the RPD indicated at the outset that IFA was an issue. It also asked the PA a series of questions about a potential return to Iraq, and in particular the possibility of going back to Dohuk. These questions were direct and specific, and were clearly directed to the question of whether that city could constitute an IFA for the PA. The RPD asked her: "what problems would you face in Dohuk?" and "are there any other reason(s) you could not relocate to Dohuk?" Given her history, as outlined above, and this line of questioning, the PA cannot reasonably have been taken by surprise that the IFA analysis included the city of Dohuk. Further, the PA's counsel had an opportunity to pursue this at the hearing, either by further questioning, leading further evidence, making submissions, or by requesting the opportunity to lead further evidence or make further submissions following the hearing.

[16] In light of this, I am satisfied that the overall procedure was fair.

II. Was the IFA analysis reasonable?

[17] The PA claims that the RPD's analysis of the IFA issue was unreasonable because it ignored relevant evidence about the treatment of internally displaced persons, and it failed to consider her full profile as a Christian who was an advocate against religious persecution.

[18] The standard of review for such determinations was previously determined to be reasonableness, since it is a question of mixed fact and law within the RPD's expertise (*Singh v Canada (Citizenship and Immigration)*, 2017 FC 719 at para 9). In light of the recent decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], this continues to be the standard that should apply (see *Cruz v Canada (Citizenship and Immigration)*, 2020 FC 22 at paras 10-14).

[19] In *Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67, Justice Rowe described the attributes of a reasonable decision in the following way:

> [31] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
>
> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will

> always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).

[20] The PA submits that the RPD erred by failing to consider the entirety of her profile. The RPD found that the PA was a Christian, and it accepted that she had worked for an organization that supported Iraqi Christians. She claims that the RPD fell short, however, by failing to analyze whether she would face persecution as a religious advocate. The RPD did not explain why it failed to conduct this analysis, and therefore its decision is unreasonable.

[21] I am not persuaded by this argument. I do not find that the evidence put forward by the PA made clear that she was seeking refugee status, in part, based on the fact that she had worked for a Christian organization or had spoken out against religious persecution. The RPD cannot be faulted for failing to consider an aspect of her claim which was not expressly advanced or which did not reasonably flow from the facts. There is no evidence that she had a profile as a human rights advocate, and while that may have been a component of her job at the time, there is no evidence that she had gained a public profile or was known by authorities because of these activities. Her evidence does not establish that the PA had become known or would be perceived to be a human rights advocate.

[22] The PA also argues that the RPD's decision is unreasonable because it did not consider the PA to be an internally displaced person within Iraq. It therefore failed to consider the

evidence that Kurdistan had become less welcoming to IDPs. The PA submits that she is not asking the Court to re-weigh the evidence, but rather to find that the RPD's analysis does not meet the test for reasonableness set out in *Vavilov*. By failing to consider this aspect of her claim and therefore ignoring relevant evidence in the record, the RPD's decision is neither "justified" nor "justifiable" and therefore it must be found to be unreasonable.

[23] In its consideration of whether Dohuk was a reasonable IFA, the RPD stated: "Also, the claimant is not an Internally Displaced Person (IDP) as traditionally defined in that she was not forced to flee her home in one region of Iraq and move to another due to the conflict. Rather, she would be relocating from Canada. There is not sufficient evidence to indicate that she would be forced to live in a refugee camp as opposed to finding her own housing" (at para 32). It went on to note the documentary evidence that indicated that IDPs in Kurdistan were better off than those who went elsewhere in Iraq. Further, the RPD found that the evidence showed that while Christians do face some economic disadvantages and discrimination in Kurdistan, they have access to housing, health care and employment.

[24] I agree with the PA that the RPD's analysis of whether she should be viewed as an IDP is flawed. The evidence clearly showed that the PA and her family had fled Mosul for Dohuk because of the increasing mistreatment they faced as Christians. The PA had moved to Kurdistan, where she indicated she faced continued exclusion and mistreatment because of her perceived ethnicity and her religion. She was required to renew her residency on a regular basis, which demonstrated that her situation was not permanent. Furthermore, she testified that her other family members who had also fled to Kurdistan had subsequently left.

[25] However, this in itself does not render the decision unreasonable. Although the RPD did not use the term internally displaced person, it did not ignore relevant evidence about the PA's status in Kurdistan, and its finding that she would not be forced to live in a displaced persons camp is based on the evidence. This is consistent with the jurisprudence (see, for example, *Abdillahi v Canada (Citizenship and Immigration)*, 2015 FC 1202; *Quebrada Batero v Canada (Citizenship and Immigration)*, 2017 FC 988 at paras 15-16; *Barragan Gonzalez v Canada (Citizenship and Immigration)*, 2015 FC 502 at paras 49-53).

[26] The RPD considered the documentary evidence, including reports dating from 2018 and 2019 that indicated that Kurdistan in general, and Dohuk in particular, continued to offer entry to displaced Christians from elsewhere in Iraq, and that while such persons faced some discrimination, they no longer required a residency permit or a sponsor to enter into or live in the region. Overall, the RPD's analysis of the documentary evidence was that the situation in Dohuk was secure for Christians and that the kind of discrimination they faced did not rise to the level of persecution or put them at risk of harm.

[27] The PA points to evidence in the record that contradicts this claim, but I am not persuaded that the decision should be overturned because the RPD did not deal specifically with these references. A review of the documents cited by the PA reveals that the situation in Kurdistan for IDPs, including Christians, has evolved and in some respects the local population is becoming less welcoming. These reports confirm, however, that IDPs continue to have access to health care, social services and employment, and they are not forced to live in camps.

[28] I find that there is ample evidence in the record to support the RPD's conclusion, and its analysis does not present a one-sided or completely positive picture of the situation for Christians in Dohuk or Kurdistan. The reasoning is clear, it is based on the application of the relevant legal principles to the factual matrix before the RPD, it does not ignore key relevant evidence, and therefore the decision is reasonable within the framework set out in *Vavilov*.

[29] A final question is whether the IFA analysis is reasonable in light of the treatment of the PA's personal history. As noted earlier, the key finding of the RPD was that the PA had an IFA in "places such as Dohuk." It based its conclusion in part on the documentary evidence, and in part on the fact that the PA had previously sought to escape religious persecution in the city of Mosul by moving to Dohuk. The difficulty however, is that the RPD relied on the PA's experience from many years before, yet at the same time it rejected documentary evidence submitted by the PA that discussed violence against Christians because it was from 2012 and was therefore "dated".

[30] The problem with this line of reasoning is obvious from the history outlined above. The PA had fled Mosul and moved to Dohuk in 2007, and had then lived there from 2011 until 2013, when she moved to Erbil. It is not at all clear how the RPD's analysis of the situation the PA would face if she went back to Dohuk could be based on her experience so long ago.

[31] One cannot criticize the RPD for rejecting dated documentary evidence, given how much the situation has changed in Iraq in the recent past. It is, however, not reasonable for the RPD to base its conclusion on the fact that the PA had lived in Dohuk during exactly the same time period as that addressed in the documentary evidence it rejected as being "dated".

[32] While I agree that this aspect of the RPDs decision is not justified, I do not find it to be sufficiently central or significant to make the decision unreasonable (*Vavilov*, at para 100). The RPD notes that the PA was familiar with Dohuk because she had lived there previously. It went on to analyze the situation in that city, and more generally in Kurdistan, based on more recent documentary evidence. Its conclusion that Dohuk would be an IFA for the PA was not based on her prior experience or evidence which was dated. I find the RPD's analysis to be reasonable, given the context of a country that was then – and is still – torn by war and strife.

[33] Despite the able submissions of counsel for the Applicants, I am unable to find that the decision is unreasonable. For these reasons, the application for judicial review is dismissed.

[34] There is no question of general importance for certification.

JUDGMENT in IMM-4362-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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