Federal Court  Cour fédérale

Date: 20200403

Docket: IMM-6190-18

Citation: 2020 FC 487

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, April 3, 2020

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

ADNAN EL HADDAD
CAROLINE EL HADDAD
ELIE EL HADDAD
SALIM EL HADDAD
CAMILLE AVRAHAM EL HADDAD

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The applicants are seeking judicial review of a November 26, 2018, decision of the Refugee Protection Division (RPD) rejecting their refugee claim. The applicants are members of

the same family: Adnan El Haddad, the principal applicant; his spouse, Caroline El Haddad; their adult sons, Salim El Haddad and Elie El Haddad; and their minor son, Camille Avraham El Haddad. They are citizens of Lebanon and Israel, with the exception of Camille, who is an Israeli citizen only.

[2] The applicants arrived in Canada from Israel on July 14, 2009, and claimed refugee status the same day. Unfortunately, for a variety of reasons, the hearing for their claim did not take place until November 14, 2018, having been postponed more than once. The RPD rejected their claim on November 26, 2018.

[3] The applicants seek judicial review of that decision. For the reasons that follow, the application for judicial review is dismissed.

II. Background

[4] The applicants allege a fear of returning to either Lebanon or Israel. The principal applicant's spouse and sons base their claims on his, with additional fears specific to their personal situations.

[5] The principal applicant claims to have received death threats from Hezbollah and the Lebanese government for collaborating with the Israeli secret service and having joined the South Lebanon Army (SLA). The principal applicant states that he was a member of the SLA from 1987 to 1990. He fled Lebanon for Switzerland in 1990, where he tried unsuccessfully to obtain refugee status. He returned to Lebanon in 1993, and states that he rejoined the SLA in 1995, for a few years.

[6] In 2000, the applicant was threatened, and he moved to Israel with his wife and two sons. A third son was born in Israel, and the family obtained Israeli citizenship. The family had no difficulties until 2008. The principal applicant then learned that Hezbollah was part of the Lebanese government and that it was looking for people who had been involved with the SLA in the 1980s and 1990s in order to interrogate or imprison them for collaborating with the Israeli army. The principal applicant also states that he was afraid for his eldest son, as he would be called up for compulsory military service in the Israeli army. He further claims to fear Israel and Israeli society because of his Arab origins and his Christian religion.

[7] The sons of the principal applicant fear returning to Israel because of the compulsory military service for men between the ages of 18 and 54. They also express fears due to their Arab origins, their father's involvement in the SLA, the security situation in Israel and the role of the military. In addition, during the hearing, the sons added a fear of returning to Israel because of their religion; they are Christian, and they are afraid of not being able to practise their religion.

[8] The applicants' claim for refugee protection was heard in part in September 2012, but after a few hours the member ended the hearing because the applicants reported a problem with the translation. The member indicated that a *de novo* hearing would be scheduled, but for various reasons it did not take place until August 28, 2018, and November 14, 2018.

[9] On March 2, 2012, the Minister's representative submitted a notice of intervention and statement of facts and law. The Minister argued that the principal applicant should be excluded from the definition of refugee under the *Convention Relating to the Status of Refugees*, July 28, 1951, 189 UNTS 137 (Convention) by virtue of Articles 1F(a) and (c) thereof, on the basis of his membership in the SLA. The representative questioned the principal applicant at the hearing, but

did not seek application of the exclusion clause under Article 1F of the Convention as he was unable to meet the burden set out by the Supreme Court in *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40. Consequently, the RPD did not deal with this issue.

[10] The RPD found the testimony of the principal applicant to be credible with respect to his fear of returning to Lebanon. Given the objective documentation regarding human rights in Lebanon, and the principal applicant's involvement in the SLA, the RPD found that there was a reasonable chance of persecution should he return to that country.

[11] As all family members are Israeli citizens, the RPD also considered the applicants' fears regarding a return to Israel. The RPD found that their fears of persecution based on their Arab origins were not supported by the evidence. The principal applicant stated that he had not been discriminated against on the basis of his origins, and the documentary evidence indicates that discrimination that exists in Israel does not amount to persecution.

[12] The RPD found two major problems with respect to the fear alleged by the sons. First, they made a significant addition to their original narrative when they testified before the RPD. They claimed a fear related to being Christian in Israel, but they had not mentioned this fear in their Personal Information Forms (PIFs). The RPD found that this addition of a new ground of persecution undermined their credibility. Moreover, the objective documentation did not indicate that Christians are persecuted in Israel.

[13] Second, the sons justified their fear of returning to Israel with the existence of compulsory military service. The RPD rejected this argument because the law on compulsory military service is one of general application and therefore does not constitute persecution of the

applicants. Furthermore, the RPD noted that there is an option for alternative service, but that the applicants had not explored it.

[14] Finally, the RPD found that the applicants had not established that they could not be protected in Israel; the objective documentation indicates that Israel is able to protect its citizens.

[15] For all of these reasons, the RPD rejected the applicants' claims for refugee protection.

III. Issues and standard of review

[16] The issues are as follows:

A. Did the RPD commit a breach of procedural fairness in not limiting the Minister's participation in the hearing?

B. Was the RPD's decision unreasonable?

[17] The Federal Court of Appeal recently explained in *Canadian Pacific Railway Company v Canada (Attorney General)* 2018 FCA 69 [*Canadian Pacific*] how the issue of procedural fairness should be approached. "According to this decision, the Court does not apply a standard of review to a question of procedural fairness: it must consider rather whether the process followed was fair and just, paying attention to the nature of the rights at stake and the consequences for affected individuals (Canadian Pacific at para 54)" (*Farrier v Canada (Attorney General*), 2018 FC 1190 at para 29). The Court writes that, "even though there is awkwardness in the use of the terminology, this reviewing exercise is 'best reflected in the correctness standard' even though, strictly speaking, no standard of review is being applied" (*Canadian Pacific* at para 54).

[18] In reviewing the merits of a decision, the standard of review is reasonableness. To be reasonable, a decision must be based on internally coherent reasoning and be justified in light of the relevant legal and factual constraints: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 101 [*Vavilov*]; *Canada Post Corporation v Canadian Union of Postal Workers*, 2019 SCC 67 at paras 29–33 *[Canada Post Corporation*]. The burden is on the party challenging the decision to satisfy the court "that any shortcomings or flaws relied on . . . are sufficiently central or significant to render the decision unreasonable" (*Canada Post Corporation* at para 33, citing *Vavilov* at para 100).

IV. Analysis

A. *Did the RPD commit a breach of procedural fairness in not limiting the Minister's participation in the hearing?*

[19] The applicants claim that there was a breach of procedural fairness because the RPD did not limit the participation of the Minister's representative in the hearing. The notice of intervention filed by the Minister's representative dealt solely with the exclusion of the principal applicant on the basis of Articles 1F(a) and (c) of the Convention. At the hearing, the Minister's representative indicated that he would withdraw his arguments for the application of the exclusion clauses. The Minister did not inform the RPD or the applicants that he intended to participate in the hearing in order to attack the applicants' credibility with regard to their fear of returning to Lebanon or Israel, and no new notice of intervention was submitted. Despite this, the RPD allowed the Minister's representative to participate in the hearing on other issues relating to the applicants' inclusion, notably, their credibility.

[20] The applicants assert that the participation of the Minister's representative without notice influenced the RPD's decision. Consequently, they claim that the RPD breached procedural fairness.

[21] The respondent submits that the Minister had the right to intervene with respect to inclusion because paragraph 170(e) of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [IRPA] requires the RPD to allow refugee claimants and the Minister to present evidence, question witnesses and make representations:

Proceedings	**Fonctionnement**
170 The Refugee Protection Division, in any proceeding before it,	**170** Dans toute affaire dont elle est saisie, la Section de la protection des réfugiés :
. . .	. . .
(e) must give the person and the Minister a reasonable opportunity to present evidence, question witnesses and make representations;	**e)** donne à la personne en cause et au ministre la possibilité de produire des éléments de preuve, d'interroger des témoins et de présenter des observations;
. . .	. . .

[22] The respondent submits that no principle of procedural fairness was breached in allowing the Minister's representative to make submissions regarding the applicants' lack of credibility.

[23] I agree with the respondent. There is no breach of procedural fairness in this case because the RPD complied with paragraph 170(e) of the IRPA. In addition, in *Canada (Citizenship and Immigration) v Atabaki*, 2007 FC 1170, the Court overturned an RPD decision in which the member had limited the participation of the Minister's representative. The court writes that the "wording of [paragraph 170(e)] is clear; it speaks to process and not issues and applies to both the Minister and the claimant" (at para 31).

[24] Given that claimants' credibility is always at issue in these matters, that the applicants were represented by counsel at the hearing, and that the Minister only intervened to make submissions at the end of the hearing and did not question the applicants, I am not satisfied that there has been a breach of procedural fairness in this case.

B. *Was the RPD's decision unreasonable?*

(1) Position of the parties

[25] The applicants argue that the RPD erred in its assessment of the evidence pertaining to three issues. First, the principal applicant submitted that he fears returning to Israel because Hezbollah may identify him as a former collaborator given that he was a member of the SLA. The RPD completely failed to analyze this ground. The applicants claim that this is a significant error, which in itself warrants the Court's intervention.

[26] Second, the RPD erred with respect to the applicants' fear of compulsory military service in Israel. The RPD's conclusion that the sons could be granted an exemption from military service is speculative and unsupported by the evidence. Although the documentation refers to the possibility of exemption, there is nothing in the evidence to show that the applicants would meet the conditions for exemption. Moreover, the RPD ignored the applicants' personal circumstances: they are of Arab origin, they are Lebanese and Christian, and their father worked with the SLA. It is for these reasons that the applicants fear and refuse to perform military service in Israel. The RPD ignored this evidence.

[27] Finally, the RPD erred in its treatment of the applicants' fears of returning to Israel on the basis of their Arab origins and religion. With respect to their fears based on their Arab origins, the RPD concluded as follows:

> It should therefore be noted that, first, if discrimination exists, it has not affected the claimants and nothing in the available evidence indicates that it amounted to persecution and, second, their desire to remain in Canada after nine years of waiting does not replace the requirements of the law with regard to granting refugee status.

[28] The applicants submit that this is an error of law because a refugee claimant does not have to prove past persecution in order to be recognized as a refugee in Canada. The definition of refugee under the Convention and the IRPA is forward looking (*Mohebbi v Canada (Citizenship and Immigration)*, 2014 FC 182). Contrary to the RPD's contention, the nine years spent in Canada since leaving Israel are relevant to the evolving situation in that country with respect to the treatment of Arabs. The applicants' fear is corroborated by the documentary evidence on the record.

[29] The RPD further erred in dismissing their fears of returning because of their religion. The applicants are Christian. They filled out their PIFs when they arrived in Canada in 2009. With the passage of time and the changing situation in Israel, the grounds for their fears have also changed. The RPD erred in concluding that the addition of this ground undermines their credibility. This is unreasonable given that the RPD cannot fault the applicants for the delay in this case.

[30] The respondent submits that the decision is reasonable given the applicants' lack of credibility as well as the documentary evidence.

[31] With respect to their fear of persecution by Hezbollah, the respondent observes that the group is only present in Lebanon and that the applicants are citizens of Israel. The question is therefore whether the applicants would benefit from Israel's protection if they were to face persecution by members and supporters of Hezbollah on Israeli territory. The RPD looked at this question, and its conclusion that Israel is able to protect the applicants is supported by the documentary evidence.

[32] The allegation that the RPD failed to take into consideration the fact that the sons are of Arab origin in analyzing their risk of being forced to perform compulsory military service is not supported by the objective documentary evidence. Moreover, the RPD did not fail to analyze the prospective risk associated with that fear; the fact that the RPD noted that the applicants had not been discriminated against in the past is not an indication that the RPD failed to consider the prospective risk. The RPD's conclusion that there is no risk of facing discrimination that amounts to persecution is also based on the objective evidence on the record.

[33] The fact that the applicants disagree with the assessment of the evidence and the weight given to their testimony does not warrant the Court's intervention. In this case, the decision is reasonable.

(2) Discussion

[34] The starting point is the framework set out in *Vavilov*, according to which "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. The reasonableness standard requires that a reviewing court defer to such a decision" (at para 85).

[35] I am not satisfied that the decision is unreasonable. The RPD's decision in this case is justified in respect of the facts and law.

[36] With respect to the principal applicant's fears regarding a return to Israel, the RPD dealt with the key issue of whether he would be protected by Israel if the risk of persecution by Hezbollah should arise. The principal applicant referred to this fear in his PIF as well as in his testimony, but he did not provide specifics or examples of the risk or of situations in which Israel has failed to protect its citizens. Rather, he spoke in general terms about the lack of security and criminality in the country. The RPD cannot be faulted for not having dealt with the issue in more detail given the evidence in this case.

[37] With respect to the sons' fears, the RPD noted that they added their religion as a ground only in their testimony, and that this undermined their credibility. The applicants argue that this is unreasonable given that their initial narratives were completed upon their arrival in Canada, and that the omissions in their PIFs were due to fatigue. In addition, they note that the situation for Christians in Israel evolved over the nine years that they waited for their refugee claims to be heard. The RPD rejected their explanations, noting that the applicants had had nine years to correct their forms, and that their fears were disproved by the objective evidence on the record. This conclusion is justified in this case given the facts. I would add that, at the outset of their testimony at the hearing, each son testified that his PIF was complete, and none added the ground of religion at that time. The RPD's finding as to the credibility of the applicants is due considerable deference, and, in the circumstances of this case, it is justified (*Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319).

[38] With respect to the fear of returning to Israel in relation to compulsory military service, the RPD found that the applicants did not meet their burden of establishing a serious possibility of persecution. The RPD noted that the applicants must establish that a law of general application, such as the Israeli law imposing compulsory military service, "was discriminatory in their case to the point that it could be considered persecution". Since they had not informed themselves as to the possibility of meeting the conditions for alternative service in lieu of military service and had not established that they had sufficient conviction to show conscientious objection, the RPD found that they had not demonstrated the reasonableness of their fear of military service. This conclusion is justified in respect of the facts and law.

[39] Finally, with respect to the treatment of the applicants' fear of persecution in Israel as a result of their Arab origins, I am not persuaded by the argument that the RPD erred in law. The RPD noted that the objective evidence on the record demonstrates that there is discrimination against persons of Arab origin in Israel, but concluded that "nothing in the available evidence indicates that [the discrimination] amounted to persecution". This is a reasonable conclusion. The RPD did not base this conclusion solely on the testimony of the principal applicant and did not err in noting his testimony to the effect that he had not been discriminated against during the years he lived in Israel. As the analysis must be forward looking, it is not unreasonable to consider a refugee claimant's testimony about his experience even if it is not a necessary element in the analysis.

V. Conclusion

[40] For all these reasons, the application for judicial review is dismissed.

[41] There is no question of general importance to certify.

JUDGMENT in IMM-6190-18

THE COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. There is no question of general importance to certify.

3. There is no question of general importance to be certified.

"William F. Pentney"
Judge

Certified true translation
This 30th day of April 2020

Margarita Gorbounova, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

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