Federal Court  Cour fédérale

Date: 20210112

Docket: IMM-7789-19

Citation: 2021 FC 40

[ENGLISH TRANSLATION]

Ottawa, Ontario, January 12, 2021

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

OBAIDA MANSOUR
MOHAMED AHMED
MAREN AHMED
AHMED AHMED

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of the Refugee Appeal Division [RAD] dated November 29, 2019. Pursuant to paragraph 111(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], the RAD confirmed the July 18, 2019, decision

of the Refugee Protection Division [RPD] that the applicant [Ms. Mansour] and her children [collectively, the applicants] were neither Convention refugees nor persons in need of protection within the meaning of sections 96 and 97 of the IRPA.

[2] Ms. Mansour argues that the RAD erred on the issue of internal flight alternative [IFA]. She contends that the RAD failed to adequately assess her personal situation and the risks of female circumcision that she and her daughter would face upon their return to Egypt.

[3] For the reasons that follow, I dismiss the application for judicial review.

II. Facts

[4] Ms. Mansour is an Egyptian citizen born in 1989. She is accompanied by her minor children born in Egypt: her eldest son (born in 2009) and daughter (born in 2011), as well as her youngest son born in 2014 during a first trip to the United States and therefore a U.S. citizen.

[5] Ms. Mansour was born in Egypt and, before leaving in 2016, she had lived in Cairo all her life. According to the marriage certificate and divorce declaration, she married the father of the children on October 26, 2007, although she stated that she had married in 2008. However, this apparent contradiction is not relevant for our purposes.

[6] Neither Ms. Mansour nor her daughter have undergone female circumcision. Ms. Mansour states that in March 2016, when her daughter was about five years old, she began to face pressure from her husband's family to have her daughter circumcised, that is, to undergo

a clitoridectomy. Ms. Mansour explained that some families in poor and rural areas of Egypt believe the procedure is necessary to promote the purity and chastity of young girls. Evidence shows, on the contrary, that the procedure has long-term harmful effects on young women, and neither Ms. Mansour nor her husband wanted such a procedure. However, on April 3, 2016, due to alleged family pressure, Ms. Mansour and her husband decided to divorce despite, it appears, having a genuine wish to remain together. Ms. Mansour's ex-husband reportedly remarried the same month.

[7] In July 2016, Ms. Mansour's former in-laws resumed their pressure campaign. They told her that it was a good time to proceed with the circumcision and that the procedure would save the family's honour, given that Ms. Mansour was now a divorced mother. The former in-laws also threatened to take Ms. Mansour's children away from her.

[8] Ms. Mansour then decided to leave Egypt with her children on August 29, 2016, going to the United States, where she claimed asylum. While in the United States, Ms. Mansour and her children were financially supported by her former husband. After unsuccessfully waiting for a hearing on her claim for asylum in the United States and fearing deportation to Egypt, on May 7, 2018, almost two years later, Ms. Mansour and her children entered Canada; they filed their refugee protection claims on May 18, 2018.

[9] The RPD hearing was held on July 11, 2019, and the claim for refugee protection was rejected on July 18, 2019.

[10] Although the RPD was not entirely convinced of the true reason for the divorce, particularly given that the husband had remarried in the same month, the RPD nonetheless found that while the uncertainty in Ms. Mansour's answers regarding the reason for the divorce weakened her testimony, these weaknesses were insufficient to undermine her credibility. On the basis of the presumption of truthfulness and her otherwise consistent account, the RPD found Ms. Mansour's allegations of persecution to be credible.

[11] However, the RPD found that the family would be able to live in safety, without a serious possibility of persecution or cruel treatment within the meaning of section 97 of the IRPA, by moving to Alexandria, and that there was insufficient evidence to establish that the former in-laws would be able to locate them anywhere in Egypt, and specifically in Alexandria.

[12] Moreover, according to the RPD, the evidence confirmed that relocation to Alexandria was possible and that it was reasonable, given the applicants' circumstances, that they could live there without facing a serious possibility of persecution, despite the difficulties faced by single women with minor children in Egypt.

[13] The RPD noted that the documentary evidence confirmed that individuals who fear persons other than state agents are likely to be able to relocate elsewhere in Egypt. The RPD found that although women do not enjoy the same rights and opportunities as men, particularly in the workplace, even if the constitution provides for equal rights and freedoms, the documentary evidence indicates that there are no barriers to resettlement for single women and that "urban middle-class women" are able to find work and housing more easily.

III. The impugned decision

[14] Before the RAD, the applicants argued that the RPD erred in its analysis of the IFA in three ways: (1) it took a retrospective rather than prospective perspective of the risks faced by Ms. Mansour and her children, (2) it made a selective reading of the objective documentary evidence, and (3) it did not question Ms. Mansour about her employment history.

[15] The RAD confirmed the RPD's determination that Ms. Mansour and her children had an IFA in Alexandria.

[16] With respect to the first prong of the IFA test, the RAD found that Ms. Mansour had not demonstrated, on a balance of probabilities, that her former in-laws could or would be able to locate her in Alexandria. In reaching this conclusion, the RAD relied, among other things, on the size of Alexandria's population, the distance between Alexandria and Cairo and Port Said, where Ms. Mansour's former in-laws live, and the fact that the former in-laws do not have the resources or contacts to locate Ms. Mansour.

[17] As for the second prong, the RAD concluded that, in light of all the circumstances, it was not objectively unreasonable for Ms. Mansour and her children to move to Alexandria. They could easily get there by plane. Ms. Mansour has no particular inability to work, and she even has a high school diploma.

[18] In addition, the RAD found that Ms. Mansour had stated at the time her passport was issued and in her divorce decree that she owned an electronics business. The RAD therefore

concluded that it was more likely than not that Ms. Mansour had an interest in the business in question, which could help her support herself and find employment, given that her youngest son would soon be going to school and that she was young and fit.

[19] After reviewing evidence that women and girls in Egypt face particular problems such as sexual harassment, gender-based discrimination and violence, the RAD concluded that Ms. Mansour had not demonstrated that she or her children would face particular difficulties for these reasons or that the harassment faced by women in Egypt would make the IFA unreasonable. The RAD noted that the burden of proof at this stage of the test was very high and that there must be conditions that would endanger the applicants' lives or safety, which had not been demonstrated in this case.

[20] On the other hand, the RAD found that the RPD had erred in failing to point out that the evidence was ambiguous with respect to the specific difficulties Ms. Mansour would face as a divorced single mother. The RAD acknowledged that Ms. Mansour, by virtue of her status as a divorced single mother, would face certain relocation difficulties.

[21] However, Ms. Mansour was born in Cairo and has always lived there. She stated that she owned a computer hardware business and that her husband had supported her while she was in the United States. These factors led the RAD to conclude that Ms. Mansour was an "urban middle-class woman" who would have a good chance of finding employment and housing.

IV. Issue

[22] Was the RAD's conclusion about an internal flight alternative in Alexandria reasonable?

V. Standard of review

[23] The parties submit that the applicable standard of review in this case is reasonableness. I agree (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]; *Mukhal v Canada (Citizenship and Immigration)*, 2020 FC 868 at para 25).

[24] In applying this standard, the reviewing court "asks 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, referring to *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paras 47 and 74; and *Catalyst Paper Corp. v North Cowichan (District)*, 2012 SCC 2, [2012] 1 SCR 5 at para 13).

VI. Analysis

[25] Ms. Mansour maintains that the RPD found her to be credible and that the RAD did not alter that finding. Aside from the RPD's conclusion regarding the reason for the divorce, I agree. The credibility of Ms. Mansour's allegations of persecution is not in dispute.

[26] In essence, the IFA's two-pronged test is based on the idea that "IFA must be sought, if it is not unreasonable to do so, in the circumstances of the individual claimant", before the

protection of a foreign country is sought (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011, [1994] 1 FC 589 at 597 (FCA) [*Thirunavukkarasu*]).

[27] This two-pronged test for IFA was recently articulated by McHaffie J. in *Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 [*Olusola*]:

> [8] To determine if a viable IFA exists, the RAD must be satisfied, on a balance of probabilities, that (1) the claimant will not be subject to persecution (on a "serious possibility" standard), or a section 97 danger or risk (on a "more likely than not" standard) in the proposed IFA; and (2) in all the circumstances, including circumstances particular to the claimant, conditions in the IFA are such that it would not be unreasonable for the claimant to seek refuge there: *Thirunavukkarasu* at pp 595–597; *Hamdan v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 643 at paras 10–12.
>
> [9] Both of these "prongs" of the test must be satisfied to conclude that a refugee claimant has a viable IFA. The threshold on the second prong of the IFA test is a high one. There must be "actual and concrete evidence" of conditions that would jeopardize the applicants' lives and safety in travelling or temporarily relocating to a safe area: *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (CA) at para 15. Once the potential for an IFA is raised, the claimant bears the onus of establishing it is not viable: *Thirunavukkarasu* at pp 594–595.
>
> [Emphasis added.]

[28] While Ms. Mansour does not specify which prong of the test she is challenging, her arguments seem to focus on the second prong, conditions that would jeopardize the applicants' lives and safety in travelling or temporarily relocating to a safe area.

[29] Ms. Mansour argues that the RAD failed to take into account the evidence in the record, including the National Documentation Package, as well as Amnesty International's report, which

notes the risks of intimidation faced by women in Egypt, particularly single women with a minor child. As a result, the RAD failed to consider in its decision aspects favourable to Ms. Mansour's position on the reasonableness of an IFA, without explaining why.

[30] In addition, Ms. Mansour argues that, as the RAD stated in its decision, the RPD acknowledged that in her form she had indicated that she had never worked, which she repeated in her testimony. However, both the RPD and the RAD indicated in their decisions that the fact that she mentioned that she owned a business was a factor that supported the possibility of her moving to Alexandria.

[31] Ms. Mansour maintains that she has never worked; just because she owns a business does not mean she worked there. The RAD's conclusion that she was part of the "urban middle-class" and that she would be able to avoid the difficulties outlined in the above documentation was erroneous. According to Ms. Mansour, this conclusion is purely hypothetical and contrary to the evidence, given that Ms. Mansour is divorced, that the divorce judgment does not provide for support, that she has little education, and that she has young children and no income.

[32] According to Ms. Mansour, this situation makes her vulnerable and creates objective conditions that are difficult to overcome in order to be able to move, since she has no income and has little chance of finding employment given her level of education, her lack of work experience and the discrimination she will face.

[33] In support of these allegations, Ms. Mansour refers to a World Bank report that states that the unemployment rate for young women is five times higher than that for young men.

[34] Ms. Mansour also mentions the number of female circumcisions in Egypt, which would make it more likely than not that her daughter would undergo such a procedure without her being able to oppose it. In support of this allegation, Ms. Mansour refers to a report that notes that there is great social pressure for girls and women in Egypt to undergo this procedure and that Egypt has the highest rate of clitoridectomy among women and girls.

[35] Finally, Ms. Mansour refers to paragraph 133 of *Vavilov* and argues that the RAD failed to provide sufficient justification for its decision. This paragraph emphasizes that the justification must be proportional to the significance of the decision for the people it affects.

[36] First, we must remember that international protection is a measure of last resort and that those who seek it must first consider whether they are able to settle elsewhere in their home country before seeking refuge in another country (*Manitas Vargas Ingrid v Canada (Citizenship and Immigration)*, 2011 FC 543 at para 14; *Brahim v Canada (Citizenship and Immigration)*, 2019 FC 503 at para 27). In addition, the burden of proof is a heavy one for establishing whether an IFA is unreasonable (*Molina v Canada (Citizenship and Immigration)*, 2016 FC 349 at para 14; *Olivares Sanchez v Canada (Citizenship and Immigration)*, 2012 FC 443 at para 22). It is not enough to show that the IFA in Alexandria was unreasonable. The burden of proof is even more onerous before the reviewing court: the applicant has to establish that the RAD's decision

was unreasonable. The reviewing court must "show deference to the RAD's assessment of these issues and its determination of whether the identified IFA is reasonable" (*Olusola* at para 6).

[37] As I have indicated, Ms. Mansour does not appear to question the RAD's findings with respect to the first prong of the IFA test.

[38] As for the second prong, I cannot accept Ms. Mansour's arguments, for the following reasons.

[39] First, I cannot share Ms. Mansour's view that the RAD disregarded the evidence that supported her position. The RAD specifically stated that the RPD erred because it did not conclude that the evidence was ambiguous on the issue of women's ease of movement in Egypt. It even referred to certain passages in the National Documentation Package, although Ms. Mansour argues that the RAD did not take this into account.

[40] It is difficult to argue in this context that the RAD failed to consider the evidence in Ms. Mansour's favour. I am not persuaded that the Amnesty International report referred to by Ms. Mansour would have led the RAD to reach a different conclusion in this case. This document adds nothing to what is already in the National Documentation Package referred to by the RAD. Moreover, even if the decision maker has not mentioned a particular piece of evidence, it is presumed that the decision maker has weighed and considered all of the evidence before him or her unless the evidence contradicts the decision maker's conclusions (*Burai v Canada (Citizenship and Immigration)*, 2020 FC 966 at para 38).

[41] I accept that the evidence indicates that Ms. Mansour has never worked. I also accept that there is no evidence to confirm that she earns any income from her interest in the electronics business. However, neither the RPD nor the RAD found that she had earned income from that business. The RPD's conclusion, confirmed by the RAD, was that her interest in this business, along with other factors, indicated that she was an "urban middle-class woman" who, based on objective evidence, was likely to find work and housing more easily if she moved to Alexandria.

[42] By the way, it should not be forgotten that Ms. Mansour's testimony was limited to the fact that she does not work and has never worked. She did not make any statements, one way or another, about her income. Given the impression that was left by the fact that she had stated being the owner of a business, if in fact she had no other source of income, she should have specifically stated this.

[43] Ms. Mansour argues that although at one point in her life, when she was at home with her family in Egypt or when she was married, she may have been an "urban middle-class woman" because she was supported by her family and husband at the time, this was no longer the case, as she is currently a single woman in Canada, who has three small children and receives government assistance.

[44] This may be the case, but Ms. Mansour's argument is not relevant. Neither the RPD nor the RAD have found that she is now middle-class. The significance of the RPD's finding that Ms. Mansour was an "urban middle-class woman," which the RAD confirmed, was that her lifelong experience in Egypt was that of an urban middle-class woman and that because of this

and other factors, she was more likely to find employment and housing in Alexandria. The question was not whether Ms. Mansour was actually working, but rather whether she could work.

[45] Not only did the RAD consider the documentation that favoured Ms. Mansour, but it also clearly explained why it was disregarding it. It was these reasons and the heavy burden of proof on Ms. Mansour, and not only the fact that Ms. Mansour was a member of the urban middle-class, that led the RAD to conclude that the applicants had not demonstrated, on a balance of probabilities, that relocating to Alexandria would be unduly harsh or objectively unreasonable in their particular circumstances.

[46] I see nothing unreasonable in this conclusion.

[47] More importantly, I find that the RAD properly analyzed the ambiguous evidence about Ms. Mansour's difficulties in relocating and that it correctly assessed the evidence about the difficulties that single women have in finding housing, employment or schooling for their children, as well as the lack of public assistance for these women. The decision appears to be the result of a reasonable weighing of the evidence that was before the decision maker.

[48] With respect to Ms. Mansour's daughter's risks of female circumcision, while I do not dispute that the rate of female circumcision in Egypt is high and that there may be significant pressure on girls and women to undergo the procedure, it was nonetheless reasonable for the

RAD to determine that the risks to Ms. Mansour's daughter were neither significant nor personalized.

[49] The statistics on female circumcision referred to by Ms. Mansour and found in the National Documentation Package are not "actual and concrete evidence" of conditions that would jeopardize the life and safety of Ms. Mansour and her daughter. The RAD's finding that this ground was not sufficient to render the IFA unreasonable does not, in my view, warrant the Court's intervention. It is well established that a "refugee protection claim cannot rely solely on the evidence found in the National Documentation Package of the country about which the fear is being raised" (*Jean v Canada* (*Citizenship and Immigration),* 2019 FC 242 at para 19).

[50] Lastly, I do not believe that the argument that the RAD decision is not sufficiently justified merits further consideration. Ms. Mansour does not specify exactly what part of the decision is not sufficiently justified, making it difficult to determine how the decision would not be consistent with the principle of justification.

[51] Ms. Mansour argues that neither the RPD nor the RAD decision suggest that any consideration was given to the impact of the decision on her and her children's dignity and safety and on her livelihood.

[52] What Ms. Mansour is seeking is a reversal of the onus of proof to overcome the conclusion that the IFA is reasonable. However, it is not for the decision maker to be concerned about how their determination as to the reasonableness of an IFA will affect the claimant. Rather,

it is up to claimants to provide “actual and concrete evidence” of conditions “that would jeopardize [their] lives and safety in travelling or temporarily relocating to a safe area” (*Ranganathan* at para 15).

[53] The requirement that reasons must reflect the impact of the decision on the individual’s rights (*Vavilov* at para 133) should not “be confused for having a different standard of reasonableness” (*Mohammed v Canada (Citizenship and Immigration),* 2020 FC 234 at para 42).

[54] In the present case, the decision of the RAD is very detailed and corresponds to the precise situation of Ms. Mansour and her children (*Vavilov* at para 133). The RAD clearly explained why the refugee protection claim was rejected.

[55] I find that the RAD decision as a whole was “transparent, intelligible and justified” (*Vavilov*). I would therefore dismiss the application for judicial review.

JUDGMENT in IMM-7789-19

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. No question is certified.

"Peter G. Pamel"
Judge

Certified true translation
Johanna Kratz, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

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