

Federal Court



Cour fédérale

Date: 20220411

Docket: IMM-7699-19

Citation: 2022 FC 520

Ottawa, Ontario, April 11, 2022

PRESENT: Madam Justice McDonald

BETWEEN:

**AHED BADER ALDIN MOHAMMAD KHIR ALHOSSINY
ZAHIR MOHD HANI WASEF ABAZEH
FARAH ZAHIR MOHAD HANI ABAZEH
HAMZEH ZAHIR MOHAD HANI ABAZEH**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants are dual citizens of Syria and Jordan. They seek judicial review of a decision of the Refugee Protection Division [RPD] of March 28, 2019, denying their refugee claim. The determinative issue for the RPD was credibility.

[2] For the reasons that follow, this judicial review is dismissed, as the decision of the RPD is reasonable.

I. Background

[3] The principal Applicant (PA), Mr. Abazeh, was born in Syria and was educated in Romania as a dental surgeon. He started a dental practice in Syria and married Ms. Alhossiny in 2004. Mr. Abazeh and his wife have two children born in 2008 and 2010.

[4] In 2012, following the outbreak of war in Syria, the family moved to Jordan to start a new life.

[5] Mr. Abazeh worked as a dentist at a clinic in Jordan. In mid-May of 2017, he started to see a new patient (Ms. Alfayez). On one occasion, Ms. Alfayez gave Mr. Abazeh a hug. The hug was witnessed by Ms. Alfayez's husband who got upset and physically assaulted Mr. Abazeh. The incident was stopped by other staff at the clinic. Afterwards, the owner of the dental clinic called Mr. Abazeh to warn him that Ms. Alfayez 's husband and family members were coming to his house.

[6] Mr. Abazeh says that he took his family to hide at his mother's home. The next morning, Mr. Abazeh called the dental clinic and was advised that Ms. Alfayez 's husband was a Police Officer and about 15 individuals had come to the clinic asking for Mr. Abazeh's address. Mr. Abazeh was advised not to come back to the clinic for his safety.

[7] On July 13, 2017, Mr. Abazeh and his family left Jordan and traveled to the United States. On August 17, 2017, they arrived in Canada and made a claim for refugee protection. The claim was heard on January 10, 2019.

II. RPD Decision

[8] The RPD found that Mr. Abazeh and Ms. Alhossiny's testimony regarding the agent of persecution was inconsistent. Mr. Abazeh stated in oral testimony that he feared persecution at the hands of the Al-Fayez clan, to which the husband of his patient belonged to. Mr. Abazeh also stated that the Al-Fayez clan is a part of a powerful tribe called the Bani Sakhr. The RPD noted that this was not mentioned in the Basis of Claim (BOC) Form where the Applicants merely alleged that they feared persecution by the police officer who attacked Mr. Abazeh at the dental clinic. When questioned about why he did not state his fear of the Al-Fayez clan or Bani Sakhr tribe specifically in his BOC, Mr. Abazeh stated that he did not remember it at that time.

[9] The issue of the use of a firearm during the attack at the dental office was also raised by the RPD, who noted that the testimony regarding the firearm belonging to the patient's husband was contradictory. At the Port of Entry (POE) interview, Ms. Alhossiny stated that the patient's husband "brandished" a firearm at Mr. Abazeh during the incident at the clinic. However, in oral testimony at the RPD hearing, Mr. Abazeh corrected his wife's statement and stated that the patient's husband did not point the gun at him, but rather, was simply carrying a gun since he was a police officer.

[10] The RPD also noted that the evidence regarding the date of the attack at the clinic was inconsistent. At the RPD hearing, Mr. Abazeh stated that the incident occurred in the “middle of the month [June]”, whereas at the POE interview, Ms. Alhossiny stated that the incident happened “15 days” before they left Jordan on July 13, 2017. This would have been about June 29, 2017.

[11] In addition, Mr. Abazeh’s testimony regarding his employment history was contradictory. He testified that he worked at the dental clinic, owned by Dr. Samer Abu Nasir, for one and a half years from 2016 until the incident in the clinic in June 2017. However, in his Schedule A form, he stated that he worked at the clinic for five years from May 2012 to August 2017. When asked about this inconsistency, Mr. Abazeh said that he misunderstood the form.

[12] The Applicants filed post-hearing evidence of a letter from the owner of the clinic. The letter stated that Mr. Abazeh had been working at the clinic from January 2016 to June 2017, and that in June 2017, a patient’s husband started beating him. The letter also confirmed that the patient’s husband later appeared at the clinic asking for Mr. Abazeh.

[13] The RPD did not assign any weight to the letter because it was dated January 14, 2017, which is six months prior to the June 2017 incident at the clinic. The RPD also noted that the letter was signed, “Dr. Samer” and did not include the writer’s surname in the signature.

[14] As a result of the above concerns, the RPD denied the refugee claim on the basis of credibility.

III. Issue and Standard of Review

[15] The parties agree that the standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]).

[16] The Applicants raise issues with the reasonableness of the credibility findings of the RPD on the following issues:

- (a) Identity of agent of persecution;
- (b) Date of attack and presence of a gun; and
- (c) Employment history.

[17] The Applicants also submit it was unreasonable for the RPD not to give any weight to their post-hearing evidence.

IV. Analysis

A. *Identity of Agent of Persecution*

[18] The Applicants argue that the RPD overemphasised minor details that were provided to be elaborative and ought not to have been relied upon to make negative credibility findings.

[19] One issue, which the Applicants' claim is a minor detail, is the identity of the agent of persecution. In their BOC, the Applicants did not identify the name of the tribe of the man who

attacked Mr. Abazeh. However, at the RPD hearing, the Applicant identified the patient's husband as part of the Al-Fayez clan who is a faction of the Bani Sakhr tribe.

[20] The attack at the dental office is the core incident which forms the foundation of the Applicants' claim for refugee protection. The identity of the agent of persecution is a key part of their claim to be at risk and in need of protection. The RPD was not satisfied that the PA would have failed to specifically identify the agent of persecution by name in the BOC. On this point, the RPD properly considered the evidence and the explanations; however, the RPD concluded that the identity was a key detail – the absence of which put the PA's credibility in issue.

[21] In the circumstances, it was reasonable for the RPD to conclude that it was a significant omission by the Applicants to not mention the name of the agent of persecution in the BOC. On judicial review, significant deference is owed to the RPD on findings of credibility.

[22] The negative credibility finding by the RPD on this issue is, therefore, reasonable.

B. *Date of Attack and Presence of a Gun*

[23] The Applicants argue that the RPD was focused on trivial details when it made a credibility finding on the lack of precision on the date of the attack at the dental office. At the hearing, the RPD asked whether the attack occurred at the "beginning, middle or the end" of the month. Mr. Abazeh replied that the attack took place in the "middle" of June. However, Ms. Alhossiny's statement at the POE interview was that the attack occurred on or about June 29, 2017.

[24] The attack at the dental clinic is the core event that forms the basis for the Applicants' claim for protection. It is the event that caused them to seek safety at the PA's mother's home, and it is the event that caused them to leave Jordan. Therefore, the date of this triggering event ought to have been at the forefront of the Applicants' minds.

[25] In my view, it was reasonable for the RPD to assess credibility based upon the lack of precision on the date of the attack.

[26] This case is distinguishable from *Cetinkaya v Canada (Citizenship and Immigration)*, 2012 FC 8 [*Cetinkaya*] where this Court held that it would be a reviewable error to "impugn the credibility of the Applicant on the sole ground that the information provided by the Applicant at the POE interview lacks details" (at para 51). The date of the attack – which gives rise to the claim for refugee protection – is not an inconsequential detail but goes to the core of the Applicants' claim for protection.

[27] Further, as noted in *Guyen v Canada (Citizenship and Immigration)*, 2018 FC 38 inconsistencies between POE statements and later evidence can support credibility findings where "those inconsistencies are about 'crucial elements' of the applicants claim" (at para 39). In my view, being unable to identify the date of the attack is a crucial element of the Applicants' claim.

[28] The Applicants also argue that it was unreasonable for the RPD to impugn their credibility regarding Ms. Alhossiny's statement at the POE interview that a gun was pointed at

Mr. Abazeh during the attack. They argue that this was merely a detail which was corrected by Mr. Abazeh during the hearing. While I agree that this singular detail may not in some circumstances be a sufficient basis upon which to impugn credibility. However, in this case, when the presence of a gun is considered in the overall factual context, it is not a minor detail. This claim for protection arises from the circumstances of an attack. Accordingly, the details of that attack including the brandishing of a gun by the agent of persecution, cannot be dismissed as a mere matter of detail.

[29] Overall when considered in the full context, it was reasonable for the RPD to make negative credibility findings on the details of the Applicants' claim.

C. *Employment History*

[30] I accept that the discrepancy on the employment dates may have arisen as the result of Mr. Abazeh misunderstanding the forms. However, given the other omissions and contradictions, it was reasonable for the RPD to find that Mr. Abazeh's explanation on this point, did not overcome the overall negative credibility finding.

D. *Post-Hearing Evidence*

[31] The Applicants argue that it was unreasonable for the RPD to assign no weight to their post-hearing evidence. The RPD did not accept the letter from Dr. Samer in part because of the date of the letter – January 2017. The RPD considered the possibility that this date was simply a typo, but held that even if this were true, the fact that the letter makes no mention that the

patient's husband was a police officer, or that the police officer's family members attended the clinic with him raised further concerns. Further, the RPD noted that the author did not include their last name in the letter.

[32] Although the RPD's concern about the absence of the author's last name on the signature line of the letter might be characterized as applying western standards when assessing evidence (*You v Canada (Citizenship and Immigration)*, 2016 FC 1010 at para 23); the RPD noted that even if the letter were assigned some weight, it alone was insufficient to overcome the implausibility and serious contradictions in the remaining elements of the claim. In my view, this was a reasonable finding.

[33] The Applicants' submissions are an invitation for the Court to reweigh the evidence, which is not the role of the Court on judicial review (*Vavilov* at para 125). Overall, the decision of the RPD is reasonable and there are no grounds for this Court to intervene.

[34] This application for judicial review is dismissed.

[35] Neither party proposed a certified question and no question is certified.

JUDGMENT IN IMM-7699-19

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed; and
2. There is no question for certification.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7699-19

STYLE OF CAUSE: ALHOSSINY v MCI

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JANUARY 20, 2022

JUDGMENT AND REASONS: MCDONALD J.

DATED: APRIL 11, 2022

APPEARANCES:

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