Federal Court  Cour fédérale

Date: 20220607

Docket: IMM-2757-21

Citation: 2022 FC 846

Ottawa, Ontario, June 7, 2022

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

JOSEPH MANSOUR ABDELMASEH MANSOUR
MARY TRAIZ KARAM YOUSSEF ABDO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is the application for judicial review of the April 8, 2021 decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada dismissing the Applicants' appeal of the decision of the Refugee Protection Division [RPD] which found that the Applicants are not Convention refugees or persons in need of protection under s 96 and s 97,

respectively, of the *Immigration and Refugee Protection Act* cite [IRPA]. The RAD found that the Applicants had a viable internal flight alternative [IFA].

Background

[2] Joseph Mansour Abdelmaseh Mansour [Principal Applicant] and his wife Mary Traiz Karam Youssef Abdo [together, the Applicants] are citizens of Egypt and are Coptic Orthodox Christians. The Principal Applicant worked with the Egyptian armed forces as a border officer. He claims that he suffered persecution and mistreatment in the army and, as a result, took early retirement in 1983. The Principal Applicant claims that the Ministry of Defence in Egypt builds apartment buildings and sells affordable apartments to army officers. He bought such an apartment in the city of Alexandria. The Applicants claim that since 2011 conditions for Christians have deteriorated and that they fear persecution from Muslim extremists. In particular, they allege that the majority of the residents in their apartment building became Muslim extremists and they suffered harassment from their neighbours who wanted them to leave their apartment. The Applicants arrived in Canada on December 13, 2018 and claimed refugee protection shortly thereafter.

RPD decision

[3] The RPD found that the Applicants were generally credible, but did make specific adverse credibility findings relating to their lack of subjective fear of generalized violence and the generalized presence of extremists and with respect to omissions from their basis of claim [BOC] form. The RPD found that the Applicants had not rebutted the presumption of state

protection, which the RPD considered to be sufficient to dismiss their claim for refugee protection.

[4] In the alternative, the RPD found that the Applicants had a viable internal flight alternative [IFA] in Cairo. The RPD found that while the Applicants alleged that they feared Muslim extremists generally, they had returned to Egypt many times despite this generalized violence. The RPD found that any risk to the Applicants from unknown extremists was speculative. Further, that the Applicants' claim was highly localized and focused around the problems with their neighbours. The RPD found that it was highly unlikely that the Applicants' neighbours would pursue them to a different city. Further, that the Applicants had not established that they would have difficulty selling their apartment, that doing so may result in further persecution from a neighbour or, that they could not use a third party agent to sell the apartment. The RPD noted that there are neighbourhoods in Cairo considered to be Christian which should also provide some protection against having extremist neighbours upon relocation. Nor had the Applicants established that they could not rent in Cairo. The RPD found that the Applicants had not established that it would be unreasonable for them to relocate to Cairo.

[5] The Applicants appealed to the RAD. The RAD dismissed the appeal by a decision dated April 8, 2021. The RAD's decision is the subject of this application for judicial review.

Decision under review

[6] The RAD found that the determinative issue in the appeal was the IFA and held that the RPD did not err in its IFA analysis.

[7] The RAD accepted that the Applicants suffered persecution at the hands of their neighbours due to their religion. However, all of the evidence indicated that it was the Applicants' neighbours in Alexandra who wanted the Applicants to give up living in their apartment. The RAD found that a move to Cairo would achieve this and that there was no evidence that their neighbours were motivated to seek out or would have any interest in the Applicants once they left the building. The RAD found that the Applicants would not face a serious possibility of persecution from their former neighbours if they relocated to Cairo. Referencing the national documentation package [NDP] for Egypt, the RAD also found there was mixed evidence as to whether Cairo would be sufficiently safe for Coptic Orthodox Christians. While there was some violence against Christians, who make up about 10% of Egypt's population, this was often the result of attempts to build churches, interfaith romances, or property disputes. Since the Applicants did not own property in Cairo, these circumstances would not be applicable to their situation.

[8] The RAD acknowledged the Applicants' submissions that six other RPD decisions had found that there was no viable IFA for Coptic Orthodox Christians in Cairo. The RAD distinguished each of those matters and concluded that the Applicants would not face a serious possibility of persecution or, on a balance of probabilities, a risk to life or to cruel and unusual treatment or punishment or danger of torture if they were to relocate to Cairo.

[9] The RAD found, and agreed with the RPD, that the motivation of the Applicants' neighbours was limited to having the Applicants leave the apartment building. The RAD stated that the Applicants had not demonstrated that it would be unreasonable for them to use a third

party to sell their apartment when they were outside of Alexandria, which would avoid any alleged resultant wrath from their neighbours. With respect to the argument that the RPD speculated as to their available finances, the RAD pointed out that the Applicants provided no evidence regarding rents in Cairo, or establishing that their pensions would not be sufficient for this purpose. The RAD concluded that it would be reasonable in all the circumstances for the Applicants to relocate to Cairo.

[10] As a result of its determinative finding that there was a viable IFA, the RAD found it unnecessary to consider the Applicants' arguments on state protection.

Issues and standard of review

[11] The sole issue in this matter is whether the RAD's decision as to the availability of a viable IFA was reasonable.

[12] The parties submit, and I agree, that in assessing the merits of the RAD's decision, there is a presumption that the reviewing court should apply the reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 16, 23, 25). Applying that 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).

Reasonableness of the RAD's decision

Applicants' position

[13] The Applicants submit that they provided the RAD with six prior RPD decisions similar to the Applicants' claim where the RPD had found there was no viable IFA in Egypt for Christian claimants. The Applicants submit that the IFA findings in those other cases all set out that Coptic Christians do not have a viable IFA in Egypt because of the pervasiveness of the persecution and discrimination they face throughout Egypt and that the RAD's attempt to distinguish those decisions is not consistent with those findings which clearly spoke generally about the situation for Coptic Christians throughout Egypt. The Applicants submit that the RAD's decision is unreasonable because there is no rational line of analysis from its attempts to distinguish the prior RPD decisions to its IFA finding, because the RAD failed to justify its departure from the RPD's prior consistent decision making and, because the RAD failed to address the Applicants' arguments about consistent decision making.

Respondent's position

[14] The Respondent submits that the RAD reasonably concluded that the Applicants had a viable IFA in Cairo and took into account the decisions of other RPD panels, giving reasons for distinguishing them. The Respondent submits that all decisions are based on the specific evidence before the panel and the fact that other panels chose to give less weight to evidence regarding Christian neighbourhoods in Cairo (or perhaps did not have that evidence before them) does not render the RAD's decision unreasonable. Nor did the Applicants establish that they would be facing persecution or discrimination rising to the level of persecution if they moved to a Christian neighbourhood in Cairo or that they would be prevented from practicing their Coptic faith there.

Analysis

[15] There is a longstanding two-part IFA test. In order to conclude that a claimant has a viable IFA, the decision maker must be satisfied on a balance of probabilities that:

1. the claimant will not be subject to a serious possibility of persecution or a section 97 risk in the proposed IFA; and
2. conditions in the part of the country proposed as an IFA are such that it would not be unreasonable in all the circumstances, including those particular to the claimant, to seek refuge there.

[16] The claimant bears the onus of establishing that a proposed IFA is not viable and can discharge the onus by demonstrating that at least one of the two prongs of the test has not been made out (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (CA); Thirunavukkarasu v Canada (Minister of Employment and Immigration), [1994] 1 FC 589 (CA); Obotuke v Canada (Citizenship and Immigration), 2021 FC 407 at para 16; Solis Mendoza v Canada (Citizenship and Immigration), 2021 FC 203 at paras 25-26).

[17] Both the RPD and the RAD identified and applied this test.

[18] Further, as stated in *Akinkunmi v. Canada (Citizenship and Immigration)*, 2020 FC 742 at para 20: “In each case, the decision maker must consider all relevant evidence regarding the serious possibility of harm to an applicant in the proposed IFA, including the characteristics of the particular alleged agent of persecution and its ability and motivation to take action in the IFA”.

[19] The onus was on the Applicants to provide sufficient credible evidence that they faced an ongoing risk in the IFA from their agent of persecution (*Berhani v Canada (Citizenship and Immigration)*, 2021 FC 1007 at para 32).

[20] In this matter, the RAD properly considered the motivation, resources, and characteristics of the Applicants' agent of persecution – their Alexandria neighbours – in determining whether an IFA would be available to them. Based on the record before it, the RAD did not err in finding that the RPD was correct in its conclusion that, should the Applicants relocate to Cairo, they would not face a serious possibility of persecution at the hands of their former neighbours.

[21] Indeed, the Applicants do not dispute the RAD's finding as to their agent of persecution, their neighbours in Alexandria.

[22] Rather, they assert that as Coptic Christians they are at risk from Muslim extremists everywhere in Egypt and that the RAD erred in finding that the RPD was correct that the Applicants have a viable IFA in Cairo.

[23] The Applicants' submission to the RAD with respect to the IFA finding of the RPD was that while the documentary evidence does speak to the fact that violence against Christians is greater and more pervasive in rural areas, nevertheless, that evidence did not indicate that violence against Christians is confined to those areas. They submitted that the RPD's finding was inconsistent with the documentary evidence – but they did not identify any instances of how this was so. That is, they did not identify specific findings in the country conditions documentation

that contradicted the RPD's finding. Instead, they provided six prior decisions of the RPD which they submitted were diametrical opposed to the RPD's decision.

[24] In this application for judicial review, the Applicants focus singularly on the RAD's reasons distinguishing the six decisions of the RPD that the Applicants submitted to support their position that Christians do not have a viable IFA in Egypt. Again, however, the Applicants do not point to objective documentary evidence within the NDP, or otherwise, to suggest that this contradicted the IFA findings of the RDP and the RAD, or that information was ignored or misapprehended.

[25] I have some concerns with this approach.

[26] First, with respect to the first prong of the IFA test, the focus of an applicant will usually be on the current country conditions. This is because the onus is on the applicant to establish with credible evidence that they face a risk of persecution or a s 97 risk or danger in the proposed IFA. The RPD and the RAD are required to make their IFA determination based on the evidence before them. Prior decisions are not evidence.

[27] Second, the approach taken by the Applicants is potentially problematic. This is because there is no way of knowing how many decisions were made by the RPD since 2017 (the date of the first decision relied upon by the Applicants) to the date of the RAD's decision, concerning IFA's for Coptic Christians in Egypt. The six presented decisions (all decided in favour of the claimants, several summarily and/or without hearings) may, or may not, be representative of a

consistent line of decision making by the RPD, as the Applicants submit. While I do not suggest that the Applicants have indulged in cherry picking, the approach lends itself to that concern.

[28] Third, country conditions are not necessarily static. They may improve or they may worsen. The Applicants' approach could potentially require the RAD (and the RPD) to focus on multiple prior decisions selected and advanced by an applicant, rather than on the application of the test for an IFA in the circumstances of that applicant in the matter before them. In most instances, this would not be an effective utilisation of resources as most cases are not factually the same and each case is decided on its own merits. Further, reliance on decisions that are, in most instances, summary in nature (granting protection) and selecting concluding general statements on the availability of an IFA in such cases, deprives the RAD the ability to substantively assess the decision posited as precedential.

[29] That said, with respect to how the RAD is to treat prior decisions, this Court has previously held that the RPD is not bound by its prior decisions and every case must be decided on its own merits. However, the RPD must review the similarities and explain why a different result is being reached from earlier decisions based on the same or very similar circumstances and country condition documentation (*Rusznyak v Canada (Citizenship and Immigration)*, 2014 FC 255 at paras 50-53, 57; *Ruszo v Canada (Citizenship and Immigration)*, 2019 FC 296 at para 17-18*; Mendoza v Canada (Citizenship and Immigration)*, 2015 FC 251 at paras 4-26; *Fodor v Canada (Citizenship and Immigration)*, 2020 FC 218 [*Fodor*] at para 67).

[30] Placing this in the context of *Vavilov*, Justice Gleeson held in *Faisal v Canada (Citizenship and Immigration)*, 2021 FC 412 that:

> [26] An administrative tribunal is expected to assess each claim that comes before it on a case-by-case basis (*Budai v Canada (Minister of Citizenship and Immigration)*, 2021 FC 313 at para 33). In doing so, the tribunal is properly constrained by its previous decisions, but importantly, it is not bound by its previous decisions (*Vavilov* at para 131; *Bakary v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1111 at para 10 [*Bakary*]). A tribunal may depart from one of its previous decisions where it reasonably justifies the departure.

(See also *Montano Alarcon v Canada (Citizenship and Immigration)*, 2022 FC 395 at para 30)

[31] In short, administrative tribunals are not bound by their previous decisions, but parties affected by administrative decisions "are entitled to expect that like cases will generally be treated alike" (*Vavilov* at para 129). Where a decision maker departs from "longstanding practices or established internal authority", it must justify why it does so, or the decision will be unreasonable (*Vavilov* at para 131). The RAD was required to decide the Applicants' claim on its own merits, keeping in mind the "constraint" of the prior decisions which required it to distinguish those cases if it did not adopt the same result.

[32] In this matter, the Applicants do not point to any policy whereby all refugee claims made by Christian Egyptians are to be accepted because no viable IFA is available anywhere in Egypt for the members of that group. Nor do I agree with the Applicants that the RAD ignored or failed to respond to their submissions about consistency with other RPD decisions.

[33] The RAD acknowledged the Applicants' submissions that other RPD decisions had found that there was no viable IFA for Coptic Orthodox Christians in Cairo. It then distinguished each of those matters:

i. The RAD distinguished IRB file TB8-00393 because the applicants in that matter had been targeted by a powerful clan and a Member of Parliament who could potentially use Egyptian authorities to search for and successfully locate the applicants no matter where they relocated in Egypt, and had sought them out in Cairo, which the RPD had found was the safest place for Coptic Christians. The RAD held, with respect to the Applicants, that there was no evidence before it that the agents of persecution in their case had have any ties to a powerful clan or access to the resources of Egyptian authorities. It found that the circumstances of the claimants in TB8-00393 were substantially different from those of the Applicants. When appearing before me, the Applicants conceded that the circumstances in TB8-00393 differ from theirs.

ii. The RPD distinguished IRB files TB8-02932, TB8-08639, and TB8-29231 because the persecution suffered by the claimants in those cases resulted in them either losing their employment or being forced to close their businesses. The RAD found that this was not the case for the Applicants, who were being persecuted by their neighbours, and their circumstances were substantially different from the claimants in these cases.

iii. The RAD found that the circumstances of the claimant in IRB file TB8-10474 were similar to the circumstances of the Applicants, in that she was harassed by Muslim extremists who demanded that sell her properties to them. However, although this was factually similar to the Applicants' situation, the RAD found that Applicants would not need to fear this type of activity should they relocate because they did not

own any property in Cairo nor would they need to purchase a property there as they could rent an apartment and could also do so in one of the Christian areas.

iv. With respect to IRB file TB9-28520, the RAD acknowledged that the NDP described difficulties faced by Coptic Christians in Egypt, but found that the Applicants' situation was such that they could move to a Christian area in Cairo.

[34] In my view, the RAD reasonably factually distinguished the cases presented by the Applicants. This is not a situation where, for example, the claimants in this matter and the comparator matters are members of the same family who have experienced the same or very similar events. Nor did the Applicants provide a comparative analysis of the documentary evidence relied upon in the prior RPD decisions with the current NDP materials relied upon by the RPD and the RAD when determining their claim. That is, they did not establish that the same materials were being considered in each case or that there had been no significant changes to the NDP packages. I note, for example, that no country conditions are referenced in in TB8-08639. However, as it was decided on January 30, 2019, the RPD in that matter could not have relied on the September 30, 2019 NDP package relied upon by the RAD in the matter before me. While TB8-29231 is more recent and refers the March 2019 NDP, this again pre-dates the NDP package relied upon by the RAD in this matter.

[35] And while it is true that some of the prior RPD decisions relied upon by the Applicants include general statements as to the availability of an IFA for Christians in Egypt, in my view, the Applicants cannot meet their onus by relying on those statements which could only derive from the country conditions in play at the time the decisions were made.

[36] Further, and in any event, the RAD found:

> [12] Regarding the Appellant's arguments that Cairo is not sufficiently safe for Coptic Orthodox Christians, the evidence is mixed. Christians live throughout Egypt, but especially in the south of Egypt and in Cairo and Alexandria, and some of Cairo's suburbs are considered "Christian areas". The same report does indicate violence against Christians, in one case in an attack on Coptic Orthodox churches. The Islamic State has claimed responsibility for one attack. It is estimated that Christians, the majority of whom are Coptic Orthodox, make up around 10% of the population in Egypt. The same report states that Christians continue to face sectarian violence, and that the government has increased security measures in churches, particularly prior to large Christian celebrations. Violence is often the result of attempts to build churches, interfaith romances, or property disputes. As the Appellants do not currently own any property in Cairo, none of these are applicable to the Appellants' situation.

[37] Having reviewed the NDP items referred to by the RAD, I am of the view that its assessment of the current country conditions was reasonable.

[38] Those items show that about 10% of Egypt's population of approximately 95 million is Christian. Most of Egypt, including Cairo, has low rates of serious violent crime and "[m]ost Egyptians, especially those living in urban areas, work, live and socialize together with little regard to each other's religious identity", although small scale disputes such as neighbourhood disagreements on occasion adopt religious overtones and escalate into community level-violence, particularly in poorer and rural areas. However, large-scale anti-Christian violence such as occurred in 2011 and 2013, notwithstanding high profile incidents in which people are killed or churches attacked, are not frequent occurrences. Further, that the majority of instances of community violence in recent years have taken place in the provinces of Upper Egypt, the province of Minya being notable in that regard. Christians are particularly concentrated in Upper

Egypt, and in major cities such as Cairo and Alexandria. Suburbs in Cairo and other cities are sometimes regarded or described as Christian areas but few are exclusively Christian. Sporadic sectarian violence flare-ups, in addition to organized attacks, are often sparked by attempts to build churches, interfaith romances or property disputes that became sectarian, Minya being such an example.

[39] Essentially, the Applicants' position is that the RAD should have come to the same conclusion as the RPD did in the prior decisions identified by the Applicants. However, the RAD acknowledged that there was mixed evidence as to whether Cairo would be sufficiently safe for Coptic Christians and, based on the documentary evidence in the NDP that was before it, concluded that a viable IFA was available to the Applicants. Having reviewed that evidence, I cannot conclude that the RAD's finding was unreasonable. The Applicants did not point to any contradictory evidence and, ultimately, failed to meet their onus of establishing with credible evidence that they face a risk of persecution or a s 97 risk or danger if they relocated to Cairo, the proposed IFA. In particular, if they chose to move to a predominantly Christian neighbourhood.

[40] In summary, I see no error in the RAD's conclusion that that the Applicants had a viable IFA in Cairo and that they would not face a serious possibility of persecution or, on a balance of probabilities, a risk to life or to cruel and unusual treatment or punishment or danger of torture if they were to relocate to Cairo.

JUDGMENT IN IMM-2757-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;

2. There shall be no order as to costs; and

3. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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