

Federal Court



Cour fédérale

Date: 20220914

Docket: IMM-1499-21

Citation: 2022 FC 1294

Ottawa, Ontario, September 14, 2022

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

**MOH'D TAREQ YAHIA MOUSA ABU AL HOMMOS
REEMAN MOHAMMAD ABDEL RAHMAN AHMAD
SAIF MOHD TAREQ YAHIA ABU AL HOMMOS
FARES MOHAMMED YAHYA ABU ALHOMMOS
JENA MOH'D TARIQ YAHIA ABUALHOMMOS
JAWAD MOHD TARE ABU AL HOMMOS**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are a family: Moh'd Tareq Yahia Mousa Abu Al Hommos ("Principal Applicant") is married to Reeman Mohammad Abdel Rahman Ahmad and together they have

five minor children, four of whom are listed as Applicants in this application. The Applicants filed a refugee claim in Canada based on their fear that their lives were at risk in Jordan, their country of citizenship, because of a dispute between the Principle Applicant and his family about the sale of inherited land. The Refugee Protection Division [RPD] dismissed their claim for protection. The Applicants' appeal to the Refugee Appeal Division [RAD] was dismissed. The Applicants challenge the RAD's dismissal in this judicial review.

[2] The Applicants argued at the RAD and on this judicial review that they were denied procedural fairness during their RPD hearing because their testimony was curtailed due to interruptions by the RPD Member. I have reviewed the transcript of the RPD hearing and the RAD's reasons for finding no breach of procedural fairness. I see no basis to interfere with the RAD's determination that there was no breach of procedural fairness.

[3] The Applicants also argue that the RAD's credibility findings were not sound, specifically because the assessment of the evidence was culturally insensitive. Much of the Applicants' argument on this point relies on evidence that the RAD refused to admit — a determination the Applicants did not challenge on judicial review. The Applicants have not persuaded me that the RAD's analysis of this issue was unreasonable.

[4] Lastly, the Applicants argue that the RAD failed to consider that even if the Principal Applicant did not act against his family's wishes regarding the inheritance, he would still be marked as a traitor. I do not agree that the RAD failed to consider this aspect of the Applicants' claim.

[5] Based on the reasons set out below, I dismiss the application for judicial review.

II. Background

[6] The Applicants are Palestinian and hold citizenship in Jordan. Their claims for protection are based on the Principal Applicant's alleged desire to transfer his share of land inheritance in Jerusalem to the highest bidder, even if the buyer is an Israeli citizen. The Principal Applicant's position went against the views of others in his extended family. He was then allegedly attacked and threatened.

[7] The RPD found that the Applicants' claims were not credible. In particular, the RPD found that the Applicants failed to establish, either through credible testimony or corroborative documents, central aspects of their claim, namely, that the Principal Applicant had inherited the land in question, and the process for the sale of this land.

[8] The Applicants appealed the RPD decision to the RAD. In their appeal to the RAD, the Applicants filed new evidence. This evidence included a lengthy affidavit from the Principal Applicant and a translated inheritance deed. The RAD found the new evidence inadmissible because the Applicants had not demonstrated that the new evidence fit within the statutory requirements set out in section 110 (4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[9] The RAD dismissed the Applicants' appeal on February 19, 2021.

III. Issues and Standard of Review

[10] The Applicants raise three issues in this judicial review: i) whether the RPD denied the Applicants procedural fairness at the hearing due to the RPD Member's interventions; ii) whether the RAD's credibility findings are reasonable; and iii) whether the RAD ignored a key component of the Applicants' claim for protection.

[11] The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. The parties agreed that I should apply the reasonableness standard of review to all three issues. Extensive submissions were not made on this point.

[12] Arguably, it may not be straightforward to characterize the first issue (a breach of fairness at the RPD hearing) as an issue related strictly to the merits of the RAD decision. However, this Court has held in a number of decisions that where the alleged breach of fairness relates to the RPD's procedure, and the RAD has considered the alleged breach in its reasons (as is the case here), this Court evaluates the RAD's reasons related to the breach of fairness on the reasonableness standard (see for example: *Ahmad v Canada (Citizenship and Immigration)*, 2021 FC 214 at para 13; *Omirigbe v Canada (Citizenship and Immigration)*, 2021 FC 787 at para 25). There are other decisions where this approach was not followed (see for example: *Ambroise v Canada (Citizenship and Immigration)*, 2021 FC 62 at paras 8-10; *Vardalia v Canada (Citizenship and Immigration)*, 2022 FC 300 at para 20).

[13] Given that neither party made extensive submissions addressing this point, and that my determination does not turn on the standard of review, I need not decide this issue. As I explain below, I am satisfied that the hearing process at the RPD, which produced the record being considered by the RAD, was fair in all the circumstances (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54). I am also satisfied that the RAD's determination on this issue was reasonable.

IV. Analysis

A. *No breach of procedural fairness at the RPD hearing*

[14] The Applicants argue that the RPD's abrupt management of the hearing resulted in a breach of fairness because the RPD stopped the Applicants from giving relevant evidence, infringing their right to be heard. The Applicants relied on two instances where the RPD allegedly stopped them from providing relevant evidence.

[15] The first instance of this RPD intervention occurred when the Principal Applicant asked to explain something and the RPD Member redirected the Principal Applicant to answer the RPD's question first. The Applicants argue that the Principal Applicant was stopped from explaining the inheritance system. After the RPD Member's questions, the Applicants' counsel specifically asked the Principal Applicant: "Can you elaborate, explain how the inheritance system works in Palestine regarding from the grandfather down to the grandchildren?" Based on

my review, I agree with the RAD's evaluation; I cannot see how the Principal Applicant was stopped from providing testimony on this point.

[16] The second instance occurred when the Principal Applicant's wife interrupted her husband's testimony to ask whether she could explain inheritance law to the RPD Member. The RPD Member did not allow this, explaining that they only wanted to hear from the Principal Applicant at that time, and then the Applicants' counsel could ask the Applicants if there was further evidence they wanted to give. After the Principal Applicant's testimony was completed, the RPD Member advised that they did not have any questions for the Principal Applicant's wife, Ms. Ahmad, the other adult claimant. The RPD Member then stated to the Applicants' counsel: "Do you have any questions for Ms. Ahmad? I know that she wanted to say some things at a certain point. Did you have any questions for her?" Even after the Applicants' former counsel's questions, the RPD Member again asked Ms. Ahmad: "Was there anything else you wanted to say ma'am?"

[17] The Applicants argued that it was not sufficient for the RPD Member to "allude" to the claimant's previous attempt to provide this evidence and that the RPD Member should have done more to elicit this testimony. I do not agree. This example does not support the Applicants' position that they were curtailed in providing evidence because of the RPD Member's conduct; it demonstrates that the RPD Member actively sought to ensure the claimant was given an opportunity to provide her evidence.

[18] I see no basis to find that the Applicants were denied procedural fairness in being able to present their claim. Applying the reasonableness standard I come to the same outcome. I find that the RAD considered the relevant parts of the transcript as set out by the Applicants and reasonably found that the Applicants' "ability to present their case was not unfairly curtailed." There is no basis to disturb this finding.

[19] I note, as the RAD also noted, that the Applicants appeared to be making allegations about the incompetence of their former counsel, who represented them at the RPD hearing. No notice was provided to their former counsel as is required and the arguments were not developed as a basis for seeking relief.

B. *No basis to interfere with credibility determination*

[20] The Applicants took issue with the RAD's evaluation of the credibility of their claim. I find that the RAD's evaluation of this issue is reasonable. The Applicants have not demonstrated that the RAD "fundamentally misapprehended or failed to account for the evidence before it" (*Vavilov* at para 126).

[21] The RAD found that the Principal Applicant's testimony was "not sufficiently coherent or credible to establish" their legal entitlement to the property in question. Consequently, the RAD held that it was appropriate for the RPD to have inquired about the availability of corroborative documentation. The RAD found that the RPD had given the Applicants multiple opportunities to explain their lack of corroborative documentation with respect to this central aspect of their claim. The RAD was not satisfied with their explanations. The RAD also found

that there were inconsistencies in the Principal Applicant's testimony. I do not see a basis to interfere with these findings.

[22] I find the Applicants' claims about the RPD's and the RAD's cultural insensitivity are not responsive to the reasons provided by the RAD. The Applicants' claims of cultural insensitivity rely on new evidence (the Principal Applicant's affidavit and a translated inheritance deed) that was not before the RAD, as the RAD had not admitted this evidence under section 110 (4) of *IRPA*. On judicial review, the Applicants did not challenge the RAD's determination to not admit these documents. Consequently, there is no basis for me to consider these materials now.

C. *No basis to find that an aspect of the claim was not considered*

[23] The Applicants argue that the RAD failed to consider a central component to their claim. They argue that in finding that the Applicants would not face section 97 harms if they abandoned their property interests, the RAD, like the RPD, failed to consider that the Applicants would continue to face harm because the Principal Applicant has been labelled a traitor by his family. Contrary to the Applicants' assertion, the RAD considered this argument and disagreed that the Applicants had established a risk of harm on this basis.

[24] The application for judicial review is dismissed. Neither party raised a serious question of general importance and I agree that none arises.

JUDGMENT IN IMM-1499-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and
2. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1499-21

STYLE OF CAUSE: MOH'D TAREQ YAHIA MOUSSA ABU AL
HOMMOS ET AL V THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: FEBRUARY 17, 2022

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: SEPTEMBER 14, 2022

APPEARANCES:

Mary Jane Campigotto FOR THE APPLICANTS

Leanne Briscoe FOR THE RESPONDENT

SOLICITORS OF RECORD:

Campigotto Law Firm FOR THE APPLICANTS
Barrister & Solicitor
Windsor, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario