Federal Court  Cour fédérale

Date: 20230428

Docket: IMM-8691-21

Citation: 2023 FC 623

Toronto, Ontario, April 28, 2023

PRESENT: Madam Justice Go

BETWEEN:

MAHER MAHFOUZ MOHAMMED ASSI

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Maher Mahfouz Mohammed Assi, is a 50-year-old stateless Palestinian. He alleges that he faces a risk of being killed or seriously harmed in the Occupied Palestinian Territories [OPT], also known as the West Bank, because of money he owes to different people, and because he facilitated the sale of land in the West Bank to an Israeli citizen.

[2] According to the Applicant's Basis of Claim [BOC] narrative, he lived in the OPT and started a delivery business in 2001 in Ramallah, which lost $100,000 worth of food items due to spoilage after Israeli authorities cut off electricity to Ramallah. The Applicant claims that the supplier obtained a judgment against him to repay that amount in installments and kidnapped him in 2009 when he failed to make these payments. The Applicant alleges that he was threatened to be killed if he did not resume the payments. Accordingly, he used the proceeds from sales of goods from a second supplier to repay the first supplier, following which he received threats to his life from the second supplier. The Applicant claims that he then repeated this tactic with a third supplier, who found out what he was doing and threatened to kill him and his family in 2015. The Applicant alleges that he moved to a different neighbourhood at this point.

[3] In January 2019, the Applicant fled to Jordan. Still fearing his suppliers, he left for the United States and arrived in Canada shortly thereafter to make a claim for refugee protection.

[4] The Refugee Protection Division [RPD] rejected his claim in March 2020 on credibility grounds. On appeal to the Refugee Appeal Division [RAD], the Applicant sought to adduce new evidence under subsection 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. In a decision dated August 12, 2021, the RAD rejected all of the new evidence and confirmed that he is neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the *IRPA* [Decision].

[5] The Applicant seeks judicial review of the Decision. I grant the application as I find the Decision unreasonable.

II. Issues and Standard of Review

[6] The Applicant raises two issues:

A. Did the RAD err in rejecting the new evidence?

B. Did the RAD err in upholding the RPD's credibility finding?

[7] The Respondent submits that the Decision is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

[8] 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": *Vavilov* at para 85. The onus is on the Applicant to demonstrate that the Decision is unreasonable: *Vavilov* at para 100. To set aside a decision on this basis, "the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency": *Vavilov* at para 100.

III. Analysis

[9] In my view, the determinative issue is the RAD's error in rejecting new evidence.

[10] In his appeal to the RAD, the Applicant provided a sworn statement from himself claiming that his wife, who remains in the OPT, recently received death threats due to his activities. He also provided a recent medical report indicating that he suffers from cardiac issues. Finally, the Applicant provided evidence showing that he is registered with the *United Nations Relief and Works Agency for Palestinian Refugees in the Near East* [UNRWA].

[11] The RAD rejected all of the new evidence on the basis that they failed to meet the requisite level of newness, credibility, and relevance: *Singh v Canada (Citizenship and Immigration*, 2016 FCA 96 at paras 38 and 49. Specifically, the RAD found that his UNRWA status and medical report are irrelevant, and that the statement consisting of third-hand information was not credible.

[12] Before this Court, the Applicant takes issue with the RAD's rejection of his registration under the UNRWA on the basis that it was not relevant. The Applicant points to case law from this Court that has held that the failure to consider the existence of a UNRWA document constitutes a reviewable error: *El-Bahisi v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 2 [*El-Bahisi*] at para 5. For example, in *Kukhon v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 69 [*Kukhon*], the Court confirmed that the existence of a UNRWA registration must be specifically considered: at paras 16-19, relying on *El-Bahisi* at para 5; see also *Abu-Fahra v Canada (Minister of Citizenship and Immigration)*, 2003 FC 860 [*Abu-Fahra*] at para 10.

[13] The Applicant also relies on the 1989 Handbook on Procedures and Criteria for Determining Refugee Status from the United Nations High Commissioner for Refugees [UNHCR Handbook], which states at para 143:

> With regard to refugees from Palestine, it will be noted that UNRWA operates only in certain areas of the Middle East, and it is only there that its protection or assistance are given. Thus, a refuge from Palestine who finds himself outside that area does not enjoy the assistance mentioned and may be considered for determination of his refugee status under the criteria of the 1951 Convention. It should be normally sufficient to establish that the circumstances which originally made him qualify for protection or assistance from UNRWA still persist and that he has neither ceased to be a refugee under one of the cessation clauses nor is excluded from the application of the Convention under one of the exclusion clauses.

[14] Accordingly, the Applicant submits that as he is still a refugee under UNRWA and the circumstances under which he qualified are still in place, the evidence of his UNRWA registration is relevant. The Applicant argues that the RAD committed a reviewable error by finding otherwise.

[15] I agree with the Applicant that in refusing to admit the Applicant's UNRWA registration as new evidence on the basis that it is "not relevant", the RAD erred.

[16] As the cases cited by the Applicant confirm, the failure on the part of the refugee board to consider UNRWA registration constitutes a reviewable error: *Kukhon* at para 19; *Abu-Fahra* at para 10. While these cases did not deal with the admission of UNRWA registration as new evidence *per se*, I agree with the Applicant that the jurisprudence does not suggest two different standards of relevance, one for the admission of new evidence, and another one for determining the claim. Indeed, that the UNRWA registration was admitted as evidence in the above-noted

cases based on its relevance, further highlights the error committed by the RAD in refusing to admit the Applicant's UNRWA registration at all.

[17] The Respondent notes that the UNRWA registration submitted by the Applicant did not contain factual details relating to the risk he claimed before the RPD and RAD, nor details about the circumstances that qualified him as a refugee under the UNRWA. Further, the Respondent notes that the UNRWA was submitted as an exhibit to the Applicant's affidavit to prove his nationality, but the Applicant's nationality was not in question before the RPD or RAD.

[18] The Respondent distinguishes the cases relied on by the Applicant, as they were not decided in the context of determining relevance for the purposes of admitting new evidence under subsection 110(4) of the *IRPA*. Further, the Respondent notes that *El-Bahisi* relied on the UNHCR Handbook excerpt cited by the Applicant above, which states that an applicant's UNRWA registration is relevant to determining refugee status provided that the conditions that originally enabled qualification are shown to persist. Here, since the UNRWA certificate submitted does not contain underlying information regarding the Applicant's claim under the UNRWA, the Respondent submits that the document contains no factual details capable of proving a fact relevant to his claim. As such, the Respondent argues that the RAD reasonably refused to admit the new evidence.

[19] I am not persuaded by the Respondent's arguments for the following reasons.

[20] First, the RAD did not engage in any analysis with respect to the UNRWA and why it was not relevant to the Applicant's refugee claim, including whether or not the conditions that originally enabled the Applicant's qualification continue to persist. As such, the Respondent's submissions merely serve to bolster the RAD's reasoning after the fact.

[21] Second, while the Applicant's registration with UNRWA may not be determinative of his claim, it is nonetheless a relevant factor that the RAD ought to have considered.

[22] Finally, I disagree with the Respondent's reliance on *El-Bahisi* to suggest that it is the underlying details of the UNRWA registration that matters. Nowhere does the Court in *El-Bahisi* say this explicitly. Rather, the Court states at para 5:

> The first error is the tribunal's failure to specifically consider the existence of the UNRWA document. While the tribunal need not mention all of the documentary evidence submitted, it is my opinion that it should consider material evidence or evidence which specifically relates to the applicant's particular claim, especially when the document mentions the applicant by name and it recognizes him as a refugee…
>
> [Emphasis added]

[23] After citing the UNHCR Handbook excerpt that the Applicant relies on, the Court in *El-Bahisi* notes "the fact of previous recognition which made the Applicant qualify for protection from the UNRWA is cogent, though admittedly not determinative, and should have been addressed in the Board's decision": at para 5.

[24] The same conclusion, in my view, must be reached in this case.

[25] Given my findings above, I need not address the other issues raised by the Applicant.

IV. Conclusion

[26] The application for judicial review is allowed.

[27] There is no question to certify.

JUDGMENT in IMM-8691-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The decision under review is set aside and the matter referred back for redetermination by a different decision-maker.

3. There is no question to certify.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8691-21
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