Federal Court Cour fédérale

Date: 20240126

Docket: IMM-4479-22

Citation: 2024 FC 130

[ENGLISH TRANSLATION]

Ottawa, Ontario, January 26, 2024

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

ELIE BAAKLINY
EDMOND BAAKLINY
RAYMOND BAAKLINY
ADAM BAAKLINY
JAMILA NAASSI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants are a family of five. The principal applicant, Elie Baakliny [PA], is a Lebanese citizen, and his spouse, Jamila Naassi, the associate applicant [AA], is a Moroccan

citizen. The PA alleges that he fears death at the hands of his father because of his conversion to Islam. For her part, the AA alleges that she suffers systematic discrimination in Morocco due to her inability to pass on her citizenship to her husband because of her gender.

[2] The Refugee Protection Division [RPD] rejected the applicants' claim for refugee protection on the grounds that they were neither refugees under section 96 of the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA], nor persons in need of protection under section 97 of the IRPA. In a decision dated April 20, 2022, the Refugee Appeal Division [RAD] dismissed the applicants' appeal.

[3] The applicants are seeking judicial review of the RAD's decision. They argue that the decision is unreasonable and raise issues of procedural fairness.

[4] I am not persuaded that the RAD committed a reviewable error in its state protection analysis or that its conclusion is unreasonable. The application is therefore dismissed for the following reasons.

II. Background

[5] The PA's children Raymond and Adam are from the PA's previous relationship (now broken off) with a Filipino citizen. Raymond was born in 2008 and Adam in 2010. Both are citizens of the Philippines and Lebanon.

[6] The PA and the AA state that they got married in Lebanon in 2015. They had one child together, Edmond, born in 2017. Edmond is a citizen of Lebanon and Morocco.

[7] The PA states that he grew up in a strict Maronite Christian family and that he left Lebanon in 2002 because of his father's harsh treatment, settling in the United Arab Emirates and, subsequently, Saudi Arabia. He converted to Islam in Saudi Arabia in 2015.

[8] According to the PA, his mother warned him in 2015 that his father was trying to kill him because of his conversion to Islam.

[9] The PA alleges that he lost his job in Saudi Arabia (and his work visa) in 2018. The PA attempted to move to Morocco with his family but was unable to obtain the required visa. He alleges that the refusal was due to his Lebanese nationality. The AA states that she tried to apply on his behalf, but was unsuccessful.

[10] In June 2018, the PA arrived in Canada. A few days later, the associate applicants left Morocco to join the PA in Canada. The applicants submitted their refugee claim on July 6, 2018.

[11] The RPD rejected the applicants' refugee claim. The RPD found that the PA had not established a nexus to the United Nations Convention relating to the Status of Refugees [Convention] — he had not proven that he would be specifically targeted by his father, and he had internal flight alternatives [IFAs] in the cities of Tyre and Saida (referred to as Sidon by the RAD). The risk raised by the applicants is generally incurred by others in Lebanon. The RPD

rejected the AA's and the children's claims on the grounds that they had not made a refugee claim against Morocco.

III. Decision under review

[12] In a decision dated April 20, 2022, the RAD dismissed the applicants' appeal and confirmed the RPD's determination. The RAD found that the determinative issues were the risk of persecution or of harm for the AA and the children in the Philippines and Morocco, where they are citizens, and the availability of IFAs for the PA in Lebanon. In its analysis, the RAD reviewed the situation and the risks for the applicants of Filipino nationality (Raymond and Adam) and of Moroccan nationality (the AA and Edmond), as well as the viability of the IFAs in Lebanon for the PA separately.

[13] The RAD concluded that, on a balance of probabilities, Raymond and Adam were neither facing a serious possibility of persecution nor a danger of torture, a risk to their lives or of cruel and unusual treatment or punishment in the Philippines. To reach this conclusion, the RAD addressed two points. First, the RAD rejected the applicants' claim that their right to be heard had not been respected since the RPD had not designated the Philippines as a country of reference. The RAD started its analysis by noting that there had been no refugee claim against the Philippines, that the PA and the associate applicants had all expressly stated to the RPD that they did not fear persecution in the Philippines and that Lebanon alone was at issue in their Basis of Claim Form.

[14] Second, even if there had been a claim against the Philippines, the RAD would not have accepted the argument that Raymond and Adam were at risk of persecution or harm in the Philippines because their mother did not have custody and the PA was not a Filipino citizen. The RAD equated this argument to that regarding family unity. which the Federal Court had rejected in Dawlatly v Canada (Minister of Citizenship and Immigration), 1998 CanLII 7952. The RAD explained that family unity is not part of the definition of a Convention refugee and that, consequently, this argument does not necessarily lead to the conclusion that the associate applicants are persons in need of protection.

[15] Furthermore, based on the National Documentation Package on the Philippines, the RAD concluded that the evidence did not demonstrate that the associate applicants would not have access to education or be victims of abuse or become homeless. Finally, the RAD rejected the argument that the Philippines had not yet implemented The United Nations Convention on the Rights of the Child on the ground that the risk invoked by the applicants, namely, illegitimacy and/or loss of inheritance rights, applies only to children born to unmarried parents, which was not the case for the associate applicants.

[16] The RAD also rejected the AA and Edmond’s claim against Morocco for two similar reasons. First, there was no claim against Morocco. Second, in the RAD’s view, although the AA’s inability to pass on her Moroccan citizenship to the PA could constitute gender-based discrimination, it did not necessarily constitute persecution.

[17] The RAD then noted that it agreed with the IFAs identified by the RPD in the cities of Tyre and Saida after considering the two-pronged test in Rasaratnam v Canada (Minister of Employment and Immigration), 1991 CanLII 13517 (FCA) [Rasaratnam]. The RAD determined that the PA's father, who is the agent of persecution, did not possess the means or the motivation to locate or persecute the PA in the IFAs. The RAD accepted the father's political affiliation, but found that the PA had not established how his political affiliation would translate into means to locate. Moreover, the PA himself had testified that he did not fear the Lebanese government. The RAD also rejected the suggestion that the PA's brother-in-law, a soldier stationed at the Beirut airport, would have access to information on arrivals or even on passengers.

[18] While determining whether it would be reasonable for the PA to relocate to the cities of Tyre or Saida, the RAD noted the "very high" threshold for the test of reasonableness of an IFA. The RAD determined that neither the economic conditions nor the lack of establishment of the associated applicants in Lebanon were sufficient to prove that the IFAs in Tyre or Saida would be unreasonable.

IV. Issues and standard of review

[19] This application raises the following issues:

A. Is the RAD's decision regarding the right to be heard for the children Raymond and Adam well-founded in fact and in law?

B. Is the RAD's decision reasonable regarding

i. the AA's fear of persecution against Morocco due to her gender, and

ii. the availability of IFAs in Tyre or Saida for the applicants?

[20] Regarding the issue of procedural fairness, the Federal Court of Appeal stated in *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*Canadian Pacific Railway*] that issues of procedural fairness do not necessarily lend themselves to a standard of review analysis. Instead, the Court's role is to ask whether the procedure was fair having regard to all of the circumstances (*Canadian Pacific Railway* at paras 54–56*; Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35).

[21] For the second issue, the parties argue, and I agree, that the applicable standard of review is that of reasonableness. To be reasonable, a decision must be justified in relation to the facts and law that constrain the decision maker *(Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]). The burden is on the applicants to show that the decision is unreasonable (*Vavilov* at para 100). To intervene, the reviewing court must be satisfied by the party challenging the decision 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", and that these alleged shortcomings or flaws "[are] more than merely superficial or peripheral to the merits of the decision" (*Vavilov* at para 100). Reasonableness review is not a "line-by-line treasure hunt for error" (*Vavilov* at para 102). The reviewing court must simply be satisfied that the decision maker's reasoning "adds up" (*Vavilov* at para 104).

V. Analysis

A. *No breach of procedural fairness*

[22] The applicants claim that the RAD's failure to give Raymond and Adam, the Lebanese and Filipino citizens, the opportunity to be heard constitutes a breach of procedural fairness and a reviewable error. This argument is rejected for the following reasons.

[23] The RAD is required to proceed without a hearing, on the basis of the RPD's record, unless there is new documentary evidence that (a) raises a serious credibility issue; (b) is central to the decision with respect to the refugee protection claim; and (c) would justify allowing or rejecting the refuge protection claim (s 110(6) of the IRPA). In the absence of new documentary evidence, the RAD did not have the authority to proceed with an oral hearing.

[24] The RAD considered and reasonably rejected the applicants' arguments that Raymond and Adam had not had the opportunity to be heard by the RPD. The RAD noted that the RPD had given the applicants an opportunity as well as an express invitation to indicate whether the claim was against the Philippines, which the applicants had denied again and insisted that Lebanon was the only country in question.

[25] Proceeding in accordance with the relevant provisions of the IRPA, the RAD did not act unfairly; there was no breach of procedural fairness.

B. *Is the decision reasonable?*

(1) The RAD reasonably considered that the gender-based discrimination did not reach the level of persecution.

[26] The applicants claim that the RAD erred in deciding, without providing justification, that the discrimination the AA faced was not persecution under the IRPA. Once again, I do not agree.

[27] The RAD could and did reasonably conclude that the fact that women cannot pass on their Moroccan citizenship to their children is discriminatory, but does it not reach the threshold of persecution. The decision satisfies the requirements of justification, intelligibility and transparency “in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85).

(2) The IFA analysis was reasonable

[28] In considering the second prong of the test for determining the existence of an IFA, namely, the reasonableness of relocating to the proposed IFA, the applicants argue that the RAD relied on a misapprehension of the evidence, that the decision lacks justification and that the RAD failed to consider the children’s interests.

[29] In order for an IFA to be reasonable, the second prong of the analysis requires that it not be unreasonable to seek refuge there given all the circumstances, including those particular to the applicant *(Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA) at para 12 [*Thirunavukkarasu*]; *Hamdan v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 643 at paras 10–12; *Leon v Canada (Citizenship and Immigration)*, 2020 FC 428 at para 9; *Mora Alcca v Canada (Citizenship and Immigration)*, 2020 FC 236 at para 5; *Souleyman v Canada (Citizenship and Immigration)*, 2020 FC 708 at para 17). The onus is on the applicant to demonstrate that the IFA is unreasonable *(Jean Baptiste v Canada (Citizenship and*

Immigration), 2019 FC 1106 at para 21). To demonstrate that the IFA is unreasonable, the applicant must provide “actual and concrete” evidence of the existence of conditions that would jeopardize his life and safety in the proposed cities *(Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA) at para 15 [*Ranganathan*]). On this point, the Federal Court of Appeal notes that “[t]his is in sharp contrast with undue hardship resulting from loss of employment, loss of status, reduction in quality of life, loss of aspirations, loss of beloved ones and frustration of one’s wishes and expectations” *(Ranganathan* at para 15).

[30] The RAD considered the applicants’ submissions on the second prong of the test, regarding the absence of a real government in Lebanon as well as the political, social, economic and financial crisis in the country. The decision responds specifically to the applicants’ submissions, providing a detailed analysis that takes into account the documentary evidence.

[31] It is well established that, with some exceptions, difficulty in obtaining employment is not sufficient grounds to render an IFA unreasonable *(Thirunavukkarasu* at para 14). Moreover, it was open to and reasonable for the RAD to conclude that the work experience acquired by a refugee claimant abroad could be employed in their country of citizenship.

[32] Contrary to the applicants’ submissions, I am satisfied that the RAD considered the evidence favourable to the applicants. For example, the RAD accepted and weighed the evidence of political and economic instability. As argued by the respondent, it was within the RAD’s discretion [TRANSLATION] “to undertake a detailed and independent assessment of the evidence related to the IFA and to reject the applicants’ reasons ...” that it would be unreasonable to

relocate to the identified cities. It is well established that a reviewing court can only intervene on judicial review when an applicant is in disagreement with the way in which the administrative decision maker assessed the evidence.

VI. Conclusion

[33] The application for judicial review is dismissed. There are no questions of general importance to be certified.

JUDGMENT in IMM-4479-22

THE COURT'S JUDGMENT is as follows:

1. The application is dismissed.

2. No question is certified.

"Patrick Gleeson"

Judge

Certified true translation
Margarita Gorbounova

FEDERAL COURT

SOLICITORS OF RECORD

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