

Date: 20071001

Docket: IMM-2014-06

Citation: 2007 FC 991

Ottawa, Ontario, October 1, 2007

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

**OMAR AL ASALI, MANAL DAFASH, HAMZEH AL ASALI,
HEBA AL ASALI, OBADA AL ASALI and TUQA AL ASALI**

Applicants

and

**THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS**

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

O'KEEFE J.

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) for judicial review of a decision by an immigration officer dated February 28, 2006, which rejected the applicants' application for a Pre-Removal Risk Assessment (PRRA).

[2] The applicants seek an order setting aside the decision of the PRRA officer and remitting the matter for redetermination.

Background

[3] The applicants are Palestinians who came to Canada on November 29, 2004 from the United States and claimed refugee protection in Canada. The principal applicant, Omar Asali, is a stateless Palestinian from Hebron, in the West Bank. He fled his home on July 30, 2004, with his wife and four children, aged 3, 9, 13 and 16 years, allegedly as a result of the risk of persecution they faced at the hands of Israeli settlers and the Palestinian Authority.

[4] Previously, the principal applicant had entered the United States on October 6, 2003 and returned to Jordan on February 12, 2004. He returned to the United States with his family on August 2, 2004, on a United States visa that was valid until February 1, 2005. The applicants remained in the United States until November 29, 2004, when they came to Canada in order to claim refugee protection.

[5] On July 25, 2005, the Refugee Protection Division of the Immigration and Refugee Board (the Board) determined that the applicants were not Convention refugees or persons in need of protection. The applicants were refused leave to challenge the Board's decision on October 11, 2005.

[6] The applicants applied for a PRRA in December 2005. On February 28, 2006 a letter was sent to the applicants informing them that their application for a PRRA had been rejected on the grounds that they would not be subject to a risk of persecution, torture or cruel and unusual treatment or punishment, or a risk to life should they return to the West Bank, Palestine. This is the judicial review of the negative PRRA decision.

Officer's Reasons

[7] The application was rejected on February 28, 2006, because the officer determined that the applicants would not be subject to risk of persecution or torture, or face a risk to life or risk of cruel and unusual treatment or punishment if removed to the West Bank.

[8] The principal applicant had identified the risks that he would be subjected to, including daily systematic harassment, humiliation and persecution at the hands of Israeli settlers and the Israeli army. He owned a fruit and vegetable store, and he alleged that when he tried to open his store he would be beaten and tortured by Israeli soldiers and settlers. He alleged that soldiers would sometimes detain him for a few days and then release him.

[9] The principal applicant also alleged that his friend was killed by Hamas in April 2004 because he was accused of collaborating with Israel. The principal applicant felt that he might suffer the same fate.

[10] The Board did not find the principal applicant credible. Although there was a list of killed collaborators on the internet, the name of the principal applicant's friend was not there, nor had there been any documentary evidence to support the claim. There were inconsistencies in his account of his store having been vandalized by Hamas. The principal applicant had spent three months in the United States before coming to Canada, and failed to claim asylum there. At the port of entry, he stated that he was afraid of the Palestinian authority, not Hamas. When confronted with this contradiction, he said he was told to say that by a friend.

[11] The PRRA officer accepted that the applicants were stateless Palestinians. He accepted the Board's credibility findings, and noted that no further evidence was received that could not have been produced at the applicants' refugee hearing. The officer's decision stated the following:

I acknowledge that country conditions are poor for Palestinians from the West Bank. The human rights record of the Palestinian Authority is poor and police lack the necessary resources to be effective. However, the evidence does not establish on a cumulative grounds basis that the level of discrimination and harassment that they may experience rises to the level of a sustained and systematic denial of basic human rights. As a result, there is a serious possibility that they would experience adverse country conditions, discrimination and a degree of harassment. However, they do not have a well-founded fear or persecution. These facts also lead me to the conclusion that they are not at substantial risk of torture, death or cruel and unusual treatment or punishment.

[12] The principal applicant had also alleged that he would have trouble supporting his family financially, but the officer reasoned that challenges to re-establishment do not constitute a risk described in sections 96 and 97 of IRPA, and were more properly considered in an H&C application.

Issues

[13] The applicants submitted the following issues for consideration:

1. Did the officer err by failing to provide a clear evidentiary basis for key findings?
2. Did the officer err by conducting a selective analysis of the objective documentary evidence concerning the risk to the applicants in the West Bank and failing to base its decision upon the totality of the evidence before it?
3. Did the officer err in failing to conduct a separate assessment of the risk faced by the minor applicants?

Applicants' Submissions

[14] The applicants submitted that the officer had accepted that they were at risk of: (1) harassment; (2) discrimination; (3) the poor human rights record of the authorities; and (4) the ineffectiveness of the police. It was submitted that the officer erred in failing to explain why this was insufficient to establish a risk of persecution.

[15] The applicants relied upon the decision of *Mohacsi v. Canada (Minister of Citizenship and Immigration)*, [2003] 4 F.C. 771, 2003 FCT 429, wherein Justice Martineau found that the Board had erred in concluding that the discrimination faced did not amount to persecution, but did not provide reasoning in support of the conclusion. The applicants submitted that in this case, as in *Mohacsi*, the officer must state his reason for finding that the discrimination and harassment did not

amount to persecution. It was submitted that there were no statements by the officer as to what kind of discrimination the applicants were likely to face, and it was therefore impossible to determine why this treatment did not amount to persecution.

[16] The applicants submitted that the objective documentary evidence specifically identified a risk to Palestinian children, but that the officer did not specifically consider this evidence in his reasons. Four of the applicants were minor children, yet the officer did not differentiate the risk they faced from the overall risk faced by the adult applicants. It was submitted that not only did the officer fail to make any mention of the best interests of the children, an assessment he was obligated to make, but there was also no assessment of the risks faced by young Palestinian children in the West Bank.

Respondent's Submissions

[17] The respondent submitted that the role of the PRRA officer under section 113 of IRPA was to examine only new evidence: (1) that arose after the rejection; (2) that was not reasonably available before; or (3) that the applicant could not reasonably have been expected to present under the circumstances. As such, it was submitted that it was open to the officer to follow the Board's conclusion that the principal applicant lacked credibility. The respondent also submitted that the applicants were simply challenging the weight given by the officer to evidence regarding current country conditions.

[18] The respondent cited *Alabadleh v. Canada (Minister of Citizenship and Immigration)* (2006), 357 N.R. 333, 2006 FC 716, wherein Justice Mosley denied an application for judicial review of a PRRA decision. In *Alabadleh*, the applicant was also a stateless Palestinian who asserted that the PRRA officer had failed to consider the interest of the children in the context of a risk assessment. Justice Mosley found that the appropriate forum for consideration of the children's interest was an application for consideration of humanitarian and compassionate factors under section 25 of IRPA.

[19] The respondent submitted that this case was similar to *Alabadleh* in that the applicant made insufficient submissions regarding the risks faced by the children.

Analysis and Decision

Standard of Review

[20] Justice Mosley performed a pragmatic and functional analysis of a PRRA officer's decision in *Kim v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 437 at paragraphs 8 to 22. I agree with his reasoning on the applicable standards and would adopt it here. Since the issues in this case are questions of fact, they are to be reviewed on the standard of patent unreasonableness.

[21] I propose to deal first with Issue 2.

[22] **Issue 2**

Did the officer err by conducting a selective analysis of the objective documentary evidence concerning the risk to the applicants in the West Bank and failing to base its decision upon the totality of the evidence before it?

The applicants submitted that the officer erred in failing to address the risk faced by the minor applicants. The respondent submitted that an H&C application was a more appropriate forum within which to consider the best interests of children. In his submissions to the officer, the principal applicant stated the following in support of his PRRA application:

My family and I have always been subject to daily systematic harassment, humiliation and persecution at the hands of Israeli settlers and Israeli Army.

...

The current security situation is extremely bad in the West Bank.

That I am not able to open my fruit and vegetables shop any more.

Thus, I would not be able to support myself and my family financially.

Israeli soldiers and Israeli settlers are still there and thus the risk is also still there.

...

I am afraid should my family and I go back to Palestine we would certainly face persecution at the hands of Israeli settlers and Israeli soldiers.

Civilian Palestinians are gunned down by Israeli soldiers daily and Israeli settlers and I am afraid to wake up one day witnessing the death of one of my children if not all my family.

Going back to Palestine means death for me and my family members.

[23] The PRRA officer's decision failed to address the risk faced by the four minor applicants, who ranged in age from three to sixteen years old. I would note that the applicants' PRRA application included the following under section 54, which requests "Supporting Evidence":

Pictures of Israeli soldiers beating Palestinian children.

...

Violations committed by Israeli soldiers and Israeli settlers against civilian Palestinians.

Pictures of Palestinian casualties including children at the hands of Israeli soldiers.

[24] There was also documentary evidence on file which showed the nature of the risks faced by Palestinian children living in the West Bank. The record contained evidence that Palestinian children risked being shot and killed by Israeli Defense Forces and were being used as human shields. I am of the opinion that there was sufficient evidence submitted by the principal applicant to put the officer on notice that the children faced particular risks if returned to the West Bank.

[25] In my view, the PRRA officer made a patently unreasonable decision when the officer failed to address the risk faced by the minor applicants if they were returned to the West Bank.

[26] Because of my finding on this issue, I need not deal with the other issues.

[27] The application for judicial review is therefore allowed and the matter is returned to a different PRRA officer for redetermination.

[28] Neither party wished to submit a serious question of general importance for my consideration for certification.

JUDGMENT

[29] **IT IS ORDERED that** the application for judicial review is allowed, the decision of the PRRA officer is set aside and the matter is referred to a different PRRA officer for redetermination.

“John A. O’Keefe”

Judge

ANNEX

Relevant Statutory Provisions

The relevant statutory provisions are set out in this section.

The *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.:

<p>96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,</p> <p>(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or</p> <p>(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.</p> <p>97.(1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally</p> <p>(a) to a danger, believed on substantial grounds to exist, of</p>	<p>96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques:</p> <p>a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;</p> <p>b) soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.</p> <p>97.(1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n’a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée:</p> <p>a) soit au risque, s’il y a des motifs sérieux de le croire,</p>
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torture within the meaning of Article 1 of the Convention Against Torture; or

d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant:

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualifié de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2014-06

STYLE OF CAUSE: OMAR AL ASALI, MANAL DAFASH,
HAMZEH AL ASALI, HEBA AL ASALI,
OBADA AL ASALI and TUQA AL ASALI

- and -

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 27, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT OF:** O'KEEFE J.

DATED: October 1, 2007

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