

Federal Court



Cour fédérale

**Date: 20110802**

**Docket: IMM-7407-10**

**Citation: 2011 FC 968**

**Ottawa, Ontario, August 2, 2011**

**PRESENT: The Honourable Mr. Justice Russell**

**BETWEEN:**

**NAWAL MUNER KHEDER ALCHARIC  
FANAR HATEM ZAKARNAH  
FADI HATEM ZAKARNAH  
DAWOOD HATEM ZAKARNAH  
and  
DIANA HATEM ZAKARNAH**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of the decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated 12 November 2010 (Decision), which

refused the Applicants' applications to be deemed Convention refugees or persons in need of protection under sections 96 and 97 of the Act.

## **BACKGROUND**

[2] The Principal Applicant is a citizen of both Iraq and Jordan. The Minor Applicants, who are the Principal Applicant's children, are citizens of Jordan only. All are Christians.

[3] The Principal Applicant moved to Jordan from Iraq in 1993 and married a Jordanian Christian in 1994. The Minor Applicants are the children of that marriage. In 2000, the family moved to Riyadh in Saudi Arabia, where the Principal Applicant's husband had taken a job. In January 2008, the husband got a new supervisor, named Onayzi. He was a Muslim who, according to the Principal Applicant, held extreme views against non-Muslims. He also belonged to the Al-Oneza tribe which, according to the Principal Applicant, has strong ties to the royal families of both Jordan and Saudi Arabia. This supervisor harassed and criticized the husband. In February 2008, they had a heated confrontation.

[4] On 20 May 2008, four uniformed members of the religious police and one uniformed member of the regular police force invaded the Principal Applicant's family home. They ransacked the house, assaulted the husband and insulted the other family members, using religious epithets. The Principal Applicant and her husband did not believe that the police would help them because they are Christians and because the agent of persecution was a member of the powerful Al-Oneza tribe. Therefore, the Principal Applicant and her husband did not report the incident.

[5] The Principal Applicant and her husband decided that she and the Minor Applicants should leave Saudi Arabia. They did not consider Jordan to be a haven because the Al-Oneza tribe has influence there. The Applicants were unable to obtain their passports immediately. It was not until 23 August 2008 that they fled Riyadh and travelled by air to Canada, via Frankfurt. They arrived in Canada on 24 August 2008 and made their claims for refugee protection on 4 September 2008 based on their fear of persecution by reason of their religion, nationality and membership in a particular social group.

[6] The Principal Applicant has been trying, unsuccessfully, to contact her husband since 14 September 2008. Her neighbours have told her that this is the last date on which he was seen at their house in Riyadh. The house has subsequently been destroyed by fire.

[7] The Applicants appeared before the RPD on 13 October 2010. They were represented by counsel and an interpreter was present. The RPD determined that they did not have a well-founded fear of persecution in Jordan based on any of the five Convention grounds. In the alternative, they failed to rebut the presumption of state protection in Jordan. This is the Decision under review.

## **DECISION UNDER REVIEW**

### **Credibility**

[8] The RPD found that the Principal Applicant lacked credibility based on the following testimony.

[9] The Principal Applicant testified that, although her husband is missing, she has not asked the Saudi police to investigate his whereabouts because Onayzi has influence with the police. Also, she claims that she cannot expect her family members to investigate because, unless they have a work permit to enter Saudi Arabia, they will be turned away at the border. The RPD found both explanations to be “inadequate” and “likely ... incorrect.”

[10] The Principal Applicant was unable to provide documentary evidence to corroborate her allegations. She testified that she and her husband did not file a complaint with the police following the May 2008 home invasion, so there was no police report. She was unable to produce photos, insurance reports or bills for replacements or repairs to the home, explaining that the family was so frightened after the home invasion that they did not think to gather such evidence. She has no evidence corroborating her testimony that their house in Riyadh has been burned. The fire was not reported to the police, and her relatives did not provide any evidence even though she asked them to do so. She stated that her neighbours would have been too frightened to provide her with a letter attesting to the fire. Although she has had no news of her husband since September 2008, she has not contacted the Saudi police or visited Saudi Arabia herself. The RPD stopped short of making an overall negative credibility finding but did note the Principal Applicant’s loss of an opportunity to bolster her claim through corroboration.

[11] The Principal Applicant was unable to satisfy the RPD that the Al-Oneza tribe was responsible for the home invasion. She testified that Onayzi had never threatened her or her children directly. When the RPD suggested that other anti-Christian groups in Saudi Arabia may have been responsible, she said that she was convinced that Onayzi instigated the invasion because it happened

after her husband confronted him at work and because Onayzi was the worst of all those who target Christians. In the absence of documentary evidence, the RPD found the former statement to be “mere conjecture” and the latter statement to be a “gross exaggeration.”

[12] The Principal Applicant said that she feared being sent back to Jordan because she may not be able to get citizenship there (a claim that was uncorroborated) and would be vulnerable, both as a single mother and as the wife of a man targeted by Onayzi. Although granted time after the hearing to provide documentary evidence that Onayzi was both powerful and vindictive, the Principal Applicant was able only to show that Onayzi existed. The RPD found that, if Onayzi was so powerful and vindictive, he would have used his influence to deport her husband from Saudi Arabia; he would not take his revenge by attacking the Principal Applicant and her children were they to return to Jordan. The RPD concluded that the Applicants’ fears were not well-founded. However, it declined to base its rejection of the refugee claims on implausibilities. Rather, it based the Decision on state protection.

### **State Protection**

[13] The RPD relied on *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, [1993] SCJ No 74 (QL), and *Flores Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at paragraph 25, for the proposition that refugee protection is available only after a claimant has unsuccessfully sought protection in her own state, given that, in the absence of clear and convincing evidence to the contrary, it is presumed that every state can protect its own citizens. “[A] claimant seeking to rebut the presumption of state protection must adduce relevant, reliable and convincing

evidence which satisfies the trier of fact on a balance of probabilities that the state protection is inadequate.” See *Flores Carrillo*, above, at paragraph 30. A refugee claimant bears a heavy burden when attempting to show that she should not have been required to exhaust every avenue available domestically before seeking protection elsewhere. See *Hinzman v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171 at paragraph 46.

[14] In the instant case, the RPD considered the availability of state protection for the Applicants in Jordan and not in Saudi Arabia (their country of residence prior to fleeing to Canada). The RPD did not accept the Applicants’ claim that state protection is not available to them in Jordan for the following reasons.

[15] Although the Principal Applicant testified that the Al-Oneza tribe exerts considerable influence over the police, the RPD noted that the Applicants “did not provide any [documentation] directly related to this key issue,” despite a post-hearing opportunity to do so. Moreover, the Applicants’ testimony is contradicted by the U.S. DOS Report for 2009, which states that civilian authorities maintain control over security forces and that the government investigates cases of police abuse and corruption. The RPD concluded that the state of Jordan would be able to provide adequate state protection to the Applicants with respect to any abuse that may be threatened or perpetrated by the Al-Oneza tribe. The RPD also recognized documentary evidence indicating that there is religious freedom in Jordan, so that the Applicants, as Christians, would not be at risk on that ground.

## ISSUES

[16] The Applicants formally raise the following issue:

Whether the RPD failed to address relevant evidence in its assessment of state protection.

[17] The Applicants raise the following issues in their arguments:

- a. Whether the RPD failed to provide adequate reasons for the Decision.
- b. Whether the RPD applied the wrong standard of proof when reviewing the evidence on tribal control.

## STATUTORY PROVISIONS

[18] The following provisions of the Act are applicable in these proceedings:

### **Convention refugee**

**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,

(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

### **Définition de « réfugié »**

**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 :

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

each of those countries; or

*(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.

### **Person in need of protection**

**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

*(a)* to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

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

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

*(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,

*(iii)* the risk is not inherent or incidental to lawful sanctions,

pays;

*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.

### **Personne à protéger**

**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 :

*a)* soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

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

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

*(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)* la menace ou le risque ne résulte pas de sanctions



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| unless imposed in disregard of accepted international standards, and | légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles, |
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| (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. |
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| <b>Person in need of protection</b> | <b>Personne à protéger</b> |
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| (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 qualité 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. |
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## STANDARD OF REVIEW

[19] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9, held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[20] Assessment of the evidence is within the RPD's areas of expertise and, therefore, deserving of deference. It is reviewable on a standard of reasonableness. See *Hassan v Canada (Minister of*

*Employment and Immigration*) (1992), 147 NR 317, [1992] FCJ No 946 (QL) (FCA); and *Ched v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1338 at paragraph 11.

[21] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with “the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.” See *Dunsmuir*, above, at paragraph 47; and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

[22] The second issue concerns the adequacy of the RPD’s reasons for refusing the Applicants’ application for refugee protection. Adequacy of reasons is a procedural fairness issue, which attracts the correctness standard. See *Khosa*, above, at paragraph 43.

[23] The third issued concerns the applicable standard of proof. This is a question of law, which is reviewable on the correctness standard. See *Munoz v Canada (Minister of Citizenship and Immigration)*, 2008 FC 995; and *Ospina v Canada (Minister of Citizenship and Immigration)*, 2011 FC 681 at paragraph 20.

## **ARGUMENTS**

### **The Applicants**

#### **State Protection Is Unavailable to Victims of Tribal Conflict**

[24] The Applicants argue that state protection is unavailable to them because they are being persecuted by a “very powerful Arab tribe which wields considerable influence in Jordan, as well as in Saudi Arabia.” The Applicants submit that the police generally do not get involved in tribal conflicts. In its Decision, the RPD looked exclusively at whether the Al-Oneza tribe exerts influence over the Jordanian police force. It failed utterly to assess an equally important part of the analysis, namely whether state protection is generally available with respect to tribal conflicts.

[25] In post-hearing submissions, the Applicants introduced evidence that was directly on point and which demonstrated that Jordan is unable to protect persons who are targeted during tribal conflict. For example, the current director of the General Security Branch of the Jordan security apparatus is a member of the Al-Majali tribe, which descends from the Al-Oneza tribe. In fact, for eight of the past twenty-five years, each director of the Jordanian General Security Branch has been affiliated with the Al-Oneza tribe which, the Applicants submit, illustrates their strong tribal influence on police and state security in that country.

[26] The Applicants submitted three news articles, one dated 2009 and two dated 2010, which indicate that, in Jordanian society, there is increasing tribal conflict and increasing reliance on the protection offered by one’s tribe rather than by the law and state authorities. The 2009 U.S. DOS

Report notes that many analysts commented that the current electoral system creates a “weak, unrepresentative parliament” that favours tribal interests.

[27] The Applicants submit that they are especially vulnerable in this political environment because they belong to no tribe and therefore have no one to protect them. This is exacerbated by the fact that, given the disappearance of her husband, the Principal Applicant would be returning to Jordan as a single mother.

[28] The Applicants argue that the RPD failed to consider any of this evidence and to balance it against evidence of the availability of state protection. The RPD thereby failed in its duty to provide adequate reasons. See *VIA Rail Canada Inc v Canada (National Transportation Agency)* (2000), [2001] 2 FC 25, [2000] FCJ No 1685 (QL) (FCA) at paragraph 22.

[29] Moreover, the Applicants contend that the RPD imposed too high a standard upon their state protection submissions by expecting them to provide direct evidence that tribes have influence over the police force. The jurisprudence does not require the Applicants to prove “with certainty” that state protection is unavailable. It requires evidence that is “clear and convincing,” and the Applicants have supplied such evidence. They submit that, in this proceeding, it is within the Court’s jurisdiction to determine whether the RPD applied the appropriate standard of proof and, if it did not, to determine whether a new hearing is warranted. See *Alam v Canada (Minister of Citizenship and Immigration)*, 2005 FC 4 at paragraph 11.

## **The Respondent**

### **Preliminary Matter**

[30] The Respondent submits that paragraphs 12, 14 and 15 of the Affidavit of the Principal Applicant contain argument and conclusions that are not within her knowledge and, therefore, should be given no weight. See *Canada (Minister of Citizenship and Immigration) v Huntley*, 2010 FC 1175 at paragraphs 261-74.

### **The Refugee Claims Were Denied In Part Due to Lack of Objective Fear**

[31] The Respondent submits that the RPD analyzed the objective basis for the claim and found it to be speculative and based on conjecture. As the Applicants have failed to challenge these findings, this application should be dismissed.

### **The Decision Was Reasonable**

[32] The Respondent submits that the RPD has recognized expertise in the weighing of evidence and the drawing of conclusions regarding the Applicants' credibility. See *Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315, 42 ACWS (3d) 886 (FCA). The RPD need not mention every piece of evidence but is presumed to have considered the evidence in its entirety. The onus is on the Applicants to establish their claim on a balance of probabilities through the provision of trustworthy evidence. Although their testimony is presumed true, the RPD found that the presumption was rebutted by evidence that was implausible.

[33] The Applicants failed to satisfy the RPD that there was a link between her husband's confrontation with Onayzi and the subsequent invasion of her home by the religious police and that Onayzi or the Al-Oneza tribe has a continuing interest in the Applicants if ever such an interest existed. They also failed to rebut the presumption of state protection in Jordan, largely because they made no attempt to access it. They did not file a police report following the home invasion, the destruction of their home by fire or the disappearance of the Principal Applicant's husband. In the absence of corroborating evidence that these events happened, the RPD was justified in rejecting the Applicants' version of events and in preferring documentary evidence attesting to the availability of state protection and freedom of religion in Jordan.

### **The Applicants' Reply**

[34] The Applicants submit that paragraph 12 (with the exception of the Principal Applicant's interpretation of the Decision) and paragraph 14 should be given full weight, as they contain facts or beliefs within the knowledge of the Principal Applicant.

[35] The Applicants clarify their contention that the RPD failed to assess adequately both state protection and objective fear. However, they do note that the RPD was clear at paragraph 23 of the Decision that it rejected the Applicants' claims not because of implausibilities in the testimony but because it found that Jordan could offer them state protection. The Applicants contend that, had the RPD given proper consideration to all of the documentary evidence, particularly the post-hearing submissions, it would have found an objective basis for the Applicants' fear.

### **The Respondent's Further Memorandum**

[36] The Applicants state that the Decision was based solely on the availability of state protection. That is not accurate. The RPD also determined that the Applicants' fear was based on speculation; it was neither well-founded nor based on objective evidence. The documentary evidence concerning tribal warfare and honour codes on campus was irrelevant to the Applicants' circumstances. When the Decision is read as a whole, it is clear that the RPD's analysis of the evidence was both thorough and reasonable.

### **ANALYSIS**

[37] My own analysis depends upon my interpretation of the basis for the Decision.

[38] Counsel for the Applicants has, quite correctly, cautioned the Court against inventing its own version of the Decision and has reminded the Court that ambiguities should be interpreted in the Applicants' favour. On the other hand, counsel agreed that the Decision must be read as a whole in order to ascertain the grounds upon which it is based.

[39] Following counsel's advice, we are told in paragraphs 5 and 6 of the Decision that the issues are credibility, whether the Applicants' alleged fear in Jordan is well-founded and the availability of state protection.

[40] At paragraph 16 of the Decision, the RPD says, after analyzing the lack of convincing evidence, that

[t]he Panel will not make an overall negative credibility finding from the above-noted implausibility and failure to corroborate issues. However, the Panel does note them, and, with respect to the lack of corroboration, comments that the claimant has lost an opportunity to bolster her claim by reason thereof.

[41] It is not entirely clear what the RPD means by these comments. I think, however, that the RPD is saying it will not dismiss the claim on the basis of “an overall negative credibility finding” but that its findings are noted.

[42] The RPD then goes on to deal with the well-foundedness of the Applicants’ claim as a separate ground. After reviewing the Applicants’ evidence on this point, the RPD then makes the following findings at paragraph 22 of the Decision:

Considering all of the above, the Panel finds it implausible that this Onayzi, if he exists, would be motivated to, or find it necessary, to target the claimant and her children in Jordan, because he did not approve of the claimant’s husband being a Christian. For this reason, the Panel finds that any fear the claimant says she has of Onayzi or his tribe is not well-founded.

[43] There is then some confusion in the Decision as a result of the wording of paragraph 23:

However, again, the Panel is hesitant to base a negative decision on, to a large extent, implausibilities. Thus, the Panel does base its negative decision herein on state protection, as follows.

[44] In the context of the Decision as a whole, it would appear that the RPD is saying that notwithstanding its findings on credibility and the absence of well-founded fear, it has decided to base its negative Decision on adequate state protection alone rather than rely upon implausibilities



in the Applicants' evidence. This would seem to be borne out by the RPD's conclusions on state protection:

However, it is notable that the claimant indicated that the police were not called by her relatives in Jordan after threats were allegedly made against the claimant by this tribe in Jordan. Thus, while the claimant was not present in Jordan and cannot be held responsible for what her relatives did or did not do, it is noted that recourse to the police was not attempted. The claimant herself, or her family, did not experience any threats or attacks in Jordan. This thus becomes a hypothetical discussion of whether adequate state protection would be available in what the Panel has found to be the very unlikely event that the tribe would one day threaten the claimant and her family if she were to hypothetically return to Jordan.

The claimant was asked to provide any article, etc., which would indicate that this tribe controls or has great influence over the police in Jordan. Counsel advised that in Exhibit C-7 there is documentation that this tribe exists in Jordan, but the Panel notes that this did not address the question asked. The claimant was given time after the hearing to provide any desired documentation, but did not provide any directly relating to this key issue. Thus, the Panel finds that this tribe does not exercise undue control over the police in Jordan.

From the above analysis the Panel finds that adequate state protection would be available to the claimant in Jordan from any abuse as may be threatened or perpetrated by this tribe in Jordan.

As such, the claimant has failed to provide clear and convincing evidence that the state would not be both willing and able to provide adequate protection for him (*sic*) in the hypothetical event she returned to Jordan. Thus, the claimant has not successfully rebutted the presumption of adequate state protection, and the Panel finds, on a balance of probabilities, that it would be available for the claimant and her family.

[45] I think, then, that the Decision must be reviewed from the perspective of state protection alone because the RPD has told us that it "is hesitant to base a negative decision on, to a large extent, implausibilities" and prefers to base its negative decision on state protection.

[46] The Applicants argue that the RPD should have looked at the evidence related to the broader issues of tribal conflict in Jordan and at the issue of whether Onayzi and his tribe could control police and state security in a way that would deprive the Applicants of state protection in Jordan. The Applicants suggest that the evidence shows that, in Jordan, the tribal mentality leads people to seek protection from their own tribe rather than the state. Because the Applicants do not belong to a tribe, they argue that they would have no protection in Jordan against Onayzi and his tribe.

[47] The RPD addresses this point directly in paragraphs 29 and 32 of the Decision:

The claimant has alleged that state protection would not be adequate. In that regard, the Panel has examined Exhibit R/A-1, Item 2.1, the U.S. Department of State 2009 Human Rights Report. On Page 7 of this document, it is set out in the paragraph entitled “Role of the Police and Security Apparatus” that “Civilian authorities maintained control over security forces. The government uses mechanisms to investigate abuse and corruption, but some allegations of impunity remained.” The report goes on to say that the government does investigate cases of police abuse and corruption. The panel was unable to find reference in any of the documentation before it in Exhibit R/A-1 that any particular tribe or tribes exercise control over the Jordanian state protection mechanism, nor was any such reference pointed out by counsel or the claimant at the hearing. Counsel did provide additional articles on tribes in Jordan, in general, with her submissions, but they were not on point in regard to this issue.

...

The claimant was asked to provide any article, etc., which would indicate that this tribe controls or has great influence over the police in Jordan. Counsel advised that in Exhibit C-7 there is documentation that this tribe exists in Jordan, but the Panel notes that this did not address the question asked. The claimant was given time after the hearing to provide any desired documentation, but did not provide any directly relating to this key issue. Thus, the Panel finds that this tribe does not exercise undue control over the police in Jordan.

[48] Having reviewed the evidence in question which appears at pages 215 to 239 of the Applicants' Record and at pages 420 to 443 of the Certified Tribunal Record, I have to conclude that the evidence reveals that Mr. Onayzi is not mentioned in this evidence, but the tribe to which he purportedly belongs—the Al-Oneza tribe (a.k.a. Al-Anza)—is mentioned. The evidence supports the Applicants' assertions that Al-Oneza and its related tribes (particularly the Al-Majali tribe) have held positions of power in Jordanian governments and security forces for the past two centuries. These tribes are described as “very significant” and “influential.” According to the evidence, they “controlled the parliament for long time (*sic*)” and “occupied the majority of seats in the government, with elite positions and the chair of the PASHA” (see page 433, CTR). Another related tribe, Al-Edwan, is described as “the most prominent Tribe that control the authorities and represent all other tribes in the area and they are the most powerful tribes in Jordan which goes back to years and years ago” (see page 427, CTR). There seems to be no doubt that this conglomerate of tribes is very powerful.

[49] The RPD says at paragraph 32 of the Decision that the Applicant was asked to provide evidence that the tribe controls or has great influence over the police in Jordan but that she “did not address the question asked” or “provide any [evidence] directly relating to this key issue.” It seems to me that she did provide evidence that tribes related to Al-Oneza do have great influence over the police. For example, page 433 of the CTR says that Al-Edwan controls the authorities.

[50] As with so much of this Decision, it is not entirely clear what the RPD is basing its findings on. The Decision appears to indicate that, on state protection, the RPD rejected the Applicant's evidence because she had failed to provide anything which showed that the tribe to which Mr.

Onayzi is related “controls or has great influence over the police in Jordan.” If this was material to the state protection finding then it seems to me that a reviewable error has occurred because the Applicant did provide evidence of such power and influence.

[51] The Applicants complain further that the RPD did not apply the correct standard of proof to the evidence adduced by the Applicants on tribal control and, in effect, required “direct” evidence of tribal control.

[52] I do not see this when the Decision is read as a whole. The RPD simply notes that the Applicant was asked if she had any documentation that would show that the tribe in question could influence the police in Jordan, and that she was given time after the hearing to provide “any desired documentation but did not provide any directly relating to this issue.”

[53] In my view, the RPD is simply pointing out that the documentation produced by the Applicants was not on point and did not directly address the issue. I cannot read into this that the RPD required a higher standard of proof than a balance of probabilities.

[54] I am also satisfied that the reasons are adequate.

[55] Given the evidence before the RPD, I have to say that the Decision was unreasonable because the Applicant did provide evidence of the kind of tribal influence over the police and the authorities that the RPD says was missing.

[56] Counsel agree that there is no question for certification and the Court concurs.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

1. The application is allowed. The Decision is quashed and returned for reconsideration by a differently constituted RPD.
2. There is no question for certification.

“James Russell”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-7407-10

**STYLE OF CAUSE:** **NAWAL MUNER KHEDER ALCHARIC  
FANAR HATEM ZAKARNAH  
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DAWOOD HATEM ZAKARNAH and  
DIANA HATEM ZAKARNAH**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** June 13, 2011

**REASONS FOR JUDGMENT  
AND JUDGMENT** **Russell J.**

**DATED:** August 2, 2011

**APPEARANCES:**

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