Federal Court  Cour fédérale

Date: 20120607

Docket: IMM-7021-11

Citation: 2012 FC 714

Ottawa, Ontario, June 7, 2012

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

IRIT FURMAN - YOUNIS
(AKA IRIT FURMAN YOUNIS)
EDEN YOUNIS

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicants, Irit Furman-Younis (the Principal Applicant) and her minor son Eden Younis are citizens of Israel. They seek to have set aside a negative decision by the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated September 15, 2011. The Board found they were not Convention refugees or persons in need of protection within the

meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

[2] For the following reasons, their application is dismissed.

I. Background

[3] The Applicants brought a refugee claim in Canada based on Eden having experienced racially-motivated bullying at school in Israel. While his mother is Jewish Israeli, his father is Sudanese Muslim. He is being raised as Muslim and Jewish to reflect his mixed religious background.

[4] The Applicants claim that Eden was continuously harassed and bullied at school. In February 2007, an attack at school landed him in the hospital. His mother attempted to address the situation with school officials, including writing a letter of complaint to the Minister of Education. She also sought the assistance of a local newspaper.

II. Decision Under Review

[5] The Bound found the Applicants failed "to submit credible and trustworthy evidence to establish a well-founded fear of persecution or serious harm upon their return to Israel." In particular, a letter from a doctor following the February 2007 incident did not substantiate the Applicants' allegations that Eden was persecuted or subjected to cruel and unusual treatment based

on his race, religion or the colour of his skin as his mother alleged. She was seen as exaggerating what happened to embellish her claim. Similarly, referring to newspaper articles and negative consequences that arose from them, the Board concluded:

> […] I find that the adult claimant did not adduce sufficient credible and trustworthy evidence to suggest that race, religion, or the colour of the minor claimant's skin played a roll in the incidents – the threatening phone calls, car incident, or termination from her employer – that happened to her after the publication of the two articles on June 19 and 26, 2009.

[6] As an alternative finding, the Board faulted the Applicants for failing to rebut the presumption of state protection in Israel. Despite the Principal Applicant's complaints to educational institutions regarding the treatment of her son, she did not go to police until June 20, 2009. This was 20 days prior to them leaving Israel. There was also insufficient evidence of police inaction.

III. Issues

[7] The Applicants raise the following issues:

(a) Were the Board's negative credibility findings reasonable?

(b) Was the Board's conclusion that the Applicants did not rebut the presumption of state protection reasonable?

(c) Did the Board apply the correct legal standard with respect to the burden of proof under sections 96 and 97 of the IRPA?

IV. Standard of Review

[8] Questions of credibility are to be afforded deference in accordance with the reasonableness standard (*Aguirre v Canada (Minister of Citizenship and Immigration)*, 2008 FC 571, [2008] FCJ no 732 at paras 13-14). This standard also applies to the assessment of the availability of state protection (*Mendez v Canada (Minister of Citizenship and Immigration)*, 2008 FC 584, [2008] FCJ no 771 at paras 11-13).

[9] Based on this standard, the Court will only intervene absent justification, transparency, and intelligibility or an outcome that is unacceptable in light of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

[10] By contrast, the statement of a legal test warrants the correctness standard (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, 2009 CarswellNat 434 at para 44).

V. Analysis

A. *Credibility Findings*

[11] The Applicants assert that the Board was unreasonable in the treatment of medical evidence following the February 2007 incident. The Board considered the failure of this report to corroborate their allegations by merely suggesting that Eden "was injured at school" central to its overall negative credibility finding. They also insist that the Board misconstrued the evidence as to Eden not remembering what happened when his mother first arrived at the hospital.

[12] With respect, I cannot accept the Applicants' position. While the Board's conclusions regarding the medical evidence were not the only ones that could be reached, it does not follow that they are unreasonable. The Board is justified in focusing on whether the evidence presented relates to the specific claim, namely that Eden was mistreated at school based on his race, religion or skin colour in such a way that would amount to persecution or put him at risk of harm.

[13] The Applicants reliance on *Ukleina v Canada (Minister of Citizenship and Immigration),* 2009 FC 1292, [2009] FCJ no 1651 is of limited assistance. In that case, Justice Sean Harrington took issue with the Board finding a report a forgery because it failed to state the cause of the injury. As the Respondent suggests, the Board in this case accepted the report as presented. There was no suggestion of a forgery. Rather, the Board faulted the report and drew a negative inference as to credibility for not addressing the central allegations raised by the Applicants related to the racial motivation behind the attacks. This analytical approach is reasonable.

[14] The Applicants further contest the Board's failure to explicitly mention psychological reports from Canadian professionals addressing Eden's condition and his discussions regarding racial and religious mistreatment.

[15] The Respondent maintains that the Board was not necessarily required to refer to these reports in seeking evidence that would address the racial motivation behind the attack. These individuals could not verify what occurred in Israel and relied primarily on the recitations from the Applicants to the extent that the reasons for the attack were mentioned. In *Gosal v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ no 346, Justice Barbara Reed suggested that the Board is not required to refer to a psychiatrist's report in all instances stating, "[i]t will depend on the quality of that evidence and the extent to which it is central to the applicant's claim."

[16] However, in this matter I find that the quality of the evidence was such that the Board should have specifically referred to and considered the psychological reports (see for example *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35, [1998] FCJ no 1425 at para 27). The failure to do so undermined its overall credibility finding. As a consequence, I cannot accept that this aspect of the Board's decision was reasonable.

[17] I do not agree with the holding in *Cortes (Litigation Guardian) v Canada (Minister of Citizenship and Immigration)*, 2011 FC 329, [2011] FCJ no 427 that a determination as to the Board's credibility findings being flawed automatically leads to the conclusion that the application must be allowed. There is no basis to conclude that the Board's credibility finding "tainted its entire

decision" in this instance (for similar reasoning see *Pena v Canada (Minister of Citizenship and Immigration)*, 2011 FC 746, [2011] FCJ no 964 at para 30). Therefore, in my view, an assessment as to the reasonableness of the state protection analysis must also be undertaken.

B. *State Protection*

[18] On review, I consider the Board's assessment of state protection, which is determinative of the claim, reasonable in the circumstances.

[19] The Applicants take issue with the Board faulting Eden's mother for not contacting police before 2009 despite her efforts to address the matter with educational officials. They also question why if she was dissatisfied with the police response she was expected to seek protection elsewhere.

[20] In a democratic state, however, the burden is much higher to rebut the presumption of state protection (see *Kadenko v Canada (Minister of Citizenship and Immigration)*, [1996] FCJ no 1376 at para 5 (CA)). In a recent case, Justice André Scott found that applicants "must show that they tried to exhaust all courses of action open to them in Israel to obtain the necessary state protection" (*Galinkina v Canada (Minister of Citizenship and Immigration)*, 2011 FC 36, [2011] FCJ no 39 at para 22). As another example, this Court has found that applicants must do more to show that state protection was not available to them than make two failed attempts to contact police (see *Antypov v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1589, [2004] FCJ no 1931 at para 12).

[21] In the context of Israel, the Board therefore reasonably faulted the Applicants for not further pursuing these matters with the police and awaiting their response. While the Applicants initially raised the matter with educational officials, they had only brought the matter to the police shortly before leaving Israel. There were other avenues available to them and the police were not given the opportunity to address the complaint (see for example *Gutierrez v Canada (Minister of Citizenship and Immigration)*, 2009 FC 487, [2009] FCJ no 617 at para 20).

[22] I must also stress that the standard of protection in these cases is adequacy (*Carillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, 2008 CarswellNat 605 at para 38). Failure to solve crimes does not necessarily mean the protection was not adequate where police investigated and responded to the allegations (see *Salvagno v Canada (Minister of Citizenship and Immigration)*, 2011 FC 595, [2011] FCJ no 794 at para 18).

[23] Given my conclusion with respect to state protection, there is no need to address other arguments raised by counsel at the hearing as to whether the Board had conducted a separate analysis under sections 96 and 97 applying the correct legal tests (see *Pena*, above at para 40).

VI. Conclusion

[24] Accordingly, this application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

" D. G. Near "

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	**IRIT FURMAN-YOUNIS ET AL v MCI**
STYLE OF CAUSE:	**IMM-7021-11**
PLACE OF HEARING:	**TORONTO**
DATE OF HEARING:	**MAY 3, 2012**
REASONS FOR JUDGMENT AND JUDGMENT BY:	**NEAR J.**
DATED:	**JUNE 7, 2012**

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