

Federal Court



Cour fédérale

Date: 20131126

Docket: IMM-7129-12

Citation: 2013 FC 1187

Ottawa, Ontario, November 26, 2013

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

**MOHAMAD SIDO
AMINA MOHAMED**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

OVERVIEW

[1] Mohamad Sido and Amina Mohamed (the Applicants), both citizens of Syria, seek judicial review of a decision of a Panel of the Refugee Protection Division (RPD) of the Immigration and Refugee Board (the Board), dated June 1, 2012, wherein it determined that they are not Convention refugees or persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] For the reasons that follow, I am of the view that this application for judicial review ought to be granted, essentially because the Board Member failed to assess the risks faced by family members of politically active Kurds.

FACTS

[3] The Applicants, of Kurdish ethnicity and Syrian citizenship, are husband and wife. The male Applicant (Mr. Sido) was born April 10, 1948, and his wife was born August 2, 1955, both in Aleppo, Syria. The Applicants have two sons, Ala and Ahmed, and two daughters, Noora and Meyada. Ala has been accepted as a refugee in Canada, and both Ahmed and Noora have been accepted as refugees in Cuba.

[4] The Applicants allege that they have experienced persecution and fear persecution at the hands of Syria's intelligence service (the Mukhabarat) as a result of their sons' political activities as Kurds. In particular, Mr. Sido states that, while not politically active himself, he has been detained and abused on four occasions because the intelligence service was searching for or seeking to obtain information about his sons.

[5] According to the summary of the facts set out in the Applicants' Memorandum, the following events took place:

- The Applicants' sons were arrested in 2004 following a demonstration organized by the Yekiti Party, which was banned in Syria. Mr. Sido was obliged to pay a bribe to obtain Ala's release;

- Although Ala went into hiding after being released, the Applicants' home was searched on two occasions and, on the second, Mr. Sido was taken into custody, held for several hours and interrogated, despite denying any knowledge of his son's whereabouts;
- After Ala's departure for Canada in 2005, Mr. Sido was again arrested and taken from his home to be interrogated and questioned about Ala. As the Mukhabarat's questions suggested that the Applicants' phones had been tapped, Mr. Sido admitted that Ala had travelled to Canada;
- In June 2006, after locating their son Ahmed and arranging for him to be freed from detention upon payment of a large bribe, Ahmed fled to Cyprus and the Applicants visited him there for several months before returning to Syria. Ahmed was ultimately refused status in Cyprus, returned to Syria and was detained once again. Mr. Sido was required to pay another large bribe to obtain his release;
- In 2008, the Mukhabarat again came to the Applicants' home and arrested Mr. Sido, detaining him for one week. After his release, they visited his home every two to three months, and he gave money each time in fear that he would be arrested if he did not comply with their requests;
- In 2008, the Applicants applied for temporary resident visas for Canada but were refused;
- In 2010, the Mukhabarat once again visited the Applicants' home in order to extort money, and arrested and detained Mr. Sido for a week as he had little money to offer them;
- With the help of their son Ala, the Applicants obtained visas for Canada, arriving on June 27, 2010 and claiming refugee protection a few weeks later.

DECISION UNDER REVIEW

[6] Finding that the determinative issue in this claim is credibility, the Board Member raised credibility issues with many aspects of the evidence presented by the Applicants. Ultimately, the Board found that the Applicants were “so lacking in credibility that there was no credible evidence relevant to their claims, which must therefore fail” (Decision, para 31).

[7] The Board Member first considered the Applicants’ identity, accepting that they are nationals of Syria and concluding on a balance of probabilities that they are of Kurdish ethnicity.

[8] The Board Member found that both Mr. Sido’s manner of testifying and his testimony itself raised questions of credibility. He noted inconsistencies in the alleged facts surrounding the detention of Ala, Mr. Sido’s beatings and bribes, and whether the Applicants paid a bribe to exit the country. In questioning the Applicants’ credibility in connection with their subjective fear, he also noted their failure to claim protection in Cyprus, their re-availment to Syria, and their delay in ultimately departing Syria.

[9] Although he rejected their primary claim, the Board Member contemplated whether they should be found to be at risk solely on the basis of their ethnicity, although this had not been raised by the Applicants themselves. The Board Member considered the objective evidence and the fact that the Applicants made it clear that they were not politically active in Syria, concluding that they would face no more than a mere possibility of persecution because of their ethnicity. As he did not believe their evidence regarding their fear of persecution, he found that the Applicants are Kurds without any political profile, who have no intention of being politically active.

[10] Although the Board Member acknowledged that conditions were extremely violent and dangerous in Syria at the time of the Applicants' hearing, he found that any risk they would face upon return would be a generalized one, faced by the population at large.

ISSUE

[11] The only substantive issue raised by counsel for the Applicants is whether the Tribunal erred in finding "that there was no independent evidence capable of supporting the Applicants' claim for refugee protection".

ANALYSIS

[12] Counsel for the Applicants accepts that the Tribunal's decision, an exercise of discretion for questions of mixed fact and law (including credibility and the assessment of evidence), is reviewable on a reasonableness standard.

[13] As such, 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":

Dunsmuir v New Brunswick, 2008 SCC 9, [2008] 1 SCR 190, at para 47; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339, at para 59.

[14] At the Applicants' hearing, their counsel acknowledged that there were a number of discrepancies in Mr. Sido's testimony, and inconsistencies with details in his PIF and that of his son, Ala. Counsel asserts, however, that the inconsistencies do not mean that the events described did

not happen, and that Mr. Sido spoke of his experiences in a sincere way, suggesting that the Applicants' decision to come to Canada was motivated by the fact that they were afraid to live in Syria any longer. That being said, counsel did not challenge the Board Member's credibility finding.

[15] However, the thrust of the Applicants' argument is that a finding of non-credibility is not determinative of the question of whether or not they are Convention refugees. According to the Applicants, the Board Member erred in law by failing to assess whether the Applicants satisfied the subjective and objective components of the test for refugee status, particularly with respect to their allegation that they were at risk in Syria because of the political activities of their sons.

[16] The jurisprudence of this Court establishes that a finding of a lack of credibility does not prevent a person from being a refugee if other evidence establishes both the subjective and objective branches of the test for refugee status. That said, there will be no need to assess documentary evidence where the only evidence linking an applicant to that evidence is the applicant's discredited testimony; it will depend, in each case, on the nature of the documentary evidence and its relationship to the claim: see *Manickan v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1525; *Fernando v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1349.

[17] In the case at bar, the Board's decision appears to turn entirely on questions of credibility and therefore to be beyond review by this Court. Yet, the Board Member carefully attempted to avoid an error of the type asserted by the Applicants by considering, despite his negative credibility findings, whether the Applicants would be at risk on the basis of their Kurdish ethnicity alone.

Although the Board disbelieved much of the Applicants' story, it accepted that they are Kurdish citizens of Syria and consequently assessed the risk they would face on that basis. Although the risk faced by most Syrian citizens under the country's current circumstances is severe, the Board Member found that the Applicants were Kurds without any political profile, who faced no more than a mere possibility of persecution because of their ethnicity, and that the risk faced as a result of Syria's extremely violent and dangerous current conditions is a generalized one, faced by the population at large.

[18] Although the Board Member assessed whether the Applicants would be at risk on the basis of their Kurdish ethnicity, the Tribunal failed to assess whether the objective documentary evidence before it established that the Applicants would be at risk in Syria as a result of their membership in a particular social group, being their family, and as a result of their imputed political opinion because of their sons' political activities.

[19] The documentary evidence before the Board suggested that there is a risk of reprisals against relatives of political activists in Syria. A report from the Danish Immigration Service entitled *Human Rights issues concerning Kurds in Syria*, Human Rights Watch's *World Report 2012 on Syria*, and the *United States' Department of State Country Report on Human Rights Practices in Syria* for the year 2011, confirm that the Syrian government and its security apparatus actively target and arbitrarily arrest the family members of government critics and human rights groups, and put pressure on them to obtain information.

[20] Moreover, this is not a case where the only evidence that links the Applicants to that documentary evidence is the Applicants' discredited testimony. The evidence before the Board was that three of the Applicants' four children were political activists who had been found to be Convention refugees in Canada and by the UNHCR in Cuba. The Board Member did not dispute that the Applicants' sons were politically active, or that these family relationships existed. Therefore, the Board Member was under an obligation to assess the documentary evidence in order to ascertain whether, on the basis of this evidence and the Applicants' family relationships (and therefore, their imputed political opinion), they would face a risk upon return to Syria. It was not sufficient to assess their future risk solely on the basis of their Kurdish ethnicity.

[21] Of course, the Board was not bound either by the fact that one of the Applicants' sons was granted refugee status on the basis of his activities with the Yekiti Party, that he was a military service evader, or that two of their other children had been recognized as Convention refugees by the UNHCR in Cuba. Moreover, it may well be that the Applicants' failure to claim in Cyprus, their re-availment to Syria, and their delay in departing Syria will eventually be found to negate any subjective fear the Applicants may claim to have. However, the weighing of documentary evidence and the fact that they did not claim refugee protection in Cyprus and were able to leave Syria should be assessed and is better left to the Board.

[22] I am therefore in agreement with the Applicants that the Board Member's conclusion that "the claimants are Kurds without any political profile and who have no intention of being politically active" is not determinative of the question of whether or not they are Convention refugees. Given the documentary evidence cited by the Applicants regarding the risks faced by family members of

politically active Kurds and the Board Member's implicit acceptance that at least one of their sons was politically active, he was bound to assess whether the Applicants meet the subjective and objective components of the Convention refugee definition on the basis of evidence emanating from sources other than the Applicants' testimony.

CONCLUSION

[23] For the reasons set out above, I find that this application for judicial review should be granted. No question of general importance has been proposed for certification, and none is certified.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted. No question is certified.

"Yves de Montigny"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7129-12

STYLE OF CAUSE: MOHAMAD SIDO AND AMINA MOHAMED v THE
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**REASONS FOR JUDGMENT
AND JUDGMENT:** de

MONTIGNY J.

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