Federal Court  Cour fédérale

Date: 20131127

Docket: IMM-8749-12

Citation: 2013 FC 1193

Ottawa, Ontario, November 27, 2013

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

MOHAMMAD HUSSEIN MOHAMMAD ADAWI
NASER MOHAMMAD HUSSEIN ADAWI
NASIM MOHAMMAD HUSSEIN ADAWI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] for judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board, dated August 16, 2012 [Decision], which refused the

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

BACKGROUND

[2] The Applicants are Palestinians who came to Canada on July 26, 2010 from the United States and claimed refugee protection in Canada. The Principal Applicant is a 45-year-old stateless Palestinian from the West Bank. On May 31, 2010, a series of events led him and two of his sons, Naser and Nasim, to flee their home and seek refugee protection, allegedly as a result of death threats they received from armed members of Hamas and Al-Jihad.

[3] The Principal Applicant alleges that after his eldest son left for Canada due to problems arising from his refusal to help militants from Hamas and Al-Jihad, rumours were spread that he and his family were collaborating with Israel. On May 31, 2010, one of his sons was beaten by two Hamas students until one of his other sons intervened. That evening, the two sons involved, who are the other Applicants in this matter, sought refuge at their uncle's house in Lod, Israel. Later that night, a group of masked men looking for the two boys entered the Applicants' home by force, and told the Principal Applicant that he had two days to surrender both of his sons to them, or else he could consider the three of them dead.

[4] After spending the night at the hospital with his wife, who suffered shock and a miscarriage after the militants came to their home on May 31, 2010, the Principal Applicant fled to Lod. He would return to his home in Ramallah again twice before leaving for the United States: once with a brother on June 2, 2010 in order to retrieve clothing and passports, and again on June 20, 2010 with

a brother and the agent of a potential purchaser, when he tried to sell his home. He alleges that he was fired at by masked men on both occasions.

[5] In early July, the Principal Applicant and his two sons went to Jordan, from where they flew to Chicago on July 11, 2010. On July 26, 2010, they made their claim for refugee protection in Windsor, Ontario.

[6] The RPD hearing of the Applicants' claims began on September 16, 2011, and continued on July 6, 2012. On August 16, 2012, the RPD determined that the Applicants were not Convention refugees or persons in need of protection.

DECISION UNDER REVIEW

[7] The RPD's sole concern with the Applicants' claim was credibility. More specifically, the RPD found inconsistencies, omissions and implausibilities in the Principal Applicant's testimony.

[8] First, the RPD found that the Principal Applicant's testimony as to when he was last living in his home was inconsistent. While he testified at the hearing that he left his home on May 31, 2010, his Claim for Refugee Protection in Canada indicated that he resided there until "06/2010." The RPD was not satisfied with the Principal Applicant's explanation that he had encountered difficulty with the interpreter, as the interpreter was known to the Principal Applicant and he had signed a declaration that the content of his Personal Information Form [PIF] was complete, true and correct, and had been interpreted to him. Furthermore, the RPD was not convinced by the Principal Applicant's claim that he was confused and apprehensive at the time of completing his form. The

RPD found that the Applicant had had ample time between fleeing his home and entering Canada to prepare his story and, as a result, his mental state could not explain a flaw in his interview upon arrival. Furthermore, the Applicant's claim that the "06/2010" date was merely ambiguous, and not evidence that could be used to contradict his claim that May 31, 2010 was the last day that he lived there, was rejected by the RPD. The RPD noted that the Principal Applicant was the only one of the three Applicants who had listed June 2010 as his last day there; his two sons had listed May 31, 2010. Therefore, the RPD found that the overall evidence suggested that he continued to reside in his home beyond May 31, 2010. This caused the RPD to draw an adverse inference regarding the credibility of his allegations.

[9] Next, the RPD found that the Principal Applicant did not consistently testify as to the number of times he returned to Palestine after initially fleeing. In his PIF, the Principal Applicant only mentioned returning to his home on one occasion – on June 2, 2010 – to get clothing and documents. When asked at the hearing, he confirmed that this was the only time he had returned to his home. However, when confronted at the hearing, he admitted to having returned to his home on June 20, 2010 in order to try to sell it. This was consistent with the description he had provided on the form that he submitted at the border, which listed this event. He then explained that he had misunderstood the RPD's question. The RPD found that misunderstanding the question was not a satisfactory explanation for failing to mention this second return at the hearing. Again, this led the RPD to draw a negative inference regarding the credibility of the Principal Applicant's allegations and to conclude that the June 20, 2010 event had been fabricated to embellish his claim.

[10] The RPD also found it implausible that the Principal Applicant would return to his home the night of June 2, 2010, so close to the deadline given to him by Hamas and Al-Jihad. The RPD found that if the warnings and deadline had been credible, the Principal Applicant would not have chosen to wait until the last minute to return to get clothing and documents. The RPD also found that if Hamas had been determined to kill him, he would not have been able to get these items safely. The RPD concluded that this event was most likely fabricated.

[11] As well, the RPD noted inconsistencies in the Principal Applicant's testimony regarding whether he had exited the vehicle when visiting his home on June 20, 2010. At the first sitting, he stated that, although he had not gone inside, he had shown his brother and a potential purchaser's agent "around the house," whereas, at the second sitting, he testified that he had remained in the vehicle the whole time. The RPD interpreted "around the house" using common sense to mean that the Principal Applicant had walked the person around the house, and concluded that he had changed his testimony. The RPD also found it to be implausible that the Principal Applicant would risk visiting the home to sell it two weeks after the deadline had passed. The RPD further noted that it would be implausible for the Principle Applicant to succeed in disposing of his house under those circumstances, and that it would also be implausible for a person to be willing to buy it. These assessments of plausibility reinforced the RPD's conclusion that the June 20, 2010 event had been fabricated.

[12] Based on the above noted credibility concerns, the RPD found that the Applicants were not Convention refugees or persons in need of protection under sections 96 or 97 of the Act. Thus, their claims were rejected.

ISSUE

[13] Did the RPD err in determining that the Applicants' claim lacked credibility?

STANDARD OF REVIEW

[14] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Minister of Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48 [*Agraira*].

[15] In *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (FCA) [*Aguebor*], the Federal Court of Appeal held that the standard of review on a credibility finding is reasonableness. Further, in *Elmi v Canada (Minister of Citizenship and Immigration)*, 2008 FC 773, at para 21, Justice Teitelbaum held that findings of credibility are central to the RPD's finding of fact and are therefore to be reviewed on a standard of reasonableness. Finally, in *Aguilar Zacarias v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1155 at para 9 [*Aguilar Zacarias*], Justice Gleason held that the standard of review on a credibility determination is reasonableness. The standard of review applicable in this case is therefore reasonableness.

[16] 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 para 47, and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 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."

RELEVANT LEGISLATIVE PROVISIONS

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

Convention refugee	**Définition de « réfugié »**
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,	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*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	*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;
(*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	*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.

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 themself 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, unless imposed in disregard of accepted international standards, and

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 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.

POSITION OF THE PARTIES

The Applicants

[18] The Applicants submit that there are serious errors in the Decision relating to the RPD's negative credibility findings. First, with respect to the RPD's finding that the Principle Applicant's evidence was inconsistent regarding the last day the he lived at his home in Ramallah, the Applicants submit that the PIF clearly explains that he left the house May 31, 2010 and spent that night in the hospital with his wife (PIF at para 13). It was not until the next day, June 1, 2010, that the Principal Applicant left for Lod (PIF at para 14). Therefore, there is no inconsistency between the date on the form and the oral testimony. When the Applicant testified that he left his home on May 31, 2010 (Certified Tribunal Record [CTR] at p 194), this is consistent with the information in his PIF. Likewise, the fact that the sons listed the date of May 31, 2010 on their forms is not problematic, as they went straight to Lod and did not accompany their parents to the hospital**.** The Applicants therefore submit that the RPD erred by ignoring evidence and making an erroneous finding of fact without regard to the evidence.

[19] The Applicants submit that the RPD engaged in a microscopic examination of the evidence and was overzealous to find discrepancies (*Attakora v Canada (Minister of Employment and Immigration)* (1989), 99 NR 168 (FCA). The RPD relied on the inconsistency noted above to point

to a lack of credibility, when in fact no such inconsistency existed. And, since the RPD accorded great significance to the last date the Principal Applicant lived in his house, it cannot be said what conclusions the RPD would have come to had it not ignored evidence and accepted that May 31, 2010 was the last day the Principal Applicant resided at his home. The Applicants rely on *Sawyer v Canada (Minister of Citizenship and Immigration)*, 2004 FC 935 [*Sawyer*] in support of this submission:

> [8] The panel's conclusions with respect to the remaining two discrepancies are not, in my view, patently unreasonable. However, in circumstances where the panel committed reviewable errors with respect to two of the four asserted discrepancies it relied upon, I conclude that a correct appreciation of the evidence may well have caused the panel to have reached a different conclusion as to the credibility of Mr. Sawyer's evidence. The panel's errors can not be said to be immaterial to its decision.

[20] With respect to the credibility of the Applicant's testimony pertaining to his return home on June 20, 2010, the Applicants submit that the proper meaning of the phrase "around the house" was not a matter of common sense, but rather what was in the Applicant's mind in describing his actions. The Applicants point out that, at the second sitting, the Principal Applicant clarified the point, and thus cannot be said to have changed his testimony. The phrase "around the house" has more than one possible meaning in common English usage. Therefore, the Applicants submit that the RPD made an unreasonable assessment of the evidence and erred in basing its decision on an erroneous finding of fact that was made in a perverse and capricious manner.

[21] Regarding the RPD's implausibility findings, the Applicants argue that the Federal Court of Appeal has warned against findings based on implausibilities (*Giron v Canada (Minister of Employment and Immigration)* (1992), 143 NR 238 (FCA)) [*Giron*]:

> The Convention Refugee Determination Division of the Immigration and Refugee Board ("the Board") chose to base its finding of lack of credibility here for the most part, not on internal contradictions, inconsistencies, and evasions, which is the heartland of the discretion of triers of fact, but rather on the implausibility of the claimant's account in the light of extrinsic criteria such as rationality, common sense, and judicial knowledge, all of which involve the drawing of inferences, which triers of fact are in little, if any, better position than others to draw

[22] The Applicants also rely on the recent case of *Aguilar Zacarias*, above:

> [10] Dealing more specifically with credibility findings that rest on plausibility determinations, this Court has often cautioned that such determinations are best limited to situations where events are clearly unlikely to have occurred in the manner asserted, based on common sense or the evidentiary record (see e.g. *Giron v Canada (Minister of Employment and Immigration)*, 143 NR 238, [1992] FCJ No 481 (CA); *Chavarro v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1119 at paras 30-32; [2010] FCJ No 1397). As was articulated by Justice Muldoon in the oft-cited case of *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776, [2001] FCJ No 1131 [*Valchev*]:
>
> > A tribunal may make adverse findings of credibility based on the implausibility of an applicant's story provided the inferences drawn can be reasonably said to exist. However, plausibility findings should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant. A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu (at para 9) [citations omitted, emphasis added].
>
> [11] An allegation may thus be found to be implausible when it does not make sense in light of the evidence before the Board or when (to borrow the language of Justice Muldoon in *Vatchev*) it is "outside the realm of what reasonably could be expected". In

> addition, this Court has held that the Board should provide "a reliable and verifiable evidentiary base against which the plausibility of the Applicants' evidence might be judged", otherwise a plausibility determination may be nothing more than "unfounded speculation" (*Gjelaj v Canada (Minister of Citizenship and Immigration)*, 2010 FC 37 at para 4, [2010] FCJ No 31; see also *Cao v Canada (Minister of Citizenship and Immigration)*, 2012 FC 694 at para 20, [2012] FCJ No 885 [*Cao*]).

[23] The Applicants submit that, in the case at bar, the RPD fell into the error of making negative credibility findings based solely on its own views of what is implausible. It was reasonable in the circumstances, the Applicants argue, for them to believe it was important to obtain documents and clothing, even if it was close to the deadline. Furthermore, it was not implausible that the Principal Applicant was able to leave his house safely with the clothing and documents on June 2, 2010, given that the men who were shooting were on foot and the Principle Applicant and his brother drove quickly and had the protective covering of a vehicle. The Applicants note that this plausibility finding was not based on an internal discrepancy, and therefore such a finding must be made by reasonable inferences (*Giron*, above).

[24] In response to the finding that it would be implausible for a sensible person, when faced with credible warnings and deadlines, to risk his own life and those of his brother and the buyer's agent by visiting the house in an attempt to sell it on June 20, 2010, the Applicants submit that this occurred nearly three weeks after the warning, and there was no evidence that Hamas or Al-Jihad would be watching the house 24 hours a day. Rather, Hamas and Al-Jihad had seen the Applicant leave the premises on June 2, 2010. It was not unreasonable or implausible that the Applicant would risk a visit in order to sell the house to finance their escape to Canada. The Applicants submit that the RPD erred by basing its finding on speculation and conjecture.

[25] Finally, with respect to the finding that it would be implausible for a sensible person to be willing to buy a house in such circumstances, the Applicants submit that there was no evidence that the potential buyer had been informed of the problems before the visit; nor was there evidence that a buyer would have problems with Hamas or Al-Jihad. Rather, the evidence was that the problems with the two groups were specific to the Applicants. Therefore, the Applicants submit that the RPD's finding on this point was also based on speculation and conjecture.

The Respondent

[26] The Respondent submits that the RPD reasonably concluded that the Applicants' claim lacked credibility. The RPD stated its adverse credibility finding in clear and unmistakable terms, supported by examples that led the RPD to doubt the Applicants' evidence: *Hilo v Canada (Minister of Employment and Immigration)* (1991), 130 NR 236. The credibility findings were not microscopic or overzealous. Rather, the Applicants were found not to be credible because of discrepancies, omissions and implausibilities identified in the Applicant's testimony. The Respondent notes that it is well established that consistency between the evidence in a claimant's PIF and oral testimony helps to establish a credible basis for a claim: *Castroman v Canada (Secretary of State)* (1994), 27 Imm LR (2d) 129 (FCTD); *LS v Canada (Minister of Citizenship and Immigration)*, 2010 FC 168 at para 18.

[27] The Respondent says that the Applicants are challenging the RPD's credibility findings by restating explanations given at the hearing. For instance, on the issue of inconsistent evidence regarding when the Principal Applicant left his home, the RPD took his explanations – namely,

difficulty with the interpreter, mental state, and ambiguity – into account in the Decision. The Respondent further submits that the RPD cannot be faulted if the Principal Applicant's PIF was not clear. In any event, the Respondent argues, it was open to the RPD to make negative inferences as to credibility since it noted and considered the Applicants' explanations in the Decision and provided reasons as to why it did not accept them.

[28] The Respondent argues that the mere fact that an applicant provides an explanation does not mean that the explanation must be accepted by the RPD or that its findings are unreasonable; it remains open to the RPD to consider the explanation to determine whether it is sufficient: *Allinagogo v Canada (Minister of Citizenship and Immigration)*, 2010 FC 545 at para 7; *Ma v Canada (Minister of Citizenship and Immigration)*, 2011 FC 417 at para 39. It was not unreasonable for the RPD to question the Principal Applicant's credibility regarding his return home and to conclude that the incidents were fabricated, given that he provided inconsistent testimony in this regard. The Respondent further submits that the RPD is entitled to make implausibility findings based on common sense and rationality, and may reject evidence if it is not consistent with the probabilities affecting the case as a whole: *Aguebor*, above.

[29] There was no single factor that was determinative in the RPD's conclusion on the Principal Applicant's lack of credibility. Rather, the finding was the result of a consideration of the evidence, omissions, deficiencies in oral testimony and questionable actions including assessments of plausibility, taken together.

[30] Finally, the Respondent submits that it is trite law that this Court should be reluctant to set aside credibility findings which are at the heart of the specialized jurisdiction of the RPD as the trier of fact: *Aguebor*, above; *Solis v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 372 (TD) (QL) at para 3.

ANALYSIS

[31] As the Respondent points out, there was no single factor that was determinative of the general negative credibility finding. That being the case, of course, even if the Court finds an error with one or more aspects of the Decision, it is still necessary to determine whether a proper appreciation and handling of the evidence may have caused the RPD to reach a different conclusion on credibility (See *Sawyer*, above, at para 8).

[32] One of the problematic findings of the RPD is that the "evidence that the principal claimant lived in his home beyond May 31, 2010 causes me to draw an adverse inference on the credibility of his allegations."

[33] In his PIF narrative, the Principal Applicant clearly states that Nasim and Naser left the house in Ramallah on May 31, 2010 and went to Lod in Israel. He also makes it clear that he left the house on May 31, 2010 and took his wife to the hospital, stayed with her overnight and then went to Lod the next day, June 1, 2010. His evidence at the hearing was consistent with this (see CTR at pp 191-192). The Principal Applicant said the "children went there [Lod] on the 31st of May, I went noon of the 1st June."

[34] In his PIF, the Principal Applicant listed 06/2010 as his last day of residence in Ramallah and as his first day of residence in Lod (see CTR at pp 19 and 145). The RPD focuses upon these dates as an inconsistency that undermines the Principal Applicant's credibility.

[35] The PIF narrative and oral testimony clearly show that the Principal Applicant left his house on May 31, 2010 but stayed in Ramallah for that night. In other words, although he was at the hospital with his wife, he was not resident in Lod until June 1, 2010, when he went to stay with his brother. There is no inconsistency here that needed to be explained. His PIF narrative is consistent with his oral testimony. If the Principal Applicant was with his wife at the hospital on the night of May 31, 2010, it is understandable that he might indicate that he did not move his residence from Ramallah to Lod until June, 2010. This is also consistent with the Applicant's testimony that he returned to the house in Ramallah to collect documents and clothes on June 2, 2010. If he returned on June 2, then he must have left Ramallah on either May 31 or June 1.

[36] The RPD then put this alleged inconsistency to the Principal Applicant and was not convinced by his responses. It is difficult to see how the Principal Applicant could explain an inconsistency that did not exist to the satisfaction of the RPD. He said he was confused and scared. This is not surprising given the RPD's finding an inconsistency where it does not really exist. The RPD rejected his explanations by pointing out that he had "signed a declaration in his PIF saying that the entire content of the form was interpreted to him. He declared the completeness, truthfulness and correctness of the information in his PIF." This is true, but it also means the Principal Applicant has to be believed on this point if there is no real inconsistency. In my view, the RPD committed a reviewable error at this point in the Decision. At the very least, the RPD engaged

in microscopic examination of the evidence on this point and was overzealous to find discrepancies (See *Attakara*, above, at para 9).

[37] The RPD also found that the Principal Applicant "could not consistently testify how many times he went back home in Palestine." He had said in his PIF narrative and his oral testimony that he only went back on June 2, 2010, but at his Citizenship and Immigration Canada interview he said he also went back on June 20, 2010. The Principal Applicant's explanation on this issue did not make sense but the CTR shows repeated communication and translation problems. However, the Principal Applicant also failed to mention the shooting incident of June 20, 2010 in his PIF, so I do not think I can find it was unreasonable for the RPD to further conclude that:

> His complete silence on the shooting incident of June 20, 2010 in the narrative and refusal at the hearing to testify to it until he was confronted with the discrepancy in this regard lead me to conclude that he most likely fabricated the event of June 20, 2010 to embellish his claim.

[38] The RPD then finds the June 2, 2010 incident fabricated because it was implausible he would return home considering the threats he was facing. The RPD found it particularly implausible that he would choose to return home at 9 PM on June 2, 2010, when he had been given a 48 hour warning at approximately 10 PM on May 31, 2010.

[39] I am fully aware of the warnings in the jurisprudence about findings based upon implausibilities. (See *Giron*, above, and *Aguilar Zacarias*, above, at para 10). Plausibility findings should only be made in the clearest of cases – that is, if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the

events could not have happened in the manner asserted by the claimant: see *Valtchev v Canada (Minister of Citizenship and Immigration)*, [2001] FCJ No 1131 (QL) at para 7.

[40] In the present case, there is nothing in the evidence to suggest that the events of June 2, 2010 as claimed by the Principal Applicant could not have happened. So, were the facts as presented outside the realm of what could reasonably be expected? The Principal Applicant says it was not implausible because it was important to obtain the documents, including passports, home ownership papers and birth certificates. Given that he needed these documents, he says it was reasonable in the circumstances that he would return to the house in Ramallah when he could, even if it was one hour before the deadline he had been given by Hamas and Al-Jihad. In his PIF narrative he says that when he got to Lod, he discussed with his brothers what to do and they all decided "we would have to leave the country." However, even accepting that he may have considered it essential to obtain the passports and other documents, this does not explain why he chose to return approximately one hour before the deadline was to expire, when he could expect Hamas and Al-Jihad to be looking for him. In the absence of such an explanation, I think it was open to the RPD to observe that "no sensible person would be expected to choose to wait until the last minute to go back home for documents and clothing." I cannot say that this implausibility finding was unreasonable. The Principal Applicant's account and explanation for what he did on June 2, 2010 are outside the realm of what could reasonably be expected.

[41] The RPD also found that the Applicant "could not testify as to whether he got out of his vehicle on June 20, 2010 consistently between two sittings."

[42] I do not think there was any inconsistency on this point. At the initial sitting, he was asked whether he went inside the house on June 20th. He said "no, I did not go inside, I was outside, I just show him, I told him this is the house, these are the keys and I just show him around the house" (CTR at p 183). The evidence is clear that he did not go inside the house, but the RPD at this point did not clarify what the Principal Applicant meant by "showing" the agent "around the house." The RPD seems to have assumed that the Applicant meant walking around the outside of the house. During the second sitting, the RPD took up the issue again and the Applicant made it clear that when he said he showed the agent "around the house," he meant he was sitting in a car with the prospective buyer's agent and pointing out the house and the boundaries of the property (CTR at pp 196, 198, 201). He explained that "you do not have the feasibility to go around, I only pointed." The RPD said the Principal Applicant "could not testify as to whether he got out of his vehicle on June 20, 2010 consistently between the two sittings." The Principal Applicant did not, however, change his testimony on this point. At the first sitting, the RPD asked him what he meant by "around the house" and just assumed that he meant he physically walked the potential buyer's agent around the outside of the house. But he never said this. When the issue came up later and he was given a chance to clarify what he meant by "around the house," he explained that he stayed in the car and pointed out the boundaries. This is not shifting testimony. The RPD says that "using common sense, what he meant was that he walked the potential buyer around the house." Common sense does not enter into it. This was a man testifying through an interpreter. As soon as he was asked what "around the house" meant, he explained. There was no reason to question this explanation based upon an alleged inconsistency.

[43] The RPD also found it implausible that the Applicant would risk the June 20, 2010 visit with his brother and a potential purchaser of the house:

> [59] The deadline given by Hamas and Al-Jihad was 10:00 pm, June 2, 2010, forty-eight hours after the night of May 31, 2010. Now, more than two weeks had passed beyond the deadline. It would be almost certain that anyone who tried to enter into or get close to the house would be shot dead had the principal claimant's allegations about the deadline and warnings been credible.
>
> [60] Under those circumstances, it would be quite implausible for a sensible person to risk his life, the life of his brother, and the life of a potential buyer for possible proceeds upon selling the house.
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> [61] It would be also quite implausible for a sensible person to expect to succeed in disposing of his house when he did not dare to get close to it and show it to a potential buyer as the house was supposed to be closely monitored by Hamas and Al-Jihad.
>
> [62] It would be equally implausible for a sensible person to be willing to buy a house when he could not see the inside of the house, could not even walk around the house, and was shot at by Hamas and Al-Jihad when he merely looked at the house, and while the seller tried to show him the house simply with his finger inside a vehicle in a distance.
>
> [63] When a house became a target of Hamas and Al-Jihad and was surrounded and monitored by their members who were determined to kill the owner and his family, who would dare to go and try to sell it? And at the same time who would like to buy it?
>
> [64] The assessments of plausibility reinforce my earlier conclusion that the incident of June 20, 2010 was most likely fabricated.

[44] I think these implausibility findings are unreasonable. There was no evidence to suggest that the Applicant could expect Hamas or Al-Jihad to be watching the house 24 hours per day three weeks later. The Applicant testified that the men from these organizations had seen him leaving the premises on June 2, 2010, and he testified that he never got out of the car on June 20, 2010. There

was also no evidence that the potential buyer or his agent had anything to fear from Hamas and Al-Jihad when those groups were specifically targeting the Applicants. I do not think it is reasonable for the RPD to assume that it "would be almost certain that anyone who tried to enter into or get close to the house would be shot dead had the principal claimant's allegations about the deadline and warnings been credible." There was no evidence to support this finding. It is pure speculation and it does not accord with common sense. The facts as presented by the Applicant – particularly when there is no clear contradiction about whether the Applicant, his brother and the potential buyer's agent got out of the car – are not outside the reach of what could measurably be expected.

[45] All in all, then, we have a mixed bag. Looking at the whole picture, I think I have to conclude that the reviewable errors I have identified render the Decision unsafe and that a proper appreciation of the evidence could well have caused the RPD to reach a different conclusion as to the Principal Applicant's credibility. The errors were material to the Decision and I think it must be returned for reconsideration.

[46] Counsel agree 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 the matter is referred back for reconsideration by a differently constituted RPD;

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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