

Federal Court



Cour fédérale

Date: 20141002

Docket: IMM-1769-14

Citation: 2014 FC 939

Vancouver, British Columbia, October 2, 2014

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

HUSSEIN ZAYTOUN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Hussein Zaytoun sought refugee protection in Canada based upon his fear that members of Hezbollah would punish him for having rejected their attempts to recruit him into the organization's military wing. The Refugee Protection Division of the Immigration and Refugee Board rejected Mr. Zaytoun's claim, finding that he had a viable internal flight alternative within Lebanon, in a majority-Christian area of the country.

[2] I have concluded that the Board's decision was unreasonable. Consequently, the application for judicial review will be granted.

I. Background

[3] Mr. Zaytoun is a 27-year-old Shiite Muslim from Beirut. He says that he was approached by Hezbollah representatives on three occasions in 2013, and that they told him that it was his duty as a Shi'a to fight in support of the Syrian regime.

[4] Mr. Zaytoun's father had been abducted and tortured by Hezbollah in Lebanon in 2007. He then fled to Canada and was subsequently granted refugee protection by this country. Mr. Zaytoun says that he was told that he would be killed if he did not comply with Hezbollah's demands, and that he would not be able to escape the reaches of Hezbollah, as his father had done.

[5] After his third confrontation with Hezbollah members, Mr. Zaytoun fled his home in the southern part of Beirut. He went into hiding at a friend's home in Faraya, a mainly Christian neighbourhood northeast of Beirut. Mr. Zaytoun says that he remained in hiding in Faraya for several weeks while he arranged to leave Lebanon and join his family in Canada.

[6] The Board did not make any explicit negative credibility findings regarding Mr. Zaytoun's story. Nor did it make any positive credibility findings. While the Board stated that it had not "made a determination that the claimant's evidence is credible", it also stated that its IFA determination was "based on the allegations and testimony of the claimant without assessing his credibility."

[7] The Refugee Protection Division is required to make negative credibility findings in clear and unmistakable terms: *Hilo v. Canada (Minister of Employment and Immigration)* (1991), 130 N.R. 236, 15 Imm. L.R. (2d) 199 (F.C.A.). In this case, the Board appears to have had doubts about Mr. Zaytoun's credibility. For example, it found that given his age and level of education, Mr. Zaytoun did not have the profile of someone Hezbollah would seek to recruit. To quote the Federal Court of Appeal in *Hilo*, this statement "does not amount to an outright rejection of the appellant's evidence but it appears to cast a nebulous cloud over its reliability": above at para. 6.

[8] The Board cannot have it both ways: Hezbollah either tried to recruit Mr. Zaytoun or it did not. Mr. Zaytoun testified under oath that Hezbollah had indeed tried to recruit him on three separate occasions. If the Board did not accept Mr. Zaytoun's testimony on this point, it was required to say so clearly, and to provide a proper credibility analysis justifying its findings. In the absence of any analysis regarding Mr. Zaytoun's credibility, his story must be taken as true. The Board cannot purport to accept Mr. Zaytoun's testimony that he was recruited by Hezbollah, and then base its internal flight alternative finding in part on the fact that Mr. Zaytoun lacked the profile of someone Hezbollah would seek to recruit.

II. The Board's Internal Flight Alternative Analysis

[9] As noted, the Board's decision ultimately turned on whether there was a viable internal flight alternative for Mr. Zaytoun within Lebanon.

[10] Determining whether an IFA exists for a refugee claimant in his or her country of origin involves questions of fact and mixed fact and law, with the result that reasonableness is the standard of review in relation to this aspect of the Board's decision: *Lopez Martinez v. Canada*

(*Citizenship and Immigration*), 2010 FC 550 at para 14, [2010] F.C.J. No. 709; *Pedraza Corona v. Canada (Citizenship and Immigration)*, 2010 FC 508 at para 5, [2010] F.C.J. No. 636.

[11] An individual seeking refugee protection bears the burden of establishing, on a balance of probabilities, that there is a serious possibility of persecution throughout the country in issue, including the area which is alleged to afford an IFA: see *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (F.C.A.), 140 N.R. 138; *Thirunavukkarasu v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 589, at para. 5, 109 D.L.R. (4th) 682.

[12] There are two elements to the IFA analysis: the Board must first be satisfied on a balance of probabilities that there is no serious possibility of the applicant being persecuted in the proposed IFA; and, second, that the conditions in the proposed IFA are such that it would not be objectively unreasonable for the applicant to seek refuge there: *Thirunavukkarasu*, above at paras. 2 and 12.

[13] In concluding that Mr. Zaytoun had an IFA available to him in Faraya, the Board noted that Mr. Zaytoun was comfortable around Christians, and that he had lived safely in Faraya for several weeks. There are two problems with these findings. The first is, as counsel for Mr. Zaytoun observed at the hearing, the fact that Mr. Zaytoun may have been comfortable around Christians does not mean that Christians in Faraya would necessarily be comfortable around Mr. Zaytoun.

[14] There was considerable evidence before the Board regarding the level of sectarian strife within Lebanon and the reach of Hezbollah in Christian areas of the country. For example, a

Board *Response to Information Request* confirmed that “much of Lebanon’s Christian community supports the Hezbollah party.” While the Board is presumed to have considered all of the evidence before it, this was highly probative evidence that directly called into question the finding that Mr. Zaytoun had a viable IFA in the Christian community of Faraya. As such, the Board should have explicitly considered it, and its failure to do so leads to the inference that this evidence has been overlooked: *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35, at paras. 14-17, [1998] F.C.J. No. 1425.

[15] Whether or not Hezbollah has been looking for Mr. Zaytoun, if his story is true - and we must accept that it is in the absence of any negative credibility findings by the Board - it is reasonable to conclude that, having rebuffed its recruitment attempts, Mr. Zaytoun could well be in danger if he were to come to Hezbollah’s attention in the future. As Mr. Zaytoun testified, Lebanon is a small country, one where it is difficult to remain anonymous. The Board accepted that Mr. Zaytoun’s name would make him readily identifiable as a Shi’a, and he would certainly stand out were he to move into a Christian area and live openly in that community.

[16] This takes us to the second problem with the Board’s analysis. The fact that Mr. Zaytoun may have been able to live safely in Faraya for several weeks prior to his departure for Canada does not mean that Faraya would be a viable IFA for Mr. Zaytoun in the future. Mr. Zaytoun testified that he was *living in hiding* during much of his time in Faraya, and the Board did not question the credibility of this assertion. The Federal Court of Appeal was clear in *Thirunavukkarasu* that a refugee claimant cannot be expected to live in hiding in order to remain safe in an IFA location: above at para. 14.

III. Conclusion

[17] I am thus satisfied that the Board's finding that Mr. Zaytoun had a viable IFA in Faraya was unreasonable, and the application for judicial review is allowed.

IV. Certification

[18] Mr. Zaytoun proposes the following question for certification:

Whether the analysis of an internal flight alternative should be done only where a claimant's credibility has been determined?

[19] It may well be possible for the Board to make a reasonable finding as to the availability of an IFA in a particular case, assuming, without deciding that a claimant's story is true.

The problem here is that the Board made veiled findings regarding Mr. Zaytoun's credibility that affected its IFA analysis, without ever conducting a proper credibility analysis. The Board then compounded its error by ignoring highly probative evidence in finding that Mr. Zaytoun could live safely in Faraya. Given the basis for my decision, I am not persuaded that the question proposed by Mr. Zaytoun is an appropriate question for certification in this case.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is allowed, and Mr. Zaytoun's application for refugee protection is remitted to a differently constituted panel of the Board for re-determination.

"Anne L. Mactavish"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

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