

Federal Court



Cour fédérale

**Date: 20150608**

**Docket: IMM-7189-14**

**Citation: 2015 FC 717**

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

**Ottawa, Ontario, June 8, 2015**

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

**BETWEEN:**

**NORMA EL KHOURY**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Introduction

[1] This is an application for judicial review under the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA) of a decision of the Refugee and Protection Division (RPD) dated November 14, 2014, rejecting the applicant's claim.

## II. Facts

[2] The applicant is a citizen of Lebanon, although she was born and has lived all her life in Syria. The applicant alleges, on the one hand, fear in Syria, where she was the victim of extortion and death threats, and on the other hand, a fear of persecution in Lebanon, because of her alleged Syrian nationality.

[3] Following the hearing held on October 2, 2014, the RPD found that while the applicant is credible, she has not demonstrated that she is a Convention refugee or a person in need of protection under sections 96 and 97 of the IRPA, against her country of citizenship, Lebanon.

## III. Statutory provisions

[4] The statutory provisions relevant to the determination of refugee status are reproduced below:

### **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, unless imposed in disregard of accepted international standards, and

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 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.

(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.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A également qualifié 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.

#### IV. Analysis

[5] This application raises the critical issue of whether the RPD's decision is reasonable in that it meets the requirements of transparency, justification and intelligibility within the decision-making process, and also 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] 1 SCR 190, at paragraph 47).

[6] The applicant criticizes the RPD for failing to seize the substance of her refugee claim, by addressing her alleged fear with regard to her Lebanese citizenship as opposed to her alleged Syrian nationality.

[7] However, the reasons for decision show that the RPD expressly considered the risks put forward by the applicant on the basis that she would be perceived as a Syrian national rather than Lebanese:

I do not find that you have established a link with a Convention ground with [regard] to your nationality. You explained that

though your family has been in Syria for generations and has never lived in Lebanon, because of the way the laws work, you are a Lebanese citizen. However, because of your accent, the people in Lebanon consider you Syrian. You've never lived in Lebanon and your longest stay there, according to your testimony, was two nights when you stayed in a hotel. I note that you went regularly for work, shopping, visits, but you have no family in Lebanon.

I recognize that you've lived in Syria your entire life. So, in determining whether or not there was link to the Convention ground, I did consider the *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status* at paragraphs 74-76 where it does explain that nationality does not necessarily mean citizenship. It also refers to membership of an ethnic or linguistic group. I do find that you have established a link with the Convention ground, and that you would be perceived as Syrian though legally, you are a Lebanese citizen.

[Emphasis added.]

(RPD Decision, Tribunal Record, page 6)

[8] Furthermore, contrary to the applicant's allegation, the RPD considered the documentary evidence regarding the discrimination suffered by the Syrians in Lebanon and analysed whether the cumulative effect of the discrimination suffered by the applicant could amount to persecution. To that end, the RPD relied on, *inter alia*, the *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* to analyze the difference between discrimination and persecution.

[9] Upon completion of its analysis, the RPD found that while Syrians having fled Syria to seek refuge in Lebanon suffer hardship in that country, the situation is somewhat different for the applicant, who has legal status in Lebanon through her citizenship:

**Cumulative Acts of Discrimination and/or Harassment**

I have considered whether or not the risks that you fear because of your nationality could amount to persecution if you return to Lebanon. You explained that you were recognized by your accent and you did not fear a specific group of person, but society in general. You also stated that you feared the aggressors that had targeted you in Syria because you said they could find you in Lebanon.

...

I asked further about what you feared particularly in Lebanon. You stated that you feared being raped, killed or being a victim of violence or mistreatment and that in the past, upon visits to Lebanon, you have been a victim of verbal mistreatment. You stated that people in Lebanon treat Syrians differently. For example, when you go shopping, they may raise the price and they would insult you verbally. You said that this has been the case in the past, prior to the start of the Syrian conflict, but that the verbal insults have gotten worse since the start of the conflict.

...

I have considered whether the elements that you fear, when taken together cumulatively could constitute persecution in your personal situation or if there is any one incident which you may risk or which you have suffered that is serious enough on its own to be considered persecution. I've considered the definition of persecution according to the jurisprudence. Jurisprudence shows that persecution is a serious and repeated infringement on a fundamental right.

I also considered paragraph 54 of the *UNHCR Handbook*. Considering the mistreatment that you have suffered, I do not consider that these events, though unfortunate, could constitute persecution either on their own or cumulatively. I've also considered whether or not you would be denied basic human rights based on your perceived nationality as a Syrian (i.e., access to education, healthcare, employment, housing, religious freedom, etc.). Nothing in the objective evidence shows me that you would be denied these basic rights.

In consideration of the evidence on file, I do recognize that there are difficulties for Syrians escaping the crisis and having gone to Lebanon. I've considered the reports at Tabs 2.3, 2.4 and 13.2 of the National Documentation Package. Again, the reports speak of a lack of legal status for Syrians which does not apply in your case and causes problems for these Syrians. It is clear that those who

are fleeing violence in Syria and seeking refuge in Lebanon have had difficulties. However, I find that the situation does not amount to persecution according to the *Guidelines*.

[Emphasis added.]

(RPD Decision, Tribunal Record, pages 6 to 9)

[10] Furthermore, the excerpts reproduced by the applicant in her factum before the Court only confirm the RPD's finding that the applicant could face discrimination rather than persecution. Some of those excerpts, taken from the documentary evidence, are reproduced below:

... Thankfully no one was hurt. But the incident captures a new level of tension in Lebanon, as the small country struggles with more than 1.5 million Syrians from all walks of life who have fled their country's civil war. Lebanon's population is barely 4.5 million.

...

I have personally experienced rudeness from Lebanese profession at the instant they realized I was Syrian.

...

I had already been hearing from Syrian expats in Lebanon about a marked rise in anti-Syrian sentiments. Many swear they've been told by Lebanese merchants "We don't sell to Syrians" as soon as a Syrian accent gave them away.

...

After more than three years of civil war in Syria, the noose appears to be tightening on the enormous Syrian refugee population who have settled in neighbouring Lebanon. Racism, mistrust and suspicion are on the rise, and the stage is set for policy changes that will likely lead to those escaping the brutality in Syria being discriminated against, expelled, from Lebanon and even turned away at the border.

...

Discrimination and mistreatment are key barriers to accessing services.

...

A 2011 report funded by the EU and written by a coalition of local human rights organizations, *A Culture of Racism in Lebanon*, identified a widespread pattern of discrimination against individuals who did not appear ethnically Lebanese. Lebanese of African descent attributed discrimination to the color of their skin and claimed harassment by police, who periodically demanded to see their papers. Arab, African, and Asian students, professionals, and tourists reported being denied access to bars, clubs, restaurants and private beaches. For example, on August 22, Joumana Haddad blogged on Now Lebanon's website that she planned to take her domestic migrant helper, Mehret, to spend a day at the beach as a birthday gift. As soon as they entered the swimming pool, the lifeguard blew his whistle and said "servants" were not allowed in the pool.

Syrian workers, usually employed in the manual labor and construction sectors, continued to suffer discrimination, as they did following the 2005 withdrawal of Syrian forces from the country.

(Applicant's Factum, Applicant's Record, at pages 163-166)

[11] In view of the foregoing, the Court considers that the RPD reasonably recognized that the treatment the applicant would face in Lebanon, while potentially discriminatory, considered in isolation or even cumulatively, does not amount to persecution for the purposes of the IRPA. This finding is rooted in the applicant's testimony at the hearing and in the evidentiary record.

[12] The RPD reasonably found that the applicant's situation differs from that of most Syrians in Lebanon, owing to her Lebanese citizenship. The RPD found, *inter alia*, that the applicant would not be forced to live close to the Lebanese-Syrian border.



[13] However, the RPD did not limit itself to classifications. Rather, the RPD's approach to the risks set forth reflects an overview of the personal circumstances of the applicant, who finds herself essentially between two nationalities.

[14] In sum, the RPD's analysis, as is apparent in its reasons, is based on a thorough review of the record before it. Its decision is reasonable and the Court's intervention is not required.

V. Conclusion

[15] In light of the foregoing, the Court dismisses the application for judicial review.

**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES that** the application for judicial review is dismissed. There is no question of general importance to be certified.

**OBITER**

This is a case where almost all of the applicant's family (child, mother, father, sister) is in Canada. While she is not a refugee, her case could perhaps be approached from a different angle with other statutory provisions.

“Michel M.J. Shore”

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Judge

Certified true translation  
Daniela Guglietta, Translator

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-7189-14

**STYLE OF CAUSE:** NORMA EL KHOURY v THE MINISTER OF  
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