

Federal Court



Cour fédérale

**Date: 20160322**

**Dockets: IMM-1312-15  
IMM-2073-15**

**Citation: 2016 FC 242**

**Vancouver, British Columbia, March 22, 2016**

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

**IMM-1312-15**

**BETWEEN:**

**FARAG FADEL HEGI and  
RAZAN FARAG FADEL HEGI and  
RAWAN FARAG FADEL HEGI  
by their Litigation Guardian  
FARAG FADEL HEGI**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**IMM-2073-15**

**BETWEEN:**

**JOMANA TAWFIQ HELAL KHALIL and  
OMAR FARAG HEGI by his  
Litigation Guardian  
JOMANA TAWFIQ HELAL KHALIL**

**Applicants**

and

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**BELL J.**

I. Background:

[1] These two applications for judicial review were heard jointly on December 8, 2015. The reviews are from two decisions by different members of the Refugee Protection Division [RPD] of the Immigration and Refugee Board. In a decision dated February 23, 2015, the RPD dismissed Mr. Farag Fadel Hegi's [Mr. Hegi's] and his two minor daughters' applications for refugee status and status as persons in need of protection as contemplated by ss 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. In a subsequent and separate decision dated March 3, 2015, the RPD dismissed similar claims brought by Mr. Hegi's spouse, Jomana Tawfiq Helal Khalil [Ms. Khalil] and their infant son. It is from those two decisions that the respective Applicants seek judicial review.

[2] I will begin by briefly setting out the rather complex history of the family's status in the United Arab Emirates [UAE].

A. *Mr. Hegi*

[3] Mr. Hegi indicated in his Port of Entry [POE] documents that he was born in the UAE to stateless Palestinian parents who held Egyptian travel documents. His family was able to remain in the UAE as long as his father maintained a work visa. Mr. Hegi's parents were eventually deported to Gaza (their place of former habitual residence) after Mr. Hegi's father was unable to continue his employment. Mr. Hegi, however, was able to obtain a work visa and remain in the UAE. His visa allowed him and his children under the age of 18 to remain with him in the UAE as long as he was employed.

[4] In 2002, Mr. Hegi's full-time employment in the UAE was terminated. Between 2002 and 2012 he accepted work at little or no pay in order to maintain his status. Upon termination from his last job in 2012, Mr. Hegi applied for, and twice received, one year humanitarian extensions of his visa. Officials apparently informed him that he would be denied a third extension without proof of employment. If his visa were to expire, he would be without status and would face detention or deportation from the UAE. On May 19, 2014, Mr. Hegi traveled from the UAE to the United States. His daughters and his spouse, Ms. Khalil, later joined him in the United States. While the daughters remained with their father, Ms. Khalil returned to the UAE to be with their son until he could obtain travel documents. On October 9, 2014, Mr. Hegi traveled to Canada with his daughters where he made claims for protection for himself and them.

B. *Ms. Khalil*

[5] According to Mr. Hegi's POE documents (adopted by reference in Ms. Khalil's documentation), Ms. Khalil's status can be traced to her grandfather, who also traveled to the

UAE for employment. Her grandfather worked for a member of the government of one of the emirates prior to the creation of the UAE. He (Ms. Khalil's grandfather) was apparently conferred citizenship in compensation for his services. Although the Respondent disputes exactly which rights were conferred upon Ms. Khalil by her "citizenship" in the UAE, there is no dispute that rights were passed down to her through her grandfather and parents and that she is unable to pass them on to her spouse and children.

[6] As a result of her status, Mr. Khalil possessed what she refers to as a 'national identity card' and a passport which allowed her to live and work in the UAE. She maintained these documents until the birth of her son. At that time, Ms. Khalil's passport had expired, although the national identity card remained valid. Ms. Khalil states that when she applied for her son's birth certificate, she was told by the UAE Ministry of Health that she was required to attend at the passport office to request a birth certificate for her son. At that office, officials requested she remit her passport and national identity card, and apply for a passport from the Comoros. She was told these steps were necessary in order to issue the birth certificate. Fearing for her son's status, Ms. Khalil agreed. At approximately the same time, her parents and siblings were similarly required to accept Comorian passports. This program, by which Comoros issued 'passports' to stateless Palestinians living in the UAE, constituted part of a financial agreement between the UAE and the Comoros, whereby the government of the UAE paid the Comoros to provide travel documents to some of its residents. Ms. Khalil claims that through the issuance of the Comorian 'passport' she was stripped of whatever citizenship rights she had in the UAE.

[7] As a result of that set out above, Ms. Khalil has a passport which affords no right to reside in either the UAE or the Comoros. She contends that since she is female, she cannot pass her Comorian status to her husband or children.

[8] Ms. Khalil and her son entered the United States on a visitor's visa on December 24, 2014, and entered Canada on January 1, 2015, where she claimed, on her own behalf and on behalf of her son, refugee protection and status as a person in need of protection. At the time she entered Canada, Ms. Khalil possessed a resident's visa for the UAE valid until June 29, 2017 or until such time as she has been out of the UAE for more than 6 consecutive months. This visa is based upon her employment in the UAE and her Comorian passport. The visa also grants her children status in the UAE until they turn 18 years of age. The children are presently 16, 13, and 5 years old. At the hearing before the RPD on March 3, 2013, Ms. Khalil reported she had been absent from the UAE for approximately 2 ½ months, that her employer had given her only one month off work and that she feared loss of her employment. The Applicants have now been in Canada for more than one year.

## II. The Decisions

[9] Both RPD members concluded the Applicants are neither refugees nor persons in need of protection pursuant to ss 96 and 97 of the Act. Identity is not disputed for any of the parties. Both RPD members accepted that the Applicants were all born in the UAE and are all stateless, in spite of their travel documents, since they do not have a right to enter Egypt (or the Comoros in Ms. Khalil's case). The RPD members found the UAE to be the country of former habitual residence for all Applicants.

A. *Mr. Hegi*

[10] In Mr. Hegi's case, the RPD drew a negative inference from inconsistencies in his testimony regarding his alleged fear of returning to the UAE. Mr. Hegi states that he fears deportation or jail for himself and his daughters if he returns to the UAE. However, when asked by the RPD if he would be afraid to go back to the UAE, Mr. Hegi answered in the negative. Mr. Hegi was challenged by the RPD regarding a statement he made in his POE that he does "not fear returning to any countries". He contends before this Court, there was a miscommunication because he added that he does "not have any countries to return to". He contends his lack of fear was based upon the fact he could not be sent anywhere. The RPD rejected that explanation and took the view that Mr. Hegi did not fear being returned to the UAE.

[11] Further, the RPD found that even if Mr. Hegi's credibility were not in issue, he and his daughters could not claim refugee or person in need of protection status since the basis of their fear arises from an ordinary law of general application. The RPD held that it is within the purview of any state to legislate regarding the consequences of remaining within its borders after the expiration of one's visa. The RPD concluded such state action does not constitute persecution. It further noted that Mr. Hegi's daughters would, based upon Ms. Khalil's visa, continue to have status in the UAE until they reach the age of 18.

[12] The RPD also drew a negative inference regarding Mr. Hegi's alleged fear given that he landed in the United States and remained there for nearly 5 months without having made an asylum claim.

B. *Ms. Khalil*

[13] As in the case regarding her husband, the RPD found Ms. Khalil and her son are subject to a valid law of general application and do not face persecution.

[14] The RPD also concluded that Ms. Khalil's loss of status in the UAE is speculative. It noted she was able to maintain employment prior to coming to Canada, did not provide evidence regarding the current status of her employment, and did not demonstrate an absence of future employment prospects in the UAE. On this basis, the RPD held that she failed to demonstrate a loss of her resident visa, which, on its face, is valid until 2017. In addition the RPD noted that at the time of the hearing she had only been absent for 2 ½ months of the 6 month consecutive absence limit set out in the visa.

III. Issues and standard of review

[15] While several issues are raised by the Applicants, including apparent misapplication of the word 'persecution' instead of 'prosecution' and findings of credibility as it relates to Mr. Hegi, I am of the view the application of the reasonableness standard of review as set out in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] SCR 190 [*Dunsmuir*] is determinative of the issues.

IV. Analysis

A. *Prosecution vs. Persecution*

[16] The Applicants contend the RPD applied a 'prosecutorial' test instead of a 'persecutory' test to the refugee and person in need of protection claims. This is, with respect, an inaccurate

characterization. In the decision concerning Mr. Hegi, the RPD properly noted there is nothing persecutory about the nature of the laws in question. It goes on to find that:

[...] the claimants face, at worst, prosecution pursuant to a law of general application should they return to the UAE, not persecution for a Convention ground or a risk to life or of cruel and unusual treatment or punishment or of torture should they return to the UAE.

This excerpt demonstrates the RPD was aware that persecution and prosecution are different and that prosecution does not necessarily amount to a claim founded on a Convention ground.

[17] This Court has concluded on several occasions that prosecution with respect to a law of general application, does not necessarily amount to persecution. In *Karsoua v Canada (Minister of Citizenship and Immigration)*, 2007 FC 58, [2007] FCJ No 95, Justice Blanchard found that the denial of a right to return to the UAE does not constitute persecution. Similarly, in *Altawil v Canada (Minister of Employment and Immigration)*, 114 FTR 241, [1996] FCJ No 986 [*Altawil*] the Court found that a denial of the right to return does not amount to persecution if applying a law of general application.

[18] The Applicants contend the RPD erred in law or reached an unreasonable decision because it misquoted *Altawil* as it relates to this issue of ‘prosecution’ versus ‘persecution’. While the RPD misquoted one phrase from *Altawil*, I am satisfied the error constituted only a typographical error which had no bearing on the decision-making process. The RPD demonstrated that it knew and applied the proper test. It committed no error of law, nor are its findings unreasonable in relation to the absence of persecution.



B. *The merits of the claims*

[19] The RPD concluded the Applicants' inability to return to the UAE is speculative given none of them have attempted to do so. I find Justice Simpson's observations in *Altawil* demonstrative of the reasonableness of the RPD's findings in this regard. She quotes from the UNHCR Handbook which states:

It will be noted that not all stateless persons are refugees. They must be outside the country of their former habitual residence for the reasons indicated in the definition. Where these reasons do not exist, the stateless person is not a refugee.

[20] The applications for judicial review by Ms. Khalil and the minor children is further complicated by the fact they all had a right to return to the UAE at the time of the RPD hearing. Mr. Hegi and Ms. Khalil simply do not meet the definition of Convention refugees or persons in need of protection under ss 96 or 97 of the Act. The RPDs' conclusions in this regard, and, in Mr. Hegi's case, on credibility, meet the test of reasonableness set out in *Dunsmuir*. The decisions are justified, transparent and intelligible, and fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, above at para 47).

[21] The applications for judicial review are dismissed without costs.

[22] None of the parties submitted a question for certification and none is certified.

"B. Richard Bell"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-1312-15

**STYLE OF CAUSE:** FARAG FADEL HEGI and RAZAN FARAG FADEL  
HEGI and RAWAN FARAG FADEL HEGI  
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JOMANA TAWFIQ HELAL KHALIL v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** DECEMBER 8, 2015

**JUDGMENT AND REASONS:** BELL J.

**DATED:** MARCH 22, 2016

**APPEARANCES:**

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