

Federal Court



Cour fédérale

Date: 20160725

Docket: IMM-5850-15

Citation: 2016 FC 872

Ottawa, Ontario, July 25, 2016

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

**SUAD SULIEMAN ODEH ABU SHABAB
ABDALLA MAHMOUD ABOUSHABAB
MAHA MAHMOUD MOHAMED OUDAH
ALY MAHMOUD MOHAMED OUDAH
MOHAMED MAHMOUD OUDAH
TAGI MAHMOUD MOHAMED ABOSHABAB**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application pursuant to s 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 of the

Immigration and Refugee Board of Canada [RPD or Board] dated December 7, 2015 [Decision] wherein the RPD determined that Suad Sulieman Odeh Abu Shabab [Principal Applicant], Tagi Mahmoud Mohamed Aboshabab [Male Applicant], Abdalla Mahmoud Aboushabab, Maha Mahmoud Mohamed Oudah, and Mohamed Mahmoud Oudah [Minor Applicants] were not Convention refugees or persons in need of protection under s 96 and 97 of the Act.

II. BACKGROUND

[2] The Applicants are stateless, ethnic Palestinians who formerly held habitual residence in the United Arab Emirates [UAE]. The Principal Applicant was born in Jordan at a camp for Palestine Refugees in the Near East run by the United Nations Relief and Works Agency. She lived there until 1994 when she married her husband, Mahmoud Mohamed Oudah Aboshabab [Mahmoud], who is also a Palestinian but was born in the UAE (Mahmoud is not party to these proceedings). After Mahmoud obtained temporary residence permits for himself and the Principal Applicant, the couple had five children in the UAE (the Male Applicant and the Minor Applicants). None of the family members ever obtained rights comparable to those held by UAE citizens, and they had to renew their residence permits every few years.

[3] In May 2015, the Male Applicant was assaulted in a park by individuals who told him to stop wearing UAE clothing and speaking with a Gulf dialect, as he is not an Emirati citizen. He suffered several injuries. The Principal Applicant and Mahmoud did not take the Male Applicant to a clinic out of fear that it could lead to the authorities being called and the revocation of their family's residency status. Instead, Mahmoud chose to speak with El Hamar, the father of the boys who instigated the attack. El Hamar works for the UAE intelligence service and has many

connections. He accused the Male Applicant of starting the fight and abusing his children. The next day, a group of young men throwing fire crackers came to the Applicants' house and threatened to burn it down if they didn't leave.

[4] Later in the month, Mahmoud went to the residency bureau to renew the Male Applicant's residency permit. The Male Applicant received only a one-year renewal as opposed to the more typical two or three year renewal. The officer told Mahmoud that "this is a gift from El Hamar" and indicated that it was the last time he would be able to renew the Male Applicant's residency permit and that it was time for the family to move to a different country. The Applicants began to arrange for American visas with the help of Mahmoud's sister in Canada. They travelled to Jordan while they waited for the visas to be approved. In August 2015, the family was approved and flew to the United States.

[5] Shortly after the family's arrival, Mahmoud learned that his mother, who was still living in the UAE, was very ill. He flew back to care for her. The Applicants remained in North America, entering Canada on September 15, 2015.

III. DECISION UNDER REVIEW

[6] Prior to the Applicants' hearing, the presiding RPD member [Board Member] wrote to the Minister of Citizenship and Immigration [Minister], pursuant to Rule 27 of the *Refugee Protection Division Rules*, SOR/2012-26 [RPD Rules], requesting that the Minister obtain the Applicants' visa applications and referred to the possibility that issues relating to the integrity of the Canadian refugee system could arise [Integrity Notice].

[7] Counsel for the Applicants brought a motion at the beginning of the hearing for the Board Member to recuse herself on the basis of a reasonable apprehension of bias due to the fact that she had invited the Minister to participate in the hearing on the basis of “integrity.” The Board Member considered the test for bias and ultimately denied the motion. At the refugee hearing, the Board Member explained that requesting United States visa information was out of the scope of the RPD’s research ability, so a Rule 27 notice was the only avenue through which these documents could be accessed. Rule 27 addresses matters of suspected fraudulence, misrepresentation or other analogous concerns.

[8] The Board Member then went on to decide that the determinative issue in the Applicants’ claim was the credibility of their allegations relating to the Male Applicant’s assault and the alleged threats from El Hamar. Taking particular issue with the fact that the Applicants could not provide photographic evidence of the assault or identify the specific day on which the Male Applicant was allegedly attacked, the RPD found that a lack of detail undermined the Applicants’ credibility on a pivotal incident.

[9] A further negative inference was drawn with respect to credibility from the Male Applicant’s lack of knowledge regarding the length of time for which he personally could obtain a residence permit, despite demonstrating an awareness of the length of time available to individuals working or attending university.

[10] The Board Member also took issue with the Applicants’ claim that it was El Hamar who was responsible for the Male Applicant’s one-year residence permit extension and the threat that

the family should leave the UAE. For several reasons, she did not find it believable that El Hamar wanted the family to leave, including the fact that the youngest Applicant was able to renew her permit for a three-year period. The RPD found that the persecution by El Hamar did not happen as described by the Applicants, if at all, undermining their credibility on a central part of their asylum claim.

[11] The Applicants' re-availing to the UAE after spending time in Jordan also demonstrated to the RPD that they were not afraid of returning and that they were not having any problems with their residence permits on the basis of El Hamar's interventions. In addition, the Board Member determined that, although Palestinians are often treated in a discriminatory way in the UAE, their treatment does not amount to persecution.

[12] The Applicants entered Canada pursuant to a valid exception under the *U.S.-Canada Safe Third Country Agreement* and as such are barred from the RAD appeal process pursuant to s 110(2)(d)(ii) of the Act.

IV. ISSUES

[13] The Applicants raise the following issues in this proceeding:

1. Whether the Board Member breached the rules of procedural fairness by demonstrating an appearance of prejudice and a reasonable apprehension of bias;
2. Whether the Board Member erred in her assessment of the Applicants' credibility.

V. 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 (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[15] The first issue raised by the Applicants is a matter of procedural fairness and will therefore be analyzed using the standard of correctness: *Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43 [*Khosa*]; *Dhaliwal v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 157 at para 25.

[16] The second issue is similarly clear in the subject matter it addresses. It is settled law that credibility findings are subject to the reasonableness standard of review. Therefore, the issue of the Board Member's assessment of the Applicants' credibility will be analyzed using the standard of reasonableness: *Yang v Canada (Citizenship and Immigration)*, 2016 FC 543 at para 8; *Ebika v Canada (Citizenship and Immigration)*, 2016 FC 582 at para 10.

[17] 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 *Khosa*, above, 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.”

VI. STATUTORY PROVISIONS

[18] The following provisions of the Act are applicable in this proceeding:

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 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

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 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

fear, unwilling to return to that country. veut y retourner.

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

(iv) the risk is not caused by the inability of that country to provide adequate health or

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) la menace ou le risque ne résulte pas de l'incapacité du

medical care.

pays de fournir

[19] The following provisions of the *RPD Rules*, are relevant in this proceeding:

Notice to Minister of possible integrity issues before hearing

27 (1) If the Division believes, before a hearing begins, that there is a possibility that issues relating to the integrity of the Canadian refugee protection system may arise from the claim and the Division is of the opinion that the Minister's participation may help in the full and proper hearing of the claim, the Division must without delay notify the Minister in writing and provide any relevant information to the Minister.

Notice to Minister of possible integrity issues during hearing

(2) If the Division believes, after a hearing begins, that there is a possibility that issues relating to the integrity of the Canadian refugee protection system may arise from the claim and the Division is of the opinion that the Minister's participation may help in the full and proper hearing of the claim, the Division must adjourn the hearing and without delay notify the Minister in writing and provide any relevant information to the Minister.

Avis au ministre — questions concernant l'intégrité avant l'audience

27 (1) Si la Section croit, avant le début d'une audience, qu'il est possible que des questions concernant l'intégrité du processus canadien d'asile soient soulevées par la demande d'asile, et qu'elle est d'avis que la participation du ministre peut contribuer à assurer une instruction approfondie de la demande d'asile, elle, sans délai, en avise par écrit le ministre et lui transmet tout renseignement pertinent.

Avis au ministre — questions concernant l'intégrité pendant l'audience

(2) Si la Section croit, après le début d'une audience, qu'il est possible que des questions concernant l'intégrité du processus canadien d'asile soient soulevées par la demande d'asile, et qu'elle est d'avis que la participation du ministre peut contribuer à assurer une instruction approfondie de la demande d'asile, elle ajourne l'audience et, sans délai, en avise par écrit le ministre et lui transmet tout renseignement pertinent.

Integrity issues

(3) For the purpose of this rule, claims in which the possibility that issues relating to the integrity of the Canadian refugee protection system may arise include those in which there is

(a) information that the claim may have been made under a false identity in whole or in part;

(b) a substantial change to the basis of the claim from that indicated in the Basis of Claim Form first provided to the Division;

(c) information that, in support of the claim, the claimant submitted documents that may be fraudulent; or

(d) other information that the claimant may be directly or indirectly misrepresenting or withholding material facts relating to a relevant matter.

Disclosure to claimant

(4) The Division must provide to the claimant a copy of any

Questions concernant l'intégrité

(3) Pour l'application de la présente règle, les demandes d'asiles qui pourraient soulever des questions concernant l'intégrité du processus canadien d'asile sont notamment celles où, selon le cas :

a) des renseignements indiquent que la demande d'asile pourrait avoir été faite, en tout ou en partie, sous une fausse identité;

b) une modification importante est apportée au fondement de la demande d'asile par rapport à ce qui est indiqué dans le Formulaire de fondement de la demande d'asile transmis initialement à la Section;

c) des renseignements indiquent que le demandeur d'asile a soumis à l'appui de la demande d'asile des documents qui pourraient être frauduleux;

d) d'autres renseignements indiquent que le demandeur d'asile pourrait avoir fait, directement ou indirectement, une présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur ce fait.

Communication au demandeur d'asile

(4) La Section transmet au demandeur d'asile une copie

notice or information that the Division provides to the Minister.

de tout avis ou renseignement que la Section a transmis au ministre.

Resumption of hearing

Reprise de l'audience

(5) The Division must fix a date for the resumption of the hearing that is as soon as practicable,

(5) La Section fixe une date pour la reprise de l'audience qui tombe dès que possible :

(a) if the Minister responds to the notice referred to in subrule (2), after receipt of the response from the Minister; or

a) après la réception de la réponse du ministre, si celui-ci répond à l'avis visé au paragraphe (2);

(b) if the Minister does not respond to that notice, no earlier than 14 days after receipt of the notice by the Minister.

b) après un délai minimal de quatorze jours suivant la réception de l'avis par le ministre, si celui-ci n'y a pas répondu.

VII. ARGUMENTS

Issue 1 – Procedural Fairness

(a) Applicants

[20] Nothing in Rule 27 of the *RPD Rules* contemplates notifying the Minister of unfounded or baseless integrity issues in order to obtain foreign visa applications. The Applicants take issue with the Integrity Notice that was sent to the Minister despite an admitted absence of any indication of any actual integrity concerns – an act that flagrantly ignores the express purpose of Rule 27. Accepting the Respondent's argument would endorse the practice of a board member ignoring the clear wording and intent of Rule 27. The RPD might have an interest in acquiring certain documentation, but it cannot raise an unfounded concern to the Minister, an adverse

party, merely for administrative convenience: *Geza v Canada (Citizenship and Immigration)*, 2006 FCA 124 [*Geza*].

[21] The Applicants do not object to the RPD's attempts to obtain their visa information. The Board Member attempted to explain to the Applicants at the hearing that she had no choice but to send the Integrity Notice. Even if it is the case that the Board Member had no choice but to send the Integrity Notice in order to acquire the visa applications, it begs the question as to why the Applicants were asked to provide their signed consent for a SIRU (the RPD's investigation unit) request just one week prior to the issuance of the Integrity Notice.

[22] The Integrity Notice had a serious negative impact on the Applicants as they prepared for their claim. It heightened anxiety, as the Principal Applicant felt the presumption of truthfulness had been obviated. As she states in her affidavit, after receiving the Integrity Notice, she "felt as though the Board was accusing my children and me of lying even before meeting us." She was nervous during her testimony and her ability to present her claim was impacted, compromising the fairness of the hearing. Regardless of the Board Member's eventual comments that she had no actual integrity concerns, by sending the Integrity Notice, the appearance of prejudicial suspicion was created. This gives rise to a reasonable apprehension that the decision-maker was unresponsive to the evidence and arguments advanced at the hearing: *Au v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 243 at para 23.

[23] The Applicants submit that the appearance of unfairness created a reasonable apprehension of bias, the appearance of which is only heightened by the fact that the claims were

ultimately refused on the basis of a negative credibility determination. An appearance of unfairness can be understood as having created a reasonable apprehension of bias. This is important to note as the RPD's duty of impartiality falls at the high end of the spectrum: *Geza*, above, at paras 52-54.

[24] The Applicants' allegations are premised on the clear and undisputed actions of the Board Member. She sent an unfounded Integrity Notice to the Applicants prior to the hearing, without justification. A reasonable person would conclude that it is more likely than not that the Board Member did not decide the Applicants' hearing fairly: *Committee for Justice and Liberty v National Energy Board*, [1978] 1 SCR 369 [*Committee for Justice and Liberty*].

(b) Respondent

[25] The Respondent says that the test outlined by the Supreme Court of Canada in *Committee for Justice and Liberty*, above, has a high threshold in light of the strong presumption of judicial impartiality – a presumption which extends to decisions of the RPD: *R v S (RD)*, [1997] 3 SCR 484 at 532; *Luzbet v Canada (Citizenship and Immigration)*, 2011 FC 923 at para 20.

[26] The Applicants' suggestion that the issuance of the Integrity Notice without actual integrity concerns raises a reasonable apprehension of bias is, according to the Respondent, without merit. The Board Member was candid about her motivation for sending the Integrity Notice. After being unsuccessful in acquiring the Applicants' visa documentation through the mechanisms available to the Board, she was simply making a second attempt to do so through the Integrity Notice. This is not evidence of any value judgment concerning the integrity of the

Applicants' claim for asylum. The Board Member even went so far as to explain the rationale behind her actions directly to the Principal Applicant when the Applicants' counsel agreed that it would be beneficial to her.

[27] The Respondent asserts that the Applicants have failed to explain how the Integrity Notice impeded them from freely articulating their testimony. While the claims may have been refused primarily on credibility concerns, these were not based on the adult Applicants' demeanour or conduct at the hearing. Rather, the concerns were founded on a lack of specificity in their accounts as to when the triggering event in question occurred. Therefore, it cannot be reasonably argued that the Integrity Notice had any prejudicial impact on the final decision.

Issue 2 – Credibility

(a) Applicants

[28] The Applicants claim that the RPD's credibility findings are unreasonable. Suggesting that the RPD relied on an overly microscopic analysis, the Applicants take issue with the Board Member's insistence that the Applicants should have been able to recall the exact date of the attacks upon the Male Applicant in their testimony. Both the Principal and Male Applicants testified that the assault took place in May, and the RPD does not identify any discrepancy, omission or inconsistency between these accounts – only having concern with the slight vagueness regarding a precise date. The Applicants argue that, given that both the Principal and Male Applicants specified that the incident took place in May, the relatively minor concern regarding a specific date must be understood in light of the Applicants' otherwise consistent

evidence about the incidents of abuse and threats they faced from the El Hamar family. A refugee claim should not be a memory test and the RPD engaged in an over-vigilant attempt to search out faults in the Applicants' testimony.

[29] The Applicants submit that, in concluding that the attack on the Male Applicant did not have "the ring of truth to it," the RPD effectively makes a plausibility determination. Such a finding should only be made where the facts are inherently implausible: *Habibi v Canada (Citizenship and Immigration)*, 2016 FC 253 at para 28; *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7. Vagueness in recalling specific dates is not enough to support a plausibility determination and the RPD is required to explain its rationale in making one: *Saeedi v Canada (Citizenship and Immigration)*, 2013 FC 146 at para 30 [*Saeedi*]. The Applicants say that no deference is owed to the RPD on this point, as the Court is just as well positioned as the Board to assess the plausibility of these central events: *Cao v Canada (Citizenship and Immigration)*, 2007 FC 819.

[30] The Decision indicates that the RPD would have been "less troubled" by the lack of specificity about the date of the assault if it had "some corroborating evidence that it had actually occurred." The Applicants say they provided such evidence by way of two letters from their former neighbours in the UAE who confirmed many details of the Applicants' story, including that the El Hamar boys were troublemakers who had hit the Male Applicant in the park and that the El Hamar family was well connected and powerful. The Decision makes no reference to these letters and yet makes an explicit finding about a lack of corroborative evidence. In terms of a lack of evidence regarding the Male Applicant's injuries, the Applicants explained their fears

of going to a hospital and of medical staff alerting the authorities about the incident. The RPD's suggestion that the Applicants could have lied to the staff about the source of the injuries ignores the Applicants' consistent explanation that they believed going to the hospital in itself created a risk of involvement on the part of the authorities and El Hamar. The RPD found it difficult to believe that no photographs were taken of the Male Applicant's injuries, given the modern ubiquity of cell phones. At no point during the hearing did the Board Member ask the Principal Applicant or the Male Applicant whether they own a cell phone. The Board Member also failed to provide any opportunity to the Applicants to explain why no photographs existed and, in so doing, breached procedural fairness and inappropriately applied Western standards to her assessment.

[31] The Applicants further submit that the only discrepancy identified by the RPD in the Applicants' testimony is simply an erroneous finding of fact on the Board Member's part. While the RPD claims that the Principal Applicant indicated that her husband was currently living with his parents while the Male Applicant said he was at a friend's house after closing up the family home, a review of the transcript indicates that the Male Applicant also said that Mahmoud was staying at his parents' home. This factual error might have been avoided had the Board Member adhered to the well-established obligation of alerting the Applicants to her belief that the Applicants had provided contradictory testimony.

[32] Finally, the Applicants argue that it was reasonable for the RPD to find that the Male Applicant's testimony regarding his status in UAE was inconsistent with documentary evidence, which reveals that children of adult males employed in UAE can only be included on

their family resident permit until age 18. While the Male Applicant could not definitively explain why his permit was renewed for one year in May 2015, he offered the reasonable explanation that he was granted an additional year because he is a year behind in school. The Board is not entitled to ignore a reasonable explanation and treat the evidence as if the account had never been provided: *Veres v Canada (Citizenship and Immigration)*, [2000] FCJ No 1913 at para 12 [*Veres*]. Similarly, the Board Member did not accept the Applicants' reasonable explanations for visiting Jordan while they waited for their United States visas. They inevitably had to return to UAE in order to receive their visas. This is not, as the RPD found, indicative of a lack of fear of returning to UAE. Furthermore, the RPD operated under a misguided impression that any risk to the Applicants should have manifested immediately. There is no reason to believe that El Hamar would never follow through on his threats at some later time. The Federal Court has recognized that it is not required of an applicant to establish the veracity of threats by actually suffering the threatened harm: *Aguilar Revolorio v Canada (Citizenship and Immigration)*, 2008 FC 1404 at para 19.

(b) Respondent

[33] The Respondent submits that the RPD is entitled to adversely decide on an applicant's credibility on the basis of contradictions and inconsistencies in his or her story, and between that story and other evidence before the Board. Moreover, the RPD is entitled to make an adverse finding regarding credibility on the basis of the implausibility of the applicant's testimony alone: *Sheikh v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 238. The Applicants have not shown that the inferences drawn by the RPD were not reasonably open to it on the record.

[34] According to the Respondent, a review of the Decision reveals that the RPD provided an explanation as to why the Principal and Male Applicants' testimony proved to be implausible in certain fundamental areas. In order for the RPD to be satisfied that evidence is credible or trustworthy, it must be satisfied that it is probably, not just possibly, so.

[35] As regards the Applicants' claim that the RPD engaged in a microscopic analysis, the Respondent submits that it was not unreasonable to expect that the Applicants would have been able to provide a date on which the alleged attack against the Male Applicant occurred. Even if a precise date was not known, it is reasonable that one or both of the Male and Principal Applicants could have deduced the date from the incident that they claimed occurred the following day – the threat of their home being burned down. The inability of the Applicants to place a date on either event significantly undermined the credibility of the alleged incidents. Furthermore, the neighbours' letters of support provided by the Applicants indicated that the attack occurred in the "summer of 2015" and "around six months ago," providing even less understanding as to when the attack actually occurred.

[36] Finally, the Respondent asserts that there is no objective evidence to corroborate the contention that the Applicants have been victims of a vendetta by El Hamar, an allegedly powerful UAE government agent. When El Hamar had an opportunity to exercise his malice, the Male Applicant was able to obtain a residency extension for one year, the appropriate length of time under the circumstances. The youngest female Applicant was able to receive a three-year extension in June 2015 and when Mahmoud, the Principal Applicant's husband, returned to the UAE from the United States, he was able to re-enter without incident.

VIII. ANALYSIS

[37] Whether or not the Board Member breached the rules of procedural fairness and demonstrated a reasonable apprehension of bias, this matter must be returned for reconsideration because of reviewable errors in the RPD's credibility analysis.

1. *Exact Date of Attack*

[38] The RPD found that the lack of specificity about the date of the assault on the Male Applicant "undermined the credibility of the claimants on this pivotal issue."

[39] Both the Principal Applicant and the Male Applicant gave consistent testimony that the assault took place in May, but they could not give the exact date. The RPD relied upon this to question their credibility even though the Board Member did not identify any other omissions, inconsistencies or contradictions in their respective testimonies, their basis of claim forms or the port of entry notes. The Board rationalizes this finding by saying that "the male claimant... was able to provide other specific details regarding when his residency permit expired, and exactly how old he would have been in May of this year." The logic here is that because the Male Applicant could be precise about some things, such as when he was born, the fact that he couldn't identify the exact date of the attack undermines his credibility. This is to demand that he be precise about everything, which is unreasonable and which turns the claim into a memory test, which the Court has warned against. See *Sheikh v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 568.

[40] The Board Member also says that:

... I would expect both claimants to remember the date of the attack with clarity because it was recent, the male claimant was violently assaulted and was allegedly injured, and because in addition to this assault, there was the added memorable factor of having firecrackers thrown at their house with a threat to burn it down which occurred the very next day. I find this lack of detail to undermine the credibility of the claimants on this pivotal incident.

[41] There is some substance to this explanation, but the failure to give precise dates has to be balanced against the fact that there were no other discrepancies, omissions or contradictions regarding the central incidents of the claim. It seems that the inability to give the exact date of the attack is what underpins the Board Member's conclusion that "the alleged incident with the two boys in May 2015 did not have a ring of truth about it." The ring of truth also has to take into account that there were no other omissions, discrepancies or contradictions, and the Board Member's conclusions on this point are no more than a plausibility finding that only focuses on one aspect of testimony: the claimants' inability to give an exact date in May when the attack occurred. Any such finding has to be based on all of the evidence before the RPD and cannot just fixate on one area of vagueness. See *Saeedi*, above, at para 30.

2. *Corroborative Evidence and Re-availment*

[42] The Board Member reasons as follows:

[20] I would be less troubled by the lack of specificity about the date of this very significant incident of assault against the male claimant if I had some corroborating evidence that it had actually occurred. This was quite a serious incident, with the male claimant being punched in the face and experiencing bruises on his body. Yet there is no medical evidence to support this allegation is true as the claimants allege they could not go to the hospital because they were worried that the hospital would call the police and El

Hamar would discover that they had reported the incident. I do not accept this as believable because it was a serious incident which led to the male claimant being injured, and the claimants were not obligated to tell the medical officials how the injuries were incurred.

Additionally; the male claimant was asked if he had any photographic evidence of this assault and he indicated that he did not. This is the incident that has led to the claimants fleeing UAE after living there for most of their lives, and seeking international protection. Cell phones are ubiquitous these days and I do not think it unreasonable that the claimants would have had the wherewithal to document the injuries experienced by the male claimant, had they actually occurred. The lack of a photo of the injuries from this assault is troubling, and I find that this undermines their allegations that this incident actually occurred.

[43] In complaining of a lack of corroborating evidence, the Board Member overlooks and fails to deal with the letters from former neighbours in the UAE which corroborate the assault on the Male Applicant and the family's subsequent problems with the El Hamar family. The RPD did not have to accept these letters, but it did have to say why they were not supportive corroborating evidence. See *Aguilar Valdes v Canada (Citizenship and Immigration)*, 2011 FC 959 at para 46; *Ralda Gomez v Canada (Citizenship and Immigration)*, 2010 FC 1041 at para 28. It could not simply ignore them.

[44] The RPD's rejection of the Applicants' explanation as to why they had no corroborating medical evidence because "the claimants were not obliged to tell medical officials how the injuries were incurred" misses the whole point of the Applicants' explanation which was that there was a risk that medical staff would alert the police if the Male Applicant sought help for his injuries. The Principal Applicant indicated in her affidavit that the family "...thought that if we went to the clinic, they would call the police. We feared the police because they would be

prejudiced against us as Palestinians. In a conflict with a UAE national, the police will always side with them....” In testimony at the RPD hearing, she said “We were scared because we said if you go to the hospital, the hospital will ask – call the police and if you call the police that Al-Hamar is a very highly connected family and then they will create us problem [*sic*]. We were scared and then we stayed at home, we didn’t want to leave the house.” The injuries were not life threatening, so there was no need to risk involving the police. The Board Member treats the evidence as though this reasonable explanation had not been given (see *Veres*, above, at para 12) and fails to consider whether, in the context of the Applicants’ precarious situation in UAE and their fear of annoying the authorities, their explanation was reasonable.

[45] There is also no evidence to support the Board Member’s findings that the Applicants had cell phones available to them, or that they could be used to take photographs of injuries in UAE. The Board Member simply assumes that UAE is just like North America and gives the Applicants no opportunity to explain why they could not take photographs themselves. See *Jamil v Canada (Minister of Citizenship and Immigration)*, 2006 FC 792 at para 25.

3. *Factual Error Over Where Mahmoud Lives*

[46] The Board Member faults the Applicants for providing contradictory evidence about where Mahmoud is currently living:

Moreover, the principal claimant and the male claimant provided contradictory evidence about where Mahmoud was currently living – with the male claimant indicating that he was living at a friend’s house after closing up the family home, while the principal claimant stated that he was staying with his parents.

[47] However, there is no inconsistency because the Male Applicant clearly testified, in regards to his father, that “He is staying at his parents’ house.” See Certified Tribunal Record, Volume 3, p 636, lines 44-46. This alleged inconsistency is one of the factors cited that undermine the Applicants’ credibility, and it is clearly wrong.

4. *Re-availment*

[48] As the Applicants point out, there are several other reviewable errors in the Decision where the Board Member fails to address reasonable explanations given for some of the RPD’s concerns. For example, the Board Member finds as follows:

[21] Finally, I note that the claimants returned to UAE after visiting Jordan this past summer. I asked the male claimant about this and why he would return to the UAE if he was frightened to go there now. He stated that they could not remain in Jordan, so they had to return to the UAE. The claimants left the UAE on July 30, 2015 and returned there on August 20, 2015, well after the problems with El Hamar arose. Stamps on their travel documents indicate that they entered the country on that date. I make two findings about this travel. One, it indicates that the claimants were not as afraid of returning to the UAE as they indicated, and two, that they were not having problems with the residence permits on the basis of El Hamar’s interventions as they were stamped back into the country with no difficulty. Both of these factors further undermine the claimants’ already tarnished credibility.

[49] The Applicants explained that they travelled to Jordan while awaiting the issuance of their United States visas. If they had stayed in the UAE, they would have subjected themselves to attacks from those they feared, so they went to Jordan temporarily. But they had to return to UAE to obtain their visas. The brief return was necessary for them to obtain travel permits so that they could seek permanent protection in North America. All of this is consistent with their stated fears. The Board Member does not have to accept it, but she did have to deal with the full

explanation and say why it was not acceptable. See *Islam v Canada (Citizenship and Immigration)*, 2015 FC 1246 at para 22; *Rodriguez v Canada (Citizenship and Immigration)*, 2012 FC 4 at para 8.

5. *Conclusions*

[50] All in all, I think there are significant reviewable errors in the Decision which require the matter to be returned for reconsideration.

[51] Counsel concur that there are no questions for certification and the Court agrees.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is allowed. The Decision is quashed and the matter is returned 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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PLACE OF HEARING: TORONTO, ONTARIO

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DATED: JULY 25, 2016

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