

Federal Court



Cour fédérale

**Date: 20161124**

**Docket: IMM-2087-16**

**Citation: 2016 FC 1300**

**Ottawa, Ontario, November 24, 2016**

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

**BETWEEN:**

**LOTIFYA K.Q. ALHEZMA  
A.K.A. LOTFIYA ALHEZMA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**(Delivered orally from the Bench in Toronto, Ontario on November 17, 2016)**

I. Overview

[1] This is an application for judicial review of a decision by the Immigration and Refugee Board's Refugee Protection Division [RPD], in which Lotifya Alhezma's [Ms. Alhezma] claim for refugee protection was rejected. The RPD found that Ms. Alhezma was neither a Convention refugee nor a person in need of protection, pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] For the reasons that follow, I would allow this application for judicial review.

II. Context

[3] Ms. Alhezma is a stateless Palestinian. She was granted a Jordanian passport that was eventually removed from her in 2011.

[4] In 1991, Ms. Alhezma's daughter attacked a Jewish man, which created a series of problems for Ms. Alhezma. She was summoned to appear before the Israeli authorities in Jerusalem, was questioned several times, and her home was broken into. While her daughter was in prison, she (the daughter) was involved in the death of another inmate. Once again, the Israeli authorities questioned Ms. Alhezma.

[5] Aware that conditions in Israeli jails for Palestinians are difficult at best, the Applicant participated in various demonstrations to raise awareness around those conditions. During the demonstrations, Ms. Alhezma was attacked by Israeli security forces with rubber bullets, tear

gas, and with the butts of their rifles. On one occasion when Ms. Alhezma was attacked with the butt of a rifle, she sustained a back injury for which doctors recommended surgical intervention. She chose not to pursue the surgery because of the risks it posed.

[6] In 1993, Ms. Alhezma was summoned by Israeli authorities, held, and interrogated for approximately fourteen hours following the detonation of a car bomb near her home.

[7] In 1998, Ms. Alhezma stopped attending demonstrations due to the pain from which she suffered.

[8] In 2003, Ms. Alhezma was picking olives in the family orchard when two Israeli settlers threatened her and her fellow olive pickers with a rifle, chased the group off the orchard, and set their vehicle on fire. In that same year, Ms. Alhezma's daughter Maysoun married a man involved with the Palestinian armed resistance, who participated in the murder of Israeli soldiers. As a result, Israeli authorities interrogated Ms. Alhezma and searched her residence.

[9] In 2011, Ms. Alhezma's son Khaled returned to visit her from the United States. The authorities came looking for him in the night, and destroyed her home. She witnessed the Israeli authorities beat Khaled, and throw her grandson against the wall.

[10] Facing constant harassment from the Israeli authorities, Khaled, his spouse and his six children left for the United States to make a refugee claim. Ms. Alhezma joined them in January 2015. However, due to a need for medication that the family could not afford, Ms. Alhezma

returned to Ramallah in March 2015 for treatment. Khaled later informed Ms. Alhezma that he intended to make a refugee claim in Canada. Ms. Alhezma arrived in Canada on December 4, 2015, where she sought refugee protection.

### III. Impugned Decision

[11] The refugee claim included Ms. Alhezma, Khaled, his spouse, and their six children. A hearing was held on April 6, 2016. The RPD rejected Ms. Alhezma's claim on April 20, 2016. It concluded that Ms. Alhezma had proffered insufficient evidence to establish a valid claim under either section 96 or 97 of the IRPA. The RPD accepted the refugee claims made by Khaled and his four children who do not hold Egyptian citizenship.

### IV. Issues and Standard of Review

[12] While Ms. Alhezma has raised multiple issues, I indicated to the parties that I was particularly interested in whether or not the RPD conflated the tests required by sections 96 and 97, and consequently reached an unreasonable decision.

[13] Ms. Alhezma contends that the standard of review is correctness. I respectfully disagree. When a tribunal interprets or applies its home statute, there is a presumption that the standard of review is reasonableness: see, *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]; *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 39, [2011] SCJ No 61. This Court has concluded that an analysis of the legal requirements under sections 96 and 97 of the IRPA attracts the standard of

reasonableness (*Kayitankore v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1030 at para 9, [2016] FCJ No 1034).

[14] This Court will not intervene if the decision is justified, transparent and intelligible, and falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir*, above, at para 47).

V. Analysis

[15] To be considered a Convention refugee, a refugee claimant must have a well-founded fear of persecution “for reasons of race, religion, nationality, membership in a particular social group or political opinion”.

[16] As mentioned previously, Ms. Alhezma contends the RPD applied the wrong legal test in it reaching its decision. In support of her position, she cites five occasions in which the RPD applied the more onerous section 97 test in its section 96 analysis. Those excerpts are set out below:

Palestinians do suffer from restrictions in their day-to-day lives in the West Bank, which can be a serious inconvenience and lead to negative economic consequences, this is not unique and it appears to target all or most people who reside in the West Bank.

...

There is insufficient evidence to conclude that this claimant would be targeted outside of what the general populace within the West Bank face as part of the hostilities between the parties.

...

The panel has considered the allegations of fearing the settlers but the panel does not find this fear to be specific to the claimant.

...

...there is nothing before the panel to suggest the elder claimant was of interest to the IDF.

...

The documentary evidence suggests that the elder claimant's profile is not one that would bring the attention of the IDF even with her testimony that she had been detained a number of years previously. Nothing in her evidence suggests that she is of interest to the IDF.

[My emphasis.]

[17] I note here that IDF is the acronym for Israeli Defence Forces.

[18] I agree with Ms. Alhezma's contention. It is evident from the above excerpts that the RPD, in its section 96 analysis, sought a degree of personal risk to Ms. Alhezma which exceeded the risk to Palestinians in general. Such an approach is appropriate to a section 97 analysis. The question is not whether Ms. Alhezma is more at risk than anyone else, but whether the persecution she would face upon returning to the West Bank is based upon a Convention ground, such that she merits refugee protection (*Fi v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1125 at para 14, 2007 3 FCR 400).

## VI. Conclusion

[19] Given the RPD's application of the section 97 criteria to its section 96 analysis, I am satisfied the decision does not meet the test of reasonableness as set out in *Dunsmuir*, nor can I

find any basis by which it can be saved through the application of *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 26, [2011] 3 SCR 708. I would allow the application for judicial review, and remit the matter to a differently constituted panel for re-determination.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is allowed without costs. The matter is referred to differently constituted panel for re-determination. No question is certified for appeal.

“B. Richard Bell”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**STYLE OF CAUSE:** LOTIFYA K.Q. ALHEZMA  
A.K.A. LOTFIYA ALHEZMA v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 17, 2016

**JUDGMENT AND REASONS:** BELL J.

**DATED:** NOVEMBER 24, 2016

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