

Federal Court



Cour fédérale

**Date: 20170111**

**Docket: IMM-2962-16**

**Citation: 2017 FC 31**

**Toronto, Ontario, January 11, 2017**

**PRESENT: The Honourable Madam Justice Simpson**

**BETWEEN:**

**MAHMOUD ISSA AHMAD AL-KHATEEB**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant has applied for judicial review of a decision of a member of the Refugee Appeal Division [the RAD] dated June 16, 2016 [the Decision]. This application is made pursuant to section 72(1) of the *Immigration and Refugee Act*, SC 2001, c 27, [the Act]. The RAD upheld the finding of the Refugee Protection Division [the RPD] that the Applicant is neither a convention refugee nor a person in need of protection because Qatar is his only country of former habitual residence.

[2] The Applicant is a stateless Palestinian man, who was born in Gaza in 1984. When he was approximately six months old, his family moved to Qatar. He grew up there as a temporary resident due to his father's employment. From 2002 until 2008, he attended university in Jordan on a student visa and returned to Qatar annually in order to retain his status. After graduation, he worked as an engineer in Qatar and his immigration status was dependant on his employment. He only returned to Gaza once, for a one month visit with relatives, when he was twelve years old.

[3] In June 2015, the Applicant changed employment in Qatar and then traveled to Canada to visit relatives. While here, he learned that he had been terminated from his new position. The Applicant's Qatar residence permit was due to expire in December 2015, and would not be renewed unless he found new employment. However, Qatar had passed a law nationalizing its workforce and the Applicant was therefore concerned that he would not be able to find a new employer to sponsor him. In that situation, Qatar would deport him to Gaza. Accordingly, the Applicant remained in Canada and claimed refugee protection alleging a fear of Gaza.

[4] Gaza is controlled by the Hamas political faction. The Applicant fears returning to Gaza because his family is affiliated with the Fatah political faction. It is Hamas' political rival. The Applicant fears persecution including torture upon return to Gaza.

I. The Issues

[5] The issue for the RAD was whether any of Qatar, Jordan or Gaza, could be treated as the Applicant's country of former habitual residence [CFHR]. The IRB had found that Qatar was the Applicant's only CFHR.

[6] The term CFHR appears in article 1(a)(2) and article 1(c)(6) of the United Nations' Convention Relating to the Status of Refugees.

[7] The term CFHR also appears in sections 96(b) and 97(1) of the IRPA. Those provisions read as follows:

96 (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.

96 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.

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

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 :

[8] I will deal in turn with the evidence about each potential CFHR and the RAD's conclusions.

II. Qatar

[9] The Applicant was content in Qatar and had no fear of persecution in that country. He lived there for twenty five years and, in addition, maintained his status as a resident by returning regularly during the five years he studied in Jordan. He lived with his family, was educated at the secondary level, and eventually found employment as an engineer. His employment gave him the right to reside in Qatar, and to travel abroad and return at will. However, as noted above, the Applicant has lost his status in Qatar. He no longer has a right of return.

III. Jordan

[10] The Applicant lived in Jordan for five years as a visiting student. He also has documents issued by Jordan which allow him to travel internationally, but give him no right to return to or to reside in Jordan. The Applicant has no fear of persecution in Jordan.

IV. Gaza

[11] The Applicant is Palestinian. He was born in Gaza and lived there with his family until he was approximately six months old. He also visited family in Palestine for one month at age twelve. He has the right to return to Gaza and reside there. He fears persecution and torture in Gaza at the hands of Hamas.

V. The RAD Decision

A. *Qatar*

[12] The RAD agreed with the RPD that Qatar is the only CFHR for the Applicant. It said at paragraph 18 of the Decision “In the RAD’s view, the Appellant’s relationship with Qatar was indeed comparable to that which exists between a citizen and a country of nationality. He had the right to live, to work, to secondary education, and to repeatedly re-enter the country. Qatar is a country of former habitual residence for the Appellant.”

B. *Jordan*

[13] The RAD did not identify Jordan as a CFHR. It said at paragraph 19 of the Decision “The Appellant was in Jordan for a longer period of time (than Gaza), but only to study. And he made regular trips back to Qatar to preserve his residency status there. Again the evidence does not suggest that the Appellant was a habitual resident of Jordan; rather he was there temporarily, with temporary status, while maintaining Qatar as his home, and he did not have a relationship with the state comparable to that of a national.”

C. *Gaza*

[14] The RAD did not identify Gaza as a CFHR. It said at paragraph 19 of the Decision “The Appellant lived in Gaza for only six months, and in the RAD’s view, this simply cannot be accurately characterized as regular, continual or usual.”

[15] The Applicant submits that the Decision creates a situation in which:

1. The risk assessment the Applicant has received from the RPD and the RAD is pointless. Risk has been assessed only in relation to a country (Qatar) about which he has expressed no fear and to which he cannot return; and
2. His risk has not and will not, even in a PRRA, be assessed in the country (Gaza) in which alleges he is at risk of persecution and torture and to which he can be returned.

[16] The Respondent says that the situation described above is not serious because the IRPA has other measures to ensure that deportation to persecution or torture does not occur. They include:

- Humanitarian & Compassionate (H&C) applications under section 25 of the IRPA
- The use of Ministerial discretion under section 25.1 of the IRPA
- PRRA applications

[17] However, in my view, none of these measures are substitutes for a meaningful decision on a refugee claim. H&C applications do not involve an in depth risk assessment and are highly discretionary. Ministers' actions are also discretionary, and a PRRA Officer is unlikely to undertake a fresh risk assessment for a country that the RAD determined need not be considered.

## VI. The Issues

[18] The Applicant has raised numerous issues, including submissions that the Decision is absurd and contrary to the objectives of the IRPA, to the Charter, and to Canada's international obligations under the Refugee Convention and the Convention Against Torture. However, in my view, one issue is dispositive. It is that the RAD failed to conduct an assessment of Gaza as a

CFHR. In one sentence, it simply compared the Applicant's six months in Gaza to his twenty five to thirty years in Qatar, and eliminated Gaza from consideration. The RAD apparently failed to appreciate that:

- There can be more than one CFHR;
- The Applicant's birth in Gaza gives him status akin to nationality;
- His rights of return and residence are also akin to the rights associated with citizenship;
- There is no minimum period for residence to establish a CFHR;
- CFHR's are "former". The fact that he was a habitual resident of Gaza many years ago is not a bar to it being a CFHR; and
- He has family in Gaza and he is Palestinian.

[19] The RAD also misunderstood the dictionary definition on which it relied for the meaning of the word "habitual". It is defined as "regular, continual, or usual". None of these words deal with duration. Instead, they suggest a normal uninterrupted lifestyle. This is exactly what the Applicant had as an infant in Gaza. He lived with his family, and ate and slept as infants do.

[20] The RAD also misunderstood the meaning of "a significant period of residence" as that term is used by Mr. Justice Cullen in *Maarouf v. Canada (Minister of Employment and Immigration)* [1994] 1 F.C. 723. Because there is no minimum period for a CFHR, significance must be capable of meaning something other than a substantial period of time. It follows that a short period can be significant.

[21] In other words, a period of residence can acquire significance for reasons other than longevity. The Applicant's first six months was a significant period, because it included his birth, and his acquisition of the rights of Residence and Return which are associated with citizenship, and which last a lifetime.

## VII. Standard of Review

[22] The parties made lengthy submissions on this issue. The Respondent suggested reasonableness and the Applicant argued for correctness. In my view, this issue need not be addressed because, for the reasons given above, the Decision would be set aside under both standards.

## VIII. Certification

[23] The Applicant posed the following question for certification:

What is the legal test for the assessing the “country of former habitual residence” for a claimant pursuant to ss. 96 and 97 of the IRPA?

[24] In my view, this is not a question that would be dispositive. The problem in this case was not the lack of a definition for a CFHR, but rather the application of the definition. Accordingly, the question will not be certified.



**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is allowed.

The question of whether Gaza is a CFHR is to be considered by a different member of the RAD in accordance with these reasons.

"Sandra J. Simpson"

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Judge

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

**DOCKET:** IMM-2962-16

**STYLE OF CAUSE:** MAHMOUD ISSA AHMAD AL-KHATEEB v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** DECEMBER 13, 2016

**JUDGMENT AND REASONS:** SIMPSON J.

**DATED:** JANUARY 11, 2017

**APPEARANCES:**

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