Federal Court  Cour fédérale

Date: 20170316

Docket: IMM-2617-16

Citation: 2017 FC 282

Ottawa, Ontario, March 16, 2017

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

AHMAD CHEHADE
RAFIFA HAMOUD
IBRAHIM CHEHADE
YARA CHEHADE
MOHAMAD CHEHADE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the decision of Refugee Protection Division ("RPD") of the Immigration and Refugee Board of Canada, dated June 6, 2016, which determined that the Applicants were neither Convention refugees nor persons in need of

protection pursuant to ss 96 and 97, respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("IRPA").

Background

[2] The Applicants are a family of five; they are all stateless Palestinians holding Lebanese travel documents. The Principal Applicant, Ahmed Chehade, and all three minor applicants were born in the Kingdom of Saudi Arabia ("Saudi Arabia"). The female Applicant, Rafifa Hamoud, was born in the United Arab Emirates ("UAE") and moved to Saudi Arabia when she married the Principal Applicant. The Applicants have lived in Saudi Arabia or the UAE all of their lives.

[3] The family would, on occasion, travel to Lebanon for vacation or to visit family. They claim that during one such visit, in June 2013, the Principal Applicant was attacked and stabbed by members of Jund El Sham in the Ein El Helweh refugee camp where he was staying. He was hospitalized for three days and claims that threats against him and his family from the Jund El Sham were received during that time. The Applicants ended their vacation early and returned to Saudi Arabia.

[4] The Applicants claim that on November 15, 2015, the Principal Applicant was given notice that his job in Saudi Arabia was terminated. The Principal Applicant tried to find a new sponsor before February 15, 2016, the date when he would be required to leave Saudi Arabia if he could not find employment. As he was not successful, and fearing that they would be removed to Lebanon where they would be at risk, the family obtained visas for the United States

and flew there on February 7, 2016. They entered Canada on February 12, 2016 and claimed refugee protection at the port of entry.

[5] The Applicants allege a fear of persecution in both Lebanon and in Saudi Arabia. They claim that they have no legal right of return to Saudi Arabia as the Principal Applicant's temporary residence there was dependent on his employment. In the result, if returned there, they would be deported to Lebanon where their lives are in danger.

Decision Under Review

[6] The RPD identified four issues in the claim. These were whether the Applicants established their identity; whether they were credible; what was their country of former habitual residence; and, whether they have a well-founded fear of persecution in the country of former habitual residence.

[7] With respect to identity, the Member was satisfied that all of the Applicants were stateless Palestinians who travelled on Lebanese documents.

[8] With respect to credibility, the RPD cited some concerns but found that the Principal Applicant was generally credible. Further, that he had provided corroborating evidence with respect to the incident in Lebanon. The RPD was satisfied that on a balance of probabilities the incident did in fact occur.

[9] The RPD noted, because the Applicants are stateless, that it must determine their former habitual residence. This was straightforward because the Applicants had only ever lived in Saudi Arabia or, in the case of the female Applicant, in the UAE but she had been in Saudi Arabia since marrying the Principal Applicant many years ago. The RPD noted counsel's argument that Lebanon should be considered the family's former habitual residence, however, determined that this was not the case given that the Applicants had spent a limited amount of time there and had no long standing or permanent intention to reside in Lebanon. It found that Saudi Arabia was their country of former habitual residence.

[10] The RPD noted that the Applicants' Iqamas, being their Saudi residence permits, indicated that they were valid until the end of 2016. This strongly suggested that the family could return to Saudi Arabia which meant that the right of return was not relevant.

[11] The RPD also noted the submission by counsel for the Applicants that Palestinians in Saudi Arabia suffer discrimination on the basis of their nationality. However, given the Principal Applicant's success and the family's lack of problems in Saudi Arabia, the RPD did not accept that they had been discriminated against.

[12] The RPD concluded that Saudi Arabia was the Applicants' country of former habitual residence. The Principal Applicant had indicated that the family had no problems there, other than the loss of his job, and the RPD found that the Applicants had not established a well-founded fear of persecution in Saudi Arabia nor are they persons in need of protection on the basis of any issues faced in Saudi Arabia due to their Palestinian ethnicity. Further, that their

Iqamas were still valid until the end of the year and they could, therefore, return to Saudi Arabia. Accordingly, their claims were rejected.

Issues and Standard of Review

[13] Although in their written submission the Applicants listed a number of issues, in my view, these are all captured within the question of whether the RPD's decision was reasonable, thereby attracting review on that standard (*Rahman v Canada (Citizenship and Immigration)*, 2016 FC 1355 at paras 11-12; *Choudry v Canada (Citizenship and Immigration)*, 2011 FC 1406 at para 18). In reviewing a decision for reasonableness, the reviewing Court is mostly concerned with the existence of justification, transparency and intelligibility within the decision making process but also with 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 SCC 9 at para 47).

Positions of the Parties

Applicants' Position

[14] The Applicants submit that the RPD erred by ignoring or misconstruing their evidence that their immigration status in Saudi Arabia was always that of temporary residents, which had to be renewed annually, and that they have no right of return to Saudi Arabia. This is because the Principal Applicant's temporary resident permit ceased to be valid when his employment was terminated and he was unable to secure new employment by February 15, 2016, being the date by which the Principal Applicant was required to find a new employment sponsor, leave Saudi

Arabia or face deportation. Further, that the Applicants feared being harmed by Saudi authorities if they tried to re-enter without an employer-sponsor.

[15] The Applicants also submit that the RPD erred by finding that Lebanon was not a country of former habitual residence for the Applicants. Lebanon is a country of former habitual residence because the Applicants have Lebanese travel documents for Palestinian refugees. The Applicants cite Article 28 of the United Nations Convention Relating to the Status of Refugees, Can TS 1969 No 6 in support of this position. They submit that the RPD failed to consider their connection to Lebanon including their United Nations recognition, family ties, time in Lebanon, and issuance of travel documents. Lebanon has issued travel documents for Palestinian refugees, presumably because it considers them to be refugees who are lawfully staying in their territory with a legal obligation towards them. In that regard, the Federal Court of Appeal in *Thabet v Canada*, [1998] 4 FC 21 (FCA) ("*Thabet*") at paragraph 28 acknowledged that there is a need to maintain symmetry between citizens and stateless persons and the Applicants submit that one comprehensive method of determining a country of reference is by the passport or travel document one holds. In this case, the Applicants hold Lebanese travel documents therefore it is logical to conclude that Lebanon is a country of reference or country of former habitual residence. Lebanon is the only country they may return to. Further, that if returned, the Applicants are in danger, as the RPD found the Principal Applicant's evidence as to the attack in Lebanon to be credible.

Respondent's Position

[16] The Respondent submits that the onus was on the Applicants to establish that they were outside of Saudi Arabia, their country of former habitual residence, due to a well-founded fear of persecution based on one of the Convention grounds (*Maarouf v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 1329 (FCTD) at para 33 ("*Maarouf*"); *Thabet* at para 16; *Arafa v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 1286 (FCTD) at para 8 ("*Arafa*")).

[17] Further, that the RPD did not ignore the Principal Applicant's evidence that his job has been terminated, he was unable to find new employment, and that because he was unemployed his family cannot return to Saudi Arabia. Rather, the RPD noted that although the Principal Applicant alleged that he looked for employment before coming to Canada, he provided no documentation in support of this fact. Further, that the Applicants' Iqamas were valid until the end of the year which strongly suggested that the Applicants could return to Saudi Arabia. The Respondent also submits that *Daghmash v Canada (Minister of Citizenship and Immigration)* (1998), 149 FTR 280 (FCTD) ("*Daghmash*"), a decision cited by the Applicants, is inapplicable as in that case the applicant's Iqama had expired. In any event, its reasoning actually supports the RPD's decision.

[18] The Respondent submits that the RPD reasonably concluded that Lebanon is not the Applicants' country of former residence, which finding is supported by jurisprudence of this Court. In *Kadoura v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1057

("*Kadoura*"), this Court rejected a stateless Palestinian's argument that Lebanon should be considered his country of former habitual residence even though he had never actually lived there. Further, the Applicants' argument that the RPD should have considered whether they could return to Saudi Arabia before finding that it was their country of former habitual residence, is contrary to this Court's finding in *Maarouf* at paragraph 44 which held that a refugee claimant does not have to be legally able to return to a country in order for it to be a country of former habitual residence. As well, in *Salah v Canada (Minister of Citizenship and Immigration)*, 2005 FC 944 ("*Salah*") the Court observed that it was questionable for the RPD to assess a claim against a country simply because a claimant carried a passport permitting him to live and work in that country (at paras 1and 5).

Analysis

[19] The IRPA defines Convention refugees and persons in need of protection as follows:

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,	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) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	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) not having a country of nationality, is outside the	b) soit, si elle n'a pas de nationalité et se trouve hors du

country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

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 :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

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) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(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,

(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) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(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

(iv) la menace ou le risque ne

the inability of that country to provide adequate health or medical care.	résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

[20] This Court has previously held that it is clear from the definition of a Convention refugee that stateless persons, being those not having a country of nationality, may be Convention refugees. However, not every stateless person is a Convention refugee. In order for a stateless person who is outside the country of his or her former habitual residence and who is unable to return to that country to be a Convention refugee, he or she must find him or herself in that situation by reason of a well-founded fear of persecution for one or more of the reasons cited in the Convention definition (*Thabet* at para 16; *Arafa* at paras 7-8; *Salah* at paras 7-8). Further, the denial of a right to return may be persecutory and, therefore, forms a part of the RPD's assessment of a well-founded fear of persecution (*Thabet* at para 32; *Daghmash* at para 9). The burden is on the applicant to show on the balance of probabilities that they are unable or unwilling to return to any country of former habitual residence (*Thabet* at para 28).

[21] The jurisprudence is also clear that the determination of the country of habitual residence of a stateless person is essentially a question of fact (*Kruchkov v Canada (Solicitor General)*, [1994] FCJ No 1264 (FCTD) at para 9; *Marchoud v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1471 at para 10 ("*Marchoud*"), *Salah* at para 5). And, in order to establish habitual residence, a claimant must establish *de facto* residence for a significant period of time in the country in question (*Maarouf* at para 44; *Kadoura* at paras 14 and 19). Further, travel documents issued by Lebanese authorities in similar circumstances have been held not to

be conclusive evidence of habitual residence (*Kaddoura v Canada (Citizenship and Immigration)*, 2016 FC 1101 at para 19; *Kadoura* at para 15).

[22] In this matter the evidence before the RPD was that the family had never lived in Lebanon. They visited on occasion for vacation or to see family. The Principal Applicant and the minor Applicants were born in Saudi Arabia and the female Applicant had lived there since her marriage. As they had not established *de facto* residence in Lebanon for a significant period of time, they failed to establish that it was a country of habitual residence. The mere holding of Lebanese travel documents did not overcome this. Accordingly, in my view, the RPD did not err in finding that Saudi Arabia, not Lebanon, was the Applicants' country of former habitual residence.

[23] The RPD also noted that the Principal Applicant's evidence was that he had no problems in Saudi Arabia, other than losing his job. The RPD rejected the submission that the Applicants had been discriminated against in Saudi Arabia because they are Palestinian given the Principal Applicant's success and his lack of problems there. In my view, based on the record before it, the RPD's finding that the Applicants had not established a well-founded fear of persecution in Saudi Arabia, and that they were not persons in need of protection, was reasonable.

[24] The Applicants also submit that the RPD erred as it was required to go further and consider whether the Applicants would be at risk in Lebanon. However, in *Marchoud* this Court held that, because the RPD determined that the UAE was the applicant's only country of habitual former residence, it was not required to assess the applicant's fear in Lebanon (*Marchoud* at

paras 4 and 13, referencing *Thabet* at para 30). As in this case, the applicant in *Marchoud* also asserted that the RPD erred in determining that he could return to the UAE without assessing the possibility of a refoulement by the UAE to Lebanon. Justice Tremblay-Lamer held that the RPD did not have to conduct such an assessment based on the definitions contained in ss 96(b) and 97(1)(a) of the IRPA (then named the *Immigration and Refugee Act*). Further, such an analysis would be moot since the risk should be assessed on the day of the hearing, not when such a refoulement by the UAE might later take place.

[25] Accordingly, in my view, the only live issue raised by the Applicants is that the RPD erred in not considering their right to return to Saudi Arabia. On this point the RPD stated:

> …These Iqamas, which are the claimant's Saudi residence permits, indicate that all of the claimants currently have a valid residence permits in Saudi Arabia, and which are valid until [*sic*] of this year. This strongly suggests to me that the family can return to Saudi Arabia, so the right of return is not relevant in this case.
>
> …
>
> They had no problems there [Saudi Arabia]. Their Iqamas are still valid until the end of this year, and they can therefore return to the Kingdom of Saudi Arabia. Therefore, I reject the claims of these claimants for the foregoing reasons.

[26] Copies of the Iqamas for all of the Applicants were contained in the record before the RPD. They are issued by the Ministry of Interior for Saudi Arabia and indicate an expiry date of September 24, 2016. This meant that, on their face, they were valid at the time of the hearing and the rendering of the RPD's decision. As the Principal Applicant's evidence was quite clear that the family had experienced no problems in Saudi Arabia, which they have not disputed in

the judicial review, and because Saudi Arabia was their country of former habitual residence, the RPD could, on that basis, reasonably refuse the claims without considering their right of return.

[27] However, the Applicants assert that the RPD failed to consider or misconstrued their evidence that, upon the termination of the Principal Applicant's employment, his Iqama was cancelled. Accordingly, that the family had no right of return.

[28] In *Thabet*, the Federal Court of Appeal set out the test for establishing refugee status for stateless persons being that (at para 30):

> In order to be found to be a Convention refugee, a stateless person must show that, on a balance of probabilities he or she would suffer persecution in any country of former habitual residence, and that he or she cannot return to any of his or her other countries of former habitual residence.

[29] The Federal Court of Appeal went on to deal with the assertion that the trial judge erred by finding that the RPD had erred by not asking itself, or discussing in any way, the fundamental question as to whether the denial of the appellant's (a stateless Palestinian) right of return to Kuwait was in itself an act of persecution. The Federal Court of Appeal stated that to ensure that a claimant properly qualifies for Convention refugee status, the RPD was compelled to ask itself why the appellant was being denied entry to a country of former habitual residence because the reason for the denial may, in certain circumstances, constitute an act of persecution by the state.

[30] In this case, at the initial hearing date on April 13, 2016, the RPD asked the Principal Applicant where the Iqamas were for the family. The Principal Applicant testified that they did not have them, or copies of them, as they were taken away when the family permanently exited

Saudi Arabia. The RPD adjourned the hearing to invite the Minister to intervene on the issue of identity. The Minister declined to do so and, when the hearing was reconvened on June 6, 2016, new documents had been submitted by the Applicants. The Principal Applicant testified that he had asked his father to look in the Principal Applicant's belongings in his old house in Saudi Arabia, his father had done so and had couriered some papers which included the Iqamas. The status of these was then addressed at the hearing, the relevant portions of the transcript being:

> PRESIDING MEMBER: What's the current status of your *iqama* in Saudi?
>
> THE INTERPRETER: Sorry?
>
> PRESIDING MEMBER: What is the current status of your *iqama* in Saudi?
>
> CLAIMANT #1: Our status in Saudi Arabia was canceled because they wanted us to leave. They wanted us to leave the country.
>
> PRESIDING MEMBER: Okay. So – but your *iqama* indicates that it's still valid.
>
> CLAIMANT #1: Because this status, *iqamas* every year has to be renewed. When the person was – who sponsored you, once he stop you from working, to prevent you from (inaudible) ask you to leave or you have to leave the country period. You have to submit your *iqama* or status and it would get canceled. And I have to submit that *iqama* or status to my – to the person who sponsored me and it will cancel – get cancelled.
>
> PRESIDING MEMBER: Okay. So I looked it up yesterday because you can look these things up online, and it's still valid.
>
> CLAIMANT #1: Yes, it is valid. It's valid for one year, could be up to December – I am not sure, December 23 or I'm not sure to which day it is valid. But the person who sponsored you, it he will terminate your services, it is done. He will pull your status from you and you have no right to (inaudible). As long as you are a foreign person, you are under the responsibility of the Saudis, the – I mean with Saudis, the company that I was working at.

[31] The RPD does not identify the source of the online information that was referenced which indicated that the Principal Applicant's Iqama was valid. However, the Principal Applicant does not dispute this and acknowledges that his Iqama was still valid, perhaps until the end of the year, but seems to suggest that his employment sponsor is able to revoke or cause his residence status to be revoked.

[32] In that regard, the Principal Applicant also provided an employment termination letter dated November 15, 2015, which states that his employment had been terminated effective December 15th, 2015 and that "as per the Saudi Labor Law, you're requested to transfer your sponsorship to another company or leave the Country not later than February 15th, 2016". The RPD did not mention this letter in its reasons but it was raised and discussed at the hearing.

[33] The Principal Applicant also testified that he had applied for "lots" of jobs in Saudi Arabia, that he looked through his network, and that he was submitting his CV to companies but did not have proof because "they don't give you anything when you submit the CV". In its decision the RPD stated that, while the Principal Applicant claimed to have looked for other employment in Saudi Arabia upon his termination, there was no evidence before it to establish this fact.

[34] The RPD found the Principal Applicant to be generally credible and made no adverse credibility findings concerning the employer's letter. In my view, there is a concern arising from the RPD's factual finding that the Applicants have a right of return to Saudi Arabia based on the

valid Iqamas which is, to an extent, contradicted by the Principal Applicant's testimony at the hearing and the termination letter. However, the RPD does not address this in its reasons.

[35] That being said, the burden was on the Applicants to submit sufficient evidence to support their position and the Principal Applicant's testimony on this point is not particularly clear. In any event, the evidence was clear that the Applicants cannot meet the definition of Convention refugees or persons in need of protection and, therefore, the RPD's decision was ultimately reasonable. Put in the context of s 96(b), they are not persons 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, are outside their country of former habitual residence, Saudi Arabia, and unable to return to that country. Importantly, because the Applicants did not leave Saudi Arabia as a result of a well-founded fear of persecution, the fact that they claim that they cannot return there is not, alone, sufficient to permit them to meet the Convention definition. Further, they explained why they cannot return, being that their Iqamas were rendered invalid because of the Principal Applicant's loss of employment. Thus, even if the Iqamas are not valid, their revocation was not, nor did the Applicants assert, in and of itself, an act of persecution. Nor does the jurisprudence support such a position (*Daghmash* at paras 9 and 11; *Marchoud* at paras 16-17).

[36] In the result, although the RPD stated that it did not have to consider the right of return because the Iqamas were valid, it had previously found that the Applicants did not have a well-founded fear of persecution in Saudi Arabia, their country of former habitual residence. Accordingly, even if it erred in not addressing the Applicants' evidence supporting their

assertion that, because of the Principal Applicant's loss of employment the Iqamas were not valid, the decision is still reasonable as it falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. No question of general importance is proposed by the parties and none arises; and

3. There will be no order as to costs.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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