

Federal Court



Cour fédérale

**Date: 20170508**

**Docket: IMM-4094-16**

**Citation: 2017 FC 461**

[ENGLISH TRANSLATION]

**Montréal, Quebec, May 8, 2017**

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

**BETWEEN:**

**WALED TALAL ABULLAH REDHA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Nature of the case

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [IRPA], for a decision made by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board. On July 25, 2016, the RAD confirmed

the decision made by the Refugee Protection Division [RPD] on October 5, 2015, in which the applicant's claim for refugee protection was denied.

## II. Facts

[2] The applicant, who is 25 years old, was born in Saudi Arabia and has lived there for his entire life, as have his parents and siblings. Yet he is a citizen of Yemen, a country to which he has never been. His citizenship—just like that of his other family members—was conferred upon him by his grandfather. Originally from the town of Zabid, his grandfather was part of the Al-Akhdam ethnic minority, a lower social class associated with slavery in Yemen. The applicant's grandfather allegedly fled Yemen in his youth to move to Saudi Arabia, where he died in 2006, without ever returning to his country of origin.

[3] Born in Saudi Arabia, the applicant's father does not have Saudi nationality, but that of Yemen. His job in a Saudi company over many years allowed him to retain a temporary residency visa that is renewable annually in Saudi Arabia, and to sponsor his spouse and their seven children.

[4] The applicant completed secondary school in Saudi Arabia, but because he is not a citizen, he did not have access to university-level studies. Therefore, he apparently decided to go to the United States, first to complete an intensive English course and second, to take studies in engineering. In January 2014, the applicant, supported financially by his father, thus entered the United States with an American visa that was valid until 2014.

[5] According to the applicant's account, in September 2014, his father was allegedly obliged to take early retirement as part of the range of "Saudization" measures for his job. The applicant's father, who lost his connection to his employer in Saudi Arabia and his residence and that of his family, was in jeopardy. The employer of the applicant's father reportedly agreed to maintain his sponsorship to allow him to renew his temporary visa for a year (until the end of 2015) in order to find another job and continue to sponsor the members of his family.

[6] The applicant's Saudi permanent residency was also renewed until November 2015. However, according to him, because his father could no longer support him financially, the applicant had to interrupt his studies in October 2014. On his father's advice, he did not return to Saudi Arabia, fearing deportation to Yemen: his father could no longer sponsor the applicant's temporary residency in Saudi Arabia, first, if he did not find another job before the end of 2015, and second, after the applicant turned 25 years old.

[7] Stricken with deep discouragement and not knowing what to do, the applicant stayed in the United States until he received a letter from the Department of Homeland Security in March 2015. The applicant, who was 23 years old at the time, decided to flee to Canada. On March 24, 2015, the applicant was arrested by the Royal Canadian Mounted Police [RCMP] for illegal entry. He submitted a claim for refugee protection and was heard by the RPD on May 25, 2015.

### III. Decision

#### A. *RPD decision – October 5, 2015*

[8] The RPD rejected the applicant's claim for refugee protection, concluding that his subjective fear of persecution and his objective fear based on his ethnic origins were not credible.

[9] First, the panel judged that the applicant did not discharge his burden of proving his objective fear of persecution in Yemen. First of all, the RPD highlighted that in October 2014, the applicant's Saudi residency had been renewed until November 2015 and that he was then able to return to Saudi Arabia. Thus, the panel judged it unlikely that the applicant's father lost his job as he claimed. The RPD then highlighted that the applicant had not claimed refugee status, even though he stated that he began to fear that he would be deported to Yemen in September 2014. Lastly, the panel drew a negative inference as to the applicant's credibility from the fact that he waited five months to seek protection in Canada in March 2015.

[10] Additionally, the RPD concluded that, on the basis of the objective evidence presented, the applicant did not establish, within the balance of probabilities, that he would be exposed to a serious risk of persecution if he had to be sent back to Yemen. The panel first noted the applicant's vague and laboured testimony, which struggled to articulate what he specifically feared about Yemen, the basis of his fear, and his claimed belonging to the Al-Akhdam group. The RPD then also found contradictions between the applicant's testimony and the letter from his father regarding their belonging to a tribe (Zabid) and an ethnic group (Al-Akhdam). Lastly, when the applicant explained at the hearing that the colour of his skin and his name would identify him as belonging to the Al-Akhdam group, the panel felt that the applicant's physical characteristics did not correspond to what was described in the submitted objective evidence.

The RPD concluded that the applicant did not show that he or his family belonged to the Al-Akhdam group.

B. *RAD decision – July 25, 2016*

[11] The RAD confirmed that the applicant was neither a Convention refugee nor a person in need of protection under sections 96 and 97 of the IRPA, concluding that the RPD's decision was free of reviewable errors in the procedural aspects of the hearing, in the assessment of testimony or documentary evidence, and in its reasoning and conclusions. The panel mentioned the items that were examined prior to its decision: the appeal record, the documentary evidence presented to both the RPD and the RAD, and the recording of the hearing before the RPD.

[12] The applicant presented new documents to the RAD without a hearing on the merits being requested. The RAD rejected the first two newspaper articles because they were normally accessible before the RPD hearing and noted moreover that numerous articles with similar content had been considered by the RPD. The RAD admitted a document that had been published after the RPD decision and dealt with one of the arguments raised by the applicant in appeal.

[13] Before detailing the reasons for its decision, the RAD specified its role, presenting a decision by the Federal Court of Appeal, *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 [*Huruglica*]. It established that it would apply the correctness standard to the decision being appealed and that it would proceed with an independent assessment of the record in order to draw its own conclusion as to the error alleged by the applicant before either

confirming the RPD's decision or setting it aside and substituting it with one of its own, while showing deference regarding the assessment of credibility done by the RPD, which had the advantage of hearing oral testimony.

[14] After having presented the contested decision in detailed fashion, the RAD gave the applicant's reasons for appeal: the RPD allegedly made errors by concluding in the applicant's lack of credibility as to his subjective fear and objective fear of persecution in Yemen.

[15] The RAD then detailed its analysis. Firstly, it concluded that the applicant could return to Saudi Arabia because he was 24 years old at the time of the appeal and, in addition, the evidence suggested that his father still had a job.

[16] Next, the RAD felt that the applicant's behaviour was not consistent with his alleged fear of being sent to Yemen: it was only when he received a letter from Homeland Security in the United States in March 2015 that he set off for Canada to claim refugee protection. The panel supported the RPD's observations as to the applicant's lack of credibility during his testimony and concluded that the applicant did not demonstrate a fear of being sent to Yemen as a result of his belonging to an ethnic group.

[17] Lastly, like the RPD, the RAD felt that the applicant did not discharge his burden of proof for establishing his belonging to the Al-Akhdam ethnic group: the applicant's testimony on his ethnic origins and the fear that resulted from it was vague and unfounded; his father's letter revealed his family's belonging to the Zabid tribe; no member of his family has allegedly gone to

or lived in Yemen. The RAD felt moreover that the RPD's comment on the applicant's physical characteristics was part of numerous considerations and was not central to the RPD's decision; if this was an error, it would not invalidate the decision.

IV. Submissions by the parties

A. *Applicant's submissions*

[18] The applicant put forward that the RAD's decision was flawed due to errors allegedly committed by the panel: (1) rejecting the additional evidence submitted with the appeal record; (2) failing to indicate the standard of intervention that was used for its analysis; and (3) in assessing the applicant's fear of being sent to Yemen, thus making an unreasonable decision.

B. *Respondent's submissions*

[19] The respondent claimed that the RAD clearly indicated the standard that would be applied to the RPD's decision. It also put forward that the RAD did not base the rejection of certain documents of additional evidence solely on the dates. The respondent alleged that the RAD's decision was based on the evidence and that it was a possible acceptable outcome that could be justified in the facts and in law.

V. Issues

[20] The issues raised in this case are as follows:

1. Did the RAD err with respect to the standard of intervention used regarding the RPD decision?
2. Was the RAD decision marked by an error that justified the Court's intervention?

[21] Both issues were subjected to the reasonableness standard (*Huruglica*, above, at paras 32–35; *Dunsmuir v New Brunswick*, [2008] 1 SCR 190, 2008 SCC 9 at para 47 [*Dunsmuir*]).

#### VI. Relevant provisions

[22] Subsections 110(4) and 111(1) deal with admissible evidence and decisions that the RAD can make:

##### **Evidence that may be presented**

(4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.

##### **Decision**

**111** (1) After considering the appeal, the Refugee Appeal Division shall make one of the following decisions:

##### **Éléments de preuve admissibles**

(4) Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.

##### **Décision**

**111** (1) La Section d'appel des réfugiés confirme la décision attaquée, casse la décision et y substitue la décision qui aurait dû être rendue ou renvoie, conformément à ses instructions, l'affaire à la Section de la protection des



réfugiés.

- (a) confirm the determination of the Refugee Protection Division;
- (b) set aside the determination and substitute a determination that, in its opinion, should have been made; or
- (c) refer the matter to the Refugee Protection Division for re-determination, giving the directions to the Refugee Protection Division that it considers appropriate.

[23] Sections 96 and 97 of the IRPA define Convention refugees and persons in need of protection:

**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 fear, unwilling to return to 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 veut y retourner.

country.

**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 medical care.

(2) A person in Canada who is a member of a class of persons

**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 pays de fournir des soins médicaux ou de santé adéquats.

(2) A également qualité de personne à protéger la

prescribed by the regulations as being in need of protection is also a person in need of protection.

personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

## VII. Analysis

[24] For the following reasons, the applicant's application for judicial review is dismissed.

### A. *Standard of intervention used by RAD*

[25] The applicant put forward that the RAD did not explain which intervention criteria were used to review the RPD's decision regarding the deference given to the assessment of credibility.

[26] In paragraph 10 of its decision, the RAD referred to *Huruglica*, above, and indicated that:

[TRANSLATION]

As for conclusions of fact and mixed conclusions of fact and of law that raise the issue of the credibility of oral testimonies, the Federal Court of Appeal declares that the RAD can show deference to the assessment of testimony done by the RPD. The Federal Court of Appeal recommends that the degree of deference to give the RPD in each case depends on the advantage enjoyed by the RPD, according to the RAD, in a particular case.

[27] The Court found that the RAD conducted its own assessment of the applicant's credibility (at paras 23–27 of the decision). In fact, throughout the decision, the RAD mentioned that it was listening to recordings of the hearing held before the RPD and mentioned its own analysis of the evidence on record. If it supported the RPD's conclusions as to the applicant's

lack of credibility, it was not out of excessive deference; the RAD's reasons were clearly detailed and were the result of an independent assessment of the testimony.

[28] There is no need for the Court to intervene in that regard.

B. *RAD decision*

(1) Rejection of the additional evidence by the RAD

[29] The RAD did not consider just the date on both documents in order to reject them. The Court referred to paragraph 6 of the RAD's decision:

[TRANSLATION]

The RAD emphasized that numerous articles with similar contents were sent to the RPD and placed in exhibit P-10, and that they were considered by the RPD in its written decision.

[30] As a result, the Court feels that the RAD's decision to reject two new items of evidence is reasonable.

(2) Assessment of the applicant's fear of being sent to Yemen

[31] It is not up to the Court that is tasked with the judicial review to reassess the evidence that was before a panel. The Court will only intervene if the contested decision does not fall within a range of acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir*, at para 47).

[32] According to the review of the applicant's credibility, the RAD could reject his testimony regarding the issue of the loss of his father's job if it judged this situation to be unlikely and that the panel could validly base its conclusions on rationality, common sense, and judicial knowledge. The RAD reportedly only referred to the applicant's status in Saudi Arabia in the context of his testimony and the letter from his father, which stated that he could not return there and risked being sent to Yemen.

[33] The applicant stressed that it was not unreasonable to conclude that the applicant could have returned to Saudi Arabia at the time when he interrupted his studies in October 2014, since his Saudi visa was valid until 2015 and he was not yet 25 years old. Moreover, the RAD drew a negative inference from the applicant's fears due to his failure to claim refugee status in the United States and the time that it took him to go to Canada (*Munoz v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1273; *Rahman v Canada (Minister of Employment and Immigration)*, [1994] FCJ No. 2041 (QL)).

[34] According to the facts in the case as a whole, the Court feels that it is not up to the Court to reassess the evidence that, moreover, was not admitted by the RAD according to the circumstances and the case as a whole. The RAD's decision was not flawed by any error whatsoever. Therefore, it is a possible and acceptable outcome.

#### VIII. Conclusion

[35] The Court orders that the application for judicial review be dismissed.

**JUDGMENT in IMM-4094-16**

**THE COURT ORDERS that** the application for judicial review be dismissed. There is no question of general importance to be certified.

“Michel M.J. Shore”

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Judge

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

**DOCKET:** IMM-4094-16

**STYLE OF CAUSE:** WALED TALAL ABULLAH REDHA v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

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**DATED:** MAY 8, 2017

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