

Federal Court



Cour fédérale

**Date: 20180130**

**Docket: IMM-3326-17**

**Citation: 2018 FC 98**

**Ottawa, Ontario, January 30, 2018**

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

**BETWEEN:**

**KHETAM MAHMOUD ALI ALHAJ  
ZAINA A S ALHADDAD**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicants, Ms Khetam Mahmoud Ali Alhaj [the principal applicant] and her daughter Zaina A S Alhaddad, which she represents [the minor applicant], seek the judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board.

[2] The RPD determined that the applicants were not Convention Refugees or persons in need of protection in Canada, pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. It concluded that the principal applicant's fear of being stripped of her Jordanian nationality was only speculative and did not amount to a serious possibility of persecution. Likewise, it concluded that the minor applicant did not face persecution because of her Palestinian ethnicity, nor was there sufficient evidence to conclude that she faced a personalized risk of persecution under section 97 of the IRPA.

[3] The only issue before this Court is whether the RPD's decision to deny the applicants' refugee claims is reasonable (see e.g. *Angel Gonzalez v Canada (Citizenship and Immigration)*, 2010 FC 1292 at para 10; *Duran Mejia v Canada (Citizenship and Immigration)*, 2009 FC 354 at para 29). For the following reasons, I find that the RPD's decision was reasonable with respect to the principal applicant, but unreasonable with respect to the minor applicant.

### ***Background***

[4] The principal applicant is a Jordanian citizen of Palestinian descent. The five-year-old minor applicant is a stateless Palestinian. Before coming to Canada, the applicants resided in Saudi Arabia. The principal applicant moved to Saudi Arabia after her Palestinian husband obtained work there. The minor applicant was born in Saudi Arabia, but does not possess Saudi citizenship since an individual born in that country from a foreign father retains his nationality.

[5] In March 2017, the applicants landed in Jordan on a stopover *en route* to the United States. The principal applicant allegedly received a phone call from the Jordanian Intelligence

Services to attend an interview. No date or reasons for the interview were specified. Since her two sisters were allegedly stripped of their Jordanian citizenships, the principal applicant feared this would happen to her as well. For that reason, she decided not to attend the interview and travel to the US. On April 6, 2017, she claimed refugee protection in Canada.

[6] In their basis of claim form [BOC], the applicants claimed fears in different countries. They first claimed fearing the Hamas in Gaza which perceived them as informants of the Palestinian Authority. Various members of their family were allegedly threatened by the Hamas. In addition, they also claimed fearing being harassed in Saudi Arabia because of their gender and because of their Palestinian ethnicity. Last but not least, the principal applicant fears being stripped of her Jordanian citizenship, as she received a call from the Jordanian Intelligence, and because it allegedly happened to her sisters.

[7] On July 5, 2017, the RPD dismissed the asylum claim.

### ***The impugned decision***

[8] The RPD first had to determine both applicants' countries of reference. Jordan was the principal applicant's country of reference, as she held Jordanian citizenship. The minor applicant's country of reference was Saudi Arabia. She is a stateless person, since Canada does not recognize the Palestinian Authority – her passport's issuing "State". In that case, the country of formal habitual residence becomes the country of reference. The RPD therefore only assessed the applicants' stories with respect to the given country of reference. The choice made by the RPD with respect to country of reference is not an issue in this application.

[9] The RPD concluded that the principal applicant failed to establish a serious possibility of persecution in her country of nationality, Jordan. The RPD found that her story was not credible based on various implausibility findings:

- The Jordanian Intelligence did not give a reason for the call, or a date to report back;
- The RPD does not see why it would have been up to her to decide when to report to the Jordanian Intelligence Services;
- The authorities could easily have stopped her when she entered Jordan a few days earlier;
- Her passport was renewed the year before for a period of five years, and was always renewed in the past; and
- She was also able to leave Jordan with her Jordanian passport to go to the US, shortly after allegedly receiving the call and being sought by Jordanian Intelligence Services. The authorities could have easily stopped her then, if they indeed wanted to revoke her citizenship.

[10] The RPD nonetheless acknowledged that the documentary evidence indicated that the Jordanian government had, at times, revoked the citizenship of Jordanian citizens of Palestinian descent. Yet, it usually concerned Palestinians returning from Kuwait after the Gulf War, and those entering Jordan from Gaza – which was not the applicant’s case. In addition, the applicant did not submit any corroborative evidence to support her allegations that her sisters were stripped

of their Jordanian citizenship. The RPD therefore concluded that the principal applicant did not establish a serious possibility of persecution in Jordan, nor did she provide sufficient evidence for a positive decision under section 97 of the IRPA.

[11] The RPD then analyzed the principal applicant's fears for her five-year-old daughter in Saudi Arabia. The RPD first tried to understand the nature of those fears. Essentially, the principal applicant seems to be claiming refugee status on the minor applicant's behalf because: her other children were bullied and sexually harassed at school; the two applicants were almost kidnapped by a cab driver; she has to send the minor applicant to private schools and hospitals since Palestinians are not allowed access to public services; and finally because the minor applicant does not attend kindergarten as the principal applicant is scared she will be sexually harassed. When asked about who would harass Zaina specifically, the principal applicant responded "anybody". The RPD found that the principal applicant's explanations were vague and general. She failed to establish how the other children – the RPD refers to their "bullying" by schoolmates – suffered problems specifically because of their Palestinian origins. The RPD concluded that having to send children to private schools and hospitals does not amount to persecution in the sense of section 96, nor has the applicant established that such services were denied specifically because of their Palestinian origins. The RPD also concluded that fears that Zaina would be sexually harassed are speculative: there is not enough evidence to find a risk in the sense of section 97.

***Dismissal of the principal applicant's claim not unreasonable***

[12] The applicants submit that the RPD rejected the principal applicant's claim solely based on unreasonable implausibility findings. Relying on *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 [*Valtchev*], the principal applicant claims implausibility findings can only be made in the clearest situations, which is not the case here. The documentary evidence's analysis with respect to Palestinians' citizenship revocation is insufficient. The RPD does not rely on any evidence related to the process of revoking citizenship in Jordan, but is rather only speculating. The facts presented by the applicant are not outside of what can be reasonably expected. In addition, the applicant's sisters' citizenships were revoked, and evidence shows that Jordanians of Palestinian origin have been arbitrarily stripped of their Jordanian citizenship in the past. Finally, the RPD does not raise any omissions or contradictions in her story. As such, the implausibility findings are insufficient to reasonably uphold a negative credibility conclusion.

[13] The respondent replies that the principal applicant failed to establish a serious possibility of persecution or that she could be subject to a risk to her life or to a risk of cruel and unusual punishment in Jordan. Her fear of losing her citizenship is speculative and does not make her a Convention refugee or a person in need of protection. It was reasonable for the RPD not to believe that a single phone call with no reasons given meant that she would be stripped of her citizenship. The respondent essentially argues that the RPD's implausibility findings were reasonable: there was no reason for the call or any date to report back; the authorities had several other opportunities to stop the principal applicant; and she did not provide any other corroborative evidence that her citizenship may be in jeopardy. Moreover, the documentary

evidence alone was insufficient to establish the risk, as she did not fit in any of the categories listed of other Palestinians who lost their Jordanian citizenship. The risk is only speculative, and clearly insufficient to justify refugee protection.

[14] I agree with the respondent that the issue was properly treated by the RPD and that its decision was reasonable. Unlike what the principal applicant contends, the RPD did not dismiss her claim solely based on implausibility findings, but rather, and more importantly, on the general lack of evidence supporting it. Of course, the RPD did first assess the plausibility of her story. Let's recall that the RPD can very well make negative credibility findings based on implausibilities (see especially *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at para 9 [*Lubana*]). Of course, this can only be done in the clearest of cases (see *Valtchev* at para 7). In doing so, the RPD has to show sensitivity to cultural differences, provide clear and unmistakable reasons, and the inferences have to be reasonable (see generally *Lubana* at para 9; *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at para 44).

[15] In the case at bar, the RPD's implausibility findings were made in clear and unmistakable terms, and were reasonable given the evidence on file. They are supported by rational reasons: the principal applicant admitted not being given a specific reason for the call; the caller did not tell her specifically when to report; the Jordanian Intelligence Services would have had various easy opportunities to stop her when she entered and left the country only several days before and after the call, but did not; her passport was just renewed; etc. The fact that the applicant admitted not being given a reason for the call was determinative. This mysterious call is the applicant's only basis for fearing persecution or ill-treatment in Jordan. It was therefore reasonable for the

RPD to first assess the applicant's credibility, but then to also stress the lack of corroborating evidence. Indeed, the principal applicant solely bases her allegations on the fact that her sisters were themselves stripped of their Jordanian nationality, but does not submit any evidence to support this.

[16] The RPD also considered her more "generalized" risk as a Palestinian. While some Palestinians had been stripped of their Jordanian citizenship in the past – usually when returning from Kuwait or when entering Jordan from the Gaza strip – the principal applicant did not fit in any of these categories. She could therefore not fear persecution simply because she is Palestinian. While there is documentary evidence suggesting that the revocation of citizenship includes other cases, considering the implausibility of the main applicant's allegations, it was nevertheless reasonable for the RPD to find that there was not a serious possibility of persecution in Jordan because of her Palestinian origin.

***Dismissal of the minor applicant's claim unreasonable***

[17] The applicants submit that the RPD's assessment of the minor applicant's claim is unreasonable since it did not take into account the *Chairperson's Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution* [Gender Guidelines], and because it did not assess how the minor applicant may fear persecution because of her gender. A simple reference to the Gender Guidelines is not enough: the RPD needed to consider the Guidelines in a meaningful way (see *Odia v Canada (Citizenship and Immigration)*, 2014 FC 663 at para 9 [*Odia*]). The RPD never tied the risk of persecution to the minor applicant's gender, but only examined the risk she is facing as a Palestinian. Moreover, the Guidelines state that "a gender-



related claim cannot be rejected simply because the claimant comes from a country where women face generalized oppression and violence and the claimant's fear of persecution is not identifiable to her on the basis on an individualized set of facts". Relying on *Salibian v Canada (Minister of Employment & Immigration)*, [1990] 3 FC 250, 73 DLR (4th) 551 (FCA) [*Salibian* cited to DLR], the applicants submit that asylum seekers do not have to show that they themselves have been persecuted in the past or would be persecuted in the future. They have to show fear resulting from acts committed or likely to be committed against members of a group to which they belong. There has to be a reasonable possibility that the applicant will be persecuted if she returns to her country. As such, the situation of women in Saudi Arabia was relevant and should have been assessed by the RPD, rather than only looking at the family's situation. This is sufficient to make the decision unreasonable.

[18] The respondent replies that the principal applicant did not establish that the minor applicant faces a serious possibility of persecution in Saudi Arabia by reason of her Palestinian origin or gender. The alleged difficulties faced by other siblings are not sufficient to demonstrate that the applicant is a refugee or a person in need of protection. The principal applicant's testimony is too vague and general to substantiate a serious risk: the minor applicant's fear is speculative. Moreover, the respondent interprets the BOC as stating that Palestinian nationality, not gender, was the main ground from which to claim protection. The need to consider the Gender Guidelines does not change the nature of the claim: women may fear persecution on the same grounds as men, in which cases the risk factor is not their gender but rather their particular identity. Moreover, *Odia* does not apply to this case, since it had to do with how an RPD member lacked gender sensitivity when assessing an applicant's testimony during the hearing.

Finally, *Salibian* is also inapplicable because there was insufficient evidence that the minor applicant could be persecuted as a Palestinian woman. The RPD clearly referred to the Gender Guidelines and was well aware of the allegations of sexual harassment and found the evidence inconclusive. There was no reviewable error despite the fact the applicants disagree with the result. In sum, the applicants failed to demonstrate how the RPD's decision was unreasonable.

[19] I agree with the applicants that the impugned decision lacks transparency and intelligibility. The decision to dismiss the minor applicant's claim was unreasonable, as it not clear that the RPD effectively conducted an assessment of the linkage between gender and the feared persecution in Saudi Arabia, as prescribed by the Gender Guidelines. Simply mentioning the Gender Guidelines and repeating the allegation that the principal applicant's children were sexually harassed in Saudi Arabia was not enough to overcome a clearly defective analysis in this case.

[20] While gender is not an enumerated ground for a well-founded fear of persecution under section 96 of the IRPA, the Gender Guidelines state that:

[...] it has been more widely recognized that gender-related persecution is a form of persecution which can and should be assessed by the Refugee Division panel hearing the claim. Where a woman claims to have a gender-related fear of persecution, the central issue is thus the need to determine the linkage between gender, the feared persecution and one or more of the definition grounds.

[21] I cannot agree with the respondent's argument that the minor applicant's section 96 claim was only based on her Palestinian ethnicity, and not on her gender. The BOC starts with the sentence: "my daughter and I are seeking refugee protection of Canada on account of our gender

in Saudi Arabia” [emphasis added]. The narrative then describes various incidents which had to do both with the minor applicant’s gender, and with her Palestinian ethnicity. Indeed, the narrative recounts incidents of violence directed towards the principal applicant’s sons, most likely due to their Palestinian ethnicity, and their family’s exclusion from various services due to their Palestinian descent. Yet, it also reports incidents of sexual harassment of her daughter, and the avoided kidnapping incident by a taxi driver which could be gender-related as well. Instead of conducting a complete analysis, the RPD only looked at whether the minor applicant was personally in danger (section 97), and whether she risked being persecuted because of her Palestinian ethnicity (section 96).

[22] At the risk of repeating myself, the RPD had to analyze the linkage between the minor applicant’s gender, the feared persecution in Saudi Arabia and her Palestinian nationality, an assessment which is clearly defective. Under section 96, an applicant has to show that there are good grounds to believe that, if she returned to her country of nationality or habitual residence, she would be persecuted. The applicant has to show that the fear results from reprehensible acts committed or likely to be committed not directly against her, but against members of a group to which she belongs: in this case, it would be Palestinian girls in Saudi Arabia (see *Salibian* at 558). Yet, the RPD only addressed whether reprehensible acts would be committed directly against her, and concluded negatively. It should however have conducted a broader analysis of general country conditions in Saudi Arabia, particularly the situation of Palestinian women and girls, in order to comply with requirements of the IRPA and the Guidelines (see especially *Joseph v Canada (Solicitor General)*, 2006 FC 165 at paras 1, 17-19; *Zolotova v Canada*

(*Minister of Citizenship and Immigration*), 2011 FC 193 at paras 2-3). Its failure to do so renders the decision unreasonable.

[23] Indeed, the RPD's decision shows no consideration of the gender issue in light of the particular identity and sexual status of women in Saudi Arabia and other women in the same category as the minor applicant. While female and male Palestinian applicants may be subjected to the same forms of harm, they may also face forms of persecution specific to their sex which may include sexual harassment. I cannot accept the argument made by the respondent's learned counsel that the matter should not be remitted to another panel because the allegations are too general. In this respect, the principal applicant explained to the RPD that her daughter Dalida was sexually harassed by two of her classmates in 2017, and despite the fact that this awful harassment was reported to the school administration, nothing was done to protect her. In the impugned decision, the RPD simply treats the daughter's situation as "problems" which did not prevent her and her other sisters to "do well in school". This shows a total lack of sensitivity. Consequently, if the applicants' story is credible, the issue is whether any such gender-related behaviour directed to young girls amounts to persecution, and whether adequate State protection is available.

### ***Conclusion***

[24] For the above reasons, the present judicial review application is allowed in part. The RPD's decision is upheld with respect to the principal applicant's claim. The decision is set aside with respect to the minor applicant's claim and the matter sent for redetermination by another panel. No question of general importance has been raised.

**JUDGMENT in IMM-3326-17**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is allowed in part;
2. The decision dismissing the principal applicant's claim is upheld;
3. The decision dismissing the minor applicant's claim is set aside and the matter returned for redetermination by another panel; and
4. No question is certified.

"Luc Martineau"

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Judge

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

**DOCKET:** IMM-3326-17

**STYLE OF CAUSE:** KHETAM MAHMOUD ALI ALHAJ, ZAINA A S  
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