

Federal Court



Cour fédérale

Date: 20180228

Docket: IMM-2311-17

Citation: 2018 FC 226

Ottawa, Ontario, February 28, 2018

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

WASAM F Y SHEIKH QASSIM

Applicant

and

**THE MINISTER OF IMMIGRATION
REFUGEES, CITIZENSHIP CANADA**

Respondent

JUDGMENT AND REASONS

[1] Wasam F Y Sheikh Qassim [the Applicant], seeks judicial review of a decision of the Refugee Protection Division [RPD], dated April 13, 2017, which found that he is not a Convention refugee or a person in need of protection as described in sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [the Act].

[2] For the reasons that follow, the Application is allowed and shall be remitted to the RPD for redetermination.

I. Background

[3] The Applicant is a stateless Palestinian. He has neither citizenship nor permanent residency in any country. He was born in the United Arab Emirates [UAE] in 1984. His father, born in Iraq, is also a stateless Palestinian who was working in the UAE on a Temporary Work Permit at the time of the Applicant's birth. His mother was a citizen of Lebanon, but was unable to pass Lebanese citizenship to her son due to Lebanese law.

[4] The Applicant has lived in the UAE his entire life apart from two years studying in Canada and two visits to Iraq. His status in the UAE was that of a dependant of his father until he graduated from university and became employed, at which time his status became that of a temporary foreign worker. The Applicant explains that as a temporary foreign worker, his status in the UAE is dependent on his sponsorship by an employer.

[5] The Applicant recounts that in May 2016 he was advised by his employer, El Barco Building Materials [El Barco] that his job was at risk. He received a Notice of Termination on August 24, 2016, and was officially terminated on September 24, 2016. The Applicant explains that upon termination, he would have had one month to find a new sponsor, after which he would have no right to reside in the UAE.

[6] The Applicant did not wait for this event to occur. He applied for a Canadian visa in July 2016, which was refused in September 2016. In November 2016, the Applicant travelled to the United States, crossed into Canada, and made a claim for refugee protection on November 15, 2016.

[7] In his Basis of Claim form, the Applicant claimed that he no longer had a sponsor in the UAE and as a result, he had no right to return. He argued that if he were forced to return to the UAE, he would be indefinitely detained.

[8] He also claimed that if forced to return to Iraq, where he claimed he had valid travel documents, as well as a right to reside due to his father's birth in Iraq, he would be persecuted on the basis of his religion and his nationality.

[9] He further claimed that if forced to return to the Occupied Palestinian Territories [OPT], he would be persecuted by the Israeli occupation forces.

II. The Decision of the RPD

[10] The RPD accepted that the Applicant was a stateless Palestinian who had resided in the UAE. The RPD acknowledged the Applicant's testimony that he had never been to Palestine, that he had accompanied his parents on family visits to Iraq on two occasions, in 1997 and 2001, and that neither he nor his father had been able to obtain Iraqi travel documents since 2006. The RPD also acknowledged that the Applicant would be unable to obtain citizenship in Lebanon, by virtue of Lebanese law, which was confirmed by objective documentary evidence.

[11] The RPD noted that the Applicant's UAE resident visa indicated that it is valid until May, 2018, that El Barco is listed as the Applicant's sponsor on the visa, and that a copy of the Applicant's termination letter from El Barco, dated August 24, 2016 had been provided.

[12] The RPD found that UAE was a country of former habitual residence [CFHR] for the purpose of the Applicant's claim given that it was the Applicant's place of birth, and that he had lived there for his entire life, other than brief visits elsewhere.

[13] The RPD found that Iraq was not a CFHR. Although the Applicant possessed an Iraqi identity card from 1997 and two expired travel documents from Iraq, his father was born in Iraq, and he had two aunts residing in Iraq, the RPD found that this was not sufficient to establish former habitual residency. The RPD also found that neither Lebanon nor Palestine were CFHRs.

[14] The RPD considered the jurisprudence which warns against making CFHR findings that are "unduly restrictive", but that also requires a claimant to have "established a significant period of de facto residence in the country in question", and that this residence should be of "some duration" (citing *Maarouf v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 723, (1993) 23 Imm LR (2d) 163 (TD)). The RPD noted that possession of a travel document from a country does not necessarily mean that the country is a CFHR (*Kadoura v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1057, 131 ACWS (3d) 500).

[15] The RPD addressed the Applicant's argument that the time spent in a country is less important than other considerations, such as family ties. The RPD found that *Al-Kateeb v*

Canada (Minister of Citizenship and Immigration), 2017 FC 31, [2017] FCJ No 79 (QL) [*Al-Kateeb*], relied on by the Applicant in support of this argument, could be distinguished, because, although the claimant had spent only six months in the country, he had been born there, which gave him rights akin to the rights associated with citizenship.

[16] The RPD further noted, among other considerations, that the Applicant had travelled to Iraq only twice, first to visit his grandparents in 1997, and second, to renew his travel document in 2001. The RPD also noted the Applicant's admission that he was not aware whether his 1997 identity card would still be valid to permit him to visit Iraq.

[17] The RPD concluded that there was no persuasive evidence that the Applicant was ever in Iraq for a continuing residence of some duration or that he had rights akin to citizenship in Iraq, given that he had never actually resided in Iraq.

[18] Based on finding that UAE was the CFHR, the RPD assessed the Applicant's allegations of persecution against the UAE. The RPD noted that there were no significant inconsistencies in the Applicant's evidence, but that no corroborative evidence had been provided.

[19] The RPD expressed concern with the Applicant's claim that his residence status in the UAE is no longer valid because he lost his job. The RPD noted that the Applicant was "indefinite" with respect to whether he could re-enter the UAE on his current visa. The RPD also expressed difficulty understanding why the Applicant did not know whether his visa was terminated.

[20] The RPD acknowledged the country condition evidence indicating that resident status is dependent upon having ongoing employment and sponsorship, but noted that the Applicant's father had arranged his own sponsorship with a friend, although not employed.

[21] The RPD concluded that the Applicant had not provided sufficient credible or trustworthy evidence that his resident status in the UAE was no longer valid.

[22] The RPD did not accept the Applicant's claim that he would be detained in the UAE upon his return, given his unemployment, and that such detention may be indefinite.

[23] The RPD found that examples pointed to by the Applicant of other persons who were detained in the UAE were not similarly situated to the Applicant because these persons were known activists. The RPD further found that Applicant's allegation of the likelihood of his indefinite detention was not corroborated by objective documentary evidence.

[24] The RPD found that the Applicant's claim that the UAE would deport him to Iraq as a result of an arrangement between the two countries was not supported by the evidence and was speculative.

[25] In conclusion, the RPD found that the Applicant had not provided sufficient evidence to establish on a balance of probabilities that he would face persecution in the UAE, or that he would be personally subject to a risk to life or of cruel or unusual treatment or punishment, or of a danger of torture in the UAE, on a balance of probabilities.

III. The Issues

[26] The overall issue is whether the RPD reasonably found that the Applicant was not a Convention Refugee or a person in need of protection. This requires consideration of several issues, which I would characterize as follows:

- Did the RPD err in determining that the UAE is the only CFHR?
- Did the RPD err in determining that the Applicant continued to have resident status in the UAE?
- Did the RPD err in determining whether the Applicant would face a risk of persecution if returned to the UAE?

IV. The Standard of Review

[27] All of the issues raise questions of mixed fact and law and are to be reviewed on the reasonableness standard (*Cehade v Canada (Minister of Citizenship and Immigration)*, 2017 FC 282 at para 13, [2017] FCJ No 283 (QL) [*Cehade*]).

[28] Where the reasonableness standard applies, the role of the Court on judicial review, is to determine whether the Officer's 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, [2008] 1 SCR 190). There may be several reasonable outcomes and "as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome" (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59, [2009] 1 SCR 339). Deference is owed to the decision maker.

V. The Applicant's Overall Position

[29] The Applicant argues that the RPD erred in determining that Iraq was not a CFHR. In support of this argument, the Applicant points to the time he has spent in Iraq, his family ties there, and his Iraqi travel documents and Identity Card, which state that he is domiciled in Iraq and that his permanent address is Iraq.

[30] The Applicant further argues that he would be denied his right to return to his CHFR in Iraq, which would constitute persecution. He submits that the RPD erred by not considering the reason why Stateless Palestinians with Iraqi travel documents are not being allowed to enter Iraq. He relies on *Rahman v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1355 at para 29, [2016] FCJ No 1397 (QL) [*Rahman*], which noted that the "RPD is compelled to ask why the Applicants is [*sic*] denied entry to a country when they are making a refugee determination regarding stateless persons". He submits that his status in Iraq was revoked because he is Palestinian, which provides the nexus to a Convention ground on the basis of nationality, perceived political opinion, and social group.

[31] The Applicant does not dispute that the UAE is also a CFHR. However, he submits that he has no right to return to the UAE because he is unemployed, and that the RPD erred in finding otherwise.

[32] The Applicant also argues that the RPD ignored objective documentary evidence, which supports his fear of being indefinitely detained in the UAE. The Applicant submits that if he is

returned to UAE, where he has no right to reside, he will be detained indefinitely as a stateless person. He submits that this constitutes persecution on a Convention ground on the basis of his membership in a particular social group – that of stateless Palestinians – and/or on the basis of imputed political opinion. The Applicant also submits that if returned to the UAE, he risks being deported to Iraq by the UAE, where he will be persecuted.

VI. The Respondent's Overall Position

[33] The Respondent emphasizes that the issue is whether the decision is reasonable – i.e. falling within a range of reasonable outcomes, and not whether the Court would reach the same findings.

[34] The Respondent submits that the RPD considered all the evidence, carefully assessed whether Iraq and UAE were CFHRs and reasonably found that only UAE was a CFHR. As a result, there was no need for the RPD to consider whether the Applicant would face a risk of persecution in Iraq.

[35] The Respondent further submits that the RPD reasonably found that the Applicant had not established that his resident permit in the UAE was no longer valid. This finding was based on an assessment of all the evidence, of which nothing was missed.

[36] The Respondent further submits that the RPD's conclusion that the Applicant was not similarly situated to others who had been detained in UAE was reasonable, and that there was no persuasive evidence that he would be detained or otherwise at risk if returned to the UAE.

VII. Did the RPD err in its determination of the CFHR?

[37] The RPD did not err in identifying the UAE as the only CFHR.

[38] The determination of whether a country is a CFHR is a question of fact. In order to establish that a country is a CFHR, an applicant must “establish *de facto* residence for a significant period of time in the country in question” (*Cehade* at para 21, citing *Maarouf v Canada (Minister of Citizenship and Immigration)* (1993), [1994] 1 FC 723 at para 39, [1993] FCJ No 1329 (QL) (TD) [*Maarouf*]). The issuance of travel documents is not, on its own, proof of a CFHR (*Cehade, Kadoura v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1057 at para 15, 131 ACWS (3d) 500 [*Kadoura*]).

[39] The RPD acknowledged the principles in the jurisprudence, including that it should not be unduly restrictive when assessing whether a country is a CFHR, but also correctly noted that there is a requirement for a significant period of *de facto* residence (*Maarouf* at para 39).

[40] The RPD reasonably found that the Applicant’s two visits to Iraq in 1997 and 2001, for periods of eight and five weeks respectively, did not amount to significant periods of *de facto* residence, even when coupled with his residency documents and family ties.

[41] The Applicant’s claim that family ties are more important than the period of duration is not supported by the jurisprudence. The RPD reasonably distinguished *Al-Kateeb*, noting that it

involved a claimant who was born in the purported CFHR, and spent his first six months *residing* there. The RPD reasonably found that the Applicant had never resided in Iraq.

VIII. Did the RPD Err in Finding that the Applicant Continued to Have Resident Status in the UAE?

[42] The Applicant argues that the RPD erred in finding that he had a valid resident permit in the UAE because the RPD failed to consider the objective country condition evidence, which states that such permits are dependent on sponsorship by an employer, and are cancelled when that employment comes to an end.

[43] I agree that the RPD erred in finding that the Applicant continued to have resident status in the UAE.

[44] The objective evidence with respect to the law of the UAE indicates that a foreign worker's right to reside in the UAE is dependent upon employment, and that right is terminated once an employment relationship ends (see for example the National Documentation Package, March 31, 2017, and the RIRs contained therein). The RPD did not dispute this evidence. Nor did the RPD dispute that the Applicant had been sponsored by his employer, El Barco, and that they had recently terminated his employment.

[45] The RPD appears to have based its finding on the Applicant's lack of certainty whether El Barco had officially invalidated his visa. The RPD noted that the Applicant had a financial incentive to clarify the issue because there was "gratuity pay" upon the termination of his visa.

The RPD also noted that El Barco had assisted the Applicant in renewing his visa in May 2016, after they had already told him that his employment was in jeopardy.

[46] However, the RPD's concerns about the Applicant's lack of certainty about his own visa do not overcome the clear objective evidence of what will or has happened; without employment, there is no sponsorship and no visa.

[47] The Applicant's testimony was that El Barco was supposed to have invalidated his visa after terminating him, however he requested that they postpone doing so. El Barco agreed to wait three to four months. The Applicant's employment was terminated in September 2016, but he did not wait three or four months. Rather, he fled to Canada via the US shortly after being terminated. The Applicant also testified that, even if El Barco had not followed through and invalidated his visa, they would be notified upon his return to the UAE and would surely invalidate the visa at that point. The RPD should have considered the Applicant's explanation that he did not know whether El Barco had terminated his visa in this context.

[48] The RPD also appears to have relied on the fact that the Applicant's father was sponsored by a friend, suggesting that the Applicant could make a similar arrangement. This is speculation and does not change the objective evidence, which indicates that the Applicant has no employment or sponsor and hence, no resident permit or right to reside in the UAE.

[49] The fact that the Applicant's visa is marked as valid until May 2018 is also not determinative. The documentary evidence indicates that a visa is dependent upon employment,

regardless of its formal expiry date. A similar situation arose in *Cehade*, where the RPD found that the claimant had a right to return to Saudi Arabia because his temporary work visa had not expired. The Court noted its concern with this finding, given that it was contradicted by the evidence indicating that the Applicant had been terminated, which would deprive him of the right to return there (at para 34 of *Cehade*).

IX. Did the RPD err in its assessment of the risk in UAE?

[50] Although the RPD erred in finding that the Applicant had resident status in the UAE, the denial of a right of return to a CFHR is not, on its own, sufficient to meet the Convention definition of persecution (*Cehade* at para 35). The reason for the denial of the right to return must be assessed.

[51] As noted in *Thabet v Canada (Minister of Citizenship and Immigration)*, [1998] 4 FC 21, 160 DLR (4th) 666 (CA) [*Thabet*], the RPD must:

. . . ask itself why the Applicant is 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.

[52] Because the RPD found that the Applicant had a right to return to the UAE, the RPD did not consider whether the reason for the denial of the right to return would be persecution.

[53] In *Thabet* at para 30, the Court of Appeal set out the test for refugee protection that applies in these circumstances:

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.

[54] In the present case, the RPD must first consider the reason why the Applicant has no right to return to his CFHR and then determine if that reason constitutes an act of persecution. The RPD should also consider other risks of persecution that the Applicant may face if returned to the UAE. Although being denied entry because of unemployment may not, on its own, constitute persecution (see *Cehade* at para 31), the Applicant also claimed that his unemployment will result in him being indefinitely detained in the UAE. Further, he claimed he would be sent to Iraq, where he would face persecution for his religion and nationality.

[55] In this case, the RPD did consider the other risks of persecution that the Applicant would face if returned. However, the RPD's finding regarding the risk of indefinite detention is not reasonable.

[56] The RPD rejected the Applicant's claim that if he were to return to the UAE without valid resident status, he would be detained, finding that this was not supported by reliable documentary evidence. The RPD found that the examples cited by the Applicant were not of similarly-situated persons and that if Palestinians were being indefinitely detained "for having lost their employment and subsequently their residency" the RPD would expect some mention of this in the country condition documents.

[57] The RPD's rejection of the Applicant's claim overlooks evidence which contradicts its finding. The 2015 report from the Global Detention Project states that UAE authorities are authorized to detain migrants who no longer have a valid resident permit. With respect to the length of detention, the Report states that:

The length of time a person can remain in detention as they await removal from the country can vary widely, ranging anywhere from a month to more than a year. Some of the factors that can prolong detention can include: difficulties getting passport/travel documents...and in case of refugees, waiting until a resettlement country accepts them.

[58] The Report does not specifically refer to stateless Palestinians, but it states that individuals can be detained for "more than a year". The factors that can prolong detention appear to be relevant to the Applicant; as a stateless person, it would be difficult to obtain travel documents and find a country to accept him. The RPD acknowledged that Iraq does not issue travel documents to those in possession of a Palestinian Authority passport, like the Applicant. The RPD should have assessed this country condition evidence rather than stating that no such evidence existed.

[59] Although the RPD need not have considered the Applicant's claim that he would be at risk if returned to the UAE because the UAE could attempt to deport him to Iraq, the RPD did not err in determining that the risk claimed was speculative.

[60] In *Marchoud*, the applicant argued that the RPD erred in not considering whether the UAE (his CFHR) would deport him to Lebanon, where he would face persecution. The Court stated:

In my opinion, the panel did not have to carry out this assessment under paragraphs 96(b) and 97(1)(a) of the Act since it is clearly stated therein that the terms “refugee” and “person in need of protection” include persons who have no nationality and who find themselves in a country where they have their habitual residence. Further, such an analysis would be moot since the risk should be assessed on the day of the hearing and not when such a refoulement by the UAE might later take place. (para 17).

[61] This suggests that, in the case of stateless persons, the relevant question to determine whether sections 96 and 97 apply is whether the person will face a risk of persecution or be in need of protection if returned to their CFHR, and *not* what might occur later if the CFHR seeks to send the person to other countries. *Marchoud* was applied in *Cehade*, where the claimant again argued that the RPD erred by not considering whether he would be deported by Saudi Arabia (his CFHR) to Lebanon. The Court found, at paras 24-25, that the RPD need not have considered what might happen if the claimant was deported by Saudi Arabia; the only issue was the treatment he might face in his CFHR.

[62] Given that the RPD reasonably found that Iraq was not a CFHR, the RPD was not required to consider whether the denial of a right to return to Iraq was persecution. Nor was the RPD required to consider whether the UAE would attempt to remove him to Iraq, or whether he would face persecution there.

[63] As noted above, although the RPD need not have considered this risk, the RPD reasonably found that the Applicant’s claim that he would be deported by the UAE to Iraq was speculative. Based on the available evidence, the RPD concluded that the Applicant could not be sent to Iraq given that he holds a Palestinian Authority passport. The evidence regarding the

UAE's deportation of individuals to Iraq referred only to Iraqi citizens, and not stateless Palestinians.

[64] In conclusion, the RPD's finding that the Applicant continued to have resident status in the UAE and could return there is not reasonable. This finding is not supported by the evidence on the record. This issue and the Applicant's overall claim of persecution and need of protection must be re-determined.

JUDGMENT in IMM-2311-17

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is allowed.
2. The matter shall be remitted to a differently constituted panel of the RPD for redetermination.
3. There is no question for certification.

"Catherine M. Kane"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-2311-17

STYLE OF CAUSE: WASAM F Y SHEIKH QASSIM v THE MINISTER OF IMMIGRATION REFUGEES, CITIZENSHIP CANADA

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