

Federal Court



Cour fédérale

**Date: 20180824**

**Docket: IMM-5241-17**

**Citation: 2018 FC 858**

**Ottawa, Ontario, August 24, 2018**

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

**BETWEEN:**

**IMADED DIN A M SHAHEEN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, a 34-year-old Palestinian, born in Kuwait, sought refugee protection against Palestine (Gaza Strip) pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The Refugee Protection Division [RPD] dismissed the refugee claim in a written decision dated November 17, 2017. The Applicant seeks to judicially review the decision. For the reasons that follow, the application for judicial review is allowed.

## II. Background

[2] The Applicant's spouse and their three children live in Gaza, Palestine and they are not part of his claim for refugee protection. The Applicant's father was born in Palestine and his mother, an Egyptian citizen, was born in Egypt.

[3] The Applicant has lived in a number of different countries. In 1992, the Applicant and his family moved from Kuwait to Iraq. They remained in Iraq until 1995, when they moved to Gaza, Palestine. The Applicant worked as a teacher in Gaza. In 2007, he married his spouse, also a Palestinian. In 2009, the Applicant and his brother fled to Malaysia to seek protection with the United Nations High Commissioner for Refugees. The Applicant's spouse and their only child at that time were unable to leave Gaza therefore in 2011, the Applicant left Hungary and returned to be with his family. Around this time, Egyptian law changed to allow citizenship for Palestinians with Egyptian mothers. The Applicant applied for and was granted Egyptian citizenship in August 2012.

[4] The Applicant states he had been encountering difficulties with Egyptian officials when crossing its borders. He also claims that his efforts at clarifying his status with Egypt involved further difficulties in obtaining a new birth certificate from Kuwait and his inability to obtain his deceased mother's passport.

[5] In Gaza, the Applicant states he feared the Israeli army due to the conflicts occurring there. In August 2015, when the Applicant was travelling to the West Bank from Gaza, he was

interrogated and detained by Israeli forces. Later that year, the Applicant was awarded a scholarship to study for a PhD in applied linguistics at a university in Hungary. He could not travel to Hungary from Gaza because of the Israeli blockade. The Applicant was given permission by the Egyptian Ministry of Foreign Affairs, along with seven of his colleagues, to exit Gaza through the Rafah border crossing with Egypt, and to fly to Hungary from Cairo. The Applicant attended university in Hungary from December 2015 until April 2016. The Applicant travelled to the United States on April 13, 2016, to attend a conference and three days later arrived in Canada and made a claim for refugee protection.

[6] In post-hearing submissions the Applicant argued that the unwillingness of the Egyptian government to cooperate in granting access to a passport was evidence of persecution by Egypt.

### III. Relevant Legislative Provisions

[7] Section 96 and 97 of the IRPA reads 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,

(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

**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) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

**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

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

**97**(1) A 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) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

#### IV. Issues

[8] While the Applicant has raised several issues for this Court to consider, the central issue is whether the RPD erred in finding that the Applicant had not made reasonable efforts to secure his Egyptian citizenship.

#### V. Standard of Review

[9] The Applicant has not made any direct submissions on the standard of review to be applied.

[10] The Respondent submits that the standard of review is reasonableness. The Court agrees with the Respondent. Questions of mixed fact and law are determined on the reasonableness standard. The reasonableness standard focuses on “the existence of justification, transparency and intelligibility within the decision-making process” and considers “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).

## VI. Analysis

[11] Both counsel agree that the applicable authority is (*Tretsetsang v (Minister of Citizenship and Immigration)*, 2015 FC 455, aff'g 2016 FCA 175 [*Tretsetsang*]). *Tretsetsang* provides for a two-part test. First, it must be determine if there is a significant impediment that prevents an applicant from exercising his rights of citizenship. Second, it must be determine if an applicant has made reasonable efforts to overcome the impediment. The onus is on the Applicant to satisfy this test.

[12] There is nothing in the decision of the RPD that clearly states that the member dealt with the first consideration of the *Tretsetsang* test, that there was an impediment, and that the impediment was significant. The RPD moved on and looked at the whether the efforts of the Applicant were reasonable. This Court takes the absence of an analysis of the first part of the test to mean that the RPD member was satisfied that this part of the test was met.

[13] This Court is persuaded by the argument of the Applicant that he has satisfied this onus. The RPD found that the two documents the Applicant had submitted established his Egyptian citizenship. Both of these documents indicate that the Applicant acquired Egyptian nationality on August 18, 2012. The Applicant contends that these documents still did not enable him to receive a passport or a confirmation that he is an Egyptian citizen or to enjoy “effective” nationality. The Applicant’s evidence of the difficulties he has faced and the treatment he has received illustrating a significant impediment, is not contradicted.

[14] The country condition evidence submitted by the Applicant illustrated that Egypt has been revoking Egyptian citizenship of Palestinians. The RPD indicated that the Applicant “clearly has not been a Palestinian affected by this mass revocation”. The RPD relied on the Consular Certificate dated March 10, 2017, which confirms that the Applicant “has acquired nationality in accordance with the law 154/2004 since August 18, 2012”. This does not contradict the Applicant’s assertions that he is not able to enjoy effective citizenship or nationality.

[15] The RPD considered the following in determining that the efforts to overcome the impediment were not reasonable:

- i. The Applicant did not attempt to make written appeals to the government of Egypt;
- ii. The Applicant did not try attending the Kuwait embassy in Canada, in person, or write letters; and
- iii. The Applicant could have had the original birth certificate notarized at the Kuwaiti embassy in Canada.

[16] This Court is persuaded by the argument of the Applicant that he did undertake reasonable efforts to secure his Egyptian identity card and passport. The Applicant provided evidence that he had asked Egyptian officials on different occasions for assistance. The evidence also established that the Applicant had enlisted the assistance of his aunt in Kuwait with respect to his birth certificate. The evidence of the Applicant was that the Egyptian officials considered his Kuwait birth certificate outdated and that he required a new one. He made reasonable attempts to obtain an updated one. This Court is guided by the Federal Court of Appeal’s

decision in *Maldonado v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 72 that “when a claimant swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there be a reason to doubt their truthfulness”.

[17] The RPD noted that “the Minister served a notice to intervene but provided no evidence, allegations or follow-up of any kind”. The Applicant consented to the Respondent making any inquiries to Egyptian officials. The Applicant cooperated with the Minister. This was further evidence of a reasonable effort on the part of the Applicant.

[18] This Court is persuaded by the argument of the Applicant that the RPD engaged in speculation when it determined that it was “unlikely” that the Egyptian government would have any cause or reason to reject the Applicant’s Kuwaiti birth certificate that the Kuwaiti embassy in Canada would have accepted his original birth certificate and that there were other cost-effective steps he could have taken. There was no evidence before the RPD to have made these findings. The only evidence was that of the Applicant. This Court finds the Applicant undertook reasonable steps to overcome the impediments preventing him from exercising his rights to citizenship.

[19] Overall, this Court finds that the RPD’s decision was not reasonable in light of the evidence before it. For the above reasons, the application for judicial review is granted and this matter is referred back to a differently constituted panel of the RPD for redetermination.

[20] Neither party has suggested a question for certification and none arises.



**JUDGMENT in IMM-5241-17**

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

1. The application for judicial review is granted and this matter is referred back to a differently constituted panel of the RPD for redetermination.
2. The parties have not submitted a question for certification and none arises.

“Paul Favel”

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Judge

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

**DOCKET:** IMM-5241-17  
**STYLE OF CAUSE:** IMADEDDEEN A M SHAHEEN V THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION  
**PLACE OF HEARING:** TORONTO, ONTARIO  
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**DATED:** AUGUST 24, 2018

**APPEARANCES:**

Debora Brubacher

FOR THE APPLICANT

Teresa Ramnirine

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Michael F. Loebach  
Barrister and Solicitor  
Toronto, Ontario

FOR THE APPLICANT

Attorney General of Canada  
Toronto, Ontario

FOR THE RESPONDENT