

Federal Court



Cour fédérale

**Date: 20190118**

**Docket: IMM-1794-18**

**Citation: 2019 FC 74**

**Ottawa, Ontario, January 18, 2019**

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

**BETWEEN:**

**FARAJ HASAN ABED ALFATTAH  
SHARAWI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, Faraj Hasan Abed Alfattah Sharawi, arrived in Canada from the United States on October 6, 2017. Upon arrival, he claimed refugee protection on the basis of his fear of harm due to his ethnicity as a stateless Palestinian and his political opinion against Israelis.

[2] The Refugee Protection Division [RPD] of the Immigration and Refugee Board rejected his claim in a decision dated March 21, 2018, because he lacked a genuine subjective fear of

returning to Hebron in the West Bank of the Occupied Palestinian Territory, and the evidence about the problems he and his family faced in the West Bank was not credible.

[3] The Applicant has now applied under subsection 72(1) of the *Immigration and Refugee Protection Act, SC 2001, c-27 [IRPA]*, for judicial review of the RPD's decision. He asks the Court to set aside the decision and return the matter for redetermination by another member of the RPD.

#### I. Background

[4] The Applicant is stateless. The country of his former habitual residence, and the only country of reference for his refugee claim, is the West Bank, Palestine.

[5] Prior to his arrival in Canada, the Applicant visited the United States for about a month in 2005. He returned to the United States in December 2006. He overstayed his visa and resided and worked there until August 2008, when he returned to the West Bank because he missed his children. The Applicant's wife resides in Hebron with their five children.

[6] The Applicant returned to the United States in March 2015 on a visa valid until April 2, 2015. Once again, he overstayed his visa and resided and worked in the United States for approximately 30 months until his arrival in Canada. While in the United States, the Applicant reacquainted himself with a woman with American citizenship, Ms. Saeda Shabaneh, whom he had met in Palestine. His desire to have a sexual relationship with her was frustrated by his religious inhibition that he could not do so unless they were married. As his religion permitted

multiple wives, the Applicant entered into a Sharia or religious marriage in May or June 2015. The Applicant's American wife wanted a civil marriage, so his status would be legal. They married in a civil ceremony in October 2016 and divorced in August 2017.

[7] The Applicant claims he was not aware of an asylum process in the United States until 2016, when he consulted an attorney. The Applicant says he did not initiate a refugee claim in the United States because the attorney advised him it was too late to apply for asylum, and he found the costs prohibitive. After the attorney told the Applicant that his marital circumstances might prejudice his status in the United States, he commenced divorce proceedings against his American wife.

[8] In his Basis of Claim [BOC] form, the Applicant alleged, among other things, that:

- In 2004, he was beaten on the street by Israeli soldiers while returning after a night out with friends. They hit him with their gun butts and kicked him.
- Since 2009, he and his family have been assaulted on numerous occasions by Jewish settlers in Hebron, who have forced themselves into his home, putting him and his family out onto the street for two or three hours at a time while the settlers ransacked the home.
- In 2014, his son was sitting outside the family home when a group of settlers shouted profanities at him and began to beat him up. They spoke in both Arabic and Hebrew, stating that they owned the land and he had invaded it.
- In 2014, he was stopped twice at checkpoints, and his car was searched and ransacked. His children were frightened and crying because the soldiers pointed guns at them.
- He was shot in the right leg by the Israeli army on May 16, 2014. A stray rubber bullet hit him when the army were shooting at a group of young children near his home while he was parking his car.
- In January 2015, his 15-year-old son was detained at a checkpoint for three hours by Israeli soldiers who shouted at him, but then suddenly released him. They told him he had no country or home and did not belong there.

- His children are regularly stopped, detained, and questioned at city checkpoints while going to school. They are sometimes detained in other areas and held for up to an hour for no good reason, just to check their school bags and harass them.
- His parents' second story apartment was entered by Israeli soldiers who stole his mother's freshly baked bread.
- He fears being abducted and killed by the Israeli army or the settlers because he is a Palestinian, and because of his perceived political opinion against the Israeli occupation and mistreatment.
- He fears the Israeli army as the agent of persecution.
- The Israeli soldiers say the land is Israel's and they want to ethnically cleanse the area. They want the Palestinians to leave. They send their people to buy Palestinian homes and push them out. They have closed down Palestinian-owned businesses, including his father's repair business.

## II. The RPD's Decision

[9] Approximately six weeks before the Applicant's hearing before the RPD, an RPD case management officer requested that the Applicant provide a copy of his United States visitor visa application and evidence to corroborate any consultations or communications with an immigration attorney while in the United States. Although the Applicant provided a form purporting to extend his visitor status, there was no clear indication on the form that it had been filed. As for evidence to corroborate any consultations with an immigration attorney, the Applicant provided only a business card of the attorney whom he claimed to have met.

[10] The RPD found the Applicant had not provided any reasonable explanation for his failure to provide acceptable documentation to establish that he had consulted with an immigration attorney about making an asylum claim in the United States. The RPD noted that the Applicant

had been put on notice that credibility was an issue and drew an adverse credibility finding from the lack of documentation about consulting with an immigration attorney.

[11] The RPD further found the Applicant's illegal overstay on two occasions, his subsequent unauthorized employment, and his failure to make an asylum claim upon entry to the United States, served "to impugn the veracity of his claim that his life was at risk in his home area." In the RPD's view, the Applicant's lack of action for approximately 30 months was not demonstrative of a genuine subjective fear of returning to his home area, and the delay in seeking refugee protection seriously undermined his credibility as someone who fears persecution in the West Bank.

[12] The RPD made an adverse credibility finding about the Applicant's marriage in the United States because of his evolving and inconsistent testimony in this regard. The RPD found the second marriage was part of a marriage sponsorship scheme, and that this indicated the extent to which the Applicant was willing to pursue his goal of achieving legal status in North America.

[13] The RPD found the Applicant's testimony about his alleged persecution and risk of violence in the West Bank to be not credible. The RPD noted that the Applicant's BOC stated that he and his family had suffered numerous assaults since 2009 by Jewish settlers in Hebron; whereas, he testified that these attacks were done by Jewish settlers who were accompanied by Israeli soldiers. The RPD also found inconsistencies with the Applicant's testimony relating to an incident involving his son in 2014. The Applicant stated in his BOC that his son had been

attacked by the sons of settlers in 2014 while sitting outside his home; whereas, he testified that this occurred as his son was returning from school.

[14] The RPD also found inconsistencies with the Applicant's testimony as to why he closed his car repair shop. The Applicant had testified that he closed his repair shop because of a lack of business and because Israeli settlers attacked his customers' cars; whereas, in his BOC he stated that he closed it because his customers could not afford to pay him.

[15] The RPD, in assessing the country condition information, stated it was uncontested that life can be difficult in the West Bank and the National Documentation Package for Palestine supported the Applicant's allegations of discriminatory treatment for Palestinians in the West Bank. However, the RPD also stated that the country condition information had to be assessed with regard to the Applicant's evidence and it was simply not enough to prove one is a Palestinian from the West Bank in order to be determined a Convention refugee. The RPD accepted that, while the Applicant may have suffered discrimination in his life as a Palestinian from the West Bank, it did not find the Applicant to be a credible witness.

[16] The RPD concluded, using a forward-looking analysis, that the Applicant was not a Convention refugee as he had not established that there was a reasonable chance or serious possibility he would be persecuted for a Convention ground, or that there would be a risk to his life or that he would be subjected to cruel and unusual treatment or punishment, should he return to the Occupied Palestinian Territory.

### III. Analysis

[17] This application for judicial review raises one primary issue: was the RPD's decision reasonable?

#### A. *Standard of Review*

[18] The standard of review for credibility findings by the RPD is that of reasonableness with considerable deference owed to the advantageous position of the trier of fact (*Cambara v Canada (Citizenship and Immigration)*, 2017 FC 1019 at para 13, 286 ACWS (3d) 531; *Aguebor v (Canada) Minister of Employment and Immigration*, [1993] FCJ No 732 at para 4, 160 NR 315).

[19] The reasonableness standard tasks the Court with reviewing an administrative decision for “the existence of justification, transparency and intelligibility within the decision-making process” and determining “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, [2008] 1 SCR 190). Those criteria are met if “the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes” (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708).

B. *The Parties' Submissions*

[20] The Applicant says the RPD failed to objectively connect the country condition evidence with his testimony. According to the Applicant, the country condition documents corroborated to a large extent his testimony as to the incidents he and his family suffered in Hebron.

[21] The Applicant maintains that the lack of seeking asylum in the United States does not diminish his subjective fear. In his view, the RPD placed undue emphasis on the need to have correspondence from an attorney who only briefly met him, and that even if he had contacted the attorney, it was unlikely the attorney would have provided any corroboration since only a first meeting had occurred.

[22] The Applicant also says the RPD's conclusion that his marriage in the United States was part of a marriage sponsorship scheme does not fit the facts. According to the Applicant, if this marriage was entered into for sponsorship purposes, an application would have been pursued from the start, or he would have at least pressured his second wife to start the process, and there was no evidence that this occurred.

[23] The Respondent notes that the Applicant does not specifically contest the RPD's negative credibility findings related to events in Hebron. It is well-established, the Respondent says, that the RPD may rely on inconsistencies between past statements and oral testimony to assess credibility, and in this case the RPD reasonably determined that the Applicant was not credible.



[24] The Respondent says the RPD reasonably assessed the country condition evidence in view of the Applicant's testimony. According to the Respondent, the Applicant cannot rely solely on country condition evidence to establish his claim, and that even if the Applicant's assertions were consistent with documentary evidence of general country conditions for Palestinians, his lack of credibility prevented him from linking those country conditions to his personal situation.

[25] With respect to the Applicant's contention that it was unreasonable for the RPD to expect correspondence from the immigration attorney, the Respondent says this misses the point because the RPD only expected some proof that the Applicant had approached an attorney. The Applicant was specifically asked for corroborating information in this regard prior to the hearing, but he did not provide such information. As such, it was reasonable, in the Respondent's view, for the RPD to draw a negative credibility finding. The Respondent further says the Applicant's argument, that he would not have received a response even if he had contacted the lawyer, is mere speculation.

[26] As to the Applicant's argument that his marriage to his American wife was not for the purpose of obtaining immigration status, the Respondent notes that the Applicant's own testimony confirmed that the purpose of the marriage was for him to obtain status in the United States.

C. *The RPD's Decision Was Reasonable*

[27] I agree with the Respondent that it is well-established that the RPD may rely on inconsistencies between past statements and oral testimony to assess credibility (*Liu v Canada (Citizenship and Immigration)*, 2012 FC 440 at para 14, 214 ACWS (3d) 551; *Eustace v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1553 at para 6, 144 ACWS (3d) 132; and *Rrukaj v Canada (Minister of Citizenship and Immigration)*, 2004 FC 605 at para 10, 130 ACWS (3d) 1012). The RPD's assessment of the Applicant's credibility was reasonable in view of the inconsistencies between his testimony, which at times was evolving, and the statements in his BOC.

[28] I also agree with the Respondent that the Applicant cannot rely solely on country condition evidence to establish his claim (*Nagy v Canada (Citizenship and Immigration)*, 2013 FC 640 at paras 68-69, 229 ACWS (3d) 530; *Horvath v Canada (Citizenship and Immigration)*, 2016 FC 792 at paras 22 to 26, 268 ACWS (3d) 416; and *Tamas v Canada (Citizenship and Immigration)*, 2012 FC 1361 at paras 68-72, 225 ACWS (3d) 200 [*Tamas*]).

[29] A claimant has a burden to establish a link between general documentary evidence and the claimant's specific circumstances (*Balogh v Canada (Citizenship and Immigration)*, 2016 FC 426 at para 19, 265 ACWS (3d) 746).

[30] In this case, the RPD reasonably found that the Applicant's account of personal risk as a Palestinian in the West Bank was not credible. It was reasonable for the RPD also to find that the

mere fact of being a Palestinian in the West Bank was not, in and of itself, sufficient to establish that the Applicant faces more than a mere possibility of persecution upon return (*Csonka v Canada (Citizenship and Immigration)*, 2012 FC 1056 at paras 67-68, 221 ACWS (3d) 418).

[31] The Applicant did not point to anything in the documentary evidence which tied his specific profile to persecution. It is not sufficient to point to general human rights problems in a country without providing evidence as to how those problems have impacted, or will impact, a claimant (see *Tamas* at para 68).

#### IV. Conclusion

[32] The RPD's reasons for rejecting the Applicant's claim for refugee protection are intelligible, transparent, and justifiable, and its decision falls within a range of possible, acceptable outcomes defensible in respect of the facts and law. The Applicant's application for judicial review is therefore dismissed.

[33] Neither party proposed a serious question of general importance to be certified under paragraph 74(d) of the *IRPA*; so, no such question is certified.

**JUDGMENT in IMM-1794-18**

**THIS COURT'S JUDGMENT is that:** the application for judicial review is dismissed, and no serious question of general importance is certified.

"Keith M. Boswell"

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Judge

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

**DOCKET:** IMM-1794-18

**STYLE OF CAUSE:** FARAJ HASAN ABED ALFATTAH SHARAWI v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 6, 2018

**JUDGMENT AND REASONS:** BOSWELL J.

**DATED:** JANUARY 18, 2019

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