

Federal Court



Cour fédérale

Date: 20190806

Docket: IMM-5346-18

Citation: 2019 FC 1049

Ottawa, Ontario, August 6, 2019

PRESENT: Mr. Justice Gascon

BETWEEN:

**SALAHEDDINE IRAQI
OMAR IRAQI
SAMAH IRAQI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, Mr. Salaheddine Iraqi, Mr. Omar Iraqi and Ms. Samah Iraqi [together, the Applicants], are three adult siblings who are stateless Palestinians.¹ They claimed refugee

¹ In this Decision, for ease of reference, I take the liberty of referring to the three applicants by their first name when referring to factual circumstances that only apply to one of them.

protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] against the United Arab Emirates [UAE] and Lebanon. The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada refused their claims for protection, as it found that their only country of former habitual residence was the UAE and that they were not at risk there. The Refugee Appeal Division [RAD] dismissed their appeal for the same reasons [RAD Decision].

[2] While the Applicants do not contest the RAD's finding that their only country of former habitual residence is the UAE, they challenge its finding that they suffer no risk of persecution or harm in the UAE. The Applicants allege that the RAD erred in finding that their claims against the UAE were not established on a cumulative basis. They ask this Court to set aside the RAD Decision and to return the case to the RAD so that their request can be reassessed by a differently constituted panel.

[3] For the reasons that follow, I will dismiss this application. Having considered the RAD's findings, the evidence before the panel and the applicable law, I can find no basis for overturning the RAD Decision. The evidence reasonably supports the RAD's findings, and the RAD's reasons have the qualities that make the decision reasonable in that it falls within a range of possible, acceptable outcomes defensible in respect of the facts and the law. There are therefore no grounds to justify this Court's intervention.

II. Background

A. *The factual context*

[4] The Applicants' parents were born in Lebanon. They moved to the UAE during the Lebanese civil war, where they had four children: the Applicants as well as an older sister, Raya. The Applicants and their parents all hold a Lebanese travel document issued to Palestinian refugees, but are not citizens of any country.

[5] In 2010, for unknown reasons, the status of the Applicants' father in the UAE was terminated, and he had to return to Lebanon. The rest of the family remained in the UAE and visited the father a few times. In the UAE, Salaheddine and Samah finished their studies, but were unable to find a job in their respective field of studies. Moreover, there was one incident related to Samah's travel document where UAE officials insulted her and screamed: "Who told you that this is a passport, you are only a refugee."

[6] In 2016, the Applicants and their parents came to Canada to attend their sister Raya's wedding, at which time they sought refugee protection. Their claims were jointly heard. The RPD found that the parents had former habitual residence in both Lebanon and the UAE and accepted their claims for fear of persecution in Lebanon. However, the Applicants' claims were rejected as the RPD found that their only country of former habitual residence was the UAE, where they did not face a risk of persecution or harm.

[7] The RPD however noted that the Applicants have no right to return to the UAE, since their mother was their sponsor in the UAE and they have been outside the country for more than six months.

B. *The RAD Decision*

[8] In its decision dated October 9, 2018, the RAD confirmed the RPD's decision to deny the Applicants' claims. The RAD began by reminding that "[s]tatelessness does not give a person an advantage over those refugees who are not stateless", relying on *Thabet v Canada (Minister of Citizenship and Immigration)*, [1998] 4 FC 21, 1998 CarswellNat 840 (FCA) [*Thabet*]. The RAD added that stateless claimants must (i) establish the country or countries of their former habitual residence, and (ii) have a well-founded fear of persecution or risk of harm in any one of these countries (*Maarouf v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 723, 1993 CarswellNat 186 (FCA) [*Maarouf*]).

[9] The RAD then found that the Applicants' only country of former habitual residence was the UAE. The RAD excluded Lebanon as a country of former habitual residence since the Applicants never resided there (*Cehade v Canada (Citizenship and Immigration)*, 2017 FC 282 [*Cehade*] at para 22; *Kaddoura v Canada (Citizenship and Immigration)*, 2016 FC 1101 at para 20; *Kadoura v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1057 [*Kadoura*] at paras 14-15). The RAD also rejected the Applicants' argument that their risk of being deported from the UAE to Lebanon had to be assessed. The RAD noted that similar arguments have been rejected by this Court and that such an analysis would be moot, since the risk must be assessed on the day of the hearing rather than when a refoulement by the UAE might later take place

(*Qassim v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 226 [*Qassim*] at paras 59-62; *Cehade* at para 24; *Marchoud v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1471 [*Marchoud*] at paras 4, 13, 16-17; *Kadoura* at paras 20-21).

[10] With regards to the second part of the analysis for stateless claimants, the RAD found that the Applicants suffered no risk of persecution or harm in the UAE. The RAD noted that, in response to the RPD's questions, the Applicants all described fears related to Lebanon and not to the UAE. As for cumulative effects, the RAD explained that it would only consider those individual incidents that related to a reason found in the *Convention Relating to the Status of Refugees* [Convention] (*Canada (Citizenship and Immigration) v Hund*, 2009 FC 121 [*Hund*] at para 35). However, it concluded that most of the incidents described by the Applicants were not related to a Convention reason.

[11] First, the RAD found that the family separation resulting from the father's deportation did not constitute discrimination or persecution against the Applicants, as this is indirect harm (*Pour-Shariati v Canada (Minister of Employment & Immigration)*, [1997] FCJ No 810, 1997 CarswellNat 999 (FCA) [*Pour-Shariati*]; *Casetellanos v Canada (Solicitor General)*, [1995] 2 FC 190, 1994 CarswellNat 1459 (FC) [*Casetellanos*]).

[12] Second, the fact that the Applicants' difficulties in finding employment was due to their profile as foreigners or Palestinians was found to be a general statement unsupported by objective evidence. No difficulty was identified for Omar. Moreover, the RAD pointed to country evidence showing that expatriates account for 85 percent of the workforce in the UAE

and that the country is recruiting non-national judges, including from the Occupied Palestinian Territories. The RAD also observed that the inability to work in the field of one's choosing does not constitute persecution (*El Assadi Kamal v Canada (Citizenship and Immigration)*, 2018 FC 543 [*El Assadi Kamal*] at para 17).

[13] Third, the RAD noted that the absence of a right of return to the UAE results from the general application of the UAE's immigration and citizenship laws and does not *per se* amount to persecution (*Hegi v Canada (Citizenship and Immigration)*, 2016 FC 242 [*Hegi*] at paras 16-17; *Karsoua v Canada (Citizenship and Immigration)*, 2007 FC 58 [*Karsoua*] at paras 37-38; *Marchoud* at paras 14-15; *Kadoura* at para 17). The denial of a right of return is not on its own sufficient to meet the Convention definition; the reasons for the denial must be assessed and must show persecutory intent or conduct related to a Convention ground (*Thabet; Qassim* at paras 50, 54; *Cehade* at para 35; *Altawil v Canada (Minister of Citizenship & Immigration)*, [1996] FCJ No 986, 1996 CarswellNat 980 (FC) at para 11).

[14] In the end, the RAD concluded that the discrimination suffered by the Applicants does not amount to persecution. The Applicants did not present any evidence that the UAE's failure to grant citizenship as a birthright has any persecutory intent or effect. The RAD acknowledged the Applicants' reference to the *United States Department of State Report – 2016*, but noted that the only evidence of discrimination in the present case was a single incident involving Samah and UAE officials regarding her travel document. As such, the evidence did not show discrimination to be substantially prejudicial to the Applicants and failed to demonstrate a serious possibility of

persecution or a risk of harm under sections 96 and 97 of the IRPA (*Canada (Citizenship and Immigration) v Munderere*, 2008 FCA 84 [*Munderere*] at para 41).

C. The standard of review

[15] The question of whether the cumulative effect of events amounts to a risk of persecution or harm is reviewable under the standard of reasonableness (*El Assadi Kamal* at para 13; *Ifeanyi v Canada (Citizenship and Immigration)*, 2018 FC 419 [*Ifeanyi*] at para 11; *Galamb v Canada (Citizenship and Immigration)*, 2016 FC 1230 [*Galamb*] at para 12). Similarly, the RAD's findings concerning the existence of a link with a Convention ground are reviewable under the standard of reasonableness (*Garcia Osorio v Canada (Citizenship and Immigration)*, 2015 FC 1276 at para 14; *Cheema v Canada (Citizenship and Immigration)*, 2015 FC 441 at para 6). Since the jurisprudence has already established that reasonableness applies, there is no need to proceed to a further analysis of the standard of review (*Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at para 62).

[16] Under the standard of reasonableness, the reviewing court must show deference to the decision under review, so long as it is justified, transparent and intelligible and falls “within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir* at para 47). In other words, the reasons behind a decision are reasonable if they “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 [*Newfoundland Nurses*] at para 16).

[17] The standard of reasonableness requires to show deference to the decision-maker as it is “grounded in the legislature’s choice to give a specialized tribunal responsibility for administering the statutory provisions, and the expertise of the tribunal in so doing” (*Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd*, 2016 SCC 47 at para 33; *Dunsmuir* at paras 48-49). Under a reasonableness review, when a question of mixed fact and law falls squarely within the expertise of a decision-maker, “the reviewing court’s task is to supervise the tribunal’s approach in the context of the decision as a whole. Its role is not to impose an approach of its own choosing” (*Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 57).

III. Analysis

[18] The Applicants allege that the RAD did not properly analyze whether their claims were established on a cumulative basis. They submit that the RAD failed to recognize that the various instances of discrimination all stemmed from their statelessness and that repeated incidents of discrimination in the past lead to a serious possibility of persecution in the future (*Mete v Canada (Minister of Citizenship and Immigration)*, 2005 FC 840 at para 5).

[19] Concerning their father’s deportation, they assert that direct harm to family members can be considered persecution (*Surujpal v Canada (Minister of Employment & Immigration)*, [1985] FCJ No 326, 1985 CarswellNat 106 (FCA)). Moreover, they allege that given the lack of reasons from the UAE authorities for the deportation, their father’s explanation that it was linked to a Convention ground should be given the benefit of the doubt. They plead that this single act is serious enough to constitute persecution.

[20] As for the employment difficulties, the Applicants argue that the denial of the right to work is persecution (*He v Canada (Minister of Employment & Immigration)*, [1994] FCJ No 1243, 1994 CarswellNat 151 (FC) [*He*] at para 15). They also contend that the possibility of working illegally is not an acceptable remedy (*Xie v Canada (Minister of Employment & Immigration)*, [1994] FCJ No 286, 1994 CarswellNat 484 (FC) at para 13). Further, they submit that the fact that expatriates comprise 85 percent of the labour market in the UAE does not apply to stateless Palestinians. Concerning the lack of allegations concerning Omar, the Applicants plead that a refugee claimant does not have to show that he had himself been persecuted in the past or would himself be persecuted in the future (*Salibian v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 250 (FCA) [*Salibian*] at para 17; *Fi v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1125 at paras 14-16).

[21] Regarding the right of return, the Applicants allege that the RAD erroneously compared stateless Palestinians to expatriates whereas, contrary to expatriates, stateless Palestinians do not chose to be in the UAE and have no home country to return to. As such, argue the Applicants, the denial of their right of return is not a law of general application. They also plead that the reasons for the denial of a right of return may in itself constitute an act of persecution by the state (*Rahman v Canada (Citizenship and Immigration)*, 2016 FC 1355 at para 27; *Maarouf* at para 44). Finally, the fact that they would face deportation to Lebanon if they were to return to the UAE is submitted to be an act of discrimination in itself.

[22] I disagree with the Applicants' contentions. I instead conclude that the RAD Decision fits well within the boundaries of reasonableness, with respect to both its assessment of the evidence

and its consideration of the Applicants' personal profiles and circumstances. The Applicants have not demonstrated that the RAD ignored the evidence or failed to consider any of it. They simply attempt to reargue the facts that were before the RAD, and ask the Court to weigh the evidence differently. This is not a ground for judicial review. The RAD Decision is well-reasoned and bears all the hallmarks of transparency, justification and intelligibility. It is very detailed and engages with all of the arguments raised by the Applicants, none of which was found to be related to a Convention ground. The Court's intervention is therefore unwarranted. More specifically, there is no merit to the Applicants' contention that the RAD only looked at each individual Applicant; on the contrary, the RAD Decision explicitly refers to the lack of evidence of discrimination as being substantially prejudicial to the three of them.

[23] The RAD properly stated the test for stateless claimants and properly applied it. The first part of the test is to establish the country or countries of the claimant's former habitual residence. The second part of the test (which is at issue here) requires that the claimant must be outside the country of his or her former habitual residence or unable to return to that country by reason of a well-founded fear of persecution for a Convention ground (*Maarouf* at para 33). As stated by the Federal Court of Appeal, statelessness does not give any advantage to obtain refugee protection (*Thabet* at para 16). In order to be granted refugee protection, a stateless person that is outside his or her country of former habitual residence must be in that situation by reason of a well-founded fear of persecution based on a Convention ground (*Cehade* at para 20; *Maarouf* at para 35).

[24] The burden was on the Applicants to show, on a balance of probabilities, that they are unable or unwilling to return to the UAE (*Thabet* at para 28; *Cehade* at para 20). However, the Applicants failed to lead any specific evidence to back up their generalized statements of widespread discrimination.

[25] The Applicants are right that various incidents of discrimination can amount to persecution, and that the RAD has a duty to consider if events that may not individually amount to persecution do so on a cumulative basis (*Munderere* at para 42; *Hund* at para 34). But discrimination is not always serious enough to equate with persecution (*Ifeanyi* at para 16). I also acknowledge that the RAD cannot simply affirm that it has considered the cumulative nature of discriminatory acts, but must actually perform an analysis of those cumulative effects (*Galamb* at para 24).

[26] In my view, this is exactly what the RAD did here. It specifically mentioned that it would analyze each individual incidents before assessing their cumulative effects. It then proceeded to analyze, in succession: 1) the family separation resulting from the father's deportation; 2) the difficulties of Salaheddine and Samah in finding employment; 3) the absence of a right of return to the UAE; 4) the country condition evidence in the *United States Department of State Report – 2016*; and 5) the specific event related to Samah's travel document. It concluded that, when considered separately or together, these events did not rise to the level of persecution. The RAD's conclusion is based on the fact that the Applicants' evidence does not disclose events of discrimination substantially prejudicial to them. This is a highly contextual analysis, as the dividing line between discrimination and persecution is often difficult to establish (*El Assadi*

Kamal at para 13). As such, a high degree of deference is warranted towards the analysis performed by the RAD.

[27] Furthermore, in order to determine whether individual incidents amount to persecution on a cumulative basis, only the incidents related to a Convention ground should be considered (*Hund* at para 35). The RAD, recognizing this limit, found that the family separation, the employment difficulties of Salaheddine and Samah and the absence of a right of return were not related to a Convention ground.

[28] Concerning the father's deportation and the family separation that ensued, the RAD found that the Applicants only showed indirect harm and that this is not sufficient to establish persecution based on a Convention ground. Contrary to the Applicants' submissions, the case law of this Court is clear that indirect persecution does not constitute persecution within the meaning of the Convention (*Pour-Shariati* at para 3; *Sivamoorthy v Canada (Citizenship and Immigration)*, 2005 FC 199 at para 10; *Casetellanos* at para 34). The person claiming refugee protection must have a well-founded fear of persecution and not simply be the unwilling spectator of persecution against others (*Casetellanos* at para 31).

[29] I accept that one of the grounds recognized by the Convention and by section 96 of the IRPA is "membership in a particular social group", a ground which allows for family concerns to be considered in certain cases (*Pour-Shariati* at para 3). However, there is a difference between suffering from direct persecution on the basis of being a member of a certain family or group, and suffering the indirect consequences of a family member being persecuted. Only the first

situation is covered by the Convention. That is not to say that direct persecution cannot be proven by indirect evidence (*Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 [*Magonza*] at para 34). But the evidence must disclose and the RAD must be convinced that there is a personal nexus between the claimant and the alleged persecution (*Pour-Shariati* at para 3).

[30] The Applicants also plead that, since their father was given no reason for the deportation, the RAD should have accepted the explanation that it was due to him being a stateless Palestinian. If this explanation had been accepted as true by the RAD, this could have been indirect evidence of persecution against stateless Palestinians, a group that the Applicants are members of. That is, it would have been indirect evidence of direct persecution. I acknowledge that the RAD did not specifically discuss this point, but it cannot be said that its decision is unreasonable for this sole reason. The Court must seek to supplement the reasons when they are insufficient (*Delta Air Lines Inc v Lukács*, 2018 SCC 2 at para 23; *Newfoundland Nurses* at para 12). In the present case, UAE officials gave no indication that the father was deported because he was a stateless Palestinian, and the rest of the family continued to live in the UAE despite being also stateless Palestinians. There is no evidence suggesting that they had to live hiding from the authorities. Presented with this set of facts, it was reasonable for the RAD not to accept the father's explanation for his deportation.

[31] Turning now to the employment difficulties, the Applicants point to a decision where the Court found that the denial of a claimant's right to work in its own field constituted persecution. In *He*, the Court wrote that "[t]o permanently deprive a teacher of her profession and to forever

convert an educated young woman into a farm-hand and garment worker, constituted persecution” (*He* at para 15). However, the Court’s more recent jurisprudence establishes that “persecution does not result from the ability to work in the field of one’s choosing. Rather, it flows from one’s inability to work at all” (*El Assadi Kamal* at para 17). Moreover, in *He*, the finding regarding the employment was accompanied by a finding that the person would be permanently deprived of her mobility and her freedom to choose where she would live (*He* at para 15). This is not the situation in the present case. In light of the evidence available, I am satisfied that it was open to the RAD to find that the Applicants could work in other fields, and that this would not cause them substantial prejudice.

[32] The Applicants further contend that the fact that expatriates comprise 85 percent of the workforce is not applicable to them, but the RAD specifically noted that judges from the Occupied Palestinian Territories are recruited to work in the UAE. As noted by the RAD, the Applicants’ statements that they suffered discrimination in employment because they are stateless Palestinians were general statements, unsupported by the evidence. There is no evidence allowing one to draw a link with the Applicants’ particular situation. I accept that refugee claimants do not have to show that they have themselves been persecuted and can rely on evidence of the fear felt by members of the same group. But this is true as long as there is evidence of a personal nexus between the claimant and the alleged persecution on a Convention ground (*Pour-Shariati* at para 3; *Salibian* at para 17). Moreover, this does not remove the Applicants’ burden to adduce sufficient evidence of that. The weight of the evidence is a function of credibility and probative value (*Magonza* at para 29). The credibility of the Applicants was not contested here, but the probative value of their evidence was. Given the lack

of specific examples of discrimination related to work, it was reasonable for the RAD to assign a low probative value, and hence a low weight, to the Applicants' statement that their difficulties were due to being Palestinians.

[33] Turning to the denial of their right of return, the Applicants are right that it may constitute an act of persecution (*Maarouf* at para 44). However, I insist on the word "may": whether the denial is an act of persecution will depend on the reasons for it (*Thabet* at para 32; *Qassim* at para 50). The RAD must determine the reasons for the denial, and then whether these reasons constitute persecution (*Qassim* at para 54). Here, the RAD determined that the reasons for the Applicants' denial of their right of return were the loss of their UAE sponsor (namely, their mother) and the fact that they have been outside the UAE for more than six months. These were the reasons provided by the Applicants themselves. The RAD then determined that these reasons did not amount to persecution, as the denial is the result of laws of general application and suggests no persecutory intent or conduct based on the Applicants' Palestinian heritage (*Hegi* at para 17; *Karsoua* at para 38). I see no reviewable error in this finding. The Applicants simply did not show that the denial was due to the fact that they are stateless Palestinians.

[34] I note that other decisions have dealt with the UAE's situation specifically and have come to a similar conclusion. In a case involving a stateless Palestinian, the Court found that the loss of the right of return was a direct consequence of the voluntary decision to leave the UAE and had no connection with a Convention ground (*Kadoura* at para 17). Another case also found reasonable the finding that having to find a new sponsor if returned to the UAE was discrimination but not persecution (*Marchoud* at paras 14-15). The situation of the Applicants

here is entirely different from, for example, the factual context in *Thabet* where Kuwait had a documented policy of excluding Palestinians with the aim of changing the demographic balance (*Thabet v Canada (Minister of Citizenship & Immigration)*, [1995] FCJ No 1725, 1995 CarswellNat 803 (FC) at para 13, aff'd [1998] 4 FC 21).

[35] Moreover, contrary to the Applicants' arguments, the fact that they may face deportation if they were to return to the UAE did not have to be considered by the RAD to assess persecution. As stated by this Court, "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 [country of former habitual residence], and *not* what might occur later if the [country of former habitual residence] seeks to send the person to other countries" [emphasis in original] (*Qassim* at para 61).

[36] In summary, the Applicants' arguments essentially boil down to asking this Court to reweigh the evidence, but this is not the Court's role on judicial review (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 112). The question before the Court is not whether another outcome or interpretation might have been possible. The question is whether the conclusion reached by the RAD falls within the range of acceptable, possible outcomes. A decision does not become unreasonable because the evidence could have supported another conclusion. Here, the RAD carefully considered the evidence submitted by the Applicants and provided detailed reasons that allow the Court to understand its reasoning.

IV. Conclusion

[37] For the reasons set forth above, this application for judicial review is dismissed. Although the Applicants would have preferred a different decision, I am satisfied that the RAD considered all the evidence before it and adequately explained why it concluded, on a balance of probabilities, that the Applicants did not face a risk of persecution in the UAE. On a standard of reasonableness, it suffices if the decision subject to judicial review has the required attributes of justification, transparency and intelligibility. This is the case here. Therefore, I cannot overturn the RAD Decision and this Court should not intervene.

[38] Neither party has proposed a question of general importance for me to certify. I agree there is none.

JUDGMENT in IMM-5346-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed, without costs.
2. No serious question of general importance is certified.

"Denis Gascon"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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