Federal Court  Cour fédérale

Date: 20190924

Docket: IMM-1511-19

Citation: 2019 FC 1206

Ottawa, Ontario, September 24, 2019

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

NAHIDA ABOUJOUJAR
HAITHAM SAFAR
SADEN SAFAR
MOHAMAD SAFAR
TEA SAFAR

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] The central point of contention in this case is whether the decision of the Senior Immigration Officer [Officer] who denied the Applicants' Pre-Removal Risk Assessment [PRRA] application was reasonable. The principal Applicant is Nahida Aboujoujar, and applying

as her family members are her husband Haitham Safar and their children Saden, Mohamad and Tea Safar. All the Applicants are stateless Palestinians with Lebanese travel documents. They most recently entered Canada on July 17, 2018, and were ordered deported on July 18, 2018. They applied for a PRRA later that month, which was denied by a Senior Immigration Officer on January 30, 2019. The Applicants applied for leave and judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Leave was granted on June 6, 2019.

II. Background

[2] According to their PRRA applications, Nahida and the three children were born in Saudi Arabia, and Haitham was born in Lebanon, but began living in Saudi Arabia, the same year he was born. The status of all five Applicants in Saudi Arabia was that of temporary residents, which has since expired. All five Applicants have a temporary right of residence in Lebanon and a right to the social services provided in Lebanon by the United Nations Relief and Works Agency for Palestinian Refugees in the Near East [UNRWA].

[3] In their affidavits, the Applicants stated Nahida was working in Saudi Arabia as a teacher of English and Haitham in information technology. This continued until 2018, when a change in Saudi policy caused them to be laid off.

[4] In January 2018, during the final few months of Haitham's employment, the family went to Lebanon to visit relatives and to explore options as to settling in Lebanon. During the visit, the Hezbollah terrorist organization took Haitham into its custody for three days. Haitham's captors

abused him and questioned him about his reasons for visiting Lebanon and possible ties to the Saudi government, which is a fervent opponent to Hezbollah. They forced him to confess falsely to working against Hezbollah.

[5] Upon Haitham's release, the family returned to Saudi Arabia immediately. Hezbollah captured and questioned Haitham's brother as to why Haitham fled without informing them.

[6] The family's final departure from Saudi Arabia and attempt to enter Canada was in July 2018, after both parents had been laid off. Their temporary residency status and, thus, their right to live in Saudi Arabia has since expired, leaving Lebanon as the only remaining country where they have a clear right to return. On July 18, 2018, one day after their arrival in Canada, the family was ordered deported, and subsequently applied for a PRRA and retained counsel.

[7] In addition to affidavits from Nahida and Haitham, the Applicants submitted as evidence for the PRRA determination various publicly available documents that describe the situation Palestinians face in Saudi Arabia and Lebanon. After their re-entry permits to Saudi Arabia expired, the Applicants' only alternative country of residence would be Lebanon. They argued that they faced a risk of persecution there under the grounds listed in section 115 of the IRPA.

[8] The Applicants argued that Palestinians in Lebanon face severe discrimination and dangerous conditions in their refugee camps, amounting to discrimination on the basis of nationality. They also argue that Hezbollah, a Shia Muslim organization, singled out Haitham because he was a Sunni Muslim working in the Sunni-dominated country of Saudi Arabia. They

now fear they will be targets of Hezbollah if they return to Lebanon, and they argue there is a risk of persecution on the basis of religion. The Applicants' evidence indicates that Hezbollah is a powerful force in Lebanon, with the capability to find people nearly anywhere in the country, detain them and inflict violence.

[9] The application was considered by a Senior Immigration Officer, and it was rejected by the Officer's decision dated January 30, 2019.

III. Decision under Review

[10] In the PRRA decision, the Officer rejected the application on the basis that the risks the Applicants faced in Lebanon did not fall into the criteria established in sections 96 or 97 of the IRPA. The Officer declined to assess the risks to the Applicants in Saudi Arabia because none of them had a right to return there.

[11] The Officer acknowledged the difficult conditions for Palestinians in Lebanon generally, but wrote that the obstacles they faced were mainly due to poverty. The Officer, who reviewed the evidence submitted as well as reference documents on Lebanon from the Canadian, British and American governments, which concluded that whatever discrimination exists against Palestinians is not considered to amount to persecution.

[12] Considering the Applicants' claim that they faced a specific risk from Hezbollah, the Officer found that the information the Applicants related in their affidavit did not provide sufficient evidence that the family would be targeted by the group if they returned to Lebanon.

[13] The Officer preferred the information in a Country Policy and Information Note on Lebanon issued by the United Kingdom Home Office, which stated that Hezbollah was "unlikely to target a returning individual unless that person presented a direct threat to its authority" (United Kingdom, Home Office, *Country Policy and Information Note: Lebanon—Palestinians*, version 1.0, June 2018).

[14] The Officer included lengthy quotations from sources indicating forcible recruitment into Hezbollah was rare. The Officer went on to write that "[t]here is no information suggesting Hezbollah has any interest in the male applicant or his family and/or that he is a wanted individual" (PRRA Decision, at p 3). On this basis, the Officer rejected the Applicants' fear of violence from Hezbollah as a ground for their PRRA application.

[15] The decision concluded by finding that the affidavit evidence and other documents from the Applicants were insufficient to establish the risk of persecution in Lebanon on a balance of probabilities under section 96 of the IRPA. The Officer also found that the Applicants were not likely, on a balance of probabilities, to face torture, a risk to life or a risk of cruel and unusual treatment or punishment there, and were therefore not in need of protection under section 97 of the IRPA. Accordingly, the Officer rejected the application.

IV. Issues

[16] This application raises the following issues:

1) Were the Officer's findings on the risks which the Applicants faced in Lebanon reasonable?

2) Was it reasonable for the Officer to decline to assess the risks the Applicants faced in Saudi Arabia?

3) Were the Applicants afforded adequate procedural fairness by the decision process, which was entirely in writing?

V. Relevant Dispositions

[17] The following provisions of the IRPA are relevant in this application:

Convention refugee	**Définition de réfugié**
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,	**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) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	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.	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.
Person in need of protection	**Personne à protéger**
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	**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

have a country of nationality, their country of former habitual residence, would subject them personally

a la nationalité ou, si elle n’a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

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) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(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,

(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) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(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.

Principle of Non-refoulement

Principe du non-refoulement

Protection

Principe

115 (1) A protected person or a person who is recognized as a Convention refugee by another country to which the person may be returned shall not be removed from Canada to a country where they would be

115 (1) Ne peut être renvoyée dans un pays où elle risque la persécution du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions

at risk of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion or at risk of torture or cruel and unusual treatment or punishment.	politiques, la torture ou des traitements ou peines cruels et inusités, la personne protégée ou la personne dont il est statué que la qualité de réfugié lui a été reconnue par un autre pays vers lequel elle peut être renvoyée.

VI. Positions of the Parties

A. *Applicants' Position*

[18] The Applicants argue the Officer's decision was unreasonable because the Officer misunderstood their status as stateless persons, misapplied the persecution standard in *Thabet v Canada (Minister of Citizenship and Immigration) (CA)*, [1998] 4 FC 21 [*Thabet*], unreasonably declined to assess the risks they faced in Saudi Arabia and denied them an oral hearing.

[19] The Applicants contend that the Officer referred to their having Lebanese "nationality" and Lebanon as protecting its "citizens" adequately, neither of which terms apply to the Applicants, reflecting a misapprehension and misapplication of the case law that exists for stateless persons under the IRPA.

[20] *Thabet*, above, at para 30, sets out that "[i]n order to be found a Convention refugee, a stateless person must show that, on the 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". The Applicants argue that the only country of former habitual residence [CFHR] for Nahida and the children is Saudi Arabia

because they have never resided in any other country. They cite *Maarouf v Canada (Minister of Employment and Immigration)* [1994] 1 FC 723 (TD), 23 Imm LR (2d) 163, for the position that a "significant period of *de facto* residence" is required for a country to be an applicant's CFHR, which is not the case for Nahida and the children in Lebanon, and arguably not for Haitham either, since he left Lebanon as a baby. This, they argue, leaves only Saudi Arabia as a possible CFHR, which the Officer did not consider in the decision.

[21] The Applicants also dispute the denial of an oral hearing, characterizing the Officer's finding that their evidence was insufficient, as a veiled finding of credibility, which under the circumstances requires an oral hearing.

B. *Respondent's Position*

[22] The Minister responds by arguing that the Officer's decision was reasonable in all respects. The Minister argues that the Officer properly declined to consider Saudi Arabia because that country would not allow the Applicants to return. Further, the Minister argues that the Officer made reasonable findings of fact that neither the treatment of Palestinians in Lebanon nor the claimed threat from Hezbollah rose to the level of persecution. The Officer was entitled to prefer other sources to the evidence of the Applicants, especially because the Applicants did not explain, in sufficient detail, as to how the evidence submitted applied to them in particular.

[23] The Minister points out that Lebanon is the only country where all the Applicants have a right to reside and receive UNRWA social services, and that it was therefore reasonable for the Officer to consider only the risks the Applicants faced in Lebanon. The Minister states that the

standards for a PRRA are different than the legal standards the Applicants cited for refugee protection determinations. The analysis is solely focused on the existence – in the country to which the Minister proposes to remove the applicant – of a well-founded fear of persecution (section 96 of the IRPA), or danger of torture, risk to life or risk of cruel or unusual treatment or punishment (section 97 of the IRPA).

[24] The Minister continues by defending the denial of an oral hearing on the basis that finding evidence insufficient – an issue separate from its credibility and reliability – is exclusively within the purview of the Officer as the administrative decision-maker, and is not to be questioned on a reasonableness review. The Minister submits that the Applicants failed to discharge their onus to make out their case.

VII. Analysis

[25] Under *Dunsmuir v New Brunswick*, 2008 SCC 9, the standard of review to be applied by this Court is reasonableness, since the Officer can be considered within his jurisdiction as a specialist, interpreting a home statute within a specialized area of expertise. In addition, sections 112 to 114 of the IRPA confer broad discretion on the Minister, and by implication on his delegate the Officer, to determine PRRA applications. Accordingly, if the Officer's decision is defensible in respect of the facts and law, and it is justified, transparent and intelligible, it should stand.

[26] Of the various issues with the Officer's reasoning, some rise to the level of unreasonableness such as pleaded in the Applicant's arguments as summarized at paragraphs 19-

20 of this judgment, with which this Court is in full agreement. In the Applicants' affidavits, they have sworn that Hezbollah sought out Haitham on multiple occasions, and held him in custody and assaulted him during their most recent encounter in 2018. For the Officer to say categorically that Hezbollah has no interest in Haitham or that he is not a wanted individual, in the face of evidence that they sought him out by name and knew of his residence and work in Saudi Arabia, requires more explanation than is given in the decision. For all the above reasons, the decision is unreasonable.

[27] In addition, a related issue is that the Officer discounting the Applicants' evidence regarding Hezbollah amounts to an adverse finding of their credibility or reliability, which would have required an oral hearing, or at least an explanation as to why the affidavit evidence was given such scant weight. This also contributes to the decision being unreasonable.

[28] The other points of contentions which the Applicants described in their memorandum are not fatal to the Minister's position. The Officer's inexact use of terms did not have a sufficient impact on the decision to make it unreasonable; it was still clear that the Applicants' right to enter and reside in Lebanon was based on their UNRWA status, not Lebanese nationality. The Officer was also reasonable in refusing to consider Saudi Arabia as a possible country of removal when Lebanon afforded the Applicants a clear right of entry and temporary residency.

VIII. Conclusion

[29] Due to the Officer's unreasonable conclusion recognizing a need for, at the very least, an analysis borne out in explanations about the Hezbollah threat; the application for judicial review

is, therefore, granted and the matter returned to the Minister for determination anew by a different Officer to ensure that the eventual decision will reflect proper consideration in respect of evidence that cannot simply be discounted without an oral hearing.

JUDGMENT in IMM-1511-19

THIS COURT'S JUDGMENT is that the application for judicial review be granted and the matter be considered anew. There is no serious question of general importance to be certified.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1511-19
STYLE OF CAUSE:	NAHIDA ABOUJOUJAR ET AL v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	SEPTEMBER 4, 2019
JUDGMENT AND REASONS:	SHORE J.
DATED:	SEPTEMBER 24, 2019

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