Federal Court  Cour fédérale

Date: 20191021

Docket: IMM-691-19

Citation: 2019 FC 1315

Ottawa, Ontario, October 21, 2019

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

BATUL HERMES ABLAHAD

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of the decision of an immigration officer [the Officer] dated January 15, 2019 [the Decision] that, pursuant to section 110(1)(d) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [IRPA], the Applicant's refugee claim was not eligible to be referred to the Refugee Protection Division of the Immigration and Refugee Board of Canada [RPD].

[2] As explained in greater detail below, this application is dismissed, because I have found no reviewable error in the Officer's interpretation or application of s 110(1)(d) of IRPA.

II. **Background**

[3] The Applicant, Batul Hermes Ablahad, is a citizen of Iraq. In September 2000, she, her husband, and their first child fled Iraq for Germany, where they applied for refugee protection.

[4] While this fact is disputed by the Respondent, the Applicant says that Germany rejected her refugee application but granted her subsidiary protection for one year. She claims, as a person with subsidiary protection, she also received a one-year resident visa, which was renewable at two-year intervals. In Germany, she and her husband had three more children and, under the laws of that country, her youngest son is a German citizen.

[5] In January 2017, the Applicant and her youngest son left Germany and came to Canada, where her mother and sister live. The Applicant claims she left Germany because her husband was abusive and because she felt discriminated against in that country. In May 2017, she applied for permanent resident status in Canada on humanitarian and compassionate [H&C] grounds. This application was refused in November 2018 on the basis that she was a Convention refugee in Germany.

[6] In December 2018, the Applicant claimed refugee protection in Canada. She says she is no longer a permanent resident of Germany, because of the length of time she has been outside that country, and therefore she cannot return there. Like her assertion that Germany did not grant

her refugee status, her allegation that she is without status to return to Germany is disputed by the Respondent.

III. **Decision Under Review**

[7] Following an interview, the Officer determined that the Applicant's refugee claim was not eligible to be referred to the RPD. This Decision, which is the subject of the within application for judicial review, was communicated by letter dated January 15, 2019. The Officer determined the claim to be ineligible under s 101(1)(d) of IRPA, because the Applicant has been recognized as a Convention refugee by a country other than Canada and can be returned to that country.

[8] Further reasons for the Decision are contained in the Officer's Notes to File [the Notes]. First, the Officer notes that the Applicant's H&C application was rejected in November 2018, finding that she was a Convention refugee in Germany. Next, the Officer reviews the Applicant's Basis of Claim [BOC] form and attached narrative, which indicate that her German refugee claim was refused and that she was granted subsidiary protection instead. The Applicant's Generic Application Form, however, states that she is a German permanent resident. The Officer notes the Applicant did not explain how she obtained that permanent resident status, and the Officer observes that the information in these forms is contradictory.

[9] The Notes also state that the Applicant presented a *Reiseausweis für Flüchtlinge* travel document, which, as shown on its cover, was issued in accordance with Article 28 of the 1951 Refugee Convention. The Officer cites the *Asylum Information Database* [*AIDA*] website, which

explains that Germany issues *Reiseausweis für Flüchtlinge* travel documents only to persons with refugee status in Germany and that such documents are issued together with a residence permit valid for up to three years. The Applicant presented a photocopy of a German permanent residence permit, as well as her travel document, and the Officer observed that both documents were valid for three years.

[10] According to the Notes, the *AIDA* website also explains that a person with only subsidiary protection in Germany could apply for a different type of travel documents for aliens, called a *Reiseausweis für Ausländer*. The Officer concludes that, if the Applicant had only subsidiary protection, she would not have been eligible for a *Reiseausweis für Flüchtlinge*, corroborating the conclusion that she was granted refugee protection.

[11] The Officer also observes that the Applicant's son is a German citizen. The website *Germany Visa* provides that children of non-German nationals can only acquire citizenship by at least one parent being a German permanent resident who has lived in Germany for at least eight years. The Officer considered the son's German citizenship to further corroborate the conclusion that the Applicant was a refugee with permanent resident status in Germany.

[12] The Notes reflect that the Officer presented the above information to the Applicant during the interview to give her an opportunity to respond. She stated that she and her family were given refugee protection under a humanitarian category, but this protection was temporary and could be taken away if conditions in Iraq improved. The Officer observed that the Applicant did not provide any indication that her status as a refugee in Germany had been taken away.

[13] The Officer also refers to asking the Applicant why her forms indicate that her refugee claim in Germany was rejected, when in fact she received a positive decision. She was unable to explain the discrepancy, although she claimed she was not fully aware of the details stated on the forms, which a representative helped her to complete.

[14] The Notes state that, based on the Applicant's own admission during the interview and the supporting documents presented, she was granted refugee protection in Germany and is a permanent resident of that country. They also state there is no indication that she cannot return to Germany. The Officer therefore concludes that the Applicant is ineligible to make a refugee claim as per section 101(1)(d) of IRPA.

IV. **Issues**

[15] The Applicant frames the issues for the Court's consideration as follows:

A. Did the Officer err in determining that the Applicant has been recognized as a Convention refugee in Germany?

B. Did the Officer err in interpreting section 101(1)(d) of IRPA?

C. Did the Officer err in determining that the Applicant can return to Germany?

V. **Standard of Review**

[16] The parties take different positions on the standard of review applicable to these issues. The Applicant submits that all three issues are reviewable on the standard of correctness, relying on the decision in *Wangden v Canada (Citizenship and Immigration)*, 2008 FC 1230 [*Wangden*], aff'd 2009 FCA 344. The Respondent's position is that all three issues are subject to the reasonableness standard.

[17] In *Wangden*, at paragraph 18, the Court concluded that a matter of statutory interpretation related to s 101(1)(d) of IRPA was reviewable on a standard of correctness. The particular issue was whether the status of withholding of removal under United States law is equivalent to the status of Convention refugee within the meaning of the *Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954) [the Convention] and under s 101(1)(d) of IRPA.

[18] In my view, it is clear that *Wangden* does not speak to the standard of review applicable to the first and third issues. As the Respondent submits, those issues are related to the Officer's application of s 101(1)(d) to the facts of this particular case—as questions of mixed fact and law, they are reviewable on the reasonableness standard (see *Mohamed v Canada (Citizenship and Immigration)*, 2019 FC 1165 at para 12).

[19] With respect to the second issue, which the Applicant frames as a question of statutory interpretation, I note the analysis by Justice Gleeson in *Aghazadeh v Canada (Public Safety and*

Emergency Preparedness), 2019 FC 99 [*Aghazadeh*], at paragraphs 15 to 22. The Court concluded that the jurisprudence subsequent to *Wangden*, and in particular *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 30, favours the standard of reasonableness where the interpretation of a decision-maker's home statute is under review (see also *Kaleb v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 345 at paras 17-21). I agree with Justice Gleeson's analysis. However, it is unnecessary for me to reach a definitive conclusion on the standard of review for this question. As discussed below, the Officer's analysis in the Decision does not raise a question of statutory interpretation as the Applicant submits.

VI. **Analysis**

A. ***Did the Officer err in determining that the Applicant has been recognized as a Convention refugee in Germany?***

[20] The Applicant's principal argument on this issue is that the Officer unreasonably relied on her travel document in determining that she has been recognized as a Convention refugee in Germany. The Notes reflect the Officer's conclusion that the Applicant's travel document is a *Reiseausweis für Flüchtlinge*, a document issued under the Convention to persons with refugee status in Germany. The Applicant submits that her travel document does not bear the name *Reiseausweis für Flüchtlinge*, but is entitled only *Reiseausweis*¸ which is equally consistent with it being a *Reiseausweis für Ausländer*, a document issued to persons who are given subsidiary protection.

[21] While the Applicant is correct that the title *Reiseausweis für Flüchtlinge* does not appear on her travel document, I interpret the Officer's conclusion, that the document is a *Reiseausweis*

für Flüchtlinge, as turning on the reference to the Convention on its front cover. I find nothing unreasonable in the Officer's analysis or conclusion.

[22] The Applicant further submits that the holder of either the *Reiseausweis für Flüchtlinge* or the *Reiseausweis für Ausländer* would have a residence permit of the sort issued to her. She relies on the *AIDA* website, which explains the duration of the *Reiseausweis für Ausländer* is usually equivalent to the foreign citizen's residence permit. However, the next sentence in that paragraph on the website states that, for beneficiaries of subsidiary protection, this duration is one year with an option of renewal(s) for two years. This information is inconsistent with a conclusion that the Applicant's travel document, which has a validity period of three years, is a *Reiseausweis für Ausländer.* The Officer notes the three year validity period of the Applicant's travel document and that this is consistent with the explanation on the *AIDA* website that a *Reiseausweis für Flüchtlinge* is issued for up to three years. Again, the Officer's analysis is reasonable, and I find no basis to interfere with the conclusion that the Applicant was granted refugee protection in Germany, not subsidiary protection as she claimed.

B. ***Did the Officer err in interpreting section 101(1)(d) of IRPA?***

[23] In reliance on *Aghazadeh*, the Applicant's submits that subsidiary protection does not trigger ineligibility under s 101(1)(d) of IRPA and the Officer erred in interpreting this section by confusing Convention refugee status with subsidiary protection. I find no merit to this position. As the Respondent submits, the Decision does not turn on a conclusion by the Officer that subsidiary protection resulted in ineligibility under s 101(1)(d), and therefore it does not turn on the Officer's interpretation of the statute. Rather, the Officer rejected the Applicant's

assertion that Germany refused her claim for refugee status and instead afforded her subsidiary protection.

C. *Did the Officer err in determining that the Applicant can return to Germany?*

[24] The Applicant argues that the Officer erred by arriving at the Decision in the absence of clear evidence that she can return to Germany. She submits there was country condition evidence, readily accessible to the Officer in the National Documentation Package [NDP] for Germany, which explains that a permanent residence permit expires six months after departure from Germany. The Applicant left Germany approximately two years prior to the Decision.

[25] The Respondent submits that the country condition evidence upon which the Applicant now wishes to rely was not put before the Officer, that s 100(1.1) of IRPA provides that the burden of proving that her claim is eligible to be referred to the RPD rests with the Applicant, and that she did not establish either that she lost her permanent resident status in Germany or that she could not return there.

[26] I agree with the Respondent's position on this issue. The Officer was not presented with the country condition document upon which the Applicant now wishes to rely. Nor has the Applicant presented to the Court any evidence to support her submission that this document is in the NDP. More importantly, this document speaks only to the circumstance in which a permanent residence permit will expire. It does not address the impact of being away from Germany on a person's Convention refugee status in that country or their ability to return there.

[27] The Applicant argues that, having conducted some country condition research (e.g., on the *AIDA* and *Germany Visa* websites) in arriving at the Decision, the Officer was obliged to do additional due diligence to determine the effect of the Applicant's absence from Germany upon her ability to return. She relies upon *Gaspard v Canada (Citizenship and Immigration)*, 2010 FC 29 [*Gaspard*] at para 16:

> 16 The onus was on the applicant to establish eligibility for referral to the Refugee Protection Division and he failed to do so. The officer based her determination of ineligibility on the information that she obtained from the U.S. Immigration and Naturalization Service in addition to the letter provided by the applicant. Upon considering the evidence available to her, the officer was satisfied that the applicant's asylum status had not been altered.

[28] *Gaspard* refers to particular inquiries undertaken by the officer in that case before arriving at the decision, and the Court found reasonable that the officer relied on the evidence resulting from those inquiries. However, I do not regard that case as supporting the position that an officer considering s 110(1)(d) has an obligation to undertake research as the Applicant submits. As *Gaspard* notes, the Applicant bears the burden of establishing eligibility for referral to the RPD. In my view, there is no basis to conclude that the Decision is unreasonable either in finding that the Applicant did not provide any proof that her status as a refugee in Germany has been taken away from her or in finding that there is no indication that she cannot return to Germany.

VII. **Conclusion**

[29] Having found no reviewable error by the Officer, this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

[30] I note that the style of cause in this matter incorrectly names the Respondent Minister as "The Minister of Immigration, Refugees and Citizenship". My Judgment will correct the style of cause to name the Respondent as "The Minister of Citizenship and Immigration".

JUDGMENT IN IMM-691-19

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. No question is certified for appeal.

3. The style of cause in this matter is amended as set out above to correct the name of the Respondent to "The Minister of Citizenship and Immigration".

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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