

Federal Court



Cour fédérale

Date: 20191031

Docket: IMM-1572-19

Citation: 2019 FC 1365

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Montréal, Quebec, October 31, 2019

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

RANI ABDULAHAD ISSA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] Rani Abdulahad Issa seeks judicial review of a decision rendered on January 16, 2019, by an International Migration Officer [Officer] of the Canadian Embassy in Lebanon, refusing his application for permanent residence under the Convention Refugees Abroad and Humanitarian-Protected Persons Abroad class provided for in section 138 of the *Immigration and Refugee*

Protection Regulations, SOR/2002-227 [Regulations]. For the reasons below, the application for judicial review will be dismissed.

II. BACKGROUND

[2] In 2017, Mr. Issa filed an application for permanent residence in Canada under the above-mentioned refugee class, duly sponsored by a group in Canada. In the various forms he completed for his application, Mr. Issa stated that he had never been married and did not indicate having travelled to or stayed in Greece.

[3] However, the Officer's preliminary check of the Canadian data system revealed that in 2010, Mr. Issa had submitted an application for a temporary resident visa to the visa office in Rome, as a resident of Greece.

[4] According to the Officer's notes, the invitation to the interview instructed Mr. Issa to bring documentation relating to his status in Greece. On November 7, 2018, the Officer met with Mr. Issa for an interview. Again according to the Officer's notes, Mr. Issa confirmed during the interview that he had been married to a Greek citizen and had lived in Greece in 2008 and 2010, but that he had returned to Lebanon and subsequently to Syria. He stated that he was convinced that his wife had since divorced him but that he had no information or documentation on that subject. Mr. Issa stated that he had lost his old passport but gave the officer a Greek residency card valid from 2009 to 2014. Mr. Issa stated that he had not

declared these facts on the advice of people close to him who had told him that the information could jeopardize his refugee protection claim. The Officer made him aware of his concerns, and on November 30, 2018, the officer sent Mr. Issa a procedural fairness letter referring specifically to subparagraphs 139(1)(d)(i) and (ii) of the Regulations, setting out his concerns regarding Mr. Issa's status in Greece and granting him 30 days to respond. There is nothing to indicate that the correspondence was not delivered to the address confirmed by Mr. Issa or that he failed to receive it.

[5] Mr. Issa did not respond to the procedural fairness letter, and in January 16, 2016, the Officer refused his application for permanent residence, having determined that Mr. Issa did not satisfy the requirements set out in subparagraph 139(1)(d)(ii) of the Regulations because, in light of the facts, he could have sought protection in Greece. The Officer stated that he had been unable to verify whether Mr. Issa's status in Greece was still valid because the latter had not provided his previous passport.

[6] On February 10, 2019, Mr. Issa sent an email to the Embassy to provide information and ask whether the Officer would allow him to enter Canada if he submitted proof of his divorce and of the expiry of his status in Greece. The Officer did not respond to this.

[7] The application for leave and for judicial review was filed on March 7, 2019. In support of his application for judicial review, Mr. Issa filed an affidavit, a copy of a divorce document and its translation and some Greek legal provisions, none of which had been before the Officer.

He did not indicate in his application that he had not received the above-mentioned email dated November 30.

III. THE PARTIES' POSITIONS

A. *Mr. Issa's position*

[8] Mr. Issa submits that the Officer erred in deciding that state protection was available to him in Greece and that his decision was therefore unreasonable; he also relies on the additional documents to support his claims that he is indeed divorced and that his residency in Greece has expired.

[9] In reply to the Minister, Mr. Issa submits that the documents attached to his affidavit do not constitute new evidence, in part because the Officer could and should have done an Internet search to verify the law, and partly because Mr. Issa stated during the interview that he was divorced and his credibility should not have been questioned.

[10] Therefore, the finding that he could obtain status in Greece on the basis of his marriage was not among the possible and reasonable outcomes open to the Officer.

B. *The Minister's position*

[11] The Minister submits that the evidence on the record establishes a reasonable possibility that there is a durable solution for Mr. Issa in Greece and that, accordingly, the decision is reasonable.

[12] The Minister adds that the Greek legislative documents and the divorce certificate constitute new evidence that cannot be admitted on judicial review and that the inadmissibility of new evidence is subject to only two exceptions: “to establish a jurisdictional error or where the finding is made in breach of natural justice or procedural fairness” (*Nyoka v Canada (Citizenship and Immigration)*, 2008 FC 568 at para 17). The Minister submits that this evidence is covered by neither of these two exceptions.

[13] Finally, the Minister submits that the requirements of section 139 of the Regulations are cumulative (*Alfaka Alharazim v Canada (Citizenship and Immigration)*, 2010 FC 1044 at para 27), that the onus is on the claimant (*Hassan v Canada (Citizenship and Immigration)*, 2019 FC 531 at para 18) and that the requirements have not been met.

[14] The Minister also submits that Mr. Issa was given the opportunity to submit new evidence to the immigration officer in response to the procedural fairness letter but that this was not done. The Minister adds that, at the time of the interview, there was no evidence of Mr. Issa’s divorce.

[15] The Minister therefore argues that the immigration officer's decision should be upheld.

IV. DISCUSSION

[16] The standard of review applicable in this case is reasonableness (*Hassan v Canada (Citizenship and Immigration)* 2019 FC 531 at para 12). This is a deferential standard, so the Court must determine whether the decision-making process is justified, transparent and intelligible and 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; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12).

[17] The Court agrees with the Minister with respect to the additional documents that were not before the decision maker, and it will therefore not consider them. It should also be noted that “[t]he governing jurisprudence tells us, in effect, that the risk of a failure of communication shifts to the Applicant if the Respondent is able to show that, on a balance of probabilities, the communication was sent and, secondly, that the Respondent had no reason to think that the communication had failed” (*Halder v Canada (Citizenship and Immigration)*, 2012 FC 1346 at para 48). Nothing suggests that Mr. Issa did not receive the above-mentioned email dated November 30, 2018, and he did not raise this argument in either his affidavit or his memorandum.

[18] Section 139 of the Regulations provides as follows:

139 (1) A permanent resident visa **139** (1) Un visa de résident

shall be issued to a foreign national in need of refugee protection, and their accompanying family members, if following an examination it is established that	permanent est délivré à l'étranger qui a besoin de protection et aux membres de sa famille qui l'accompagnent si, à l'issue d'un contrôle, les éléments suivants sont établis (..)
(d) the foreign national is a person in respect of whom there is no reasonable prospect, within a reasonable period, of a durable solution in a country other than Canada, namely	d) aucune possibilité raisonnable de solution durable n'est, à son égard, réalisable dans un délai raisonnable dans un pays autre que le Canada, à savoir :
(i) voluntary repatriation or resettlement in their country of nationality or habitual residence, or	(i) soit le rapatriement volontaire ou la réinstallation dans le pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle,
(ii) resettlement or an offer of resettlement in another country;	(ii) soit la réinstallation ou une offre de réinstallation dans un autre pays;

[19] The jurisprudence is clear that in light of the statutory framework of paragraph 139(1) of the Regulations, the burden of proof rests solely on the applicant to establish that he had “no reasonable prospect, within a reasonable period, of a durable solution in a country other than Canada” (*Salimi v Canada (Minister of Citizenship and Immigration)*, 2007 FC 872 at para 7; *Qurbani v Canada (Citizenship and Immigration)*, 2009 FC 127 at para 18); (*Karimzada v Canada (Citizenship and Immigration)*, 2012 FC 152 at para 25). Mr. Issa had the burden of establishing that his status in Greece did not constitute a durable solution under section 139 of the Regulations, which, unfortunately, he did not do, despite having been given the opportunity.

[20] The Officer's decision is reasonable, and the application for judicial review will therefore be dismissed.

JUDGMENT in IMM-1572-19

THIS COURT'S JUDGMENT is that:

- (1) The application for judicial review is dismissed;
- (2) No question is certified.

“Martine St-Louis”

Judge

Certified true translation
This 15th day of November, 2019.

Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1572-19

STYLE OF CAUSE: RANI ABDULAHAD ISSA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: OCTOBER 30, 2019

JUDGMENT AND REASONS: ST-LOUIS J.

DATED: OCTOBER 31, 2019

APPEARANCES:

Jean-Pierre Chamoun

FOR THE APPLICANT

Annie Flamand

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Chamoun, Constantin – Avocats
Montréal, Quebec

FOR THE APPLICANT

Attorney General of Canada
Ottawa, Ontario

FOR THE RESPONDENT