

Federal Court



Cour fédérale

Date: 20191128

Docket: IMM-2181-19

Citation: 2019 FC 1527

Toronto, Ontario, November 28, 2019

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

**AHMED ZAKI ABED MASRI (A.K.A. AHMED MASRI),
SAMAR MOUSA DARWEESH ABU NASSAR
(A.K.A. SAMAR ABU NASSAR), BADER AHMED ZAKI
MASRI (A.K.A. BADER MASRI) (A MINOR), YARA
AHMED ZAKI MASRI (A.K.A. YARA MASRI) (A MINOR),
AND
YOUSEF AHMED ZAKI MASRI (A.K.A. YOUSEF
MASRI) (A MINOR)**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Ahmed Zaki Abed Masri, Samar Mousa Darweesh Abu Nassar, Bader Ahmed Zaki Masri, Yara Ahmed Zaki Masri, and Yousef Ahmed Zaki Masri (the “Applicants”) seek judicial

review of the decision of the Immigration and Refugee Board, Refugee Appeal Division (the “RAD”). In the decision, the RAD dismissed the Applicants’ appeal from a decision of the Refugee Protection Division (the “RPD”), refusing their claim for refugee status or protection, pursuant to section 96 and subsection 97(1), respectively, of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] The Applicants are ethnic Palestinians, born in Kuwait. They hold Jordanian passports. They allege a fear of persecution based upon a future risk of revocation of their status in Jordan.

[3] The RPD determined the Applicants failed to establish risk of citizenship revocation in Jordan or religious persecution, and made negative credibility findings against the Applicants.

[4] The RAD dismissed the Applicants’ appeal, finding the determinations of the RPD were correct.

[5] The first issue to be addressed is the standard of review applicable to the decision of the RAD.

[6] Any issue of procedural fairness or a question of law is reviewable on the standard of correctness; see the decision in *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339.

[7] The merits of the RAD's decision are reviewable on the standard of reasonableness; see the decision in *Canada (Citizenship and Immigration) v. Huruglica*, [2016] 4 F.C.R. 157 (F.C.A).

[8] According to the decision in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, the standard of reasonableness requires that a decision be transparent, justifiable and intelligible, falling within a range of possible, acceptable outcomes that are defensible on the law and the facts.

[9] Upon review of the records filed and consideration of the arguments advanced, I am satisfied that the application for judicial review should be granted.

[10] In my opinion, the RAD misapplied the legal test for its review of the RPD decision, when it said the following:

[12] The RAD is to review the raised issues with the RPD's findings of law, fact (and mixed fact and law), which raised no issues of credibility of oral evidence, applying the correctness standard.^{vi}

[13] In assessing the credibility of oral evidence, the RPD *may* have a meaningful advantage, as the RPD directly sees, observes, and selects questions to ask of witnesses etc. The Court has specifically reiterated that "significant deference is due to the findings of a tribunal"^{vii} recognizing that "the role of this Court is a very limited one because the tribunal had the advantage of hearing the witnesses testify, observed their demeanor and is alive to all the factual nuances and contradictions in the evidence"^{viii}.

[Emphasis in Original.]

[11] The RAD erred in its identification and application of the standard of review. That is an error justifying intervention of the Court.

[12] In my opinion, the RAD correctly identified its role relating to assessing the facts, but it erred in describing its role relative to its review of credibility findings. It appears that credibility was an issue before the RPD. The RAD's error may have compromised the Applicants right to a fair review before the RAD.

[13] As well, it is not clear that the RAD conducted an "independent" assessment of the RPD's decision, in relation to the evidence contained in the Certified Tribunal Record and relating to the grounds of appeal that were advanced by the Applicants.

[14] In my opinion, this lack of clarity is an issue that is reviewable on the standard of reasonableness. If the RAD's decision is not apparently independent, then it fails the reasonableness test, pursuant to *Dunsmuir, supra*.

[15] It is not necessary for me to address the other arguments raised by the Applicants.

In the result, the application for judicial review is allowed. The decision of the RAD is set aside and the matter is remitted to a differently constituted panel of the RAD for re-determination.

There is no question for certification arising.

JUDGMENT in IMM-2181-19

THIS COURT'S JUDGMENT is that the application for judicial review is allowed.

The decision of the Refugee Appeal Division is set aside and the matter is remitted to a differently constituted panel for re-determination. There is no question for certification arising.

“E. Heneghan”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-2181-19

STYLE OF CAUSE: AHMED ZAKI ABED MASRI (A.K.A. AHMED MASRI), SAMAR MOUSA DARWEESH ABU NASSAR (A.K.A. SAMAR ABU NASSAR), BADER AHMED ZAKI MASRI (A.K.A. BADER MASRI) (A MINOR), YARA AHMED ZAKI MASRI (A.K.A. YARA MASRI (A MINOR), AND YOUSEF AHMED ZAKI MASRI (A.K.A. YOUSEF MASRI) (A MINOR) v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 28 , 2019

JUDGMENT AND REASONS: HENEGHAN J.

DATED: NOVEMBER 28, 2019

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