

Federal Court



Cour fédérale

**Date: 20200129**

**Docket: IMM-684-19**

**Citation: 2020 FC 160**

**Ottawa, Ontario, January 29, 2020**

**PRESENT: The Honourable Mr. Justice Favel**

**BETWEEN:**

**SAOSAN KHALIL I. ALMOQAIAD,  
ASHRAF M. A. GHAREEB,  
FUAD ASHRAF MOHAMMED GHAREEB,  
MAYA ASHRAF MOHAMMED GHAREEB,  
ABDULRHMAN ASHRAF MOHAMMED  
GHAREE**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] This is an application for judicial review of a Refugee and Appeal Division [RAD] decision brought pursuant to section 72 of the *Immigration and Refugee Protection Act*,

SC 2001, c 27 and made on January 8, 2019. There, the RAD upheld a decision of the Refugee Protection Division [RPD] that found that the Applicants are not Convention refugees or persons in need of protection.

[2] The application for judicial review is dismissed for the reasons that follow.

## II. Background

[3] I rely on the background facts as presented in the RAD decision. They are not contentious.

[4] The Principal Applicant, Saosan Khalil I Almoqaiad, her husband Ashraf M.A. Ghareeb, and their three minor children [Co-Applicants], are seeking refugee status in Canada.

[5] The Principal Applicant is a citizen of Saudi Arabia. She claims that her family will harm her if she returns because of her refugee application in Canada. She also claims persecution in her home country due to her gender. The Co-Applicants are stateless Palestinians. All Co-Applicants claim discrimination related to their education and employment. The Co-Applicant Husband claims that he will be persecuted because he spoke out against the government of Saudi Arabia.

[6] The Principal Applicant and Co-Applicants [Applicants] arrived in Canada in September 2016 and made a refugee protection claim. The RPD rejected their claim due to, (a) a lack of

credibility, and (b) the finding that the Applicants experienced discrimination, not persecution. The RAD rejected the Applicants' appeal of the RPD decision on January 8, 2019.

### III. Issues & Standard of Review

#### A. *Issues*

[7] The Applicants raise three issues:

1. Did the RAD err in finding that the RPD did not breach procedural fairness, natural justice, and s 170 of the *Immigration and Refugee Protection Act* (IRPA) in the manner in which it conducted the hearing?
2. Did the RAD err in fact and law in finding that the RPD did not err in finding that the alleged treatment to the Applicants was not persecution, but merely discrimination?
3. Did the RAD err in its assessment of the RPD's credibility findings?

#### B. *Standard of Review*

[8] In accordance with the Supreme Court's recent revision of the administrative law framework, the overall decision is to be presumptively reviewed on a reasonableness standard. I see no reason that this standard should be rebutted in this case, as this not a statutory appeal, nor does it involve an exemption that would attract a standard of correctness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 101–102). The question of procedural fairness will continue to be assessed without deference to the decision-maker (*Yankson v Canada (Citizenship and Immigration)*, 2019 FC 1608 at para 14).

IV. Analysis

A. *Breaches of Natural Justice and Procedural Fairness*

[9] The Applicants' first argument is that the RAD erred in finding that the RPD did not breach procedural fairness, natural justice, and s 170 of IRPA. In support of these arguments the Applicants point to alleged interruptions and an argumentative or adversarial tone on the part of the RPD, which the RAD did not properly take into account.

[10] First, the Applicants argue that the RAD incorrectly found that the RPD member did not deny the Applicants' natural justice.

[11] Second, citing s 170(e) of IRPA—which mandates that the RPD must “give the person and the Minister a reasonable opportunity to present evidence, question witnesses and make representations”—the Applicants argue that the RPD erred in unreasonably limiting the scope of s 170 and the RAD erred by not quashing the RPD decision and setting a new hearing in accordance with IRPA s 111(1)(c). Within these arguments, the Applicants have also included an accusation for a reasonable apprehension of bias.

[12] What the Applicants seem to be asking is: did the RAD correctly assess the evidence before them in finding that there was no breach of procedural fairness or natural justice or IRPA s 170(e)?

[13] The Applicants rely on the passage in the RAD decision where the Board dismisses the natural justice/procedural fairness claim due to lack of evidence. According to the Applicants, the RAD was incorrect because they supplied affidavits that supported their claims. The information in the affidavits pointed to one example in the unofficial transcript of the hearing of an exchange between the RPD member and the Co-Applicants that the RAD characterized as a difference of opinion on the objective country-condition evidence.

[14] Accordingly, the RAD noted that those claims could not point to specific examples in the unofficial transcript (other than the exchange referred to above) where the alleged misconduct occurred.

[15] I find that the Applicants' argument regarding a reasonable apprehension of bias fails because they have not provided sufficient details as to how it is present in the current matter.

[16] The Applicants do little more than disagree with the kind of evidence that the RAD should have accepted and provides little legal support for their claims.

[17] The situation at hand is not unlike that before Mandamin J in *Chelaru v Canada (MCI)*, 2012 FC 1535:

[24] The Applicant submits that the RPD cut off questioning of the Applicant throughout the hearing, indicating that it had heard all it needed to hear. The Applicant submits that she was not able to fully present her case because of the time constraints placed on her testimony. She also argues that sacrificing procedural fairness for administrative efficiency is not a permissible trade-off, and therefore the RPD erred by not discharging its statutory obligation under s 162(2) of the IRPA to "deal with all proceedings before it

as informally and quickly as the circumstances and the considerations of fairness and natural justice permit."

[25] This argument has no merit. In the portion of the transcript relied upon by the Applicant, the RPD advises counsel of the issues it considers relevant to the claim. The RPD cautioned counsel against spending time on the issue of the Applicant's Roma heritage, because according to the Applicant's own testimony, her only fear was of her former common-law husband.

[18] The Court found that there was no reviewable error in simply cutting the claimant off when appropriate. In *Svecz v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 3 at paras 42-46, LeBlanc J. affirms the principle in *Chelaru*, above, stating that a decision-maker is entitled to limit repetitive testimony and does not breach natural justice by not allowing testimony that was not central to the claim.

B. *Persecution versus Discrimination*

[19] The Applicants argue that the RAD erred in law by finding that the alleged persecution against the Applicants only rose to the level of discrimination instead of persecution. They claim that the RAD's reasoning is "simply faulty and insufficient."

[20] I am not persuaded by the Applicants' argument on this issue. As the Respondent notes, the Applicants provide no explanation as to how the RAD has erred in making this determination; rather, the Applicants simply disagree.

[21] The RAD noted that the Co-Applicant husband operated a business with significant assets and that he was able to travel in and out of Saudi Arabia without incident.

[22] Respecting the Principal Applicant, who had been employed as a school principal and was an operator of her business, the RAD found that there was no reliable evidence that she suffered or would suffer persecution if she returned to Saudi Arabia. In considering a forward-looking claim the RAD observed that the RPD looked at the objective country-condition evidence and the allegations of the Applicants.

[23] Further, the Respondent notes that the Applicant has not challenged the adverse credibility findings of the RPD or RAD. With this, the RAD's finding that the Applicants did not have reliable material showing persecution of the Applicants is reasonable.

C. *Credibility*

[24] The Applicants argue that the RAD erred in confirming the RPD's assessment of the Applicants' credibility because the RAD did not understand that breaches of procedural fairness undermined the entire hearing, and that the credibility arguments may have been different if procedural fairness was present.

[25] I find that this argument, too, fails under the lens of judicial review. As the Respondent notes, the Principal Applicant did not argue this point before the RAD, nor have the Applicants argued that the RAD erred in confirming that the Applicants were not credible; rather, the Applicants only argue that procedural defects spoiled the credibility findings. The RAD noted that the contradictions and omissions in the written and oral testimony of the Principal Applicant and the Co-Applicant were not in relation to minor facts. The inconsistencies went directly to their main allegations.

V. Conclusion

[26] The RAD's decision is reasonable and its reasons are intelligible. The application for judicial review is dismissed. The parties have not raised any question of for certification and no such question arises.



**JUDGMENT in IMM-684-19**

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

There is no question of general importance for certification and none arises. There is no order as to costs.

“Paul Favel”

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-684-19

**STYLE OF CAUSE:** SAOSAN KHALIL I. ALMOQAIAD, ASHRAF M. A. GHAREEB, FUAD ASHRAF MOHAMMED GHAREEB, MAYA ASHRAF MOHAMMED GHAREEB, ABDULRHMAN ASHRAF MOHAMMED GHAREEB v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 4, 2019

**JUDGMENT AND REASONS:** FAVEL J.

**DATED:** JANUARY 29, 2020

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