Federal Court  Cour fédérale

Date: 20200917

Docket: IMM-4025-19

Citation: 2020 FC 901

Ottawa, Ontario, September 17, 2020

PRESENT: Mr. Justice McHaffie

BETWEEN:

ALI AL DYA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ali Al Dya claims that Hezbollah tried to forcibly recruit him to fight for them in Syria, and seeks refugee protection in Canada. The Refugee Appeal Division (RAD) of the Immigration and Refugee Board (IRB) found his narrative to be implausible, as it did not accord with the objective evidence about Hezbollah's recruitment practices in Lebanon, and aspects of his

account were inconsistent with the assertion that Hezbollah was interested in forcing him to fight.

[2] Mr. Al Dya argues that the RAD's decision was contrary to the *Valtchev* principle that implausibility findings should be made only in the "clearest of cases": *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776. He argues that the RAD made the same errors described in two recent decisions, *Zaiter* and *Khadra*, in which this Court found the RAD's treatment of the same country condition evidence and similar factual allegations to be unreasonable: *Zaiter v Canada (Citizenship and Immigration)*, 2019 FC 908; *Khadra v Canada (Citizenship and Immigration)*, 2019 FC 1150.

[3] I conclude the RAD's decision was reasonable. The RAD applied the governing law regarding plausibility findings, including *Valtchev*, in a reasonable way. In doing so, it reached a reasonable finding that Mr. Al Dya's account was implausible based on the country condition evidence and the details of his factual allegations. While the RAD did place undue reliance on the description of certain evidence as "anectodal," one of the analytical errors described in *Zaiter*, this was not determinative of the analysis and did not render the decision as a whole unreasonable. The RAD's analysis of Mr. Al Dya's other supporting documents was also reasonable.

[4] The application for judicial review is therefore dismissed. Although the Minister asked that I certify a question pertaining to *Valtchev*, I decline to do so as I conclude that the question is not dispositive, and that it is based on a misapprehension of *Zaiter*.

II. Issues and Standard of Review

[5] Mr. Al Dya raises the following two issues on this application:

A. Did the RAD err in concluding that Mr. Al Dya's account of his attempted forcible recruitment by Hezbollah was implausible?

B. Did the RAD err in its assessment of the other documents filed in support of Mr. Al Dya's application?

[6] The parties agree that these issues are to be reviewed on the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25. Applying that standard requires the Court to assess whether the decision is "based on an internally coherent and rational chain of analysis" and whether it is "justified in relation to the facts and law that constrain the decision maker": *Vavilov* at paras 85, 90, 99, 105–107. In making this assessment, the Court should refrain from reweighing or reassessing evidence, and should not interfere with factual findings absent exceptional circumstances: *Vavilov* at para 125. Nevertheless, *Vavilov* also underscores that a decision must be reasonable in light of the evidentiary record and the general factual matrix that bears on the decision: *Vavilov* at para 126.

[7] One of the "legal constraints" on an administrative decision is relevant binding precedent. A decision may be unreasonable if it departs from binding precedent or does so without reasonable justification: *Vavilov* at paras 111–112. While *Vavilov* specifically addresses binding precedent regarding interpretation of a statutory provision, the same principle applies in respect of other issues, such as the approach to credibility findings in assessing a claim for refugee protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001,

c 27 [*IRPA*]. If binding precedent establishes an applicable analytical framework, a decision may be unreasonable if it fails to apply that framework without reasonable justification: see, *e.g.*, *XY v Canada (Citizenship and Immigration)*, 2020 FC 39 at para 49.

[8] Mr. Al Dya highlights *Vavilov*'s recognition that the impact of a decision on an individual affects how a court conducts reasonableness review: *Vavilov* at paras 133–135. Where an individual's rights and interests are severely impacted, the reasons provided must "reflect the stakes": *Vavilov* at para 133. They must also demonstrate that the decision maker has considered the consequences of a decision, and that the consequences are justified in light of the facts and law: *Vavilov* at para 135. On my read of this discussion in *Vavilov*, however, it is directed to the need for "adequate justification" of a decision: *Vavilov* at para 133. Where the stakes are high, there is a heightened need to provide sufficient explanation to justify the decision.

[9] The refusal of Mr. Al Dya's refugee claim clearly has a significant impact on him. However, the RAD's decision was adequately explained, and Mr. Al Dya does not argue otherwise. The RAD provided detailed discussion of the legal principles and extensive reference to the factual record, and Mr. Al Dya does not point to shortcomings in the extent or manner to which the RAD explained its reasoning. His challenges are to the reasoning itself. If a decision is adequately explained, paragraphs 133 to 135 of *Vavilov* do not invite a greater degree of scrutiny or an attenuated approach to deference in conducting reasonableness review because of the decision's impact. The primary justification for deference described in *Vavilov*—respect for legislated institutional design choices—applies fully to Parliament's choice to leave the determination of refugee claims to the Refugee Protection Division (RPD) and the RAD, even

though such determinations inherently have significant impact on the claimant: *Vavilov* at paras 23–30; *IRPA*, ss 107, 110–111. I therefore do not consider that the significant impact of the RAD's decision on Mr. Al Dya materially changes the nature of reasonableness review in this matter.

III. Analysis

A. *The RAD's Implausibility Analysis was Reasonable*

(1) Mr. Al Dya's narrative

[10] Mr. Al Dya is a citizen of Lebanon and Syria. The heart of his claim for refugee protection is that Hezbollah tried to forcibly recruit him to fight for them in Syria, and would do so if he returned to Lebanon. He recounted Hezbollah's efforts to recruit him in Beirut over the period from 2013 to 2016. This began while he lived with his mother, with calls that appealed to his duty and offered compensation. When he refused, pressure increased, with repeated calls, insulting language and a promise to "come after" Mr. Al Dya. When the calls continued, Mr. Al Dya moved, changed his telephone number and started working as a taxi driver in Beirut. Over a year later, during which time Hezbollah continued to visit his mother's house, Mr. Al Dya started receiving phone calls again on his new number. Men came to the office of the taxi company he worked for, so he left that job, moved and changed his telephone number again, and took new work in a body shop.

[11] The culminating event described by Mr. Al Dya was an attack in June 2015. While visiting his family at his mother's house, men with covered faces and machine guns broke

through the door, grabbed Mr. Al Dya and tried to pull him out. His mother and sister tried to defend him, but the men pushed them away, injuring his mother. The men then left without Mr. Al Dya, but said they would return.

[12] After this attack, Mr. Al Dya says he looked for ways to leave the country. He was ultimately able to do so in October 2016, with the financial assistance of cousins in Canada and a false employment letter.

(2) The RAD's rejection of the narrative

[13] The RAD concluded that Mr. Al Dya's narrative of attempted forcible recruitment by Hezbollah was not credible for two primary reasons: (i) inconsistency with the objective documentary evidence regarding Hezbollah's recruitment practices; and (ii) inconsistencies between Mr. Al Dya's narrative and his assertion that Hezbollah was trying to forcibly recruit him.

[14] The first of these was based on the RAD's assessment of the country condition evidence regarding recruitment by Hezbollah in Lebanon. This evidence came in the form of both documents in the IRB's National Documentation Package (NDP) and additional articles filed by Mr. Al Dya. Based on this review, the RAD agreed with the RPD that "the preponderance of the objective documentary evidence states that Hezbollah does not engage in forced recruitment."

[15] Mr. Al Dya's submissions to the RAD, and his submissions to this Court, pointed to an element of a Response to Information Request (RIR) dated October 29, 2015, identified as

Item 7.4 in the NDP for Lebanon. The RIR deals specifically with recruitment practices of Hezbollah in Lebanon. That RIR begins by noting that "[a]ccording to sources, Hezbollah does not 'forcibly' recruit its members." At the same time, the RIR quotes a professor of international history at the London School of Economics (LSE) as saying there is "anecdotal evidence" that Hezbollah had "started forcibly recruiting since it has become more involved in the Syrian conflict" and that this "occurs mainly in rural areas where Hezbollah has strong influence such as southern Lebanon and the Beqaa valley."

[16] The RAD analyzed this evidence in the following manner:

> In assessing this evidence, I observe that "anecdotal evidence" has low probative value when weighed against other evidence in the record because it is unreliable and has not been verified. Furthermore, the Appellant did not live in rural areas where the professor believed there was anecdotal evidence of forced recruitment. Rather, he lived in the city of Beirut, the Druze dominated area of Aramoun, and the Christian area of Ashrafiyah.

[17] The RAD then referred to a May 2, 2016 article from the *Jerusalem Post* filed by Mr. Al Dya that reported on senior Hezbollah commanders sending their sons to Europe to prevent them from being coerced into fighting. The RAD noted that, unlike those described in the article, Mr. Al Dya is not a family member of those who have committed their allegiance to Hezbollah.

[18] The RAD weighed these two pieces of evidence against the evidence that Hezbollah does not engage in forced recruitment. In the latter category, the RAD listed expert opinions from four professors from three universities; representatives of three Western embassies in Lebanon; the Danish Refugee Council and the Norwegian Refugee Council; an official from Human Rights

Watch; a senior analyst from the International Crisis Group; and several observers from Lebanese human rights and non-governmental organizations. This evidence came from the RIR referred to above (Item 7.4) and an October 2014 report of the Danish Immigration Service entitled "Stateless Palestinian Refugees in Lebanon," which was Item 13.7 in the NDP for Lebanon. The RAD found that these statements "overwhelmingly outweigh" the anecdotal evidence given by the LSE professor and the *Jerusalem Post* article. It noted that this evidence was not silent on the issue of forced recruitment, but made "explicit statements contradicting" Mr. Al Dya's evidence.

[19] The RAD also addressed Mr. Al Dya's assertion that forced recruitment was growing given Hezbollah's desperation in light of losses in Syria. It found the evidence Mr. Al Dya filed did not support this claim, noting that even with these losses, Hezbollah's expanded recruitment techniques included recruiting non-Shiites and Palestinians, indoctrinating teenagers, and using monetary benefits, but did not include forcible recruitment. To the contrary, the RAD pointed to evidence that recruits are free to leave, and that Hezbollah's response to desertion is simply to cut off financial aid to recruits and their families.

[20] The second aspect of the RAD's credibility assessment was based on the RPD's findings that Mr. Al Dya's narrative was itself inconsistent with the claim that Hezbollah was seeking to forcibly recruit him. The RAD noted that given the evidence Hezbollah does not forcibly recruit men with Mr. Al Dya's profile, and that it has an extensive intelligence apparatus and military capacity, the RPD was correct to doubt Mr. Al Dya's story that he had evaded Hezbollah's pursuit of him for two years, and that he had escaped armed men because his mother and sister

intervened in the June 2015 attack. In doing so, the RAD approved the RPD's analysis that it was not credible that having targeted Mr. Al Dya for forcible recruitment and having pursued him for two years, Hezbollah broke into his house with machine guns and tried to pull him away, but then simply left without taking him after his mother and sister intervened.

[21] The RAD summarized its analysis of the plausibility of Mr. Al Dya's claim in the following terms, adopting language found at paragraph 14 of Justice Norris' decision in *St. Croix v Canada (Citizenship and Immigration)*, 2019 FC 461:

> The RPD found that the Appellant's story as a whole does not seem plausible and identified several discrete elements to lead to this conclusion. While none of these credibility concerns may be sufficient on its own to negate the claim, taken cumulatively, they do.

(3) The RAD's implausibility finding was not unreasonable

[22] The RAD's finding that Mr. Al Dya's story was not credible was, expressly, an implausibility finding. It found that his account was implausible given the objective evidence on Hezbollah recruitment and the details of his story.

[23] I conclude that the RAD's implausibility finding was reasonable. The RAD's reasons showed that it adopted the framework established by this Court in respect of implausibility findings, and applied that framework to the evidence in a reasonable manner.

(a) *The RAD's approach to its implausibility finding*

[24] Before turning to its analysis of the evidence, the RAD set out its understanding of the applicable legal framework for that analysis. The RAD thoughtfully sought to integrate a number of principles found in the case law:

- a refugee claimant's sworn evidence is presumed to be true unless there are reasons to doubt its truthfulness: *Maldonado v Minister of Employment and Immigration*, [1980] 2 FC 302 (CA) at p 305;

- the RPD and RAD may draw conclusions on credibility based on implausibilities, rationality, and common sense: *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 26; *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732, 160 NR 315 (CA) at para 4;

- uncontradicted evidence may be rejected if it is not consistent with the probabilities affecting the case as a whole: *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at paras 9–10, citing *Akinlolu v Canada (Minister of Citizenship and Immigration)*, [1997] FCJ No 296 at para 13;

- an implausibility finding may be reasonable where rationally connected to country condition evidence that is overwhelmingly contrary to the claimant's story: *Khakimov v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 18 at para 25(C);

- caution must be exercised in rejecting evidence on the basis of plausibility, given the concerns about subjectivity and cultural context: *Valtchev* at para 7;

- plausibility findings should only be made in the "clearest of cases," *i.e.*, where the facts presented are outside the realm of what could reasonably be expected, or the documentary evidence demonstrates the events could not have happened in the manner asserted by the claimant: *Valtchev* at para 7.

[25] Having reviewed these principles, the RAD stated its view that the "clearest of cases" standard with respect to implausibility findings does not displace the usual requirement that facts be established on the standard of a balance of probabilities. It also noted that "implausibility" should be distinguished from "impossibility," and interpreted the "clearest of cases" as a "caution that there must be evidence to underpin a plausibility finding, and not mere conjecture."

[26] As noted above, one of the legal constraints on an administrative decision is that of binding precedent: *Vavilov* at para 112. Here, the RAD correctly identified the legal principles regarding plausibility findings that constrained its decision-making.

[27] This Court and the Federal Court of Appeal have long recognized that implausibility findings raise particular issues in the context of refugee claims, given the differing political and cultural contexts in which such claims are raised, the subjective nature of such findings, and the potential to import inapplicable Canadian paradigms: *Ye v Canada (Minister of Employment and Immigration)*, [1992] FCJ No 584 (CA); *Bains v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 497; *Leung v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 774, 81 FTR 303 at paras 14–16.

[28] In *Valtchev*, Justice Muldoon cited *Leung* and *Bains*, and connected the issue of plausibility with the broader *Maldonado* principle that a claimant's sworn evidence is presumed to be true: *Valtchev* at paras 6–9. He summarized the concerns with implausibility findings in the refugee context, and the appropriate approach to making them, at paragraph 7 of his reasons, adopting language from L. Waldman, *Immigration Law and Practice*, (Markham: Butterworths Canada Ltd 1992) at §8.22:

> A tribunal may make adverse findings of credibility based on the implausibility of an applicant's story provided the inferences drawn can be reasonably said to exist. However, plausibility findings should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant. A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu.
>
> [Emphasis added.]

[29] This passage, and an equivalent passage in *Divsalar* citing the same text from Waldman, have been repeatedly cited and adopted by this Court, and form the basis of the Court's approach to implausibility findings in the refugee context: *Divsalar v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 653 at paras 23–24; *Zaiter* at para 8; *Aguilar Zacarias v Canada (Citizenship and Immigration)*, 2012 FC 1155; *Martinez Giron v Canada (Citizenship and Immigration)*, 2013 FC 7 at paras 14–18; *Sanchez v Canada (Citizenship and Immigration)*, 2018 FC 665 at paras 20–21.

[30] As the Minister noted, Justice Annis of this Court criticized the *Valtchev* approach as raising the evidentiary burden in respect of credibility findings based on implausibility, in thorough and thought-provoking reasons in *Kallab v Canada (Citizenship and Immigration)*, 2019 FC 706 at paras 102–131. A question on the issue was certified, but the appeal taken from that decision was discontinued: *Kallab* at para 224; *Kallab v Canada (Citizenship and Immigration)*, Court File No A-213-19. In my view, given the extensive authority from this Court adopting and applying *Valtchev*, it must be recognized as good law until overturned by a higher court. I will discuss this further below in addressing the Minister's request that I certify a question for appeal.

[31] Ultimately, the parties on this application did not argue that the statement from *Valtchev* that implausibility findings should only be made in the "clearest of cases" is itself incorrect. Rather, the Minister argues that *Valtchev* is wrongly applied if the reference to the requirement that events "could not have happened in the manner asserted" becomes a standard of "impossibility," or if it displaces the general rule that factual issues are decided on a balance of probabilities. For his part, Mr. Al Dya argues that *Valtchev* remains good law, and agrees that it does not reflect an "impossibility" standard. He argues that the RAD, while citing *Valtchev*, did not follow it, and that the primary issue is the unreasonableness of the RAD's treatment of the evidence, and in particular the "anecdotal evidence" cited by the LSE professor.

[32] I agree with the parties that *Valtchev* does not create a standard of impossibility. In other words, it does not limit implausibility findings to cases where it is impossible that the alleged events occurred. Rather, this Court has equated the "clearest of cases" and "could not have

happened" language from *Valtchev* to situations where it is "clearly unlikely" that the events occurred in the asserted manner, based on common sense or the evidentiary record: *Zaiter* at para 8; *Aguilar Zacarias* at paras 10–11. The RAD's distinction between "implausibility" and "impossibility" is consistent with this Court's jurisprudence and is reasonable.

[33] I also agree with the Minister and the RAD that *Valtchev* does not displace the overall burden on a refugee claimant to establish their claim on a balance of probabilities. In my view, the "clearest of cases" standard from *Valtchev* neither displaces the balance of probabilities standard nor reverses the legal burden of proof.

[34] There is an important distinction to be drawn between the burden of proof to establish facts on a balance of probabilities, and the analytical tools that apply to the assessment of evidence filed to meet that burden. The RPD and RAD may receive and base a decision on evidence "considered credible or trustworthy in the circumstances": *IRPA*, ss 170(*g*)-(*h*), 171(*a*.1)–(*a*.2). This Court has developed a number of principles regarding credibility findings in this context. Examples include this Court's statement that evidence should not be rejected based on trivial inconsistencies (see *Kanagarasa v Canada (Citizenship and Immigration)*, 2015 FC 145 at para 13), and its statements regarding the treatment of corroborative evidence (see *Ismaili v Canada (Citizenship and Immigration)*, 2014 FC 84 at paras 31–56). Neither of these affects the overall requirement that a claimant prove their claim on a balance of probabilities: *Ismaili* at para 32.

[35] The same is true of *Valtchev*. It addresses how and when evidence can reasonably be found not credible on grounds of implausibility. As with other principles, it does not affect the overall standard of proof. Its use of "clearest of cases" or "clearly unlikely" language does not mean that facts need not be proved on a balance of probabilities, and does not disturb the overall burden. Rather, this language recognizes that the unusual or improbable does occur, and that it is unreasonable to reject evidence as not credible simply because the events it describes are unusual. In other words, it *avoids* a fallacy that would equate the overall probability of an event occurring in another country with either the likelihood of it having happened to a particular claimant, or the likelihood the claimant is lying in claiming it happened to them.

[36] To take a straightforward hypothetical example, suppose country condition evidence establishes that local police issue a summons in slightly more than half of cases where they seek to arrest a person. Overall, it is more likely than not that a summons would be issued if the police sought to arrest someone. Yet it is clearly plausible that the police would seek to arrest someone without a summons; it happens almost half the time. If a claimant testified that the police sought to arrest them without a summons, it would be a fallacy to conclude that it is more likely than not the claimant is lying based simply on the overall probabilities that prevail in the country. Put another way, it would be unreasonable to find the claimant's account lacked credibility as "implausible" because it involved a "less than likely" scenario. Recognizing and avoiding this fallacy in no way changes the overall burden on the claimant to prove their claim on a balance of probabilities.

[37] Counsel for Mr. Al Dya raised another example of this fallacy in oral argument. He rightly noted that if he advised the Court he could not attend a hearing because he had been in a car accident, it would be unreasonable to disbelieve that assertion as implausible simply because the chances of any given driver being in a car accident on a given day are very low. As Justice Norris noted in *Zaiter*, the *Valtchev* principle seeks to avoid the fallacious conclusion that because an event is uncommon or unlikely, it did not (or could not) occur: *Zaiter* at para 8.

[38] *Valtchev* also seeks to ensure that implausibility findings do not rely on misplaced assumptions about what is likely or rational from a Canadian frame of reference. In this regard, it is worth noting that *Valtchev* describes two related aspects of plausibility findings: the sense of what is rational or logical ("outside the realm of what could reasonably be expected"), and the assessment of the relevant documentary evidence ("documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant"). These are related since what is considered rational or logical—what "makes sense"—in a given context may be impacted by the documentary evidence, notably the evidence of country conditions: *Aguilar Zacarias* at paras 10–11; *Valtchev* at para 9.

[39] At the same time, *Valtchev* does not preclude consideration of plausibility or likelihood in making credibility assessments. If the evidence shows that a particular occurrence never occurs or is clearly unlikely, this may form a reasonable basis for an adverse credibility finding, particularly if there is nothing to explain or corroborate the clearly unlikely occurrence. Similarly, an assertion may be so far-fetched, so far outside the realm of what could be

reasonably expected, even after taking cultural differences into account, that it is implausible, even if the objective evidence does not directly address the likelihood of its occurrence.

[40] In most real-world situations, country condition evidence will not be as clear or as mathematical as the examples above, and may be equivocal, competing or even conflicting. In such cases, the RPD or the RAD will be called upon to assess the country condition evidence to determine what it says about the plausibility or likelihood of a particular scenario arising. As with other evidentiary assessments, this is done on a balance of probabilities. That assessment may have to address viewpoints that cannot co-exist, such as one source of evidence saying a particular scenario never happens, and another saying it always does. In such a case, the decision maker may have to determine and explain which evidence is preferred, on a balance of probabilities. In other cases, different elements of evidence may be reconcilable. For example, evidence that says a particular scenario is rare or unlikely does not conflict with evidence that it sometimes occurs. These evidentiary assessments are part of the decision maker's core function.

[41] Finally, I also note that it is important to distinguish between the rules governing the RAD's task in assessing evidence and making credibility findings, and the Court's role in reviewing its performance of that task. Citing *Kallab*, the Minister raised concerns that the *Valtchev* principle is inconsistent with the standard of review of factual findings. I cannot agree. Recognizing that there are legal constraints regarding reasonable credibility findings does not mean that the deference due to factual findings is lessened. As noted above, *Vavilov* confirms that factual findings are reviewed on the reasonableness standard, and that such review does not entail reweighing or reassessing the evidence: *Vavilov* at paras 125–126. It does, however,

include reviewing whether the decision maker applied the right legal framework, including in their assessment of the evidence.

[42] I conclude that the RAD's statements that "implausibility" is not the same as "impossibility," and that the "clearest of cases" standard does not displace the general standard of a balance of probabilities, are reasonable.

[43] I have some difficulty with the RAD's statement that it interprets the "clearest of cases" as a "caution that there must be evidence to underpin a plausibility finding, and not mere conjecture." Certainly, this is one aspect of the *Valtchev* principle. However, the "clearest of cases" language is not merely a "caution." As noted above, it equates to a "clearly unlikely" standard that helps avoid the fallacy of assuming that evidence of an unlikely event is likely to be false. However, given the RAD's express recognition that implausibility findings should only be made in the clearest of cases, I am satisfied that its statement of the applicable law was reasonable.

(b) *The RAD's treatment of the evidence*

[44] Mr. Al Dya argues that the RAD made two related errors in its application of the foregoing principles to the evidence regarding forcible recruitment by Hezbollah. First, he argues the RAD erred in discounting the evidence of the LSE professor regarding instances of forced recruitment on the basis that it is described as "anecdotal." Second, he argues that although the RAD stated the *Valtchev* "clearest of cases" principle, it actually found his story to be implausible only because it was unlikely.

[45] With respect to each of these issues, Mr. Al Dya relies on the decision of Justice Norris in *Zaiter*. That case similarly involved an allegation that the claimant faced forcible recruitment by Hezbollah in Lebanon. Mr. Zaiter had pointed to the same element of the same RIR—the evidence from the LSE professor that Hezbollah had started forcibly recruiting—in support of the contention that Hezbollah had changed its recruitment strategies. Justice Norris found the RAD's adverse credibility determination to be unreasonable since the RAD made its plausibility assessment based only on whether it was "unlikely to have happened in the manner asserted," rather than the "clearly unlikely," "outside the realm of what could reasonably be expected" or "could not have happened" standard from *Valtchev*: *Zaiter* at paras 8–11. The RAD also improperly made assumptions about what the LSE professor meant by the word "anecdotal": *Zaiter* at paras 12–16.

[46] Mr. Al Dya also relies on the decision of Justice Lafrenière in *Khadra*, another decision involving an allegation of forcible recruitment by Hezbollah in Lebanon. Referring to and adopting *Zaiter*, Justice Lafrenière noted that the RAD did not engage with the objective documentary evidence on forced recruitment in any detail, and did not address articles produced by Mr. Khadra describing forced recruitment by Hezbollah: *Khadra* at paras 17–21. He concluded he was unable to determine the basis for the RAD's weighing of the evidence, or whether the RAD had considered the totality of the evidence: *Khadra* at para 23.

[47] Turning first to Mr. Al Dya's argument regarding the "anecdotal" evidence, I do not agree that the RAD's treatment of this issue rendered its decision unreasonable. Unlike in *Zaiter*, the RAD did not purport to assess what the LSE professor meant by the term "anecdotal." That

said, I agree with Mr. Al Dya that the RAD's observation regarding the LSE professor's evidence as "anecdotal" does repeat one of the errors identified by Justice Norris, namely that it appears to assume a lesser degree of verification or reliability than other statements in the RIR, even though the evidentiary support for those opinions is not stated: *Zaiter* at para 16.

[48] Significantly, however, the RAD did go on to consider whether the LSE professor's evidence supported Mr. Al Dya's narrative, and concluded that it did not. The RAD noted that Mr. Al Dya "did not live in rural areas where the professor believed there was anecdotal evidence of forced recruitment." This is unlike the situation in *Zaiter*, where Justice Norris noted that the circumstances described by the professor were consistent with Mr. Zaiter's account, given that the harassment had begun when he was living in the Beqaa Valley. While Mr. Al Dya underscores that the professor's evidence was that the reported instances of forced recruitment occurred "mainly" in rural areas, suggesting some occurrences outside that area, I do not believe that this one qualifier can perform the task Mr. Al Dya assigns to it, of rendering the RAD's decision unreasonable for not having accepted the possibility of Hezbollah recruitment in Beirut. To do so would effectively raise the implausibility standard to that of impossibility, which Mr. Al Dya accepts is not the law.

[49] In addition, unlike the analysis described in *Zaiter*, the RAD undertook a weighing exercise and explained that it was giving primacy to the consistency between multiple other sources, including additional sources beyond the RIR, each of which concurred that Hezbollah did not engage in forced recruitment.

[50] Nor did the RAD fail to engage with the documentary evidence on forced recruitment or fail to address the articles filed by Mr. Al Dya, as was the case in *Khadra*. Rather, the RAD undertook a detailed consideration of the objective evidence, including both those elements in the evidence that indicated that forcible recruitment did not happen, and those elements that described reported instances of it having occurred. This included an assessment of articles Mr. Al Dya filed that reported that Hezbollah commanders were seeking to protect their sons from forced recruitment, and reported on the recruitment of children, which is by definition not voluntary. Again, the RAD noted that these situations did not describe Mr. Al Dya's situation as he was an adult and not related to someone who had already committed allegiance to Hezbollah.

[51] Importantly, the RAD's assessment of plausibility was not solely based on its assessment that the objective evidence did not support forcible recruitment by Hezbollah of men with Mr. Al Dya's profile. It also assessed Mr. Al Dya's specific factual allegations, doubting the plausibility of his story that he evaded Hezbollah for two years and that when Hezbollah sent armed men to forcibly take him away, they abandoned that task because his mother and sister intervened. The RAD noted that the various credibility concerns may not have been sufficient on their own to negate the claim, but that taken cumulatively, they did. This cumulative assessment of implausibility, based on an assessment and weighing of the country condition evidence and a review of the particular factual allegations, is entitled to deference.

[52] Thus, although the RAD may have overstated the significance of the LSE professor's evidence being described as "anecdotal" when compared to some of the other evidence, I cannot conclude that this rendered the decision as a whole unreasonable. The misstep is not so

"sufficiently central or significant to render the decision unreasonable": *Vavilov* at para 100. The difference between this conclusion and that reached in *Zaiter* and *Khadra* is the result of the differences in the RAD's analysis of the evidence and the factual situations between the cases.

[53] I turn then to Mr. Al Dya's second argument that the RAD did not apply the *Valtchev* "clearest of cases" analysis, but rather made the error described in *Zaiter* of making an implausibility finding based on mere likelihood. Again, I do not agree that the RAD in this case made the same error that was made in *Zaiter*.

[54] As set out above, the RAD concluded that the "clearest of cases" standard does not displace the usual standard of establishing a fact on a balance of probabilities. For the reasons discussed, I conclude that this is reasonable. The "clearest of cases" standard addresses a different issue than the balance of probabilities standard. Unlike in *Zaiter*, I see no indication that the RAD, having reasonably stated the applicable approach, then made its implausibility findings based only on a conclusion that forced recruitment was "unlikely." To the contrary, the RAD expressly concluded that based on both the country condition evidence and Mr. Al Dya's factual account, the events described "were outside the realm of what could reasonably be expected in the present circumstances." This is the assessment required by *Valtchev*. I am satisfied based on my review of the RAD's decision that it understood and applied the appropriate approach to its implausibility finding, and that its finding was reasonable.

B. *The RAD's Assessment of the Other Supporting Documents was Reasonable*

[55] Before reaching its conclusion on credibility, the RAD looked at Mr. Al Dya's other documents to see if they corroborated the events and resolved the credibility concerns. However, as the RAD noted, none of the documents corroborated Mr. Al Dya's contention that Hezbollah had tried to forcibly recruit him. A medical report on his mother's injuries did not speak to how they occurred, leases simply indicated that he had moved, and letters from his sisters describing the June 2015 attack did not state that Hezbollah had tried to forcibly take him away to fight, as he alleged.

[56] Mr. Al Dya argues that this analysis of the documents faulted them for what they did not say, and not what they do say. This Court has held such an analysis to be unreasonable: *Arslan v Canada (Citizenship and Immigration)*, 2013 FC 252 at para 88; *Gabila v Canada*, 2016 FC 574 at paras 35–40.

[57] I disagree. Unlike in *Arslan* and *Gabila*, the RAD did not impugn the credibility of the supporting documents based on missing information. Rather, it simply noted that the documents did not contain information to corroborate the central aspect of Mr. Al Dya's claim, namely that Hezbollah had tried to forcibly recruit him. The documents were therefore not helpful to corroborate the claim, nor to resolve the credibility issues raised by the assessment that Mr. Al Dya's story was implausible. Finding that a document does not contain information that corroborates a story is different from finding the document not credible because it does not contain certain information.

[58] I therefore conclude that the RAD's assessment of the supporting documents filed by Mr. Al Dya was reasonable.

IV. Conclusion

[59] As I have not been satisfied that the RAD's rejection of Mr. Al Dya's claim for refugee protection was unreasonable, the application for judicial review is dismissed.

V. Certified Questions

[60] The Minister asks the Court to certify the following questions as being serious questions of general importance, pursuant to subsection 74(*d*) of the *IRPA*:

> Is the statement in *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776, that the Refugee Division's implausibility findings of credibility can only be made in the clearest of cases a correct statement of law? Does it impose a particular burden of proof?

[61] The first of these questions is essentially the same as one of the questions certified in *Kallab*. While the Minister's question as phrased refers to the "Refugee Division," I take it to refer to both the RPD and the RAD, as the *Valtchev* principle applies to each.

[62] The Federal Court of Appeal has confirmed that in order to be certified, a question must be a serious question that (a) is dispositive of the appeal; (b) transcends the interests of the parties; and (c) raises an issue of broad significance or general importance: *Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at para 46.

[63] I agree with Mr. Al Dya that the issue raised in the Minister's proposed question is not dispositive of this application and thus does not meet the requirements for certification. I note that as described above, the Minister and Mr. Al Dya agreed that the *Valtchev* "clearest of cases" approach was correct. Mr. Al Dya's concern was that the RAD had not applied that standard in his case. The Minister's concern was the possibility that *Valtchev* might be taken to displace the general standard of proof on a balance of probabilities. As discussed above, the RAD did apply the *Valtchev* principle, and that principle does not displace the standard of proof on a balance of probabilities. While the applicable approach to questions of plausibility was necessarily relevant to this application, this does not in my view make the general question of whether *Valtchev* is good law "dispositive" in the sense of *Lunyamila*, particularly where the parties agree that *Valtchev* is good law. Were it otherwise, a question might be certified on whether any binding authority was "good law" any time a case was argued on the basis of that authority.

[64] Based on the Minister's submissions, I understand the certified questions to be ultimately directed at whether *Valtchev* represents an exception to the general rule that a claimant bears the burden of proof on a balance of probabilities. This appears to be based on a concern with Justice Norris' statement in *Zaiter* that there must be something more than a "mere unlikelihood" before a claimant's account is rejected as not credible because it is implausible. In my view, this concern is misplaced. I do not read Justice Norris as suggesting the overall burden of proof to be anything other than the balance of probabilities. To the contrary, he was simply adopting and applying the analysis already well established in *Valtchev* and *Aguilar Zacarias*. As discussed, the "clearly unlikely" and "clearest of cases" language in those cases does not speak to the burden of proof. Rather, it helps avoid the fallacy of equating credibility with likelihood, and

finding any assertion that something uncommon happened to be inherently implausible. In any event, it would not be appropriate for me to certify a question in this case to address concerns that the Minister might have with the decision in *Zaiter*.

[65] I therefore decline to certify a question as requested by the Minister.

JUDGMENT IN IMM-4025-19

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

"Nicholas McHaffie"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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