

Federal Court



Cour fédérale

**Date: 20211015**

**Docket: IMM-5709-20**

**Citation: 2021 FC 1082**

**Ottawa, Ontario, October 15, 2021**

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

**BETWEEN:**

**MOATAZ JAMAL EL ALI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The applicant, Moataz Jamal El Ali, seeks judicial review of a decision dated October 22, 2020, by a Senior Immigration Officer [Officer] refusing his application for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds.

[2] In my view, I find that the Officer erred in his/her assessment of the adverse country conditions and the degree of hardship Mr. El Ali will face if returned to Lebanon. On that issue, I find that the Officer's decision fails to reveal a rational chain of analysis, leading to conclusions which do not reasonably flow from the elements of evidence under review.

[3] For the reasons that follow, I grant the application for judicial review.

## II. Facts

[4] Mr. El Ali is a stateless Palestinian born on July 6, 1982, in the Beddawi Palestine refugee camp in Lebanon, where he grew up. In 2004, Mr. El Ali moved to the United Arab Emirates [UAE] for work and in 2008 married Ms. Hiba Imad Kassem, also a stateless Palestinian. The couple remained in the UAE, save for a short period in December 2009, when Ms. Kassem returned temporarily to Lebanon to give birth to their first son, Bilal.

[5] Between 2010 and 2016, the family lived in the UAE, where Mr. El Ali was able to work. Their second son, Mohamad, was born in the United States in March 2013 during a family visit to that country. Their third son, Omar, was born in the UAE in August 2014. However, Mr. El Ali knew that he could never become a permanent resident of the UAE and that the family would always depend on his employer to retain their temporary resident status. Therefore, in order to find stability, Mr. El Ali and Ms. Kassem decided to move the family to Canada and claim refugee protection.

[6] On the strength of United States visas, Ms. Kassem, along with Bilal, Mohamad and Omar, travelled to Canada via the United States and arrived on February 12, 2016, by crossing the border in Fort Erie. They immediately claimed refugee protection. Since Mr. El Ali was still able to work in the UAE, he decided to join them later, which he did on May 29, 2016, when he arrived in Canada to claim refugee protection. The family's claims were eventually joined. On March 3, 2017, Ms. Kassem gave birth in Canada to their daughter, Lara.

[7] On March 28, 2017, the Refugee Protection Division [RPD] refused the family's claim for refugee protection, and on May 4, 2017, the Refugee Appeal Division [RAD] found them ineligible to make an appeal pursuant to the *Agreement between the Government of Canada and the Government of the United States of America for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries* (otherwise known as the "Safe Third Country Agreement") and subparagraph 110(2)(d)(ii) of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]*.

[8] Their applications for judicial review of the RPD and RAD decisions (respectively IMM-1756-17 and IMM-2356-17) were held in abeyance pending the adjudication and appeal decision in *Kreishan v Canada (Citizenship and Immigration)*, 2019 FCA 223, issued on August 19, 2019, regarding the jurisdiction of the RAD for claimants who entered Canada from the United States under an exception to the Safe Third Country Agreement. Eventually, the application for judicial review of the RPD's decision was dismissed on July 29, 2020, and the applicants therein then discontinued their application for judicial review of the RAD decision.

[9] While the applications for leave and judicial review were pending, Mr. El Ali, Ms. Kassem and their children applied for permanent residence on H&C grounds in October 2018, however, following an incident of domestic violence, Mr. El Ali and Ms. Kassem separated after he was criminally charged. Mr. El Ali's H&C application was severed from the one for the rest of the family. Eventually, the H&C application of Ms. Kassem and her three sons was granted.

[10] The criminal charges against Mr. El Ali were eventually resolved in March 2020 with a peace bond and mandatory completion of the Partner Assault Response Program; Mr. El Ali therefore has no criminal record.

[11] In his updated H&C submissions, Mr. El Ali acknowledges his wrongdoing in the dispute with his spouse:

My wife Hiba and I have had problems in our marriage and it has led our case to separate. I am deeply sad and ashamed of this but I respect her choice. It has been so hard for us in Canada, and for me as I feel such pressure to find safety and provide for our kids; that I have been a person I never want to be. I have apologized to Hiba to my children and to everyone in my life and I am doing the work I need to change. We had never had problems like this before. In court after our fight I was given a peace bond and ordered to do classes which I have done. These classes have been a great help for me. My father had a temper and I am seeing that I am doing the same as him. I hate this about myself and I promise to myself and to God and to Hiba and my beautiful children that I will do everything I can to never be like this again.

[12] On October 22, 2020, the Officer refused Mr. El Ali's request for an H&C exemption. It is this decision which is the subject matter of the present application for judicial review.

[13] Mr. El Ali remains currently separated from Ms. Kassem, who is now a permanent resident and lives in Canada with the four children: Bilal, 11 years old, Mohamad, 8 years old, Omar, 7 years old and Lara, 4 years old; the boys are all permanent residents and Lara is a Canadian citizen by birth.

### III. The Decision under Review

[14] The Officer identified four factors expressed by Mr. El Ali in his H&C application: his establishment in Canada, the best interests of the children [BIOC], his relationship with his sister who is a permanent resident in Canada, and the adverse country conditions and the hardships that he would face as a stateless Palestinian if he returned to Lebanon.

[15] First, the Officer found that although Mr. El Ali had acknowledged responsibility for the incident involving his wife, his “record of domestic violence in Canada against his wife, even though it did not result in a criminal conviction, is an important negative factor which must be weighed together with the positive H&C factors in his case” [emphasis added].

[16] The Officer reviewed Mr. El Ali’s work history and found that he was on government assistance for much of his time in Canada, having been issued a work permit for only 20 months since first arriving in Canada in May 2016 – although in fairness to Mr. El Ali, at the time of the Officer’s decision, he was employed as a construction worker and held a work permit valid until August 2021. In the end, the Officer found that there was insufficient evidence to conclude that Mr. El Ali had a “pattern of sound financial management in this country.”

[17] The Officer also considered the letter of support from Mr. El Ali's sister with whom Mr. El Ali had a close relationship. The Officer, however, found that "it is expected that a certain level of establishment would have been achieved" by Mr. El Ali after residing in Canada for over four years. In the end, and on the basis of the evidence before him, the Officer gave only "some weight" to Mr. El Ali's establishment factor.

[18] The Officer then considered the BIOC factors if Mr. El Ali was to return to Lebanon and found that he did not provide sufficient supporting evidence regarding his relationship with his children to demonstrate that he plays a central role in caring for them.

[19] Other than a letter from Mr. El Ali stating that he visits with his children about three times per week, the Officer found that there was no other evidence such as a letter of support from Ms. Kassem that such visits were regular. In addition, the Officer found that there was insufficient evidence to show that Mr. El Ali had been financially supporting his family on an ongoing basis since he separated from his wife. The Officer pointed to the fact that no separation agreement had been filed to establish the level of support Mr. El Ali is to provide for his children or the level of access he is to have of them – I should point out that it is unclear whether a separation agreement between Mr. El Ali and Ms. Kassem even exists or what the terms of their separation actually are.

[20] In any event, on the whole, the Officer was not satisfied that there was sufficient evidence regarding the nature of Mr. El Ali's relationship with his children to conclude that he "plays a central role in caring for his children or a significant parental role in their lives and

development.” With Ms. Kassem and the boys having received permanent residence status, and with little Lara already a Canadian citizen, the Officer found that there was little risk that the children would be uprooted from their home in Canada and that it was reasonable to conclude that the children would continue to enjoy the love and support of their mother, who seems to be the primary caregiver.

[21] Third, the Officer considered the adverse country conditions to assess the hardship Mr. El Ali would face if he was returned to Lebanon. Although the Officer acknowledged that the evidence indicates that discriminatory laws in Lebanon adversely affect the rights of Palestinians, whether living inside or outside the refugee camps, the Officer found that Mr. El Ali was not denied access to education while in Lebanon – Mr. El Ali studied at the Lebanese American University in Beirut from where he obtained a degree in business administration. After outlining and assessing the concerns expressed by Mr. El Ali in the event he was to return to Lebanon, particularly as a returning Palestinian in the midst of severe economic conditions in that country, the Officer found that there was insufficient evidence to conclude that Mr. El Ali “would be denied the right to earn a livelihood in Lebanon upon his return to that country.” The Officer did, in the end, give some weight to the adverse country conditions, which “negatively impact the security in that country.”

[22] The Officer concluded by repeating Mr. El Ali’s history of domestic violence, which was “an important negative factor which must be weighed together with the positive H&C factors in his case”, and found that he/she was “not satisfied that sufficient H&C grounds exist to approve this exemption request.” Mr. El Ali’s application was therefore denied.

#### IV. Issues

[23] Mr. El Ali raises two issues in his application, *to wit*, the reasonableness of the Officer's decision and the failure of the Officer to respect the principles of procedural fairness.

[24] In particular, Mr. El Ali argues that the Officer unreasonably assessed the adverse country conditions and the hardship he would face in Lebanon as well as the BIOC factors. In addition, Mr. El Ali argues that as a self-represented litigant, the Officer owed him a heightened obligation of procedural fairness and in light of a veiled credibility finding, should have flagged for him by way of a procedural fairness letter the shortcomings in his evidence so that Mr. El Ali could have an opportunity to respond and complete his application if necessary.

#### V. Standard of Review

[25] There is consensus that reasonableness is the applicable standard of review of an H&C decision (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 57-62; *Kanhasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44 [*Kanhasamy*]; *Khira v Canada (Citizenship and Immigration)*, 2021 FC 160 at para 27 [*Khira*]).

[26] In conducting a reasonableness review, a court “must focus on the decision the administration decision maker actually made, including the justification offered for it, and not on the conclusion the court itself would have reached in the administrative decision maker's place” (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 15 [*Vavilov*]). A reasonable decision “is one that is based on an internally coherent and rational



chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at paras 85, 102).

[27] To determine whether there was a breach of procedural fairness, the Court must determine whether the decision-making process was fair having regard to all of the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54, 56; *Mission Institution v Khela*, 2014 SCC 24 at para 79 and *Khan v Canada (Citizenship and Immigration)*, 2019 FC 534 at para 19).

[28] Finally, I would add that that subsection 25(1) of the IRPA confers broad discretion on a visa officer. The granting of an exemption based on H&C grounds is deemed exceptional and discretionary, and the visa officer is entitled to deference (*Kanthasamy* at paras 93, 111; *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 at paras 11, 15; *Serda v Canada (Minister of Citizenship and Immigration)*, 2006 FC 356 at para 20 and *Adams v Canada (Citizenship and Immigration)*, 2009 FC 1193 at para 31).

## VI. Analysis

[29] I need not deal with the procedural fairness issue as I find that the Officer failed to properly address the adverse country conditions and the hardship that Mr. El Ali would face if he were to return to Lebanon. As the assessment of hardship played a determinative role in the Officer’s decision, the decision must be set aside.

[30] I should first mention that Mr. El Ali takes no issue with the Officer's finding regarding his reprehensible conduct that led to his separation from his wife and children. The Officer rightly found that Mr. El Ali's "record of domestic violence in Canada against his wife, even though it did not result in a criminal conviction, is an important negative factor which must be weighed together with the positive H&C factors in his case." Mr. El Ali has accepted responsibility for his actions, has sought forgiveness from his family, and must now live with the consequences.

[31] Mr. El Ali also takes no issue with the fact that the Officer only gave "some weight" to the establishment factor.

[32] Rather, Mr. El Ali challenges the manner in which the Officer addressed the adverse country conditions and the hardship he would face as a stateless Palestinian having to return to Lebanon, to which the Officer only gave "some weight". Mr. El Ali also challenges the Officer's assessment of the BIOC factor.

[33] In the Officer's decision, the Officer accepts that "[a]dverse country conditions that have a direct negative impact on [Mr. El Ali] are a relevant factor in the assessment of hardship in an H&C application."

[34] Mr. El Ali provided evidence that as a stateless person living in the Beddawi refugee camp, he lived a life of fear and uncertainty, with little if any security and constant violence within the camp. The Officer acknowledged the overcrowding in the camp and the documentary

evidence which “indicates that Palestinians in Lebanon are marginalized and excluded from key aspects of social, political, and economic life, including curtailed access to health and educational services as well as limited job opportunities and a prohibition from owning property.” The Officer also recognized Mr. El Ali’s assertion that he “will be forever stateless because Lebanon denies any path to citizenship for Palestinian refugees.”

[35] However, rather than addressing those concerns, the Officer thereafter concluded that “there is insufficient objective evidence before [him] to conclude that it is mandatory for stateless Palestinians in Lebanon to live in refugee camps rather than outside of the camps. Therefore, it is reasonable to conclude that [Mr. El Ali] could live outside of the Beddawi refugee camp upon his return to Lebanon”.

[36] I have trouble following the Officer’s chain of analysis.

[37] First of all, Mr. El Ali never argued that it was “mandatory” for him to live in the refugee camp. Consequently, why the Officer would make that statement is unclear.

[38] What is also unclear is how the Officer, in his/her chain of analysis, reasonably concluded that Mr. El Ali could live outside of the Beddawi refugee camp upon his return to Lebanon. The Minister argued that the documentary evidence allowed the Officer to arrive at this conclusion. That may be so, but the conclusion does not logically and reasonably follow in the chain of analysis of the decision.

[39] The Officer acknowledged that there is a prohibition against Palestinians owning property in Lebanon. The documentary evidence suggest that the few Palestinians who do succeed in living outside the camps are subject to exorbitant rents for apartments – assuming they can find employment which pays wages allowing them to afford such rents – or must use Lebanese nationals as *prête-noms*, leaving them at risk of being evicted from their own properties as they are never seen as being the registered owners. In her affidavit filed in support of what was then the combined H&C application for the entire family, Ms. Kassem states:

Because we were stateless, we weren't allowed to purchase homes or land outside of the refugee camp, or own businesses—at least not with [*sic*] the assistance of a Lebanese citizen. But even that came with it's [*sic*] own troubles. I have heard many stories about stateless Palestinians who have bought homes outside of the camp and put the home in the name of a Lebanese person, only to be evicted from their home by that person. The only security we had, however flimsy, was to live in the camp.

[40] In the face of such evidence, it is also unclear how the Officer could “reasonably conclude” that Mr. El Ali was able to live outside the camp. Mr. El Ali had lived his whole life in the refugee camp and left only to follow his family to the UAE, where he had secured employment. There is no evidence that Mr. El Ali ever did live outside the refugee camp, although from the Officer's conclusions, Mr. El Ali's education should have allowed him to do that.

[41] More importantly, whether Mr. El Ali could live outside the refugee camp may be less of an issue. The Officer recognized that Palestinians are marginalized in Lebanon and excluded from access to certain jobs and property. Not only is there systemic discrimination against Palestinians, but Mr. El Ali also argues that laws prohibiting Palestinians from accessing certain

professions such as lawyers, doctors and engineers as well as from owning property point to state-sponsored discrimination, a perennial condition of uncertainty with no possibility of ever achieving stability or citizenship within the country.

[42] The Minister argues that Mr. El Ali did not provide evidence to show that he fell within one of the 37 professions from which Palestinians are admittedly excluded. However, Ms. Kassem states in her affidavit that Palestinians are prohibited from owning businesses. Mr. El Ali in fact has a business degree. It may be that although barred from owning a business he would be able to work for one, but that line of analysis was not made prior to the Officer coming to the conclusion that Mr. El Ali would be able to find work.

[43] The Officer readily acknowledged that “[t]he evidence before [him/her] indicates that in Lebanon discriminatory laws adversely affect the rights of Palestinians, be it inside or outside of the refugee camps.” However, rather than addressing the systemic nature of such discrimination and the impact such may have on Mr. El Ali, whether inside or outside the refugee camp, the Officer simply went on to state the following: “at the same time, I find that [Mr. El Ali] was not denied access to education in Lebanon . . . he completed secondary school . . . and . . . studied at the Lebanese American University in Beirut, where he obtained a degree in business administration.”

[44] Again, there seems to be a break in the logical chain of analysis between what the Officer had identified as elements of the relevant evidence and his/her ultimate findings. I appreciate that Mr. El Ali was able to benefit from an education, however, the Officer did not address the

extensive evidence confirming what Mr. El Ali has been experiencing as a stateless Palestinian seeking to earn a livelihood in Lebanon, whether inside or outside the Beddawi refugee camp, as well as documentary evidence which confirms that the situation in Lebanon has only deteriorated for refugees with the recent influx of refugees from Syria.

[45] Rather, the Officer found that there was “insufficient objective evidence before [him/her] to conclude that [Mr. El Ali] would be denied the right to earn a livelihood in Lebanon upon his return to that country”; the Officer was, however, “cognizant of the fact that Palestinians are prohibited from working in certain occupations” and that it was “likely that [Mr. El Ali] could be negatively impacted by the state of the economy in Lebanon upon his return to that country because Lebanon is facing its worst economic and financial crises in thirty years.”

[46] The Officer makes no mention of the fact that the documentary evidence confirms that Palestinians are excluded from the labour market not only on account of statutory bans, but also on account of onerous requirements to obtain work permits, such as the requirement for employers to prove that a Lebanese national could not occupy the position. In short, for various high skilled jobs, Palestinians born in Lebanon are treated as foreign workers.

[47] The Minister argues that the Officer recognized that Mr. El Ali, because of his education, language skills and experience in working in high skilled jobs outside of Lebanon, simply did not meet the profile of the typical stateless Palestinian refugee to which much of the documentary evidence relates. That may be so, however, the Officer does not address the issue of how Mr. El Ali was able, despite the odds, to obtain a university degree in Lebanon, which led to

12 years of skilled work in the UAE. And that is precisely the point – Mr. El Ali stated that he had to leave Lebanon to find work in another country since he was unable to find work in Lebanon because of the systemic and state-sponsored discrimination. I find it difficult to follow the Minister on this issue.

[48] In the end, I am not satisfied that the Officer’s decision was “based on an internally coherent and rational chain of analysis . . . that is justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at paras 15, 85, 102). Although findings on hardship by immigration officers do attract a highly deferential standard of review (*Khir*), in this case, the Officer’s conclusions regarding Mr. El Ali’s likelihood of earning a living in the event he is returned to Lebanon are unintelligible, and the reasoning of the Officer fails to address the very “objective” evidence which points to the ongoing discrimination and hardship that stateless Palestinians are presently experiencing in Lebanon.

[49] Given my findings as regards the manner in which the Officer dealt with the adverse country conditions factor in his/her analysis of Mr. El Ali’s application, it is not necessary that I address the further arguments of Mr. El Ali in respect of the manner in which the Officer dealt with the BIOC factor in his/her assessment.

## VII. Conclusion

[50] I grant the application for judicial review and return the matter to another officer for redetermination.

**JUDGMENT in IMM-5709-20**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is granted and the matter is returned to a different Immigration Officer for reconsideration.
2. There is no question for certification.

**"Peter G. Pamel"**

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5709-20

**STYLE OF CAUSE:** MOATAZ JAMAL EL ALI v THE MINISTER OF  
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**APPEARANCES:**

Raphael Vagliano FOR THE APPLICANT

Maria Burgos FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Jared Will & Associates FOR THE APPLICANT  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario