Federal Court Cour fédérale

Date: 20230321

Docket: IMM-1072-21

Citation: 2023 FC 391

Ottawa, Ontario, March 21, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

NMS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of a decision of a Senior Officer (the "Officer") of Immigration, Refugees and Citizenship Canada ("IRCC"), dated October 26, 2020, denying the Applicant's Pre-Removal Risk Assessment ("PRRA") application.

[2] The Applicant is a stateless Palestinian gay man. He fears persecution in Lebanon on the basis of his sexual orientation, his association with family members who were granted refugee protection in Canada, and his stateless status. Excluded from refugee protection pursuant to Article 1F(b) of the *Refugee Convention*, his application was limited to an assessment of whether he is a person in need of protection pursuant to section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[3] The Applicant submits that the Officer's decision is unreasonable because the Officer failed to adequately consider the evidence of the risk he faces in Lebanon. The Applicant further submits that the Officer breached his right to procedural fairness.

[4] For the reasons that follow, I find that the Officer's decision is both reasonable and procedurally fair. This application for judicial review is dismissed.

II. Facts

A. *The Applicant*

[5] The Applicant is a 47-year old Palestinian gay man. He was born in Kuwait in 1974 to stateless Palestinian parents and held temporary status in Kuwait as a dependent of his parents. He is also stateless but has applied for protection against Lebanon, where he has family connections.

[6] In 1990, the Applicant's family left Kuwait following the Iraqi invasion. The Applicant's family was registered in Lebanon with the United Nations Relief and Works Agency for Palestinian Refugees in the Near East ("UNRWA"), and they resided in the Sabra/Shatila refugee camp in Lebanon until 1991.

[7] In 1991, the Applicant and his family travelled from Lebanon to the United States ("US"), where they remained for over a decade without status.

[8] On April 13, 1999, the Applicant was convicted in the US of Four Counts of Battery, equivalent to section 266 of the *Criminal Code*, RSC 1985, c C-46. This is an indictable offence and liable to imprisonment for a term not exceeding five years.

[9] The Applicant came to Canada in May 2002. On September 19, 2002, the Applicant was arrested in Canada by the Canada Border Services Agency ("CBSA") for his 1999 US conviction. The Applicant was also wanted in Florida on several other charges, including: Sexual Battery on an Incapacitated Person, Lewd and Lascivious Battery (seven counts), Interference with Child Custody, and Delivery of a Controlled Substance to a Minor (two counts). These charges and convictions all related to victims aged 14-16 years old. The Applicant was discovered living and working in Toronto, using the alias "Zach Saed". CBSA detained the Applicant and reported him inadmissible to Canada for serious criminality.

[10] On September 24, 2002, the Applicant made a claim for refugee protection in Canada. His claim was suspended because a report for serious criminality had been referred for a hearing.

In October 2002, the Applicant was arrested on an extradition warrant for his charges in the US. On March 26, 2003, the Applicant's refugee claim was further suspended, pending the determination of his extradition proceedings.

[11] According to the Applicant, in April 2004, his sister, Magdoline Qablawi, was granted refugee protection based on a risk of persecution and cumulative discrimination in Lebanon pursuant to section 96 of the *IRPA*.

[12] The PRRA Decision notes that in June 2004, the Applicant was "accidentally released from detention when he made bail for his extradition proceedings and his immigration detention order was not realized." On June 25, 2004, the Applicant was once again arrested by the CBSA, and released on June 30, 2004.

[13] On September 26, 2005, the Applicant was issued a Deportation Order for foreign criminality based on his 1999 Battery convictions.

[14] In August 2006, the Applicant married Salma Taha (Ms. "Taha"). They were married for six years and have two Canadian-born children. On March 29, 2007, Ms. Taha submitted an application to sponsor the Applicant.

[15] On August 23, 2007, the Applicant was extradited to the US to face his outstanding criminal charges. On February 7, 2008, the Applicant entered a Plea Agreement in the US and was sentenced to five years probation. The Applicant alleges that four of the five charges were

dismissed, the Florida Court withheld adjudication of the fifth charge, and no conviction resulted.

[16] In 2008, the Applicant states that his father visited family in the Sabra/Shatila refugee camp in Lebanon. The Applicant's father was served with a written notice, dated July 25, 2008, asking him to attend the office of the Joint Security Force of Burj Abarjne camp ("Call-in Notice"). The Applicant's father went to the office, where he was asked about the charges against the Applicant and his involvement in homosexuality. He was given a letter condemning the Applicant's "deviation" from "Islamic morals" and was ordered to bring the Applicant to them for punishment. The letter on record is written by the unit commander of the Martyr Ursan Alhabet Unit of the Lebanon National Security Forces, and bears the logo of the Palestinian National Authority ("2008 Letter").

[17] On July 18, 2008, the Applicant was removed from the US and returned to Canada, pursuant to a removal order based on his inadmissibility to the US.

[18] On February 22, 2013, the Applicant's refugee claim was rejected on the basis that the Applicant is excluded from refugee protection pursuant to Article 1F(b) of the *Refugee Convention* as a result of an extradition process.

[19] On April 5, 2013, the Applicant was issued a warrant for an admissibility hearing, which was executed on April 9, 2013. The Applicant was detained and deemed unlikely to appear for further proceedings and a danger to the public because of his criminal history. It was also noted

that he was working without authorization and despite not living with his spouse for six months and not disclosing this change in information to the IRCC, he was still pursuing his spousal sponsorship application.

[20] On April 17, 2013, the Applicant was released on cash bonds, with terms and conditions, including that he reside with a bondsperson (his mother, spouse, or his sisters) at all times.

[21] In May 2013, the Applicant's father visited Lebanon. In an undated letter to the Applicant, his father stated that it "became clear" to him that the Camp Security Unit is "still listing" the Applicant's name on a wanted list ("Father's Letter"). The Applicant's uncle also provided him with an undated circular issued by the camp authorities ("Refugee Camp Circular"), stating that homosexuals are to be punished according to Sharia law with the "shedding of blood".

[22] In 2013, the Applicant's uncle began to receive threats from religious extremists in Lebanon, including an incident in March 2013 involving the burning of his car. A police report of the incident suggests that this was partly due to the Applicant's uncle's connection with the Applicant, as well as his conversion to Christianity. The Applicant's uncle fled to Canada with his family in 2014, and was granted refugee protection on July 15, 2014.

[23] On June 27, 2013, the Applicant's application seeking judicial review of the refusal of his refugee claim was denied.

[24] On June 6, 2013, the Applicant filed a PRRA application. Since then, on request from IRCC and on his own initiative, the Applicant has filed several updates to his submissions and additional evidence.

[25] On March 24, 2017, the Toronto Police Service's Sex Crimes Unit arrested and detained the Applicant and charged him with Luring (two counts), Sexual Interference (two counts), Sexual Assault (three counts), and Obtaining Sexual Services. The charges are a result of interactions with boys under the age of 18 and involve impairing the minors prior to the alleged assaults. Following the Applicant's arrest, it was learned that he was not residing with any of his bondspersons. The charges were highly publicized in the media and the media articles on record suggest that the Applicant faced further child sexual abuse charges in May 2017. On March 25, 2017, the Applicant began serving his sentence at the Toronto South Detention Centre.

[26] The Applicant claims that following his arrest and the media's publication of his charges, his sexual orientation was "outed" to the community and his extended family. He claims his extended family were attacked in Lebanon, were warned that homosexual activity is not acceptable in their culture, and received threats to kill the Applicant if he returned to Lebanon. The Applicant states that his family filed a police report, but the police refused to help and said they could not protect the Applicant.

[27] In May 2017, the Applicant's aunt approached the Palestinian Liberation Organization ("PLO") in Lebanon to ask if they could offer protection to the Applicant. A letter from the PLO to the Applicant's aunt dated May 13, 2017 ("2017 PLO Letter") warns of the risk to the

Applicant at the hands of the Islamic militia and recommends that he not return to Lebanon. The Applicant states that his extended family in Lebanon have themselves stated that they would not protect him or be associated with him if he were to return.

[28] On July 2, 2019, the Applicant was convicted of the following charges and sentenced to 7.5 years in prison, for which he received 3.5 years credit for pre-sentence custody:

- Two counts of Luring a child under 18 years old: 15 months jail time, 42 months of pre-sentence custody, Order Prohibition/Restriction 99 years, Order Prohibition/ Seizure 99 years, Sex Offender Registry 99 years and DNP [DNA extracted for Primary Offence] on first count, and Jail Concurrent 12 months on second count.
- Two counts of sexual interference: 18 months jail time, concurrent on first count, and 3 years jail time, consecutive on second count.
- Sexual assault: 2 years jail time consecutive.
- Making sexually explicit material available to a child: 6 months jail time, concurrent.

[29] The Applicant's Statutory Release Date was on March 22, 2022.

B. *Decision Under Review*

[30] In a decision dated October 26, 2020, the Officer denied the Applicant's PRRA application. While the Applicant claimed risk in both Lebanon and Kuwait, the Officer found that the evidence indicates that Lebanon is the country of reference.

[31] The Officer noted that the Applicant has also been determined inadmissible to Canada on the grounds of serious criminality pursuant to paragraph 112(3)(b) of the *IRPA* with respect to a conviction in Canada punishable by a term of imprisonment of at least ten years. He also falls under paragraph 112(3)(c) because he made a claim for refugee protection that was rejected on the basis that he is excluded pursuant to Article 1F(b) of the *Refugee Convention.* The Officer found that since the Applicant is inadmissible to Canada on grounds of serious criminality and the evidence indicates a term of imprisonment of more than two years, the Applicant is only eligible to be assessed under section 97 of the *IRPA*.

[32] Since the Applicant had not been before a panel of the Refugee Protection Division, the Officer considered all of the Applicant's written evidence in their assessment linked to a personal, forward-looking risk in Lebanon, except for evidence speaking to humanitarian and compassionate factors that do not link to a personal, forward-looking risk. The Officer did not find that serious issues of credibility were raised regarding the Applicant's evidence, and therefore determined that an oral hearing was not required.

[33] The Applicant's submissions addressed the risks he faces in Lebanon: a) as a gay man, in general, and in particular due the threats from extremists in the community from which the authorities have indicated they cannot protect him; b) as a westernized person; c) as a stateless Palestinian; d) as a returnee; e) from militias and the state; f) due to his family relationship with his uncle who has been granted refugee status in Canada; and g) due to dangerous country conditions in Lebanon. The Officer rejected each of his claimed grounds of protection and found

that the Applicant "has not provided objective evidence to demonstrate that he is not able to return to Lebanon".

[34] The Officer accepted the Applicant's identity as a homosexual man on the basis of the submissions and evidence. However, the Officer did not find the positive refugee claims of the Applicant's uncle and sister to be helpful in determining the Applicant's risk under section 97 because their refugee determinations examined risk based on section 96 of the *IRPA*, and were not related to the Applicant's sexual orientation. The Officer found that these refugee determinations also involved different evidence and a different decision-maker (the RPD) and were of little assistance to support the Applicant's cited risk in Lebanon.

[35] The Officer also examined the evidence from the Applicant's father from 2008 to 2013. This included:

A. A 2005 letter from the Minister of the Interior in Lebanon advising that religious converts and homosexuals cannot be protected by the government in Lebanon;

B. The Call-in Notice from 2008;

C. The 2008 Letter;

D. The Father's Letter, which is undated and includes the Applicant's father's statement that camp authorities were still interested in the Applicant;

E. The Refugee Camp Circular, which is undated and warns against forbidden activities, including homosexuality; and

F. The 2017 PLO Letter, which indicates that the PLO had received a request to intervene in the Applicant's matter because the Islamic militia have been searching

> for the Applicant “high and low to execute him”. The letter indicates that the PLO cannot intervene and recommends that the Applicant not return to Lebanon.

[36] The Officer noted that it is unclear why persons in Lebanon would be interested in the Applicant in 2013, when the Applicant had only lived in Lebanon for one year from 1990 to 1991. While the 2008 Letter discusses the Applicant’s charges, it does not indicate what consequences the Applicant faces besides a mention of “procedural actions”. The Officer noted that the Refugee Camp Circular condemning homosexuality is general and does not mention the Applicant by name. The Officer also found no evidence that the Applicant’s family members knew or disclosed his sexual orientation to persons in Lebanon. Based on the evidence, the Officer determined that it is unclear how the Applicant would be perceived as having engaged in homosexual activities in the US, including by persons in Lebanon.

[37] The Officer further determined that the Applicant’s updated PRRA submissions do not support a finding that he continues to be on any wanted list or is sought by radical groups due to his sexual orientation. Specifically, the Officer noted that it is unclear how the Applicant’s extended family in Lebanon could have become aware that his US charges were related to homosexual acts and in turn relayed this to the authorities in Lebanon, as alleged. The Officer noted that the charges did not identify the Applicant as having engaged in homosexual acts. The Officer emphasized that when the Applicant first submitted his PRRA application in 2013, he indicated that his extended family was entirely unaware of his sexual orientation.

[38] The Officer found the May 13, 2017 letter from the PLO to be vague, lacking in detail and not supported by corroborating evidence from the recipient of the letter (the Applicant’s

aunt), such as a sworn declaration from the Applicant's aunt affirming her relation to the Applicant and affirming her request to the PLO. Since the Applicant claimed to have no relationship with his relatives in Lebanon, the relationship with his aunt who approached the PLO is unclear, particularly since identification documents were not provided.

[39] With respect to the Applicant's allegations that his family members were attacked in 2017 because of his sexual orientation, the Officer found that the Applicant had not pointed to any objective evidence to support this allegation. Given the lack of details or documentation regarding the alleged attack, the Officer assigned little probative value to this assertion.

[40] The Officer also assigned low probative value to a letter from the Applicant's sister; dated April 14, 2018, alleging that the Applicant's family in Lebanon have stated that they will not protect him or even associate with him should he return to Lebanon. The letter further states that the Applicant's family in Lebanon cannot be relied on to protect him from the authorities, and may in fact harm him. The Officer found that this statement was unsupported by other evidence. Similarly, the Officer found the letters from the Applicant's family members, provided by the Applicant in updated submissions in 2020; contain assertions of risk in Lebanon that are speculative and not based on objective evidence.

[41] Upon reviewing the objective country condition documentation, the Officer accepted that "discrimination and human rights violations against homosexuals in Lebanon continue to occur." However, the evidence indicates that laws against same-sex sexual relations in Lebanon are only occasionally enforced and rarely prosecuted. The Officer also noted that various legal experts in

Lebanon question whether the law actually criminalizes same-sex conduct. As such, the Officer found that while the Applicant may face discrimination in Lebanon due to his sexual orientation, it does not amount to a risk as defined under section 97 of the *IRPA.*

[42] Finally, the Officer reviewed country condition evidence of the living conditions in refugee camps in Lebanon. The Officer found that while "the conditions in Lebanon's refugee camps are far from ideal and limitations imposed on Palestinian refugees can be discriminatory," this situation affects all Palestinian refugees in Lebanon and does not amount to a personalized risk under section 97 of the *IRPA.*

III. Preliminary Issue

[43] At the oral hearing, the Applicant's counsel requested that the Court anonymize the style of cause. The Applicant's counsel specified that he sought only anonymization and not confidentiality, in order to avoid harm that may befall the Applicant upon return to his country of origin. The Respondent did not oppose the Applicant's request.

[44] The Applicant's request is granted and the style of cause is amended to refer to him as "NMS", effective immediately.

IV. Issues and Standard of Review

[45] This application for judicial review raises the following issues:

A. *Whether the Officer's decision is reasonable*

B. *Whether there was a breach of procedural fairness*

[46] The parties concur that the first issue is to be reviewed on the reasonableness standard. I agree (*Sierra v Canada (Immigration, Refugees and Citizenship)*, 2020 FC 441 at para 17). This conclusion accords with the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*") at paragraphs 16-17.

[47] The issue of procedural fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 ("*Canadian Pacific Railway Company*") at paras 37-56; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35).

[48] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13; 75; 85). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A decision that is reasonable as a whole 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 para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[49] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

[50] Correctness, in contrast, is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraphs 21-28 (*Canadian Pacific Railway Company* at para 54).

V. Analysis

A. *Whether the Officer's decision is reasonable*

[51] The Applicant submits that the Officer unreasonably dismissed the risk he faces in Lebanon on the basis of his sexual orientation, his association with his uncle, and his status as a stateless Palestinian. The Respondent maintains that overall; the Officer reasonably weighed the Applicant's evidence. After doing so, the Officer was not satisfied that the Applicant would face a risk under section 97 based on his sexual orientation. The Officer also reasonably found that the alleged risks associated with the Applicant's time spent in a Western country, his association

with his uncle, and his profile as a stateless Palestinian were not supported by sufficient objective evidence or did not meet the threshold for risk under section 97 of the *IRPA*.

(1) Risk based on the Applicant's sexual orientation

[52] The Applicant submits that the Officer failed to adequately consider the voluminous evidence that he submitted to demonstrate the risk he faces as a gay man in Lebanon. First, the Applicant argues that the Officer ignored the Father's Letter. While the Officer's decision mentions the Father's Letter, the Applicant submits it fails to analyze it in any way or explain why it is being discounted.

[53] Second, the Applicant submits that the Officer failed to adequately account for the Call-in Notice, the 2008 Letter, the Refugee Camp Circular, and a 2005 statement from the Lebanon's Ministry of Interior and Municipalities ("2005 Statement") advising that given the chaotic security situation, the government is unable to protect homosexuals living in Lebanon. These documents establish a clear risk to the Applicant in Lebanon as a gay man. The Applicant argues that both he and his father confirmed the nature of these documents, which were provided to the Applicant's father and forwarded to the Applicant. The Applicant maintains that the Officer failed to analyze or provide reasons for rejecting these documents, and is therefore deemed to have ignored it (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration*), 1998 CanLII 8667 (FC) ("*Cepeda-Gutierrez*") at para 17).

[54] Third, the Applicant submits that, due to errors with the Certified Tribunal Record ("CTR") before the Officer at the time the decision was rendered, the Officer seems to have been

unaware of a Bulletin from the Lebanese Ministry of Interior and Municipalities ("2014 Bulletin") submitted by the Applicant, which discusses an incident involving the burning of the Applicant's uncle's vehicle. The Applicant maintains that this evidence was crucial and the Officer erred by stating that there was no evidence that the attacks on his uncle were related to the Applicant.

[55] Fourth, the Applicant submits that the Officer erred in their analysis of publicly available articles describing the Applicant's criminality related to same-sex sexual offences, including mugshots and descriptions of the offences. The Applicant asserts that the Officer failed to appreciate how this evidence indicates that his sexual orientation is public, and therefore known to the Palestinian community in Lebanon. The news articles, particularly those published since 2017, provide compelling objective evidence that he will be identified as a gay man in Lebanon, including by his family members, and faces a forward-looking risk as a result.

[56] Next, the Applicant argues that the Officer failed to reasonably assess the 2017 PLO Letter, which was critical to evaluating the risk faced by the Applicant as it outlines how the Applicant is wanted by extremists and the authorities cannot protect him.

[57] Finally, the Applicant submits that the Officer unreasonably dismissed his affidavit and the updated letters from his immediate family members, which discuss how the Applicant's extended family members in Lebanon were attacked in 2017 because of his sexual orientation, and will pose a risk to him in Lebanon. The Officer unreasonably required the Applicant to provide objective evidence to support these statements.

[58] The Respondent contends that the Officer reasonably weighed the Applicant's evidence. With respect to the Father's Letter, the Respondent argues that the Officer did not discount the letter, but noted that the Applicant's father's view of the risks in Lebanon is subjective and disagreed with the conclusion reached by the Applicant's father in his letter. In the same vein, the Call-in Notice and the 2008 Letter were explicitly discussed in the Officer's decision and the Officer did not agree with the Applicant's submission that the documents established a personalized and "clear risk" under section 97 of the *IRPA*. The Respondent maintains that the Officer is presumed to have reviewed all of the documents and came to a reasonable conclusion on the objective risk.

[59] With respect to the publicly available information about the Applicant's criminality, the Respondent argues that the Officer's decision reasonably notes that the Applicant's US charges do not mention the Applicant's homosexuality. There is no evidence that the Applicant is still of interest to persons in Lebanon due to his sexual orientation. Furthermore, the evidentiary record supports the Officer's conclusion that the Applicant failed to establish that he has family in Lebanon who wish him harm because of his sexual orientation. The Applicant's assertion of this risk was based on speculation and is not supported by further evidence.

[60] In response to the Applicant's argument about the 2017 PLO Letter, the Respondent argues that the Applicant's aunt's request to the PLO was not submitted as evidence, and the 2017 PLO Letter does indicate that there has been an investigation into whether the Applicant is in fact wanted by extremist groups in Lebanon. It is possible that the PLO simply repeated the Applicant's aunt's request for a letter outlining the risk, and stated that they would not be able to

intervene. Finally, the Respondent submits that it was reasonable of the Officer to find that the statements contained in letters from the Applicant's immediate family members are speculative opinions and not based on objective evidence. None of the statements were made by individuals who are actually living in Lebanon and would know of the risks the Applicant faces there.

[61] I agree with the Respondent. In my view, the Officer adequately reviewed and weighed the evidence provided. It is well established that an administrative decision-maker is not required to refer to every piece of evidence put before it (*Cepeda-Gutierrez* at para 16). I agree with the Respondent's argument that simply because the Officer did not agree with the Applicant's father's view that the Applicant is at risk in Lebanon does not mean that the Officer ignored the Father's Letter. I also find it was reasonable of the Officer to highlight that certain government documentation, such as the Refugee Camp Circular, did not mention the Applicant by name and therefore did not demonstrate a personalized risk under section 97 of the *IRPA.*

[62] It was reasonable of the Officer to determine that the publicly available information regarding the Applicant's criminal convictions do not explicitly address the Applicant's sexual orientation. The existence of this information online does not establish the claim under section 97 of the *IRPA,* and I find that the Officer dealt with this evidence appropriately. Relatedly, the Officer reasonably determined that the Applicant's assertion that family members in Lebanon wish him harm based on his sexual orientation was speculative and unsupported by reliable evidence. Furthermore, I do not find that the Officer erred by noting that the updated statements from the Applicant's immediate family members contain mere opinions regarding the risk the

Applicant faces in Lebanon, particularly since these family members are not currently living in Lebanon.

[63] Finally, I note that in his supplemental submissions, the Applicant submits that the 2014 Bulletin connecting his case with his uncle was omitted from the original CTR and only included in the Amended CTR, indicating that the Officer did not in fact have this evidence before them when making the decision. The Applicant asserts that this evidence is material because the Applicant's uncle was later found to be a Convention refugee in Canada. While I accept that the 2014 Bulletin omitted in the original CTR does discuss how the Applicant's uncle is allegedly "covering up" for the Applicant, who is wanted by "some fanatic fundamentalist organizations in Lebanon," I do not find that this Bulletin supports the Applicant's assertion that his uncle received threats from religious extremists *because* of the Applicant's sexual orientation. The Bulletin says nothing about the Applicant's sexual orientation. I therefore do not find the absence of the Bulletin in the CTR to be a reviewable error, nor does it support the Applicant's allegation of risk based on sexual orientation.

(2) Risk based on family association

[64] The Applicant submits that the Officer unreasonably dismissed the risk he faces due to his association with his uncle, who was granted refugee status based on his work as a director of a hospital and his family's failure to comply with strict Islamic social norms. The Applicant maintains that there are reasons to believe that extremists in Lebanon targeting both him and his uncle would see their cases as intertwined, in particular because extremists have accused both of

them of religious conversion. In the Applicant's case, this "conversion" includes the adoption of "Western values", including homosexuality.

[65] The Respondent submits, and I agree, that the Officer's decision explicitly addresses the risk based on the Applicant's association with his uncle as one of the many aspects of the Applicant's claim. However, while the Applicant's PRRA submissions assert that there is a risk stemming from the Applicant's association with his uncle who was granted refugee status in Canada, the Applicant fails to adequately support this assertion or explain how this risk exists. As discussed above, the Applicant asserts that his uncle received threats from religious extremists due to the Applicant's sexual orientation, yet the 2014 Bulletin does not indicate that the threats were made because of the Applicant's homosexuality. Without more information or evidence demonstrating how the Applicant would face a personalized risk under section 97 of the *IRPA* because of his association with his uncle, I find it was reasonable of the Officer to conclude that the evidence does not support the Applicant's claim.

(3) Risk based on status as stateless Palestinian

[66] The Applicant submits that the Officer erred by concluding that the risk he faces as a stateless Palestinian in Lebanon did not amount to risk under section 97 of the *IRPA.* The Applicant argues that the Officer erroneously engaged in a "comparative approach" to the risk assessment, thereby failing to assess the risk on an objective basis, which the Court has found to be an error, citing *Salibian v Canada (Minister of Employment and Immigration),* 1990 CanLII 7978 (FCA) at paras 16, 18, and *Fodor v Canada (Citizenship and Immigration),* 2020 FC 218 ("*Fodor*") at paras 19, 48.

[67] The Respondent stresses that the Officer was not engaging in an analysis under section 96 of the *IRPA,* but rather under section 97, which required assessment of whether the Applicant would be *personally* subject to risk. This excludes risks faced generally by other individuals or groups in the country of reference. As such, the risk faced by other stateless Palestinians in Lebanon is a generalized risk experienced by a large group, not a personalized one (*Azzam v Canada (Citizenship and Immigration),* 2019 FC 1517).

[68] I do not find that the Officer erred in analysing the risk the Applicant faces as a stateless Palestinian in Lebanon. As submitted by the Respondent, the jurisprudence relied on by the Applicant promoting a "non-comparative approach" addresses risk analyses in cases involving refugee claims made under section 96 of the *IRPA*, not section 97. For instance, in *Fodor*, which dealt with a PRRA officer's improper analysis under section 96 of the *IRPA*, my colleague Justice McHaffie specifically noted that "the officer's analysis improperly imported a requirement for individualization of risk that is more suited to a section 97 claim" (at para 4). In the case at hand, the analysis was conducted under section 97. Therefore, it was appropriate for the Officer's analysis to focus on the more rigorous requirement that the Applicant demonstrate that he would face a personalized risk in Lebanon. The Officer's decision states:

> It is accepted that the conditions in Lebanon's refugee camps are far from ideal and limitations imposed on Palestinian refugees can be discriminatory. This is a situation that affects all Palestinian refugees residing in camps throughout the country. The applicant's evidence does not support that his personal situation is different than other Palestinian refugees living in the country or that his profile will expose him to risk described in section 97 of the IRPA.

[69] Based on the evidence before the Officer, I see no reason to disturb the finding that the risk related to the Applicant's status as a stateless Palestinian was not personalized, but rather generalized and faced by other similarly situated stateless Palestinians living in Lebanon (*De Munguia v Canada (Citizenship and Immigration)*, 2012 FC 912 at para 26).

[70] Overall, I find that, the Officer reached a reasonable conclusion that the Applicant does not face a risk in Lebanon pursuant to section 97 of the *IRPA*, based on the evidence.

B. *Whether there was a breach of procedural fairness*

[71] Subsection 113(b) of the *IRPA* provides that a hearing may be held if the officer is of the opinion that a hearing is required, based on the specific factors prescribed in section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("*IRPR*"). The factors outlined in section 167 of the *IRPR* are cumulative (*Kharel v Canada (Citizenship and Immigration)*, 2021 FC 1307 at para 16) and must be satisfied for a hearing to take place:

Hearing — prescribed factors	**Facteurs pour la tenue d'une audience**
167 For the purpose of determining whether a hearing is required under paragraph 113(b) of the Act, the factors are the following:	**167** Pour l'application de l'alinéa 113b) de la Loi, les facteurs ci-après servent à décider si la tenue d'une audience est requise :
(a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in sections 96 and 97 of the Act;	a) l'existence d'éléments de preuve relatifs aux éléments mentionnés aux articles 96 et 97 de la Loi qui soulèvent une question importante en ce qui

(b) whether the evidence is central to the decision with respect to the application for protection; and	concerne la crédibilité du demandeur;
(c) whether the evidence, if accepted, would justify allowing the application for protection.	b) l'importance de ces éléments de preuve pour la prise de la décision relative à la demande de protection;
	c) la question de savoir si ces éléments de preuve, à supposer qu'ils soient admis, justifieraient que soit accordée la protection.

[72] The Applicant argues that while the Officer found insufficient evidence to substantiate the Applicant's claim, the Officer in fact made a veiled credibility finding by relying in substance on a finding that the Applicant's claim that he would be targeted in Lebanon is not credible. The Applicant submits that the Officer's failure to hold an oral hearing pursuant to paragraph 113(b) of the *IRPA* and the factors outlined in section 167 of the *IRPR* consists of a breach of the Applicant's right to procedural fairness.

[73] The Applicant relies on *Cho v Canada (Citizenship and Immigration),* 2010 FC 1299 ("*Cho*"), in which this Court found that an officer made a veiled credibility finding in rejecting the applicant's allegations (at paras 23-26). Similar to *Cho*, the Applicant submits that the Officer could not have rendered the decision without finding that the Applicant and his witnesses were not telling the truth. The Officer erred by requiring corroborating evidence, absent a good reason to reject the Applicant's credibility (*Senadheerage v Canada (Citizenship and Immigration),* 2020 FC 968 at para 36). The Applicant further submits that the Officer's error in his case is similar to the officer's error in *Chekroun v Canada (Citizenship and Immigration),* 2013 FC 738 ("*Chekroun*"), which involved the refusal of a PRRA application alleging risk

based on the applicant's sexual orientation. This Court in *Chekroun* found that the officer had based their decision on veiled credibility findings and relied on the absence of corroborative evidence to establish his homosexuality, failing to apply the presumption of truthfulness to the Applicant's testimony (at paras 65-66).

[74] At the very least, the Applicant argues that the Officer did not believe him, and for this reason, an oral hearing should have been held, particularly in light of his substantial corroborative evidence, including affidavits and witness statements. The Applicant argues that this is a serious issue (*Uddin v Canada (Citizenship and Immigration)*, 2011 FC 1289 at paras 3-5). Having accepted that the Applicant is a gay man, the Officer was required to assess the objective evidence of risk to the LGBT community in Lebanon in order to assess the forward-looking risk to the Applicant. The Applicant further submits that the Officer failed to adequately assess the risk related to the Applicant's association with his uncle. In doubting the Applicant's oral testimony on these points and failing to conduct an oral hearing, the Applicant submits that the Officer breached procedural fairness.

[75] The Respondent maintains that no credibility issue arose in the Officer's evaluation of the evidence because the evidence submitted to support the Applicant's allegations of risk was not based on his personal experiences. Rather, the evidence was either related to beliefs held by third parties about the Applicant's risk, or evidence created by third parties and collected by the Applicant to support his belief that he would be at risk in Lebanon based on his interpretation of the documents and the opinions of others. The Respondent notes that the Officer did believe the Applicant's own account of events that were within his personal knowledge and that he

personally attested to, such as his sexual orientation. The onus was on the Applicant to make his case in writing, including ensuring that the evidence was sufficient (*Sanchez v Canada (Citizenship and Immigration),* 2016 FC 737 at para 7). The Applicant failed to discharge his evidentiary and legal burden of proof. As such, the Applicant's procedural fairness rights were not breached, as the Officer chose to not to exercise his discretion to hold an oral hearing based on an application of the facts at issue to the factors outlined in section 167 of the *IRPR*.

[76] The Respondent further submits that the Officer's decision clearly indicates that the factors required for an oral hearing were not present in this case, and the evidence provided by the Applicant was insufficient such that the the Officer was simply not convinced by the evidence. The Respondent asserts that where an officer assesses the weight or probative value of the evidence, it is well established that no hearing is warranted (*Singh v Canada (Citizenship and Immigration),* 2016 FCA 96 at para 44; *Sallai v Canada (Citizenship and Immigration),* 2019 FC 446 at paras 51-55).

[77] I agree with the Respondent. Section 167(a) of the *IRPR* is operative where serious issues arise involving the Applicant's credibility. I do not find that the evidence in this case raised a serious issue of the Applicant's credibility, nor did the Officer make veiled credibility findings, as the Applicant alleges. Instead, the Officer found that the Applicant failed to discharge his burden to provide sufficient evidence to demonstrate that he faces a personalized risk of harm in Lebanon (*Cosgun v Canada (Citizenship and Immigration),* 2010 FC 400 at paras 32-34). While I recognize that a finding of insufficient evidence may in some cases reveal that

an officer was actually concerned with an applicant's credibility, I do not find that to be the case here (*Ullah v Canada (Citizenship and Immigration)*, 2011 FC 221 at paras 24-30).

[78] Furthermore, while the Applicant asserts that he *believes* he would face a risk upon return to Lebanon, this belief was based on information provided to him by third parties. I find the Officer adequately assessed this same evidence to conclude that it did not meet the threshold required under section 97 of the *IRPA.* In their submissions, the Respondent relies on my colleague Justice Zinn's discussion of the interplay between weight, sufficiency and credibility of evidence in *Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 at paragraph 27. I find Justice Zinn's summary applicable to the case at hand:

> [27] Evidence tendered by a witness with a personal interest in the matter may also be examined for its weight before considering its credibility because typically this sort of evidence requires corroboration if it is to have probative value. If there is no corroboration, then it may be unnecessary to assess its credibility as its weight will not meet the legal burden of proving the fact on the balance of probabilities. When the trier of fact assesses the evidence in this manner he or she is not making a determination based on the credibility of the person providing the evidence; rather, the trier of fact is simply saying the evidence that has been tendered does not have sufficient probative value, either on its own or coupled with the other tendered evidence, to establish on the balance of probability, the fact for which it has been tendered. That, in my view, is the assessment the officer made in this case.

[79] In my view, the Officer based their decision on the insufficient probative value of the evidence submitted by the Applicant and the weight it should be given. Upon weighing the Applicant's evidence, the Officer concluded that the Applicant failed to meet his onus of proving that he faces a risk upon return to Lebanon and fits the profile of a person in need of protection

pursuant to section 97 of the *IRPA.* I therefore do not find that the Officer had a duty to hold a hearing under subsection 113(b) of the *IRPA,* nor were the Applicant's rights to procedural fairness breached by the Officer's decision not to conduct an oral hearing (*Yakut v Canada (Citizenship and Immigration),* 2010 FC 628 at para 29).

VI. Conclusion

[80] This application for judicial review is dismissed. The Officer's decision is both reasonable and procedurally fair. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-1072-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. The style of cause is anonymized and the Applicant's name is replaced with the initials "NMS", effective immediately.

3. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1072-21
STYLE OF CAUSE:	NMS v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	BY VIDEOCONFERENCE
DATE OF HEARING:	MARCH 1, 2023
JUDGMENT AND REASONS:	AHMED J.
DATED:	MARCH 21, 2023

APPEARANCES:

Daniel Kingwell	FOR THE APPLICANT
Stephen Jarvis	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mamann, Sandaluk & Kingwell LLP Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT