

Federal Court



Cour fédérale

Date: 20230707

Docket: IMM-8621-22

Citation: 2023 FC 932

Ottawa, Ontario, July 7, 2023

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

MOLHEM ZREIKI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of the reconsideration decision of the Refugee Appeal Division of the Immigration and Refugee Board (the “RAD”), dated August 16, 2022 (the “Decision”), which dismissed the Applicant’s refugee claim based on lack of nexus to a Convention ground and the availability of an internal flight alternative (“IFA”).

[2] The RAD found that the Applicant was neither a Convention refugee nor a person in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

II. Background

[3] The Applicant, Molhem Zreiki is a 31-year-old Arab citizen of Israel. The facts are set out in paragraphs 1-7 of the RAD's decision.

[4] The Applicant comes from Kafr Kanna, an Arab village near Nazareth, Israel. In August 2016, a dispute arose between the Applicant's family and another family (the "Zrekat family") in the Applicant's village. The Applicant's aunt married a man from the Zrekat family. The man then married another woman before divorcing the Applicant's aunt, leading to conflict between the two families. At the time the conflict began, the Applicant was volunteering in Greece with a humanitarian organization.

[5] When he returned to his village in late September 2016, the Applicant received a phone call from a member of the Zrekat family. The member of the Zrekat family and the Applicant arranged to meet, in person, to discuss the dispute between their two families. Upon meeting, the member of the other family and his brother attacked the Applicant with metal pipes. When arriving to assist the Applicant, the Applicant's cousin inadvertently struck and seriously injured one of the attackers with his car. Additional members of the Zrekat family arrived, threatening to kill the Applicant. The injured individual died shortly thereafter.

[6] The Applicant was subsequently investigated and released by police; the driver of the car, the Applicant's cousin, was charged and ultimately convicted of various offences related to the incident.

[7] Conflict between the families escalated and the Applicant's family relocated to the city of Nazareth. The other family blamed the Applicant for the incident, threatened the Applicant and shot at his family's home in Kafr Kanna. In October 2016, the Applicant left Israel. In December 2016, the member of the Zrekat family attempted to burn down the Applicant's home in Kafr Kanna.

[8] The conflict continued. In February 2018, the Applicant returned to Israel and ran into members of the Zrekat family, who chased and threatened him. This incident caused the Applicant to leave Israel for Canada.

[9] After the Applicant arrived in Canada the conflict between the two families continued. Village elders started a peace process between the two families. In August 2018, a conference was arranged where the families agreed to certain terms, including that the Applicant would not return to Kafr Kanna for 12 years. Fearing that the Zrekat family would not abide by the terms of the agreement, the Applicant fled to Canada and initiated a refugee claim in September 2018.

[10] In October 2019, the Refugee Protection Division (the "RPD") generally accepted the Applicant's story; however, it found that the Applicant was neither a Convention refugee nor a

person in need of protection. The RPD found no nexus to a Convention ground and found there was a viable IFA in Jerusalem.

[11] On initial appeal, the RAD denied the Applicant's claim on February 12, 2021. The RAD found that the Zrekat family could find the Applicant in Jerusalem but that the Applicant could avail himself of state protection. That initial decision was set aside by this Court on consent judgment issued on December 8, 2021 (Court file: IMM-1557-21).

[12] The matter was referred to the RAD for redetermination.

III. Decision under Review

[13] In a decision dated August 16, 2022 the RAD dismissed the Applicant's appeal.

[14] The RAD held that the Applicant's status as an Israeli Arab and his membership in his family did not establish a sufficient nexus to a Convention ground under section 96 of the *IRPA*. As well, the RAD found that Jerusalem was a viable IFA for purposes of section 97 of the *IRPA*.

[15] With respect to the finding of a lack of a nexus to a section 96 ground owing to the Applicant's status as an Israeli Arab, the RAD made the following determinations:

- A. Case law has held that the RAD must consider whether the persecutor has mixed motives, at least one of which must be based on a Convention ground.

- B. The Applicant argued that his race as an Israeli Arab established a connection to a nexus ground; however, the RAD must consider nexus to a Convention ground from the prospective of the persecutor:
- i. The Applicant's persecutors are the Zrekat family and not the Israeli state and they do not wish to harm him because he is an Arab.
 - ii. The Zrekat family's ill will towards the Applicant is based largely on their perception that the Applicant was involved in the death of their family member.
 - iii. A secondary reason for the threat to the Applicant is his family membership.
- C. The Applicant was not required to show that his race was his persecutor's sole motive; however, there was insufficient evidence to establish that the Applicant's Israeli Arab status formed even part of the motive for the Applicant's persecution.

[16] With respect to the Applicant's membership in his family establishing a nexus to a Convention ground the RAD made the following findings:

- A. "Family" cannot be a standalone section 96 ground.
- B. For family to be considered a section 96 Convention ground at least one of the family members have to have their risk anchored to a Convention ground.

- C. To find family as a particular “social group” for purposes of section 96, the Applicant’s persecution must be directly attributable to the fact that they are a member of that family and there must also be a clear nexus between the persecution levelled against one of the family members and that which is taking place against others.

- D. The Applicant failed to establish that the persecution experienced by him or his family members is connected to any independent Convention ground. The Applicant made the same argument that the risk his family members faced owed to their race as Arabs. There was nothing to indicate the family member’s race as Arabs formed part of the motivation for the Zrekat family to harm them.

[17] With respect to the availability of Jerusalem as an IFA, the RAD applied the two-part test asking (1) whether there are risks to the Applicant, on a balance of probabilities, of torture, risk to life, or cruel and unusual treatment or punishment and (2) whether it is reasonable for the Applicant to relocate to Jerusalem.

[18] The RAD found that there are no risks to the Applicant of torture, risk to life or cruel and unusual treatment or punishment in Jerusalem:

- A. While the Zrekat family would be able to locate the Applicant in Jerusalem if they so desired, it is not clear that they would wish to follow him there to harm him. The settlement agreement in 2018 between the Applicant’s family and the Zrekat family required him to leave the village of Kafr Kanna. Furthermore, the Applicant’s

family agreed to be expelled from the village for three years, after which they were required to live two kilometres away from the Zrekat family.

- B. Since 2018, there have been two incidents between the Applicant's family and the Zrekat family and both occurred in Kafr Kanna.
- C. The Zrekat family did not pursue the Applicant when he was staying in Tel Aviv, and it is therefore unlikely they would pursue him in Jerusalem.

[19] The RAD also held that:

- A. The Applicant would not be in hiding or at risk from the Zrekat family so he would be able to carry out his daily activities and meet with family members so long as he did so outside of Kafr Kanna.
- B. The Applicant has valuable experience volunteering with a humanitarian organization abroad and has completed studies at an Israeli academic college in the field of paramedicine that would aid him in finding employment. The Applicant also testified that he was capable of doing blood and lab work and speaks both Arabic and Hebrew.
- C. The second prong of the IFA test is not meant to guarantee the Applicant the enjoyment of an ideal standard of living; rather, the Federal Court of Appeal has

confirmed that it requires conditions that would jeopardize the life and safety of a claimant.

[20] Finding no nexus to a Convention ground for purposes of section 96 of the *IRPA* and a valid IFA for purposes of section 97, the RAD dismissed the appeal and denied the Applicant's claim.

IV. Issues

- A. *Did the RAD err by failing to find the Applicant's status as an Arab Israeli established a nexus to a Convention ground under section 96 of the IRPA?*

- B. *Did the RAD err in finding that Jerusalem was an IFA for purposes of section 97 of the IRPA?*

V. Standard of Review

[21] The standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 25).

VI. Analysis

- A. *Did the RAD err by failing to find the Applicant's status as an Arab Israeli established a nexus to a Convention ground under section 96 of the IRPA?*

[22] The Applicant argues that the RAD erred in finding there was no nexus between the Applicant's status as an Arab Israeli and his persecution by the Zrekat family. The Applicant contends that his Arab status was a contributing factor to his persecution because the dispute would have not developed had it not been between two Arab families. The Applicant submits that it is only Arab and Arab families in Israel that form such vendettas and thus race was one of the factors. The Applicant also argues that he became a "soft target" for the Zrekat family because of the lack of police and state protection for Arabs in Israel.

[23] I find the RAD reasonably determined that the Applicant's status as an Arab Israeli did not establish a nexus to a section 96 Convention ground.

[24] There is little disagreement on the applicable legal principles between the parties and the RAD. The relevant perspective for determining nexus to a Convention ground is that of the persecutor (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at 693-94). Furthermore, a Convention ground need not be the only reason or even the substantial reason for the persecution, but must be a contributing factor.

[25] Here, the RAD reasonably determined that the fact that the Applicant is an Israeli Arab was not a contributing factor. While, the conflict in this case arose between two Arab families

and even if the Applicant's submission is accepted that it is only Arab families that pursue such vendettas, there was no evidence the Applicant is being pursued by the Zrekat family because he is an Arab.

[26] Rather, as the RAD observed, the conflict arose due to pre-existing tensions between the two families, which, particularly with respect to the Applicant, escalated after the incident where the Applicant's cousin inadvertently killed a member of the Zrekat family.

[27] The RAD reasonably found there was no causation established to support the alleged nexus.

[28] For similar reasons, the Applicant's claim that his membership in his family constitutes a section 96 ground must fail. For such a claim to succeed there must be evidence that at least one member of the Applicant's family faces persecution for a Convention ground, in this case, because they are Israeli Arabs (*Asghar v Canada (Minister of Citizenship and Immigration)*, 2005 FC 768 at paras 19-20). The RAD reasonably found the Applicant failed to establish that a member of his family was persecuted by the Zrekat family for such a reason.

B. *Did the RAD err in finding that Jerusalem was an IFA for purposes of section 97 of the IRPA?*

[29] There is no dispute that the RAD cited the correct test for an IFA for a section 97 claim. The two-part test is whether:

- A. There is no risk to life, nor a risk of cruel and unusual treatment or punishment.
- B. The IFA site must be reasonable for the Applicant to relocate and reside in.

(Rasaratnam v Canada (Minister of Employment and Immigration), [1992] 1 FC 706 at 711 (CA))

[30] The Applicant argues that the RAD unreasonably assessed the evidence of threats to the Applicant by the Zrekat family, both prior to the 2018 settlement agreement and the two incidents afterwards.

[31] I find that the RAD reasonably considered the very incidents cited by the Applicant in its reasons. It assessed the Applicant's evidence and testimony and concluded that those incidents occurred in the Applicant's village of Kafr Kanna and there was no evidence of conflict between the families outside of Kafr Kanna. Therefore, it was reasonable to find that the Applicant would be safe from persecution in Jerusalem.

[32] As such, the RAD reasonably found the first prong of the IFA test met.

[33] The Applicant does not make arguments as to any unreasonableness in the RAD's assessment of the second prong of the IFA test.

VII. Conclusion

[34] The application is dismissed.

JUDGMENT in IMM-8621-22

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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