

Federal Court



Cour fédérale

**Date: 20230908**

**Docket: IMM-5223-22**

**Citation: 2023 FC 1219**

**Ottawa, Ontario, September 8, 2023**

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

**BETWEEN:**

**HYAM ALKARRA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicant, Hyam Alkarra, seeks judicial review of a decision by the Refugee Appeal Division (“RAD”) dated May 9, 2022, confirming a decision by the Refugee Protection Division (“RPD”) that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”).

[2] The RAD found the determinative issue to be the Applicant's forward-facing risk of persecution in Lebanon on the basis of her Syrian nationality, her religious beliefs as a Seventh-day Adventist, and her gender.

[3] The Applicant submits that the RAD unreasonably found that her claim of discrimination do not amount to persecution and in doing so, erroneously disregarded relevant evidence, failed to consider the cumulative effects of discrimination, and made unreasonable findings based on speculation and inference.

[4] For the reasons that follow, I find that the RAD's decision is reasonable. This application for judicial review is dismissed.

## **II. Facts**

### **A. *The Applicant***

[5] The Applicant is a 58-year-old citizen of Syria by birth and Lebanon by marriage. The Applicant married her husband in January 1995 in Lebanon. She obtained Lebanese citizenship in April 2004.

[6] The Applicant claims that she and her husband are both Seventh-day Adventists. The Applicant's civil registration extract lists her Roman Orthodox, while her husband's civil registration extract lists him as Maronite. The Applicant claims that Lebanon does not recognize the Seventh-day Adventist Church as a legitimate religion.

[7] The Applicant and her husband resided in Lebanon, where the Applicant allegedly worked as a teacher from 1999 to 2007. In January 2008, when her co-workers were given contracts to renew their employment, she was allegedly told by a co-worker that the school did not renew her contract because the parents complained that their children were starting to imitate the Applicant's Syrian accent.

[8] The Applicant claims that on September 26, 2008, a group of four men approached her, told her that she did not belong in Lebanon as a Syrian, and threw stones at her. She claims that no one intervened and some witnesses even cheered the men, agreeing with their statements. The Applicant alleges that she also received threatening letters at her home in Lebanon, labelling Syrians as "the enemy" and telling her to leave the country.

[9] The Applicant claims that she and her husband decided to leave Lebanon following this incident, and relocated to Alaouda, Syria. The Applicant allegedly began to work as a tutor from home and a French teacher in Tartous, while her husband began managing a bookstore. The Applicant claims that she left her teaching job in June 2012.

[10] The Applicant claims that in September 2017, members of the Syrian National Defence Forces ("NDF") came to the bookstore at which her husband worked and demanded that he pay 20,000 Syrian pounds monthly in return for their protection. The Applicant and her husband complied, fearing for their lives, and the Applicant claims that she sold her jewels to make ends meet. The Applicant claims that eventually, her husband was unable to meet the NDF's demanded payment and as a result, they were attacked in their home on May 22, 2019. She

claims that a member of the militia pointed a gun at her husband and threatened to kill them both if they did not pay the money. The Applicant allegedly sold a valuable piece of jewelry to cover the extortion cost.

[11] The Applicant claims that her brother, a Canadian citizen, needed a stem cell transplant. On July 25, 2019, the Applicant travelled to Canada on a visitor's visa, to act as her brother's stem cell donor. The Applicant stayed with her brother during this time, either at his home or at the hospital, as he needed constant care.

[12] The Applicant made a claim for refugee protection in Canada in December 2019. She claims that she did not apply for protection earlier because she feared that it would interfere with her brother's medical care. The Applicant's brother passed away on September 19, 2020.

[13] The Applicant alleges that her husband continues to live in Syria and had continued to pay the NDF's extortion demands until February 2021, when he lost his job. She claims that on March 20, 2021, the NDF contacted her husband at their home, demanding further payments.

B. *RPD Decision*

[14] In a decision dated December 23, 2021, the RPD found that the Applicant is neither a Convention refugee nor a person in need of protection, on the basis that she does not face an objective fear in Lebanon on the basis of her religious belief and her Syrian ethnicity, nor a risk in both Syria and Lebanon on the basis of her gender.

[15] Although the RPD accepted the Applicant's testimony that she is a Seventh-day Adventist, practiced the faith in Lebanon, and that adherents to this faith face some difficulties, it noted that the Applicant's official documents state that she is an Orthodox Christian and that her husband is accepted as Maronite. The RPD therefore found that from the perspective of the Lebanese state, the Applicant is not viewed as a Seventh-day Adventist and the only way this would change is if she was to self-report. The RPD therefore found no issue flowing from the Applicant not having a recognized religious background with regards to discrimination from the Lebanese state. The RPD also referenced objective evidence stating that Christians do not face generalized discrimination in Lebanon.

[16] In terms of the Applicant's allegations of discrimination in Lebanon on the basis of her Syrian background, the RPD acknowledged a number of incidents and evidence demonstrating issues faced by Syrian refugees, but noted that the Applicant is not a Syrian refugee but a Lebanese citizen as of right. The RPD found no evidence that she would face discrimination solely on the basis of her Syrian ethnicity or her Syrian accent.

[17] With regards to discrimination in Lebanon and Syria on the basis of gender, the RPD noted that while this may pose a societal disadvantage, the Applicant has been able to establish a career in the field of education in both Lebanon and Syria, and provided no evidence that she would not be able to do the same upon her return.

[18] The RPD acknowledged the Applicant's testimony that she was attacked in Lebanon in September 2008 and that she heard a rumour from a co-worker that her employment contract was

not renewed because of her Syrian accent. The RPD accepted that these incidents were frightening and demeaning, but noted that the Applicant's claim must be assessed on a forward-looking basis. The RPD noted the objective evidence demonstrating that the Applicant would face barriers in Lebanon as a female adherent of an unrecognized faith, but nonetheless concluded that the Applicant provided only speculative evidence of potential issues she would face in Lebanon. The RPD found that the Applicant provided insufficiently clear or forward-looking evidence that she would face discrimination on the basis of her religious beliefs, her Syrian ethnicity, her gender, or the accumulation of these three identities, upon her return to Lebanon.

[19] For these reasons, the RPD found that the Applicant did not establish a serious possibility of persecution or a risk to her life or of cruel and unusual treatment or punishment if she were to return to Lebanon. The RPD therefore rejected the Applicant's claim.

### C. *Decision under Review*

[20] In a decision dated May 9, 2022, the RAD dismissed the Applicant's claim on the basis that she does not have a forward-facing risk in Lebanon and the discrimination she faces does not amount to persecution.

[21] The Applicant submitted a new affidavit before the RAD, which included an article to be introduced as new evidence on appeal. The Applicant submitted that this article was admissible because it discusses the discrimination and persecution faced by Syrians in Lebanon, which is directly relevant to the RPD's findings. The RAD found that although this article was published

after the RPD decision, its contents do not provide new information or describe new events or changes in circumstances. The RAD concluded that the article was inadmissible as new evidence, on the basis that it was not sufficiently new as per subsection 110(4) of *IRPA*, and therefore did not hold an oral hearing.

[22] The RAD found insufficient evidence to support the finding that the Applicant faces a serious possibility of persecution on the basis of her religious beliefs in Lebanon. On appeal, the Applicant submitted that while recognized Christian groups do not face discrimination in Lebanon, unrecognized Christian denominations such as the Seventh-day Adventists face discrimination, which is why her and her husband's official documents list them as belonging to recognized faiths. She further submitted that she and her husband practice their faith openly and are therefore susceptible to being recognized as Seventh-day Adventists.

[23] However, the RAD noted that persecution can be distinguished from harassment or discrimination, as outlined in *Sefa v Canada (Citizenship and Immigration)*, 2010 FC 1190 ("*Sefa*"), and that discrimination may only amount to persecution in certain circumstances. The RAD noted that the Applicant and her husband have been able to practice their faith and are members of a Seventh-day Adventist church that is still in operation, and that according to objective evidence, members of unrecognized religious groups are permitted to own property, assemble for worship, and freely practice religious rites. The RAD acknowledged the objective evidence indicating that members of unrecognized religious groups are unable to perform marriages or divorces, and as such, some such members will list themselves as belonging to other recognized religions to ensure their official documents remain valid, which the RAD found

to align with the Applicant's evidence. The RAD ultimately found the evidence to demonstrate that Seventh-day Adventists can freely practice their faith in Lebanon and the discrimination they face in terms of legal status does not amount to persecution for the purposes of refugee protection. The RAD concluded that the Applicant's fear of religious persecution in Lebanon is not objectively well founded.

[24] The RAD found that the Applicant does not face a serious possibility of persecution on the basis of her gender. The RAD acknowledged that the RPD's analysis of this issue is sparse and noted that the Applicant's allegations of risk as a woman are not clearly articulated. The RAD found that the objective evidence demonstrates that women face discrimination in family matters, personal status, and in access to full participation in politics, the workforce, and the community. That being said, the RAD found that the Applicant did not detail any previous incidents of discrimination on the basis of her gender and that her profile does not give rise to an elevated risk of gender-based persecution.

[25] The RAD further found that the Applicant does not face a serious possibility of persecution in Lebanon on the basis of her Syrian nationality. On appeal, the Applicant submitted that the RPD erred by distinguishing her situation from those of Syrian refugees, and noted that she was already a Lebanese citizen at the time that she was allegedly attacked. However, the RAD agreed with the RPD's assessment and found that the Applicant's risk profile is lower because of her status as a Lebanese citizen. The RAD found that the objective evidence points largely to discrimination against Syrian refugees due to their refugee status and that



despite the Applicant's experiences of discrimination on the basis of her ethnicity and her accent, her and her husband's citizenship status reduces her risk of discrimination.

[26] Although the RAD accepted that the Applicant was attacked by a group of men in September 2008 and she received threatening notes to her home, it found that singular incidents do not amount to persecution and there is insufficient evidence to establish a forward-facing risk of persecution on the basis of her Syrian nationality in the future. The RAD also found that the Applicant's belief that she lost her job due to her Syrian nationality is based on a rumour and that this is insufficient to establish an objective basis for her fear of persecution on this basis.

[27] The RAD noted the Applicant's submission on appeal that if returned to Lebanon, she would be forced to live in an Islamic area in Lebanon and her husband would not dare to live there with her. The RAD found that this allegation is not supported by the Applicant's evidence and that rather, when asked if she would live with her husband if returned to Lebanon, she testified that they would live together.

[28] Lastly, the RAD acknowledged the Applicant's submission that the RPD failed to adequately address the cumulative effect of the discrimination she would face in Lebanon on the basis of her intersectional identity as a woman, a Syrian, and a Seventh-day Adventist. However, the RAD ultimately found that cumulatively, the Applicant's allegations of past harm and discrimination do not rise to the level of persecution or a forward-facing risk upon return. The RAD concluded that the Applicant failed to establish that she has a well-founded fear of persecution in Lebanon and therefore dismissed her appeal of the RPD's decision.

**III. Issue and Standard of Review**

[29] This application raises the sole issue of whether the RAD's decision is reasonable.

[30] The standard of review is not in dispute. The parties agree the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) (“*Vavilov*”). I agree.

[31] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). 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 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 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).

[32] For a decision to be unreasonable, an 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).

#### **IV. Analysis**

[33] The Applicant submits that the RAD unreasonably found that the evidence of discrimination does not amount to persecution. Specifically, the Applicant submits that the RAD failed to adequately assess the cumulative effects of discrimination faced by the Applicant, either ignored or misconstrued central evidence, and relied unreasonably on speculation and inference.

[34] The Applicant submits that the RAD erred in finding that Seventh-day Adventists are able to freely practice their faith in Lebanon and that the objective does not support a finding that the discrimination they face amounts to persecution. The Applicant submits that the RAD selectively relied on objective evidence to support this finding, while the same objective evidence demonstrates that members of unrecognized religious groups have a lower legal status and that some adherents of unrecognized faiths face low-level societal discrimination, such as being precluded from access to employment or housing. The Applicant submits that this counters the RAD’s finding and demonstrates that the RAD was not mindful to the totality of the evidence. The Applicant submits that this evidence of discrimination in housing and employment, taken with the evidence of lower legal status, corroborates the Applicant’s fear of the forward-facing risk of persecution in Lebanon.

[35] The Applicant submits that in finding that Christians do not face significant discrimination in Lebanon, the RAD unreasonably relied on a generalization to support the

finding that the Applicant and her husband would not face such a risk. The Applicant submits that the objective evidence makes a distinction between recognized Christian groups and unrecognized religions, which includes the Seventh-day Adventists. The Applicant submits that this is not a matter of reweighing evidence, but of raising objective evidence that contradicts the RAD's findings and which it therefore had an obligation to consider.

[36] With respect to the RAD's finding regarding discrimination against Syrians in Lebanon on the basis of their Syrian nationality, the Applicant submits that the RAD erroneously disregarded the evidence in the National Documentation Package ("NDP") showing discrimination against Syrian refugees as irrelevant and that this evidence is relevant to how Syrians are treated generally. The Applicant further submits that the RAD failed to meaningfully consider the fact that she was attacked and sent threatening letters while being a Lebanese citizen, and that her citizenship status did not preclude these incidents from taking place. The Applicant submits that the cumulative effect of the discrimination she faces on the basis of her Syrian ethnicity, her religion, and her gender rises to the level of persecution for the purpose of grounding refugee protection, and that the RAD's conclusion to the contrary is based on an unreasonable assessment of the evidence.

[37] The Respondent maintains that the RAD's assessment of the Applicant's claim is reasonable. On the issue of discrimination on the basis of religious beliefs, the Respondent submits that the Applicant's submissions amount to a request that this Court reweigh evidence, which is not this Court's role on review. The Respondent further submits that contrary to the Applicant's allegation that certain central evidence was not mentioned in the decision and

therefore ignored, a holistic review of the RAD's reasons belies this finding. The Respondent notes that the RAD explicitly accepted the misuse of registered religions in official papers, the refusal to recognize divorces and marriages in some unrecognized religions, and issues selling land. The Respondent submits that the RAD was alive to the evidence suggesting some discrimination against Seventh-day Adventists, but reasonably found that discrimination does not always rise to the level of persecution, and that the Applicant and her husband were able to continue to freely practice their faith in Lebanon.

[38] With respect to discrimination on the basis of the Applicant's Syrian nationality, the Respondent submits that the RAD made reasonable distinctions between the treatment of Syrian refugees and all Syrians, particularly those who are Lebanese citizens such as the Applicant. The Respondent notes that the Applicant's submissions on this issue attempt to reargue the merits of the Applicant's RAD submissions, rather than raise a specific error in the RAD's decision or point to a particular piece of evidence that was allegedly overlooked. The Respondent further notes that contrary to the Applicant's assertion that the RAD did not consider the cumulative effect of discrimination faced by the Applicant on the basis of all three alleged grounds, the RAD explicitly stated that the past harm and discrimination faced by the Applicant was considered cumulatively. The Respondent submits that on the basis of the evidence, the RAD reasonably found that the Applicant's circumstances and citizenship status lower her risk of discrimination amounting to persecution.

[39] I agree with the Respondent. The question of whether discrimination suffered by a claimant rises to the level of persecution for the purpose of granting refugee protection is governed by the following considerations, as outlined by this Court in *Sefa*:

[10] The Board provided what the parties agree was a clear statement of the law regarding when discrimination of the kind suffered by the applicants will rise to the level of persecution sufficient to ground a claim for protection under the Act:

To be considered persecution, mistreatment suffered must be serious<sup>[1]</sup> and the inflicting harm occurs with repetition or persistence, or in a systematic way.<sup>[2]</sup> To determine what qualifies as serious one must examine the harmed interest of the claimant and to what extent the interest might be compromised. The courts equate seriousness with a key denial of a core human right.<sup>[3]</sup> It is the requirement that the harm be serious that has led to a distinction between persecution and harassment. Persecution is characterized by the greater seriousness of the mistreatment involved.<sup>[4]</sup> The courts have also distinguished between persecution and mere unfairness.<sup>[5]</sup> At paragraph 54 of the *UNHRC Handbook*<sup>[6]</sup> it is stated persons who receive less favourable treatment as a result of differences are not necessarily victims of persecution. It is only in certain circumstances that discrimination will amount to persecution, such as serious restrictions on one's right to earn a livelihood, right to practice religion or access to normally available educational facilities. Mistreatment may constitute discrimination or harassment and not be serious enough to be regarded as persecution.<sup>[7]</sup> A finding of discrimination not persecution is within the jurisdiction of the RPD.<sup>[8]</sup> Acts of harassment, none amounting to persecution individually, may cumulatively constitute persecution.<sup>[9]</sup> The repeated instances of harassment in the past may lead to a serious possibility of persecution in the future.<sup>[10]</sup> Whether or not measures of discrimination amount to persecution must be determined in consideration of all the circumstances.

The Court finds that the Board set out a clear and correct statement of the law with respect to this subject.

[Emphasis added, citations omitted]

[40] It is these legal constraints surrounding the issue of discrimination that bear upon the RAD's decision in the Applicant's case, and within which the RAD reasonably found that the discrimination faced by the Applicant does not amount to a fear of persecution in Lebanon.

[41] The RAD's finding is not that the Applicant would not face discrimination at all. The RAD explicitly recognized that as an adherent of an unrecognized religion in Lebanon, the Applicant is not afforded the same legal standing as a member of a recognized religion and is therefore unable to perform a marriage or divorce. The RAD also accepted that the Applicant was attacked in a racially motivated incident in Lebanon in 2008, received threatening letters on the basis of her Syrian nationality, and would face barriers as a woman in Lebanese society. The RAD accepted the Applicant's experiences of discrimination, but the RAD was also open to find that there was insufficient evidence of a forward-facing risk of persecution and that the disparate treatment the Applicant may face does not rise to the level of persecution as outlined in *Sefa*.

[42] The RAD reasonably applied the objective evidence to the Applicant's particular circumstances, which demonstrate that Seventh-day Adventists are able to own property, assemble for worship and practice their religious rites openly, and that the Applicant and her husband did so prior to leaving Lebanon. The RAD reasonably noted that the Applicant and her husband are regular attendees at a Seventh-day Adventist church, were married in a Seventh-day Adventist church, and have been able to openly practice their faith. The RAD also found that the available evidence pointing to discrimination against Syrians in Lebanon is largely related to Syrian refugees, and that the Applicant's experiences as a Lebanese citizen lower the risk of future discrimination such that her fear of persecution is well founded. The RAD's assessment

of the Applicant's allegations are justified and rooted in the evidentiary and legal constraints bearing on the decision (*Vavilov* at paras 99, 125).

[43] For these reasons, I find that the RAD's decision is reasonable and the Applicant has failed to point to a reviewable error in the decision warranting this Court's intervention.

**V. Conclusion**

[44] This application for judicial review is dismissed. The RAD's decision is justified, intelligible and transparent, in light of the evidentiary record (*Vavilov* at para 99). No questions for certification were raised, and I agree that none arise.



**JUDGMENT in IMM-5223-22**

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

1. This application for judicial review is dismissed.
2. There is no question to certify.

“Shirzad A.”

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Judge

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

**DOCKET:** IMM-5223-22

**STYLE OF CAUSE:** HYAM ALKARRA v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** BY VIDEOCONFERENCE

**DATE OF HEARING:** MAY 31, 2023

**JUDGMENT AND REASONS:** AHMED J.

**DATED:** SEPTEMBER 8, 2023

**APPEARANCES:**

Omolola Fasina FOR THE APPLICANT

Stephen Jarvis FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Omolola Fasina FOR THE APPLICANT  
Barrister and Solicitor  
London, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario