

Federal Court



Cour fédérale

**Date: 20231031**

**Docket: IMM-4385-21**

**Citation: 2023 FC 1444**

**Ottawa, Ontario, October 31, 2023**

**PRESENT: The Honourable Madam Justice Elliott**

**BETWEEN:**

**ELIE NADER**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicant is a citizen of Lebanon, who has been employed with the Internal Security Forces (ISF) of Lebanon, since 2006. Between August 2006 and March 2009 and from November 2011 onward, the Applicant was stationed at Roumieh prison, which was one of the largest prisons in Lebanon.

[2] In February 2019, the Applicant applied for a Temporary Resident Visa (TRV) to join his fiancée, a Canadian citizen, for the birth of their son. At that time the Applicant sought, in the alternative, a Temporary Resident Permit (TRP) pursuant to section 24 of the *Immigration and Refugee Protection Act SC 2001 c27 [IRPA]*.

[3] The Applicant now seeks judicial review of a decision by an Officer at the Embassy of Canada (Embassy) in Beirut, Lebanon, dated June 24, 2021 denying him a TRV [Decision].

[4] It is common ground that the Embassy failed to consider the Applicant's alternate request for a TRP. Therefore, the TRP request will be returned to the embassy to be assessed.

[5] For the reasons that follow I am satisfied the TRV refusal was reasonable.

## II. **Background Facts**

[6] On February 1, 2021, the Applicant received a procedural fairness letter (PFL) alleging there were reasonable grounds to believe he was inadmissible under paragraph 35(1)(a) of the *IRPA* for committing an act outside of Canada that constitutes an offence referred to in sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act, SC 2000 c24 [CAHWCA]*.

[7] In response, the Applicant sent a Statutory Declaration describing his roles during his employment at Roumieh prison as being limited to the following:

- August 15, 2006 to December 16, 2006: training on how to handle different situations that could occur. Not in the general prison area and no contact with prisoners. Human rights training and communication protocols.
- December 16, 2006 to March 2, 2009: stationed as a guard outside the prison. No contact with prison population.
- November 23, 2011 to June 24, 2016: returned to Roumieh prison as a driver transferring prisoners from prison to court hearings and back to prison. At times, the Applicant was driving the vehicle. At other times, he was not physically in the transporting vehicle but in the vehicle behind it where the Applicant served as a guard for the vehicle carrying the prisoners. The Applicant's only interaction with the prisoners was stated to be instructing them on safe entry and exit from vehicles, and to make them aware of other safety measures.

[8] In addition to the foregoing, the Applicant filed a Further Affidavit attached to which was an official letter from the Directorate General of Internal Security Forces containing a breakdown of the Applicant's roles over the years.

[9] The letter indicates the Applicant was promoted to Sergeant on December 24, 2010, to Sergeant Major on June 1, 2013 and to Adjutant on February 18, 2017. On December 25, 2020, the Applicant was promoted to Chief Adjutant.

III. **Decision under Review**

[10] The Global Case Management System (GCMS) notes made by the Officer state that while the Applicant's PFL response focusses on a 2015 prison riot incident, the reports are not limited to that specific incident but cover a wide period of time, especially from 2006 when the Applicant worked as a prison guard.

[11] After comparing numerous reports, which they itemized in the Decision, and considering those reports against the Applicant's employment timeline and duties, the Officer had concerns that "there may be reasonable grounds to believe that the applicant is a member of the inadmissible class of persons described in subsection 35(1) of the Immigration and Refugee Protection Act (IRPA), which states that a permanent resident or foreign national is inadmissible to Canada under paragraph 35(1)(a) of IRPA for committing an act outside of Canada that constitutes an offence referred to in sections 4 to 7 of the CAHWCA".

[12] Having so determined, the Officer, after considering the passage of time, sent another PFL to the Applicant on February 1, 2021.

[13] The Applicant requested a deadline extension to respond to the PFL. On June 7, 2021, the Officer received the response.

[14] In his response, the Applicant argued there was no evidence of widespread torture or ill treatment of prisoners at the Roumieh prison during the period of his employment (my emphasis)

and, even if such acts took place, it could not be established that the Applicant was complicit in their commission.

[15] In addition, the Applicant argued that the incidents reported would only amount, at most, to inhumane acts that could not be regarded as widespread or systematic.

#### IV. **Issues and Standard of Review**

[16] The Applicant raises three issues.

1. He states it was procedurally unfair for the Officer to rely on the details in the unsigned and undated Details of Military Service form without providing him with the form, which stated he was guarding prisoners inside the prison from 2006 to 2009 and, from 2009 to 2012 he was transporting prisoners to tribunals. He adds that the Officer unreasonably relied on the Details of Military Service form over the Applicant's sworn testimony.
2. The Applicant also states that the Officer's finding that he is inadmissible under paragraph 35(1)(a) was unreasonable and it was made without regard to the evidence.
3. Finally, the Applicant submits the Officer erred in failing to consider the Applicant's request for a Temporary Resident Permit. However, as previously noted, the TRV request error has been conceded and will be returned to the Embassy to be assessed.

[17] The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] extensively reviewed the law of judicial review of administrative decisions. The Supreme Court confirmed that judicial review of an administrative

decision is presumed to be on the standard of reasonableness, subject to certain exceptions (which do not apply on these facts), and the burden is on the party challenging the decision to show it is unreasonable: *Vavilov* at paras 23 and 100.

[18] A reasonable decision is one that displays justification, transparency and intelligibility with a focus on the decision actually made, including the justification offered for it. To set a decision aside, a reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision: *Vavilov* at para 100.

#### V. Analysis

[19] The documentary evidence considered by the Officer showed that, since November 2009, prisoners were held under inhumane conditions at Roumieh Prison, where the Applicant worked.

[20] There was also evidence before the Officer that guards at Roumieh prison beat and kicked detainees. Roumieh prison was described as Lebanon's "most infamous prison."

[21] The Officer also noted there were inconsistencies between the Applicant's statements about the duties he performed during the time in question.

[22] Overall, the officer was not satisfied with the Applicant's denials and determined, that based on the Applicant's own statements and the documentary evidence, it was reasonable to believe that the Applicant was complicit in crimes against humanity.

[23] The Applicant however argues that the documentary evidence did not support the Officer's conclusion. He submits that the evidence refers to torture, which occurred before prisoners were transferred to Roumieh prison. This argument however runs counter to the many documents found in the record that were considered by the Officer.

[24] In his written response to the PFL the Applicant received, he set out that he had stated he was a Soldier at Roumieh Prison from November 2006 to January 2009 (where his duties included "guarding the prisoners inside the prisons, making sure they are being served the food and transporting them to the tribunals") and a Corporal at Roumieh Prison from January 2009 to January 2012 (where his duties included "transporting the prisoners into the tribunals and outside of the tribunals, being present during the tribunals for security reasons.")

[25] The Applicant argued that the incidents reported would only amount, at most, to inhumane acts that could not be regarded as widespread or systematic. The documentary evidence however showed that the acts were not spontaneous or isolated. They were widespread and systematic.

[26] One article noted that prisoners at Roumieh prison were “held under cruel conditions” while another article said a former Lebanese Interior Minister pledged to probe allegations of prisoner abuse after viewing a leaked video of guards at Roumieh beating and kicking inmates.

[27] The article also stated that another leaked video showed a room full of detainees stripped down to their underwear. It also stated that one clip showed a prisoner lying on a floor covered in water, with his hands tied behind his back.

[28] The Officer’s findings are well documented and thoroughly considered in the context of the Applicant’s responses to the two PFL letters. One of the PFL responses stated that from December 2006 to March 2009 the Applicant was “stationed as a guard outside the prison gate and had no contacts with the prison population”. The Officer reasonably noted that the answer contradicted the Applicant’s earlier statement regarding his duties.

## VI. **Conclusion**

[29] Having reviewed the above-noted articles as well as several other articles in the record, I am satisfied that the Officer’s finding that they had reasonable grounds to believe that the Applicant is a member of the inadmissible class of persons described in subsection 35(1) of the *IRPA* is reasonable.

[30] The Officer concluded that the response to the PFL did not adequately demonstrate that the numerous instances of human rights violations committed during the time of employment of the Applicant should be disregarded, and that the Applicant was in no way complicit in those.



[31] I find that the Decision displays justification, transparency and intelligibility and, I can discern no serious shortcomings in the Officer's analysis.

[32] For all the foregoing reasons, this application is dismissed with respect to the TRV.

[33] As previously noted, regarding the Embassy's failure to consider the Applicant's TRP application, it is to be returned to the Embassy to be assessed.

[34] The parties indicated at the hearing of this matter that a Certified Question might be posed once my Reasons are released. They also indicated that any submissions with respect to such a question would be made at that time.

**JUDGMENT in IMM-4385-21**

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

1. This application is dismissed with respect to the TRV.
2. The TRP application is to be returned to the Embassy for assessment.

"E. Susan Elliott"

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Judge

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

**DOCKET:** IMM-4385-21

**STYLE OF CAUSE:** ELIE NADER v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** HELD BY WAY OF VIDEOCONFERENCE

**DATE OF HEARING:** JULY 12, 2022

**JUDGMENT AND REASONS:** ELLIOTT J.

**DATED:** OCTOBER 31, 2023

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