

Federal Court



Cour fédérale

**Date: 20240307**

**Docket: IMM-469-23**

**Citation: 2024 FC 391**

**Ottawa, Ontario, March 7, 2024**

**PRESENT: Mr. Justice Norris**

**BETWEEN:**

**EMAN IBRAHIM WADEE NOUMAN  
LAYAN MOHAMMED ABDEL MONEM  
AL RAFATI  
ADAM MOHAMMAD AL RAFATI**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Eman Ibrahim Wadee Nouman, the principal applicant, is a citizen of Jordan of Palestinian origin. The minor applicants are her children. Ms. Nouman's daughter Layan is also a citizen of Jordan. Her son Adam is a citizen of both Jordan and the United States.

[2] Ms. Nouman sought refugee protection in Canada for herself and her children on the basis of her fear of persecution and other harms at the hands of her uncle (her father's brother). In a decision dated December 19, 2022, the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada found that, while Ms. Nouman's account of her conflicts with her uncle was credible, her beliefs do not "correspond with the objective evidence about the agents of persecution and the available state protection." Accordingly, the RPD rejected the claims, finding that the applicants are neither Convention refugees nor persons in need of protection.

[3] The applicants now apply for judicial review of the RPD's decision under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The grounds for review relate solely to the RPD's findings concerning Ms. Nouman's fear of her uncle. The applicants do not challenge the RPD's rejection of the claims based on a fear that Ms. Nouman's Jordanian citizenship could be withdrawn (as had happened previously) or her fear of other adverse treatment in Jordan due to her Palestinian identity.

[4] As I will explain, I agree with the applicants that the RPD's conclusion that Ms. Nouman's subjective fear of her uncle lacks an objective basis is unreasonable.

[5] It is common ground that the RPD's decision should be reviewed on a reasonableness standard. 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" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). A reviewing court

“must be able to trace the decision maker’s reasoning without encountering any fatal flaws in its overarching logic, and it must be satisfied that there is a line of analysis within the reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived” (*Vavilov*, at para 102, internal quotation marks and citation omitted). On the other hand, “where reasons are provided but they fail to provide a transparent and intelligible justification,” the decision will be unreasonable (*Vavilov*, at para 136). The onus is on the applicants to demonstrate that the RPD’s decision is unreasonable. To set aside a decision on this basis, the 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” (*Vavilov*, at para 100).

[6] When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances (*Vavilov*, at para 125). Nevertheless, the test of reasonableness and its requirements of justification, intelligibility and transparency apply to an administrative decision maker’s assessment of the evidence and to the inferences the decision maker draws from that evidence (*Kreishan v Canada (Citizenship and Immigration)*, 2019 FCA 223 at para 46).

[7] Ms. Nouman was born in the United Arab Emirates in 1990 and grew up there. In 2004, her father fell seriously ill so he returned to Jordan with his family, including Ms. Nouman. Because of her father’s lingering illness, her father’s brother acted as the head of her family.

[8] Ms. Nouman and her husband, Mohammad Al Rafati, were married in 2012.

Ms. Nouman's uncle did not consider Mr. Al Rafati to be a suitable husband for Ms. Nouman because he came from a poor family. This caused a serious and long-lasting rift between the two families. There were particularly strong feelings between Ms. Nouman's uncle and Mr. Al Rafati's brother, Darweesh.

[9] In February 2013, Ms. Nouman and her husband moved to Saudi Arabia for the latter's work. Their daughter Layan was born there in 2014. Their son Adam was born in the United States in 2017, when Ms. Nouman was visiting family there. During this time, Ms. Nouman and her immediate family had little contact with her uncle.

[10] In mid-March 2020, as the COVID-19 pandemic was emerging, Ms. Nouman returned to Jordan with her two children. Her husband remained in Saudi Arabia while he tried to resolve some outstanding issues with his employer. Ms. Nouman stayed in Jordan with a maternal aunt. She was able to avoid contact with her father's family, including her uncle.

[11] Tensions between the two families came to a head in March 2021, when Ms. Nouman's brother-in-law Darweesh (who worked for the municipal government in Amman) prevented her uncle from obtaining a business license. In retaliation, Ms. Nouman's uncle gathered some people together to confront Darweesh at his office. They assaulted him and set fire to his office (although the fire was quickly brought under control). Darweesh did not report the attack to the police because he did not want his interference with the licensing process to come to light.

[12] A few days later, Ms. Nouman's uncle arrived at the home of Ms. Nouman's mother, where Ms. Nouman was visiting at the time. He demanded that Ms. Nouman divorce her husband immediately. If she did not do so, he would use his influence to take her children away from her and she would never see them again. According to Ms. Nouman, she feared that her uncle could carry through with this threat with impunity because he had influence with state authorities (including the police). She was aware that her uncle had assaulted her mother in 2017 but nothing came of this despite her mother reporting the assault to the police. She also knew her uncle had ties to a powerful clan through his wife's family. She believed he could carry through with his threats against her with their assistance, if necessary.

[13] Ms. Nouman and her husband decided that the best course of action would be for her to leave Jordan with their children. Her residency permit in Saudi Arabia had expired so she could not return there. She already had a valid visitor's visa for Canada (it had been issued in February 2018) so they decided she would go to Canada. Since she could not enter Canada at that time due to the pandemic, Ms. Nouman decided to go to the United States first and wait for the borders to open again (she also had a valid visitor's visa for the United States).

[14] Ms. Nouman and her children arrived in the United States on April 2, 2021. They remained there with family until October 21, 2021, when they flew to Toronto. On arrival, Ms. Nouman stated that they wished to seek refugee protection. Subsequently, Ms. Nouman's husband arrived in Canada and also claimed refugee protection. His claim is being processed separately from the applicants'.

[15] As noted above, the RPD found Ms. Nouman's account of her experiences with her uncle to be credible. However, the RPD rejected the claims because Ms. Nouman's beliefs or fears did not "correspond with the objective evidence." The RPD gave two reasons for making this finding. First, there was insufficient evidence that Ms. Nouman's uncle had the legal authority to order her to divorce her husband or to take away her children. On the basis of country condition evidence, the RPD found that it was Ms. Nouman's husband, not her uncle, "who has the legal authority to divorce her or take her children away." Second, there was insufficient evidence that Ms. Nouman's uncle had the "practical influence" to make his threats a reality. The RPD found that, even if Ms. Nouman's uncle is connected to a powerful clan and tribe through his wife's family, there was insufficient evidence that he had "practical influence" over the clan or tribe or that his dispute with Ms. Nouman's husband's family would be of any concern to them.

[16] I agree with the applicants that these findings are unreasonable. Simply put, the RPD has misconstrued the central issues raised by the applicants. Ms. Nouman never suggested that she feared that her uncle could or would act *legally*; rather, her fear was that he would act extra-legally and, further, that he could do so with impunity because of his influence with state authorities and his powerful connections. That her uncle had influence was demonstrated by the incident involving her mother in 2017. That he could enlist others to assist him when required was demonstrated by the attack on Ms. Nouman's brother-in-law just days before he threatened to take away Ms. Nouman's children unless she complied with his demand to divorce her husband. As *Vavilov* holds, the "principles of justification and transparency require that an administrative decision maker's reasons meaningfully account for the central issues and concerns raised by the parties" (at para 127). The RPD failed to do so here.

[17] The application for judicial review must, therefore, be allowed. The decision of the RPD will be set aside and the matter will be remitted for redetermination before a different decision maker.

[18] The parties did not suggest any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

**JUDGMENT IN IMM-469-23**

**THIS COURT’S JUDGMENT is that**

1. The application for judicial review is allowed.
2. The decision of the Refugee Protection Division dated December 9, 2022, is set aside and the matter is remitted for reconsideration by a different decision maker.
3. No question of general importance is stated.

“John Norris”

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Judge



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

**DOCKET:** IMM-469-23

**STYLE OF CAUSE:** EMAN IBRAHIM WADEE NOUMAN ET AL v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** OCTOBER 30, 2023

**JUDGMENT AND REASONS:** NORRIS J.

**DATED:** MARCH 7, 2024

**APPEARANCES:**

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