

Federal Court



Cour fédérale

**Date: 20110329**

**Docket: IMM-5197-10**

**Citation: 2011 FC 382**

**Ottawa, Ontario, March 29, 2011**

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

**BETWEEN:**

**ABDALLAH ALI HAMDAR**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of the decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated 5 August 2010 (Decision), which

refused the Applicant's application to be deemed a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

## **BACKGROUND**

[2] The Applicant is a citizen of Lebanon. His refugee claim is based on his political opinion and his association with members of the Israeli military and intelligence.

[3] The Applicant's former wife and his brother were officers in the Lebanese army at the material time. The Applicant lived in the southern suburbs of Beirut, where Hezbollah had strong support and many followers. He occasionally spoke out against the ideology of Hezbollah in the presence of his neighbours. In 1997, one such neighbour reported the Applicant to Hezbollah and Syrian intelligence and the Applicant was subsequently imprisoned and beaten. In September 1998, he was again arrested by Syrian intelligence, beaten, tortured and forced to pay a ransom for his release. In December 1999, he was arrested and imprisoned for a year by Hezbollah and Syrian intelligence, who suspected him of bombing a Hezbollah leader near his home; he was again forced to pay for his release. In 2001, he and his friend were ambushed in a supermarket. The friend was killed and the Applicant shot in the leg and hospitalized for two months; he has submitted a hospital record in support of this claim.

[4] In 2004, Hezbollah and Syrian intelligence asked him to gather information for them. The Applicant requested protection from the Lebanese army but none was forthcoming. In January 2006, members of Hezbollah shot at the Applicant's car and later told him that this was a warning.

The Applicant went into hiding. He left Lebanon on 11 April 2006 on a United States visa. He spent sixteen days in Italy, two days in Dubai and Oman, over a month in Italy again and then three months in the US. On 1 January 2007, he crossed the border into Canada and claimed refugee protection on the same day.

[5] Prior to his escape from Lebanon, between 2001 and 2004, the Applicant travelled outside the country on multiple occasions; his destinations included the US, the Netherlands, the United Arab Emirates and Malaysia.

[6] The Applicant appeared before the RPD on 27 April and 30 June of 2010. He was represented by counsel and an interpreter was present. The RPD found that “there is no more than a mere possibility that the [Applicant] would be persecuted for any Convention ground” if he was to return to Lebanon and “nothing in the evidence that would provide a foundation for establishing a personal risk or a danger for the [Applicant] under section 97(1) of the Act.” This is the Decision under review.

#### **DECISION UNDER REVIEW**

[7] The RPD identified the determinative issue in this case to be credibility. It noted that, although there were several inconsistencies in the Applicant’s testimony, it would set out in its Decision only those that were central to the claim, and they are as follows.

[8] The Applicant did not mention in his Port of Entry statement (POE) that his major problems began in 2004 and 2005 when Hezbollah and Syrian intelligence approached him to work as an informant due to his family connections to the Lebanese army. The Applicant also did not mention in his POE that Hezbollah arrested him in 1999 for bombing a Hezbollah leader and that his car was shot at and damaged in 2006. These details were reported in his PIF and in his oral testimony.

[9] The Applicant explained that he was confused and tired at the port of entry and that he was hesitant to reveal his entire story out of fear that he might be sent back to Lebanon. The RPD did not accept this explanation as credible or reasonable. It found that, as an educated and well-travelled individual who had arrived in Canada with a well-planned intention of claiming refugee protection, the Applicant would have mentioned these important events if they had actually occurred, particularly given that he identified them as the major problems causing him flee the country.

[10] The Applicant also mentioned in his POE that he was distributing pamphlets opposing the Syrian army, but he did not state this in his PIF or at the hearing. Again, the Applicant's explanation for this inconsistency was his confusion and fatigue and his fear of revealing his entire story.

[11] The Applicant did mention in his POE, in his PIF and at the hearing that he had been shot in the leg by Hezbollah during the supermarket incident in 2001. However, in his POE, he had added that seven other people were killed. In light of the other above-mentioned discrepancies, the RPD rejected as speculative the Applicant's assertion in his PIF that he was a target in that shooting. It also rejected his explanation that, at the port of entry, he was focused on his own problems and so did not mention the seven other casualties.

[12] The RPD found that the Applicant did not have a subjective fear of persecution. His delay in leaving Lebanon and his failure to claim asylum in any of the countries he visited during the material time were inconsistent with subjective fear. The RPD rejected the Applicant's explanation that he did not want to leave his family and his business and that he had not resolved to leave Lebanon for good until mid-December 2006, when he realized that the US promise to disarm Hezbollah would not come to fruition. He was in the US at that time and travelled to Canada to make his claim shortly thereafter.

[13] With respect to the section 97 claim, the RPD found that, based on the evidence, the Applicant would face no personal risk or danger were he to return to Lebanon.

## **ISSUES**

[14] The Applicant raises the following issues:

- i. Whether the RPD's credibility findings were unreasonable;
- ii. Whether the RPD failed to provide adequate reasons for rejecting the Applicant's section 97 claim; and
- iii. Whether the RPD's conduct during the hearing breached the rules of procedural fairness.

## **STATUTORY PROVISIONS**

[15] The following provisions of the Act are applicable in these proceedings:

### **Convention refugee**

**96.** A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

*(a)* is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

*(b)* not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

### **Person in need of protection**

**97.** (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

*(a)* to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention

### **Définition de « réfugié »**

**96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

*a)* soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

*b)* soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

### **Personne à protéger**

**97.** (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

*a)* soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la

Against Torture; or	Convention contre la torture;
(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,	(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,	(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

**Person in need of protection**

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

**Personne à protéger**

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

**STANDARD OF REVIEW**

[16] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9, held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[17] The first issue challenges the RPD's credibility findings. Findings of credibility fall within the RPD's area of expertise and, therefore, attract a standard of reasonableness. See *Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315, 42 ACWS (3d) 886 (FCA); *Aguirre v Canada (Minister of Citizenship and Immigration)*, 2008 FC 571 at paragraph 14; and *Dunsmuir*, above, at paragraphs 51 and 53.

[18] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at paragraph 47; and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."



[19] The second issue concerns the adequacy of reasons, and the third issue concerns procedural fairness in general. As held in *Canada (Minister of Citizenship and Immigration) v Charles*, 2007 FC 1146 at paragraph 24, citing *CUPE v Ontario (Minister of Labour)*, 2003 SCC 29, the adequacy of reasons is an issue of procedural fairness. Issues of procedural fairness are reviewable on a standard of correctness.

## **ARGUMENTS**

### **The Applicant**

#### **Credibility Findings Were Unreasonable**

[20] The Applicant challenges the RPD's credibility findings, specifically regarding his failure to mention in his POE facts that he did mention in his PIF and at the hearing. The Applicant explained his fear that full disclosure of his story to immigration officials at the port of entry would jeopardize his safety and that of his family. He did not lie but, at the same time, he did not reveal everything until he had had an opportunity to speak with legal counsel and confirm that he would be permitted to stay in Canada. He has provided corroborating evidence confirming his injuries at the hands of Hezbollah and Syrian intelligence and establishing his family's connection to the Lebanese army. Given the Applicant's cultural background and his past experiences with Hezbollah and Syrian intelligence, this explanation is plausible. In rejecting it, the RPD applied North American reasoning to the Applicant's behaviour, contrary to the reasoning of this Court in *RKL v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at paragraph 12.

[21] The Applicant acknowledges that assessments of credibility are at the heart of any refugee claim and that a negative credibility finding will almost invariably result in a rejection of the claim on the basis of lack of a well-founded fear of persecution. The Applicant argues that, in the instant case however, the discrepancies identified by the RPD were not significant to the claim, nor were they obviously implausible. Rather the RPD engaged in a microscopic examination of the evidence and became so fixed on the details that it overlooked the substance of the facts that grounded the claim, contrary to the reasoning of this Court in *Sheikh v Canada (Minister of Citizenship and Immigration)* (2000), 190 FTR 225, [2000] FCJ No 568 (QL) at paragraphs 22-24. See also *Jamil v Canada (Minister of Citizenship and Immigration)*, 2006 FC 792 at paragraphs 24-25. In failing to exercise due care and caution in its credibility assessment, the RPD acted unreasonably.

[22] This unreasonable credibility finding then led to other erroneous findings. For example, the exact number of people killed in the attack at the supermarket is irrelevant to the claim. What matters is the consistency with which the Applicant maintained that he was injured and his friend was killed. The hospital record, which was in evidence, confirms that the Applicant was shot in the leg and hospitalized for over two months. The Applicant submits that the record shows that he testified in a consistent manner throughout the hearing, in great detail and without contradiction.

[23] The Applicant further argues that the RPD misconstrued the evidence as to why he did not claim asylum in any other country, despite having the opportunity to do so. The RPD's limited conclusion that the Applicant did not want to leave his family omits the following important details. Up to a certain time, the Applicant could pay for protection in Beirut and, therefore, continued to live with his family and operate his business, as was his preference. When he could no longer pay

for protection in Beirut, he moved elsewhere throughout the country, particularly in the safer Christian regions in the north. Then, when those regions too became unsafe, he was forced to leave the country. Nonetheless, he maintained a hope and a resolve to return to Lebanon if the US succeeded in disarming Hezbollah and the security situation improved. When that plan did not materialize, he crossed the border into Canada to carry out his ultimate plan, which was to claim refugee status in Canada. When viewed in its totality, the Applicant's explanation for his delay in leaving is reasonable. By truncating the story, the RPD misconstrues the Applicant's actions so that they appear inconsistent with a person who has a well-founded fear of persecution. This constitutes a reviewable error.

### **Section 97 Analysis Was Inadequate**

[24] The Applicant contends that the RPD is "virtually silent" with respect to his section 97 claim, despite evidence that he was arrested, detained, tortured and attacked by Hezbollah and Syrian intelligence in 1997, 1998, 1999, 2001 and 2006. The RPD did not address the country conditions documentation and other evidence to discern whether the Applicant was a person in need of protection. In failing to conduct an individualized assessment, the RPD acted unreasonably and contrary to this Court's findings in *Kilic v Canada (Minister of Citizenship and Immigration)*, 2004 FC 84.

### **RPD Breached the Rules of Procedural Fairness**

[25] The Applicant argues that, in persistently interrupting and asking him to repeat his testimony several times, the RPD deprived him of the opportunity to present his case. The RPD's conduct significantly interfered with his explanations and the orderly presentation of his case. The Applicant submits that the RPD crossed the line between controlling the hearing and unduly interfering in the Applicant's testimony, which this Court and the Federal Court of Appeal have found constitutes a breach of procedural fairness. See *Kumar v Canada (Minister of Employment and Immigration)* (1987), [1988] 2 FC 14, [1987] FCJ No 1015 (FCA) (QL); and *Thiara v Canada (Minister of Citizenship and Immigration)* (1997), 127 FTR 209, [1997] FCJ No 258 (QL).

### **The Respondent**

#### **Credibility Finding Was Reasonable**

[26] The RPD notes that the discrepancies in the Applicant's evidence that are referenced in the Decision are but a sampling; they are the discrepancies most relevant to the Applicant's claim.

[27] The Respondent argues that the Applicant merely disputes the RPD's credibility assessment and is inviting this Court to re-weigh the evidence and, in particular, to re-weigh the Applicant's explanations for his contradictory evidence. This is not the Court's function on judicial review. See *Khosa*, above, at paragraph 61.

[28] The RPD, as the trier of fact, has the advantage of hearing the oral evidence. Its expertise in the assessment of credibility is undisputed, and its identification of inconsistencies and contradictions are integral to that assessment. The RPD is entitled to make adverse findings on the

basis of such contradictions. See *Dhindsa v Canada (Minister of Citizenship and Immigration)* (2000), 102 ACWS (3d) 165, [2000] FCJ No 2011 (FC) (QL).

[29] Where the RPD has made a negative credibility finding, “that determination is sufficient to dispose of the claim unless there is independent and credible documentary evidence capable of supporting a positive disposition of the claim.” See *Sellan v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 381.

[30] In the instant case, the RPD was not satisfied that the Applicant was at risk from Hezbollah and Syrian intelligence, based on the inconsistencies in his evidence, which were not satisfactorily explained. The Respondent particularly notes the evidence indicating that the Applicant was not a target in the supermarket shooting; this goes to the heart of his claim of personalized risk. The RPD’s credibility findings were grounded in the evidence and were not unreasonable.

### **No Well-founded Fear of Persecution**

[31] The Respondent states that the Applicant has not challenged the RPD’s finding that he lacked a well-founded fear of persecution. This is sufficient reason to dismiss the application.

[32] The RPD’s finding that the Applicant lacked a well-founded fear of persecution was reasonably based on his delay in leaving Lebanon and his failure to claim asylum both on his business trips abroad and immediately following his final departure from Lebanon in 2006. If he really feared for his life, protecting his life would have been his greatest concern. See *Riadinskaia v*

*Canada (Minister of Citizenship and Immigration)* (2001), 102 ACWS (3d) 967, [2001] FCJ No 30 (FC) (QL). The Respondent points out that the Applicant's claim that he did not seek asylum before mid-December 2006 because he had not resolved to leave Lebanon for good until then is contradicted by his other evidence. He stated in his PIF: "I did not make claims in any of the other countries because I did not feel that I would be able to make a life for my family in any of those places." At the hearing he stated that he did not think of claiming asylum in Italy because he was intent on coming to Canada with a well-thought-out plan. This "asylum shopping" supports the RPD's finding of negative credibility and lack of well-founded fear. The Respondent contends that the Applicant is looking for a new country in which to raise his family. He is willing to say anything to secure refugee status in Canada. He does not believe that his safety is at risk.

### **No Need for a Separate Section 97 Analysis**

[33] The Respondent argues that, having conducted a thorough section 96 analysis, the RPD had nothing new to add under section 97; the evidence was the same, as were the credibility issues. See *Brovina v Canada (Minister of Citizenship and Immigration)*, 2004 FC 635; *Biro v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1428 at paragraph 21; and *Herrera v Canada (Minister of Citizenship and Immigration)*, 2007 FC 979.

### **The Hearing Was Not Unfair**

[34] Although the Applicant argues that the RPD prevented him from presenting his case, he failed to show that the RPD prevented him from saying anything that he wanted to say or that it

misconstrued the facts. The RPD is entitled to question an applicant regarding inconsistencies in his evidence. That is not unfair.

[35] Moreover, the Applicant did not protest during the hearing. He therefore failed to discharge his burden of making the issue known at the earliest possible moment, rather than waiting until the Decision was released. The Respondent argues that, based on the Federal Court of Appeal decision in *Yassine v Canada (Minister of Citizenship and Immigration)* (1994), 172 NR 308, [1994] FCJ No 949 (FCA) (QL) at paragraph 7, even if a breach of natural justice did occur, the Applicant's conduct was an implied waiver of that breach.

### **The Applicant's Reply**

[36] The Applicant argues that the RPD acted unreasonably in relying on the POE as a thorough account of his claim. In *Samarakkodige v Canada (Minister of Citizenship and Immigration)*, 2005 FC 301 at paragraph 50, Justice John O'Keefe notes that an immigration officer's notes are unlikely to contain all of the details of an applicant's claim. The point of the POE interview is to determine whether a claimant meets the criteria for admissibility and eligibility to make a refugee claim. The Applicant argues that the RPD's treatment of the POE is over-vigilant.

[37] With respect to the 2001 shooting at the supermarket, the Applicant submits that, contrary to the RPD's reasoning, the number of people who were killed in that incident is not instructive on the issue of whether or not he was targeted. The Applicant received a message from a friend who reported that the incident was in retaliation for the Applicant's alleged bombing of a Hezbollah

leader. It was open to the RPD to find that this evidence was not credible, but it was not open to the RPD to conclude that the Applicant was not targeted because of the number of people killed in the incident.

[38] The Applicant relies on the Federal Court of Appeal decision in *Sellan*, above, to argue that the RPD is required to assess the relevant objective evidence in support of a section 97 claim, even where it has made an adverse finding on the basis of the claimant's subjective evidence. Specifically, the RPD should have considered the medical report confirming that the Applicant was shot and hospitalized following the 2001 shooting.

#### **The Applicant's Further Memorandum**

[39] The Applicant submits that the RPD engaged in speculation and assumption when it concluded that he lacked a subjective fear of persecution based on the fact that he did not leave Lebanon or claim asylum at his earliest opportunity. The Applicant explained to the RPD that he acted as he did because he did not want to abandon his family and because he still had some hope that the security situation in Lebanon would improve; this explanation is entirely plausible. There is no basis in the evidence to support the finding that the Applicant lacked subjective fear. The Applicant relies on a similar case, *Mohammadi v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1028, which states that the bonds of family loyalty may lead a person to engage in risky conduct that might otherwise indicate a lack of subjective fear. He submits that the RPD has failed to state why it found the Applicant's explanation unconvincing.



### **The Respondent's Further Memorandum**

[40] The Respondent argues that the Applicant has misstated the proposition in *Mohammadi*, above. As is evident in paragraphs 28 and 29 of that case, the Court was simply observing that the RPD did not articulate a sufficient basis in the evidence to support its inferences regarding credibility and that its failure to do so constituted a reviewable error.

[41] The Respondent contends that *Mohammadi* is distinguishable from the instant case. In the instant case, the credibility finding was not based on inferences but rather on contradictions and inconsistencies in the Applicant's evidence in the POE, in the PIF and at the hearing. The Applicant stated in his PIF: "I did not make claims in any of the other countries because I did not feel that I would be able to make a life for my family in any of those places." The Respondent submits that this is "flatly contradicted" by the Applicant's PIF statement that he did not claim asylum earlier because he did not want to leave his family and still held out hope that the security situation would improve and also by his evidence at the hearing that he did not think of seeking asylum in Italy but was intent on coming to Canada with a well-thought-out plan to make a refugee claim.

### **ANALYSIS**

[42] As the RPD makes clear in the Decision, the determinative issue was credibility. Rather than addressing any positive aspects in the claim, the RPD chose to base its negative credibility finding on "inconsistencies in the claimant's testimony which he did not explain satisfactorily ...." The RPD cites four examples which it feels support its general findings of non-credibility.

### **Failure to Mention Problems at CBSA Interview**

[43] The RPD faulted the Applicant because, when he was interviewed by an officer of the Canada Border Services Agency on 1 January 2007 when he first entered Canada, he did not mention that:

- a. his major problems in Lebanon began with Hezbollah in 2004/2005;
- b. the military division of Hezbollah wanted him to advise them about the Lebanese army and intelligence because his wife, brother and cousin are officers in the Lebanese army;
- c. on 11 January 2006 his car was shot at and damaged.

The Applicant had mentioned these facts in his PIF and at the hearing.

[44] The RPD cited this as a discrepancy between his initial interview and his later PIF and asked him to explain it. The record shows that the Applicant testified and explained numerous times in a clear and coherent fashion that he was afraid of what would happen to him at the port of entry. He explained in detail that he was afraid that if US officials discovered he was anti-Hezbollah they would try to get him to provide information to them. The Applicant stated that he did not want to do this because he feared it would put his family in jeopardy. This fear was very present in the

Applicant's mind when he entered Canada on 1 January 2007 and it is reasonable to conclude that he was fearful of exposing the full extent of his problems with Hezbollah to immigration officials until a time when he was confident that he would be permitted to stay in Canada and make a claim for refugee protection. The Applicant reasoned that it was in his best interest to disclose only part of his story at the POE until he was given an opportunity to talk with legal counsel and ensure that full disclosure of his persecution would not jeopardize his safety and the safety of his family.

[45] The RPD addresses the Applicant's explanation as follows in its reasons:

When asked at the hearing to explain this discrepancy, the claimant stated that he hid some information at that time as he was confused and afraid regarding what was going to happen to him. The Panel does not find the claimant's explanation credible or reasonable. He is an educated and well-traveled individual and he arrived in Canada with a well-thought out (*sic*) intention of claiming refugee protection. The Panel is of the view that he would have mentioned these important events that are central to his claim if they had actually occurred, especially when he described these as major problems and these are the problems that made him flee the country.

[46] In the recent case of *Wu v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1102 at paragraph 16, Justice James O'Reilly warned as follows:

With respect to the Board's reliance on differences between Mr. Wu's statements at the POE and his testimony at the hearing, I accept that the Board should be careful not to place undue reliance on the POE statements. The circumstances surrounding the taking of those statements is far from ideal and questions about their reliability will often arise.

[47] Similarly warnings were made by Justice Luc Martineau in *RKL v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at paragraph 13:

In evaluating the applicant's first encounters with Canadian immigration authorities or referring to the applicant's Port of Entry

Statements, the Board should also be mindful of the fact that “most refugees have lived experiences in their country of origin which give them good reason to distrust persons in authority”: see Prof. James C. Hathaway, *The Law of Refugee Status*, (Toronto: Butterworths, 1991) at 84-85; *Attakora, supra*; and *Takhar, supra*.

[48] The Decision shows that the RPD was not mindful of these warnings. We do not know what questions the CBSA officer put to the Applicant or what scope and encouragement he was given to tell his whole story; yet the RPD treats the POE notes as though they should have revealed essentially what was revealed in the PIF and at the hearing. At the POE the Applicant did identify the agent of persecution but, as he explained at the hearing, he did not give the full account because he did not know at that time how safe he and his family were from persecution in Lebanon.

[49] It is evident from the transcript and from the Applicant’s evidence that he was very concerned that none of the information in his immigration proceedings be reported back to Hezbollah. He asked for a different interpreter at the hearing because the first interpreter knew his family back in Lebanon (see pages 356-58 of the Tribunal Record) and he did not feel that he could be uninhibited in his testimony if the first interpreter was present, despite the fact that she was under oath. Also, he withheld information during his POE statement for fear that he would reveal information unfavourable to Hezbollah and then be sent back to face the consequences. He did not tell his full story until he was reassured by counsel that he would be allowed to remain in Canada. I am not convinced that the RPD took this into consideration.

[50] In addition, the RPD’s logic for rejecting the Applicant’s explanation on this point is seriously faulty. Just because the Applicant is educated and came to Canada with a well-thought-out plan does not in any way undermine his explanation that, at the border, he felt he needed to show

extreme care about what he said because it might mean that he would be sent straight back to Lebanon. Indeed, this sounds to me like the kind of care that an educated man with a well-thought-out plan would take.

[51] Similar problems occur in relation to the RPD's inconsistency and negative credibility findings in paragraph 16 of the Decision. As Justice François Lemieux pointed out in *Jamil*, above, at paragraph 25, a tribunal must be reasonable in rejecting an applicant's explanation when confronted with a contradiction and "must not be quick to apply North American logic and reasoning to a claimant's behaviour" and "the tribunal must assess the applicant's claim against the totality of the evidence."

[52] The fact that a significant portion of the Applicant's explanation is not referred to in the Decision suggests to me that the RPD in this instance did not fully consider the Applicant's explanation and failed to take into account the warnings of the Court cited above.

[53] In my view, similar problems also occur with regard to the supermarket shooting of 30 November, 2001. In this case, the RPD does not even bother to refer to the hospital record that the Applicant submitted and which showed he was treated for a gunshot wound to the leg had hospitalized for 2 1/2 months.

[54] The evidence was that the friend who was killed and the Applicant were in different areas of the supermarket and the shots were fired from outside the supermarket, but in reading the transcript it is evident that this was not a "supermarket" in the North American sense. It appears to have been an open-fronted fruit and vegetable stall or shop in a larger mall area that measured only "a couple

of meters,” so that the shooting came from the entrance to the market and was aimed into the market.

[55] The details suggest that the Applicant’s account that he was the main target was much less implausible than the RPD concludes. The RPD reveals that it is disinclined to accept the Applicant’s account of the shooting incident and that he was the target because of the other contradictions in the Applicant’s evidence: “In light of the other discrepancies, the Panel does not find the claimant’s explanation credible or trustworthy.” This means then that, should the RPD’s finding regarding other discrepancies be unreasonable, its reliance on those discrepancies to find the Applicant not credible on this incident must also be unreasonable.

[56] The RPD also seems to have ignored the totality of the Applicant’s explanations for his delay in coming to Canada to claim refugee status. Besides his fears for his family, the Applicant testified that, even though he left Lebanon in April 2006, he did not make a decision to seek refugee protection until mid-December 2006 when he finally realized that the USA’s promise to disarm Hezbollah would not be kept. Until that time, the Applicant planned to return to Lebanon as soon as possible. The RPD failed to consider the totality of the evidence on this point.

[57] It is trite law that assessing credibility and weighing evidence are at the heart of the RPD’s expertise and that the Court should observe great deference for this process and intervene only in the rarest of cases.

[58] In the present case, when the record is reviewed in total, it is clear to me that the RPD is selective with regard to the Applicant’s explanations to the point of inaccuracy. In addition, the

RPD failed to consider important corroborative evidence that contradicted its conclusions and to take into account the totality of the evidence. See *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35, [1998] FCJ No 1425 at paragraph 17.

[59] This is one of those rare occasions when the RPD's negative credibility findings cannot be regarded as reasonable because they fall outside of the *Dunsmuir* range.

[60] The Applicant also raises grounds with regards to the RPD's failure to consider fully section 97 risks and a breach of procedural fairness. It is unnecessary to consider these matters because I have come to the conclusion that the Decision is unreasonable on its determinative issue of credibility and so must be sent back for reconsideration.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

1. The application is allowed, the decision is quashed and the matter is referred back for reconsideration by a differently constituted RPD.
2. There is no question for certification.

“James Russell”

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Judge



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

**DOCKET:** IMM-5197-10

**STYLE OF CAUSE:** **ABDALLAH ALI HAMDAR**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**PLACE OF HEARING:** Calgary, Alberta

**DATE OF HEARING:** February 17, 2011

**REASONS FOR JUDGMENT  
AND JUDGMENT** **Russell J.**

**DATED:** March 29, 2011

**APPEARANCES:**

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Rick Garvin FOR THE RESPONDENT

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