

Federal Court



Cour fédérale

Date: 20110614

Docket: IMM-4165-10

Citation: 2011 FC 695

Ottawa, Ontario, June 14, 2011

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

HANADI AL-MUSAWI
(a.k.a. Hanadi Hassan M Al-Musawi)

and

RIYAM AL-OJAIMI
(a.k.a. Riyam Wiaam Abd Al-Ojaimi)

Applicants

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 17 July 2010 (Decision), which

refused the Applicants' application to be deemed Convention refugees or persons in need of protection under sections 96 and 97 of the Act.

BACKGROUND

[2] The Applicant and her daughter, the Minor Applicant, are citizens of Iraq. The Applicant's father and mother are permanent residents of Canada. When her father applied to immigrate to Canada in 1999 under the Skilled Worker Program, the Applicant joined her application to his. However, when she married, her application was severed and effectively cancelled. In 2006, she reapplied under the Skilled Worker program. She last communicated with Canadian immigration officials regarding this pending application in 2008, when she allegedly was told not to follow-up until 55 months after the date of filing. She is still awaiting the outcome of that application. In April 2008, she applied and was accepted to study at an applied arts and technology college in Ontario. In July 2008, she applied for a student visa to study in Canada.

[3] Prior to fleeing Iraq, the Applicant and her husband were employed in Baghdad by Iraqna, a large, Egyptian-owned mobile phone company. The Applicant is a computer engineer and held a position in the company as team leader. She claims that, at the material time, about 60 percent of employees in the Baghdad office were foreigners, mostly Americans; that the company itself is rumoured to be a Jewish/Israeli company; and that many of the senior employees had admitted to her co-workers that they were Jewish. She further claims that Iraqna employees are in danger of being kidnapped by Iraqi insurgents, particularly those employees who are Jewish but, more significantly, those who are engineers. By getting rid of the engineers who build the

telecommunications network, insurgents can register their opposition to the government and slow down progress in the country.

[4] The Applicant claims that, in speaking with her co-workers over lunch and coffee, she was vocal in her criticism of the government, of Sunni parties and of militias such as the Al-Mahdi army, and that her outspokenness angered her Shia co-workers. The Applicant states that she is a Shia Muslim and that her husband is a Sunni Muslim, a fact that she concealed from her co-workers.

[5] On 1 June 2008 the Applicant alleges that an anonymous caller telephoned her and advised her to quit her job and divorce her husband because he is a Sunni. She dismissed this incident, thinking the caller was a disgruntled employee.

[6] On 20 June 2008 at 8:15 a.m., the Applicant says that she had left her house and was getting into her car to drive to work when a man opened her car door and climbed into the passenger seat next to her. At the same time, a second car approached and two masked men jumped out of it and tried to pull her from her own car. Her neighbours came running and screaming to rescue her. This attracted the attention of the guards outside the Ministry of Justice, which is located very near the Applicant's home. The guards began shooting into the air. The kidnappers pushed the Applicant to the ground and shot at her, but they missed. She and her husband did not call the police because they believed the police to be infiltrated by militia and criminals.

[7] Two days later, the Applicant alleges that another anonymous caller telephoned her, saying that she had not been forgotten by the militia men and advising her to quit her job and divorce her husband. The Applicant went to stay with her uncle, and her husband went to hide with his family in Mosul. Her husband informed her that, while in Mosul, Al-Qaeda threatened him and accused him of being a spy because he had married a Shia. He subsequently fled to Syria. The Applicant and the Minor Applicant left Iraq on 1 July 2008. They arrived in Canada on 17 September 2008 and sought refugee protection on 26 September 2008. The Applicant is currently working full-time with the Canadian branch of Iraqna.

[8] The Applicant and the Minor Applicant appeared before the RPD on 31 May 2010. They were represented by counsel and an interpreter was present. Applicant's counsel submitted additional written argument on 10 June 2010. The RPD found, in the Decision released 17 June 2010, that the Applicant's refugee claim was motivated by her desire to come to Canada and not by a desire to flee Iraq. This is the Decision under review.

DECISION UNDER REVIEW

[9] The RPD found that the Applicant was motivated by a desire to come to Canada, rather than a desire to flee Iraq, based on an examination of her actions.

The Applicant's Actions Indicate a Continuing Prior Interest in Coming to Canada

[10] The Applicant applied to study in Canada in April 2008, although her problems in Iraq did not arise until May of the same year. The RPD concluded that the Applicant applied to a Canadian college not to study here but as a way to get a Canadian visa. The Applicant explained that, although she had been accepted to study here and had intended to do so, she did not follow through with this plan because she was “out of the track of studying” and, after the attempted kidnapping, was under too much stress to cope with study at that time. The RPD did not accept this explanation. It observed, first, that there was no evidence to show that she had “psychological issues” at the time and, second, that at the hearing the Applicant appeared capable, confident and well-able to cope with the demands of life in Canada. Consequently, the RPD drew a negative credibility inference.

[11] The RPD also considered that the Applicant has made two previous applications for permanent residence – once in 1999 and once in 2006 – which indicate her continuing prior interest in coming to Canada. Contrary to the Applicant's understanding that the 1999 application was cancelled, documentary evidence from Citizenship and Immigration Canada indicates that it is still pending. The RPD found that, if the Applicant feared being returned to Iraq, she would have followed up on at least one of these two applications. This caused the RPD to draw a negative credibility inference.

The Applicant's Claims of Employment-Related Risks Are Implausible

[12] The RPD also notes that several elements of the Applicant's Personal Information Form narrative (PIF) were implausible and uncorroborated. For example, it was unlikely that Iraqna, a company owned by an Arab country with a recent history of hostility toward Israel, would be perceived as being a Jewish/Israeli company, as the Applicant claimed. The Applicant was unable to point to a single employee who was Jewish, despite her senior position in the company, and she was unable to produce any corroborating evidence that such a perception existed even though she claimed that it was widespread. The RPD identified this weakness as significant because the perception of the company as being a Jewish/Israeli company was one of the reasons the Applicant had offered to explain why Iraqna employees were targeted. This caused the RPD to draw a negative credibility inference.

[13] Also implausible in the RPD's view was the Applicant's assertion that she was vulnerable to attack because she worked for a company that built the telecommunications infrastructure. The *China Daily* newspaper article introduced in evidence to support her claim is dated January 2006 and is not recent. The RPD observed that the August 2007 UN Report on Iraqi Asylum Seekers did not include engineers or telecommunications workers among the professionals at risk in Iraq. The Applicant's allegation that Iraqna employees have recently gone missing was uncorroborated. The RPD found that there was "not a serious possibility" that the Applicant was at risk because of the nature of her employment.

[14] The RPD gave little weight to the Applicant's assertion that she was vulnerable because she spoke out against the government and the militias to her colleagues at work. When questioned, she admitted that she had not been targeted at work, only that her manager had warned her that some of the other employees had certain views about her.

The Alleged Attack Is Unlikely to Have Happened as Claimed

[15] With respect to the alleged kidnapping, the RPD found several aspects of the Applicant's story to be implausible. First, it was unlikely that she would not know how many shots the kidnappers had fired at her. She was lying on the ground at their feet and therefore in very close proximity. The gunshots would have been loud, even if the Ministry of Justice guards were also firing their guns from across the street. Second, it was unlikely that the kidnappers would have fired at her at such close range and missed. Third, the Applicant was unable to document this attempted kidnapping, despite the fact that neighbours and Ministry of Justice guards witnessed it. She did not report it to the police. Her explanation that the witnesses were too frightened to give evidence and that she believed the police to be infiltrated with insurgents was not accepted. The RPD found that the events could not reasonably have occurred as the Applicant indicated, and it drew a negative credibility finding.

The Applicant Will Not Be a Single Woman or Single Mother if Returned to Iraq

[16] The RPD acknowledged evidence in the National Documentation Package that single women and single mothers were at higher risk than others in Iraq. However, it concluded that the

Applicant need not be a single woman or a single mother if she were to return to Iraq. The Applicant and her husband are still in a relationship. His reasons for fleeing Iraq are tied to her alleged persecution. Given the Applicant's failure to establish that she was persecuted, there is nothing preventing her husband from returning to Iraq, in which case the Applicant will not be a single woman and single mother in Iraq and therefore will not face the related risks.

The Applicant's Claim of Religious Persecution is Unfounded

[17] In light of the Applicant's general credibility problems and the lack of evidence corroborating the claim that she and her husband belong to different religious sects, the RPD did not accept the Applicant's claim that their marriage puts them at risk of religious persecution. Although Shia Muslims are vulnerable to sectarian violence, this is a generalized risk. Moreover, the RPD recognized the most recent US DOS Report, which states that sectarian violence has "decreased to the lowest level since 2004."

ISSUE

[18] The Applicant raises the following issue:

Whether the RPD erred in finding that the Applicant failed to establish an objective basis for a well-founded fear of persecution based upon her identity as a female professional employed by a company previously targeted by insurgents.

STATUTORY PROVISIONS

[19] 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

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 :

- | | |
|--|---|
| <p>(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or</p> | <p>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 Convention contre la torture;</p> |
| <p>(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if</p> | <p>b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :</p> |
| <p>(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,</p> | <p>(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,</p> |
| <p>(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,</p> | <p>(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,</p> |
| <p>(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and</p> | <p>(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,</p> |
| <p>(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.</p> | <p>(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.</p> |

Person in need of protection

Personne à protéger

(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.

(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

[20] 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.

[21] The RPD's finding that the Applicant failed to establish an objective basis for a well-founded fear of persecution is a question of mixed fact and law. It attracts a standard of reasonableness. See *Butt v Canada (Minister of Citizenship and Immigration)*, 2010 FC 28 at paragraph 6.

[22] 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."

ARGUMENTS

The Applicant

The RPD Did Not Consider the Applicant's Identity as a Whole

[23] The Applicant submits that the Decision is flawed because the RPD failed to consider all evidence together in assessing her objective fear of persecution based on her identity as a professional woman working for a company that deals in the repair and reconstruction of telecommunications infrastructure and that, in consequence, is seen as supportive of the Iraqi government and, therefore, is a target for insurgents. Instead of looking on her identity as a whole, the RPD's assessment "parsed [the Applicant's] identity into separate components."

[24] The Applicant contends that where she works and what she does puts her at risk. She refers to the *China Daily* newspaper article from 2006, which specifically refers to Iraqna and which states:

Insurgents have sabotaged efforts to repair Iraq's dilapidated infrastructure, blowing up power lines and killing or kidnapping engineers as part of a campaign against the Shi'ite and Kurdish led government. [my emphasis]

[25] In addition, the Applicant, as an engineer who works for a company that previously had been targeted by insurgents for its support of the government through the repair of the country's dilapidated telecommunications system, is perceived as having a pro-government political opinion.

[26] Also, the British Home Office reports that women and girls, particularly those who are perceived as or actually transgressing traditional roles and/or who are exposed in society, have been

intimidated and specifically targeted for attacks (including murder) by non-state actors. Vulnerable groups include women engaged in the professions, politics and journalism; civil society activists; and women who transgress social or religious mores.

[27] The Applicant argues that her profile, the elements of which are outlined above, clearly puts her at a disproportionate risk compared to other Iraqi citizens and that the documentary evidence supports this argument.

The Respondent

The Applicant Lacked Subjective Fear

[28] The Respondent notes that, to establish a fear of persecution, an applicant must establish both subjective and objective fear. See *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at 723. A finding that the applicant lacks subjective fear may render an assessment of the objective fear superfluous and warrant dismissal of the claim. See *Ahoua v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1239 at paragraph 16.

[29] In the instant case, the Decision makes it clear that the Applicant was found to be not credible and to lack a subjective fear of persecution based on: her desire to come to Canada and not specifically to flee Iraq; her application to study in Canada as a way of obtaining a student visa; her two previous applications for landing, neither of which she has followed up on since 2008; her uncorroborated and implausible claims regarding the danger of working for a company that was perceived to be a Jewish/Israeli company and that reputedly hired “many” Jewish senior employees;

the lack of reported attacks on Iraqna employees since 2006; the implausibility of elements of her uncorroborated alleged attack by armed kidnappers; and the improbability that she would be targeted because of her political opinion, which was expressed, with no obvious repercussions, only in the workplace. The Respondent argues that this negative credibility finding, which remains unchallenged by the Applicant, renders the objective component of the test irrelevant.

The Findings Regarding Lack of Objective Fear Were Reasonable

[30] In the alternative, the Respondent argues that the RPD's analysis regarding the Applicant's lack of objective fear of persecution was reasonable. There has been no documentary evidence of attacks on Iraqna employees since 2006. Having found that the Applicant was not at risk in Iraq, the RPD reasonably concluded that it would be safe for her husband to return to Iraq. This, in turn, meant that she would not be a single woman and single mother in Iraq and would not face persecution on that basis.

[31] The Applicant argues that, because she falls into several generalized risk categories, she meets the profile of a Convention refugee. Being subject to generalized risk does not entitle an applicant to refugee protection in Canada. It was reasonable for the RPD to find that these generalized risks could not constitute a reasonable basis for her claim.

ANALYSIS

[32] At the hearing of this application in Toronto, the Applicant's essential complaint was that, in assessing forward-looking risk, the RPD failed to assess whether there was more than a mere possibility of persecution based upon the Applicant's identity as a female, professional engineer in Iraq. The Applicant says that, in assessing risk, the RPD parsed her identity and should have had regard to her full profile.

[33] My reading of the Decision is that the Applicant did not establish subjective fear. Also, in looking to the future, the RPD makes it clear that not only does the evidence show that general violence in Iraq has declined but that there was no evidence that Iraqna employees were being targeted.

[34] In her written submissions, the Applicant attempted to show that Iraqna employees were at risk because of rumored Jewish associations of the company. This was rejected by the RPD and the Applicant does not question the RPD's findings on this issue.

[35] The Applicant is now attempting to parse her own profile. At the hearing, she wished to leave out of account that she was an Iraqna employee and that she still works for the Canadian arm of Iraqna in Canada, as the RPD found. There is nothing to suggest that if she returns to Iraq she will not, or cannot, continue working for Iraqna. As the RPD found, there is no evidence of attacks on Iraqna employees (male or female) since 2006.

[36] The Applicant's account of what had happened to her in the past was discredited. She does not challenge the RPD's findings in that regard, nor does she challenge the RPD's finding that she was motivated to come to Canada and not to flee Iraq.

[37] In assessing future risk, whether section 96 persecution or section 97 risk, the RPD clearly referred to the general situation on violence and the Applicant's particular profile, which included her employee association with Iraqna.

[38] I can find nothing unreasonable in the Decision.

[39] Both parties agree that there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

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

“James Russell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4165-10

STYLE OF CAUSE: **HANADI AL-MUSAWI**
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and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 5, 2011

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

DATED: June 14, 2011

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