Federal Court  Cour fédérale

Date: 20120704

Docket: IMM-8554-11

Citation: 2012 FC 848

Ottawa, Ontario, July 4, 2012

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

ENAS ALHOKBEE, RAIAN ALHOKBEE,
ANIS AL TEWNEH, and
KAMELIA AL ATAWNEH

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants seek judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the Board), dated November 8, 2011, which found that the applicants were neither Convention refugees nor persons in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). For the reasons that follow the application is dismissed.

Facts

[2] The applicants are a family of Arab citizens of Israel: the principal applicant, Enas Alhokbee (applicant), and her three children, Anis Al Atawneh, Kamelia Al Atawneh, and Raian Alhokbee. The applicant states that she was raised in an abusive home by a strict Muslim father. Her father arranged for her to marry Kamal Al Alawneh when she was 20 years old and they had two children together before divorcing in 2003.

[3] After the divorce the applicant and her children moved back in with her parents. Her father physically and emotionally abused her because she was a single mother and because she violated Muslim norms in her dress and behaviour. She decided to flee the abuse and left her parents' home without her father's permission. Her father vowed to kill her if she did not return to live with him.

[4] Between 2005 and 2009 the applicant relocated to nine different apartments in five cities evading her father and other relatives. In 2007, the applicant gave birth to her third child out of wedlock, as the father's family refused to let him marry a woman with children from a previous marriage. The applicant's brother-in-law informed her father that she had a child out of wedlock, because he was angry at the applicant's sister for leaving him due to abuse. The applicant states it is considered shameful in Muslim culture to have a child out of wedlock.

[5] The applicants left Israel for Canada on November 29, 2009 and made their refugee claims on December 1, 2009. The applicant's sister also came to Canada with her children and they made refugee claims in February 2011. They received refugee protection on December 28, 2011.

[6] The applicant states that she fears return to Israel because she will be the victim of an "honour killing" by her father or other family members. She also states that since coming to Canada she has converted to Christianity.

Decision Under Review

[7] The Board recounted the applicant's allegations and noted that she filed a letter at the hearing indicating she had become a "born again Christian" since coming to Canada. The Board noted that the applicant did not elaborate upon her religious beliefs at the hearing or link those beliefs to her fears upon return to Israel.

[8] The Board accepted the applicant's evidence of her fear of her family and the danger of being punished or killed by them upon return to Israel. Thus, the Board found her subjective fear to be credible and to be supported by documentary evidence about the problem of honour killings in Israel's Arab communities. However, the Board found that the claims failed because of the availability of state protection.

[9] The Board did not find the applicant's evidence about her attempts to seek state protection credible. The Board noted her testimony that she reported her father to the police in 2006, but withdrew the complaint.

[10] The Board reviewed the relevant principles in determining whether there is state protection and reviewed general documentary evidence about Israel. The Board noted some evidence of

discrimination against evangelical Christians but again, noted that the applicant had not alleged persecution based on her conversion to Christianity.

[11] The Board found the applicants did not rebut the presumption of state protection. The Board noted that on the one occasion the applicant went to the police, protection was immediately offered, but she withdrew her complaint. The Board acknowledged the cultural reasons that the applicant gave for withdrawing the complaint but found that this was nonetheless not demonstrative of a lack of state protection.

[12] The applicants' claims were therefore refused.

Standard of Review and Issue

[13] The issue raised by this application is whether the Board's analysis of state protection was reasonable: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190.

Analysis

[14] The applicants submit that the Board selectively considered, and in fact distorted, the documentary evidence on protection against honour killings in Israel. In my view, the Board's treatment of the evidence on state protection was reasonable.

[15] The determinative issue in the claim was the availability of state protection. The Board accepted that the applicant feared she would be the victim of an honour killing by her father or other relatives, and the Board accepted that, based on the documentary evidence, honour killings are a

serious problem in Israel and therefore this fear was well-founded, both subjectively and objectively.

[16] The Board found that on the only occasion that the applicant went to the police, protection was immediately offered, but she withdrew her complaint. The Board stated at paragraph 53:

> The [applicant] justified her withdrawal on the basis that if her father was arrested she would face larger problems from her father's brothers and extended family. This explanation is rooted in her Bedouin cultural tradition but is not demonstrative of a failure of state protection.

[17] This is not an accurate summary of the applicant's explanation for withdrawing the complaint. She did not state she would face "larger problems"; she stated that her father had made it clear that he could easily instruct another family member to kill her, and therefore having her father arrested would not protect her, and in fact would create greater danger for her.

[18] The Board's interpretation of a letter of support from the Haifa Municipal Family Violence Centre is also challenged. The Board states that, while the letter recommends that the applicants leave Israel, the letter "did not specifically deal with the issue of why the claimant could not access state protection in Israel through the police and the criminal courts." However, the letter stated:

> Inas has also informed that her cousins have been arrested I the past for criminal behavior and therefore are not concerned with criminal repercussions if they harm her. Furthermore she spoke of a number of incidences [*sic*] in her family where women were murdered due to behavior that dishonored the family. From her story it seems that the only long term solution that will keep her and her children safe will be to leave Israel and build a new life in a different country. The need to leave the country is critical since Israel is a very small country and therefore it is impossible to find a place where she can live safely and calmly with her children for the long term.

[19] In my view the Board accorded the letter both a reasonable interpretation and weight. The law with respect to state protection is clear. The presumption of state protection must be rebutted with clear and convincing evidence, established on a balance of probabilities.

[20] In a democratic state like Isreal with a professional police force and an independent judiciary, more than a single visit to the police, wherein they agreed to take action which would be adequate, is required to rebut the presumption: *Flores Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, [2008] 4 FCR 636.

[21] The Board noted that counsel for the applicant had cited *Pearson v Canada (Minister of Citizenship and Immigration)*, 2011 FC 981, in which a humanitarian and compassionate decision was set aside because the officer failed to consider whether, despite a general presence of adequate state protection, the particular applicant had been unable to seek protection given her circumstances. The Board noted it had no general humanitarian and compassionate jurisdiction and also that the *Pearson* case was distinguishable because that applicant had sought police protection 30-40 times.

[22] The applicant also relies on *Jabbour v Canada (Citizenship and Immigration)*, 2009 FC 831 wherein a finding of state protection was set aside in light of the Board's failure to address certain aspects of the evidence before it. As the proposition that a tribunal cannot be selective in its review of the evidence is well established, it is difficult to see how *Jabbour* advances the applicant's case. In *Jabbour*, the police refused to protect unless the applicant became a police informant. Mandamin J. found, in my respectful view, rightly, that a finding of state protection was unreasonable.

[23] In this case, the Board referred to the country reports, the RIR and the specific evidence before it. The findings that it drew based on that evidence were reasonable.

[24] The Board had before it evidence which supported its conclusion that state protection was available. Its conclusions fall squarely within the criteria of logical outcomes as informed by the law and the evidence.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review be and is hereby dismissed. No question for certification has been proposed and none arises.

"Donald J. Rennie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8554-11
STYLE OF CAUSE:	**ENAS ALHOKBEE, RAIAN ALHOKBEE, ANIS AL TEWNEH, and KAMELIA AL ATAWNEH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION**
PLACE OF HEARING:	Toronto
DATE OF HEARING:	June 7, 2012
REASONS FOR JUDGMENT:	RENNIE J.
DATED:	July 4, 2012

APPEARANCES:

Phillip Trotter	FOR THE APPLICANTS
Kevin Doyle	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Phillip J.L. Trotter Lawyer Toronto, Ontario	FOR THE APPLICANTS
Myles J. Kirvan, Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT