

Federal Court



Cour fédérale

Date: 20150521

Docket: IMM-2434-14

Citation: 2015 FC 654

Ottawa, Ontario, May 21, 2015

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

**HAIM RODRIK
VIVET RODRIK
NATALIE RODRIK
LADYA RODRIK**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Haim Rodrik [the Principal Applicant], his spouse Vivet Rodrik [the Female Applicant], and their daughters Natalie and Ladya Rodrik, have applied for judicial review of a decision dated February 13, 2014 made by the Refugee Protection Division of the Immigration and Refugee Board [the Board], wherein it determined that the Applicants are neither Convention refugees nor persons in need of protection [the Decision].

[2] The application is made pursuant to subsection 72(1) of the *Immigration Refugee Protection Act*, SC 2001, c 27 [the IRPA].

I. Background

[3] The Principal Applicant is a 56 year-old citizen of Israel. He was born in Istanbul but immigrated to Israel in 1972. He fears persecution at the hands of Meir Benhabib [Meir] who is an international drug trafficker.

[4] The Female Applicant is a 40 year-old citizen of Turkey who also holds an Israeli passport. She fears persecution at the hands of Karem Borekcioglu [Karem].

[5] The Principal Applicant met the Female Applicant in 1998. They began their relationship the following year and she gave birth to Ladya in Turkey in 2004. After she moved to Israel and converted to Judaism, they were married in October 2010. Natalie was born in Israel.

[6] The Principal Applicant's difficulties began in 2007 when Meir was released from prison in Turkey and moved to Israel. The Principal Applicant was asked to help him start a legitimate business; however, before long, Meir returned to drug trading.

[7] Meir then asked for the Principal Applicant's assistance with his illegal business. However, instead of assisting Meir, he reported him to the United States Drug Enforcement Administration [the DEA] at the American Embassy in Tel Aviv, and was given a 10-year US

visa in exchange for information about Meir. The Principal Applicant was given an informant number and began communicating with a DEA agent.

[8] After the Female Applicant moved to Israel in 2010, the Principal Applicant became increasingly afraid of Meir, so he moved his family away from the city to a nearby suburb. However, Meir located them and contacted the Principal Applicant again.

[9] The Principal Applicant did not go to the Israeli police for protection because, as a result of his own experience as a civil guard, he knew that the police had problems with leaks and that there was no witness protection program. Instead, he asked the DEA to provide protection for him and his family. He was told to travel to Cyprus where the DEA would help his wife and children obtain US visas.

[10] The Applicants travelled to Cyprus in January 2011 but were unable to acquire the visas. After the incident involving Karem described below, they fled to Canada in August 2011 and made refugee claims.

[11] The Female Applicant's problems began in 2008 when she was introduced to Karem in Istanbul. He began to pursue her. However, she was uncomfortable with his persistent advances. He followed her and her daughter around Istanbul, and also appeared uninvited at her home.

[12] The Female Applicant alleges that, in March 2010, Kareem attempted to rape her. She says that her screams alerted a neighbour who called security and Kareem fled. It was a result of this incident, that she joined the Principal Applicant in Israel.

[13] After the Applicants travelled to Cyprus, the Female Applicant alleges that Kareem tracked them down and conspired with her neighbours in Cyprus to kidnap her daughters. He was unsuccessful and was later deported from Cyprus. She fears that if she were to return to Turkey she would be terrorized by Kareem and that the state would not protect her. However, she has no fear of Kareem if she returns to Israel. With regard to Israel, she shares her husband's concerns about Meir.

II. The Decision

[14] The Board dismissed the Principal Applicant's claim against Israel because:

- a) It found no nexus to a Convention ground;
- b) It found him lacking in credibility;
- c) It found him not to be at risk under s 97 of the IRPA;
- d) It found that Israel offered adequate state protection.

[15] On this application for judicial review, the Principal Applicant only challenges the Board's finding about state protection.

[16] The Board dismissed the Female Applicant's claim against Turkey under sections 96 and 97 of the IRPA because her account lacked credibility.

[17] The Board dismissed the Female Applicant's claim against Israel because it was based on the Principal Applicant's claim, which it had already dismissed.

[18] The Board also found that the Female Applicant is entitled to return to Israel and become a citizen under the Law of Return.

[19] On this application for judicial review, the Female Applicant challenges:

- a) The negative credibility findings relating to her fear of Karem;
- b) The conclusion that she is entitled to Israeli citizenship under the Law of Return.

III. The Issues

[20] The determinative issues are:

- i. were the Board's reasons adequate when they described Israel's Law of Return as the basis for the Female Applicant's and Ladya's right to citizenship?
- ii. if the reasons were inadequate, does the record disclose other evidence to support the Board's conclusion that the Female Applicant and Ladya have a right to Israeli citizenship?

IV. Discussion

[21] The Board noted that the Female Applicant entered Canada on a State of Israel Passport (provisional) which notes on its cover "Israeli Citizenship". The Board also noted that this

document creates the rebuttable presumption that she is a citizen of Israel [the Presumption of Citizenship].

[22] In her initial Personal Information Form [PIF], the Female Applicant described herself as an Israeli citizen. Later, in her amended PIF, she changed her status in Israel to “Visitor”. However, since no documents were provided to support this status, the Presumption of Citizenship was not rebutted.

[23] The Female Applicant testified at the Board’s hearing that she has a right to return to Israel and remain there indefinitely.

[24] The Board noted that there are four means of acquiring Israeli citizenship: birth, residence, naturalization, and the Law of Return. Without considering its provisions, the Board simply concluded that the Law of Return confers citizenship on the Female Applicant and Ladya.

[25] In my view, this reasoning was inadequate. The Law of Return is expressed to apply to Jewish immigrants to Israel. The Female Applicant is clearly not in that category because the documentary evidence shows her to be a citizen, and she testified that she already has a right to return and stay in the country indefinitely.

[26] However, there was ample evidence on the record to support the Board’s decision without reliance on the Law of Return. First, the Presumption of Citizenship applied so that she is presently a citizen. Second, as a Jewish spouse and child of an Israeli citizen with rights to

return and stay indefinitely, it is within the control of the Female Applicant and Ladya to acquire citizenship in Israel. In this regard, see *Williams v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 126 at paragraph 22.

[27] For these reasons, I have concluded that, based on the record, the Board's decision is reasonable.

[28] I have also concluded that it is not necessary to deal with the other issues. Since the Female Applicant and Ladya can live safely in Israel, I need not consider the reasonableness of the Board's decision that she was not credible in her claim against Turkey. As well, since the Principal Applicant was found to face no risks in Israel, the Board's conclusions about state protection were unnecessary and need not be considered.

V. Certification

[29] No question was posed for certification for appeal under section 74(d) of the IRPA.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed.

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2434-14

STYLE OF CAUSE: HAIM RODRIK, VIVET RODRIK, NATALIE RODRIK,
LADYA RODRIK v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 12, 2015

JUDGMENT AND REASONS: SIMPSON J.

DATED: MAY 21, 2015

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