Federal Court  Cour fédérale

Date: 20170718

Docket: IMM-175-17

Citation: 2017 FC 695

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 18, 2017

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

ELI ELIAS SAMEER KOMATSIA

Applicant

And

THE MINISTER OF CITZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The applicant, an Israeli citizen of Arab origin and of Christian faith, is appealing from a decision of the Immigration and Refugee Board of Canada, Refugee Appeal Division [RAD], dated December 20, 2016, which confirmed the rejection, by the Refugee Protection Division of the Board [RPD], of the refugee protection claim that he filed under sections 96 and 97 of the

Immigration and Refugee Protection Act [Act] shortly after he arrived in Canada in September 2015.

[2] Both the RAD and the RPD found that the state of Israel was capable of protecting the applicant against the threats that apparently forced him to flee the country. The applicant, a truck driver by trade, claims that during a trip to the West Bank in February 2014, Palestinian extremists asked him to transport weapons into Israeli territory, which he refused to do. This apparently resulted in pressure, threats and physical attacks against him by that extremist group in both Israel and the West Bank. The applicant purportedly at one point reported the situation to Israeli border guards, but they reportedly merely searched his load. He allegedly did not take other steps with the Israeli authorities, because he was of the opinion that they do not normally intervene in what they perceive as being a [TRANSLATION] "dispute between Arabs".

[3] Exasperated, the applicant purportedly left Israel for Brazil in December 2014 and apparently stayed there until April 2015. When he returned to Israel, he was allegedly again targeted by his persecutors. He apparently returned to Brazil in May before coming to Canada in September 2015. The applicant fears being a victim of the extremist group if he was to return to Israel.

[4] The RPD found that the applicant had not discharged his burden of rebutting the presumption of state protection. Acknowledging that the Israeli police force's record is not perfect and that it sometimes exhibits racism toward Israeli nationals of Arab origin, the RPD found that that was not sufficient to rebut the presumption, especially considering the fact that

the applicant's problem had nothing to do with a [TRANSLATION] "dispute between Arabs", as he liked to call it, but had everything to do with a threat to the security of Israel. The RPD stated that it was of the view that in that context, the authorities would have taken the applicant's information seriously, especially because he is a citizen and resident of Israel.

[5] The RAD did not think it appropriate to intervene and found, based on its own assessment of the record, including evidence from the National Documentation Package on Israel, that the applicant had not discharged his burden of establishing, by clear and convincing evidence, that in his case, there was a rebuttal of the presumption of state protection. In this regard, the RAD emphasized that such was the case because the applicant had not exhausted the avenues available to him to obtain protection from the authorities of his country.

[6] The applicant criticizes the RAD, and the RPD before it, for failing to consider the evidence demonstrating that the state of Israel has committed—and continues to commit—many human rights violations against Palestinians and for failing to explain why that conduct, shown by the border guards' indifference to his information about his persecutors' actions, could not justify his loss of confidence in the Israeli authorities and his refusal to seek protection from his persecutors. He also claims that the RAD was bound by this Court's decision in *Zaatrec v Canada (Citizenship and Immigration)*, 2010 FC 211 [*Zaatrec*], a case that is, in his opinion, similar to his case, and which, except for a footnote, the RAD ignored.

II. Issue and standard of review

[7] The issue here is whether, as argued by the applicant, the RAD, in finding that the state of Israel, despite its human rights record, is capable of protecting the applicant from his persecutors, committed an error that warrants the intervention of the Court based on the parameters set out in section 18.1 of the *Federal Courts Act*, RSC, 1985, c. F-7.

[8] It is well established, and the applicant agrees, that RAD decisions are reviewable by this Court on the deferential standard of reasonableness (*You v Canada (Citizenship and Immigration)*, 2016 FC 1010, at para 11). This standard is also the applicable standard of review for the review of state protection issues because they involve questions of mixed fact and law that fall within the expertise of the RPD (*Meci v Canada (Citizenship and Immigration)*, 2014 FC 892, at para 16 [*Meci*]), and also now that of the RAD, as it too is a specialized administrative tribunal.

[9] According to this standard of review, the Court can only interfere with RAD decisions if they fall outside the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, at para 47).

[10] In this case, I find that there is no need to intervene.

III. Analysis

[11] In *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 [*Ward*], the Supreme Court of Canada reiterated that international refugee law was established "to serve as a back-up to the protection one expects from the state of which an individual is a national". It was also intended that refugee protection claimants "be required to approach their home state for protection before the responsibility of other states becomes engaged". This right was therefore meant to come into play only "in situations when that protection is unavailable, and then only in certain situations" (*Ward*, at p 709).

[12] Thus, absent a complete breakdown of state apparatus, it should, according to a long line of authority, be presumed that state protection is available for a refugee claimant. To rebut this presumption, the claimant must provide clear and convincing evidence of the state's inability or unwillingness to provide protection, which need not be perfect (*Carillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, at para 19; *Ruszo v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1004, at para 29 [*Ruszo*]; *Ward*, at p 722).

[13] In this case, it is not in dispute that this presumption applies to the state of Israel, a democratic country with a professional police force and an independent judiciary. However, to rebut this presumption, the applicant had to demonstrate that he exhausted all of the objectively reasonable avenues to obtain state protection or that it would have been objectively unreasonable for him to do so (*Hinzman v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171, at para 46). In other words, doubting the effectiveness of state protection without reasonably

testing it, or simply asserting a subjective reluctance to engage that protection, does not rebut the presumption of state protection (*Ruszo*, at para 33).

[14] First, I cannot agree with the applicant's claim that the RAD failed to consider the evidence demonstrating that the state of Israel has committed—and continues to commit—human rights violations against Palestinians. To the contrary, the RAD noted it by mentioning, in particular, criticisms of how the police handle complaints by Arab Israelis, which sometimes takes longer than it should and is perceived as favouring police officers over victims. However, the RAD also pointed out that the Israeli state is in effective control of its security forces and police officers and that there are, for its citizens, including those of Arab origin and of Christian faith, administrative and judicial recourses, before independent judges, in cases of basic rights violations. It also noted, in this regard, that government organizations, which have investigatory powers, are capable of receiving and following up on complaints from citizens whose rights have been violated. The RAD also emphasized that the situation experienced by the applicant would have undoubtedly interested the Israeli security agency because it concerned the country's security.

[15] In my opinion, the RAD's finding that the applicant did not exhaust the avenues available to him to obtain state protection and thus did not discharge his burden of rebutting the presumption that protection was available to him was reasonable. Once again, a refugee protection claimant cannot question the effectiveness of state protection without actually testing it. In this regard, it is also erroneous to state that the RAD, and the RPD before it, failed to consider the border guards' reaction to the applicant's denouncement. The RPD found, in

paragraph 16 of its reasons, that mentioning the threats received on one occasion is insufficient to establish that he could not avail himself of state protection. The RAD implicitly considered this, finding that the applicant had not exhausted the avenues available to him to obtain protection from the authorities in his country.

[16] As previously stated, to successfully rebut the presumption of state protection, an applicant is required to demonstrate that he or she took all objectively reasonable efforts, without success, to exhaust all courses of action reasonably available to them, before seeking refugee protection abroad (*Ruszo*, at para 32). Making only one attempt, while other avenues were reasonably available, such as filing a report with the police, as noted by the RPD, is not sufficient (*Ruszo*, at para 37; *Meci*, at paras 36 to 38). The applicant's reluctance to take further action with the police, on the pretext that it would be in vain, seems, in my view, to be a subjective reluctance in light of the documentary evidence in the record and in circumstances where the threats against him could reasonably be considered to be more than a simple [TRANSLATION] "dispute between Arabs", and is therefore insufficient to rebut the presumption of state protection as was ultimately concluded by the RAD.

[17] The *Zaatrec* case is of no help to the applicant in my view. I note that the applicant argues that the RPD and the RAD were bound by that decision. That is tantamount to saying that in light of that judgment of the Court, only one possible, acceptable outcome was open to those two decision-makers, that is, that the state of Israel denies protection to its nationals of Arab origin, including those of Christian faith.

[18] That argument cannot be accepted for a number of reasons. First, *Zaatrec* does not have that effect. In that case, the Court found that the RPD "failed" to address evidence demonstrating a broad pattern of the Israeli state's refusal to provide adequate protection to its Arab citizens, which, according to the Court, vitiated all of its analysis and therefore justified the referral of the matter to the RPD for reconsideration (*Zaatrec*, at paras 55-56). In this case, that review was done. It is explained in detail in the RAD's decision and shows that the RAD was sensitive to the fact that the situation is not perfect in Israel and that human rights violations occur there. However, as noted, the RAD stated that it was satisfied that the state of Israel, a democratic country, provides protection from that type of abuse.

[19] Furthermore, *Zaatrec* was rendered in 2010 and the decision that it overturned, in July 2009. There is a gap of nearly eight years between the RPD's decision in *Zaatrec* and the RAD's decision in this case. I have no evidence before me that the situation, as described in *Zaatrec*, still applies, at least to the same extent. In recent judgments, this Court has dismissed judicial reviews from Israeli nationals who argued that the RPD, in one case, and the RAD, in another case, erred by finding that the state of Israel was capable of protecting them (*Alhokbee v Canada (Citizenship and Immigration)*, 2012 FC 848 and *Khattr v Canada (Citizenship and Immigration)*, 2016 FC 341). The first case (*Alhokbee*) involved a family of Arab Israelis who claimed that they were persecuted by members of the wife's family, the father of which was violent and of strict Muslim faith. In the other case (*Khattr*), a stateless permanent resident of Israel stated that she was persecuted by the state of Israel mainly because she had to, in her work as a lawyer, defend cases that involved Palestinians.

[20] As shown in these two judgments and in *Zaatrec*, being an Israeli citizen of Arab origin is not, in itself, a rebuttal of the presumption of state protection. More is required to rebut this presumption. Here, I am satisfied, as I have already stated, that the RAD's finding, in light of all of the evidence in the record, that the applicant did not do enough to rebut the presumption, is within the range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[21] This application for judicial review will therefore be dismissed. Neither of the parties requested that a question be certified for the Federal Court of Appeal. I am also of the view that there is no basis for certifying a question.

JUDGMENT in IMM-175-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. No question is certified.

"René LeBlanc"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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