

Federal Court



Cour fédérale

**Date: 20180906**

**Docket: IMM-3534-17**

**Citation: 2018 FC 893**

**Toronto, Ontario, September 6, 2018**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**REEM JAMAL NABHANI  
RAKAN RAEF SALMAN ALARJAME**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Ms. Reem Jamal Nabhani (the “Principal Applicant”) and her minor child Rakan Raef Salman Alarjame (collectively the “Applicants”) seek judicial review of the decision of the Immigration and Refugee Board, Refugee Appeal Division (the “RAD”) made on July 19, 2017. In that decision, the RAD found that the Applicants were neither Convention refugees nor persons in need of protection within the meaning of section 96 and subsection 97(1), respectively, of the *Immigration and Refugee Protection Act*, S. C., 2001, c. 27 (the “Act”).

[2] The RAD based its decision upon negative credibility findings and its conclusion that the Applicants had failed to show that the Principal Applicant had not acquired Jordanian citizenship.

[3] The Principal Applicant presents as a stateless Palestinian from Jordan; her minor child is a citizen of Jordan.

[4] The Applicants now argue that the RAD erred in finding that the Principal Applicant had acquired Jordanian citizenship. They claim that this finding was speculative and that the RAD should have verified the acquisition of citizenship with the Jordanian authorities.

[5] The Applicants further submit that the RAD breached the principle of natural justice by relying on new arguments without giving them the opportunity to respond. Specifically, they claim that the RAD raised issues about “visits” by the Applicants to Syria rather than being resident there. The Applicants also submit that the RAD raised an issue about their failure to ask that an affiant be called as a witness before the RPD.

[6] Further, they argue that the decision does not meet the standard of reasonableness and that the RAD erred by arbitrarily excluding relevant evidence.

[7] The Minister of Citizenship and Immigration (the “Respondent”) submits that the RAD reasonably found that the Principal Applicant had acquired Jordanian citizenship. Otherwise, he

argues that there was no breach of natural justice and that the decision meets the standard of reasonableness.

[8] The appropriate standard of review for this Court when reviewing a decision of the RAD is reasonableness; see *Canada (Minister of Citizenship and Immigration) v. Huruglica* (2016), 396 D.L.R. (4th) 527 (F.C.A) at paragraph 35. Accordingly, the Court should not interfere if the RAD's decision is intelligible, transparent, justifiable, and falls within a range of outcomes that are defensible in respect of the facts and the law; see the decision in *Dunsmuir v New Brunswick*, [2008] 1 S.C.R. 190 at paragraph 47.

[9] Next, I refer to the standard of review to be applied by the RAD upon an appeal from the RPD.

[10] In judicial review of a decision of the RAD, the reviewing court must look at the standard of review applied by the RAD to the RPD's decision. The Federal Court of Appeal in *Huruglica*, *supra* at paragraph 77 said:

... I find no indication in the wording of the IRPA, read in the context of the legislative scheme and its objectives, that supports the application of a standard of reasonableness or of palpable and overriding error to RPD findings of fact or mixed fact and law.

[11] According to the decision of the Supreme Court of Canada in *Dunsmuir*, *supra*, there are generally only two standards of review, that is reasonableness and correctness. If the standard of reasonableness does not apply, only the standard of correctness remains to be applied by the RAD in its review of certain issues before the RPD.

[12] At paragraph 103, of *Huruglica*, supra, the Federal Court of Appeal concluded:

I conclude from my statutory analysis that with respect to findings of fact (and mixed fact and law) such as the one involved here, which raised no issue of credibility of oral evidence, the RAD is to review RPD decisions applying the correctness standard. Thus, after carefully considering the RPD decision, the RAD carries out its own analysis of the record to determine whether, as submitted by the appellant, the RPD erred. Having done this, the RAD is to provide a final determination, either by confirming the RPD decision or setting it aside and substituting its own determination of the merits of the refugee claim. ...

[13] In my opinion, the paragraph quoted above means that the RAD must apply a correctness standard when reviewing decisions of the RPD which do not raise issues of the credibility of oral evidence.

[14] The issue of procedural fairness is reviewable on the standard of correctness; see the decision in *Canada (Citizenship and Immigration) v Khosa*, [2009] 1 S.C.R. 339.

[15] The reasonableness standard, according to the decision in *Dunsmuir v New Brunswick*, [2008] 1 S.C.R. 190 requires that a decision be transparent, justifiable and intelligible, falling within a range of possible acceptable outcomes that is defensible on the law and facts.

[16] It is not necessary for me to address the Applicants' submissions about breach of procedural fairness since I am satisfied that the finding about the acquisition of Jordanian citizenship by the Principal Applicant is not sustainable on the evidence submitted.

[17] In my opinion, the conclusion of the RAD is not reasonable, and that is the standard by which the RAD decision is subject to review.

[18] I agree with the submissions of the Applicants' that the RAD apparently did not consider all of the evidence before it and that its conclusion is not solidly grounded in that evidence.

[19] In the result, the application for judicial review will be granted and the decision of the RAD will be set aside. The matter will be remitted to a differently constituted panel of the RAD for redetermination. There is no question for certification arising.

**JUDGMENT IN IMM-3534-17**

**THIS COURT'S JUDGMENT is that** the application for judicial review is granted and the decision of the Refugee Appeal Division is set aside. The matter will be remitted to a differently constituted panel of the Refugee Appeal Division for redetermination. There is no question for certification arising

“E. Heneghan”

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Judge

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

**DOCKET:** IMM-3534-17

**STYLE OF CAUSE:** REEM JAMAL NABHANI, RAKAN RAEF SALMAN  
ALARJAME v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 27, 2018

**JUDGMENT AND REASONS:** HENEGHAN J.

**DATED:** SEPTEMBER 6, 2018

**APPEARANCES:**

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