

Federal Court



Cour fédérale

**Date: 20190313**

**Docket: IMM-2806-18**

**Citation: 2019 FC 303**

**Ottawa, Ontario, March 13, 2019**

**PRESENT: The Honourable Mr. Justice Bell**

**Docket: IMM-2806-18**

**BETWEEN:**

**SALWA SALIM CHARAFEDDINE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT WITH REASONS**

I. Nature of the Matter

[1] The Applicant [Ms. Charafeddine] seeks judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [IRPA], from a decision of the Refugee Protection Division of the Immigration and Refugee Board [RPD], rendered on May 30, 2018 [Decision]. The RPD concluded Ms. Charafeddine is neither a Convention refugee nor a

person in need of protection pursuant to section 96 and subsection 97(1)-of the IRPA. It concluded she faced no objective and reasonable risk of persecution. For the reasons set out herein, I dismiss the application for judicial review.

## II. Summary of the Facts

[2] Ms. Charafeddine is a 50-year-old citizen of Lebanon. She alleges threats and mistreatment by two (2) of her former lovers in Lebanon. The most serious allegation, a death threat, was communicated to her brother in Lebanon in February 2012 while Ms. Charafeddine was residing in Canada.

[3] In 2010, while working at a coffee shop in Beirut, Ms. Charafeddine met and became romantically involved with Borhan Hamada. She often frequented Mr. Hamada's apartment in Beirut. Four (4) months after starting her relationship with Mr. Hamada, Ms. Charafeddine learned he was married and had children. When she ended the relationship, Mr. Hamada was not pleased. He apparently insulted, threatened and assaulted her. Ms. Charafeddine left Mr. Hamada's apartment and quit her job in order that Mr. Hamada could not locate her.

[4] In October 2010, three (3) months after leaving Mr. Hamada, Ms. Charafeddine found a new job, where she met Mr. Fayed Msage. Ms. Charafeddine believed Mr. Msage could protect her from Mr. Hamada's threats given his size, strength and strong personality. In February 2011, after seeing Ms. Charafeddine with Mr. Msage, Mr. Hamada started, once again, to threaten Ms. Charafeddine. She again quit her job. She stayed at home until April 2011 when she commenced employment at yet another location.

[5] In August 2011, Ms. Charafeddine learned, through a co-worker, that Mr. Msage had relationships with other women and that he bought and sold stolen cars. When Ms. Charafeddine confronted Mr. Msage about his business operations, he informed her it was a lucrative business. Ms. Charafeddine claims she did not want to be with such a person and that she feared Mr. Msage would threaten her as did Mr. Hamada. She remained in the relationship with Mr. Msage while she communicated with her mother in Canada and made an application for a Visitor Visa to come to Canada. On October 18, 2011, she received her Visitor Visa. On December 2, 2011, she left Lebanon for Canada. She did not immediately make an application for asylum.

[6] Ms. Charafeddine did not contact police authorities in Lebanon regarding either Mr. Hamada or Mr. Msage.

[7] Ms. Charafeddine claims that when Mr. Msage learned she was in Canada, he started “badmouthing” her. Her brother, who lives in Lebanon, learned of this and confronted Mr. Msage. In February 2012, Ms. Charafeddine’s brother and Mr. Msage had a physical altercation, initiated by Ms. Charafeddine’s brother. As a result of the altercation, her brother’s arm was broken and Mr. Msage allegedly threatened to kill Ms. Charafeddine in the event she returns to Lebanon. The fight between her brother and Mr. Msage, including Mr. Msage’s threat to kill her if she returned to Lebanon, prompted Ms. Charafeddine to file a claim for refugee protection in Canada. Neither Ms. Charafeddine, nor her brother, filed a complaint with the police regarding the fight or the apparent death threat of February 2012.

[8] The hearing by the RPD into the claim for asylum took place on May 24, 2018. In a decision dated May 30, 2018, the RPD rejected the claim. That refusal is the subject of the within application for judicial review.

### III. Decision Under Review

[9] The determinative issue for the RPD was the credibility of the threats. The RPD found Ms. Charafeddine lacking credibility on the issue of subjective fear for a number of reasons, namely: (1) the length of the relationships with Mr. Msage and Mr. Hamada were too short to be considered serious; (2) the lack of evidence to demonstrate that both Mr. Msage and Mr. Hamada still have an ongoing interest in the Applicant following the termination of those relationships more than six (6) years ago; (3) other than the evidence of the fight between Ms. Charafeddine's brother and Mr. Msage, instigated by the brother, Ms. Charafeddine provided no evidence to support her contention that either man remains interested in her or her whereabouts; (4) the lack of a police report at any time. In addition, the RPD concluded Ms. Charaffeddine failed to establish that she faces an objective and reasonable risk of persecution at the hand of either Mr. Hamada or Mr. Msage. In the RPD's view, neither the subjective, nor the objective elements required to establish grounds under either s. 96 or s. 97 were met. The RPD relied upon *Adjei v. Canada (Minister of Employment and Immigration)*, [1989] 2 FC 680.

### IV. Relevant Provisions

[10] The relevant provisions of the *IRPA* are sections 96 and 97. These provisions are set out in full in the Appendix attached to these Reasons.

V. Analysis

[11] Ms. Charafeddine contends the interpretation of IRPA by the RPD should be assessed on the correctness standard. The Respondent contends reasonableness is the appropriate standard of review on all questions, citing, inter alia, *Cerra Gomez v. Canada (Citizenship and Immigration)*, 2018 FC 1233, at para. 14. I agree with the Respondent's contention. The interpretation of the IRPA involves the interpretation of the RPD's home statute. All other questions constitute questions of mixed fact and law. Both attract a reasonableness standard of review (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at paras. 51, 53, 54, 164) [*Dunsmuir*]. Given that all questions at issue attract the reasonableness standard, it is well established that this Court must show deference to the RPD's decision, while determining whether there was justification, transparency and intelligibility within the decision-making process and ensuring that the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir* at para 47).

[12] Even if one accepts that Ms. Charafeddine established a subjective fear of Mr. Msage, the RPD concluded she failed to establish that she faces an objective and reasonable risk of persecution by him. Given the circumstances surrounding Mr. Msage's threat, including the conduct of Ms. Charafeddine's brother and the lack of a police report, I am of the view that such a conclusion meets the test of reasonableness.

[13] Ms. Charafeddine appears to acknowledge that given the circumstances surrounding the threat communicated to her brother, the threat was not serious. However, she says that a threat

need not be serious in order to establish a serious possibility of persecution. I disagree. If the threat was not serious, it follows there is no danger for the Applicant (*Li v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 1, at para. 36, 329 NR 346; *Mohebbi v. Canada (Citizenship and Immigration)*, 2014 FC 182, at paras. 3-4).

VI. Conclusion

[14] For the foregoing reasons, the application for judicial review is dismissed. Neither party proposed a question of general importance for the Federal Court of Appeal, therefore no question is certified.

**JUDGMENT in IMM-2806-18**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed,  
and no question is certified for consideration by the Federal Court of Appeal.

“B. Richard Bell”

---

Judge

## ANNEX

***Immigration and Refugee Protection Act, S.C. 2001, c. 27*****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

**(a)** to a danger, believed on

***Loi sur l'immigration et la protection des réfugiés, L.C. 2001, ch. 27*****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 :

**a)** soit au risque, s'il y a



substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

**(b)** to a risk to their life or to a risk of cruel and unusual treatment or punishment if

**b)** soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

**(i)** the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

**(i)** elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays

**(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,

**(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,

**(iii)** the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

**(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,

**(iv)** the risk is not caused by the inability of that country to provide adequate health or medical care.

**(iv)** la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats

**Person in need of protection**

**Personne à protéger**

**(2)** A person in Canada who is a member of a class of persons

**(2)** A également qualité de personne à protéger la

prescribed by the regulations  
as being in need of protection  
is also a person in need of  
protection.

personne qui se trouve au  
Canada et fait partie d'une  
catégorie de personnes  
auxquelles est reconnu par  
règlement le besoin de  
protection.

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

**DOCKET:** IMM-2806-18

**STYLE OF CAUSE:** SALWA SALIM CHARAFEDDINE v. THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 7, 2019

**REASONS FOR JUDGMENT  
AND JUDGMENT:** BELL J.

**DATED:** MARCH 13, 2019

**APPEARANCES:**

John Rokakis FOR THE APPLICANT

Christopher Crighton FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

John Rokakis FOR THE APPLICANT  
Toronto, Ontario JOHN ROKAKIS

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario CHRISTOPHER CRIGHTON