Federal Court  Cour fédérale

Date: 20190603

Docket: IMM-2318-18

Citation: 2019 FC 779

St. John's Newfoundland and Labrador, June 3, 2019

PRESENT: Madam Justice Heneghan

BETWEEN:

MOHAMED HASSAN MOHAMED ZAQOUT,
TAMARA ZUHAIR IBRAHIM ALSHARAIRI,
HASSAN MOHAMED HASSAN ZAQOUT,
RASHA MOHAMED HASSAN ZAQOUT,
OMAR MOHAMED HASSAN ZAQOUT,
SALMA MOHAMED HASSAN ZAQOUT

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Mr. Mohamed Hassan Mohamed Zaqout (the "Principal Applicant"), his wife Ms. Tamara Zuhair Ibrahim Alsharairi and their minor children Hassan Mohamed Hassan Zaqout, Rasha Mohamed Hassan Zaqout, Omar Mohamed Hassan Zaqout and Salma Mohamed Hassan

Zaqout (collectively “the Applicants”) seek judicial review of the decision of the Immigration and Refugee Board, Refugee Protection Division (the “Board”), dated April 25, 2018.

[2] In its decision, the Board determined that the Applicants were neither Convention refugees nor persons in need of protection, within the meaning of section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (the “Act”), respectively.

[3] The Principal Applicant sought protection on the basis of persecution as a member of a particular social group, that is a stateless Palestinian in Saudi Arabia. His claim and those of his children were assessed relative to Saudi Arabia, as the country of their habitual residence.

[4] The claim of Ms. Ibrahim Alsharairi was assessed relative to Jordan, her country of origin. She based her claim upon a pattern of discrimination that she alleged amounted to persecution, including a law that denies women the right to transfer citizenship or to sponsor a spouse or children.

[5] The Principal Applicant and his children are stateless Palestinians. Ms. Alsharairi is a citizen of Jordan. The Principal Applicant held a travel document issued by the government of Egypt and his son Hassan Mohamed Hassan Zaqout was authorized to travel pursuant to this document. The other children held travel documents issued by Palestinian and Egyptian authorities.

[6] The Board referred to information contained in the Certified Tribunal Record (the "CTR") that shows that acquisition of a passport from the Palestinian authorities or an Egyptian travel document leads to the loss of Jordanian citizenship and the right to acquire such citizenship.

[7] Ms. Alsharairi travelled upon a Jordanian passport.

[8] The Board made negative credibility findings against the Principal Applicant and otherwise found that the discrimination that he experienced in Saudi Arabia does not amount to persecution. It also found that the Principal Applicant had not established on a balance of probabilities that if returned to Saudi Arabia he would be subjected to one of the risks set out in subsection 97(1).

[9] The Board considered whether the problems experienced by the Principal Applicant in Saudi Arabia, including harassment, mistreatment and difficulty obtaining work cumulatively amounted to persecution and concluded that they did not.

[10] The Board also considered the Principal Applicant's status as a stateless Palestinian. It concluded that although this status may have led to discriminatory treatment, that treatment did not amount to persecution. The Board noted that statelessness does not, *per se*, establish a basis for protection as a Convention refugee.

[11] The Board accepted that Ms. Alsharairi had experienced discrimination resulting from the operation of the Jordanian law but that such treatment did not amount to evidence of persecution.

[12] The Applicants now argue that the Board's decision is unreasonable and that it is tainted by a reasonable apprehension of bias. They base the latter argument upon allegedly unreasonable questions from the Board and from sarcastic comments recorded in the transcript of their hearing.

[13] The first issue to be addressed is the applicable standard of review.

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

[15] The merits of the decision, involving assessment of the evidence against the statutory criteria, are reviewable on the standard of reasonableness; *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, [2018] 2 S.C.R. 230.

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

[17] I will first address the arguments about bias.

[18] The test for a finding of bias was set out by the Supreme Court of Canada in *Committee for Justice & Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369 at page 394 as follows:

> …the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically–and having thought the matter through–conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly".

[19] I have reviewed the transcript of the proceedings before the Board, in its entirety.

[20] I see no inappropriate questions or comments that might support the allegation of bias. There is no basis for judicial intervention on this ground.

[21] I now turn to the submissions made about the unreasonableness of the Board's decision.

[22] The critical element of the claim advanced by the Principal Applicant and his children is their status as stateless Palestinians.

[23] Statelessness, *per se*, is not a basis for establishing status as a Convention refugee or person in need of protection within the scope of the Act; see the decision in *Thabet v. Canada (Minister of Citizenship and Immigration)*, [1998] 4 F.C. 21.

[24] In my opinion, the Board reasonably considered the evidence submitted. The conclusions are clearly set out and meet the standard of reasonableness, as discussed in *Dunsmuir, supra*.

[25] It is not necessary for me to address the Applicants' arguments about the unconstitutionality of paragraph 110(2)(d) of the Act, that is the availability of an appeal before the Refugee Appeal Board. That issue was decided in *Kreishan v. Canada (Citizenship and Immigration)* (2018), 60 Imm. L.R. (4th) 257. No decision has yet been delivered by the Federal Court of Appeal to yield a different outcome.

[26] In the result, this application for judicial review is dismissed. There is no question for certification arising.

JUDGMENT in IMM-2318-18

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

There is no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2318-18
STYLE OF CAUSE:	MOHAMED HASSAN MOHAMED ZAQOUT, TAMARA ZUHAIR IBRAHIM ALSHARAIRI, HASSAN MOHAMED HASSAN ZAQOUT, RASHA MOHAMED HASSAN ZAQOUT, OMAR MOHAMED HASSAN ZAQOUT, SALMA MOHAMED HASSAN ZAQOUT v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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JUDGMENT AND REASONS:	HENEGHAN J.
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