Federal Court Cour fédérale

Date: 20190626

Docket: IMM-3435-18
IMM-3436-18
IMM-3437-18

Citation: 2019 FC 863

Ottawa, Ontario, June 26, 2019

PRESENT: Mr. Justice Ahmed

Docket: IMM-3435-18

BETWEEN:

MAYA WARD

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-3436-18

AND BETWEEN:

NOWAR WARD
LAMA ALDBIAT
KINDA WARD
NAYA WARD

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-3437-18

AND BETWEEN:

MOHANNAD WARD
MAISAA EID
FARAH WARD
MARAH WARD

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This judgment applies to three applications for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act,* SC 2001, c 27 ("IRPA") of decisions by an International Migration Officer ("Officer") at the Embassy of Canada in Beirut, Lebanon, dated May 24, 2018.

[2] The three applications, numbered IMM-3435-18, IMM-3436-18, and IMM-3437-18, were heard concurrently, and involve nine members of the same extended family. The Applicants are citizens of Syria who applied for permanent residency under the Convention Refugee Abroad Class or the Country of Asylum Class. Their applications were rejected by the Officer on the basis that they did not reside outside their country of persecution, Syria.

[3] I will allow these applications for the following reasons.

II. Facts

[4] The individuals listed below will be referred to collectively as the Applicants. For ease of reference and not due to any lack of respect, they will be referred to individually using their first names.

[5] The applicant in IMM-3435-18 is Maya Ward, a citizen of Syria born September 5, 1985 in Damascus, Syria. Maya's parents and younger brother continue to reside in Syria.

[6] The applicants in IMM-3436-18 are a Syrian family, consisting of Nowar Ward, his wife Lama Aldbiat, and their two daughters, Kinda Ward, age 21, and Naya Ward, age 17.

[7] The applicants in IMM-3437-18 are a Syrian family, consisting of Mohannad Ward, his wife Maisaa Eid, and their two twin daughters, Farah Ward and Marah Ward, both age 14.

[8] The Applicants are members of the same extended family. Mohannad and Nowar are brothers; Maya is their niece.

[9] The Applicants filed applications for permanent residence dated August 30, 2016. The applications of Nowar and Mohannad each listed their wives and children as dependants.

[10] The Applicants sought permanent residence as privately sponsored refugees under the Convention Refugee Abroad Class or the Country of Asylum Class. Their applications were sponsored by a group of five Canadians who placed funds in trust.

[11] The Applicants are Ismaili Muslims, a religious minority group in Syria.

[12] In the narrative attached to her application, Maya described her family's background in Syria and their decision to leave Syria for Lebanon in September 2014:

i. Maya grew up in Damascus, Syria with her parents and younger brother;

ii. when the Syrian uprising began in 2011, their neighbourhood became very dangerous due to fighting between the Syrian regime and opposition groups;

iii. in July 2012, their neighbourhood was destroyed, and the family had to leave their home. Maya and her mother were forced to quit their jobs as teachers;

iv. Maya and her family were displaced several times within Syria over the next two years due to attacks by religious extremists, including one incident where the family's apartment was partially set on fire;

v. in May 2014, Maya's father was kidnapped, and not released until January 2015 when Maya's extended family paid a large ransom;

vi. Maya fled to Lebanon in September 2014 along with her mother and brother, and settled in Tripoli; and

vii. Maya's mother and brother returned to Syria in December 2014, due to the high cost of living in Lebanon without being able to work, as well as the need to search for the Maya's kidnapped father.

[13] In the narrative attached to his application, Nowar described his family's background in Syria and their decision to leave Syria for Lebanon in August 2015:

i. the family came to Canada in 2006 as permanent residents. They lived in Canada for about four months, but returned to Syria as Nowar and Lama could not find work in Canada;

ii. prior to the Syrian uprising in 2011, Nowar worked for Syrian Airlines and Lama worked as a civil engineer;

iii. when the uprising started, the family were unable to return to Canada because their permanent residency had expired;

iv. in May 2013, the family lost their home in Damascus, Syria, when their neighbourhood was destroyed by fighting between the Syrian regime and opposition groups;

v. the family were threatened by extremist religious groups who believed that, as Ismaili Muslims, they supported the Syrian regime;

vi. the family suffered significant danger while living in Syria, including an incident where Nowar was injured in a sniper attack which killed two bystanders; and

vii. as a result of this danger, the family fled to Lebanon in August 2015 and settled in Tripoli, Lebanon.

[14] There is no narrative before the Court from the application of Mohannad and his family. However, Mohannad stated in his application that the family had resided in Lebanon since 2013. Their circumstances are described below.

[15] On April 11, 2018, Mohannad filed a form indicating that since November 2014, he and Maisaa had been going to and from Lebanon six or seven times per year, and remaining in Syria for an average of 20 days each trip. Mohannad also clarified that since November 2014, Farah and Marah lived in Syria with their grandparents and attended school.

[16] On April 13, 2018, Maya filed a form indicating that she had been travelling back and forth between Syria and Lebanon since July 2015, six or seven times per year.

[17] On April 18, 2018, the Applicants were interviewed at the Embassy of Canada in Beirut, Lebanon ("Interviews"). The Officer conducted three separate interviews: one involving Maya, one involving Nowar and his family, and one involving Mohannad and his family.

[18] The only evidence before this Court of the events of the Interviews is the Officer's Global Case Management System ("GCMS") notes. The Officer prepared separate GCMS notes for each interview. However, significant portions of the Officer's notes have been copied in all three matters.

[19] The Officer's notes from Mohannad's interview outline his family's circumstances:

> (i) Mohannad graduated as a lawyer in 2012, but was unable to practice law due to the situation in Syria, and worked instead as a painter;

> (ii) the family lived in Damascus, Syria until August 2013, when protesters began to demand that Ismaili Muslims leave Syria;
>
> (iii) in August 2013, the family fled to Lebanon, and lived in Tripoli;
>
> (iv) the family returned to Syria in 2014, and settled in Salamiyah, so that Farah and Marah could attend school.

[20] In each of the Interviews, the Officer heard evidence that Maya, Nowar, and Mohannad had spent time in both Syria and Lebanon. The Officer then informed each of the Applicants he was concerned they did not fall within the scope of the Convention Refugee Abroad Class or the Country of Asylum Class, because they resided in Syria and intended to return to Syria after their interview. The exert below is from the Officer's notes from Maya's interview, but was substantially copied into the notes for both Nowar's and Mohannad's interviews:

> At this point of the interview, I informed PA I had concerns that she may not meet the definition of a refugee or country of Asylum, under IRPA. I explained to the applicants that a refugee was initially someone who was [sic] sought protection in a country of asylum and it would appear he was still residing in Syria and had come to Lebanon on some occasions in 2018, for her form filling and interview. I informed PA I had reasonable grounds to believe that while he is outside of his country of persecution today, she does not intend to be outside of your country of persecution. Additionally, Were [*sic*] it not for form filling and this interview, there is no evidence for me to see they would have left their country of persecution.

[21] The Officer's notes indicate that in response to these concerns:

i. Maya stated she had resided in Lebanon between September 2014 and July 2015, and that she is not allowed to legally be in Lebanon for more than one month; and

ii. Mohannad stated that while his children had been living in Syria, he lived in Lebanon and had travelled back and forth between Syria and Lebanon.

[22] Each of the Applicants provided additional evidence to the Officer after the interviews.

[23] Maya provided the following documents to the Officer:

i. certificate of residence authored by the Lebanese Ministry of Interior and Municipalities, dated April 22, 2018, indicating that Maya resided in Tripoli, Lebanon from January 15, 2015 to November 1, 2015;

ii. A certificate of residence authored by the Lebanese Ministry of Interior and Municipalities, dated April 19, 2018, indicating that Maya was a "frequent visitor" to Tayr Dabba, Lebanon, between January 2017 and April 2018; and

iii. A Lebanese entry/exit record showing her legal entries to Lebanon (two entries in 2014, one in March 2018, and one in April 2018 for the interview).

[24] Maya also wrote in an email to the Officer, dated May 17, 2018, that the majority of her time in Lebanon was illegal, and that she could provide more details if needed.

[25] In an email dated May 17, 2018, Nowar indicated that he returned to Lebanon in January 2017 and lived in the village of Tayr Dabba. Nowar indicated that the family's border crossings in 2015 and 2016 had been illegal, and submitted documentation supporting his claim of residence in Lebanon:

i. an order by the Director General of Syrian Airlines, dated April 3, 2018 indicating that Nowar's unpaid leave be extended until December 10, 2018, so that he could stay in Lebanon;

ii. a certificate of residence, dated April 19, 2018, authored by Ministry of Interior and Municipalities in Tayr Dabba, Lebanon, indicating that Nowar had been a "frequent visitor" to Tayr Dabba since the beginning of 2017;

iii. a certificate of residence, dated April 27, 2018, authored by the Ministry of Interior and Municipalities in Tripoli, Lebanon, indicating that the family had resided in Tripoli between August 2015 and December 2016; and

iv. a Lebanese entry/exit record for Nowar, showing one entry and exit on March 22, 2018, one entry to Lebanon on April 9, 2018, and a departure from Lebanon on April 18, 2018.

[26] In an email to the Officer dated May 17, 2018, Mohannad wrote that his family had moved to Salamiyah, Syria at the end of 2014 to reside with Maisaa's parents, so that Farah and Marah could attend school. Mohannad also wrote that he had been living in Lebanon illegally, first in Tripoli until November 2016, and then in Tayr Dabba, a village in southern Lebanon. Attached to Mohannad's email was the following documentation supporting his claim of residence in Lebanon:

i. a certificate of residence authored by the Ministry of Interior and Municipalities, dated April 22, 2018, indicating that Mohannad, "together with his family", lived in Tripoli from August 2013 to November 2016;

ii. a certificate of residence authored by the Ministry of Interior and Municipalities, dated April 19, 2018, indicating that Mohannad had been a resident of Tayr Dabba since January 2017 and continued to live there; and,

iii. a Lebanese entry/exit record, showing that Mohannad entered Lebanon on March 18, 2018, departed from Lebanon on March 22, 2018, and returned to Lebanon on April 8, 2018.

III. **Decision Under Review**

[27] In three separate GCMS entries dated May 24, 2018, the Officer reviewed the evidence provided by the Applicants, noted inconsistencies between the Applicants' testimony of their time in Lebanon and their Lebanese entry/exit records showing legal border crossings, found that each of Maya, Nowar, and Mohannad were not credible, and found that the Applicants had not entered Lebanon until the spring of 2018.

[28] The Officer concluded that as the Applicants resided in Syria, they did not fall within the definition of the Convention Refugee Abroad Class or the Country of Asylum Class, and therefore their applications should be dismissed. The exert below is taken from the GCMS notes

regarding Maya's matter, but it is copied word-for-word into the notes for the two related proceedings:

> … Having reviewed the totality of the evidence provided and on balance, I find that the applicant is not credible and has contradicted herself, between the eligibility interview and in response to procedural fairness. Consequently, I am not satisfied that the applicant meets the definition of the Convention refugee abroad class and the country of Asylum class. Based upon all the evidence provided in the application and the interview, I am not satisfied that there is a reasonable chance or good grounds applicant has a well-founded fear of persecution, given applicant continues to reside in the country that she is seeking protection from.
>
> Additionally, based upon all the evidence provided by the applicant in the file and in his [*sic*] response to the procedural fairness portion of the interview, and in light of country conditions in Syria, I am not satisfied that there is a reasonable chance or good grounds that the applicant continues to be, seriously and personally affected as a result of armed conflict in Syria, considering that applicant continues to reside in her country of habitual residence.
>
> Therefore, applicant does not meet the requirements of the Act under section A96 or R147. For the reasons set out above, I am refusing the application.

[29] In three separate decision letters dated May 24, 2018, the Officer found that the Applicants were neither Convention Refugees nor members of the Country of Asylum Class, on the basis that the Applicants were not residents of Lebanon and were instead residing in the country from which they sought protection ("Decisions"). The substantive portions of the Officer's analysis are exerted below:

> I am not satisfied that you meet the definition of Convention refugee abroad class given that you are in the country that you are seeking protection from. Based upon all the evidence provided in your application and the interview, I am not satisfied that there is a reasonable chance or good grounds you have a well-founded fear

> of persecution. Therefore, you do not meet the requirements of this paragraph.
>
> …
>
> I am not satisfied that you meet the definition of the Country of Asylum class given that you continue to reside in the country that you are seeking protection from. Based upon all the evidence provided in your application and the interview and in light of country conditions in Syria, I am not satisfied that there is a reasonable chance or good grounds that you continue to be, seriously and personally affected as a result of armed conflict in Syria considering that you are in your country of residence. Therefore, you do not meet the requirements of this paragraph.
>
> [Emphasis added]

[30] In the decision letters for Maya and Mohannad, the Officer went on to conclude that they did not fall within paragraph 139(1)(d) of *Immigration and Refugee Protection Regulations,* SOR/2002-227 ("Regulations") as they had resettled in their country of nationality, Syria. The exert below appeared in both decision letters:

> After carefully assessing your application, I have determined that you do not meet these requirements. You have resettled in your country of nationality, Syria. Therefore, you do not meet the provisions of this paragraph.

[31] Other than the few lines addressing paragraph 139(1)(d), which do not appear in the decision letter for Nowar and his family, all three decision letters are identical.

IV. **Issues**

i. Did the Officer err in interpreting the criteria for the Convention Refugee Abroad Class and the Country of Asylum Class?

ii. Did the Officer err in finding that the Applicants had not resided in Lebanon?

iii. Did the Officer err by inferring a lack of risk from the Applicants' supposed return to Syria?

V. **Relevant Provisions**

[32] Under paragraph 139(1)(e) of the Regulations, a permanent resident visa shall be issued to a foreign national if it is established that the person is, among other possibilities, a member of the Convention Refugee Abroad Class or a member of the Country of Asylum Class:

139 (1) A permanent resident visa shall be issued to a foreign national in need of refugee protection, and their accompanying family members, if following an examination it is established that	139 (1) Un visa de résident permanent est délivré à l'étranger qui a besoin de protection et aux membres de sa famille qui l'accompagnent si, à l'issue d'un contrôle, les éléments suivants sont établis :
…	…
(e) the foreign national is a member of one of the classes prescribed by this Division;	e) il fait partie d'une catégorie établie dans la présente section;

[33] Section 96 of the IRPA defines a 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,	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) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	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) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that	b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut

fear, unwilling to return to that country.	ni, du fait de cette crainte, ne veut y retourner.

[34] Section 147 of the Regulations defines the Country of Asylum Class:

147 A foreign national is a member of the country of asylum class if they have been determined by an officer to be in need of resettlement because	147 Appartient à la catégorie de personnes de pays d'accueil l'étranger considéré par un agent comme ayant besoin de se réinstaller en raison des circonstances suivantes :
(a) they are outside all of their countries of nationality and habitual residence; and	a) il se trouve hors de tout pays dont il a la nationalité
(b) they have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in each of those countries.	ou dans lequel il avait sa résidence habituelle;
	b) une guerre civile, un conflit armé ou une violation massive des droits de la personne dans chacun des
	pays en cause ont eu et continuent d'avoir des conséquences graves et personnelles pour lui.

[35] Under paragraph 139(1)(d) of the Regulations, a permanent resident visa shall be issued to a foreign national if it is established that there is no reasonable prospect, within a reasonable period, of a durable solution in a country other than Canada.

139 (1) A permanent resident visa shall be issued to a	139 (1) Un visa de résident permanent est délivré à l'étranger qui a besoin de protection et aux membres de sa famille qui l'accompagnent si, à l'issue d'un contrôle, les
foreign national in need of refugee protection, and their	
accompanying family members, if following an examination it is established that	éléments suivants sont établis:
…	…
(d) the foreign national is a	d) aucune possibilité raisonnable de solution durable

person in respect of whom there is no reasonable prospect, within a reasonable period, of a durable solution in a country other than Canada, namely (i) voluntary repatriation or resettlement in their country of nationality or habitual residence, or (ii) resettlement or an offer of resettlement in another country;	n'est, à son égard, réalisable dans un délai raisonnable dans un pays autre que le Canada, à savoir : (i) soit le rapatriement volontaire ou la réinstallation dans le pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle, (ii) soit la réinstallation ou une offre de réinstallation dans un autre pays;

VI. **Standard of Review**

[36] Decisions of visa officers determining whether applicants are members of the Convention Refugee Abroad Class or the Country of Asylum Class generally raise issues of fact or of mixed fact and law, and are therefore reviewed on a standard of reasonableness (*Saifee v Canada (Citizenship and Immigration)*, 2010 FC 589 at para 25 [*Saifee*]). Reasonableness review is concerned with the existence of justification, transparency and intelligibility within the decision-making process, as well as whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]).

[37] The Applicants suggest, on the basis of an obiter remark in *Saifee*, above at paragraph 26, that decisions by visa officers on pure questions of law, such as an officer's interpretation of the IRPA and the Regulations, may require review on a standard of correctness. However, *Saifee* was decided in the wake of *Dunsmuir*; subsequent decisions of this Court have established that a visa officer's interpretation of the IRPA and the Regulations is owed deference and should be reviewed with the reasonableness standard (*Ameni v Canada (Citizenship and Immigration)*,

2016 FC 164 at paras 17-30 [*Ameni*]; *Tareen v Canada (Citizenship and Immigration)*, 2015 FC 1260 at para 16).

VII. **Analysis**

A. *Did the Officer err in interpreting the criteria for the Convention Refugee Abroad Class and the Country of Asylum Class?*

[38] The Applicants argue that the Officer erred by requiring residence outside Syria as a pre-condition to acceptance in either the Convention Refugee Abroad Class or the Country of Asylum Class.

[39] The Applicants rely on the decision of Justice Brown in *Ameni,* above, which allowed an application for judicial review on the basis that an immigration officer erroneously imposed a residency requirement as a precondition to both the Convention Refugee Abroad Class and the Country of Asylum Class. Justice Brown found at paragraphs 24 and 27 that an individual must simply be outside their country of nationality:

> [24] Turning to the phrases used in the decision, nowhere do the IRPA or IRPR require a Convention refugee or country of asylum class claimants to "reside outside of the country of nationality", be "residing in Pakistan", "substantiate residency", or be "resident" in Pakistan as insisted upon by the Officers. Further, there is no requirement that the Applicants "substantiate continuous residency", or "establish residency" in Pakistan.
>
> …
>
> [27] I agree with the Applicants' submission that simply being outside one's country of nationality is required. This ruling is consistent with internationally accepted guidelines in that regard. The UNHCR's "Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees" states at para 88:

> "It is a general requirement for refugee status that an applicant who has a nationality be outside the country of his nationality. There are no exceptions to this rule. International protection cannot come into play as long as a person is within the territorial jurisdiction of his home country" [emphasis added]. Note that the verb is not "to reside", nor is it "to live" but rather "to be".
>
> [Emphasis added]

[40] Justice Brown concluded at paragraphs 28 to 29 that the immigration officer's imposition of this residency requirement was unreasonable:

> [28] In my view, in terms of establishing the quality of connection to a country other than that of their nationality, persons claiming Convention refugee or country of asylum class protection outside Canada need only establish what the statute requires, namely that one "is outside" their country of nationality, i.e., that they be outside such other country. Officers lack the legal authority to require applicants to meet any higher requirement. In my view they also act unreasonably and without statutory authority to the extent they impose, as I find they did in this case, a requirement that such claimants reside or live outside the country of their nationality; being outside such their country of nationality is enough.
>
> [29] The Officers summarized their finding by stating: "…I do not believe that the applicants reside outside of their country of nationality, and therefore do not meet the eligibility criteria for resettlement to Canada as refugees as set out at section 96 of the Act and section 147 of the Regulations." This is an impermissible cause and effect analysis. Therefore this finding is unreasonable, and to the extent the decision depends on this finding and the underlying but non-existent residency requirement, it must be set aside. For completeness, in my respectful opinion the Officers applied an incorrect legal test with the same result namely that the decision must be set aside.

[41] The above reasoning, and the conclusion that an immigration officer had unreasonably imposed a residency requirement, was adopted by Justice Diner in *Amani v Canada (Citizenship and Immigration)*, 2016 FC 1215 [*Amani*].

[42] The Applicants argue that on the date of the Interviews, April 18, 2018, they were outside Syria, and therefore satisfied the requirement of being outside their country of nationality. The Applicants argue that the Officer was unreasonable to focus on their place of residence, impose an elevated requirement of "residency" not contained in the IRPA or the Regulations, and therefore reject their applications on the basis that they did not reside outside of Syria.

[43] The Respondent fails to meaningfully address this issue, and instead focuses their submissions on the Officer's negative credibility findings and the findings that the Applicants were not at risk in Syria, which the Respondent argues were determinative and reasonable. In particular, the Respondent highlights inconsistencies between statements at the Interviews suggesting that the Applicants resided in Syria and post-interview submissions suggesting that they resided in Lebanon.

[44] The Respondent also attempts to distinguish the *Ameni* decision, on the basis that *Ameni* does not alter the requirement that a member of the Convention Refugee Abroad Class must suffer a serious and personal risk from residing in their country of nationality. The Respondent suggests that the Officer reasonably concluded that the Applicants did not suffer such a risk, and therefore reasonably dismissed their applications.

[45] The underpinning of the Respondent's argument is that the Officer's consideration of the Applicants' residency was merely one factor in the Officer's overall analysis of the Applicants' risk while living in Syria, and that this overall analysis was reasonable. I disagree. The Respondent's arguments attempt to shift the focus away from the true crux of the Decisions – the imposition of a residency requirement not contained in the IRPA or the Regulations.

[46] The Officer erred in interpreting the requirements of the Convention Refugee Abroad Class and the Country of Asylum Class, and this error led directly to the Officer's rejection of the applications. As the decisions of *Ameni* and *Amani* have established, the imposition of a residency requirement is both wrong and unreasonable.

[47] The requirement for inclusion in either class is merely that an individual be outside of his or her country of persecution. On April 18, 2018, the date of the Interviews, the Applicants met this requirement.

[48] The Officer appears to have seized upon this residency requirement, and used it to summarily dismiss all three applications. This is evidenced by the Officer's haphazard copying of effectively the same decision letter, and substantial portions of the notes, for all three related decisions.

[49] The Respondent attempts to shift the Court's focus to the Officer's other conclusions in the GCMS notes, regarding the Applicants' lack of credibility and their degree of risk from residing in Syria. However, it is clear that those conclusions were inexorably tied to the Officer's erroneous focus on a residency requirement which he believed the Applicants had to satisfy. As a result, the Officer failed to meaningfully address the applications on their merits, and did not reasonably consider the Applicants' risk profiles in Syria.

[50] At the hearing of this matter, the Respondent repeatedly emphasized that the Applicants had returned to work in Syria and therefore could not be at risk. However, as was highlighted by the Applicants in rebuttal, there was no evidence before the Officer that Maya has been able to return to work since she was forced to quit her job as a teacher in July 2012. Similarly, the

evidence before the Officer was that Mohannad had not worked since November 2014. The evidence that was before the Officer, including the inability of some of the Applicants to find meaningful employment, clearly suggests that the Applicants suffer a great deal of risk in Syria. More importantly, the Officer never meaningfully considered their risk.

[51] I find that the Officer erred by requiring the Applicants to prove ongoing residence in Lebanon as a pre-condition to membership in the Convention Refugee Abroad Class or the Country of Asylum Class. This error caused the Officer to fail to conduct a reasonable analysis of the risks suffered by the Applicants in their country of nationality, and thereby fail to meaningfully consider the Applicants' membership in the Convention Refugee Abroad Class or the Country of Asylum Class. For this reason alone, these matters must be returned for reconsideration.

[52] I will not address the other issues raised by the Applicants, as they stem from this primary error by the Officer. However, I will comment briefly on each.

[53] With respect to the second issue, the Officer found that the Applicants had not resided in Lebanon, and instead had come to Lebanon for the first time in the spring of 2018 to fill out forms and to attend their interviews. In reaching this conclusion, the Officer used their Lebanese entry/exit records, which showed border crossings in the spring of 2018, to refute their testimony and their residency certificates, which evidenced significant time spent in Lebanon. The Officer's analysis and conclusions flow directly from the erroneous imposition of a residency requirement, and as such do not merit independent consideration.

[54] Nonetheless, the Officer's finding is highly problematic for two reasons. First, it defies logic that the Officer would use the Lebanese entry/exit records, records of legal border crossings, to refute the Applicants' evidence of illegal border crossings. Second, the Officer's reasoning reflects an extreme lack of understanding of the conditions described in the country condition evidence, particularly the prevalence of illegal border crossings between Lebanon and Syria.

[55] The evidence before the Officer as a whole strongly suggests that the Applicants generally, and particularly Maya, Nowar, and Mohannad, have spent substantial portions of time since the beginning of the Syrian crisis residing in Lebanon.

[56] With respect to the third issue, the Officer inferred a lack of risk from the Applicants' supposed return to Syria. This finding again does not merit independent consideration, as it flows directly from both the erroneous imposition of a residency requirement and the erroneous finding that the Applicants had only come to Lebanon in the spring of 2018 to fill out forms and attend the Interviews.

[57] However, even if the Applicants had only come to Lebanon in the spring of 2018, which I find highly doubtful, inferring a lack of risk from this fact is highly questionable given the Applicants' circumstances. In particular, the Officer failed to address:

i. Maya's evidence, as outlined in the Officer's notes, that her home had been partially destroyed by shells and that her father had been kidnapped;

ii. Nowar's testimony at the Interviews that his family had experienced shelling as recently as "yesterday and the day before yesterday";

iii. Mohannad's testimony at the Interviews that the situation in Salamiyah, Syria was "terrible, I am afraid to go back there"; and,

iv. the country condition evidence suggesting that the vast majority of Syrian asylum-seekers are in need of refugee protection, and that religious minorities such as Ismaili Muslims are at a particularly high risk.

[58] Without meaningfully addressing this evidence, it is difficult to see how an immigration officer could reasonably conclude that the Applicants would not be at risk residing in Syria.

VIII. **Certified Question**

[59] At the hearing of this matter, the Respondent proposed the following certified question:

> Is the legal requirement outlined in R139(1)(e) of the Immigration and Refugee Protection Regulations, that the foreign national be a member of one of the classes prescribed by this Division, namely [s. 96 and R. 147], met or satisfied by temporary stays in a third country while the foreign national continues to or returns to ordinarily reside in the country of nationality/habitual residence?

[60] The Applicants oppose the certification of this question.

[61] The requirements for a certified question were articulated by the Federal Court of Appeal in *Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at paragraph 46:

> [46] This Court recently reiterated in *Lewis v. Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para. 36, the criteria for certification. The question must be a serious question that is dispositive of the appeal, transcends the interests of the parties and raises an issue of broad significance or general importance. This means that the question must have been dealt with by the Federal Court and must arise from the case itself rather than merely from the way in which the Federal Court disposed of the application. An issue that need not be decided cannot ground a properly certified question (*Lai v. Canada (Public Safety and Emergency Preparedness)*, 2015 FCA 21, 29 Imm. L.R. (4th) 211 at para. 10). Nor will a question that is in the nature of a reference or whose answer turns on the unique facts of the case be properly

> certified (*Mudrak v. Canada (Citizenship and Immigration)*, 2016 FCA 178, 485 N.R. 186 at paras. 15, 35).

[62] I find that the proposed question does not merit certification. The question is not one of broad significance or general importance. Rather, the question is factual in nature, as any answer will depend on the particular facts of the case.

IX. **Conclusion**

[63] These applications for judicial review are allowed. There is no question for certification.

JUDGMENT in IMM-3435-18, IMM-3436-18 and IMM-3437-18

THIS COURT'S JUDGMENT is that:

1. The decisions under review are set aside and the matters referred back for redetermination by a different immigration officer.

2. No question is certified.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3435-18
STYLE OF CAUSE:	MAYA WARD v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
DOCKET:	IMM-3436-18
STYLE OF CAUSE:	NOWAR WARD ET AL V THE MINISTER OF CITIZENSHIP AND IMMIGRATION
DOCKET:	IMM-3437-18
STYLE OF CAUSE:	MOHANNAD WARD ET AL V THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	APRIL 30, 2019
JUDGMENT AND REASONS:	AHMED J.
DATED:	JUNE 26, 2019

APPEARANCES:

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