

Federal Court



Cour fédérale

Date: 20190909

Docket: IMM-389-19

Citation: 2019 FC 1150

Ottawa, Ontario, September 9, 2019

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

MOHAMAD KHADRA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mohamad Khadra, seeks judicial review of a decision of the Refugee Appeal Division [RAD] wherein the RAD dismissed the Applicant's appeal and confirmed the decision of the Refugee Protection Division [RPD] that the Applicant was not a Convention refugee or a person in need of protection made pursuant to paragraph 111(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] For the reasons below, the application for judicial review is allowed.

II. Facts

[3] The Applicant is a citizen of Lebanon, born on October 10, 1982. He was married to a Canadian permanent resident but divorced on January 16, 2014 before his sponsorship application was finalized.

[4] In his Basis of Claim Form, the Applicant claims his paternal uncle, Imad Khadra, is “very involved in both the political wing and military wing” of Hezbollah. The uncle pressured the Applicant and his ex-wife to stay in Lebanon. The uncle also pressured the Applicant to join Hezbollah to “uphold the family honour and fight in Syria.” The Applicant states that his uncle assaulted him on March 14, 2014 when he refused to join Hezbollah. The uncle then ordered him to attend a Hezbollah military training camp, threatening “very grave consequences” for failing to attend.

[5] The Applicant fled his hometown, Tyre, and went into hiding, staying with a friend in Beirut. When the Applicant failed to show up at the military training camp, the uncle told the Applicant’s father the Applicant would be shot as a traitor if he refused to fight.

[6] The Applicant left Lebanon for the United States in May 2014, and arrived in Canada in October 2016 at which time he claimed asylum.

[7] The Applicant claims agents of Hezbollah went to his friend's house in Beirut several times looking for the Applicant. The agents threatened that friend—and the uncle threatened the Applicant's father, telling him “there would be dire consequences for [the Applicant's] entire family, if at least one of us [that is, the Applicant and his brothers] did not return and fight.” The Applicant fears that his uncle will harm him and that he “will be ostracized and not able to work anywhere” if he returns to Lebanon.

A. *Decision of the Refugee Protection Division*

[8] In its decision dated December 12, 2017, the RPD rejected the Applicant's claim, finding he had not established a well-founded risk of forced recruitment by Hezbollah in light of the objective documentary evidence. The RPD found the Applicant was not a likely target of Hezbollah recruiters because of his age, his unwillingness to join Hezbollah, and his profile as “a high school educated man who worked at various jobs in Lebanon and the USA and is well-travelled.” The RPD decided the Applicant's evidence regarding his uncle and Hezbollah's forced recruiting did not displace other evidence of Hezbollah's non-forced recruiting.

[9] At the hearing before the RPD, the Applicant testified that his uncle was a “high-ranking member of Hezbollah.” When asked by the RPD for documents concerning any influence his uncle might have with Hezbollah, the Applicant responded that “all his family knows he is member of Hezbollah but we can't, we don't have the written documents [...] to prove that.” The RPD found the Applicant had not established his uncle was a high-ranking member of Hezbollah and there was insufficient evidence that the Applicant could be discovered in Beirut by his uncle. The RPD concluded the Applicant had an available internal flight alternative [IFA] in Beirut.

B. *Decision of the Refugee Appeal Division*

[10] In its decision dated October 15, 2018, the RAD identified the two determinative issues as whether the RPD erred in assessing the Appellant's well-founded fear of Hezbollah and his uncle and whether the RPD erred in finding an available IFA in Beirut.

[11] The RAD accepted the RPD's inferences regarding Hezbollah's recruitment practices, referring to the National Documentation Package for Lebanon and articles the Applicant entered into evidence. The RAD concluded that "[t]he RPD was correct to note that most sources indicate that Hezbollah does not forcibly recruit members" and "the arguments made by the [Applicant] that he was an attractive recruit for Hezbollah are speculative." The RAD determined the Applicant did not provide sufficient evidence to establish, on a balance of probabilities, that he risked forced recruitment by Hezbollah.

[12] The RAD also accepted that the Applicant failed to provide sufficient evidence to establish his uncle is a high-ranking member of Hezbollah, and the RAD adopted the RPD's determination that the Applicant did not demonstrate an objective well-founded fear of his uncle and Hezbollah.

[13] The RAD reviewed the evidence regarding the Applicant's IFA in Beirut and adopted the reasons of the RPD. The RAD determined the Applicant was safe from his uncle in Beirut, and it is reasonable for the Applicant to relocate there.

III. Issues

[14] The sole issue to be determined is whether the RAD decision is unreasonable. The Applicant argues that the RAD committed reviewable errors on the merits as follows:

- i. the RAD erred in its consideration of the evidence regarding Hezbollah's recruitment tactics, and thus made unreasonable inferences regarding the foundation of the Applicant's fear;
- ii. the RAD erred by confirming and adopting the RPD's imposition of the arbitrary requirement that the uncle be high-ranking within Hezbollah to establish the Applicant's well-founded fear;
- iii. the RAD erred by failing to give the Applicant the benefit of the presumption of truthfulness regarding his uncle's rank in Hezbollah, and by drawing an invalid inverse inference regarding his credibility due to a lack of corroborative evidence on the same point; and
- iv. the RAD erred in fact and law in its determination that Beirut would be a viable IFA for the Applicant.

IV. Standard of Review

[15] There is no dispute between the parties that the standard of review in this case is reasonableness. I agree. In reviewing the decision, this Court must consider whether the decision is justified, transparent, and intelligible, and if it falls within the range of possible outcomes

defensible in respect of the facts and the law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47.

V. Analysis

A. *Applicant's Well-Founded Fear of Forced Recruitment*

[16] At the hearing, the Court brought to the parties' attention a recent decision rendered by Mr. Justice John Norris in *Zaiter v Canada (Minister of Citizenship and Immigration)*, 2019 FC 908 [*Zaiter*] where certain facts cited are on all fours with those at bar.

[17] In *Zaiter*, the applicant was a Lebanese man (from the Beqaa Valley) who feared being forcibly recruited by Hezbollah. The applicant adduced evidence of forced recruitment, including an excerpt from the National Documentation Package for Lebanon (Response to Information Request dated October 29, 2015), which is also relied on by the Applicant in the present case.

The excerpt reads as follows:

In correspondence with the Research Directorate, a professor of international history at the London School of Economics and Political Science, who researches armed conflict in the Middle East, stated that there is "anecdotal evidence" that Hezbollah "has started forcibly recruiting since it has become more involved in the Syrian conflict." The same source noted that many Lebanese Shi'a "feel Lebanese and not Syrian" and are therefore reluctant to join Hezbollah "to fight for Asad." According to the Professor of international history, forced recruitment occurs mainly in rural areas where Hezbollah has strong influence such as southern Lebanon and the Beqaa valley. The source also indicated that there are "talks of disappearances" of those individuals who refuse to join Hezbollah but that to the source's knowledge, no reports have arisen in which family members of said individuals have been subject to harassment [citations omitted].

[18] The RPD dismissed Mr. Zaiter's evidence, deciding it was less probative than the evidence of Hezbollah's non-forced recruiting. The RAD agreed with the RPD that the use of the term "anecdotal" meant "that the professor giving this information also did not consider the information to be verifiable or reliable." Justice Norris disagreed, stating as follows at para 16 of *Zaiter*:

Anecdotal evidence may be less reliable as an indicator of broader trends or patterns than evidence obtained through systematic study but this does not mean that it has not been verified or is inherently unreliable. The fact that the professor was prepared to share this information with the IRB Research Directorate and provided additional details [...] suggested that he or she had not dismissed it as unverifiable or unreliable. Even if these were merely isolated reports, they were consistent with what the applicant claimed had happened to him, including that the harassment had begun when he was living at home with his family in the Beqaa Valley.

[19] In the same paragraph, Justice Norris also noted weaknesses in the evidence of Hezbollah's non-forced recruiting:

Moreover, while the Response to Information Request also cites the opinions of other academics that Hezbollah does not forcibly recruit its members, the evidentiary support for these opinions is not stated. We do not know whether they are the product of systematic study, anecdotal reports, or something else.

[20] Justice Norris determined the RAD's decision to prefer objective documentary evidence regarding Hezbollah's non-forced recruiting over the applicant's testimony and objective documentary evidence regarding Hezbollah's forced recruiting was not reasonable. I respectfully adopt his reasons as my own.

[21] In the present case, the RAD does not engage with the Applicant's objective documentary evidence on forced recruitment in any detail. Nor does it address articles produced by the Applicant describing Hezbollah's forced recruiting.

[22] The RAD is not required to refer to every piece of evidence in the record in order for its decision to be reasonable. It remains that the RAD's failure to mention a critical piece of evidence may render its decision unreasonable. The RAD's burden of explanation increased with the relevance of the evidence in question to the disputed facts (see *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 (Fed TD) at para 17).

[23] It is unclear why the RAD gave greater weight to the evidence of Hezbollah's non-forced recruiting over the Applicant's testimony and other objective evidence of Hezbollah's forced recruiting around the time the Applicant fled Lebanon. The reasons provided do not allow me to determine whether the RAD directed itself to the totality of evidence when making its findings of fact or may have overlooked or ignored contradictory evidence.

B. *Applicant's Well-Founded Fear of His Uncle*

[24] The RAD agreed with the RPD's conclusion that the Applicant failed to provide sufficient evidence that his uncle is a high-ranking member of Hezbollah. It is important to note, however, that no adverse credibility determination was made against the Applicant by either the RPD or the RAD.

[25] The Applicant testified at the hearing before the RPD about his uncle's interest in having him or one of his brothers join Hezbollah—and how the uncle threatened the Applicant's family and friend when the Applicant failed to join and attend a military training camp. The Applicant also spoke to his uncle's political and military affiliation with Hezbollah. The Applicant produced sworn statements and declarations of his family members that assert his uncle is involved with Hezbollah, he is angry and resentful, he assaulted the Applicant and threats were made to the Applicant's family.

[26] The RAD did not determine the Applicant's testimony or the statements of the Applicant's family were not credible. It focussed instead on his uncle's rank in Hezbollah. The RAD does not explain why it gave seemingly no weight to the Applicant's personal knowledge of the role of his uncle in Hezbollah or the Applicant's explanation that he could not produce documents establishing his uncle's "rank" in Hezbollah.

[27] There is nothing in the decisions below that directly address the evidence of the Applicant that his uncle, irrespective of his rank, could harm the Applicant himself or marshal the support of other Hezbollah members to locate and persecute the Applicant. This evidence went to the crux of the Applicant's case and should not have been discounted without proper reasons.

C. *Availability of IFA*

[28] There was evidence before the RAD that the entire region of Lebanon is at risk from Hezbollah. There was also testimony from the Applicant, albeit hearsay, that Hezbollah was able

to locate the Applicant in Beirut after he had gone into hiding. In the circumstances, the question whether the Applicant has an internal flight alternative in Beirut should be redetermined based on a reassessment of his uncle's role and influence in Hezbollah

VI. Conclusion

[29] For these reasons, the application for judicial review of the RAD's decision is allowed. The decision is set aside, and the matter is remitted for redetermination by a different decision-maker.

[30] There are no questions for certification.

JUDGMENT IN IMM-389-19

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is allowed.
2. The Refugee Appeal Division's decision dated October 15, 2018 is set aside.
3. The matter is remitted for redetermination by a different decision-maker.

"Roger R. Lafrenière"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-389-19

STYLE OF CAUSE: MOHAMAD KHADRA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: AUGUST 27, 2019

JUDGMENT AND REASONS: LAFRENIÈRE J.

DATED: SEPTEMBER 9, 2019

APPEARANCES:

Allison Williams FOR THE APPLICANT

Kristina Dragaitis FOR THE RESPONDENT

SOLICITORS OF RECORD:

Levinson & Associates FOR THE APPLICANT
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario