

Federal Court



Cour fédérale

Date: 20200320

Docket: IMM-2564-19

Citation: 2020 FC 398

Ottawa, Ontario, March 20, 2020

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

**AZHAR MOHAMMAD SAMAK
(A.K.A. AZHAR MOHAMMAD AZHER SAMAK)
BATOL ANAS ABDULRAHMAN ABDULRAHMAN
AMER IBRAHIM MOHAMMAD MOHAMMAD
OLA AMER IBRAHIM IBRAHIM
ALI AMER IBRAHIM IBRAHIM
MUSTAFA AMER IBRAHIM IBRAHIM**

Applicants

And

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] In this case, the Applicants submit that the Refugee Protection Division [RPD] committed eight reviewable errors. The Respondent submits that these submissions should not

obscure the most fundamental evidentiary challenge that the Applicants face, namely, the fact that the Islamic State of Iraq and the Levant [ISIL or ISIS] (and its affiliates) are no longer in control of Mosul and control no territory in Iraq. In addition, the Respondent submits that none of these challenges overturns the ample evidence that the Applicants worked, went to school and lived in Erbil, Iraq and could return to the region.

[2] Underlying the findings of the RPD, however, is a string of inconsistent and shifting testimony which caused the RPD to seriously doubt the Applicants' credibility.

[3] For the reasons that follow, the Applicants have failed to convince me that the alleged errors either exist or are determinative of the outcome. I therefore dismiss the present application for judicial review.

II. Facts

[4] The Applicants are Dr. Azhar Mohammad Samak [Female Applicant], her husband, Dr. Amer Ibrahim Mohammad Mohammad [Male Applicant], their three minor children, and the Female Applicant's adult daughter from a previous marriage. All are Iraqi citizens. The Male Applicant is a paediatric surgeon; the Female Applicant is an anaesthesiologist. They were married in 2003, and the minor children were born between 2005 and 2009.

[5] The Male Applicant claims to be a Shia Muslim and his wife claims to be a Sunni Muslim.

[6] The Male Applicant was born in Erbil, Iraq, today the Kurdistan regional capital, but grew up in Mosul, where he went to high school and where his father was born and worked while he was growing up.

[7] He completed his medical school at the University of Baghdad and, following a series of internships (including at the Al Jumhuri Teaching Hospital in Mosul between 2003 and 2005 and at the Shaqlawa Hospital in Erbil between 2006 and 2008), the Male Applicant proceeded to study paediatric surgery at the Hawler Medical University/College of Medicine in Erbil from 2008 to 2011.

[8] He was hired by the Kurdish Regional Government, Ministry of Health, to work as a physician specialist in paediatric surgery at the Rapareen Teaching Hospital, a public hospital in Erbil, from 2015 to 2017.

[9] In addition, between 2001 and 2015, the Male Applicant also operated his private medical clinic in the Al-Zuhour neighbourhood of the city of Mosul, approximately 100 km northwest of Erbil, in the Nineveh governorate or Province of Iraq.

[10] The Female Applicant was born and raised in, and completed her medical studies in, Mosul. She worked at the Al Jumhuri Teaching Hospital in Mosul from 2001 to 2015 and along the way undertook an internship course at the Shaqlawa Hospital in Erbil, studied anaesthesiology at Hawler Medical University/College of Medicine in Erbil, and trained as an

emergency room anaesthesiologist at the Rizgary Teaching Hospital, a public Kurdish Ministry of Health-run facility in Erbil.

[11] In 2014, the City of Mosul fell into the hands of ISIS. The targeting of Shiite and minorities followed soon thereafter; in addition, doctors in particular were being targeted.

[12] In 2015, as tensions mounted in Mosul, the Female Applicant took on a position as a specialist in anaesthesia at the Rizgary Teaching Hospital in Erbil, where she remained until 2017. This coincided with her husband taking a position at the Rapareen Teaching Hospital, also in Erbil, where he remained until the family left Iraq in 2017.

[13] The Male Applicant was concerned that he would face violent reprisals because of his professed Shia Muslim faith.

[14] In 2015, the Male Applicant was told by a former patient that he had been placed on a public list of persons who were to be killed by ISIL on account of his Shia faith. In fear of his life, and that of his family, the Male Applicant claims to have moved his family from their home in the Al-Zahra neighbourhood of Mosul to a home in the Al-Zuhour neighbourhood of the city, I take it close to, or in the same building as, the Male Applicant's private clinic.

[15] The Applicants claim that later that year, their home in the Al-Zahra neighbourhood was destroyed by ISIL.

[16] The Applicants claim that they had to hire private drivers for their commute from Mosul to Erbil so as to avoid ISIL checkpoints. A few times per month, the Applicants would commute to their respective hospitals in Erbil and stay at the hospital for several days. Sometimes, the Applicants would stay with a family in Erbil. They were able to secure employment in Erbil as well as enter and leave Erbil on account of the fact that the Male Applicant was born there. They were able to gain access to Mosul because the Female Applicant was Sunni.

[17] In June 2017, men clad in black clothes attacked the Applicants at their home in the Al-Zuhour neighbourhood. The Applicants fled to a neighbour's home and were able to escape from the men. The Applicants believe that these men were sent by ISIS to target the Male Applicant (because of his Shia faith) and the minor applicants (because of their mixed Shia/Sunni heritage).

[18] The same neighbour helped the Applicants travel to another area of Mosul, where the Applicants hid until they were able to flee Iraq. The Applicants left their jobs and, in August 2017, on the strength of a US visa, the Applicants travelled to Chicago and, from there, travelled to Buffalo and crossed over into Canada on September 13, 2017. They arrived at an official port of entry and initiated their refugee claims through an exemption to the *Safe Third Country Agreement*, as the Female Applicant has a brother in Canada.

[19] They admit never having wanted to remain in the US and admit having obtained the US visa to facilitate their seeking of refugee protection in Canada.

[20] When the Applicants applied for American visas to flee from Iraq to the US, they listed Erbil as their place of residence.

[21] Prior to their departure from Iraq, the Applicants filed a complaint with an investigative court regarding the destruction of their home (which occurred in 2015). The Applicants filed the complaint in order to secure their property rights and receive compensation for the damage.

[22] The Applicants alleged that they were targeted by ISIS for numerous reasons, including the Shia faith of the Male Applicant, the Male Applicant's status as a man married to a Sunni woman, and the adult Applicants' careers as doctors.

III. Decision Under Review

[23] In a decision dated April 2, 2019, the RPD denied the Applicants' refugee claims.

[24] The RPD found that the Applicants were not Convention refugees nor persons in need of protection. This central determination was based on the finding that the Male Applicant's account of the events leading up to their departure from Iraq lacked credibility.

[25] The RPD also found that the Applicants are not presently at risk from ISIS and do not require international protection. In addition, on a balance of probabilities, the RPD found that the Applicants were not living in Mosul when ISIS was present in that city and were not targeted or at risk of gender-related violence from ISIS, as they asserted, but that they were actually living

and working in Erbil and their children were attending school there. Consequently, Erbil was a viable internal flight alternative [IFA] for them.

IV. Issues

[26] The Applicants raise eight issues; however, after reviewing the RPD decision, reading the hearing transcript and hearing counsel submissions, I believe only three issues require attention:

- A. Did the RPD's assessment of the Male Applicant's ethnicity violate procedural fairness as the Male Applicant was unaware that his Arab ethnicity was in doubt?
- B. Did the RPD commit a reviewable error in its credibility assessment?
- C. Did the RPD commit a reviewable error in its assessment of Erbil as an internal flight alternative?

[27] As to the remaining issues identified by the Applicants, I will address them briefly in the following paragraphs.

[28] I take the Applicants' point that the RPD failed to address the medical evidence showing that one of the minor applicants has bedwetting issues as a result of the trauma he and his family experienced, and that the RPD thus committed a reviewable error. However, the Applicants have not convinced me that such an error warrants judicial review, as the minor applicant's mental health situation is not an issue central to the outcome of the decision.

[29] The Applicants submit that the RPD failed to assess their cumulative risk as Arabic doctors and the family members of a Shia man, collectively. I disagree. In its decision, the RPD acknowledged the Applicants' arguments concerning their cumulative risk. The RPD found that

“the evidence does not support that the discrimination they have or would experience would result in them experiencing serious harm amounting to persecution.” In any event, the threat posed by ISIS and its affiliates was the main basis of the Applicants’ refugee claims. In its analysis of the claims, the RPD addressed the basis of the claims and found that ISIS did not pose a risk to the Applicants (based on documentary evidence) and that the adult Applicants’ behaviour prior to leaving Iraq did not support the proposition that the Applicants were at a significant risk.

[30] The Applicants claim that the RPD did not address the refugee claim of the Female Applicant’s adult daughter and the adult Applicants’ minor children. I disagree; as was the case with the adult Applicants, the threat posed by ISIS and its affiliates was the main basis of the children’s refugee claims. As I stated earlier, the RPD addressed this concern and found that it is no longer a significant threat. The Applicants have not provided evidence that the children face specific risks due to their profile above and beyond the general risks that are equally applicable to their parents. The RPD made several references to the children’s situation. The RPD dedicated a paragraph to the children’s schooling situation and whether they attended school in Erbil. The RPD examined the Male Applicant’s testimonial evidence that the children travelled to Erbil in order to take their exams. The RPD examined the children’s risk of travel due to their father being Shia. The RPD also found that there was no evidence to suggest that the children could be granted entry into Erbil on account of their father’s status. All of these factual inquiries and determinations show that the RPD was alive to the children’s claims.

[31] As to the Applicants' submission that the RPD failed to take into consideration the Immigration and Refugee Board of Canada Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution [Gender Guidelines] and assess a gender-related fear of harm, I disagree. The RPD did acknowledge in its decision that it "considered the Gender Guidelines in this case." In any event, the application of the Gender Guidelines does little to affect the outcome of my decision. The Applicants' gender-related fear of harm is connected to ISIS, an organization known for committing acts of sexual violence and rape in pursuit of their objectives. Since the RPD determined that ISIS is no longer a risk in the region, I see no reason why the RPD would need to embark on a distinct inquiry in order to assess the gender-related risk posed by this group.

[32] As to the issue of whether the RPD failed to apply the section 97 test to the Applicants' individual circumstances, the RPD addressed the factual predicate of the Applicants' allegations. The basis of the Applicants' section 97 claim is ISIS. The RPD determined that ISIS is no longer in control of the region. It would be redundant for the RPD to conduct a separate analysis of a risk that no longer exists in the relevant area.

V. Standard of Review

[33] The Applicants submit that the first issue is subject to the correctness standard of review (Applicants' Memorandum at paras 21, 23). I agree (*Garces Caceres v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 4 at paras 18, 20, 23; *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paras 55, 79; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 43; *Mcintyre v Canada (Citizenship and Immigration)*,

2016 FC 1351 at para 16; *Mission Institution v Khela*, 2014 SCC 24 at para 79; *Ghauri v Canada (Citizenship and Immigration)*, 2016 FC 548 at para 22; *Canada (Attorney General) v Sketchley*, 2005 FCA 404 at para 53; *Galyas v Canada (Citizenship and Immigration)*, 2013 FC 250 at para 27).

[34] The Applicants argue that the standard of reasonableness applies to the remaining issues (Applicants' Memorandum at paras 21-22). I agree (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 25).

VI. Analysis

A. *Did the RPD's assessment of the Male Applicant's ethnicity violate procedural fairness as the Male Applicant was unaware that his Arab ethnicity was in doubt?*

[35] The RPD made it clear during the hearing and in its decision that the main issues in the Applicants' claims were credibility, the availability of an IFA in Erbil, and forward-looking risks given the changing country conditions in Iraq.

[36] The RPD made an adverse finding concerning the ethnic identity of the Male Applicant within the context of its assessment of a viable IFA. At paragraph 28 of its decision, the RPD made the following finding:

Further, the panel notes that the adult male claimant was born in Erbil. While he states he is Shia Arab, the evidence that would support this allegation is his own testimony which has been found to lack credibility and a driver's licence that cannot be relied upon which includes a Shia-Arab tribal name. The panel noted above its concerns related to the reliability of this document. The panel is not satisfied that the claimant is not, in fact, Kurdish, as he was born in Erbil, attended school there, has worked in the region and

speaks the language. At the very least, the panel finds that these personal aspects of his history suggest he is able to enter and remain in the region with his family. The claimant himself suggested in writing and in testimony that access to the region is facilitated by his place of birth being Erbil.

[Emphasis added.]

[37] The Applicants argue that ethnic identity was not an issue during either RPD hearings or in counsel's submissions. The Applicants submit that this finding is a breach of procedural fairness because the RPD did not previously indicate that ethnic identity was a live issue but chose to rely on the issue of ethnic identity to deny the refugee claims.

[38] The Respondent submits that the Applicants mischaracterized the RPD's analysis of this issue. The Respondent argues that the RPD did in fact analyze the Male Applicant's claims with the assumption that he is an Arab who would be relocating to Erbil.

[39] On my reading of the decision, the RPD's finding concerning the Male Applicant's ethnicity is predicated on six factors:

- (i) the RPD found the Male Applicant's testimony not to be credible given what it found to be evolving testimony, inconsistencies and hesitations, as well as what it found to be an "incredible" story about travelling back and forth between Mosul and Erbil for two years prior to leaving Iraq. Nor did it find credible the driver's licence he exhibited showing a Shia Arab tribal name;
- (ii) the Male Applicant was born in Erbil;
- (iii) the Male Applicant attended school in Erbil;
- (iv) the Male Applicant worked in the Kurdish region for several years;
- (v) the Male Applicant speaks Kurdish, albeit at a low level of proficiency; and

- (vi) the Male Applicant has easier access to the Kurdish region because Erbil was his place of birth.

[40] Whether or not the Male Applicant's ethnicity was a live issue at the commencement of the RPD hearings, each one of these factors came to light as a result of the questions asked of the Male Applicant by the RPD member and his counsel. However, the Male Applicant mentioned 12 times during the hearing that he was Shia Arab, not Kurdish. It seems to me that if the RPD had any concerns as to whether the Male Applicant was truly Shia, it should have raised those concerns at the hearing and provided the Male Applicant with an opportunity to address them. The RPD did not, and thus I find that it breached the procedural fairness owed to the Applicants.

[41] That said, however, I should add that the RPD's finding on the ethnicity issue is not determinative of the RPD's overall decision. The ethnicity issue arose within the RPD's larger discussion on the Applicants' ability to live in Erbil as a viable IFA, and although I appreciate that the RPD stated that it was not satisfied that the Male Applicant is not Kurdish, in reviewing the viability of Erbil as an IFA, the RPD found that the Applicants' collective work as well as educational and living experience in Erbil suggest that they may continue to live in Erbil; these are sufficient reasons to justify the conclusion that Erbil is a viable IFA.

[42] In any event, the crux of the matter lies in credibility.

B. *Did the RPD commit a reviewable error in its credibility assessment?*

[43] I see this as being the fundamental issue in the RPD's decision.

[44] The Applicants submit that the RPD's credibility assessment is contrary to the evidence and is based on speculation. In particular, the Applicants take issue with the following credibility findings:

- (i) the Applicants lived in Erbil full-time and have the ability to re-enter Erbil;
- (ii) the documents and the driver's licence submitted by the Applicants lacked authenticity;
- (iii) the Applicants did not state when and how their house was destroyed in the complaint to the Iraqi investigative court;
- (iv) travelling between Mosul and Erbil in the manner in which was described is not plausible.

[45] The Applicants also argue that the RPD drew an adverse credibility finding in regards to all of the Applicants, while concentrating on the Male Applicant's testimony.

[46] The RPD conducted a thorough analysis of the Applicants' credibility and identified several credibility shortcomings related to the Applicants' allegations.

[47] First, the Applicants made substantial modifications to their basis of claim forms. On their original basis of claim forms, the Applicants stated that they lived and worked in Mosul when they lived in Iraq and during the period of ISIS control. They also indicated that they moved to different parts of Mosul "because relocating to another city was not possible." Yet, this

indication was contradicted by the Applicants' US visa applications, which stated that the adult Applicants were living in Erbil (in the Kurdistan region of Iraq).

[48] The Applicants then amended their basis of claim forms by providing a new narrative. This time, the adult Applicants stated that they worked in hospitals in Erbil from 2015 to 2017, in addition to having been educated and trained in Erbil.

[49] The RPD found other indications that the Applicants may have in fact been living in Erbil. The US visa application stated Erbil as the Applicants' place of residence, although the Applicants allege that they used a false address in order to increase the likelihood of success of their refugee claims. The Male Applicant worked at two hospitals in Erbil for several years. Documents show that both adult Applicants had full-time work in the Kurdistan region. Based on these factors, the RPD concluded that it is likely that the Applicants lived in Erbil.

[50] The RPD identified several reasons to doubt the credibility of the Applicants' identification documents. The RPD had doubts about the Male Applicant's national identity card because he was not forthcoming as to where he received the card.

[51] The RPD also found that the issuing location of the Applicants' passports supported the conclusion that they likely lived in Erbil:

The panel noted that the adult claimants' passports were issued in Erbil in 2012. When asked about why this was done in Erbil, rather than Mosul, he stated that it was because of his family register being in Erbil. The panel then noted that the claimant had actually provided his father's family register, and that it says they were registered in Mosul. So he was asked again why his passport was

issued in Erbil in 2012, at which time he stated that passport and other government departments were being targeted in Mosul, so he was afraid to go to the office there. The panel finds that the claimant's evolving testimony about why he was being issued a passport in Erbil in 2012 further undermines the credibility of his allegations regarding the claimants' connections to Erbil and Mosul and his general credibility.

[Footnote omitted.]

[52] The RPD also had several issues with the Male Applicant's driver's licence, which was issued in Mosul in October 2015; it was the only document presented by the Male Applicant showing his Shia Arab tribal name. In the context of discussing the issuance of this document during the hearing, the transcript indicates the following:

MEMBER: And who was there at government office opened in Mosul to issue driver's licences?

CLAIMANT 1: All the government offices were operating at that time but they were a kind of like following or they were affiliated with the Al-Qaeda.

COUNSEL: With what?

CLAIMANT 1: Al-Qaeda, ISIS.

COUNSEL: ISIS, okay.

CLAIMANT 1: They were getting their instructions from ISIS but that they were operational, (inaudible) in Mosul.

MEMBER: Did you have any other identity documents that show this tribal name?

CLAIMANT I: No, but it's my tribe.

MEMBER: So, how did it come to be on your driver's licence if none of your other documents have this name?

CLAIMANT 1: This driving licence was issued in 1985 and at that time we had our documents with that name.

MEMBER: You provided the family registration of your father?

CLAIMANT 1: Yes.

MEMBER: Ibrahim Mohammad Zaffuk (ph).

CLAIMANT 1: Yes.

MEMBER: Why is this tribal name not on the family registration?

CLAIMANT 1: This was also issued in 2006. At that time it was also not safe to show the tribe name on the document.

MEMBER: Okay. I want to make sure you I understand fully, so during the time that ISIS controlled Mosul, you and your wife both held full-time jobs in Erbil, your children were registered in schools in Erbil, but you did not live in Erbil, you chose to continue living in Mosul is that what your evidence is?

CLAIMANT 1: Yes, we stayed in Erbil temporarily for a short period of time but we were visiting Mosul frequently, and If I still own that house we still have that house in Mosul and it's was our like safe haven there. So, in case we will be kicked out of Kurdistan there is nowhere we can go anywhere except Mosul.

[Emphasis added.]

[53] The RPD stated the following at paragraph 15 of its decision:

The claimant then stated that he was hiding his driver's licence, which was the only identification he held that showed his tribal name, the name which showed him to be Shia. The panel has numerous concerns regarding this licence, but particularly notes that, despite stating he had to hide this from view, the licence he presented in the claim was issued to him in Mosul in October 2015. He stated that he did not use this licence, and renewed it because one might get a large fine if driving without it. However, in Mosul there were no traffic police to ask for the licence, so did not carry it. It beggars belief that the claimant would have renewed his driving licence in Mosul in October 2015, after ISIS held control of the city, when this is the only document that allegedly has information that would show his Shia background, particularly as he was not using it during this period. In addition to the general credibility concerns raised by this, the panel notes this renders unreliable the only document that the claimant provided that supports his association with a Shia tribe as alleged. The panel rejects the claimant's explanation that he was safely able to navigate back and forth into Mosul because he was hiding a

licence that in fact was issued in Mosul during the period of ISIS rule.

[Emphasis added; footnote omitted.]

[54] The RPD discounted evidence about the destruction of the Applicants' home because the report is vague on the date of the incident and the reason for the targeting:

The adult male claimant provided a document related to making a complaint with an investigative judge related to his house that he states was destroyed by ISIS. When asked what evidence was required to support the application, he stated just their own statements and the statement of a person from the area. These statements provided did not include any dates of when the destruction of his property occurred other than "2015", and were done shortly before they left Iraq. When asked about the purpose of making such a complaint just before leaving the country, the claimant stated it was so they may someday make a request for compensation. He had not followed up as of the date of the claim. Given the significant credibility issues in this claim, the fact that the preponderance of the evidence in support of this complaint came from the claimants themselves or someone described as a friend of the male claimant, and the timing of the claim days before leaving in order to seek protection, the panel finds it cannot believe the claimant's statements that these were produced for the purpose of future compensation rather than to support an otherwise false refugee claim. Furthermore, even if the documents are accurate, they do not establish when or why the home was destroyed nor that the claimants were living in the home. Given the widespread destruction in Mosul, the panel finds the claimants owning property effective [sic] by the conflict insufficient to establish a forward-looking risk should they return to Iraq.

[Emphasis added; footnote omitted.]

[55] The RPD also found that it "strain[ed] credulity" that the Applicants would travel back and forth from Erbil to Mosul for work. The hearing transcript reveals the following exchanges:

MEMBER. Alright, are you suggesting it was less safe for you in Erbil than in Mosul during the period that ISIS was controlling that city? You wrote that ISIS targeted you on a killing list and blew up

your house, none of what you describing seems anything close to that?

CLAIMANT 1: Yeah, but still there were many explosions in the city of Erbil.

MEMBER: Okay but you continuously chose to go back to Mosul, is what you trying to have us believe, I just want to make sure that I am understanding your explanation, are you suggesting that you continually went back because it was unsafe in Erbil.

CLAIMANT 1: No, for me both Mosul and Erbil were two areas that I wasn't able to live forever, and within that period I was trying to get anything to leave the country, so it was just like gaining time at that [...]

MEMBER: Okay, why not gain that time living in Erbil. while you were waiting to find out if you can go to Australia or [...] why would you continually [...]?

CLAIMANT 1: I wasn't very welcomed in Erbil because I am an Arab, I used to notice that, every time I would go to the security agency office to renew my residency. Maybe because I also had a feeling that they would discover I am Shia also in Erbil. The Shia militia fought the Kurds to liberate the city of Kirkuk from the Kurdistan Government. So there were attempts between the Kurds and the Shia sect and the Government of Baghdad because of that and any time when they discovered that I am a Shia in Erbil they would exclude me, they would kick me out.

MEMBER: Okay. Again, the other alternative for you, was Mosul. As someone who is born in Erbil, who is identifiable as Shia and who you say ISIS knew as Shia, now given that context, I understand what you are saying about difficulties in Erbil, what I am not understanding is why Mosul was a better option, such that you would continue to go back there and live there.

CLAIMANT 1: ISIS were in control of Mosul but most of the time we wouldn't see them in the streets, they might attack an area or house at other times we don't see them or find them in the streets. So it was possible to move from one area to another and to Erbil and the two houses that I moved to I was in hiding, even neighbours they didn't know that I was there and because it was my city that I am used to it, and so I prefer to stay in it until I live. I had other options to live in Baghdad in the south in Iraq but fear is everywhere. We wanted to get out of Iraq finally to get to a safe haven, not Erbil, Erbil was just temporary option.

MEMBER: Did you have to go through checkpoints between Mosul and Erbil?

CLAIMANT 1: Yes.

MEMBER: Including ISIS checkpoints?

CLAIMANT 1: Drivers were able to get through routes to avoid those checkpoints.

MEMBER: So, in the two years four times monthly drive back and forth between Mosul and Erbil, you never crossed an ISIS checkpoint?

CLAIMANT 1: No.

MEMBER: Were the Kurdish authorities little bit concerned about you travelling back and forth like that?

CLAIMANT 1: They knew that I lived in Mosul and when they used to ask me, are you coming to Erbil, I say that I have work in Erbil, I work in Erbil.

[Emphasis added.]

[56] In the decision, the RPD expressed its concerns in this way:

The panel finds it strains credulity that the claimants would have travelled back and forth from Mosul to Erbil for two years, during the height of ISIS activities and control of Mosul, in this manner. The panel notes that during this period of time, there was active conflict between ISIS and security forces based out of Erbil, and ISIS was known for their brutal treatment of the local populations under their control. The deployment of mines, improvised explosive devises [*sic*], suicide bombers, and other weapons of war and control were used to enact violence on a widespread scale by ISIS. It would be, in such a context, exceedingly unlikely that it would be a simple matter of knowing a driver who knew the right road to take in order to travel back and forth between the two cities.

[Emphasis added, footnote omitted.]

[57] I must agree with the RPD. While their lives in Erbil were not ideal, I too am having difficulty understanding why the Male Applicant would take his life, and the lives of his family, in his own hands and continue to commute back and forth, past ISIS checkpoints, from a city in which he was working and had some semblance of a normal life to a city where he says if he was found by ISIS he would have been killed.

[58] I believe that the RPD's credibility analysis is not unreasonable. The RPD identified contradictions in the Applicants' submitted materials and a series of implausibilities relating to the Applicants' claim of a lack of establishment in Erbil and targeting by ISIS. These determinations were made with regard to the evidence on the record, including country condition evidence that attests to the inherent risks involved in travelling in the region. I, therefore, see no reason to intervene with the RPD's credibility findings.

[59] There were also issues regarding the testimony of the Male Applicants as regards the schooling of their children. At the hearing, the argument was that the children, although registered at a school in Erbil, did not attend that school but were home-schooled by the adult Applicants when they were in Mosul.

[60] The testimony at the hearing was as follows:

MEMBER: And would those records show that they were going to school in Erbil or will it show that they were just taking exams?

CLAIMANT 1: Just results of exams.

MEMBER: How many times over those two years would you say that your children went to Erbil or Duhok to do their exams?

CLAIMANT 1: Most of the time when we went to Erbil they were with us. On the days when they don't have school, we would go, just me and my wife.

MEMBER: So, just to clarify, are you saying that approximately four times a month that you were travelling between Mosul and Erbil, your children would come with you, on those four trips?

CLAIMANT 1: Yes.

MEMBER: Why did you keep going back, you had your family, your wife, your children in Erbil regularly, you had jobs in Erbil, why did you keep going back to Mosul over two-year period when ISIS was controlling the city?

CLAIMANT 1: In regard to my wife, my wife is an Arab Sunni, she doesn't have any problem entering Mosul. In Mosul, about approximately a million Arab Sunni stayed in the city, not all of them left the city despite the control of ISIS (inaudible). It was just me because I was a Shia, so I was afraid of that, because of that, so I was hiding my driver's license, I wasn't showing it. Entering Mosul, my wife would identify herself that she is an Arab Sunni and Mosul is our city, where we lived and we were raised, we know every city, and the city, we know friends, it is difficult to leave it easily and we were hoping that things get better and continue living in Mosul.

[Emphasis added.]

[61] And further on, the hearing transcript reveals the following exchanges:

MINISTER'S COUNSEL: And how would you say your level of Kurdish is for reading and writing and speaking?

CLAIMANT 1: Beginner.

MINISTER'S COUNSEL: Now, when I looked at your son [child's name] on page 133 of Exhibit 15, he got 95 marks in Kurdish, so if he is just home school and you are only a beginner and his mums speaks none how did he achieve such a great mark?

CLAIMANT 1: My son is very smart and he was learning that language at school though he was learning it very fast and he was also teaching me some words so I used to ask him I learned from him. Yes, so and my daughter also came to Canada and she attended the French classes for a year and she got 90.

MINISTER'S COUNSEL: 90?

CLAIMANT 1: 90, 9-0.

MINISTER'S COUNSEL: Wow.

CLAIMANT 1: Despite the fact that both of us me and my wife both don't speak any French.

MINISTER'S COUNSEL: So, your children all three children were learning Kurdish in School where?

CLAIMANT 1: What?

MEMBER: Is that they were studying Kurdish where were they studying Kurdish?

COUNSEL: Which school?

CLAIMANT 1: The names of the schools you mean?

MINISTER'S COUNSEL: Well I was looking for location so I wanted to know in Erbil?

CLAIMANT 1: Yes, Erbil.

MINISTER'S COUNSEL: Okay, so you told us your children didn't go to school in Erbil they just went to register to write exam, so now you are telling me they learned Kurdish in school in Erbil so can you explain?

CLAIMANT 1: So, they were taking the books and my son is very smart so he was able he could read the books, he also had his dictionaries with him. We also uploaded some sorry downloaded some applications on his I-pad. And they required Kurdish language there is just basic so the letters and simple words and this school is an English school basically so Kurdish language is considered to be auxiliary or second. We enrolled them in English schools because we wanted to leave and travel about. So, me and my wife both were teaching the kid English, maths and biology. We didn't care about Kurdish language if he learn it or not because we knew that we going to leave Iraq sooner. And I kind of was stressing those three subjects English, maths and science because I knew when we travel or leave they will have to take a test.

MINISTER'S COUNSEL: When I asked a question of where they learned Kurdish and you said in school and then I asked where was

the school and you said Erbil, did I get that right is that what you said?

CLAIMANT 1: Yes.

MINISTER'S COUNSEL: My question is, okay I am not talking about English, I am not talking about maths, not talking about biology I am talking about Kurdish. So, when you were asked by me now and earlier by this Member if the children attended school, you said no they only registered to write exams but now you are telling me they studied Kurdish in school, those are different answers and I don't understand, so that's my question what's correct, did they go to school in Erbil and study, learn Kurdish?

CLAIMANT 1: So, well for us we were allowed to attend school, they were allowed, the kids were allowed to attend school only certain days or few days just because they were a kind of like understanding our situation, so we were talking them to school few days only to learn language. They had the books and they could read at home that's all. I was usually sitting with them and both reading the books and he knew some words and I was always stressing that Kurdish language is not very important because we are going to leave. So, and the youngest one did not learn English, sorry he did not learn Kurdish language and when he got the start I am not sure what the start is, when he got the start he was accepted and then when we asked the school, sorry not the school, when we asked them to give us a certificate of his level, they wrote down his level and maths, science and English and for Kurdish they just wrote down acceptable, so his level was just acceptable and we didn't care because we knew we were going to travel, but his elder brother is very smart he was able to learn the basics of Kurdish language very quickly.

[Emphasis added.]

[62] And further on in the hearing transcript, the following exchanges took place:

MEMBER: Your children were registered in schools in Erbil, we know that we have the documents. So, what we are trying to understand is why you have your children in Mosul not going to school, you have your children registered in schools in Erbil, two things how do those things match, how do they work?

CLAIMANT 1: There was an agreement between the Central Government in Iraq and the government of the region in Kurdistan,

so this agreement was just to help the kids enrol in schools in Kurdistan. They were not treated as regular students.

[...]

COUNSEL: Okay, so let's say your kids had wanted to go to school every single day of the week and you wanted your kids to go to school every single day of the week in Erbil, could that have been done?

CLAIMANT 1: So, no, they were only coming with us at the time when we were there physically in Erbil.

COUNSEL: Okay. (inaudible) questions that you were asked when on like the last day you were here given that the city that you lived in was so dangerous and was a strong hold for ISIS fighters why didn't you keep going to work in Erbil but going back there all the time? And why not stay in Erbil all the time?

CLAIMANT 1: Because I was not given permanent residency in Erbil. The temporary residency that I had there was tied to my employment and just in case there will be any kind of stake at work or trouble at work we will be let go, they will let us go, sorry, and then we won't be able to get to Erbil anymore and even we will be deported from Kurdistan, so that case where we supposed to go.

[Emphasis added.]

[63] It is clear from the hearing transcript that the RPD had difficulty understanding why the adult Applicants would continue returning to live in Mosul, supposedly an area in which there was a serious risk to themselves during the period of ISIS control, when they worked and had their children registered in schools in Erbil.

[64] The RDP found that the Applicants' story simply did not add up. I see nothing unreasonable in that finding.

C. *Did the RPD commit a reviewable error in its assessment of Erbil as an internal flight alternative?*

[65] At the start of the hearing, the Male Applicant confirmed that his place of birth was Erbil. The Male Applicant also stated that he was trained at several hospitals in Erbil. The RPD member then asked for clarification regarding the Male Applicant's access to Erbil, his place of birth:

In your Basis of Claim Form, you wrote my birth city was in Erbil and I could access Erbil city? What does that mean?

[66] The Male Applicant responded that he has easier access to Erbil:

I mean it gives me more access or easier access if I show them my ID, where it says that my birth place is Erbil, and at least I wanted them to know that in the 60s when I was born, my father used to live in the city in Erbil.

[67] Later in the hearing, the RPD member asked the Male Applicant about the Kurdish language abilities of the Applicants. The Male Applicant stated that his Kurdish language proficiency was at the "beginner" level.

[68] Counsel for the Applicants then asked the Male Applicant about the possibility of relocating to Erbil:

Okay, let's say you returned and you go to Erbil, what do you think is likely to happen if you attempt to integrate yourself there and live there permanently? Do you think you can live there permanently with your family?

[69] The Male Applicant responded that long-term residency in Erbil is limited to Kurds:

Erbil and other cities in the province of Kurdistan are Kurdish cities, Kurds have the right to live there permanently without any condition so that's on condition. So, for Arabs who come from outside Kurdistan and in order for those Arabs to obtain temporary residency in Kurdistan, they will either have to have sponsor, the sponsor should be Kurdish citizen or he has to be employed by the government.

[70] Counsel asked a similar question about the possibility of permanent relocation:

Would you, even if you return would you be able to live there permanently is that an automatic right you will have?

[71] The Male Applicant then stated that he and his wife are ineligible for a permanent right to live in Erbil because of their Arab identity:

No. Arabs have no right to live permanently in Kurdistan. They only have the right to live temporarily in Kurdistan and that's under certain conditions and currently we don't fit into these, we can't meet those conditions now after we lost our jobs both me and my wife.

[72] The Male Applicant also stated that it is unlikely that he will be sponsored for permanent residency in Kurdistan because he does not have any Kurdish relatives:

It's not easy to get Kurdish sponsor because the sponsor will have to take all the responsibility of me just in case I will have any kind of like a legal issue. I don't have Kurdish relatives that who will be able to fully take me my responsibility there legally.

[73] The Applicants argue that the RPD failed to consider contrary evidence on anti-Arab discrimination in Erbil and evidence that the Applicants are ineligible for permanent residency in

Kurdistan. At the hearing, the Male Applicant admitted living in Erbil temporarily for a short period of time and visiting Mosul frequently.

[74] The Applicants submit that their ability to remain in Erbil was tied to their employment. Without employment, the ability for Arabs to remain in Kurdistan is precarious at best and they are always at risk of being told to leave. As to the fact that their children were registered in schools in Erbil, the Male Applicant testified that there was an agreement that his children would be able to register in schools in Erbil but could not regularly attend classes.

[75] However, what is troubling is that the Applicants were fully employed in hospitals in Erbil at the time they decided to leave Iraq. The Female Applicant testified that they only had temporary residency in Erbil, tied to their employment.

[76] The Applicants' post-hearing arguments made the point that there was continued risk to the Applicants in Erbil as ISIS would be able to reach them in that city. This point was not argued before me; I suspect that this is because today the ISIS presence in Erbil, let alone the remainder of Iraq, is severely diminished.

[77] There was an argument made before me that the Applicants would continue to suffer from religious persecution even in Erbil if it were to be discovered that they are a Shia/Sunni couple. I note that this argument was not raised before the RPD or in the Applicants' counsel's post-hearing brief. The Male Applicant also testified that his family was constantly worried when they were in Erbil on account of him being Shia.

[78] It may well be that there was political tension in Erbil, however, this did not prevent the Applicants from living there while being employed there; the imminent risk to them lay in Mosul.

[79] The Respondent submits that the RPD conducted a thorough review and assessment of the evidence and had regard to the circumstances of the Applicants' claims and their alleged risk when it conducted its IFA analysis. The Respondent argues that it was open to the RPD to conclude that the Applicants could re-establish themselves in Erbil.

[80] The Applicants' argument concentrates on three elements.

[81] The first element is a Vox media report that allegedly indicates that Arabs do not have the legal right to live permanently in Erbil. However, the page reference cited by the Applicants does not support the Applicants' assertions, and the Vox media report simply summarizes the tensions between Kurds and Iraq's central government.

[82] The second element is their counsel's written submissions that indicate that the Applicants need to be sponsored in order to live and work in Erbil on a permanent basis and that even sponsorship is unavailable to the Applicants. However, the RPD addressed the evidence presented by the Applicants on this issue and concluded that it was insufficient to support the proposition that the Applicants would not be able to live and work in Erbil:

The panel acknowledges that there are restrictions on residence and working in Erbil, but finds in the claimants' circumstances, where both adults have extensive work experience as doctors in public hospitals, the children have attended schools, and the adult

male claimant was born in the region, they are likely to be able to meet the requirements of residency (as they likely have in the past). In other words, their extensive and personal history in the region suggests they would have the ability to fulfill the requirements of residency, such as obtaining government employment, engaging locals to sponsor their residency or having significant personal connections such as having been born in the region. The evidence does not suggest that this ability would not pass to their children, including the adult child of the principal claimant. The panel finds that, given the significant credibility concerns in this case, it is unwilling to accept the claimants' testimony and evidence that they would be unable to reside in the KRI [*Kurdistan Region of Iraq*], and instead prefers the evidence that establishes a lengthy and significant personal history in the region and an ability to work and live legally and continuously in the region as evidence of the likelihood they could continue to do so should they return. (RPD Decision at para 29).

[Footnote omitted.]

[83] The third element is evidence of human trafficking in Erbil. While human trafficking is a risk in Erbil, and Iraq generally, the RPD's failure to examine the risks associated with human trafficking is explained by the Applicants' absence of submissions on this issue either in the Applicants' refugee claim forms, at the RPD hearing, or in the Applicants' post-hearing submissions. However, the risks associated with ISIS were the central concern in this case.

[84] I, therefore, reject the Applicants' submission that the RPD failed to consider contrary evidence.

[85] What also became clear during the hearing is that the Applicants are able to remain and live in Erbil as long as they are employed there. This of course puts into question why they simply did not relocate to Erbil after the Male Applicant was targeted by ISIS and while both adult Applicants were employed in Erbil.

[86] The Applicants' counsel stated at the hearing that her clients never felt comfortable in Erbil. That may be true, but that is not the test for the determination of a viable IFA. I accept that being Arab and living in Erbil may have been difficult to manage, but compared with the risks inherent in the Applicants supposedly commuting back and forth between Erbil and Mosul, I can certainly see why the RPD had concerns over the Applicants' story.

[87] I have not been convinced that the RPD's finding of Erbil as a viable IFA is unreasonable.

VII. Conclusion

[88] Accordingly, I would dismiss the application for judicial review.

JUDGMENT in IMM-2564-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There are no questions for certification.

“Peter G. Pamel”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2564-19

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IBRAHIM v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 15, 2020

JUDGMENT AND REASONS: PAMEL J.

DATED: MARCH 20, 2020

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