

Federal Court



Cour fédérale

Date: 20200331

Docket: IMM-1458-19

Citation: 2020 FC 457

Ottawa, Ontario, March 31, 2020

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

OTHMAN MAHMOOD SALEH

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Othman Mahmood Saleh [Mr. Saleh] seeks judicial review pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] from a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada. The RAD dismissed Mr. Saleh's appeal from the Refugee Protection Division's [RPD] decision, finding that he was neither a Convention refugee nor a person in need of protection.

[2] For the reasons set out below, the application for judicial review is dismissed.

II. Brief Summary of Factual Background

[3] Mr. Saleh is of Kurdish ethnicity from the Kurdistan region of Iraq [KRI]. He is a citizen of Iraq and of no other country.

[4] In Iraq, Mr. Saleh worked at the immigration office in Erbil. He managed a unit that processed applications from residents of Turkey and Iran who wished to reside in the KRI. This office was co-located with the passport office. Mr. Saleh contends a friend's uncle approached him and requested he process passports for a list of 18 people. Mr. Saleh suspected the uncle, as well as those on the list, to be radicalized, and either members or sympathizers of the Islamic State of Iraq and Syria [ISIS]. Mr. Saleh refused to process the applications and began to fear for his safety. On the advice of a friend, whom he says is a police officer, Mr. Saleh made no attempt to contact police authorities about either the unlawful request for passports or his fear for having failed to comply with the request.

[5] Mr. Saleh arrived in Canada in June 2016 where he sought refugee protection pursuant to sections 96 and 97 of the *IRPA*. He contended he faced a risk of harm in Iraq for having refused to process the passport applications. The RPD rejected Mr. Saleh's claim on January 15, 2018. The RAD dismissed his appeal on January 25, 2019.

III. RPD Decision

[6] The RPD concluded Mr. Saleh failed to rebut the presumption that state protection is available to him. First, the RPD found the objective evidence demonstrated that a functioning police and security system exists in the KRI. Second, there was no evidence of any recent political changes in the KRI that would have altered the state protection analysis. Third, Mr. Saleh's political and personal connections would not lead to any harm to him should he try to access police services. Finally, and perhaps most importantly, the RPD found the KRI and Erbil take the threat from ISIS and similar groups very seriously. Therefore, the RPD concluded it is unlikely the police, or other security forces in those regions, would have failed to act had Mr. Saleh reported the matter.

IV. RAD Decision

[7] The RAD concluded the RPD erred in several matters not relevant to this judicial review. However, it confirmed the RPD's decision that Mr. Saleh had failed to rebut the presumption of adequate state protection.

[8] In reaching its conclusion, the RAD first observed that the RPD did not err by assigning low probative value to the statement of Kawa Abdul-Aziz Hassan, Mr. Saleh's friend and purported police officer who allegedly advised Mr. Saleh not to report the matter to the police. Mr. Hassan had filed an Iraqi civilian status identification document, but no document identifying him as a police officer. In addition, the RAD considered the extensive documentary evidence that demonstrated Kurdish authorities deal aggressively with terrorist groups. The RAD considered Mr. Hassan's apparent advice not to report the matter to police to be inconsistent with his purported status as a police officer and the documentary evidence that police react seriously

to such threats. Second, the RAD considered the detailed documentary evidence regarding steps to be undertaken to report a matter to the police and the ensuing steps taken by the judiciary. It found Mr. Saleh had not followed any of those steps. Third, the RAD considered the effectiveness of state protection in the KRI. It referred, in part, to declarations by the Iraqi government regarding the defeat of ISIS. It also referred to independent research, which demonstrated the seriousness with which Kurdish forces combat ISIS, as well as an independent research paper that concluded the Kurdish security apparatus benefits from modern equipment and training and has control of the security situation in the KRI. The RAD concluded that had Mr. Saleh reported the information available to him about the 18 potential terrorists, the state would have pursued them aggressively.

V. Relevant Provisions

[9] The relevant provisions are sections 96 and 97 of the *IRPA*, as set out in the attached Schedule.

VI. Issues

[10] While Mr. Saleh raises several issues, they can be summarized concisely by asking whether the RAD decision regarding state protection meets the test of reasonableness. See, *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10, 441 DLR (4th) 1 [Vavilov]; *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35, 396 DLR (4th) 527. When conducting a reasonableness review, the Court must “consider the

outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified” (*Vavilov*, at para 15).

VII. Analysis

[11] Mr. Saleh contends the test for state protection requires an assessment “not only of the efforts made by the state, but actual results”. He says that neither the RPD, nor the RAD, assessed whether state protection is adequate at the operational level. As a result, according to him, the RAD ignored his safety. He supports his position by referring to various reports that discuss ISIS’ presence in the region, the atrocities committed by authorities in the fight against ISIS, the atrocities committed by ISIS, the unavailability of law enforcement in certain areas of the KRI, and the fact that the local population does not often make use of the justice system.

[12] The onus rests upon a refugee claimant to rebut the presumption of state protection. He or she must provide clear and convincing evidence of a state’s inability to protect its citizens:

Canada (Attorney General) v Ward, [1993] 2 SCR 689, 103 DLR (4th) 1. In *The Minister of Citizenship and Immigration v Flores Carrillo*, 2008 CAF 94 at para 30, 69 Imm LR (3d) 309 [*Carrillo*], Justice Létourneau, for the Court, explains that to rebut the presumption of state protection, a refugee claimant must adduce relevant, reliable and convincing evidence that establishes on a balance of probabilities that the state protection is inadequate. In that case, the Court concluded the impugned decision was reasonable given that the claimant “had failed to make determined efforts to seek protection” and had failed to “make additional effort to seek protection from the authorities when the local police officers allegedly did not provide the protection she was seeking” (*Carrillo* at paras 33-35). In *Hinzman v Canada (Citizenship and*

Immigration), 2007 CAF 171 at para 37, 282 DLR (4th) 413, leave to appeal to SCC refused, 32111 (15 November 2007), Justice Sexton, also writing for a unanimous Court, explains that to qualify for refugee status, an applicant must first establish that he or she sought protection from the home state and was unable to obtain it, or, alternatively, establish on an objective basis that the state cannot provide protection.

[13] Having set out the relevant jurisprudence, I will rely liberally upon the Respondent's written submissions to demonstrate why I am of the view the impugned decision is reasonable.

[14] First, Mr. Saleh contends the RAD ignored a relevant Danish report from the National Documentation Package. This assertion is incorrect. The RAD makes numerous references to that very document. Second, Mr. Saleh contends the RAD ignored documentary evidence regarding the security situation in Mosul and Ninevah province. With respect, Mosul and Ninevah are not in the KRI. Furthermore, the documentary evidence clearly demonstrates a difference in the security situation in those areas as compared to the KRI. Third, Mr. Saleh refers to a part of the National Documentation Package that speaks to the ineffectiveness of state protection for internally displaced persons and refugees in the KRI. This article is not relevant to Mr. Saleh's ability to seek state protection in the KRI. He was neither a displaced person, nor a refugee, in the KRI. In fact, he held a responsible position in the KRI, which was important to the security of the region, before his departure for Canada. Fourth, Mr. Saleh expresses concern about alleged atrocities committed by the KRI security forces in their fight against ISIS. While such atrocities, if they were committed, cannot be condoned, I fail to understand how the aggressive nature of the fight against ISIS by KRI security forces advances Mr. Saleh's position

on this application. Fifth, Mr. Saleh asks this Court to conclude the decision is unreasonable because the RAD failed to consider that political parties in the KRI do not protect political dissent and the judiciary is not sufficiently independent. Given the ferocity of the fight against ISIS by the KRI government, and given that Mr. Saleh does not claim to be a political dissident, I fail to appreciate the relevance of that submission. In my view, it does not advance the argument that the RAD decision is unreasonable.

[15] Finally, Mr. Saleh generally contends the RAD ignored evidence. I disagree. While Mr. Saleh is correct in his assertion that the RAD did not refer to each of the 45 country condition documents filed by him, there is no obligation, statutorily or jurisprudentially, for the RAD to have done so (*Jean-Baptiste v Canada (Citizenship and Immigration)*, 2018 FC 285 at para 20 citing *Kaur v Canada (Citizenship and Immigration)*, 2012 FC 1379 at paras 31-34, 421 FTR 309 (Eng) and *Quebrada Batero v Canada (Citizenship and Immigration)*, 2017 FC 988 at para 13). The RAD did, however, observe that none of the country condition documents filed by Mr. Saleh contradicted the RPD's conclusions in relation to the adequacy of state protection. In my view that observation is sufficient to meet the requirements of *Vavilov* regarding transparency, justification, and the furnishing of reasons (*Vavilov* at para 86).

[16] In the result, the RAD reasonably concluded Mr. Saleh failed to rebut the presumption of state protection.

VIII. Conclusion

[17] The within application for judicial review is dismissed without costs. Neither party proposed a question to be certified for consideration by the Federal Court of Appeal, and none arises from the record.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed, without costs. No question is certified for consideration by the Federal Court of Appeal.

"B. Richard Bell"

Judge

SCHEDULE

Immigration and Refugee Protection Act, SC 2001, c 27

Loi sur l'immigration et la protection des réfugiés, LC 2001, ch 27

Convention Refugee

96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Person in need of protection

97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on

Définition de réfugié

96 A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Personne à protéger

97 (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a

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

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

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

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

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

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

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

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

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

FEDERAL COURT
SOLICITORS OF RECORD

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