Federal Court  Cour fédérale

Date: 20220121

Docket: IMM-189-21

Citation: 2022 FC 69

Ottawa, Ontario, January 21, 2022

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

DINA NAJJAR
and ELIAS SHAKRA (spouse)

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] The principal Applicant, Dina Najjar, seeks judicial review of a decision rendered by a migration officer [Officer] at the Canadian Embassy in Abu Dhabi, United Arab Emirates, refusing her application for permanent residence as a member of the Convention refugee abroad class or the country of asylum class under sections 139(1)(e), 145 and 147 of the *Immigration*

and Refugee Protection Regulations, SOR/2002-227 [IRPR]. The principal Applicant alleges that the decision was unreasonable and that it violated principles of procedural fairness and natural justice.

II. Facts

[2] The principal Applicant is a Christian citizen of Syria and Lebanon residing in the United Arab Emirates [UAE] since February 2013. The principal Applicant's spouse Elias Shakra, a citizen of Syria, has resided with her in the UAE since 2015.

[3] While the principal Applicant was residing in Aleppo in October 2012, she experienced a traumatic event in the course of the Syrian civil war, after which she fled to her aunt's village of Mashta El-Helou near Tartous, Syria, in November 2012 and resided therein for several months before relocating to Dubai, UAE, in February 2013 to teach music at the American International School. The principal Applicant's spouse fled Aleppo and moved to the Syrian regime controlled city of Damascus in December 2012, where he resided until relocating to the UAE in early 2015 following his marriage to the principal Applicant. The principal Applicant is currently unemployed, and her spouse has worked continuously as a legal advisor since his arrival in Dubai.

[4] In December 2017, a private sponsorship for resettlement by *La communauté syriaque catholique*, arranged by the principal Applicant's sister in Montreal, was referred to the visa office in Abu Dhabi for the principal Applicant and her spouse to obtain permanent residence in Canada as members of the Convention refugee abroad class or as members of the country of

asylum class. In September 2018, the application was refused. Judicial review of this decision was sought but later discontinued upon agreement between the parties for the application to be brought before another officer for redetermination.

[5] The present application for judicial review pertains to the outcome of the redetermination that began in April 2019. The principal Applicant and her husband were interviewed in June 2019, at which time the interviewing officer indicated that the principal Applicant was eligible for resettlement under the Private Sponsorship of Refugees resettlement program.

[6] In August 2020, the principal Applicant was sent a procedural fairness letter from the Officer raising concerns regarding the principal Applicant and her spouse's travels to Syria and affording them an opportunity to respond. Following the principal Applicant's response to the letter, the Officer reassessed the eligibility decision based on new information that was not before the interviewing officer in June 2019, namely the principal Applicant's two trips to Syria in 2019 and 2020 after the second interview took place, for the purposes of selling and moving personal belongings from Syria to Lebanon. The principal Applicant traveled to Syria on 14 occasions since leaving Syria in February 2013 for the purposes of visiting her ailing aunt, selling and moving personal belongings, attending a wedding and a funeral of her family members, and attending to the administration of documents. The principal Applicant's husband travelled back to Syria on several occasions since leaving the country in 2015 for the purposes of the serious illness of his mother, the termination of his membership in the Bar Association, and the attestation of a document.

III. Impugned Decision

[7] The decision rendered by the Officer on November 1, 2020, refused the principal Applicant's application, as the Officer determined that the principal Applicant was neither eligible for permanent residence under the Convention refugee abroad class pursuant to section 145 of the IRPR nor under the country of asylum class pursuant to section 147 of the IRPR.

[8] Based on the numerous trips made to Syria by the principal Applicant and her husband, the Officer concluded that their behaviour is incongruent with that of individuals with a well-founded fear of persecution. The Officer noted that family visits and administrative tasks do not constitute emergencies that would oblige them to recurrently return to the country from which they seek protection. The nature of the visits was deemed to be voluntary, because they were not forced or obliged by the use of force to return to Syria. As such, the Officer was not satisfied on reasonable grounds that the principal Applicant and her husband have a well-founded fear of persecution in Syria, and therefore decided that they are not eligible for resettlement under the Convention refugee abroad class.

[9] Moreover, the Officer concluded that the principal Applicant and her spouse are not eligible for resettlement to Canada under the country of asylum class, as the Officer was not satisfied on reasonable grounds that they have been, and continue to be, seriously and personally, affected by civil war, armed conflict, or massive human rights violations in Syria. The Officer relied on the fact that the principal Applicant and her spouse were able to secure safe passage out of Aleppo and settle in other safe areas of Syria before both securing legal residency in the UAE.

The Officer also relied on the fact that the principal Applicant and her husband were able to enter and exit Syria, as well as pass through numerous checkpoints, without facing any credible threat or actual harm to their physical security by state or non-state actors during their voluntary return visits. In the opinion of the Officer, individuals who are personally and seriously affected by civil war, armed conflict or human rights violations would not reasonably and voluntarily return to Syria multiple times per year on an annual basis. Furthermore, the Officer took into account his personal knowledge of country conditions and noted that the region in which the village of Mashta El-Helou is located has remained under the control of the Syrian regime and is largely unaffected by the civil war. The Officer also noted that the UAE does not refoul Syrian nationals as a general practice, provides a one-year renewable humanitarian visa for nationals of war-torn countries, and that the principal Applicant is eligible to be included in her husband's sponsorship in the UAE, given that he has worked there continuously as a legal advisor.

[10] Finally, the Officer decided not to use his discretion to apply humanitarian and compassionate grounds on the basis of family reunification. In exercising his discretion, the Officer took into account the principal Applicant and her spouse's recurring visits to Syria, the presence of their friends and family in Lebanon, and the fact that the principal Applicant has continued to be able to visit her two siblings living overseas.

IV. Issues

[11] This matter raises the following issues:

1) Was the Officer's decision reasonable?
2) Did the Officer breach procedural fairness or principles of natural justice?

V. Standard of Review

[12] With respect to the first issue, the parties concur that the decision of the Officer must be reviewed on the standard of reasonableness. The Court agrees. None of the situations that allow for a departure from the presumption of the reasonableness standard are applicable in this case: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 17, 25; *Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67 at para 27.

[13] As for the issue of procedural fairness and natural justice, the appropriate standard of review is correctness: *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35. Correctness is a non-deferential standard of review, and the central question is whether the procedure was fair having regard to all of the circumstances, including the factors in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 [*Baker*].

VI. Analysis

A. *Reasonableness of the Officer's decision*

(1) Submissions of the principal Applicant

[14] The principal Applicant submits that it was unreasonable for the Officer to conclude that she and her spouse are not Convention refugees or members of the country of asylum class based on their temporary status in the UAE and their past visits to Syria. The principal Applicant

purports to have provided sufficient arguments to prove that she has well-founded fear of persecution in Syria and cannot remain in the UAE nor settle in Lebanon.

[15] First, the principal Applicant argues that the decision is unreasonable on account of its lack of transparency, justification and intelligibility. The principal Applicant contends that the Officer's reasons failed to adequately justify his findings, and that only two sentences in the impugned decision contained actual reasons for the decision.

[16] Furthermore, the principal Applicant submits that it was unreasonable for the Officer to conclude that the principal Applicant was not affected by the armed conflict in Syria and ineligible on account of her visits to Syria, as nothing in the evidence indicates that the principal Applicant and her spouse voluntarily returned to Syria or chose to avail themselves of the Syrian government's protection. The principal Applicant contends that she was compelled for reasons beyond her control to visit Syria for short sporadic visits, and that she feared for her life during each visit. The principal Applicant also notes that the two visits made to Syria after her second interview were to arrange for the removal of her personal belongings from Syria to Lebanon in preparation for her departure to Canada, in light of the interviewing officer's positive assessment of their application.

[17] The principal Applicant further submits that it was unreasonable for the Officer to base his findings on the situation in Syria on his personal knowledge rather than on reliable sources such as country condition reports. Moreover, the principal Applicant submits that Canada provides the only durable solution for herself and her husband, as they are at risk of being

deported from the UAE at any time, and cannot return to either Syria or Lebanon. Finally, the principal Applicant submits that the Officer's reasons for not granting permanent residence on humanitarian and compassionate grounds are humiliating and inhumane.

(2) Submissions of the Respondent

[18] The Respondent submits that it was reasonable for the Officer to determine that the principal Applicant did not qualify for resettlement in Canada under the Convention refugee abroad class, as voluntarily returning to the country of alleged persecution may reasonably lead a decision maker to conclude that risk is unlikely for the person involved.

[19] Furthermore, the Respondent submits that it was reasonable for the Officer to conclude that the principal Applicant did not meet the requirements to obtain permanent residence under the country of asylum class, as the principal Applicant did not establish that the Officer erred in stating that the principal Applicant and her spouse had not faced any threat or actual harm to their physical security by state or non-state actors during their trips to Syria. The Respondent submits that ease of travel in the country of alleged persecution can undermine a well-founded fear of persecution, and that visa officers are entitled to use their knowledge of local conditions.

[20] With respect to the principal Applicant's allegation of there being an absence of reasons, the Respondent submits that the Global Case Management System notes [GCMS notes] of the Officer form an integral part of the reasons for refusal.

[21] The Respondent also argues that the principal Applicant's submissions regarding the existence of a durable solution are not relevant to the issues before the Court, as the assessment of the prospect of a durable solution is only a second stage of inquiry that must not be analyzed if it is concluded that an applicant is not a member of the Convention refugee class or country of asylum class.

[22] The Respondent submits that a decision made on humanitarian and compassionate grounds is an exceptional and discretionary remedy, and that the principal Applicant has not shown that the Officer erred in stating that the principal Applicant's spouse could sponsor her residency in the UAE.

(3) Analysis

[23] For the reasons provided below, the Court holds that it was reasonable for the Officer to conclude that the principal Applicant failed to establish a well-founded fear of persecution or that she continues to be personally and seriously affected by civil war, armed conflict or human rights violations in Syria.

[24] First, a reasoned explanation for this conclusion can be discerned from the justification provided by the Officer in the Decision and in the GCMS notes, the contents of which are transparent and intelligible. It has been consistently held by this Court that the GCMS notes form part of an officer's decision: *Sedoh v Canada (Citizenship and Immigration)*, 2021 FC 1431 at para 36, citing *Rabbani v Canada (Citizenship and Immigration)*, 2020 FC 257 at para 35; *Thedchanamoorthy v Canada (Citizenship and Immigration)*, 2018 FC 690 at para 17; *Rahman v*

Canada (Citizenship and Immigration), 2016 FC 793 at para 19. Contrary to what is argued by the principal Applicant, the reasons provided by the Officer are sufficiently clear, and allow the reviewing court to understand how the Officer arrived at his decision.

[25] The evidence of the principal Applicant's numerous return visits to Syria provide ample evidence for the Officer to have concluded that the principal Applicant's behaviour was incongruent with that of an individual having a well-founded fear of persecution or who continues to be personally and seriously affected by the conflict. While most of the return visits of the principal Applicant were made to care for the principal Applicant's ailing aunt, the spouse went back due to his mother's illness at a different time-frame. The Officer noted that trips made to Syria for the performance of administrative tasks do not constitute emergencies that would have forced them to return to Syria involuntarily. It is trite law that one's voluntary return to the country against which they claim protection can be a significant impediment to proving a subjective fear of persecution: *Gharbi v Canada (Citizenship and Immigration)*, 2021 FC 1446 at paras 38-41, citing *Abdelgadir v Canada (Citizenship and Immigration)*, 2021 FC 58 at para 15; *Forvil v Canada (Citizenship and Immigration)*, 2020 FC 585 at para 59; *Sainnéus v Canada (Citizenship and Immigration)*, 2007 FC 249 at para 12; *Houssou v Canada (Citizenship and Immigration)*, 2006 FC 1375 at para 3. As such, it was reasonable for the Officer to rely on the principal Applicant and her spouse's return visits to Syria to conclude that they are ineligible for permanent residence under the Convention refugee abroad class or the country of asylum class. Such a finding follows a rational, consistent and logical reasoning in its analysis.

[26] Finally, the principal Applicant has not demonstrated that it was unreasonable for the Officer to not grant permanent residency on humanitarian and compassionate grounds. The granting of status on such grounds is an exceptional and discretionary remedy.

[27] In reaching this decision, it was reasonable for Officer to rely on his own personal knowledge of country conditions, rather than on official sources. This Court has consistently held that officers are entitled to rely on their personal knowledge of local conditions in their assessment of evidence: *Mohammed v Canada (Citizenship and Immigration)*, 2017 FC 992 at para 7; *Bahr v Canada (Citizenship and Immigration)*, 2012 FC 527 at para 42; *Hafamo v Canada (Citizenship and Immigration)*, 2019 FC 995 at para 22; *Saifee v Canada (Citizenship and Immigration)*, 2010 FC 589 at paras 30-31.

[28] The issue raised by the principal Applicant as to the existence of a durable solution is not relevant to the impugned decision. Since the Officer was not satisfied that the principal Applicant had established a well-founded fear of persecution or that she continued to be personally and seriously affected by the conflict in Syria, it was not necessary for the second stage of inquiry, the existence of a durable solution, to be addressed: *Sar v Canada (Citizenship and Immigration)*, 2018 FC 1147 at para 44.

[29] It is the role of the Officer to weigh evidence based on expertise, while the reviewing court must not interfere with such factual findings, absent exceptional circumstances: *Vavilov*, above, at para 125. The principal Applicant is in effect asking the Court to reweigh the evidence

and reach a different conclusion from the Officer; however, this is not the proper role of a reviewing Court on judicial review.

B. *Procedural fairness and natural justice*

(1) Submissions of the principal Applicant

[30] The principal Applicant submits that the Officer committed various breaches of procedural fairness and principles of natural justice. Citing *Baker*, above, the principal Applicant contends that the Officer was obliged to afford her a greater degree of procedural fairness on account of the significant impact of the decision on her and the legitimate expectation of the principal Applicant resulting from the positive assessment of the interviewing officer.

[31] The principal Applicant contends that the Officer failed to disclose his concerns regarding the principal Applicant's visits to Syria and did not permit the principal Applicant to respond to these concerns. The principal Applicant further submits that the Officer failed to make reasonable efforts to clarify factual issues regarding the return visits to Syria, and that it was incumbent upon the Officer to hold a hearing to allow the principal Applicant to make clarifications. Moreover, the principal Applicant alleges that the Officer was predetermined to reject the application, and that the procedural fairness letter was simply a formality. Finally, the principal Applicant submits that the Officer failed to provide adequate reasons for the decision, as only a few paragraphs were provided while the rest of the contents consisted of GCMS notes that were not addressed to the principal Applicant.

(2) Submissions of the Respondent

[32] The Respondent contends that the Officer did not breach procedural fairness or a principle of natural justice. It is submitted that the reasons of the Officer were adequate, as the Refusal Letter and GCMS notes constitute reasons for the decision and clearly outline why the Officer denied the application and reached his findings. Moreover, the Respondent argues that the level of procedural fairness afforded to visa applicants is low, that the principal Applicant was given every opportunity to address the Officer's concerns, and that the Officer was under no obligation to hold a hearing or to request additional documents. The Respondent rejects the principal Applicant's contention that the procedural fairness letter was simply a formality and that the principal Applicant had prejudged the case, and notes that this allegation of bias does not rest on any evidence. Finally, the Respondent argues that the principal Applicant cannot rely on the doctrine of legitimate expectations to claim a substantive right to a visa, as it is a purely procedural doctrine.

(3) Analysis

[33] It has not been demonstrated by the principal Applicant that any breach of procedural fairness or of a principle of natural justice has been committed by the Officer. As noted above, the reasons provided by the Officer in the GCMS notes and Decision provide sufficient justification for the conclusions reached therein. There is no evidence on the record that supports the existence of a bias or of a predetermined result on the part of the Officer. The Officer's concerns regarding the principal Applicant's visits to Syria were adequately disclosed to the principal Applicant in the Procedural Fairness Letter, and the principal Applicant was provided

an opportunity to allay those concerns in her reply to that letter. The Officer made reasonable efforts to clarify factual issues regarding the return visits to Syria by sending the Procedural Fairness Letter and soliciting the principal Applicant's response.

VII. Conclusion

[34] For the reasons set out above, this application for judicial review is dismissed.

JUDGMENT in IMM-189-21

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

There is no serious question of general importance to be certified.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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