

Federal Court



Cour fédérale

Date: 20220222

Docket: IMM-3770-21

Citation: 2022 FC 244

Ottawa, Ontario, February 22, 2022

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

IBITISAM FARAJ JIRJEES JIRJEES

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Ibitisam Faraj Jirjees Jirjees [Ms. Jirjees], seeks judicial review of the decision of a Migration Officer [the Officer] at the Canadian Embassy in Beirut, Lebanon, dated April 1, 2021. The Officer refused her application for permanent residence as a member of the Convention refugees abroad class or the country of asylum class, pursuant to section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] and sections 139, 145 and 147 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations]. The

Officer also rejected the application of the Applicant's 22-year-old son, Yousif, who is not a party to this application for judicial review.

[2] For the reasons that follow, the application for judicial review is dismissed. The Officer's reasons convey that the Officer considered both whether Ms. Jirjees and Yousif were Convention refugees and whether they were members of the country of asylum class. The Officer's decision is reasonable as it demonstrates justification, transparency and intelligibility; the Officer considered all the evidence, probed the evidence of Ms. Jirjees and Yousif to fully understand their claim, provided an opportunity for Ms. Jirjees and Yousif to address concerns about the credibility of their account, and applied the law to the facts.

I. Background

[3] Ms. Jirjees and her son, Yousif, are citizens of Iraq. They left Iraq and relocated to Lebanon in June 2019.

[4] Following the approval of a sponsorship application to come to Canada, they applied for permanent residence as members of the Convention refugees abroad class or the country of asylum class.

[5] In their application for permanent residence, Ms. Jirjees stated that they were fleeing "the oppression, injustice and daily threats" to their lives. She stated that she and Yousif could not return to Iraq because they would be harmed and probably killed because they are Christians, a minority in Iraq, and because they had "lost everything."

[6] Ms. Jirjees and Yousif were interviewed by a Migration Officer on April 1, 2021. The Migration Officer's notes are set out in the Global Case Management System [GCMS].

[7] The Officer probed their reasons for leaving Iraq in 2019. Ms. Jirjees responded that they left out of fear for Yousif, because his school friend had been kidnapped and killed in 2017. The Officer probed for further details about this incident. Yousif said very little, but when directly asked, he first responded that he did not know who killed his friend or why.

[8] Yousif also responded that he feared for his own life because he had also been threatened by the same people, but did not provide details of the threat. Yousif suggested that he would be singled out due to his religion as he was the only Christian in his class.

[9] The Officer probed Yousif's response, noting, "I have concerns with the credibility of your story, he is Muslim and you are Christian. You said the same people who kidnapped him also threatened to kidnap you because of your religion, however they kidnapped your friend who was Muslim."

[10] The Officer probed why Ms. Jirjees had left Iraq. She responded that the situation was very bad, including instability, kidnappings, and killings and that she was a widow and she feared for Yousif.

[11] The Officer also probed why Ms. Jirjees and Yousif had waited two years after Yousif's friend had been killed before leaving Iraq, and why they had returned to Iraq after visiting one of

Ms. Jirjees' daughters in Lebanon in 2017, noting that this was just after Yousif's friend had been killed. Ms. Jirjees responded that they needed to make arrangements and get their possessions, and that as they lacked the financial means to leave permanently, they "just waited for [her] brother to send money to leave." She also explained that one of her daughters remained in Iraq, because her husband would not leave.

II. The Decision Under Review

[12] By letter dated April 1, 2021, the Officer refused the application for permanent residence, finding that Ms. Jirjees and Yousif did not meet the eligibility criteria as members of the Convention refugees abroad class nor the country of asylum class.

[13] The letter set out the relevant provisions of the Act and the Regulations with respect to both classes and stated that the Officer was not satisfied that Ms. Jirjees and her son met the requirements. The Officer stated:

You stated that you fear going back to Iraq because your son Yousif's friend was killed and kidnapped, however when asked about details regarding the incident, you and Yousif were unable to give any details. When asked why you did not flee Iraq after this incident, when you travelled abroad in 2017 to visit your daughter, you answered that you had to make preparations, and that you could come to Lebanon only once your brother made financial preparations to support you in Lebanon and to sponsor you to Canada, which was in 2019. Therefore, I have concerns that you do not meet the requirements of the Convention Refugees and Country of Asylum class as you could not give any details regarding your claim, and it appears that you travelled outside of your country for the main purpose of making an application to immigrate to Canada.

[14] The GCMS notes, which together with the letter constitute the reasons for the decision, set out the key elements of Ms. Jirjees' and Yousif's accounts of why they left Iraq and the circumstances leading to their arrival in Lebanon, as described above. The GCMS notes also reflect the Officer's concerns, which were clearly communicated to Ms. Jirjees and Yousif at the interview, in particular regarding the lack of detail about the kidnapping of Yousif's friend, the threat to Yousif, and their explanation for not leaving Iraq until 2019.

[15] The GCMS notes reflect that the Officer explained to Ms. Jirjees and Yousif that the Officer was not convinced that they had fled due to a real fear of persecution or serious harm. The GCMS notes also reflect that the Officer explained the definition of Convention refugees and a country of asylum. The Officer advised Ms. Jirjees and Yousif, "[w]hile I understand that [the] situation of Christians in Iraq in general is difficult, however you have to show me you are [sic] personally have a fear of persecution or that you are personally affected by war and conflict." The Officer recapped what Ms. Jirjees and Yousif had recounted and summarized the concerns with this account. Ms. Jirjees and Yousif reiterated their previous responses.

[16] The Officer concluded:

Based on their testimony, I am not satisfied that the applicants have a fear of persecution or were personally affected by war, conflict and violation of human rights and are unable or unwilling to leave their country of nationality on the basis of that fear. I presented my concerns to the applicants, to which the PA stated that she does not have any fear of persecution, and that it is all for her son. When I asked Yousif to respond to my concerns, he answered that he is afraid on all levels, the security level, the financial level. While I understand that financial constraints can be difficult, I am not satisfied that they would overcome a fear of persecution or serious and personal harm.

III. Issue and Standard of Review

[17] The only issue raised by Ms. Jirjees is that the Officer erred by failing to consider their eligibility as members of the country of asylum class.

[18] There is no dispute that the standard of review applicable to the decision of an immigration officer determining an application for permanent resident status is reasonableness: *Housou v Canada (Citizenship and Immigration)*, 2020 FC 964 at para 13; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17 [*Vavilov*]).

[19] In *Vavilov*, the Supreme Court of Canada provided extensive guidance to reviewing courts, including to begin by examining the reasons for the decision with respectful attention, seeking to understand the reasoning process followed by the decision-maker to arrive at a conclusion. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at paras 85, 102, 105–110).

IV. The Relevant Statutory Provisions

[20] Permanent residence will be granted to a foreign national in need of refugee protection if they can establish membership in one of a number of classes, including the Convention refugees abroad class and the country of asylum class.

[21] The Regulations set out the applicable requirements for the Convention refugee abroad class and country of asylum class:

145 A foreign national is a Convention refugee abroad and a member of the Convention refugees abroad class if the foreign national has been determined, outside Canada, by an officer to be a Convention refugee.

145 Est un réfugié au sens de la Convention outre-frontières et appartient à la catégorie des réfugiés au sens de cette convention l'étranger à qui un agent a reconnu la qualité de réfugié alors qu'il se trouvait hors du Canada.

[22] A Convention refugee is defined in section 96 of the Act, as follows:

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

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

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

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

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

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.

[23] Section 147 of the Regulations sets out the criteria for the country of asylum class:

147 A foreign national is a member of the country of

147 Appartient à la catégorie de personnes de pays

<p>asylum class if they have been determined by an officer to be in need of resettlement because</p>	<p>d'accueil l'étranger considéré par un agent comme ayant besoin de se réinstaller en raison des circonstances suivantes :</p>
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<p>(a) they are outside all of their countries of nationality and habitual residence; and</p>	<p>a) il se trouve hors de tout pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle;</p>
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<p>(b) they have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in each of those countries.</p>	<p>b) une guerre civile, un conflit armé ou une violation massive des droits de la personne dans chacun des pays en cause ont eu et continuent d'avoir des conséquences graves et personnelles pour lui.</p>
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V. The Decision Is Reasonable; the Officer Did Not Fail to Consider Membership in the Country of Asylum Class

[24] Ms. Jirjees argues that although the decision letter and GCMS notes may mention the country of asylum class, the Officer's focus was exclusively on whether she and Yousif met the definition of a Convention refugee. Ms. Jirjees submits that the Officer's questioning focused only on the definition of a Convention refugee, particularly their "fear of persecution or serious harm." Ms. Jirjees points to *Saiffee v Canada (Citizenship and Immigration)*, 2010 FC 589 [Saiffee], where the Court emphasized that members of the country of asylum class do not need to meet the definition of a Convention refugee. She submits that she explained her fear of instability, killings and kidnappings in Iraq and of persecution as a Christian. She adds that the Officer's failure to consider the country of asylum class is demonstrated by the Officer's failure to even refer to the country conditions or the situation generally in Iraq.

[25] I do not agree that the Officer failed to consider Ms. Jirjees' or Yousif's eligibility in the country of asylum class. The Officer reasonably found that they were not eligible as Convention refugees abroad or as members of the country of asylum class.

[26] There is no dispute that the Convention refugee abroad and country of asylum classes are distinct, as noted by the Court in *Saifee*, at para 39:

Members of the country of asylum class need not meet the definition of Convention refugee, and consequently need not demonstrate a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion. Rather, they must demonstrate that they are displaced outside of their country of nationality and habitual residence, and have been and continue to be seriously affected by civil war, armed conflict or massive violations of civil rights, and that there is no reasonable prospect within a reasonable period of a durable solution elsewhere for them.

[27] In *Saifee*, the Court found that the immigration officer erred by finding that an applicant was required to meet the definition of Convention refugee in order to be considered as a member of the country of asylum class. In the present case, the Officer made no such finding or error.

[28] The Officer considered all the information provided by Ms. Jirjees and Yousif, conducted an interview, extensively probed their account and responses and provided several opportunities for them to respond to the Officer's concerns, including about the credibility of their account, which were clearly communicated to them. The responses provided did not address the Officer's concerns.

[29] The reasons for the decision—the letter and GCMS notes—clearly show that the Officer considered whether Ms. Jirjees and Yousif met the criteria for the Convention refugee abroad class and the country of asylum class.

[30] In the decision letter, the Officer set out the relevant legislative provisions, including paragraph 139(1)(e) and section 147 of the Regulations, and section 96 of the Act and stated, “[a]fter careful consideration, I have determined that you do not meet the criteria for being eligible as a member of the Convention refugees abroad class or the country of asylum class” [emphasis added].

[31] The Officer also stated:

Specifically: You stated that you fear going back to Iraq because your son Yousif’s friend was killed and kidnapped, however when asked about details regarding the incident, you and Yousif were unable to give any details. When asked why you did not flee Iraq after this incident, when you travelled abroad in 2017 to visit your daughter, you answered that you had to make preparations, and that you could come to Lebanon only once your brother made financial preparations to support you in Lebanon and to sponsor you to Canada, which was in 2019. Therefore, I have concerns that you do not meet the requirements of the Convention Refugees and Country of Asylum class as you could not give any details regarding your claim, and it appears that you travelled outside of your country for the main purpose of making an application to immigrate to Canada.

[Emphasis added.]

[32] The GCMS notes also reflect that the Officer assessed their eligibility for both the Convention refugees abroad and country of asylum classes. Among other references, the GCMS notes state: “[b]ased on their testimony, I am not satisfied that the applicants have a fear of

persecution or were personally affected by war, conflict and violation of human rights and are unable or unwilling to leave their country of nationality on the basis of that fear.”

[33] I also agree with the Respondent that the Officer’s other references in the GCMS notes, including the notes of the interview, to “serious harm” reflect the Officer’s consideration of whether Ms. Jirjees and her son were “seriously and personally affected by civil war, armed conflict or massive violation of human rights” (section 147 of the Regulations). The references to “serious harm” reflect the criteria of the country of asylum class as distinct from references to fear of persecution, as required by section 145 of the Regulations and section 96 of the Act.

[34] The GCMS notes of the interview show that the Officer probed their alleged fear of persecution, as well as how Ms. Jirjees and her son were seriously and personally affected by the situation in Iraq. The Officer specifically asked Yousif, who was an adult, to speak for himself (because Ms. Jirjees was otherwise answering on his behalf) and to explain his fear, his friend’s kidnapping and the threat to him. Yousif did not provide any details, including about the nature of the threat to him, how it was communicated, or by whom. His suggestion that it was based on being Christian did not make sense given that his friend who had been kidnapped and killed, apparently by the same unknown people who threatened Yousif, was not Christian. The Officer raised credibility concerns and turned to questioning Ms. Jirjees about why she left Iraq and why she returned in 2017 and waited another two years before leaving.

[35] The GCMS notes reflect Ms. Jirjees’ response that they remained in Iraq after the killing of Yousif’s friend, in large part to await financial assistance from Ms. Jirjees’ brother, before

fleeing to Lebanon. As a result, the Officer was not satisfied that Ms. Jirjees and her son were seriously and personally affected by the situation in Iraq. As the Officer noted, financial constraints make it difficult to flee but not to the extent that they would remain in Iraq if facing a fear of persecution or serious and personal harm.

[36] Given that Ms. Jirjees and Yousif did not demonstrate a subjective fear and did not provide evidence about how the situation in Iraq affected them, the Officer did not err by not specifically referring to the prevailing country conditions in Iraq: *Abreham v Canada (Citizenship and Immigration)*, 2020 FC 908 at para 23; *Gebrewlidi v Canada (Citizenship and Immigration)*, 2017 FC 621 at para 27. In any event, the Officer is assumed to be aware of the country conditions and there is no indication otherwise.

[37] Moreover, an applicant has the onus to establish that they meet the criteria for the Convention refugee abroad or country of asylum class, which includes providing evidence to establish a link between the country conditions and their personal circumstances. In the present case, Ms. Jirjees did not establish to the satisfaction of the Officer that she was personally affected by the country conditions in Iraq. She repeatedly focused on her concern for Yousif and the fact that several family members were already in Canada. She stated that she did not have any fear for herself. The current argument that as Christians they would be personally affected was not ignored by the Officer, but is not sufficient, without more, to establish that they meet the criteria of the country of asylum class.

JUDGMENT in IMM-3770-21

THIS COURT'S JUDGMENT is that:

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

"Catherine M. Kane"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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OF CITIZENSHIP AND IMMIGRATION

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