Federal Court  Cour fédérale

Date: 20221027

Docket: IMM-116-22

Citation: 2022 FC 1470

[ENGLISH TRANSLATION]

Ottawa, Ontario, October 27, 2022

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

GELNAR GEBARA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Gelnar Gebara, a citizen of Syria, has applied for judicial review of a decision by an officer with the Canadian Embassy in Lebanon, Immigration Division, dated December 20, 2021, refusing her application for permanent residence as a member of the Convention Refugee Abroad or the Humanitarian-Protected Persons Abroad class pursuant to

sections 145 and 147 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations].

[2] Ms. Gebara argues that the officer failed to review her personalized and prospective grounds of persecution in Syria under section 145 of the Regulations; that he made erroneous and unreasonable findings of fact regarding her credibility; and that, when applying section 147 of the Regulations, he unreasonably found that the security situation in Syria would improve.

[3] The application for judicial review will be dismissed for the reasons set out below.

II. Facts and underlying decision

[4] Ms. Gebara was born to a Christian family in Damascus. Between 2006 and 2011, she lived and worked in Syria, and from January 2011 to January 2014, she resided in the United Arab Emirates (UAE) for work. Ms. Gebara has been married but initiated divorce proceedings in 2010, which ended in 2016. In 2014, upon expiry of her work permit in the UAE, Ms. Gebara returned to live with her parents in Damascus and remained there until June 2018, when she left for Lebanon.

[5] On March 13, 2019, Ms. Gebara filed an application for permanent residence [APR] from Lebanon, as a member of the Convention Refugee Abroad or Country of Asylum classes. In support of her APR in these two classes, Ms. Gebara cited the civil war going on in Syria since 2011 and the proximity of her home in Damascus to the town of Jobar, where there had been major armed conflicts. On October 28, 2021, she had an interview at the Canadian Embassy in

Beirut with the officer responsible for reviewing her APR. On December 20, 2021, Ms. Gebara's APR was refused.

[6] In his decision, which also includes notes from the Global Case Management System [GCMS], the officer first refers to the relevant legislative provisions, including subsection 11(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act], on the officer's power to issue a visa if he is satisfied that the foreigner is not inadmissible and meets the requirements of the Act; subsection 16(1) of the Act on the obligation to answer all questions truthfully; section 96 of the Act on the definition of a Convention refuge; and sections 139, 145 and 147 of the Regulations on the requirements for obtaining a permanent resident visa as a member of the Convention Refugee Abroad or Country of Asylum classes. The officer concluded that he was not satisfied that Ms. Gebara's application would qualify in either class due to inconsistencies and contradictory statements arising from her interview on October 28, 2021, which raised substantial concerns about her credibility. Furthermore, the officer noted that Ms. Gebara's APR was based mainly on a general lack of stability in Syria, and he gathered from the evidence that Ms. Gebara had not been personally threatened or persecuted when she resided in Syria.

[7] On that point, the officer took into account the fact that Ms. Gebara was a divorced woman from the Syrian Christian minority but noted that she had made the conscious choice to go back to live with her parents in Damascus in 2014 and concluded that the alleged facts were insufficient to determine that she was at risk because of her status as a woman. The officer thus concluded that the application did not contain any indication or clear expression of a well-founded fear in Syria, because Ms. Gebara had not mentioned any specific persecution. After

considering the application in its entirety, the officer concluded that he was not satisfied that Ms. Gebara was not inadmissible and that she met the requirements of the Act and the Regulations for Convention Refugee Abroad or Country of Asylum class applications.

III. Issue and standard of review

[8] This application for judicial review raises a single issue: is the officer's decision reasonable?

[9] The standard of review that applies to the officer's decision is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17 [*Vavilov*]). The role of the court then is to assess whether the decision as a whole is reasonable, that is, whether the decision is based on "an internally coherent and rational chain of analysis" and whether the decision as a whole is transparent, intelligible and justified (*Vavilov* at paras 85–86).

IV. Preliminary issue: admissibility of the applicant's documentary evidence

[10] In his memorandum of fact and law, the respondent, the Minister of Citizenship and Immigration [Minister], opposed the filing of the documentary evidence submitted by Ms. Gebara by affidavit, namely exhibits G to M, and noted the reference to that documentary evidence in paragraphs 16 and following of the applicant's memorandum. The Minister argues that Ms. Gebara had not submitted that documentary evidence for review by the officer, as demonstrated by its absence from the certified tribunal record.

[11] At the hearing, Ms. Gebara's counsel stated that all of the documents submitted, which are contained in the National Documentation Package, existed on the day of the decision and are part of the collection of documents that the officer was required to know and consider in his analysis. Relying on *Idu v Canada (Citizenship and Immigration)*, 2021 FC 1081, the Minister, maintained that, even though the tribunal record showed no reference to country condition documentation, one could assume that the officer was either knowledgeable of these country conditions or could easily access available country conditions documentation in order to carry out his duties properly, which at first glance appears to confirm the idea that the officer did indeed have the documents even though they were not formally filed by Ms. Gebara in support of her APR.

[12] Regardless, and as it will be more thoroughly explained below, in these reasons, I am of the opinion that the determinative issues in this application are the officer's assessment of Ms. Gebara's credibility and the fact that the application did not contain any indication or clear expression of a well-founded fear in Syria. Yet the disputed evidence relates exclusively to the officer's assessment of Ms. Gebara's risk of persecution as a divorced woman without the protection of a man in Syria. It will therefore not be considered in the analysis of the reasonableness of the impugned decision, and, as a result, I am of the opinion that it is not necessary for me to rule on this issue of admissibility.

V. Analysis

[13] In *Walu v Canada (Citizenship and Immigration)*, 2021 FC 824, which also looked at an immigration officer's assessment of an APR in the same classes, Justice Kane summarized the decision-maker's expertise and the reviewing court's deference in the following manner:

> [16] According to *Vavilov*, the Court should 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). The Court does not assess the reasons against a standard of perfection (*Vavilov* at para 99).
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> [18] It is also well established that the decision-makers that hear the testimony and review the evidence are ideally placed to assess credibility: *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (QL) at para 4, 160 NR 315 (CA). The credibility findings of the decision maker should be given significant deference: *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at para 7, 228 FTR 43; *Lin v Canada (Citizenship and Immigration)*, 2008 FC 1052 at para 13, [2008] FCJ No 1329 (QL); *Fatih v Canada (Citizenship and Immigration)*, 2012 FC 857 at para 65, 415 FTR 82).

[14] In this case, Ms. Gebara argues that the reasons provided in support of the officer's findings as to her credibility do not comply with the reasonableness requirements set out in *Vavilov*. I agree that the officer's decision is not a masterpiece of clear writing. Indeed, it is difficult to identify the reasons that led the officer to determine that Ms. Gebara lacked credibility on the basis of some of Ms. Gebara's answers during her interview and what in her APR in general sparked the officer's concerns about her credibility. However, a thorough reading of the decision confirms that the officer, even prior to the interview, had doubts about the

truth of Ms. Gebara's allegation that she left Syria for Lebanon in 2018. The officer's doubts clearly arose from the fact that Ms. Gebara, who, at the time of the interview, alleged that she had already been living in Lebanon for three years, had not filed any material evidence in support of that allegation.

[15] To allow Ms. Gebara to address his concerns about the weakness of her evidence, the officer first asked Ms. Gebara how she had entered Lebanon, to which she replied that she had used her entry-exit card. The officer therefore asked her where that card was, which led to the following exchange:

> [TRANSLATION]
> I don't have it. WHAT HAPPENED TO IT? Because I don't know . . . I lost it. I don't know if someone stole it. Since it had expired, I didn't worry about it. DID YOU LOSE IT OR WAS IT STOLEN? I had my card in my wallet, with my driver's licence, and I can't find them anymore.
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> [Emphasis added.]

[16] On the basis of that exchange the officer concluded that it was highly unlikely that Ms. Gebara would not consider her entry-exit card to be an important document since it is an official travel document that can be used to cross borders and, in that regard, is similar to a passport. Ms. Gebara maintains that she never said that she considered the card to be unimportant. Although I accept Ms. Gebara's submissions on this point, considering the answers she gave the officer, I cannot find that it was unreasonable for him to arrive at the finding that he did.

[17] Also given the lack of material evidence on the record, the officer questioned Ms. Gebara about various elements related to her presence in Lebanon in 2018, including her employment,

her rent and her financial resources, and whether she had approached the United Nations Refugee Agency. Ms. Gebara replied that she was not working, was not paying rent but contributed to the expenses of the house where she was living, and that she had not approached the Agency because she did not need material support. Ms. Gebara stated that she was receiving money from her family in Syria by taxi and that she had received $200 in American money 10 days before the interview. Considering the significant devaluation of the Lebanese pound against the American dollar, the officer asked Ms. Gebara about the exchange rate between the two currencies, to which she replied that she tried as much as possible not to convert her American money, and that it was easier for her to give her friend money than it was to convert it.

[18] Ms. Gebara argues that each of her answers to the officer's questions was reasonable and that none of the officer's findings regarding their lack of credibility were adequately justified. I agree with Ms. Gebara that, taken individually, some of her explanations may have been reasonable. However, overall, I am of the opinion that it was reasonable for the officer to find that Ms. Gebara's answers were not enough to quell his concerns. Through his questions, the officer was trying to obtain information that would have allowed him to determine whether Ms. Gebara had indeed been residing in Lebanon since 2018 since she had not provided any concrete evidence to that effect. Now, even if I agree that some of Ms. Gebara's answers were reasonable answers to the officer's questions, that does not mean that they were enough to address his concerns. In other words, Ms. Gebara may well have been credible in some of her answers, but they did not make her alleged residence credible.

[19] Ms. Gebara's allegation that she left Syria for Lebanon in 2018 was a key element of her application because it supported her fear of persecution claims. In addition to this consideration is the fact that Ms. Gebara did not provide any reason for her fear of returning to Syria. When the officer asked her about this, Ms. Gebara replied that she personally did not have any fears. The officer even mentioned the fact that she is a divorced Christian woman in his decision. But the officer felt that the fact that she allegedly returned to Syria in 2014 and stayed there until 2018 mitigated any expressed fear of persecution. The officer therefore determined that she did not meet the conditions set out in section 96 of the Act and section 147 of the Regulations. As a result, he could not be satisfied that Ms. Gebara was eligible and not inadmissible, as required by paragraph 11(1) of the Act.

[20] The burden was on Ms. Gebara to show that the officer's decision was unreasonable by satisfying the Court that there were sufficiently serious shortcomings in the decision such that it could not be said to exhibit the requisite degree of justification, intelligibility and transparency (*Vavilov* at para 100). Considering the evidence on the record and the reasons explained above, I am not satisfied that she has met her burden. In my opinion, the officer's findings are reasonable and call for deference.

VI. Conclusion

[21] The application for judicial review is dismissed.

JUDGMENT in docket IMM-116-22

THE COURT ORDERS that:

1. The application for judicial review is dismissed.

2. There is no question to certify.

"Peter G. Pamel"
Justice

Certified true translation
Johanna Kratz

FEDERAL COURT

SOLICITORS OF RECORD

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