

Federal Court



Cour fédérale

**Date: 20230418**

**Docket: IMM-5331-22**

**Citation: 2023 FC 563**

**Ottawa, Ontario, April 18, 2023**

**PRESENT: Mr. Justice McHaffie**

**BETWEEN:**

**HASSAN RIHAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Hassan Rihan seeks judicial review of a decision of the Refugee Appeal Division [RAD] that found him not to be a Convention refugee or a person in need of protection. For the following reasons, I conclude Mr. Rihan has not demonstrated that the RAD's decision is unreasonable, and this application must therefore be dismissed.

[2] Mr. Rihan's claim for refugee protection is based on his fear of a notorious criminal family in Lebanon. Mr. Rihan initially refused to rent his apartment to a member of the family. However, that individual submitted another lease application through his wife under a false name and then threatened Mr. Rihan when the latter found out their true identity. In the face of these threats, Mr. Rihan leased the apartment to the individual in August 2018. When Mr. Rihan's family sought to reclaim the apartment at the end of the lease in 2019, the individual refused to leave and threatened Mr. Rihan and his family. The individual also ignored subsequent legal notices sent by Mr. Rihan's brother.

[3] Mr. Rihan accepts that his asserted risk has no nexus to a Convention ground, but claims he is a person in need of protection under paragraph 97(1)(b) of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]*. An analysis under subsection 97(1) of the *IRPA* involves an objective test assessing the existence of a present or prospective risk for the claimant: *Sanchez v Canada (Citizenship and Immigration)*, 2007 FCA 99 at para 15.

[4] The RAD concluded Mr. Rihan was not a person in need of protection, since he had not demonstrated the existence of a prospective risk should he return to Lebanon. The RAD found the criminal family's threats had only arisen when Mr. Rihan's family attempted to reclaim the apartment on his behalf, and that if Mr. Rihan abandoned his claim to the apartment, the criminal family would not be motivated to harm him and he would therefore not be at risk. While recognizing this would entail a financial loss, the RAD concluded it was a reasonable choice for Mr. Rihan to make to free himself of his asserted risk, citing *Sanchez* at para 16.

[5] To be successful on this application for judicial review, Mr. Rihan must demonstrate that the RAD's decision was unreasonable: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25; *Wei v Canada (Citizenship and Immigration)*, 2021 FC 1310 at para 9.

[6] Mr. Rihan's primary argument is that the RAD unreasonably assessed his fear that the criminal family remains motivated to harm him because they felt humiliated by his initial refusal to rent them the apartment. Despite counsel's able arguments, I am unpersuaded that the RAD's decision was unreasonable.

[7] The RAD considered Mr. Rihan's assertion that he would remain at risk even if he abandoned the apartment, based on the criminal family wanting revenge for the humiliation of the initial refusal. The RAD noted that, notwithstanding a formal notice sent in December 2019 to which there was no response, more than two years had passed since Mr. Rihan had heard from the criminal family. While accepting the criminal nature of the family, the RAD noted the lack of contact, the lack of evidence regarding the current condition of the apartment, the lack of evidence about whether the individual was still even in the apartment, and the fact that threats were only made when Mr. Rihan's family tried to reclaim the apartment rather than at any time between the lease signing and the attempts to reclaim. The RAD concluded that "the existence of threats in the past is intrinsically linked to the fact that [Mr. Rihan], through his wife, attempted to reclaim his apartment."

[8] This conclusion was reasonably open to the RAD on the evidence. Contrary to Mr. Rihan's submissions, I do not read the RAD's reasons as relying on assumptions that the criminal family would act rationally. Rather, the RAD reviewed the evidence regarding the nature of the threats received from the criminal family and noted they were entirely tied to the efforts to reclaim the apartment, and not to any asserted "humiliation" arising from the initial refusal. The factual evidence put before the RAD by Mr. Rihan did not support his subjective fear that the agents of persecution would be motivated to pursue him based on the asserted humiliation. Put another way, while Mr. Rihan contends that it is "the point of view of the persecutor that matters," there was no evidence to support the assertion that the persecutor's point of view included any intent to harm Mr. Rihan or his family because of the initial refusal.

[9] Mr. Rihan points to the criminal conduct of the family, including their involvement in other murders, noting that a refugee claimant can use the evidence of similarly-situated persons to demonstrate risk: *Josile v Canada (Citizenship and Immigration)*, 2011 FC 39 at para 22, citing *Salibian v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 250 at pp 258–259. However, the fact that the family is criminally violent generally does not demonstrate that Mr. Rihan is personally at risk from them. Nor are the circumstances of the other murders reported in any way similar to the dispute over the possession of the apartment such that they can constitute evidence of the risk Mr. Rihan faces if he returns to Lebanon.

[10] As Mr. Rihan quite rightly points out, he could not possibly have been expected to call evidence from the criminal family member himself. This is the case in effectively all refugee claims: it would be rare indeed for the agent of persecution to be a witness. Nor are claimants

expected to put themselves at risk to gather evidence. However, this does not change or remove the requirement that a refugee claimant present evidence that establishes the basis for their claim, and it does not permit speculation as to the persecutor's mindset to take the place of evidence of risk: see, e.g., *Melaj v Canada (Citizenship and Immigration)*, 2023 FC 92 at para 46, citing *Franco Garcia v Canada (Citizenship and Immigration)*, 2021 FC 1006 at paras 24, 32–33.

[11] In the current case, Mr. Rihan did not present evidence supporting his claim that the criminal family would continue to be motivated to harm him, even if he abandoned the apartment, due to the perceived humiliation of the original refusal. Indeed, the evidence regarding the threats pointed in the opposite direction. Given the evidence before them and the nature of Mr. Rihan's claim, it was not unreasonable for the RAD to conclude that he had not demonstrated that he had a prospective risk if he returned to Lebanon that would make him a person in need of protection.

[12] The RAD's finding on the absence of prospective risk was determinative of the appeal before it, and the reasonableness of that finding is determinative of this application for judicial review. Although Mr. Rihan raised concerns about the RAD's conclusions regarding his failure to seek asylum in the United States, I agree with the parties that those conclusions did not impact the RAD's analysis of prospective risk. I therefore need not address the parties' arguments on this point.

[13] The application for judicial review is therefore dismissed. Neither party proposed a question for certification and I agree that none arises in the matter.

**JUDGMENT IN IMM-5331-22**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is dismissed.

“Nicholas McHaffie”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5331-22

**STYLE OF CAUSE:** HASSAN RIHAN v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** MONTREAL, QUEBEC

**DATE OF HEARING:** APRIL 13, 2023

**JUDGMENT AND REASONS:** MCHAFFIE J.

**DATED:** APRIL 18, 2023

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