

Federal Court



Cour fédérale

Date: 20230425

Docket: IMM-6052-21

Citation: 2023 FC 601

[ENGLISH TRANSLATION]

Ottawa, Ontario, April 25, 2023

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

**BASEL ALDEBS
HANADA ALMAAZ
ADAM ALDEBS
KARAM ALDEBS**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The principal applicant, Basel Aldebs, his wife, Hanada Almaaz (the associate applicant) and their two sons, Karam and Adam Aldebs, are a Syrian family that has been living in the

United Arab Emirates since 2011. They are seeking judicial review of a decision rendered by a migration officer [Officer] at the Canadian Embassy in Abu Dhabi, United Arab Emirates, refusing their applications for permanent residence as members of the Convention refugees abroad class and as members of the country of asylum class under sections 139(1)(e), 145 and 147 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations].

[2] Following an interview and the sending of a procedural fairness letter, the Officer rejected the applicants' application on July 8, 2021, concluding that the applicants were not eligible because they had voluntarily reavailed themselves of the protection of Syria when they visited that country each summer from 2013 to 2017. The applicants seek judicial review of the Officer's decision under section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. They allege that the decision is unreasonable and that it violates the principles of procedural fairness and natural justice. The respondent submits that the decision is reasonable and that no issues of procedural fairness arise.

[3] I agree with the respondent that there are no issues of procedural fairness. However, for the reasons set out below, I am of the view that the Officer based his decision on a series of events and circumstances that he had misunderstood with respect to the applicants' visits to Syria and their departure from that country in 2017. The misinterpretation of evidence that was clearly relevant and on which the Officer relied in reaching his negative decision undermines the reasonableness of the decision. The application will therefore be allowed.

II. Background

[4] The applicants are a family adhering to the Druze faith, a minority religion in Syria. The family moved to the United Arab Emirates with temporary residence status. The principal applicant works as a physician in that country.

[5] The applicants' family, including the principal applicant's elderly parents and the associate applicant's elderly parents, live in Syria. After moving to the United Arab Emirates, the applicants visited Syria in 2013, 2014, 2015, 2016 and 2017. These trips were made to visit family and help their parents.

[6] In 2017, the associate applicant's father was diagnosed with cancer. After receiving this news, the applicants returned to Syria to visit him. The principal applicant testified that during this visit, he was approached by an officer of the Syrian army who pressured him to remain in Syria to work in a military hospital. This demand did not appear to be negotiable, and the principal applicant would have put the associate applicant and the children in danger by refusing to comply. The applicants therefore fled the country.

[7] In January 2017, the applicants filed an application for permanent resident status in Canada as members of the Convention refugees abroad class or as members of the country of asylum class. The application was accompanied by a sponsorship application.

[8] On September 12, 2018, the applicants attended an interview with an immigration officer in Abu Dhabi. A procedural fairness letter was sent on January 30, 2020, and the application was rejected on July 8, 2021.

III. Decision under review

[9] According to the letter of refusal, the application was refused because the Officer determined that Syria was generally safe for the applicants. The Officer reached this conclusion on the basis of the applicants' regular long visits to Syria, which continued despite the ongoing civil war.

[10] The Officer acknowledged that in response to the procedural fairness letter, the applicants had alleged that the visits were not voluntary. However, the Officer concluded that the applicants had provided limited evidence and explanations regarding the purpose of the family visits in 2013, 2014, 2015 and 2016 or how these visits might be characterized as "emergencies". The Officer found that the family visits did not justify their return to a country where the applicants feared persecution or were seriously and personally affected by an armed conflict, civil war or massive violation of human rights. The Officer also noted, on the basis of statements made during the interview, that the regions of Syria where the applicants' family members lived and that they visited were relatively stable and secure.

[11] The Officer's notes in the Global Case Management System [GCMS] highlighted the additional explanations provided by the principal applicant regarding their visits, including the need to remain at home at all times to ensure their safety, the need to travel with their children to

avoid having the family separated in case of a border closure, the internal policies of the hospital where he worked in the United Arab Emirates that only allowed for vacation to be taken during the summer and the impossibility of bringing the parents out of Syria, as they were incapable of obtaining visas from the United Arab Emirates. However, the Officer also noted that the applicants provided no evidence that the parents had visa applications refused, or regarding the hospital's policies. The Officer's notes also indicate that the applicants provided no evidence to corroborate the purpose of the visits to Syria, and that the principal applicant did not adequately explain his role in providing support to his parents, especially considering that his specialization is rhinoplasty and ear, nose and throat surgery. There was also no information about the arrangements in place for the parents during the rest of the year. On this point, the Officer noted that the applicants' brothers and sisters reside in Syria.

[12] The Officer considered the reason for the principal applicant's 2017 flight from Syria, namely a government official's pressuring him to work in the military hospital, and attributed limited weight to this testimony.

[13] The Officer also concluded that the applicants were not eligible as members of the country of asylum class because they had no difficulty travelling within and outside of the country, their family members lived in the same region and that region was stable, the evidence established that medical facilities exist and function sufficiently well and, beyond the incident with the government official, the applicants did not mention any other risks to their security. Finally, the Officer noted that the general and hypothetical risks of terrorism, bombing and kidnapping did not prevent the applicants from travelling to Syria several times.

IV. Issue and applicable standard of review

[14] As stated above, the application raises two issues:

- A. Is the Officer's decision reasonable?
- B. Does the Officer's decision breach procedural fairness?

[15] The parties agree that the first issue is subject to the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23). A reasonable decision is based on an internally coherent reasoning and is justified in light of the legal and factual constraints that bear on the decision (*Vavilov* at paras 102–107).

[16] The second issue must be reviewed on a standard of correctness or, rather, by determining whether a fair and just process has been followed under all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

[17] As a preliminary matter, the respondent alleges that the documents presented at pages 173 to 214 of the applicants' record should not be considered, as they were not before the Officer. The applicants submit that the documents address the country conditions in Syria, of which the Officer is presumed to be aware. The documents are also correctly included in the record in the context of a judicial review (*Saifee v Canada (Citizenship and Immigration)*, 2010 FC 589 at paras 27–36). As I find below that the Officer misinterpreted the evidence relating to the applicants' flight from Syria in 2017 and that this erroneous interpretation was sufficient to

undermine the reasonableness of the Officer's decision, there is no need for me to consider the arguments presented regarding this issue.

V. Analysis

A. *The erroneous interpretation of the evidence is determinative*

[18] It is not contested that it was open to the Officer to review and consider the number of visits made by the family to Syria despite the alleged risks and to find on this basis that the applicants no longer considered themselves to be in danger (*Sanchez Hernandez v Canada (Citizenship and Immigration)*, 2012 FC 197 at para 21; *Kostrzewa v Canada (Citizenship and Immigration)*, 2012 FC 1449 at para 26). However, it is equally clear from a review of the record that the Officer misinterpreted the evidence relating to the applicants' departure from Syria in 2017. The applicants' allegations indicate that the risk they faced in Syria changed in 2017.

[19] The principal applicant explained to the Officer, during the interview and in his response to the procedural fairness letter, that he was pressured during his last visit to Syria in 2017 by a government official to return to work in Syria in a military hospital to treat injured soldiers. He also noted that the home of the associate applicant's parents was bombed in 2018.

[20] The Officer attributed little weight to the incident with the government official for several reasons. Among these, the Officer noted that the principal applicant had been unable to demonstrate a reasonable risk that he would be forced to work in a military hospital, as he had been exempted from military service. The Officer also noted that in fleeing Syria in 2017 to

avoid pressure to work in a military hospital, the principal applicant had left without his wife and children, who remained in the country for 26 more days, and that they had renewed the passport of one of the children at the government office. Having thus assessed the evidence, the Officer found that the fear alleged by the family was neither consistent nor supported.

[21] This reasoning is not supported by the evidence in the record. As submitted by the applicants, the entire family left Syria on the same day, August 7, 2017. This is clear from the passports, all of which have exit stamps from Syria with the same date (Certified Tribunal Record [CTR] at pp 200, 229, 254, 288). Moreover, their son's passport was renewed on July 19, 2017, before the principal applicant entered the country, and therefore before the pressure at issue was exerted (CTR at p 198). Moreover, the documentary evidence shows that persons exempted from military service in Syria for medical reasons may nevertheless be assigned to non-combat roles (National Documentation Packages (16 April 2021), Syria, Tab 8.1, section 4). The applicants submit that this evidence is consistent with the circumstances described by the principal applicant and that the Officer erred in relying on the military service exemption for medical reasons to attribute little weight to the principal applicant's interaction with the government official. I agree.

[22] The pressure exerted during the 2017 visit to Syria by a government official was a central element of their refugee protection claim, contrary to the arguments submitted by the respondent. The Officer's error with respect to this part of the applicants' account has an impact on the findings as a whole and is therefore determinative.

B. *There has been no breach of fairness*

[23] Having concluded that the decision is unreasonable, I will address the fairness argument only briefly.

[24] The applicants submit that they were informed by an initial officer that that a positive decision would be rendered after the interview of September 2018, as noted in the GCMS, and that it was unfair that the Officer who rendered the final decision subsequently reached a contrary result. The respondent is of the view that the Officer had not rendered a positive decision before changing his mind and that this argument has been raised for the first time on judicial review.

[25] No final decision was reached at the close of the interview of September 2018. It was open to the Officer to identify other concerns and raise them after the interview. The Officer communicated his concerns and sought a response to them through a procedural fairness letter. In the circumstances, there has been no breach of fairness.

VI. Conclusion

[26] The application for judicial review is allowed. There is no question of general importance to be certified.

JUDGMENT in IMM-6052-21

THIS COURT'S JUDGMENT is as follows:

1. The application is allowed.
2. The matter is referred back to another decision maker for reconsideration.
3. No question is certified.

"Patrick Gleeson"

Judge

Certified true translation
Francie Gow

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6052-21

STYLE OF CAUSE: BASEL ALDEBS, HANADA ALMAAZ, ADAM ALDEBS, KARAM ALDEBS v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE

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