

Federal Court



Cour fédérale

Date: 20240222

Docket: IMM-219-23

Citation: 2024 FC 180

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 22, 2024

PRESENT: Madam Justice Azmudeh

BETWEEN:

**OMAR MOUSSA
YARA OMAR MOUSSA
AMIR MAHDI MOUSSA
SARA AL MAWLA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Omar Moussa, Yara Omar Moussa, Amir Mahdi Moussa and Sara Al Mawla [collectively, the applicants] are citizens of Lebanon who are seeking judicial review of the rejection of their refugee protection claim by the Refugee Appeal Division [RAD] of the

Immigration and Refugee Board of Canada [IRB]. The application for judicial review is dismissed for the following reasons.

[2] The undisputed facts accepted by the RAD are as follows:

- The applicants lived in Alkousaibe, an agglomeration of the city of Nabatieh, in southeast Lebanon. The principal applicant was a car dealer. In July 2018, one of his vehicles was stolen by a criminal gang. He was warned that his life could be in danger if he filed a report with the police. The gang demanded a significant amount of money from him before agreeing to return the vehicle.
- Nine months later, in April 2019, the gang forced the principal applicant to go to a meeting with their leader, Abou Ali Hamieh, who then ordered the principal applicant to provide the gang with the name and address of each person he sold a vehicle to from then on and a copy of the keys to that vehicle. The principal applicant told him that he would not comply with that requirement. He was then beaten by several gang members and warned that he was going to have to reconsider his position.
- Four days later, several gang members visited the principal applicant and told him that their leader had ordered that he be killed because their leader held him responsible for the arrest of one of their own after the principal applicant filed a complaint with the police. Upon hearing that, the principal applicant decided that he and his family had to leave the country for their own safety.

[3] Both the RPD and the RAD concluded that the applicants had a viable internal flight alternative (IFA) in Beirut and rejected their allegations that the criminal organization had links with Hezbollah or the Lebanese government. They concluded that Ali Hamieh's gang had neither the means nor the motivation to harm the applicants in Beirut. Both divisions also considered Beirut a reasonable IFA. At the hearing before the RAD, the applicants submitted three new

pieces of evidence, which the RAD accepted under subsection 110(4) of the *Immigration and Refugee Protection Act* [IRPA]. The evidence is as follows:

- a. A letter from the mayor of Alkousaibe-Nabatieh, Hassan Rashid Mehdi, dated July 1, 2022:

<i>English text in the record</i>	<i>Our translation</i>
I the undersigned, mayor of Alkousaibe, declare that approximately a week ago I was questioned twice about Mr. Omar Mohamad Moussa, his mother Souhaila, by 3 unknown individuals who do not have any official status, and I informed them that Mr. Omar Mohamad Moussa, his mother Souhaila are outside Lebanon and I don't know anything else about him.	Je soussigné, maire d'Alkousaibe, déclare qu'il y a environ une semaine, j'ai été interrogé à deux reprises au sujet de M. Omar Mohamad Moussa et de sa mère Souhaila par trois personnes inconnues qui n'ont aucun statut officiel, et je les ai informés que M. Omar Mohamad Moussa et sa mère Souhaila se trouvent à l'extérieur du Liban et que je ne sais rien d'autre à son sujet.

- b. A letter from the mayor of Msaytbeh-Beirut, Abdallah Mohamad Al-Akhras dated July 13, 2022:

<i>English text in the record</i>	<i>Our translation</i>
I the undersigned, mayor of Msaytbeh Abdallah AI-Akhras, declare that I was questioned about Mr. Omar Mohamad Moussa by 3 unknown individuals who do not have any official status, and I informed them that I do not know anything about him. Abdallah Mohamad AI-Akhras Mayor of Msaytbeh 03-301061	Je soussigné, maire de Msaytbeh Abdallah AI-Akhras, déclare avoir été interrogé au sujet de M. Omar Mohamad Moussa par trois personnes inconnues qui n'ont aucun statut officiel, et je les ai informées que je ne savais rien à son sujet. Abdallah Mohamad AI-Akhras Maire de Msaytbeh 03-301061 Sceau et signature officiels

Official seal & signature	Nom du maire : Abdallah Mohamad AI-Akhras Tél : 03- 301061
Mayor name: Abdallah Mohamad AI-Akhras Phone: 03-301061	Sceau officiel et cachet
Official seals & Stamp	

- c. Statement by the principal applicant's father dated July 14, 2022. The English translation in the record reads as follows:

<i>English text in the record</i>	<i>Our translation</i>
<p>Dear Ladies and Gentlemen,</p> <p>I, the undersigned, Mohamad Moussa, the father of Omar Moussa, inform you that during the past years he was subjected to straits and extortion from an armed gang headed by Abu Ali Hamiyah because of the escape of my son Omar-out of Lebanese territory¹ fearing for his life after he was threatened with death by Abu Ali Harniyah and his armed gang. No more In age, as before, am In the last days of my life. And I was not telling Omar about these harassment and blackmail so that he would not increase his anxiety and fear and forget and continue his life in peace ... until he told me that his asylum request was rejected and here I was forced to tell him about this</p> <p>I hope to look at this situation with the eyes of mercy and humanity that you work for and for your messenger.</p> <p>Best Regards</p>	<p>Mesdames et Messieurs,</p> <p>Je soussigné, Mohamad Moussa, père d'Omar Moussa, vous informe qu'au cours des dernières années, il a été victime de tracasseries et d'extorsions de la part d'une bande armée dirigée par Abou Ali Hamiyah en raison de la fuite de mon fils Omar hors du territoire libanais¹, craignant pour sa vie après avoir été menacé de mort par Abou Ali Harniyah et sa bande armée. Je n'ai plus d'âge, comme avant, je suis dans les derniers jours de ma vie. Et je ne parlais pas à Omar de ce harcèlement et de ce chantage afin qu'il n'augmente pas son anxiété et sa peur et qu'il oublie et continue sa vie en paix... jusqu'à ce qu'il me dise que sa demande d'asile a été rejetée et que je sois forcé de lui en parler.</p> <p>J'espère regarder cette situation avec les yeux de la miséricorde et de l'humanité pour lesquels vous travaillez et pour votre messenger.</p> <p>Meilleures salutations</p>

Mohamad Moussa	Mohamad Moussa
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I. Decision

[4] I dismiss the applicant's application for judicial review because I consider the RAD's decision to be reasonable.

[5] The parties submit and I agree that the standard of review in this case is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII), [2019] 4 SCR 653 [*Vavilov*]).

Legal framework

[6] The two-pronged IFA test is well established:

- (a) the claimant will not be persecuted (on the basis of the "serious possibility" test) or exposed to danger or risk under section 97 of the *Immigration and Refugee Protection Act* [IRPA] (on the basis of the "balance of probabilities" test) in the proposed IFA; and
- (b) in all the circumstances, including circumstances particular to the claimant, conditions in the IFA are such that it would not be unreasonable for the claimant to seek refuge there.

[7] Once the issue of an IFA has been raised, the onus is on claimants to show that they do not have a viable IFA. This means that, to counter the argument that a viable IFA exists, claimants must show either that they would be at risk in the proposed IFA or, if they are not at risk in the proposed IFA, that it would be unreasonable in all the circumstances for them to

relocate there. The burden of the second test (whether the IFA is reasonable) is very heavy because the Federal Court of Appeal held in *Ranganathan v Canada (Minister of Citizenship and Immigration)* (CA), 2000 CanLII 16789 (FCA), [2001] 2 FC 164 [*Ranganathan*], that the test requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, the test requires actual and concrete evidence of such conditions. For the IFA test in general, see *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (CA); *Ranganathan*; and *Rivero Marin v Canada (Citizenship and Immigration)*, 2023 FC 1504 at paragraph 8.

Analysis: Is the decision reasonable?

[8] First prong of the IFA test: Was the RAD's analysis reasonable in concluding that the applicants did not face a serious possibility of persecution in the IFA on a Convention ground under section 96 of the IRPA or, on a balance of probabilities, a personal risk of harm under subsection 97(1) of the IRPA?

[9] The applicants state that the RAD admitted the new evidence but failed to examine it in a reasonable manner. They claim that the three statements directly attacked and targeted the RPD's assertions in its decision that the principal applicant's persecutors would not have the motivation to look for him, given the time that had passed.

[10] I disagree. In fact, I believe the RAD addressed why the evidence as a whole, including the new evidence, did not help the applicants meet their burden of demonstrating that they faced a serious risk of persecution or a personal risk of harm in the IFA.

[23] Taking into account the first prong of the IFA analysis established by the case law, that is, whether there is a serious possibility of the appellants being persecuted or personally subjected to a risk to their lives, I am of the opinion that the evidence presented, including the new evidence, fails to establish that such a risk exists. Nothing is known about the identity of the three individuals who reportedly approached the mayors of Alkousaibe and Msaytbeh other than that they were strangers who “do not have any official status.” Even with the information in the principal appellant’s father’s statement, I do not consider it reasonable to assume that those people have ties to the gang or to make assumptions about why they wanted to know the whereabouts of the principal appellant.

[Emphasis added]

[11] Having examined the three statements reproduced above, I find the RAD’s conclusions to be reasonable. At the hearing, counsel for the applicants placed great emphasis on the father’s letter in arguing that the nexus with the gang’s ongoing motivation had been established. However, the letter is rather vague. It is not clear whether the father’s statement that he was extorted because of his son is based on reliable evidence or on his own deductions. The father does not mention a time or a place. Once the issue of an IFA is raised, the onus is on the applicant to prove that an IFA does not exist. The RAD concluded that these letters, including the father’s, failed to prove this. The applicants are in effect asking the Court to reweigh the evidence, which it cannot do.

[12] I also note that the mayor's letters, including that of the mayor of the district in Beirut, were vague in that the individuals who had approached them were unknown. Neither the mayors nor the RAD ought to speculate on whether a conversation with unknown individuals years later would show that, on a balance of probabilities, the same gang continues to be motivated with regard to the applicants.

[13] In the circumstances and given the vague information in the letter, the decision not to hold an oral hearing was also reasonable.

[14] The applicants claim that the RPD and the RAD also disregarded evidence of links between the gang and Hezbollah. I do not think so. I also consider it reasonable that the RAD saw no link between the criminal gang and Hezbollah or the government. In this regard, the RAD agreed with the RPD and concluded that the new evidence was insufficient. The RPD based its conclusion in part on the following exchange (in English) at the hearing:

<i>English text in the record</i>	<i>Our translation</i>
<p>PRINCIPAL CLAIMANT: He didn't threaten me with Hezbollah. Hezbollah had nothing to do with his threat but I was scared and afraid. Made me more fearful when he mentioned the name of Hezbollah.</p> <p>(00:35:08)</p> <p>MEMBER: Okay, so why did you not include that in your Basis of Claim form if it made you more fearful?</p>	<p>DEMANDEUR PRINCIPAL : Il ne m'a pas menacé avec le Hezbollah. Le Hezbollah n'avait rien à voir avec ses menaces, mais j'étais effrayée et j'avais peur. J'ai eu encore plus peur quand il a mentionné le nom du Hezbollah.</p> <p>(00:35:08)</p> <p>COMMISSAIRE : D'accord, alors pourquoi n'avez-vous pas inclus cela dans votre Formulaire de Fondement de la demande d'asile si cela vous a fait plus peur?</p>

PRINCIPAL CLAIMANT: I don't know, I have no answer. But I can say he did not mention Hezbollah when he threatened me.

MEMBER: Okay. Do you have any evidence to show me that Mr. Hamieh is a real person or what his connections are or anything about him, any documentary evidence or proof?

PRINCIPAL CLAIMANT: Yes, he is a real person.

MEMBER: But do you have any evidence to show me of that?

PRINCIPAL CLAIMANT: He didn't give me his photo. He didn't give me his phone number. He didn't give me any other details about him. How will I be able to provide evidence about that? This is a criminal person and he doesn't give details of his life.

MEMBER: You've said that he's well-known and that the gang is well-known and is connected. So if that's true, are there any media articles about him or any documentary evidence that you can show me?

PRINCIPAL CLAIMANT: Well, given the situation in the country, I mean in Lebanon and so forth, people are fearful of coming anywhere near this person or saying anything about him.

DEMANDEUR PRINCIPAL : Je ne sais pas, je n'ai pas de réponse. Mais je peux dire qu'il n'a pas mentionné le Hezbollah lorsqu'il m'a menacé.

COMMISSAIRE : D'accord. Avez-vous des preuves pour me montrer que M. Hamieh est une personne réelle ou quels sont ses liens ou quoi que ce soit à son sujet, des preuves documentaires ou des preuves?

DEMANDEUR PRINCIPAL : Oui, c'est une personne réelle.

COMMISSAIRE : Mais avez-vous des preuves à me montrer à cet effet?

DEMANDEUR PRINCIPAL : Il ne m'a pas donné sa photo. Il ne m'a pas donné son numéro de téléphone. Il ne m'a pas donné d'autres détails le concernant. Comment pourrais-je fournir des preuves à ce sujet? Il s'agit d'un criminel et il ne donne pas de détails sur sa vie.

COMMISSAIRE : Vous avez dit qu'il était bien connu et que le gang était bien connu et avait des liens. Si c'est vrai, y a-t-il des articles de presse à son sujet ou des preuves documentaires que vous pouvez me montrer?

DEMANDEUR PRINCIPAL : Eh bien, étant donné la situation dans le pays, je veux dire au Liban et ainsi de suite, les gens ont peur de s'approcher de cette personne ou de dire quoi que ce soit à son sujet.

[15] On the basis of the above, the RPD drew the following conclusion, with which the RAD reasonably agreed (the proceedings before the RPD were conducted in English):

<i>Original RPD decision</i>	<i>Our translation</i>
<p>First, I note that none of the articles, or the others disclosed, reference AAH specifically, whose first name is unknown, or otherwise his direct relationship to the Public Works and Transport Minister in Lebanon, Hezbollah, or the other criminals listed. I do acknowledge that AAH shares the same last name as these individuals, and therefore, are likely to be from the same clan, who is known to be ‘tough’, on a balance of probabilities. However, these articles do not indicate who AAH is specifically; that he has a personal relationship with these individuals; or that he otherwise collaborates with these individual to track and locate individuals of the claimant’s profile – individuals who refused to collaborate in criminal endeavors – across Lebanon.</p>	<p>Tout d’abord, je constate qu’aucun des articles, ni aucun des autres communiqués, ne mentionne spécifiquement AAH, dont le prénom est inconnu, ni sa relation directe avec le ministre des travaux publics et des transports au Liban, le Hezbollah ou les autres criminels cités. Je reconnais que AAH porte le même nom de famille que ces individus et qu’il est donc probable qu’ils appartiennent au même clan, connu pour être « coriace », selon toute probabilité. Cependant, ces articles n’indiquent pas qui est AAH en particulier, qu’il a une relation personnelle avec ces individus, ou qu’il collabore d’une autre manière avec ces individus pour traquer et localiser des individus du profil du demandeur d’asile - des individus qui ont refusé de collaborer à des entreprises criminelles - à travers le Liban.</p>

[16] Therefore, I am of the opinion that it was reasonable for the RAD to conclude that the family would be safe in Beirut.

Second prong: Could the RAD reasonably conclude that it would be reasonable for the applicants, in their particular circumstances, to relocate to Beirut?

[17] In my opinion, the RAD carried out an independent analysis of the second prong and concluded that the applicants had failed to discharge the heavy burden of proof. The RAD was aware of the problems in Lebanon that had created generally difficult conditions for its citizens:

[24] As for the second prong of the IFA analysis, which involves determining whether Beirut is a reasonable choice given the circumstances, including those particular to the appellants, I do not consider that the available evidence concerning the current conditions in that city, including the evidence in the National Documentation Package on Lebanon, establishes that the appellants' lives and safety would be at risk if they had to move there. I acknowledge that the entire country is in political shambles with no end in sight and that the country is also experiencing an economic and financial crisis, which has had devastating consequences for a large part of the population. Added to this is the impact of the massive explosion in the Port of Beirut in August 2020, which destroyed a large part of the city. All of this makes returning to Lebanon an unenviable option for the appellants, and it is certainly not a desirable environment for raising young children.

[25] However, the case law has set a very strict test for determining whether an IFA is unreasonable. What is required is nothing less than establishing the existence of conditions that put the appellants' lives and safety at risk. Instability alone is not the test of reasonableness, nor is disintegrating infrastructure. I therefore conclude that the appellants have failed to discharge their burden of proof with respect to the second prong of the IFA analysis.

[18] There is a clear chain of reasoning that explains how the RAD reached its conclusion. That makes it reasonable.

JUDGMENT in IMM-219-23

THIS COURT’S JUDGMENT is as follows:

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

“Negar Azmudeh”

Judge

Certified true translation
Vincent Mar

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-219-23

STYLE OF CAUSE: OMAR MOUSSA, YARA OMAR MOUSSA,
AMIR MAHDI MOUSSA, SARA AL MAWLA v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JANUARY 31 2024

**JUDGMENT AND
REASONS:** AZMUDEH J

DATED: FEBRUARY 22, 2024

APPEARANCES:

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