

Federal Court



Cour fédérale

Date: 20240613

Docket: IMM-10162-23

Citation: 2024 FC 909

Vancouver, British Columbia, June 13, 2024

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

**IBRAHIM KAYALI
AND BESHER KAYALI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicants are seeking judicial review of a visa officer's decision to deny their application for permanent residence in the refugees abroad class. I am granting the application because the officer made credibility findings that were based on a distortion of the applicants' evidence.

I. Background

[2] The applicants, Ibrahim Kayali and Beshar Kayali, are brothers. They are citizens of Syria. When the civil war broke out in 2011, Ibrahim lived in Aleppo. He married his wife and the couple now has three children. The family lived in very difficult conditions. In 2013, they moved to Idlib, but the conditions there became worse, and they moved back to Aleppo. In 2016, Ibrahim received a bullet in the shoulder while he was out to buy food.

[3] For his part, Beshar was conscripted into the Syrian army in 2011. He says that he spent most of the civil war as a driver for an officer. He was released from the army in 2020.

[4] When they reunited, the brothers decided to leave Syria for Lebanon, with the help of a smuggler. They then applied for permanent residence in Canada in the Convention refugee abroad class and the country of asylum class.

[5] The brothers were interviewed, with the assistance of an interpreter, at the Canadian embassy in Beirut in June 2023. The visa officer then denied their applications, because of credibility concerns.

[6] They are now seeking judicial review of the visa officer's decision.

II. Analysis

[7] On judicial review, my role is not to reweigh the evidence or to decide the case afresh. Rather, I can only intervene with respect to factual determinations if the officer “has fundamentally misapprehended or failed to account for the evidence before it”: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 126, [2019] 4 SCR 653.

[8] In this case, the officer found the applicants to lack credibility, to the point that they were “unable to further assess eligibility and admissibility.” The officer added, “[w]hen taken as a whole, I did not find the applicant’s narrative and testimony to be credible.”

[9] This finding of a general lack of credibility is based on more specific findings of contradictions or implausibility, at least two of which are unreasonable.

[10] Firstly, the officer found that Ibrahim’s denial of having seen members of terrorist groups was at odds with the evidence indicating that terrorist groups were present in Aleppo throughout the relevant period.

[11] This finding, however, is based on a distortion of what Ibrahim said. The officer’s notes contain the following exchange:

*Tell me about your friends and relatives that took part in the conflict?

Some of our neighbours deserted the regime army and joined the FSA, we know them only by face. I only know the groups of daesh and al nusra by name, I’ve never seen any of the armed men

*how is it possible to have never seen any of these men before?
You stayed in Syria for the entirety of the civil war?

I saw the groups, the FSA and regime army, but as soon as the clashes started, I would leave immediately and go to a safe place

*so in 2015, you moved from Aleppo to idlib and back, and never encountered any al-nusra or daesh checkpoints?

Yes we did

*ok, so you did encounter and interact with someone from these armed groups?

I didn't see anyone from these armed groups that I know personally

*sir, let me rephrase my question. in your entire time in Syria, have you ever seen anyone in daesh or al nusra? Any of the armed groups? ever see anyone in person or interact with a member of one of the armed groups, whether you know them personally or not?

I did see armed groups, but I didn't have any type of interactions with them, in all the times I was in Syria I moved a lot to find a safe place for my family, even on my way to and from idlib, I used to cross checkpoints manned by the regime or FSA, sometimes I couldn't tell if it was an fsa checkpoint or not

[12] When reading this, one must keep in mind that the officer interviewed the applicants with the assistance of an interpreter. Moreover, it is unclear whether the notes are a verbatim transcript of what the applicants said or the officer's own reformulation or summary.

[13] On a fair reading of the notes, it is obvious that Ibrahim did not initially understand the question and mainly wanted to reassure the officer that he was not personally involved with terrorist groups. Thus, it was disingenuous for the officer to base a negative credibility finding on Ibrahim's "claim of never having seen any members of these terrorist groups while residing in Aleppo City." When he understood the question, Ibrahim said the exact opposite, as one can see

in the excerpt from the notes quoted above. The officer's focus on one line of the exchange led to a fundamental misapprehension of the evidence. Ibrahim's answers must not be dissected to highlight a small piece that, taken in isolation, would make no sense.

[14] The second problematic finding relates to the fact that Ibrahim and his family moved between Aleppo and Idlib around 2015 and stayed in Syria until 2021, shortly after Beshar was released from the army. The officer's reasons contain the following explanation:

I would have reasonably expected an applicant with a wife and three children to not have remained and moved between such violent cities in Syria during the height of the conflict all for a brother that was safely stationed far away in Damascus and who did not encounter any danger or risk throughout the entirety of this service.

[15] Moreover, during the interview, the officer mentioned that he had "interviewed hundreds of other Syrians of similar profiles as yourselves, who managed to flee Syria a lot earlier than 2021."

[16] This finding is, in effect, a plausibility finding. The officer finds the applicants not credible because the facts could not have taken place as Ibrahim recounted them. The officer's concerns can be subdivided in two: the fact that Ibrahim's family could have left Syria earlier and the fact that waiting for Beshar was not a reasonable justification for remaining in Syria. These findings, however, are problematic because they fail to take into account the applicants' explanations.

[17] Contrary to what the officer suggests, remaining close to Beshar was not the only reason Ibrahim's family remained in Syria until 2021. While it is true that Ibrahim and his wife highlighted this factor, they also mentioned other reasons that made it impossible to leave earlier. When asked whether he remained in Syria only because of his brother, Ibrahim replied:

My mother had asked me to take care of my brother and never leave him alone, plus I was called for reserve, and I was moving from place to place to avoid the regime and keep my family safe, at that time I didn't have enough money with me to bring my family to Lebanon and I didn't even know I could be smuggled in Lebanon.

[18] When asked why she remained in violent areas of Syria, Ibrahim's wife answered:

As a mother, I wanted to flee and get my children to safety, but I wasn't able to do so, all the areas around us were being clashed over, so we didn't have a safe route to leave.

[19] Moreover, the officer based their finding on the fact that Beshar was not in danger while he was in the army, because he was never sent to the frontlines. However, the brothers made it clear that they were not in contact until Beshar left the army and that Ibrahim did not know whether Beshar was safe or not. Therefore, it is illogical to conclude that Ibrahim should not have worried about Beshar.

[20] Relying on the fact that other claimants had been able to leave Syria earlier is also problematic. Of course, officers are entitled to take country condition evidence or their knowledge of local conditions into consideration when assessing a claimant's evidence. In this case, however, the officer's reasoning amounted to little more than the proposition that if some

people were able to leave Syria in 2015, then the applicants must have been able to do so, and their failure to do so tends to show a lack of subjective fear.

[21] In fact, when reading the interview notes, it appears that the officer very quickly formed the view that the applicants had no subjective fear because they could have left Syria earlier. Although they gave Ibrahim notice of their concerns, the officer did not take his answers into account and repeated their view that it made no sense to stay in Syria just to remain close to his brother. This tends to show that the officer did not listen to the applicants' answers or, in other words, failed to account for the evidence.

[22] As a result, the officer's finding is based on a generalization that does not take into account the applicants' evidence. This renders the finding unreasonable.

[23] While the officer gave other reasons for his finding of a general lack of credibility, the two findings reviewed above are sufficiently central to the decision to render it unreasonable as a whole.

III. Disposition

[24] For these reasons, the application for judicial review will be granted, the decision will be set aside and the matter will be remitted to a different officer for reconsideration.

JUDGMENT in IMM-10162-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The decision rejecting the applicants' application for permanent residence is set aside.
3. The matter is remitted to a different officer for reconsideration.
4. No question is certified.

"Sébastien Grammond"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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