

Federal Court



Cour fédérale

Date: 20240723

Docket: IMM-9717-23

Citation: 2024 FC 1159

Toronto, Ontario, July 23, 2024

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

**HALA HAMZI
FATME HAMZE**

Applicants

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicants seek judicial review of a decision of the Refugee Appeal Division [RAD] that affirmed a decision by the Refugee Protection Division [RPD] denying their claims for refugee protection.

[2] For the reasons that follow, this application will be granted.

II. BACKGROUND

A. *Facts*

[3] The Applicants are citizens of Lebanon. I will refer to Hala Hamzi as the Principal Applicant [PA] and Fatme Hamze, who is Hala's mother, as the Associate Applicant [AA]. The Applicants are Shia Muslims.

[4] In October 2020, the PA's father spoke to her about marrying Assaad Jouad, who is an influential Sheikh from their home village. The Sheikh is a hard-line religious conservative, who practices polygamy and has connections to the militant Hezbollah group. Ms. Hamzi immediately refused because she wishes to practice her faith in a modern way, does not wish to wear a hijab, wishes to choose her own husband, and wants to work and study – which would not be possible if she was married to the Sheikh. She additionally does not support polygamy.

[5] In November 2020, the Sheikh pressured the PA's father to ask her to reconsider marrying him. She understood her father was afraid of the Sheikh and his influence, and the Sheikh was pressuring her father to encourage her to agree to the marriage. Ms. Hamzi stated she needed more time to consider the proposal, and left Lebanon in February 2021.

[6] The PA learned from her brother in Lebanon that the Sheikh was angry that she had left Lebanon. The PA's father had advised her brother that if she did not want to marry the Sheikh, she should remain in Canada. Following the Applicants' departure from Lebanon, the PA's father (the spouse of the AA) became ill, and later died. The Sheikh had visited her father in the

hospital and attended her father's funeral; both times, he asked family members about when the Applicants would return to Lebanon.

B. *The RPD Decision*

[7] The RPD refused the Applicants' claims for refugee protection, finding that, while they were credible witnesses, they had failed to establish that they would be targeted by the Sheikh. The RPD noted that both civil and religious law in Lebanon require women's consent for marriage and, as such, the Applicants had not established that the Sheikh would resort to violence or kidnapping to force the PA to marry him. Finally, the RPD found that the gender-based discrimination and harassment that the Applicants would face as women in Lebanon does not rise to the level of persecution.

[8] Over the course of the hearing, the RPD questioned the PA about where she had lived in Lebanon, where her family lived, and where she would return to, if she were to return. The PA testified that she had been living with her parents in Beirut, and that is where her remaining siblings in Lebanon continue to live. The PA further testified that single women do not tend to live alone in Lebanon and, with the death of her father, if she returned to the country she would have no choice but to move back to the village where the Sheikh lived. The AA testified that if she were to return to Lebanon, she would live with one of her sons in Beirut.

[9] In its reasons, the RPD made repeated reference to the likelihood of harm that the Applicants would face upon return to Beirut, noting that neither their fear of the Sheikh, nor their fears of gender-based harm were sufficient to attract refugee protection.

C. *Decision under Review*

[10] The Applicants appealed the RPD refusal to the RAD. They argued that the RPD had erred in its assessment of the risks resulting from the PA's refusal to marry the Sheikh, given his influence and connections to Hezbollah. The Applicants also argued the RPD erred by assessing the legal requirement for a women's consent to marriage in the abstract, and removed from the social context of widespread gender-based discrimination combined with the Sheikh's influence. Finally, they argued that the RPD had erred in its assessment of the risk of gender-based harassment, discrimination, and persecution.

[11] The RAD refused the Applicants' appeal and confirmed the RPD's determination that the Applicants were not Convention refugees. The RAD found, as had the RPD, that the Applicants were credible and accepted that they had a subjective fear of the Sheikh. However, it found there was no objective basis for their fear of persecution.

[12] In doing so, the RAD essentially adopted the findings of the RPD. It found that the objective evidence indicates that Shia Muslim law requires consent of both parties for marriage, and that there is nothing in the objective evidence regarding the forced marriage of adult Lebanese women. The RAD found that there was insufficient evidence to establish that the Sheikh would violate both religious and civil law in Lebanon by kidnapping, or otherwise forcing the PA to marry him, or that the Sheikh would harm other family members in order to force the PA to agree to marry him.

[13] The RAD also found that there was insufficient evidence to corroborate the Applicants' submission that the Sheikh would be able to use his relationship with Hezbollah to force the PA to marry him.

[14] Finally, the RAD found that although the Applicants may face discrimination in Lebanon due to their gender, this discrimination does not rise to the level of persecution. It adopted the reasoning of the RPD, from paragraphs 18-32 of the RPD decision. Paragraphs 31 and 32, which summarize the RPD's conclusions, are excerpted below:

While the objective evidence is clear that gender-based violence remains a serious issue in Lebanon, the particular situation of the principal claimant does not give rise to a serious possibility she will be a victim of gender-based persecution or discrimination that rises to the level of persecution. I accept the principal claimant may face harassment as a woman if she were to return to Beirut, Lebanon, but there is nothing before me to indicate the harassment would rise to the level of persecution in her case. The principal claimant received a university degree and worked for many years before coming to Canada. In the words of the UNHCR Handbook, *supra*, there were no serious restrictions on her right to earn a livelihood, her right to practise her religion, or her access to normally available educational facilities. The principal claimant is not married to the Sheikh and intends not to marry the Sheikh. I find the possibility of encountering the Sheikh in the neighbourhood, while undoubtedly unpleasant, does not rise to the level of persecution.

Regarding the associate claimant, I have already found there is not a serious possibility that she would be harmed by the Sheikh because she supports the principal claimant's decision to refuse the Sheikh. The associate claimant has three adult children currently living in Lebanon. Following the Federal Court decision of *Duroseau Calixte v. Canada*, the associate claimant would not be

returning to Lebanon as a woman destitute and unprotected; it is reasonable to expect that her three children in Lebanon would be able to assist her. There is no evidence to indicate that she would not have family support should she return to Lebanon. As such, she would not be alone and without protection or shelter if she were to return to her country.

III. ISSUES

[15] This matter raises only the following issue: Was the RAD's decision to deny the Applicants refugee protection reasonable?

IV. STANDARD OF REVIEW

[16] The parties do not dispute that the standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [Vavilov]. A reasonable decision displays justification, transparency and intelligibility, with a focus on both the decision actually made and the reasons for it: *Vavilov* at para 15. To do so, a decision must be based on an "internally coherent and rational chain of analysis and that is justified in relation to that facts and law that constrain a decision-maker" (*Vavilov* at para 85).

V. ANALYSIS

[17] While several elements of the RAD decision are reasonable, this application for judicial review must be granted on a single, narrow ground. This ground relates to an error committed by the RPD, and replicated by the RAD, on the location in which the Principal Applicant would reside, if she were to return to Lebanon.

[18] As noted above, the Principal Applicant testified that, with the death of her father, if she were to return to Lebanon, she would have no choice but to return to live in the village where the Sheikh lives. The specific exchange between the RPD member and the PA is as follows:

MEMBER: So, if you were to return, where would you have to live?

PRINCIPAL CLAIMANT: Now that my father passed away, there is no place for me to live in Beirut and the only place I have to go back to live would be in the village where Sheikh will be my neighbor...

[19] Given that the rest of the Principal Applicant's immediate family in Lebanon live in Beirut, this response may have warranted further questioning. However, the RPD did not question the Principal Applicant further on this point, and it did not cast any doubt on the assertion in its reasons.

[20] Instead, the RPD seems to have misapprehended this element of the Principal Applicant's testimony, as it referred repeatedly in its reasons to the risks that she would face upon return to *Beirut*. In summarizing the Principal Applicant's testimony, the RPD also stated that: "[I]f she would return to Lebanon, the only place she could go would be back to live in the neighbourhood she lived in before and she could not return there, as the Sheikh would again be her neighbour." This is incorrect. Prior to the Principal Applicant's departure from Lebanon, she was living in Beirut, and her specific testimony was that she could not return to Beirut, but would have to return to the family's village.

[21] In its reasons, the RAD did not refer specifically to the location of the Principal Applicant's return – though it did adopt a significant portion of the RPD's reasons, including paragraphs that refer to the Principal Applicant's return to Beirut.

[22] In the circumstances, I find this to be a reviewable error. It is trite, of course, that decision-makers must assess risk based on an accurate understanding of the testimony before them. In this case, the unquestioned testimony of the Principal Applicant was that she would have no choice but to return to the very location where her claimed agent of persecution resided. While it may have been open to the RPD (and later the RAD) to question this assertion, it was not open to these tribunals to disregard the Principal Applicant's testimony and instead focus its analysis on the risk of return to Beirut.

[23] This is precisely what the RPD did. For instance, in one of the passages adopted by the RAD, the RPD stated: "I accept the principal claimant may face harassment as a woman if she were to return to Beirut, Lebanon, but there is nothing before me to indicate the harassment would rise to the level of persecution in her case." Later, the RPD concluded: "I find that the claimants have not established that she faces a serious possibility of persecution in Beirut at the hands of the Sheikh or from society at large due to their gender." [Emphasis added].

[24] In failing to correct this error, I find that it also taints the RAD's decision, as the documentary evidence indicated that both corruption and gender-based harm are more pronounced in rural and socially conservative areas. In the Principal Applicant's Basis of Claim form, she specifically indicated that her home village was indeed quite conservative. She stated:

I am also scared to go back and live in a town where women are more and more wearing the hijab and following the old traditions of Islam. I didn't grew up like this. Lebanon is becoming more and more radicalised religiously and this worries me a lot. If I don't follow these traditions I can become a target as a Muslim women.

[25] *Vavilov* instructs reviewing courts that it would be improper to overturn an administrative decision simply because its reasoning exhibits a “minor misstep.” Instead, courts “must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable”: *Vavilov* at para 100.

[26] As noted above, while some elements of the RAD’s decision may be reasonable, I have concluded that its failure to correct the RPD’s error as to the important question of the specific location of the Principal Applicant’s return is “sufficiently central” to its decision, such that it is unreasonable.

[27] To analogize from the “internal flight alternative” context, it is crucial for decision-makers to assess risk on the basis of a correct understanding of the specific location to which an individual would return: *Valdez Mendoza v. Canada (Citizenship and Immigration)*, 2008 FC 387 at paras 17-18. This is particularly the case when the documentary evidence indicates regional disparities in human rights protection within a country.

VI. CONCLUSION

[28] As a result, I grant this application for judicial review. The parties did not propose a question of general importance, and I agree that none arises in this case.

JUDGMENT in IMM-9717-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. No question is certified for appeal.

"Angus G. Grant"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9717-23

STYLE OF CAUSE: HALA HAMZI, FATME HAME v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JULY 11, 2024

JUDGMENT AND REASONS: GRANT J.

DATED: JULY 23, 2024

APPEARANCES:

Jared Will FOR THE APPLICANTS

Ferishtah Abdul-Saboor FOR THE RESPONDENT

SOLICITORS OF RECORD:

Jared Will & Associates FOR THE APPLICANTS
Barrister and Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario