

Federal Court



Cour fédérale

Date: 20090727

Docket: IMM-5193-08

Citation: 2009 FC 768

Ottawa, Ontario, July 27, 2009

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

**SULEIMAN MOHAMMED
ABDUL RAHMAN**

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72 (1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of a decision of the Refugee Division of the Immigration and Refugee Board (Board), dated November 6, 2008 (Decision) refusing the Applicant's application to be deemed a Convention refugee or person in need of protection under sections 96 and 97 of the Act.

BACKGROUND

[2] The 37-year-old Applicant was born, and has always lived, in the Wieval refugee camp in Lebanon before coming to Canada. He inherited his Palestinian nationality, refugee and stateless status from his Palestinian parents who fled to Lebanon after their village was destroyed in the 1947-1948 war that resulted in the creation of the state of Israel.

[3] The Applicant was automatically registered as a refugee with the United Nations High Commissioner for Refugees because his parents were registered refugees with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).

[4] The Applicant attended the school of Faculty of Sciences at the Lebanese University in Beirut and obtained a Master's Degree in Electronics in June 1997.

[5] At the time the Applicant graduated from University, Lebanon did not permit Palestinians to work in the field of Electronics and, until recently, teaching has also been a prohibited profession for Palestinians in Lebanon.

[6] The Applicant worked illegally as a teacher from 1998 until he arrived in Canada in June 2007. He was paid less than a Lebanese teacher receives for similar work and he received no social security benefits.

[7] The United Nations provides free medical clinics at the Applicant's refugee camp because Palestinians have to pay to be treated in Lebanese hospitals. Palestinians have no right to own property inside or outside the refugee camps and, if Palestinians leave Lebanon, they do not have an absolute right to return. Palestinians have been victims of excessive force and deliberate killings in the context of the Lebanese civil war and the ongoing conflict in the Middle East.

[8] Since 1989, the Lebanese army has controlled who may enter or leave the Applicant's refugee camp by checking identification and searching individuals and their vehicles.

[9] In September 2002, the Lebanese army stormed the Applicant's camp and pointed guns at anyone who came outside their homes. Palestinian refugees were arrested on suspicion of involvement in Palestinian militant groups and held, at times for years, without a trial. Police are also known to have tortured detainees. The Applicant claims he has lived with discrimination and insecurity all of his life.

[10] In July 2006, Israel launched a war on Lebanon for 33 days. The Applicant's house was slightly hit and rubble fell on him and his family when Israel bombed a petrol station nearby.

[11] The Applicant arrived at Vancouver International Airport on June 18, 2007 and applied for refugee protection on July 22, 2007 in Vancouver. The Applicant's refugee hearing was held on October 15, 2008. The November 6, 2008 Decision rejected the Applicant's refugee claim.

DECISION UNDER REVIEW

[12] The Board held that the Applicant was not a Convention refugee and that he did not have a well-founded fear of persecution for a Convention ground in Lebanon. The Applicant was also not a person in need of protection because his removal to Lebanon would not subject him personally to a risk to his life or a risk of cruel and unusual treatment or punishment. There were also no substantial grounds to believe that the Applicant's removal to Lebanon would subject him personally to a danger of torture.

[13] The Board found the Applicant to be a credible witness who "did not exaggerate his circumstance and...was forthcoming with details about his life as a Palestinian refugee in Lebanon."

[14] The Board held that the determinative issue was whether the Applicant would face persecution in Lebanon because of his status as a Palestinian. The Board felt that, despite the problems facing Palestinians in Lebanon, the Applicant himself had not been persecuted and would not be persecuted if he were to return to Lebanon. The Board said that it made this determination by not only scrutinizing the various forms of discrimination that the Applicant has endured, but also by examining the various forms of discrimination cumulatively.

[15] The Board noted that the Applicant lives in a decent home and was afforded the opportunity to study at the Lebanese University in Beirut. The Board also commented that the Applicant has

been working consistently as a professional teacher. The Applicant would have preferred to work in electronics, his chosen field, but until quite recently he was prohibited from doing so by the Lebanese government. The Applicant is not legally permitted to look for this work. The Board noted that “[m]ost likely he will not be able to find work in his chosen field because Lebanese employers are not inclined to hire Palestinians legally when there are additional financial costs to do so, and when many Palestinians are willing to work illegally.” Even so, the Board felt that under the new law, the Applicant would be permitted to form his own electronics company if he wishes.

[16] The Board also noted that the United Nations has fulfilled many of the obligations that Lebanon owes to Palestinian refugees. The Applicant has received medical care and a primary level education, which approximates to what Lebanon gives many of its own citizens.

[17] The Board found that, even after all the cumulative discrimination the Applicant has endured, he would not face persecution because he “utilized all the rights” that Lebanon has provided over the years and, when he did not have legal rights, he found a way to live as though he had those rights. As well, when the Applicant’s family was legally prohibited from renovating the family home, they did so anyway, without paying a penalty. Even though the Applicant was not legally permitted to work as a teacher until quite recently, he has worked as a teacher for years.

[18] The Board also pointed out that the Applicant was born in a refugee camp in Lebanon and he is still living in this same refugee camp: “This is demoralizing, but not necessarily persecution.” The Board found that the Applicant has faced discrimination, but has not been persecuted, “even

when the discrimination is cumulated.” The Board then went through the various areas of discrimination listed by the Applicant.

Housing

[19] The Applicant testified that he could legally move outside of the refugee camp and rent a home if he wished. However, he has chosen not to because renting is expensive and living outside of the camp is less physically secure than residing in the camp. As well, moving would take him away from his family who still reside in the refugee camp. The Board concluded that “[w]ith decent housing and an option to move outside the camp...the [Applicant] is not persecuted in terms of his housing.”

Medical Care

[20] The Board held that the Applicant has not been persecuted in terms of health care despite Lebanon providing no health care for Palestinians, because UNRWA has provided “better care than that experienced by many Lebanese citizens from their own government.”

Education

[21] The Board also found that Lebanon did not persecute Palestinians in terms of children’s rights to an education because, although Lebanon does not pay for the education of any Palestinian

children, the UNRWA provides the same service to Palestinian refugees. The UNRWA provides the funding and infrastructure for all primary schooling and has built six secondary schools in recent years and provides 850 vocational training places, a teacher training program and approximately 200 university scholarships annually for Palestinians in Lebanon.

[22] The Board comments that the Applicant was provided with a free primary education and his family paid the tuition for him to attend three private high schools. He then enrolled at the Lebanese University in Beirut. He paid more tuition than a Lebanese citizen would pay but was legally allowed to obtain an advanced degree in Lebanon. The Board notes that this appears to be no different from the situation in Canada where foreign students pay greater tuition and health insurance fees than Canadian citizens.

Work

[23] The Board noted that as of June 7, 2005, Palestinians can now work in 50 out of 72 professions previously denied to foreigners, but “[t]here is little indication so far, that the change in law has made a substantial difference to Palestinians.” The Board also acknowledged that there is a “host of financial conditions and costs placed on employers and Palestinian employees that do not encourage the regularizing of Palestinian’s employment in Lebanon. As well, the Applicant’s employer had refused to legalize his status.” The Board concluded, however, that “it is too soon to know whether the change in the employment law will actually benefit Palestinians. It should however make a big difference to Palestinians wishing to open their own businesses.”

Militants

[24] The Board noted that “so far the Lebanese authorities have not stopped [the Applicant’s] movements but he believes that this could happen at any time.” The Board went on to state that Lebanon does not oversee the comings and goings of Palestinians into and out of the camps and leaves actual security within each refugee camp to the Palestinians. The Board felt that there is a legitimate state reason to check Palestinian identities and their persons. Many Palestinians have been involved in armed actions over the years. The Board pointed out that “[a] State has the right to control the importation of illegal arms and militants into the refugee camps.”

[25] The Board concluded that “life in the refugee camps is fragile. The [Applicant] fears being caught in cross-fire. Violence erupts and the [Applicant] may not be able to avoid its consequences. It is generalized violence. There is no evidence that the violence the [Applicant] fears is solely or partially because he is Palestinian. The [Applicant] has not presented evidence to indicate that he has been specifically targeted by any militant faction for any reason.”

Societal Discrimination

[26] The Board noted that the Applicant agreed that discrimination problems in Lebanon lie with governmental policies toward Palestinians and not the Lebanese people themselves.

Additional Matters

[27] Counsel raised the argument that it would be unfair to deny the Applicant refugee protection when his brother received it in 1994. The Board stated that they could not analyze why the brother had been granted protection, since no reasons had been issued with the order granting him refugee protection. Moreover, the Board felt it could not examine the country conditions of 1994 and the individual circumstances of the Applicant's brother in comparison to the Applicant.

[28] The Board again stressed the Applicant's forthrightness and credibility and that he had recounted the story of his life without exaggeration: "He lives without hope-his future is circumscribed by his status in Lebanon. The [Applicant] cannot fully actualize all that he can be, because he is prohibited from doing so as a non-citizen in Lebanon."

[29] The Board notes that the Applicant's brother and his parents live in Canada and that the Applicant speaks English fluently. As well, he has an advanced degree and has worked as a teacher for many years. The Applicant is also "a sincere and honest person". The Board ended by stating that it hoped "the Minister [could] provide extraordinary relief to enable this deserving human being to stay in Canada. [The Board did] not have the jurisdiction to issue extraordinary relief."

ISSUES

[30] The Applicant submits the following issues on this application:

- a. The Board erred in law in that it applied the wrong tests for determining a well-founded fear of persecution;
- b. The Board failed to do a proper analysis in determining that the claim was not established on a cumulative basis;
- c. The Board based its decision on findings of fact unsupported by the evidence.

STATUTORY PROVISIONS

[31] The following provisions of the Act are applicable in these proceedings:

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

country.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection

Personne à protéger

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

STANDARD OF REVIEW

[32] The Applicant submits that the error of law discussed in issue (a) requires a standard of review of correctness, while the remaining issues of failing to do a proper analysis and the Board's basing its Decision on facts unsupported by the evidence require a standard of reasonableness. I agree with the submissions of the Applicant on the applicable standards of review.

[33] In *Dunsmuir v. New Brunswick* 2008 SCC 9 (*Dunsmuir*) the Supreme Court of Canada recognized that, although the reasonableness *simpliciter* and patent unreasonableness standards are theoretically different, "the analytical problems that arise in trying to apply the different standards undercut any conceptual usefulness created by the inherently greater flexibility of having multiple standards of review": *Dunsmuir* at paragraph 44. Consequently, the Supreme Court of Canada held

that the two reasonableness standards should be collapsed into a single form of “reasonableness” review.

[34] The Supreme Court of Canada in *Dunsmuir* also held that the standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[35] Thus, in light of the Supreme Court of Canada’s decision in *Dunsmuir* and the previous jurisprudence of this Court, I find the standard of review applicable to the issues on this application, with the exception of issue (a), to be reasonableness. When reviewing a decision on the standard of reasonableness, the analysis will be concerned with “the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law”:
Dunsmuir at paragraph 47. Put another way, the Court should only intervene if the Decision was unreasonable in the sense that it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

[36] Issue (a) is a question of laws and will be reviewed on a standard of correctness. See *Suresh v. Canada (Minister of Citizenship and Immigration)* 2002 SCC 1.

ARGUMENTS

The Applicant

Error in Law

[37] The Applicant submits that in order to establish a “well founded fear of persecution,” an applicant need not prove that they have been persecuted in the past or will be persecuted in the future. The Applicant cites *Adjei v. Canada (Minister of Employment and Immigration)*, [1989] 2 F.C. 680 at paragraphs 7 and 8 (F.C.A.) (*Adjei*):

7 We would adopt that phrasing, which appears to us to be equivalent to that employed by Pratte J.A. in *Seifu v. Immigration Appeal Board* (A-277-82, dated January 12, 1983, not reported):

... [I]n order to support a finding that an applicant is a Convention refugee, the evidence must not necessarily show that he "has suffered or would suffer persecution"; what the evidence must show is that the applicant has good grounds for fearing persecution for one of the reasons specified in the Act.

8 What is evidently indicated by phrases such as “good grounds” or “reasonable chance” is, on the one hand, that there need not be more than a 50% chance (i.e., a probability), and on the other hand that there must be more than a minimal possibility. We believe this can also be expressed as a “reasonable” or even a “serious possibility”, as opposed to a mere possibility.

[38] The Applicant also relies on the definition of a “reasonable chance” of persecution as defined by the Federal Court of Appeal as anything “more than a minimal possibility”: *Adjei; Naredo v. Canada (Minister of Employment and Immigration)*, [1981] F.C.J. No. 1130 (F.C.A.) and *Ponniah v. Canada (Minister of Employment and Immigration)*, [1991] F.C.J. No. 359 (F.C.A.).

[39] The Applicant points out that the Board in the present case made the following statement at the outset of its analysis of the evidence:

The determinative issue is whether the claimant will face persecution in Lebanon. I must determine whether Lebanon will persecute the claimant because of his status as a stateless Palestinian.

[40] The Applicant says that, in addition to misstating the determinative issue at the outset, the Board repeatedly indicated that it was applying the wrong test. The Board stated that it had examined the various forms of discrimination cumulatively and required the Applicant to show that “he is persecuted and will be persecuted” in order to establish a well-founded fear of persecution on cumulative grounds. The Applicant feels that the Decision should be set aside on this ground alone.

[41] The Applicant adds, however, that the Board also erred in law by requiring him to demonstrate that he has been personally targeted in order to establish a well-founded fear of persecution. In assessing his fear of harm in the context of violence between Palestinian militants and the Lebanese authorities, the Board found that he fears “generalized violence” and has not been “specifically targeted” by any militant faction for any reason.

[42] The Applicant submits that an applicant can establish a well-founded fear of persecution based on the experiences of others similarly situated. He does not have to show that he is at greater risk than others. The Applicant cites *Salibian v. Canada (Minister of Employment and Immigration)*, [1990] 3 F.C. 250 (F.C.A.) at paragraph 18:

...In the context of claims derived from situations of generalized oppression, therefore, the issue is not whether the claimant is more at risk than anyone else in her country, but rather whether the broadly

based harassment or abuse is sufficiently serious to substantiate a claim to refugee status. If persons like the applicant may face serious harm for which the state is accountable, and if that risk is grounded in their civil or political status, then she is properly considered to be a Convention refugee.

[43] The Applicant notes that the Board found no evidence that the violence he fears is solely or partially because he is Palestinian. This is unreasonable since refugees were killed, injured or displaced from the Nahr al-Barad refugee camp in May 2007 simply because they were Palestinians. The Applicant lives in a refugee camp and could be subject to violence and forced displacement because he is a Palestinian refugee, or he could be arrested and abused on suspicion of supporting militants precisely because he is Palestinian.

Cumulative Grounds

[44] The Applicant also submits that the Board applied the wrong test and should have considered whether the repeated incidents of discrimination in the past, together with other adverse factors such as a general atmosphere of insecurity in the country of origin, lead to a well-founded fear, or a serious possibility, of persecution in the future. He says that the Board's consideration of cumulative discrimination was "coloured by its misapprehension of the test, and cannot stand on that basis alone." See: *Kadhm v. Canada (Minister of Citizenship and Immigration)*, [1998] F.C.J. No. 12 (F.C.T.D.) (*Kadhm*) and Office of the United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status* at paragraph 53 (UNHCR Handbook).

[45] The Applicant submits that a well-founded fear of future persecution can be justified on cumulative grounds where a claimant has been subject to various measures not in themselves amounting to persecution. The UNHCR Handbook states as follows at paragraph 53:

An applicant may have been subjected to various measures not in themselves amounting to persecution (eg. Discrimination in different forms), in some cases combined with other adverse factors (e.g. general atmosphere of insecurity in the country of origin). In such situations, the various elements involved may, if taken together, produce an effect on the mind of the applicant that can reasonably justify a claim to well founded fear of persecution on “cumulative grounds.”

[46] The Applicant points out that discrimination can amount to persecution where it leads to consequences of a substantially prejudicial nature for the person concerned, such as serious restrictions on his/her right to earn a livelihood. The Federal Court has held that where the state interferes substantially with an applicant’s ability to find work, the possibility of working illegally is not an acceptable remedy. See: UNHCR Handbook at paragraph 54 and *Xie v. Canada (Minister of Employment and Immigration)*, [1994] F.C.J. No. 286 (F.C.T.D.) (*Xie*). The Applicant also cites paragraph 55 of the UNHCR Handbook:

...where measures of discrimination are, in themselves, not of a serious character, they may nevertheless give rise to a reasonable fear of persecution if they produce, in the mind of the person concerned, a feeling of apprehension and insecurity as regards his future existence...A claim to fear of persecution will...be stronger where a person has been the victim of a number of discriminatory measures of this type and where there is thus a cumulative element involved.

[47] The Applicant says that Canadian case law confirms that the Board must consider whether repeated incidents of discrimination in the past lead to a serious possibility of persecution in the

future. See: *Horvath v. Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No. 643; *Mete v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 840 and *Kadhm*.

[48] The Applicant also submits that all of the problems Palestinians face in Lebanon could establish a claim to a well-founded fear of persecution on cumulative grounds. This Court cannot be satisfied that the Board would have come to the same conclusions had it applied the correct test in assessing the evidence. Therefore, the Decision cannot stand.

[49] The Applicant's position is that the Board did not provide an adequate analysis as to why the multiple measures of discrimination, combined with the general atmosphere of insecurity in Lebanon, could not establish his claim. The only rationale appears to be that the Applicant was able to find ways to survive, despite the discrimination, through working and repairing his home illegally, using his own resources to pay for his education, and with assistance from UNRWA. These are not adequate remedies for the serious discrimination that the Applicant and other Palestinians face in Lebanon, their country of "habitual residence," as they have no other country. See: *Maarouf v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 723 and *Xie*.

Findings Not Supported by the Evidence

[50] The Applicant further submits that the Board made a series of findings that were not supported by the evidence:

- a. The Board found that the Applicant's family had been able to "renovate and update" the house they lived in, and that he therefore had "decent housing" as compared to other Palestinians who live in makeshift or crumbling structures lacking basic facilities and infrastructure. There was, however, no evidence about the current condition of the family's house or its sufficiency for the number of people living in it;
- b. The Board found that, although it is inadequate, Palestinian refugees experience better medical care from UNRWA than many Lebanese receive from their own government, ie. those that do not have medical insurance. There was no basis to find that medical care received by Palestinians is "superior" to care provided by the Lebanese government to its own poor;
- c. Lebanon provides free public school to its citizens to grade 12, contrary to the finding of the Board.

[51] The Applicant concludes by stating that, as a stateless Palestinian refugee in Lebanon, he has suffered discrimination and insecurity all of his life. He claims to be a Convention refugee due to a well-founded fear of persecution on cumulative grounds. The Board applied the wrong test when it found that he must show he will be persecuted in Lebanon and made other errors of fact and law.

The Respondent

[52] The Respondent submits that the Board properly assessed the Applicant's claim. The Decision as a whole demonstrates that the Board applied the correct test for a well-founded fear of persecution.

[53] The Respondent suggests that the Applicant is attempting to establish that years of discrimination amount to persecution. The Court has held that the Board is required to perform an analysis of the key events to decide whether there is discrimination or persecution. The Respondent relies upon the Federal Court of Appeal decision of *Sagharichi v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 796 at paragraph 3, where it was held that in all cases it is for the Board to draw a conclusion in a particular factual context by proceeding with a careful analysis of evidence adduced and a proper balancing of the various elements contained therein. The intervention of the Court is not warranted unless the conclusion reached appears to be capricious and unreasonable. See: *El Hof v. Canada (Minister of Citizenship and Immigration)* 2005 FC 1515.

[54] The Respondent states that the Court has held that the determination of what constitutes persecution involves an analysis of many factors, including persistence, seriousness, and the quality of the alleged incidents. See: *Ranjha v. Canada (Minister of Citizenship and Immigration)* 2003 FCT 637 and *Liang v. Canada (Minister of Citizenship and Immigration)* 2008 FC 450.

[55] In the current case, the Respondent points out that the Board undertook a thorough analysis of the following factors:

- a. Housing- The Board found that the Applicant lived in a home and that his family has been able to renovate and upgrade the home. The Applicant also testified that he could live outside the refugee camp and rent a home if he so wished.

The Board concluded that, with decent housing and an option to move outside the camp, the Applicant was not persecuted in terms of his housing;

- b. Medical Care- The UNRWA provides medical care to Palestinians which is superior to that provided by the Lebanese government for its own poor. The Applicant testified that he had access to a medical clinic in his refugee camp.

The Board concluded that the Applicant was not persecuted with respect to medical care when he received medical services superior to those received by many Lebanese citizens;

- c. Education-The Applicant received a free primary education. His family paid the tuition for him to attend three private high schools. He obtained a Master's Degree in Electronics from the Faculty of Sciences at the Lebanese University in Beirut.

The Board concluded that, while the Applicant had to pay higher tuition than a Lebanese citizen, this was no different than in Canada where a foreign student must pay greater tuition and health fees than non-Canadians;

- d. Work- The Board found that despite the former legalized discrimination against Palestinians in the workplace, the Applicant had worked continually as a teacher from 1998 to 2007.

The Board concluded that, even though the Applicant's work was not in his chosen field of electronics, he was able to obtain work that requires an advanced education. Moreover, with the new employment legislation he will be able to open his own electronics company;

- e. Militants-The Board found that there was no legitimate state reason for the militants to check Palestinian identities and their persons. The Board concluded that this was not a form of persecution. The Applicant did not present evidence to show that he was specifically targeted by any militant faction for any reason;
- f. Societal Discrimination- The Applicant did not feel emotionally and psychologically assaulted by the Lebanese people because he is Palestinian. His issue is with the Lebanese government and its policies.

[56] The Board concluded that, despite the articulated historical policies of the Lebanese government and the living conditions of the vast majority of Palestinians in Lebanon, the Applicant has not been persecuted and will not be persecuted if he returns to Lebanon. The Board also stated that it had made the determination not only by scrutinizing the various forms of discrimination that the Applicant had endured, but also by examining the various forms of discrimination cumulatively.

[57] The Respondent maintains that the Board undertook the correct analysis and that it determined the seriousness, persistence and quality of the incidents. It was a reasonable outcome for the Board to conclude that the Applicant was not a Convention refugee or a person in need of protection.

Reasonable Findings

[58] The Respondent also submits that the Board based its conclusion on the Applicant's testimony at the hearing in which he stated that his family has been able to update and renovate their home. Based on this evidence, it was open to the Board to conclude that he had access to decent housing. It was a reasonable conclusion that is owed a significant degree of deference by the Court: *Dunsmuir* at paragraph 47.

[59] The Applicant has not provided transcripts of the hearing to support his argument that he did not testify that his family had updated and renovated their house, but had brought in building supplies in 1975. The onus is on the Applicant to make his case and, even if the Applicant did not

state that his family had been able to renovate and update their house, it would be reasonable for the Board to reach the conclusion that the building materials were for improving the house.

[60] The Respondent notes that the Applicant argues that the Board made a baseless finding when it stated that Palestinian refugees received better care from the UNRWA than many Lebanese citizens. While the Respondent acknowledges that the documentary evidence does not make that specific statement, it was a reasonable conclusion for the Board to draw based on information before it that discussed the inequality of medical services received by different social strata in Lebanese society and the healthcare available to Palestinians by the UNRWA.

ANALYSIS

[61] There are particular findings in the Decision where the Board's reasoning is unclear and which are not supported by the evidence. For example, the finding in paragraph 44 that the violence which the Applicant fears is "generalized violence" and that there is "no evidence that the violence the claimant fears is solely or partially because he is Palestinian" is extremely difficult to understand given the evidence before the Board concerning the events that precipitated the Applicant's flight from Lebanon, and the evidence that violence is directed at Palestinians simply because they are Palestinian. Such violence is not directed at, and does not affect, the general population of Lebanon.

[62] Nor does the Applicant need to present evidence "to indicate that he has been specifically targeted," as the Board appears to suggest he should. As the Federal Court of Appeal made clear in

Saliban “[i]f persons like the applicant may face serious harm for which the state is accountable, and if that risk is grounded in their civil or political status, then s/he is properly considered to be a Convention refugee.”

[63] There is no need, however, for the Court to cite reviewable errors that are evident in some of the Board’s particular findings. This is because there are two fundamental problems that underlie the whole Decision and which require that this matter be returned for reconsideration.

[64] The first problem is the Board’s failure to address the cumulative aspects of the long and extremely dispiriting discrimination that the Applicant has obviously suffered as a stateless Palestinian in Lebanon.

[65] The Board says at paragraph 21 that the determination that the Applicant will not be persecuted if returned to Lebanon is made “by not only scrutinizing the various forms of discrimination that the claimant has endured, but also by examining the various forms of discrimination cumulatively.” The Board then goes on to scrutinize “the various forms of discrimination” separately, but never provides any real explanation as to why the cumulative impact does not amount to persecution.

[66] As Justice Dawson pointed out in *Mete v. Canada (Minister of Citizenship and Immigration)* 2005 FC 840 at paragraph 9 “it is insufficient for the RPD to simply state that it has considered the cumulative nature of the discriminatory acts.”

[67] As in *Mete*, the Board in the present case “completely failed to consider the cumulative effect of the conduct characterized ... to be discriminatory or harassing, as required by the Federal Court of Appeal in *Retnem*, and as explained in the Handbook on Refugee Status.” It is not enough for the Officer to simply say that he has examined “the various forms of discrimination cumulatively.” The reasons need to articulate why the long history of appalling discrimination by the State of Lebanon against the Applicant as a stateless Palestinian does not amount to persecution. There is no indication in the Decision as to what test and what reasoning the Board applied to the issue of whether the cumulative impact of discrimination did not amount to persecution.

[68] The second major problem with the Decision is that it is by no means clear what burden of proof the Board imposed upon the Applicant to establish persecution. On its face, the Decision suggests that the Applicant was expected to prove that the state of Lebanon “will persecute the claimant because of his status as a stateless Palestinian.” This problem is exacerbated by other suggestions in the Decision that the Applicant must also establish that he has been, or will be, personally targeted.

[69] As the Federal Court of Appeal made clear in *Salibian* at paragraph 17, an “applicant does not have to show that he had himself been persecuted in the past or would himself be persecuted in the future.” The Officer in the present case makes the same mistakes that Justice Martineau, applying *Salibian*, warned against in *Fi v. Canada (Minister of Citizenship and Immigration)*,

[2007] 3 F.C.R. 400, 2006 FC 1125 at paragraphs 14-16:

14 That being said, it is trite law that persecution under section 96 of the IRPA can be established by examining the treatment of

similarly situated individuals and that the claimant does not have to show that he has himself been persecuted in the past or would himself be persecuted in the future. In the context of claims derived from situations of generalized oppression, the issue is not whether the claimant is more at risk than anyone else in his country, but rather whether the broadly based harassment or abuse is sufficiently serious to substantiate a claim to refugee status. If persons like the applicant may face serious harm for which the state is accountable, and if that risk is grounded in their civil or political status, then he is properly considered to be a Convention refugee (*Salibian v. Canada (Minister of Employment and Immigration)*, [1990] 3 F.C. 250 (C.A.), at page 259; *Ali v. Canada (Minister of Citizenship and Immigration)* (1999), 235 N.R. 316 (F.C.A.)).

15 In *Salibian*, above, the decision under review related to a refugee claim made by a citizen of Lebanon. It also appeared that the plaintiff had been the subject of various incidents connected with the fact of being Armenian and a Christian. Despite this evidence, the IRB had dismissed the claim on the ground that the plaintiff was "a victim in the same way as all other Lebanese citizens are." The Federal Court of Appeal concluded that the IRB had both erred in law and made an arbitrary and capricious conclusion of fact. With respect to the issue of law, Justice Robert Décaré clearly indicated that a situation of "civil war" in a given country "is not an obstacle to a claim provided the fear felt is not that felt indiscriminately by all citizens as a consequence of the civil war, but that felt by the applicant himself, by a group with which he is [page407] associated, or, even, by all citizens on account of a risk of persecution based on one of the reasons stated in the definition [of a Convention refugee]" (*Salibian*, above, at page 258 [emphasis added]).

16 Therefore, a refugee claim that arises in a context of widespread violence in a given country must meet the same conditions as any other claim. The content of those conditions is no different for such a claim, nor is the claim subject to extra requirements or disqualifications. Unlike section 97 of the IRPA, there is no requirement under section 96 of the IRPA that the applicant show that his fear of persecution is "personalized" if he can otherwise demonstrate that it is "felt by a group with which he is associated, or, even, by all citizens on account of a risk of persecution based on one of the reasons stated in the definition [of a Convention refugee]" (*Salibian*, above, at page 258 [emphasis added]).

[70] In addition, because the Board appears to require the Applicant to prove that he “will face persecution” and nowhere in the Decision does the Board articulate what burden of proof and what test it is applying to the facts, the Court cannot be satisfied that it applied the right test for determining a well-founded fear of persecution. See *Adjei*.

[71] For these reasons, it is my view that this Decision must be returned for reconsideration.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. The application is allowed and the matter is referred back for reconsideration by a different officer.
2. There is no question for certification.

“James Russell”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT FILE NO.: IMM-5193-08

STYLE OF CAUSE: *SULEIMAN MOHAMMED ABDUL RAHMAN*

v.

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Vancouver, B.C.

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REASONS FOR JUDGMENT: RUSSELL J.

DATED: July 27, 2009

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