Federal Court  Cour fédérale

Date: 20110909

Docket: IMM-7531-10

Citation: 2011 FC 1066

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, September 9, 2011

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

RAMI BAHJAT YAH ABEDALAZIZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Preliminary

[1] It is settled law that a refugee claimant must demonstrate a well-founded fear of persecution in relation to each of his or her countries of nationality before seeking protection in another country (section 96 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA); *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, 103 D.L.R. (4th) 1).

[2] The scope of this principle has been extended to cases where, at the time of the hearing before the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB), an applicant is entitled to acquire, by mere formalities, the citizenship of a country with respect to which he or she has no well-founded fear of persecution.

[3] In *Canada (Minister of Citizenship and Immigration) v. Williams*, 2005 FCA 126, [2005] 3 F.C.R. 429, the Federal Court of Appeal found the following:

> [19] It is common ground between counsel that refugee protection will be denied where it is shown that an applicant, at the time of the hearing, is entitled to acquire by mere formalities the citizenship (or nationality, both words being used interchangeably in this context) of a particular country with respect to which he has no well-founded fear of persecution.
>
> [20] This principle flows from a long line of jurisprudence starting with the decisions of our Court in *Canada (Attorney General) v. Ward*, [1990] 2 F.C. 667 (C.A.), and in *Canada (Minister of Employment and Immigration) v. Akl* (1990), 140 N.R. 323 (F.C.A.), where it was held that, if an applicant has citizenship in more than one country, he must demonstrate a well-founded fear of persecution in relation to each country of citizenship before he can seek asylum in a country of which he is not a national. Our ruling in *Ward* was confirmed by the Supreme Court of Canada (at paragraph 12 of these reasons) and the principle eventually made its way into the IRPA, section 96 referring to "each of their countries of nationality."
>
> [21] In another decision rendered before the Supreme Court of Canada rendered its own in *Ward*, *Bouianova v. Canada (Minister of Employment and Immigration)*, (1993), 67 F.T.R. 74, Rothstein J. (sitting then in the Trial Division of the Federal Court of Canada) broadened the holding of our Court in *Akl*. He held that if, at the time of the hearing, an applicant is entitled to acquire the citizenship of a particular country by reason of his place of birth, and if that acquisition could be completed by mere formalities, thereby leaving no room for the State in question to refuse status, then the applicant is expected to seek the protection of that State and will be denied refugee status in Canada unless he has demonstrated that he also has a well-founded fear of persecution in relation to that additional country of nationality.

[4] Moreover, a refugee claimant's "unwillingness" to carry out the steps necessary for acquiring citizenship in the country in which he or she has no fear of persecution may lead to the rejection of his or her claim. In this case, seeking remedies in the courts is similar to such steps.

II. Introduction

[5] This is an application for judicial review of the RPD's decision dated November 15, 2010, that the applicant is not a "Convention refugee" or a "person in need of protection" in accordance with sections 96 and 97 of the IRPA.

III. Facts

[6] The applicant, Rami Bahjat Yah Abedalaziz, was born in Jordan. He says that he is a native of Palestine and lived in the West Bank.

[7] On April 29, 2008, in Amman, Jordan, the applicant applied for a Canadian visa (study permit), which was issued to him on June 8, 2008. In his application for a study permit, the applicant claimed to be a Jordanian citizen. He referred to a passport number and stated that this passport was valid until July 14, 2009. According to the applicant's evidence, the passport was issued on July 15, 2004, and was valid until July 14, 2009, and therefore had a validity period of 5 years. It bears a national identity number (Application for a study permit: Applicant's Record (AR) at page 44 and, also, page 46, Section A; Passport issued on July 15, 2004, AR at page 60).

[8] The applicant states that he was a Jordanian citizen when he filed his application for a study permit with the Canadian Embassy in Amman on April 29, 2008, since he was in possession of a Jordanian passport that bore a national number and was valid until July 14, 2009.

[9] According to the applicant's testimony at the hearing, a few days later, on May 15, 2008, he was issued what he considers a temporary passport by Jordan, one that was valid until May 14, 2013.

[10] According to the applicant, he is no longer a Jordanian citizen because this second passport bears no national identity number. The applicant claims that his Jordanian passport is temporary and that he is stateless.

[11] The applicant arrived in Canada on June 30, 2008, and sought refugee protection on July 2, 2008.

[12] On July 22, 2008, the applicant indicated at the point of entry that his parents are Jordanian citizens and that they obtained Jordanian citizenship before he was born (Interview notes at pages 9-10: Exhibit A of the affidavit of Natacha Jean-Louis).

[13] However, in his Personal Information Form (PIF), which was signed on August 18, 2008, the applicant stated that his parents have Palestinian citizenship (PIF at page 4, question 4: Exhibit B of the affidavit of Natacha Jean-Louis).

IV. Decision under review

[14] The applicant is seeking protection in Canada in respect of Palestine. He is not raising any fear of persecution or danger in respect of Jordan.

[15] First, the RPD found that the applicant is a Jordanian citizen.

[16] Alternatively, assuming that the applicant lost his citizenship as he claims, the RPD found that he can challenge this decision by seeking remedies as mentioned in the documentary evidence, which was found to be credible and trustworthy.

[17] Because the applicant did not allege any fear of persecution or danger according to sections 96 and 97 of the IRPA in respect of Jordan, his refugee claim was rejected.

[18] The applicant claims that when he obtained his study permit for Canada, he was no longer a Jordanian citizen. He believes that he arbitrarily lost this citizenship because he was not residing in Jordan.

V. Issues

[19] (1) Did the RPD infringe upon the applicant's right to a fair hearing?

(2) Did the RPD err in finding that the applicant is a Jordanian citizen or could acquire citizenship in that country by mere formalities?

VI. Analysis

[20] The Court agrees with the respondent's position that the decision is well founded in fact and in law and does not warrant the intervention of this Court.

A. Standard of review

[21] The RPD's finding that the applicant could acquire Jordanian citizenship by mere formalities and that he was therefore not stateless pertains to a determination based on the documentary evidence and the applicant's testimony. This is an issue that largely involves the interpretation of facts. The applicable standard of review is reasonableness (*Reza v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 606, 362 F.T.R. 67 at paragraph 26).

[22] The standard of review applicable to credibility issues is also reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190).

[23] Furthermore, "[t]he decision maker's credibility analysis is central to its role as trier of fact, and consequently its Credibility findings are entitled to the highest degree of curial deference" [emphasis added] (*Lin v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 698, at paragraph 11; cited with approval in *Ndam v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 513, at paragraph 4).

[24] Furthermore, when issues of credibility and the assessment of evidence are involved, "it is well established that the Court will intervene only if the decision was based on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it"

(*Camara v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 362, 167 A.C.W.S. (3d) 158 at paragraph 12).

B. No breach of the rules of natural justice or procedural fairness

[25] The applicant's argument regarding the failure to comply with the principles of natural justice and procedural fairness cannot succeed under the circumstances.

[26] First, it is not sufficient to claim that the RPD breached his right to make his case; he must still give a factual basis for his allegation. However, the applicant's affidavit is totally silent on this issue. The submission that the applicant was not able to present complete evidence is not supported by affidavit and should be disregarded.

[27] Consequently, the submission that the applicant was not able to present complete evidence is not supported by affidavit and should be disregarded.

[28] Moreover, the question of the applicant's citizenship is not a temporary issue, as he claims, but an important one because, if the RPD found that the applicant is a Jordanian citizen and did not seek protection in that country, his refugee claim collapses.

[29] This is a fundamental element that the applicant must demonstrate. In fact, the refugee claimant must demonstrate that he or she is a "Convention refugee" or a "person in need of protection" in his or her country of nationality. In this context, nationality means citizenship in a

particular country (sections 96 and 97 of the IRPA; *Hanukashvili v. Canada (Minister of Citizenship and Immigration)* (1997), 129 F.T.R. 216, 72 A.C.W.S. (3d) 914; *Ward*, above).

[30] The applicant refers to the short length of his hearing.

[31] The length of a hearing is not a gauge of the quality of the work by an administrative tribunal. The applicant did not establish that his counsel did not have sufficient time to submit his evidence or to submit all of the evidence he considered relevant.

[32] In *Vorobieva v. Canada (Minister of Employment and Immigration)* (1994), 28 Imm. L.R. (2d) 97, 52 A.C.W.S. (3d) 167 (FC), this Court decided that the RPD may reasonably limit the length of a hearing and that, in the absence of objection by the parties, this does not constitute a breach of the principles of natural justice:

> [11] I am not persuaded that in controlling its own process and limiting time available for testimony and where the time allocated does not appear to have been unreasonable, and the limits proposed were not strenuously objected to, that the panel denied a fair hearing, or violated s-s. 46(3) of the Act. [Emphasis added.]

[33] Moreover, subsection 162(2) of the IRPA stipulates the following:

Sole and exclusive jurisdiction	**Compétence exclusive**
162. (1) Each Division of the Board has, in respect of proceedings brought before it under this Act, sole and exclusive jurisdiction to hear and determine all questions of law and fact, including questions of jurisdiction.	**162.** (1) Chacune des sections a compétence exclusive pour connaître des questions de droit et de fait — y compris en matière de compétence — dans le cadre des affaires dont elle est saisie.
Procedure	**Fonctionnement**

(2) Each Division shall deal with all proceedings before it as informally and quickly as the circumstances and the considerations of fairness and natural justice permit.	(2) Chacune des sections fonctionne, dans la mesure où les circonstances et les considérations d'équité et de justice naturelle le permettent, sans formalisme et avec célérité.

[Emphasis added.]

[34] Furthermore, there is no evidence that the applicant objected to the length of the hearing, the panel's approach or an alleged apprehension of bias. The applicant is now precluded from doing so and his late argument cannot draw the attention of this Court.

[35] In *Kouama v. Canada (Minister of Citizenship and Immigration)* (1998), 160 F.T.R. 122, 87 A.C.W.S. (3d) 991, this Court indicated that the fact that the hearing was not very long is insufficient to demonstrate a breach of natural justice:

> [13] In my view, the applicant raises two related issues in his submissions: the length of the hearing and the opportunity to be heard. In the case at bar, the hearing lasted only 20 minutes. Is that sufficient reason to conclude that justice was denied? I am convinced it is not. As an administrative tribunal, the Refugee Board determines the subject matter and the scope of its hearings, provided it acts in good faith (*Nova Scotia v. Marshall*, [1989] 2 S.C.R. 788). Furthermore, MacKay J. pointed out in *Vorobieva*, *supra*, that the Refugee Board controls its own process and the time allocated for each hearing. It goes without saying that the Board has the necessary discretion and expertise to estimate the time required for dealing with cases. On reading the record in this case, I found the facts to be relatively straightforward. Furthermore, the record also shows that the applicant and his counsel did not raise any objection to the length of the hearing. I therefore cannot conclude that the length of the hearing was unreasonable or amounted to a denial of justice. [Emphasis added.]

[36] Regarding the applicant's allegation that he was unable to make his case, the applicant did not submit any element demonstrating that there was a denial of justice. He also did not establish that he was prevented from submitting any evidence.

[37] The applicant did not prove that the panel did not give him the opportunity to answer the questions asked of him or to make submissions on the facts or factors likely to affect the decision. The burden of proof is on the applicant (*Kouama*, above).

[38] The criticisms made late by the applicant follow the RPD's decision to reject the refugee claim.

[39] Under these circumstances, in failing to raise an alleged breach of the principles of procedural fairness at the first opportunity, that is, during the hearing before the RPD, he is now precluded from basing his application for judicial review on these inadmissible allegations.

[40] The applicant did not demonstrate with his affidavit and the documents submitted in support of his application for judicial review that the RPD failed to observe the principles of natural justice and, in particular, the *audi alteram partem* rule.

C. The applicant did not rebut the presumption of citizenship

[41] The refugee claimant must demonstrate that he is a "Convention refugee" or a "person in need of protection" in his or her country of nationality. In this context, nationality means citizenship in a particular country (sections 96 and 97 of the IRPA; *Hanukashvili*, above; *Ward*, above).

[42] Paragraph 93 of the *Handbook on Procedures and Criteria for Determining Refugee Status*, Geneva, September 1979, recognizes the existence of a *prima facie* presumption that a passport holder is a national of the country of issue. The mere assertion by the passport holder that it was issued as a matter of convenience for travel purposes only is not sufficient to rebut the presumption of nationality (*Mathews v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1387, 127 A.C.W.S. (3d) 528 at paragraph 11; *Adar v. Canada (Minister of Citizenship and Immigration)* (1997), 132 F.T.R. 35, 71 A.C.W.S. (3d) 1151).

[43] The RPD noted that the applicant had already held a Jordanian passport with a national identity number and had clearly claimed to be a Jordanian citizen. Therefore, the RPD drew a negative inference with respect to the credibility of the applicant, who claimed to be a Jordanian citizen and then went back on this statement:

> [17] There are contradictions between the fact that, in his April 29, 2008, application for a study permit, he states that he is a Jordanian citizen, and the fact that today he states that he is no longer a Jordanian citizen.
>
> [18] The documentary evidence indicates that Jordan issues passports to three categories of Palestinians: "Jordanian citizens of Palestinian origin who can obtain five-year passports with national identity numbers." It is clear that the claimant has already obtained a passport with a national identity number and it is clear that he claimed to be a Jordanian citizen.
>
> [19] However, he told me that he has lost his citizenship. He referred to a document for which a translation was submitted this morning: the bridge crossing card. He presented me the passport that he obtained after applying to study, which does not have a national identity number. [Emphasis added.]

[44] The RPD assessed the relevant documentary evidence that indicates that the applicant was not in one of the situations for which, according to the law, his Jordanian citizenship could be legally revoked (Decision at paragraph 23).

[45] Based on the evidence submitted to the RPD, it was reasonable for the RPD to find that the applicant, a Palestinian who was born in Jordan, whose parents are Jordanian citizens, and who is a Jordanian passport holder, had not rebutted the presumption that the holder of a passport is a citizen of the issuing country.

D. Alternatively, the applicant may pursue remedies to challenge the revocation of his Jordanian citizenship

[46] The RPD found, in the alternative, that, assuming that the applicant did lose his Jordanian citizenship in the circumstances raised, the documentary evidence indicated, on the one hand, that his case did not give rise to a revocation of citizenship and, on the other hand, that there was an opportunity to go before the Jordanian courts to challenge the loss of his citizenship. The documentary evidence indicates that Jordanian courts have been receptive to these challenges (Decision at pages 5-7).

[47] In *Williams*, above, the Federal Court of Appeal agreed with the reasons in *Bouianova v. Canada (Minister of Employment and Immigration)* (1993), 67 F.T.R. 74, 41 A.C.W.S. (3d) 392:

> [22] I fully endorse the reasons for judgment of Rothstein J., and in particular the following passage, at page 77:
>
> > The condition of not having a country of nationality must be one that is beyond the power of the applicant to control.

> The true test, in my view, is the following: if it is within the control of the applicant to acquire the citizenship of a country with respect to which he has no well-founded fear of persecution, the claim for refugee status will be denied. While words such as "acquisition of citizenship in a non-discretionary manner" or "by mere formalities" have been used, the test is better phrased in terms of "power within the control of the applicant" for it encompasses all sorts of situations, it prevents the introduction of a practice of "country shopping" which is incompatible with the "surrogate" dimension of international refugee protection recognized in *Ward* and it is not restricted, contrary to what counsel for the respondent has suggested, to mere technicalities such as filing appropriate documents. This "control" test also reflects the notion which is transparent in the definition of a refugee that the "unwillingness" of an applicant to take steps required from him to gain state protection is fatal to his refugee claim unless that unwillingness results from the very fear of persecution itself. Paragraph 106 of the *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention an the 1967 Protocol relating to the Status of Refugees* emphasizes the point that whenever "available, national protection takes precedence over international protection," and the Supreme Court of Canada, in *Ward*, observed, at p. 752, that "[w]hen available, home state protection is a claimant's sole option."
>
> [23] The principle enunciated by Rothstein J. in *Bouianova* was followed and applied ever since in Canada. Whether the citizenship of another country was obtained at birth, by naturalization or by State succession is of no consequence provided it is within the control of an applicant to obtain it. (The latest pronouncements are those of Kelen J. in *Barros v. Minister of Citizenship and Immigration*, 2005 FC 283, and Snider J. in *Choi v. Canada (Solicitor General)*, 2004 FC 291.) [Emphasis added.]

[48] The RPD found that the applicant had not demonstrated that he could not, by mere formalities, acquire Jordanian citizenship. The RPD found the following on the basis of the documentary and testimonial evidence as a whole:

> [31] I am taking the claimant’s personal situation into account: his parents are merchants and, according to what he told the immigration officer, they are Jordanian citizens; and there is no refugee protection claim against Jordan. I am of the opinion that, in Jordan, the claimant can appear before the courts and obtain his Jordanian citizenship once again.

[49] This finding by the RPD is well founded. This Court has repeatedly established that, when a person can avail himself or herself of the citizenship of a country by mere formalities or steps, international protection cannot apply (*De Rojas v. Canada (Minister of Citizenship and Immigration)*, [1997] F.C.J. No. 117 (QL/Lexis), 69 A.C.W.S. (3d) 148 (FC); *Alvarez v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 296, 156 A.C.W.S. (3d) 437).

[50] The RPD was indeed entitled to prefer the objective documentary evidence to the applicant's allegations. It was also entitled to compare the pieces of documentary evidence to determine which situation it considered the most consistent with reality (*Zhou v. Canada (Minister of Citizenship and Immigration)*, [1994] F.C.J. No. 1087 (QL/Lexis), 49 A.C.W.S. (3d) 558 (CA) at paragraph 20; *Tekin v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 357, 122 A.C.W.S. (3d) 357 at paragraph 17; *Lozandier v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 770, at paragraph 20).

[51] Subsequently, in the context of this case, it drew all of the inferences with respect to the documentary evidence that was not consistent with the probabilities of the case as a whole (*Mutinda v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 365, 129 A.C.W.S. (3d) 1183 at paragraph 12).

[52] Given the RPD's finding that there were recourses available to the applicant to challenge the decision that he lost his Jordanian citizenship, the applicant also had to demonstrate a fear in that country (*Ward*, above; *Canada (Minister of Employment and Immigration) v. Akl* (1990), 140 N.R.

323, 20 A.C.W.S. (3d) 255 (FCA); *Chahoud v. Canada (Minister of Employment and Immigration)* (1992), 140 N.R. 324, 32 A.C.W.S. (3d) 123 (FCA); sections 96 and 97 of the IRPA).

[53] However, in this case, the applicant did not allege any fear of persecution or danger under sections 96 and 97 of the IRPA with respect to Jordan.

[54] Because the RPD found that the applicant did not have a well-founded fear with respect to Jordan, it was not required to address the applicant's fear with respect to Palestine (*Espinoza v. Canada (Minister of Citizenship and Immigration)*, [1999] 3 F.C. 73 (FC) at paragraph 43; *Dawlatly v. Canada (Minister of Citizenship and Immigration)* (1998), 149 F.T.R. 310, 80 A.C.W.S. (3d) 852 (FC) at paragraph 14).

VII. Conclusion

[55] For all of these reasons, the applicant's submissions have no merit and do not warrant the intervention of this Court in judicial review.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the applicant's application for judicial review be dismissed. No question of general importance for certification arises.

"Michel M.J. Shore"
Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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