Federal Court  Cour fédérale

Date: 20120504

Docket: IMM-5987-11

Citation: 2012 FC 534

Ottawa, Ontario, May 4, 2012

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

CHADI FAOUR AND AMAL FAOUR

Applicants

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*, SC 2001, c 27 [the Act] for judicial review of the decision rendered by the Refugee Protection Division of the Immigration and Refugee Board (the Board) dated July 12, 2011, which refused the applicants' claim to be deemed Convention refugees or persons in need of protection under sections 96 and 97 of the Act.

[2] The applicants seek an order setting aside the decision and remitting the matter for redetermination by a differently constituted panel of the Board.

Factual Background

[3] The applicants, Mr. Chadi Faour (principal applicant) and his mother, Mrs. Amal Faour, are both citizens of Lebanon. The applicants claim refugee status in Canada as they contend that they are "Convention refugees" pursuant to section 96 of the Act due to the fact that they belong to a particular social group, namely that of being members of the Faour and Abdallah families who are suspected by Hezbollah of collaborating with the Israeli army and the militia of the south Lebanese army. Consequently, the applicants affirm that they face persecution if returned to Lebanon due to their refusal to cooperate with Hezbollah by providing information about their family members.

[4] The applicants' ancestral village is that of Khiam, which is located in southern Lebanon, in proximity to the Israeli border, and situated in an area controlled by the militia of the south Lebanese army. The applicants' extended family members reside in Khiam and are among the largest and most influential families in the area. Between 1978 and 2000, this region was occupied by Israel with the aid of the militia of the south Lebanese army. Consequently, the Lebanese citizens residing in the area often collaborated with the Israeli and south Lebanese armies, either voluntarily or by force.

[5] The principal applicant has never lived in the village in Khiam. The principal applicant's mother was born in Beirut and then moved to Abu Dhabi in 1976, where the principal applicant was

born in 1977. The applicants then moved to Beirut in 1987, where they resided until they travelled to Canada and filed their refugee claim.

[6] When they moved to Beirut, the applicants lived in an apartment in the southern suburb of Haret Hreik, within the sector known as Shoura, which later came under the control of Hezbollah in 1992. The applicants allege that their problems started when Hezbollah became aware of the applicants' family origins. In the summer of 1997, the principal applicant was detained for several hours by Hezbollah and was later joined by both of his parents. During this detention, Hezbollah asked the applicants for their cooperation and demanded that they disclose information regarding their family members in Khiam. However, the applicants declined to cooperate. Consequently, the applicants submit that they were continually harassed by Hezbollah for their help.

[7] In 2003, the applicants sold their property and relocated to another part of Haret Hreik that was outside of the Shoura sector. The applicants explain that matters were relatively peaceful until May 9, 2006, when the principal applicant was accosted, taken against his will, questioned and threatened by Hezbollah and ordered to provide information on his family members.

[8] In July of 2006, when Israel bombed certain parts of Beirut, the applicants abandoned their apartment and rented another in Hamra, a district in western Beirut. The applicants' house was close to the home of Saad Al-Hariri, the leader of the Future Movement. When the fighting subsided in August 2006, the applicants maintain that Hezbollah refused to allow them to return to their previous apartment in Haret Hreik unless they agreed to collaborate.

[9] In May of 2008, the principal applicant was allegedly detained for three (3) days by Hezbollah, during which time he was interrogated concerning his Sunni neighbours and the residence of Saad Al-Hariri. The principal applicant also suffered an injury to his arm.

[10] In February of 2009, the principal applicant was detained again by Hezbollah for a two-day (2) period, during which time they reiterated their demands that he collaborate with them in providing information. Later, the applicants affirm that they received visits at their residence from Hezbollah seeking their cooperation.

[11] The applicants chose to flee to Canada using visitor visas. The applicants arrived in Canada on June 29, 2010 and later claimed refugee status on August 6, 2010.

[12] The applicants' refugee claim was heard by the Board on June 21, 2011.

Decision under Review

[13] In its decision, the Board determined that the applicants' story lacked credibility and plausibility with respect to certain determinative issues. The Board found that the acts of harassment suffered by the applicants did not amount to persecution. The Board found that the risk faced by the applicants was the same generalized risk faced by other Lebanese citizens. Finally, the Board determined that a viable Internal Flight Alternative (IFA) was available to the applicants in Beirut.

[14] Firstly, with regard to the issue of the credibility of the applicants' story, the Board made note of the following implausibilities and omissions:

a. The Board found it implausible that Hezbollah would harass the principal applicant on six separate occasions, between 1997 and 2010, in order to obtain information about his relatives in Khiam, when the principal applicant had never lived in Khiam;
b. The Board found it implausible that Hezbollah would have demanded the principal applicant to cooperate and provide information on his Sunni neighbours or the goings-on at the residence of Saad Al-Hariri, when the principal applicant stated that he was working full time during the day outside of his residence;
c. The Board found the applicants' behaviour to be incompatible with their alleged fear due to the fact that they moved to a house in the same Beirut suburb in 2003;
d. The Board found it to be implausible that Hezbollah uttered threats of physical aggression against the applicants, yet on August 19, 2006, the actual punishment that the applicants suffered was that of being prevented access to their previous apartment;
e. The Board drew a negative inference from the fact that the principal applicant testified that he did not remember filing a denunciation concerning the mistreatment he suffered during his detention by Hezbollah in the summer of 1997 until he was reminded by the Board that this fact had been included in his previous materials;
f. The Board found it implausible that the principal applicant and his mother would have very little communication and would not know the phone number or address of their sixty-five (65) year old father and husband (respectively) that remained in Beirut. The Board did not accept the applicants' explanation on this issue.

[15] The Board also observed that, other than suffering an arm injury in May of 2008, the principal applicant suffered no physical abuse at the hands of Hezbollah. As such, the Board concluded that the continued attempts of Hezbollah to secure the principal applicant's collaboration merely amounted to harassment and did not constitute persecution. Furthermore, the Board concluded that the documentation filed by the applicants to demonstrate the political unrest in Lebanon did not support their contention that they were personally targeted, but rather, the documentation indicated that the applicants would be exposed to the same generalized risk faced by all Lebanese citizens. Consequently, the Board found that on a balance of probabilities, there was no

reasonable chance or serious possibility that the applicants would be persecuted if they were to return to Lebanon.

[16] However, the Board noted that even if the applicants had succeeded in demonstrating a well-founded fear of persecution – which was not the case – a viable IFA existed in the suburbs of Beirut, other than that of Haret Hreik.

Issue

[17] The Court finds that the only issue in the case at hand is the following: were the Board's findings reasonable?

Statutory Provisions

[18] The following provisions of the *Immigration and Refugee Protection Act* are applicable in these proceedings:

REFUGEE PROTECTION, CONVENTION REFUGEES AND PERSONS IN NEED OF PROTECTION	NOTIONS D'ASILE, DE REFUGIE ET DE PERSONNE A PROTEGER
Convention refugee	Définition de « réfugié »
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,	**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*) is outside each of their	*a*) soit se trouve hors de tout

countries of nationality and is unable or, by reason of that fear, unwilling to avail themself 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 country.

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.

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 themself 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

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

disregard of accepted international standards, and	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

[19] With regard to the issue of the Board's credibility findings, the applicable standard of review is that of reasonableness (*Thomas v Canada (Minister of Citizenship and Immigration)*, 2012 FC 53 at para 12, [2012] FCJ No 57; *Mejia v Canada (Minister of Citizenship and Immigration)*, 2009 FC 354 at para 26, [2009] FCJ No 438; and *Zarza v Canada (Minister of Citizenship and Immigration)*, 2011 FC 139 at para 16, [2011] FCJ No 196).

[20] Case law has also held that the same standard of reasonableness applies to findings relating to the existence of an IFA (*Sanchez v Canada (Minister of Citizenship and Immigration)*, 2011 FC 926 at para 12, [2011] FCJ No 1150). Similarly, the issue of whether an applicant faces persecution and a personalized risk is also reviewable according to the reasonableness standard (*Sefa v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1190 at para 21, [2010] FCJ No 1660; *Acosta v*

Canada (Minister of Citizenship and Immigration), 2009 FC 213 at paras 10-11, [2009] FCJ No 270).

[21] As the Supreme Court of Canada explained in the case of *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190: "reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law."

Arguments

The Applicants' Position

[22] The applicants assert that the Board made contradictory statements in its analysis. As well, the applicants advance that the Board actually found their claim to be implausible rather than not credible, and that there is an important distinction to be made in this regard. Moreover, the applicants maintain that the Board erred regarding what information was or was not mentioned in the Personal Information Form (PIF). Furthermore, the applicants affirm that the Board made certain factual mistakes and did not take the applicants' testimony into account. As well, the applicants submit that the Board misunderstood the facts about the principal applicant's father, as he was always threatened and a target of Hezbollah.

[23] The applicants also argue that the Board erred in its analysis of the possibility of an IFA in Lebanon. Essentially, the applicants affirm that the documentary evidence on Lebanon reveals that Hezbollah is active throughout the whole of Lebanon, and thus, they maintain that "if the Hezbollah

is after you, you have no place to live in Lebanon" (the Applicant's Memorandum, para 27). As well, the applicants note that the Lebanese government has no control over Hezbollah. Moreover, the applicants advance that the Board's decision runs contrary to the established jurisprudence on Lebanon (*Hamadi v Canada (Minister of Citizenship and Immigration)*, 2011 FC 317, [2011] FCJ No 396; *Soueidan v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 956, [2001] FCJ No 1397).

[24] Thirdly, the applicants submit that the Board erred when it stated that the applicants suffered harassment rather than persecution. The applicants maintain that the Board was mistaken regarding its interpretation of what constitutes persecution and also omitted key elements that demonstrated this persecution. In addition, the applicants advance that the Board's conclusions were speculative and that their evidence was heard but not listened to.

[25] Finally, in their Further Affidavit and Further Memorandum of Argument, the applicants also call into question the competency of the current Board members and their ability to adjudicate refugee cases in light of recent statistics concerning Board members' test scores outlined in certain access to information requests made by the applicant. The applicants contend that there is an apprehension of institutional incompetence on the part of all Board members, which renders the Board's decision in the matter at hand *ultra vires*.

The Respondent's Position

[26] With respect to the issue of the applicants' credibility, the respondent recalls that the Board is in a better position than the Court to determine the credibility of the applicants, as it is a finding of

fact. Moreover, the respondent affirms that, contrary to the applicants' submissions, the Board was not obliged to determine if all of the applicants' allegations were truthful. Rather, the respondent advances that it was open to the Board to draw negative inferences and ultimately render a negative credibility assessment based on the inconsistencies and implausibilities of the applicants' story. As well, the respondent argues that there is no indication that the Board ignored the content of the applicants' PIF.

[27] Secondly, the respondent submits that the acts of harassment faced by the principal applicant do not amount to persecution. The respondent contends that if the principal applicant had truly feared for his life, he would have reacted differently to the continuous demands and threats of Hezbollah; the Board noted that he neither submitted to Hezbollah's demands nor did he attempt to hide. As well, the respondent reminds that the sole form of physical abuse that the principal applicant actually suffered was that of being struck on the arm on May 11, 2008. As such, the respondent affirms that the Board reasonably concluded that the alleged harassment or discrimination suffered by the applicants did not constitute persecution, as the term has been defined as an "affliction of repeated acts of cruelty or a particular course or period of systematic infliction of punishment" (*Rajudeen v Canada (Minister of Employment and Immigration)* (FCA), [1984] FCJ No 601, 55 NR 129; *Olearczyk v Canada (Minister of Employment and Immigration)* (FCA), [1989] FCJ No 322, 8 Imm LR (2d) 18; *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, [1993] SCJ No 74).

[28] Thirdly, the respondent propounds that the risk faced by the applicants is indeed a risk that is general to the population of Lebanon. The respondent submits that it is trite law that, to be

considered a person in need of protection, one must face a personalized risk, rather than one that is generally faced by other citizens in the country (*Prophète v Canada (Minister of Citizenship and Immigration)*, 2008 FC 331, [2008] FCJ No 415; *Ould v Canada (Minister of Citizenship and Immigration)*, 2007 FC 83, [2007] FCJ No 103). Consequently, the respondent advances that the Board's conclusion on this issue was a reasonable one, as the applicants encountered the same situation as the general population of their country due to the widespread political unrest.

[29] Finally, with regard to the arguments raised in the applicants' Further Affidavit and Further Memorandum of Argument, the respondent counters that there is nothing to suggest in the applicants' documentary materials that the particular Board member in question could be deemed incompetent. The respondent suggests that the applicants' arguments amount to mere speculation and are inherently misguided, incorrect, unfounded and absurd.

Analysis

[30] The Court is of the view that the issue of the applicants' credibility is determinative in the case at hand.

[31] As a specialized Tribunal, the Board is entitled to make negative credibility determinations in the face of inconsistencies and contradictions and determine the plausibility of testimony (see *Aguebor v Canada (Minister of Employment and Immigration)* (FCA), [1993] FCJ No 732, 160 NR 315 [*Aguebor*]; *Razm v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 373, 164 FTR 140). Moreover, it is important to note that the burden rests on the refugee claimant to demonstrate the unreasonableness of the inferences and conclusions drawn by the Board. As the

Federal Court of Appeal stated in *Aguebor*, above, at para 4, "[a]s long as the inferences drawn by the tribunal are not so unreasonable as to warrant our intervention, its findings are not open to judicial review."

[32] In the present case, the applicants argue that the Board erred in its analysis of the credibility of their story as the Board presented contradictory statements, made factual mistakes, misunderstood facts, and did not take their testimony into account.

[33] However, upon considering the documentary evidence and the testimony provided by the applicants, the Court must conclude as to the reasonableness of the Board's decision. The Court observes that the Board noted the key omissions and implausibilities: it was implausible that Hezbollah would continually harass the principal applicant though he had never lived in Khiam, and though he affirmed on a number of occasions that he could provide no information; that the behaviour of the applicants was inconsistent with their alleged fear of persecution; that the principal applicant could not remember a key factual element of his narrative during his testimony.

[34] In addition, the Court does not accept the applicants' arguments that the Board made contradictory, confusing or false statements. Rather, the Court notes that the Board provided clear and comprehensive reasons for rejecting the applicants' explanations. Upon reviewing their submissions, the Court finds that the applicants have not satisfied their burden of establishing the unreasonableness of the Board's decision as to their credibility.

[35] Consequently, pursuant to the case of *Cienfuegos v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1262, [2009] FCJ No 1591, as the negative credibility finding is determinative, the applicants' failure to prove that it is unreasonable is fatal to their application, and thus no other issues need be addressed in the matter at hand (see also *Salim v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1592 at para 31, 144 ACWA (3d) 326; *Chan v Canada (Minister of Employment and Immigration*) [1995] 3 SCR 593 at para 147, 58 ACWS (3d) 287).

[36] Finally, the applicants argue that several current Board members applied on a competition by the Public Service Commission of Canada for the recruitment of future members of the Refugee Protection Division and did not qualify. Hence the applicant urges this Court to declare that all current Board members are therefore incompetent to hear a refugee claim until the *Balanced Refugee Reform Act* comes into force on June 29, 2012. (This same argument was also raised by counsel for the applicants in file IMM-6317-11).

[37] The test referred to by the applicants follows a reform to the appointment procedure for IRB members by Martin Jones & Sasha Baglay, *Refugee Law*, (Toronto: Irwin Law, 2007) at 22):

a. initial screening and a written test;
b. merit-based screening of candidates by an Advisory Panel constituted of academics, lawyers, and NGO representatives;
c. interviews, reference checks, and evaluation review by the Selection Board, comprised of IRB officials and external experts from other tribunals;
d. based on the assessments by the Advisory Panel and the Selection Board, the IRB Chairperson recommends qualified candidates to the CIC Minister;

e. the Minister makes recommendations to the Governor in Council.

[38] The applicants opine that, since a number of the current Board members have failed the test as part of the reform to the appointment procedure for IRB members, all members of the current Board are incompetent to hear refugee claims and that there is an apprehension of institutional incompetence on the part of all IRB members.

[39] With all due respect, in the circumstances, the applicants' argument is based on speculation. For instance, there is no evidence with respect to the questions in the test. At hearing before this Court, counsel for the applicants confirmed that the results of the test are confidential. In addition, there is no evidence to demonstrate whether the Board member in the case at bar failed the test or whether he was successful. More importantly, there no is evidence that the Board member indeed wrote the test.

[40] Generally speaking, the Court recalls that the limitations of statistics are well-known (*Es-Sayyid v Canada (Minister of Public Safety and Preparedness)*, 2012 FCA 59 at para 55, [2012] FCJ No 250). More particularly, in the case at bar, the Court finds that the interpretation advanced by the applicant based on statistics is farfetched and the Court does not agree that there is reasonable apprehension of bias on the part of the decision-maker. On the basis of lack of evidence and factual basis, the applicant's argument therefore fails.

[41] In light of the foregoing, the Court finds that the decision reached by the Board was reasonable. As a result, the application for judicial review will be dismissed.

Proposed Questions for Certification

[42] The applicants proposed the following questions for certification:

> Question 1:
> "Considering that both, current Governor in Council (GIC) appointees of the Refugee Board and future RPD civil servants of the Refugee Board, will be called upon to interpret the same definition of refugee and of persons in need of protection, does failure of GIC appointees, to succeed in the selection process to become future civil servant RPD members, under C-11, is indicative of an appearance incompetence and disqualify them as decision makers?"
>
> Question 2:
> "If the answer to the first question is YES, is the Immigration and Refugee Board in violation of principles of natural justice and Charter rights of refugee claimants and of persons in need of protection?"
>
> Question 3:
> "If the answer to the first question is YES, would it result in two discriminatory regimes for refugee claimants and persons in need of protection, one under current law, and another under C-11?"

[43] The Federal Court of Appeal stated the necessary criteria for certifying a question of general importance in *Canada (Minister of Citizenship and Immigration) v Liyanagamage* (FCA), [1994] FCJ No 1637, 176 NR 4. The proposed questions must transcend the interests of the immediate parties to the litigation, contemplate issues of broad significance or general application and be determinative of the appeal. In the Court's view, the questions formulated by the applicant do not satisfy these criteria.

[44] The first question put forth by the applicants simply invites speculation and, on the fact of this case, would not be dispositive of this appeal. Moreover, the Court found that there was no ground to conclude that there is a reasonable apprehension of bias or institutional incompetence. The Court agrees with the respondent that the question, as formulated, is more in the nature of a

reference question (*Pillai v Canada (Minister of Citizenship and Immigration*), 2001 FCT 1417, [2001] FCJ No 1944). Consequently, it is not appropriate for certification.

[45] Considering the negative answer to the first question, there is no need for the Court to answer the second and third question.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is dismissed;

2. There is no question for certification.

"Richard Boivin"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5987-11
STYLE OF CAUSE:	Chadi Faour et al v MCI
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	March 20, 2012
REASONS FOR JUDGMENT:	BOIVIN J.
DATED:	May 4, 2012

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