

Federal Court



Cour fédérale

Date: 20131107

Docket: IMM-10581-12

Citation: 2013 FC 1122

Toronto, Ontario, November 7, 2013

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

KHALIL YOUNES AND KHAWLA KHALIFE

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application concerns a challenge by an elderly husband and wife who claim refugee protection based on a well-founded fear of persecution in Lebanon as stateless Palestinians. In the decision under review, dated September 19, 2012, the Refugee Protection Division of the Immigration and Refugee Board (the RPD) rejected the Applicants' claims under ss. 96 and 97 of *IRPA* on two grounds: a finding of negative credibility with respect to the Applicants' evidence; and a determination that the conditions the Applicants would face upon a potential return to a refugee camp in Lebanon "may constitute discrimination, but not persecution" (Decision, para. 24).

I. **The Negative Credibility Finding**

[2] With respect to the RPD's decision, it is necessary to repeat the established law with respect to the making of a negative credibility finding as I have stated in *Istvan Vodics v Minister of Citizenship and Immigration*, 2005 FC 783:

[10] With respect to making negative credibility findings in general, and implausibility findings in particular, Justice Muldoon in *Valtchev v. Canada (Minister of Citizenship & Immigration)* (Fed. T.D.), states the standard to be followed:

6. The tribunal adverts to the principle from *Maldonado v. M.E.I.*, [1980] 2 F.C. 302 (C.A.) at 305, that when a refugee claimant swears to the truth of certain allegations, a presumption is created that those allegations are true unless there are reasons to doubt their truthfulness. But the tribunal does not apply the *Maldonado* principle to this applicant, and repeatedly disregards his testimony, holding that much of it appears to it to be implausible. Additionally, the tribunal often substitutes its own version of events without evidence to support its conclusions.

7. A tribunal may make adverse findings of credibility based on the implausibility of an applicant's story provided the inferences drawn can be reasonably said to exist. However, plausibility findings should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the manner asserted by the claimant. A tribunal must be careful when rendering a decision based on a lack of plausibility because refugee claimants come from diverse cultures, and actions which appear implausible when judged from Canadian standards might be plausible when considered from within the claimant's milieu. [see L. Waldman, *Immigration Law and Practice* (Markham, ON: Butterworths, 1992) at 8.22]

[Emphasis added]

[11] It is not difficult to understand that, to be fair to a person who swears to tell the truth, concrete reasons supported by cogent evidence must exist before the person is disbelieved. Let us be clear. To say that someone is not credible is to say that they are lying. Therefore, to be fair, a decision-maker must be able to articulate why he or she is suspicious of the sworn testimony, and, unless this can be done, suspicion cannot be applied in reaching a conclusion. The benefit of any unsupported doubt must go to the person giving the evidence.

[12] [With respect to the provision of clear reasons] [t]he Federal Court of Appeal impresses a decision-making duty on the CRDD in *Hilo v. Canada (Minister of Employment & Immigration)* (1991), 15 Imm. L.R. (2d) 199 (Fed. C.A.) at paragraph 6 as follows:

In my view, the board was under a duty to give its reasons for casting doubt upon the appellant's credibility in clear and unmistakable terms. The board's credibility assessment, quoted supra, is defective because it is couched in vague and general terms.

In addition, as expressed in *Leung v. Canada (Minister of Employment & Immigration)* (1994), 81 F.T.R. 303 (Fed. T.D.) at paragraph 14, the duty to be clear is linked to a requirement to state the evidence:

The Board is under a very clear duty to justify its credibility finding with specific and clear reference to the evidence.

[Emphasis added]

[3] In the hearing before the RPD, the female Applicant primarily provided the sworn evidence in support of the claim. The RPD's concerns with respect to her credibility are addressed in the following paragraphs of the decision rendered:

[10] The claimant indicated that the principal reason the claimants left Lebanon was the alleged raid on their residence in Lebanon, and assault on them, in August 2009. In addition, they alleged that their home was ultimately taken by militant groups in 2011. For credibility reasons, the Panel does not accept that either of these events occurred. Explanation follows.

[11] The claimant indicated in testimony that during the August 2009 event, she was kicked and hit, and there was an attempt to remove her niqab. In addition, her husband was spat on in the face and insulted. However, in the Narrative, it was only written that armed men threatened them, and there was no mention of any physical assault. The Panel also notes that no assault was mentioned IMM 5611, part of Exhibit R/A-2, the Port of Entry (POE) Notes.

[12] The claimant did not require medical attention for injuries suffered during this alleged assault, thus the assault could not be documented by any medical records. She said she believed she needed psychological help due to the event, but she did not take it. Thus, the assault could not be documented by any medical records.

[13] The claimant was asked why it was not mentioned in her Narrative that this assault occurred. Her answer was that it was so traumatic to her that she did not wish to mention it. It was pointed out to her that she had chosen to mention it at the hearing, thus she was asked again why she had not mentioned it in the Narrative. She merely repeated that it was traumatic, which was non-responsive. Especially given that the alleged assault could not be documented, the Panel finds that its mention at the hearing is an embellishment only, from which the panel makes a negative inference as to credibility.

[...]

[16] The claimant was also unable to provide documentary evidence that their home was confiscated by militants in 2011 as they alleged. The Panel does note the two e-mails in Exhibit C- 5, from persons close to the claimants, indicating that the home was seized as alleged, and that the claimants requested that evidence thereof be provided. None was. Considering the other concerns in regard to credibility as noted herein, and given the fact that this is not documentary third-party corroborative evidence, the Panel gives these e-mails relatively little weight, insufficient to establish that the claimants are credible in this regard. Thus, the Panel finds that this expropriation did not occur.

[Emphasis added]

[4] With respect to the female Applicant's evidence that she was assaulted in the raid on her home, the RPD found that the difference between the Port of Entry notes, the PIF, and her evidence

given during the course of the hearing to be of critical importance. Within the seven lines of text in paragraph 13 of the decision the RPD provides a line of reasoning which is based on the Applicant's evidence elicited by the RPD Member during the hearing of the claim beginning with the statement "let me ask you a few questions":

MEMBER: Okay, have you...what problems have you had due to your gender?

CO-CLAIMANT: I was ill treated and they persecuted me.

MEMBER: Can you be more specific, give details? [...]

[...]

CO-CLAIMANT: They persecuted me; they used obscenities (inaudible) to me and since I happen to be a Muslim woman this is contradictory to our traditions and our habits. They treated me very badly, they kicked me with their feet and they tried to remove my Hijab off my head ...

MEMBER: They being, sorry? Who is they?

CO-CLAIMANT: Those who attack us in our house and who laid hand on our house.

MEMBER: Those who attacked our house and what?

CO-CLAIMANT: And those who took over our house.

MEMBER: I see and so they hit you and kicked you?

CO-CLAIMANT: Yes, they did and they also insulted my husband, they told him that he was unable to protect his wife and they spat on his face.

[...]

MEMBER: Okay. Sorry I just need to concentrate. Yes, so from the beginning, did they also beat your husband?

CO-CLAIMANT: One of them was about to beat him but they observed that he was exhausted and was very sick.

MEMBER: I see and you they kicked and hit?

INTERPRETER: They?

MEMBER: You they kicked and hit?

CO-CLAIMANT: Yes.

MEMBER: Did you require medical attention?

CO-CLAIMANT: No, but I believe I was in need of a psychologist.

MEMBER: Did you seek mental health care?

CO-CLAIMANT: No, I did not. What was our minds then was how to get rid of this situation we were in. They did certain gestures that were

MEMBER: Gestures, yeah, yeah.

CO-CLAIMANT:...that were so obscene I really wished that the ground would cleave and get me into that hole.

MEMBER: Oh, I understand. Why is it that you did not mention in your narrative that you were beaten?

CO-CLAIMANT: Because I would not really want to live through it again, whenever I think about it or talk about it it all gets almost refreshed in my mind.

MEMBER: Well you mentioned it today; why not in your pif narrative?

CO-CLAIMANT: I did not wish really to think about it so much and put it on paper and re-live it, love [sic] it over again.

(Tribunal Record, pp. 583-586)

[5] It is obvious from the transcript that the Applicant was responsive to the RPD Member's questioning to add further evidence to the Port of Entry and PIF statements. It appears that the RPD Member simply did not accept the Applicant's evidence that trauma was her reason for not providing the statements in the initiating documents. I find that the rejection of the Applicant's reason for not mentioning the assault in her PIF constitutes an implausibility finding: that is, it is implausible that the trauma she testifies to is a reason for not mentioning the assault. According to the decision in *Valchev*, to reach this finding the RPD was required to conclude that the Applicant's evidence was "outside the realm of what could reasonably be expected". There is no such finding.

[6] In my opinion, the RPD Member failed to provide a clear and unmistakable reason for disbelieving the Applicant's sworn testimony provided in answer to the questioning conducted. Therefore, I find that the RPD's negative credibility finding is erroneous.

[7] With respect to the fact that the Applicants did not claim protection for a year and a half following their arrival in Canada, the RPD found as follows:

[19] Considering all the above, the Panel finds that the claimants' behaviour indicated that they did not have a subjective fear of a return to Lebanon. They claimed to have feared Lebanon throughout,

and to have come to Canada to escape Lebanon. Yet, they made no claim for over a year and a half after arrival, and made no efforts to even research how they might make a claim. She claims that the alleged expropriation of their residence in 2011 spurred their decision to claim, but the Panel has found [in paragraph 16] that no such expropriation occurred. Further, given that the claimants claim to have feared Lebanon, and the Panel finds from their behaviour that they did not, from this the panel makes a negative inference as to credibility.

[20] Given all the above credibility concerns, the Panel finds that the claimants' evidence, overall, has not been credible, and thus insufficient to support their claim for refugee protection.

[Emphasis added]

Paragraph 19 of the decision establishes that the erroneous negative credibility finding made in paragraph 13 had a pervasive and perverse effect throughout the decision and, indeed, even resulted in the conclusion that the Applicants had not established a well-founded subjective fear in making their claim.

[8] In addition, as an element of the negative credibility finding made in paragraph 13, the RPD Member expected documentation to substantiate the assault of the Applicant. Indeed, as stated in paragraph 12 of the decision, there was no documentation of the assault because the Applicant did not require medical attention. As set out in paragraph 16 of the decision, the RPD also expected documentary evidence to support the Applicants evidence that their home was confiscated in 2011, but effectively rejected two emails supplied as evidence of this fact. I find that the rejection was erroneously made because the evidentiary worth of the emails was not considered independently from the erroneous negative credibility finding with respect to the female Applicant's evidence.

[9] Given the detrimental impact of the RPD's erroneous negative credibility finding on the Applicants' claim for protection, the decision under review must be set aside. However, there is also a second reason.

II. The Discrimination vs. Persecution Finding

[10] Because the Applicants' identity as stateless Palestinians returning to Lebanon was accepted by the RPD, the RPD properly concluded that a persecution vs. discrimination determination was required.

[11] In the result, the RPD did not make a finding of persecution of Palestinians in Lebanon. The entirety of the RPD's reasons for reaching this conclusion are as follows:

[24] It is incumbent on the Panel to make a determination as to whether the conditions the claimants would have to live under in the event of a potential return to Lebanon amount to persecution, or is simply discrimination and/or harassment, which latter classification would not result in refugee protection. This analysis assumes that they would live in their former refugee camp, Ain El Hilweh, and in their former residence, as the Panel has not accepted the allegations that their home was damaged and then confiscated, or indeed that they were ever personally attacked. The starting point is whether the potential harm to claimants is a serious one. Another way of stating the test is whether any core human right of the claimants would be denied should he return to Lebanon and live in a refugee camp for Palestinians. Summarizing the evidence, it appears that UNWRA supports the residents of the camp to a significant extent. There have been no allegations that Palestinian refugees do not have enough to eat or accommodation. Basic education and some health care is provided. Thus, the populace appears to be able to live a basic life with the essentials of life provided. This is not to say that this is a desirable way to live one's life, only that it is adequate for persons to live their lives with their essential needs fulfilled. The Panel notes the other restrictions such as not having the right to vote, be citizens, or have fully unfettered access in the country. However, the Panel does determine that these conditions do not derogate from its finding, which it makes, that the conditions the claimants would face upon a

potential return to Lebanon and a refugee camp may constitute discrimination, but not persecution.

[25] It is also noted from Item 2.3 that "Over the last three years, the government, in coordination with UNRWA, has taken concrete steps to improve relations between Palestinian refugees and the Lebanese community and address the housing conditions in the camps". Thus, there is in addition reason to believe that the conditions of Palestinian refugees in Lebanon will improve.

[26] The Panel has also reviewed the very extensive documentation provided in the submission. However, these do not derogate from the Panel's finding herein that the situation of stateless Palestinians in Lebanon does not amount to persecution.

[27] In that regard the Panel notes the particular situation of the claimants, as indicated by the visa application in Exhibit RJA-4. The documents therein indicate that the claimants owned property and a vehicle, and appeared to have significant financial resources. In addition, as discussed in testimony, the claimants traveled frequently and for trips of significant durations, further evidence that they personally, at least, were relatively prosperous and by no means surviving at the margins of existence, as other residents of Palestinian refugee camps might be.

[28] There was also evidence provided of danger in the camp due to fighting amongst Palestinian factions. This is unfortunate indeed. However, any risk to the claimants from this, the Panel finds, is in the category of generalized risk, as the camps apparently can be generally dangerous places, subject to violence by militants. It is remembered, though, that the Panel has found that these claimants have not been personally targeted.

[29] Counsel has provided a very large amount of printed material, in Exhibits C-4 and C-5 as well as the submission, which indicate that the camps can be a generally dangerous place, subject to violence. As indicated above, though, the Panel has found this danger to be of generalized violence, for which the claimants are not entitled to refugee protection. The exhibits confirm the existence of the militant group that the claimants alleged seized their property. However, the Panel has found that there has been no such seizure.

[30] As a result of the above analysis, the Panel finds that the claimants do not have a well-founded fear of persecution, or a risk to their life, or a risk of cruel and unusual treatment or punishment, or a danger of torture upon a potential return to Lebanon.

[31] The Panel thus finds the claimants to not be Convention refugees under s. 96 nor persons in need of protection under s. 97 of the IRPA.

[Emphasis added]

[12] I agree with Counsel for the Applicants' following argument that the RPD utterly failed to address the evidence on the issue at hand, to present a credible analysis of that evidence, and further, the decision rendered disregards and misstates crucial documentary evidence about the plight of Palestinians in Lebanon:

It is respectfully submitted that the R.P.D. Panel erred by unreasonably determining that what the Applicants faced in Lebanon "may constitute discrimination" as opposed to the factually-based and more serious level of systematic 'persecutory discrimination'. Evidently, the R.P.D. Panel's Decision was based on an overly simplistic interpretation of the voluminous documentary evidence filed by the Applicants, which focused on the past, present and future plight of the stateless-Palestinian minority population of Lebanon. Moreover, the Panel failed to make reference to and assess the pivotal documentary evidence before it, which amply supported the Applicants' required past and anticipated persecutory discrimination, mistreatment and compelling risks of harm.

[...] Seen in the most positive light, the stateless-Palestinians of Lebanon have been and continue to be the beneficiaries of an on-going cycle of exclusion, suffering, deplorable neglect, misery, insecurity and despair. It is clear that the Panel simply did not carefully analyze the overwhelming documentary evidence in light of the particular circumstances of the Applicants, which it was obliged to do.

In short, the matter of the Applicants is not one in which the R.P.D. Panel's dismissive, "cookie-cutter" or "proforma" - style analysis will suffice and, as a result, serious doubts may be cast on the thoroughness and accuracy of its analysis and findings, in its totality.

Moreover, it is submitted that the R.P.D. Panel in its Reasons, erred by both disregarding and misstating material documentary evidence before it and improperly making selective use of the evidence, which led to it erroneous findings of fact, concerning the issue of the Applicants' plight as stateless-Palestinians in Lebanon.

As noted by the Federal Court, in the context of a failed Refugee Claim, in the matter of *Simpson v. Canada* (11, August, 2006, IMM-5326-05 (F.C.A):

“While it is true that there is a presumption that the Board considered all the evidence, and there is no need to mention all the documentary evidence that was before it, where there is important material evidence on the record that contradicts the factual finding of the Board, a blanket statement in the Decision that the Board considered all of the evidence will not be sufficient. The Board must provide reasons why the contradictory evidence was not considered relevant or trustworthy.”

(Applicants’ Memorandum of Argument, paras. 25 - 26)

[13] With respect to the RPD’s opinion stated in paragraph 24 of the decision that the identification of violations of core human rights is critical in reaching a determination of persecution of Palestinians in Lebanon, Counsel for the Applicants argues that cogent evidence on the record was not considered:

In the article entitled “Persecution faced by Palestinian Refugees in Lebanon” from the website <http://refugees.resist.ca/document/situationlebanon.htm>, the following is noted:

The treatment of Palestinian refugees in Lebanon has been recognized to constitute a violation of a plethora of basic human rights. Amnesty International reported in 2003 that the Lebanese treatment of stateless Palestinians is in violation of:

- The International Covenant on Economic, Social, and Cultural Rights;
- The International Covenant on the Elimination of All Forms of Racial Discrimination;
- The Convention on the Rights of the Child;
- The International Covenant on Civil and Political Rights;
- The Convention on the Elimination of All Forms of Discrimination Against Women, and;
- The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Canada has either ratified or acceded to each of these instruments. Palestinians in Lebanon face systematic discrimination that jeopardizes their capacity to attain the essentials of a safe and healthy existence.

Jordan, Lebanon, and Syria have the largest Palestinian refugee populations. Those in Lebanon probably suffer the most out of these three communities. For them, the pain associated with the loss of their homes, the decades of exile in foreign countries is aggravated by a policy of systematic discrimination against them.

According to UNRWA, the hundreds of thousands of Palestinian refugees in Lebanon have the highest rate of people living in “abject poverty” of all the Palestinian refugee communities they serve.

Palestinian refugees were subject to arrest, detention, and harassment by state security forces, Syrian forces, and rival Palestinians.

United Nations Relief and Works Agency (UNRWA), Amnesty International and the Palestinian Human Rights Organization have recognized that, as a result of this systematic discrimination, Palestinian Refugees in Lebanon are almost entirely dependent on UNRWA for basic services.

UNRWA is, however, unable to provide these services, due to budget constraints.

Since 1994, UNRWA has been facing serious budget shortages which have affected the quality and scope of the services it renders.

For over 50 years, [Palestinian refugees] have been excluded from the international system for the protection of refugees.

The lack of adequate assistance is only one of the failures of the international community towards Palestinian refugees living in UNRWA’s area of operation. Unlike other refugees, they are not protected by the 1951 Convention relating to the Status of Refugees or the United Nations High Commissioner for Refugees (UNHCR). Both the 1951 Convention and the Statute of UNHCR exclude Palestinian refugees from international protection. Ironically, like the Lebanese law barring [Palestinian refugees] from owning property in Lebanon, the Convention and the Statute do not explicitly exclude Palestinian refugees; rather, they exclude anyone who receives assistance from other organs of the United Nations. Here again, Palestinian refugees find themselves singled out.

Thus, because of their unique situation, Palestinian refugees in Lebanon have been denied virtually every available means of securing their basic rights:

The exceptional condition of Palestinian statelessness and Palestinian dispersal extends itself to all political, economic, social and humanitarian spheres.

Harsh discriminatory practices by the Lebanese government and the incapacity of lack of UNRWA to fulfil its mandate have driven Palestinian refugees into a situation characterized by abject poverty, isolation, and persecution.

This deplorable situation is also highly unlikely to improve in the foreseeable future.

(Applicants' Memorandum of Argument, para. 37)

I agree with this argument. As a result, I find that the RPD failed to reach a supportable discrimination vs. persecution determination as required, and, thus, for this second reason the decision must be set aside.

ORDER

THIS COURT ORDERS that the decision under review is set aside and the matter is referred back for redetermination by a differently constituted panel.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: KHALIL YOUNES AND KHAWLA KHALIFE V THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

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DATED: NOVEMBER 7, 2013

APPEARANCES:

Marc J. Herman FOR THE APPLICANTS

Sybil Thompson FOR THE RESPONDENT

SOLICITORS OF RECORD:

HERMAN & HERMAN FOR THE APPLICANTS
Barrister and Solicitor
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada