

Federal Court



Cour fédérale

Date: 20160427

Docket: IMM-3724-15

Citation: 2016 FC 471

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, April 27, 2016

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

**KHALED EL-KHATIB, ALINA FLORENTIN
EL-KHATIB, SALAH EL-KHATIB,
ALEXANDRA GABRI EL-KHATIB, MAHA
MARIA EL-KHATIB AND MOHAMAD
EL-KHATIB**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

ORDER AND REASONS

Introduction

[1] The applicants—two brothers, their wives and the minor children of one of the couples—are from Romania. They arrived in Canada in August 2010 and claimed refugee protection on October 28 of the same year. They claim that they fled Romania because they were targeted by the local mafia, who allegedly extorted, threatened and physically assaulted them.

[2] On June 26, 2015, the Immigration and Refugee Board of Canada's Refugee Protection Division (RPD) dismissed the applicants' refugee claims, arguing that they were neither refugees nor persons in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act). The RPD essentially found that the applicants' credibility was undermined by contradictions, omissions and inconsistencies in relation to crucial elements of their story. It also found that by not claiming refugee protection until two months after arriving in Canada, the applicants had not behaved like people who genuinely feared for their lives.

[3] The applicants maintain that the RPD did not properly assess their credibility, that is, that it conducted a microscopic analysis of the evidence and failed to consider and assess the accounts and testimony of the two wives. They also feel that the RPD failed to take into account the fact that the Palestinian background of the two brothers, Khaled and Salah, is the source of the problems that forced them to leave Romania. Consequently, they are seeking judicial review

of the RPD's decision and ask that the matter be sent back for redetermination by a different panel.

[4] The question here is whether the RPD committed, in concluding as it did, an error justifying the Court's intervention in accordance with the provisions of section 18.1 of the *Federal Courts Act*, R.S.C., 1985, c. F-7.

[5] It is well established that the standard of review applicable to this type of matter is that of reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, [*Dunsmuir*]). According to this standard of review, the Court must show deference to the findings of fact or mixed law and fact made by the RPD.

[6] This deferential approach is particularly required when, as in this case, the impugned findings relate to the credibility and plausibility of the refugee claimant's story. In these matters, as the Federal Court noted in *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35 (F.C.T.D.) [*Cepeda-Gutierrez*], the Court should not substitute its view for that of the Board, which has the benefit not only of seeing and hearing the witnesses, but also of the expertise of its members in assessing evidence relating to facts that are within their area of specialized expertise (see also: *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, at paragraph 89 [*Khosa*]; *Lin v. Canada (Citizenship and Immigration)*, 2008 FC 1052, at paragraph 13; *Martinez Giron v. Canada (Citizenship and Immigration)*, 2013 FC 7, at paragraph 14; *Dong v. Canada (Citizenship and Immigration)*, 2010 FC 55, at paragraph 17; *Lawal v. Canada (Citizenship and Immigration)*, 2010 FC 558, at paragraph 11; *Quintero Sanchez v. Canada (Citizenship and Immigration)*, 2011 FC 491, at

paragraph 12). Thus, the Court will intervene only if the RPD made its non-credibility finding without regard to the evidence (*Cepeda-Gutierrez*, at paragraph 14; see also *Camara v. Canada (Citizenship and Immigration)*, 2008 FC 362, at paragraph 12).

[7] In this case, although the RPD appears to have conducted a microscopic examination of the applicants' refugee claims in some respects, I am of the opinion that, when considered as a whole, the RPD's decision has the qualities that make a decision reasonable in that it falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir*, at paragraph 47).

[8] The following contradictions, inconsistencies and omissions in the applicants' story do appear to fall within this range:

- a) The period during which Khaled allegedly worked in an exchange office: six years according to his account, and four years according to his testimony, which is a significant discrepancy.
- b) The incident where, in 2006, Khaled's extortionists allegedly came to the exchange office to threaten him and his clients. Khaled did not mention this incident in his account, thinking that he only had to include the important points of his story, a justification that, in my opinion, the RPD was entitled to depart from. Khaled testified in this regard that his error had been due to the fact that someone had interpreted for him the form on which he had written his account; however, on that same form, he indicated that he had not received any assistance from an interpreter.
- c) The injuries Khaled allegedly sustained at the hands of his extortionists in a police station, injuries that supposedly required hospitalization, and that are not mentioned in his account.

- d) The month in which Khaled allegedly began work as a dentist: November 2009 according to his account and August 2009 according to his testimony.
- e) Khaled's inability to explain why a mere exchange office employee and dentist would be the target of extortionists.
- f) The month in which Khaled allegedly stopped working at the dental office: August 2010 according to his account and July 2010 according to his testimony, the latter being the month in which he left Romania for Canada.
- g) The incident in which the brothers were allegedly attacked in a nightclub. Salah mentioned it in his account, but Khaled did not.
- h) The country Salah left in 1995 to study in Romania: Kuwait according to his account, and the United Arab Emirates according to his testimony.

[9] In my opinion, it was reasonable for all these contradictions and omissions to cause the RPD to have doubts as to the credibility of the applicants' story. In this context, I find that it was open to the RPD not to give weight to a local newspaper article that describes the applicants' alleged difficulties and that also contains inconsistencies, specifically in regards to Salah's daughter and the school she attended, as well as the letter from Salah's wife's parents, a document that, moreover, is not dated (*Jia v. Canada (Citizenship and Immigration)*, 2014 FC 422, at paragraph 19; *Huang v. Canada (Citizenship and Immigration)*, 2011 FC 288, at paragraph 21; *Li v. Canada (Citizenship and Immigration)*, 2015 FC 1273, at paragraph 23).

[10] Lastly, the RPD is presumed to have considered all the evidence before it, such that the fact that Khaled's and Salah's wives' evidence is not mentioned in the RPD's decision is not, in itself, sufficient to conclude that the RPD was unaware of it (*Cepeda-Gutierrez*, at paragraph 16;

Antrobus v. Canada (Citizenship and Immigration), 2012 FC 3, at paragraphs 5 and 6). In paragraph 6 of its reasons, the RPD clearly stated that it had [TRANSLATION] “heard the applicants’ testimony and analyzed the evidence in the record.”

[11] In any event, fear of the mafia and police remains the basis of all the applicants’ refugee claims. In this regard, the wives’ evidence adds nothing of significance to that of Khaled and Salah. In fact, they share the same fears as their husbands. Given that the brothers’ story was found not to be credible and the wives’ refugee claims largely depended on it, this argument cannot succeed.

[12] Lastly, in the context of this case, I do not find it unreasonable for the RPD to have drawn a negative inference from the fact that applicants did not claim refugee protection until two months after arriving in Canada. Nor do I find it unreasonable for it to have deemed insufficient the justifications provided by the applicants to explain the delay. As established in the jurisprudence of this Court, failure to seek protection in Canada at the first opportunity may constitute sufficient grounds upon which to reject a claim for refugee protection, because the delay can be construed as inconsistent with the behaviour of someone who genuinely fears for his or her life (*Earl v. Canada (Citizenship and Immigration)*, 2011 FC 312, at paragraphs 46-48; *Mesidor v. Canada (Citizenship and Immigration)*, 2009 FC 1245, at paragraph 12; *Huerta v. Canada (Citizenship and Immigration)* [sic] (1993), 157 NR 225, at paragraph 4, 40 ACWS (3d) 487). Without justifying in itself the rejection of the refugee claims in this case, it was also open to the RPD to infer from this delay that the behaviour of those involved was inconsistent with that of people who fear for their lives. In my view, in the context of this case,

this inference was within the range of possible, acceptable outcomes in respect of the facts and law.

[13] Again, it is not for this Court to re-examine the evidence in the record and substitute its own findings for those of the RPD. As we have seen, its role is more limited. In other words, the question is not whether another decision-maker would have concluded differently than the RPD after considering the same facts. The question is whether it was reasonable for the RPD to conclude as it did, keeping in mind that certain questions of mixed fact and law may have more than one reasonable outcome (*Dunsmuir*, at paragraph 47; *Khosa*, at paragraph 59). I have concluded that this was the case.

[14] Counsel for the parties have agreed that there is no need, in this case, to certify a question to the Federal Court of Appeal. I am also of that view.

ORDER

THE COURT ORDERS that:

1. The application for judicial review is dismissed;
2. No question is certified.

“René LeBlanc”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3724-15

STYLE OF CAUSE: KHALED EL-KHATIB, ALINA FLORENTIN
EL-KHATIB, SALAH EL-KHATIB, ALEXANDRA
GABRI EL-KHATIB, MAHA MARIA EL-KHATIB
AND MOHAMAD EL-KHATIB v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

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ORDER AND REASONS: LEBLANC J.

DATED: APRIL 27, 2016

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