

Federal Court



Cour fédérale

Date: 20160627

Docket: IMM-3145-15

Citation: 2016 FC 711

Ottawa, Ontario, June 27, 2016

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**JACK PANBOUKIAN,
CARINA PANBOUKIAN,
TAMAR KENDERJIAN &
CAREN PANBOUKIAN BY HER
LITIGATION GUARDIAN
JACK PANBOUKIAN**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, a family of four Armenian Christians from Lebanon, sought refugee protection in Canada on the basis of their fear of Islamist terrorist groups, particularly ISIS. They

originally came to Canada in 2012 on visitors' visas. The adult applicants subsequently applied for work permits, unsuccessfully. They made their refugee claim in 2014 after they learned that the security situation in Lebanon had seriously deteriorated.

[2] A panel of the Immigration and Refugee Board rejected the applicants' claim on the basis that ISIS was not actually in control of Lebanon and security forces had waged a successful campaign against it. In addition, the Board found that the applicants could probably live safely in Beirut (*ie*, they had an internal flight alternative (IFA)). Accordingly, the Board concluded that the applicants did not have a well-founded, objective fear of persecution in Lebanon. Its conclusion was upheld by the Refugee Appeal Division (RAD).

[3] The applicants submit that the RAD's decision was unreasonable because it failed to explain why the evidence before it, including new evidence filed by the applicants on their appeal, did not support a well-founded fear of persecution. In addition, they argue that the RAD unreasonably found that their delay in seeking refugee protection showed an absence of subjective fear of persecution. The applicants ask me to quash the RAD's decision and order another panel to reconsider their claim.

[4] I agree with the applicants that the RAD's findings were unreasonable on the evidence. Therefore, I will allow this application for judicial review.

[5] The sole issue is whether the RAD's decision was unreasonable.

II. The RAD's Decision

[6] In addition to confirming the Board's conclusions on objective fear and IFA, the RAD went on to find that the applicants' delay in claiming refugee status showed an absence of subjective fear of persecution in Lebanon. The RAD noted that the refugee claims were filed only after the adult applicants' work permits were denied. It found that this showed that the refugee claim was simply one of a number of routes the applicants explored in trying to remain in Canada.

[7] The RAD also noted that the applicants did not fear persecution in 2012, and that the evidence did not show that ISIS was now targeting Armenian Christians in any significant way in Lebanon.

[8] The RAD allowed the applicants to file three new documents. It rejected a fourth on the basis that it was reasonably available before their claim was heard by the Board. Nevertheless, the RAD found that the evidence before it failed to show that the applicants had a well-founded fear of persecution from ISIS.

III. Was the RAD's decision unreasonable?

[9] The Minister makes the preliminary argument that the affidavit of the applicant Jack Panboukian contains argument and legal opinion and that those portions of it should be struck. I agree, and have only considered the admissible contents of the affidavit.

[10] The Minister also maintains that the RAD's decision was reasonable on the evidence. The Minister concedes that ISIS has persecuted Christians in some areas of Lebanon, but points out that the applicants had no problems before they left in 2012. In addition, the evidence showed that Lebanese security forces had achieved some success in addressing the threat posed by ISIS. In particular, Beirut was fairly safe.

[11] I disagree with the Minister's submissions. In my view, the evidence showed that the applicants' fear reasonably arose from the circumstances in Lebanon in 2014, even though they had not experienced serious problems in 2012.

[12] The recent evidence before the Board and the RAD showed that:

- The threat from ISIS was not confined to border areas.
- Threats had been made against Christians.
- Both the Prime Minister and the Foreign Minister of Lebanon conceded that their country lacked the resources to combat ISIS.

[13] In addition, the new evidence before the RAD established that:

- The threat from ISIS was spreading, and youths were preparing to conduct suicide attacks.
- Jihadist fighters were readying themselves for an attack against Christian towns.
- ISIS had imported car bombs into Beirut, indicating an increased risk in that city.

[14] In my view, this evidence contradicted the RAD's findings in respect of the applicants' subjective and objective fear, as well as its conclusion that they had an IFA in Beirut. The RAD did not analyze that evidence in its reasons. Accordingly, I find that its decision does not represent a defensible outcome based on the facts and the law.

IV. Conclusion and Disposition

[15] The RAD failed to address important evidence supporting the applicants' claims and contradicting its findings that the applicants did not have a subjective or objective fear of persecution in Lebanon. Therefore, I find that its conclusion was unreasonable and must, therefore, allow this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed, and the matter is returned to another panel of the RAD for reconsideration.
2. No question of general importance is stated.

“James W. O'Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3145-15

STYLE OF CAUSE: JACK PANBOUKIAN, CARINA PANBOUKIAN,
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HER LITIGATION GUARDIAN JACK PANBOUKIAN
v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 3, 2016

JUDGMENT AND REASONS: O'REILLY J.

DATED: JUNE 27, 2016

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