

Federal Court



Cour fédérale

Date: 20170419

Docket: IMM-3764-16

Citation: 2017 FC 374

Ottawa, Ontario, April 19, 2017

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

**LUBNA ABD ALRAHMAN FOUAD ABU ZAID
AMER MOHAMMAD ABDEL-MUHSEN AL-DIBEH
AYHAM AMER MOHAMMAD ABDEL-MUHSEN
AL-DIBEH
AHMAD AHMER MOHAMMAD ABDEL-MUHSEN
AL-DIBEH**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants are a family from Jordan. Lubna Abu Zaid, the principal Applicant, is 33 years old and her husband, Amer Al-Dibeh, is 35 years old. Their two children, Ayham and Ahmad, are six and four years of age, respectively. Following their arrival in Canada on January 14, 2016, the Applicants made a claim for refugee protection, alleging that they faced

risk of harm in Jordan from the family of a married woman who falsely alleged she had an extra-marital affair with Amer. However, the Refugee Protection Division [RPD] of the Immigration and Refugee Board rejected the Applicants' claim in a decision dated August 5, 2016. The Applicants have now applied under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for judicial review of the RPD's decision.

I. Background

[2] The Applicants' claim is based on an accusation of adultery and threats of death that occurred in July 2015. According to the Applicants, Amer's sister witnessed a male stranger leaving the apartment of a woman named Iklas, leading her to believe that Iklas was having an extra-marital affair. Amer's sister and Iklas are related through marriage; their husbands are brothers. At around the same time, Iklas' husband was in the process of divorcing Iklas based on an allegation of adultery. Iklas confronted Amer's sister and threatened her to not provide evidence at the divorce proceeding. If Amer's sister did not comply with this threat, Iklas said she would falsely tell her family that the stranger leaving her apartment was Amer. Despite this threat, Amer's sister gave evidence at the divorce proceeding and, subsequently, Iklas told her family that she had had an extra-marital affair with Amer. Amer's sister relayed this information to Amer on July 3, 2015.

[3] The following day, Amer consulted the Mukhtar, the local village leader, for advice; but the Mukhtar was unable to resolve the situation. The Mukhtar advised Amer to flee their village because the police would not provide protection and local culture would require Iklas' family to avenge the violation of their family's honour. The Applicants fled to Lubna's father's house in

Irbid, Jordan, where they stayed until leaving Jordan. In late July 2015, the Applicants applied for a visa to travel to the United States and, after receiving their US visa on September 9, 2015, they began making arrangements to leave Jordan. On November 17, 2015, the Applicants left Jordan and travelled to the US to stay with Lubna's sister in Louisiana. Some two months later, the Applicants travelled to Canada and made a claim for refugee protection.

II. The RPD's Decision

[4] The RPD rejected the Applicants' claim in a decision dated August 5, 2016, finding that they were neither Convention refugees nor persons in need of protection. The RPD noted several concerns with the testimony of Lubna and Amer and, ultimately, found that the Applicants were generally not credible. The RPD questioned the credibility of the Applicants' claim that they fled to Lubna's father's house in Irbid prior to leaving Jordan, noting that the Applicants had omitted this detail in their initial refugee forms and mentioned it for the first time in their Basis of Claim [BOC] form. The RPD also questioned why Iklas' family never attempted to locate the Applicants while they were hiding in Irbid; the RPD noted that Iklas and Amer's sister are related through marriage and, in the RPD's view, it did not make sense that Iklas' family would not have attempted to find Amer through Lubna's family relations. The RPD drew a negative inference in this regard.

[5] The RPD also made a negative inference concerning the Applicants' delay in leaving Jordan after receiving their US visa. The RPD noted that the Applicants received their visa on September 9, 2015, but they did not leave Jordan until November 17, 2015. In their BOC form, the Applicants attributed this delay to their decision to wait for the Mukhtar to resolve the

conflict. During the hearing, however, the Applicants stated that they delayed their departure to obtain money to purchase their plane tickets; Amer testified that he sold his car to raise the money, and waited an additional month for cheaper airfare. In response to the RPD's questions about the Applicants' inconsistent explanations for not leaving Jordan sooner than they did, the Applicants explained that they were unaware they should have mentioned these details in their BOC form and had only 10 days to complete the form. The RPD did not accept this explanation, stating that:

[16]...The panel does not find that this reasonably explains the discrepancy between his oral testimony around his delay and his written statements. If financial reasons were the significant factor, it is reasonable to expect this to have been mentioned in the BOC ... The panel finds this to be a hearing room embellishment to explain away the concerns of the panel around the delay in departure. ...

[17] The panel finds these actions inconsistent with those reasonably expected of individuals whose lives were in peril in Jordan as alleged.

[18] The panel draws a negative inference as to both subjective fear and the credibility of their allegations from the unreasonable delay in leaving Jordan and the inconsistent testimony provided on the issue.

[6] As to the Applicants' failure to make a refugee claim in the United States, the RPD observed that the Applicants have close family ties in Canada and the US and were visiting family in the US for approximately two months before coming to Canada to seek protection. The Applicants explained that they felt Canada was a better option because they had concerns, as Muslims, about the political climate in the US. The Applicants acknowledged, however, that they did not have any problems while in the US and felt generally welcomed as Muslims. Although it did not make a further negative credibility finding from the Applicants' failure to

seek refuge in the US, the RPD remarked that this failure was consistent with the credibility and subjective fear concerns previously identified.

[7] The RPD had concerns about the Applicants' failure to mention that Iklas and Amer's sister were related by marriage. The RPD noted that this detail was absent from the BOC narrative, and Iklas was described only as a woman in the neighbourhood. When the Applicants were asked to explain this omission, Amer stated that he did not think it was a key detail worth mentioning, and that he may have overlooked the fact since he only had 10 days to complete the BOC form. The RPD found this omission had not been reasonably explained and drew a negative inference from this omission.

[8] The RPD challenged the Applicants' credibility concerning the threats from Iklas' family. The RPD questioned Amer as to why he consulted the Mukhtar about threats received from Iklas' family on July 4, 2015, even though Iklas did not inform her family about the alleged adultery until the following day on July 5, 2015. The Applicants were unable to explain this inconsistency. Amer testified that he sought advice from the Mukhtar as a precaution before Iklas' brothers threatened him. The RPD discounted this explanation. Lubna also explained that she overheard threats made against the entire family in her residential building. The RPD questioned why Lubna never mentioned any of these threats in her BOC form, given that this was a relevant and significant detail. The RPD made negative credibility findings based on these inconsistencies and omissions.

[9] The RPD noted the absence of any credible documentation to support the Applicants' claim. The Applicants did not have any court documents to verify that Iklas' husband had commenced divorce proceedings or that Amer's sister had provided testimony. The RPD recognized that, while the Applicants may not have direct access to court documents since they were not parties in the divorce proceedings, Amer's sister should have had access to some documentation because she provided testimony as a witness. The RPD placed little weight on the letters provided by Amer's sister, Amer's brother, and the Mukhtar because the Applicants had not provided the original documents or copies of the emails which verified proof of receipt. The RPD noted that Rule 42 of the *Refugee Protection Division Rules*, SOR/2012-256 [Rules], clearly indicates that originals are required, and the Applicants' counsel should have made them aware of this requirement. Although the RPD granted time for these documents to be produced after the hearing, they had not been provided by the time the RPD issued its decision some five months after the hearing. Additionally, the RPD noted various other faults with these letters, such as being undated, and gave each one little weight following its examination of the letters.

[10] The RPD questioned the reasonableness of the Applicants' allegation that they were at risk of honour violence caused by a false allegation of adultery, expressing doubt that in a patriarchal society, Iklas, a female complainant, would be believed over Amer. The RPD also noted that Amer's sister could corroborate Amer's story and that Iklas would likely not be believed given her tarnished reputation because of a past affair. The Applicants were unable to explain these concerns to the RPD, and the RPD found that Amer provided "shifting and inconsistent testimony" in this regard. The RPD confirmed its doubts about the Applicants' alleged risk of honour violence by looking to the country condition documentation which stated

that males were rarely victims of honour crimes and there were no reported cases where a male had been killed. The RPD found, in view of the country documentation, that there was no evidence that Lubna or the children would face a risk of harm due to the adultery allegation made against Amer.

[11] The RPD ultimately concluded that:

[46] Given all of the above concerns, the panel finds the principal and male claimants to have been generally not credible. ...the story as a whole lacks the ring of truth.

[47] The panel finds that it has insufficient credible or trustworthy evidence to establish the allegations in these claims. The panel finds, on a balance of probabilities, that Iklas did not threaten the male claimant's sister with false allegations against him; that she has not told anyone that it was with the male claimant that she was having an affair; and that the claimants are not being threatened related to false allegations against the male claimant.

III. Issues

[12] The Applicants' submissions raise the following issues:

1. What is the appropriate standard of review?
2. Did the RPD breach its duty of procedural fairness?
3. Were the RPD's negative credibility findings unreasonable?
4. Did the RPD improperly require the Applicants to provide corroborating evidence?
5. Did the RPD improperly reject the three letters?

IV. Analysis

A. *Standard of Review*

[13] The RPD's assessment of the Applicants' credibility is to be reviewed on a standard of reasonableness (*Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 at para 4, 160 NR 315, (CA)). Credibility findings have been described as the "heartland of the Board's jurisdiction," in that they are essentially pure findings of fact (*Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at para 7, 228 FTR 43). Moreover, the RPD's interpretation and assessment of evidence is reviewable on a standard of reasonableness (*Oluwafemi v Canada (Citizenship and Immigration)*, 2009 FC 1045 at para 38, 181 ACWS (3d) 554; *Lin v Canada (Citizenship and Immigration)*, 2008 FC 698 at paras 11-12, [2008] FCJ No 888 [*Lin*]). The RPD's factual findings are to be given significant deference (*Lin* at para 11). The reasonableness standard also applies to allegations that the RPD ignored relevant corroborative evidence (see: *Eze v Canada (Citizenship and Immigration)*, 2016 FC 601 at paras 12, 22, 267 ACWS (3d) 681; *Maldonado Ventura v Canada (Citizenship and Immigration)*, 2012 FC 463 at paras 24, 30, 408 FTR 161; *Hadesh v Canada (Citizenship and Immigration)*, 2016 FC 747 at para 17, [2016] FCJ No 749).

[14] Consequently, this Court should not intervene so long as the RPD came to a conclusion that is transparent, justifiable, intelligible, and within the range of possible, acceptable outcomes based on the law and the facts before it (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at

para 59, [2009] 1 SCR 339 [*Khosa*]). A reviewing court can neither substitute its own view of a preferable outcome nor can it reweigh the evidence (*Khosa* at paras 59, 61).

[15] The standard of review to determine whether the RPD fulfilled its duty of procedural fairness is correctness (*Dirie v Canada (Citizenship and Immigration)*, 2015 FC 1052 at para 15, [2015] FCJ No 1144; *Ngeze v Canada (Citizenship and Immigration)*, 2016 FC 858 at para 22, [2016] FCJ No 934; *Mission Institution v Khela*, 2014 SCC 24 at para 79, [2014] 1 SCR 502; *Khosa* at para 43). Under the correctness standard, a reviewing court shows no deference to the decision maker's reasoning process and the court will substitute its own view and provide the correct answer if it disagrees with the decision maker's determination (see: *Dunsmuir* at para 50).

[16] Moreover, the Court must determine whether the process followed in arriving at the decision under review achieved the level of fairness required by the circumstances of the matter (see: *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at para 115, [2002] 1 SCR 3). When applying a correctness standard of review, it is not only a question of whether the decision under review is correct, but also a question of whether the process followed in making the decision was fair (see: *Hashi v Canada (Citizenship and Immigration)*, 2014 FC 154 at para 14, 238 ACWS (3d) 199; and *Makoundi v Canada (Attorney General)*, 2014 FC 1177 at para 35, 249 ACWS (3d) 112).

B. *Did the RPD breach its duty of procedural fairness?*

[17] The Applicants argue that the RPD breached its duty of procedural fairness by not notifying them that it would “depart from the Act” and apply legal and technical rules of evidence in assessing the three letters, contrary to subsection 170(g) of the *IRPA*. According to the Applicants, the RPD should have notified them as to its concerns over the authenticity of the letters and provided them with an opportunity to respond. The failure to do so, the Applicants say, was a breach of procedural fairness. I find no merit in this argument because it is nothing more than a complaint about the RPD not assigning more weight than it did to these three letters.

[18] The RPD noted at the hearing that the Applicants had failed to provide either the original copies of the three letters or the corresponding emails which proved receipt, and further noted that the Applicants had not provided these documents after the hearing. The Applicants were made aware of the RPD’s concerns about these letters at the hearing as well as the requirements under Rule 42 of the *Rules*. This is not a case where, post-hearing, the RPD looked to extrinsic documentation in reaching its decision without affording the Applicants an opportunity to address such documentation. On the contrary, the RPD in this case merely assessed at the hearing the very documentation provided by the Applicants themselves. There is nothing unfair about the RPD proceeding in such a manner.

C. *Were the RPD’s negative credibility findings unreasonable?*

[19] The Applicants submit that the RPD erroneously made negative inferences as to the Applicants’ credibility because they failed to include minor or elaborate details in their BOC

forms. According to the Applicants, the RPD further erred by making a negative credibility finding because the Applicants failed to provide court documentation to establish the divorce proceeding between Iklas and her husband. The Applicants also take issue with the RPD's finding that it was unlikely that Amer, as a male, would be targeted in an honour killing while the female Iklas would be allowed to live. The Applicants say the RPD can only make adverse findings based on the implausibility of a claimant's story in the clearest of cases where the allegations are outside the realm of what could reasonably be expected. The Applicants also challenge the RPD's conclusory credibility findings, arguing that the RPD erroneously focused on minor discrepancies to question their credibility.

[20] The Respondent submits that the RPD reasonably determined that the adult Applicants generally lacked credibility. According to the Respondent, the Applicants' evidence contained material omissions and inconsistencies and conflicted with objective documentary evidence about honour killings. The Respondent says the RPD is owed significant deference in making credibility findings because they are factual, case-specific, and arise from an individualized assessment. In the Respondent's view, the inconsistencies and omissions in the Applicants' evidence cannot be characterized as minor, noting in particular that Amer failed to mention in his BOC form that Iklas told her family she had had an affair with him, an omission which the RPD found to be "a significant incident that set the wheels in motion for his problems with the brothers." The Respondent further argues that the RPD reasonably made a negative inference about the Applicants' evidence because they failed to tender evidence from the divorce proceeding, and that even if the RPD may have erred in this regard, the decision as a whole

should be upheld as reasonable since it was merely one finding among many other reasonable findings.

[21] The RPD's credibility findings in this case were reasonable because they were based on more than the adult Applicants' failure to include minor or elaborate details in their BOC forms. The RPD explained that Amer's sister's relationship to Iklas was relevant to Iklas' brothers' ability to locate the Applicants. This was not a minor or elaborative detail. Similarly, the Applicants' failure to mention that they stayed in Jordan after receiving their US visas was relevant to whether they were truly in peril. Finally, the RPD believed that the Applicants' failure to mention the threats against Lubna and the two children in the BOC form was a significant detail which was omitted.

[22] The RPD's credibility findings were also based on serious inconsistencies in the adult Applicants' narrative. For example, the RPD questioned Amer as to why he consulted the Mukhtar about threats received by Iklas' family on July 4, 2015, even though Iklas did not inform her family about the alleged adultery until the following day on July 5, 2015. The adult Applicants were unable to explain this inconsistency. Similarly, the RPD did not believe that Iklas' family members would not attempt to find the Applicants given that Iklas was related to Amer's sister by marriage. The RPD's credibility findings about the adult Applicants in this case were transparent and, accordingly, reasonable in view of the evidence before the RPD.

D. *Did the RPD improperly require the Applicants to provide corroborating evidence?*

[23] The Applicants claim that the RPD erred by requiring the Applicants to adduce court documents from Iklas' divorce proceeding. Although the RPD recognized that the Applicants would not have access to the divorce documents, it nonetheless stated it would be reasonable for Amer's sister to have access "given her involvement in the case, such as those documents relating to her being a witness and having to attend court to give her testimony." The Applicants assert that this finding is unreasonable because it was not based on the evidence which showed that court documents are only available to the parties to a proceeding. In my view, however, even if this finding by the RPD is unreasonable, as the Applicants contend, this does not render the RPD's decision as a whole unreasonable because the failure to submit any court documents did not, in and of itself, undermine the adult Applicants' credibility.

E. *Did the RPD improperly reject the three letters?*

[24] The Applicants submit that the RPD unreasonably placed little weight on the three letters written by Amer's brother, Amer's sister, and the Mukhtar. According to the Applicants, the RPD cannot reject these letters on the basis of what they do not say. In the Applicants' view, the low weight ascribed to the letters is a veiled finding that they were fraudulent, and the RPD incorrectly assessed the letters based on strict rules of evidence given that the RPD, by virtue of subsection 170(g) of the *IRPA*, is not bound by any legal or technical rules of evidence.

[25] The Respondent maintains that the RPD reasonably considered the Applicants' three supporting letters. According to the Respondent, despite the lack of originals and proof of

receipt, the RPD nevertheless considered all three letters and provided several reasons for ascribing them little weight. In particular, the Respondent notes with respect to the Mukhtar's letter, that the RPD reasonably noted the illegible stamp, the confusion over the Mukhtar's tribe, and the fact his account of events was inconsistent with Amer's testimony.

[26] The RPD admitted these three letters as evidence; yet, it placed little weight on them because of concerns over their authenticity. The RPD's first concern was that they were copies, contrary to the requirement to submit original documents pursuant to Rule 42 of the *Rules* which requires a party who has provided a copy of a document to the RPD to provide the original document. The RPD's second concern was that these letters, which were purportedly received as attachments to email messages, were not accompanied by the emails which proved receipt. The RPD also raised a concern that none of the letters were dated or sworn. Despite the RPD's concerns over the authenticity of these documents, it still decided to admit these documents.

[27] I disagree with the Applicants' assertion that the RPD made a "veiled finding" that the three letters were fraudulent because, had they been so, the RPD would not have accepted them as evidence or given any weight to a fraudulent document. Furthermore, the RPD did not, as the Applicants contend, require that the letters conform to strict rules of evidence contrary to subsection 170(g) of the *IRPA*. In my view, the RPD relied on indicia of credibility and trustworthiness to determine the appropriate weight to be assigned to these letters and, as subsection 170(h) of the *IRPA* provides, received and based its decision "on evidence that is adduced in the proceedings and considered credible or trustworthy in the circumstances."

[28] It was reasonable for the RPD in this case to raise its concerns over the credibility and relevance of the three letters. The RPD found that the letter from Amer's brother did not provide many details concerning the Applicants' claim, and it also questioned the credibility and relevance of the statement by Amer's brother that Iklas' divorce took place in a military court, whereas the country documentation stated that a divorce proceeding occurred in the religious courts. The RPD also noted that the letter from Amer's sister mentioned Iklas making a threat to identify Amer as the person with whom she was having an affair and that she told Amer this; yet, the RPD found this letter was not as fulsome as might reasonably be expected. Lastly, the RPD noted that the letter from the Mukhtar was inconsistent with Amer's testimony, notably with respect to the Mukhtar's tribe and the amount of time he spent trying to reconcile the family's situation.

[29] In short, the RPD did not improperly reject the letters written by Amer's brother, Amer's sister, and the Mukhtar. On the contrary, it received these letters as evidence and, upon review and consideration of them, reasonably ascribed little weight to them, especially in view of its concerns about the lack of original documents and lack of evidence as to their provenance. It is not the Court's function to reweigh the evidence that was before the RPD. The RPD's assessment of the letters was transparent and, consequently, reasonable.

V. Conclusion

[30] For the reasons stated above, this application for judicial review is dismissed. The RPD's decision in this case was a reasonable one rendered without any denial of procedural fairness.

[31] Neither party proposed a question of general importance for certification; so, no such question is certified.

JUDGMENT

THIS COURT'S JUDGMENT is that: the application for judicial review is dismissed;
and no question of general importance is certified.

"Keith M. Boswell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3764-16

STYLE OF CAUSE: LUBNA ABD ALRAHMAN FOUAD ABU ZAID,
AMER MOHAMMAD ABDEL-MUHSEN AL-DIBEH,
AYHAM AMER MOHAMMAD ABDEL-MUHSEN AL-
DIBEH, AHMAD AHMER MOHAMMAD ABDEL-
MUHSEN AL-DIBEH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 2, 2017

JUDGMENT AND REASONS: BOSWELL J.

DATED: APRIL 19, 2017

APPEARANCES:

Debora Canedo Brubacher FOR THE APPLICANTS
Deanna Karbasion

Sophia Karantonis FOR THE RESPONDENT

SOLICITORS OF RECORD:

Loebach Law Firm FOR THE APPLICANTS
Barristers and Solicitors
London, Ontario

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