

Federal Court



Cour fédérale

Date: 20171205

Docket: IMM-2745-17

Citation: 2017 FC 1107

Vancouver, British Columbia, December 5, 2017

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

ANTRANIG MIHRAN KRIUOR GHAZIGIAN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This applicant seeks the judicial review of the decision made by the Refugee Appeal Division [RAD] on May 18, 2017. The judicial review is made pursuant to section 72 of the *Immigration and Refugee Protection Act* (S.C. 2001, c. 27) [IRPA], and it relates to the appeal decision which affirmed the decision of the Refugee Protection Division [RPD] that the applicant is neither a convention refugee nor a person in need of protection (sections 96 and 97 of IRPA).

I. The facts

[2] The applicant is a 64-year-old citizen of Egypt. He is a Christian of Armenian descent who lived in Cairo. The applicant alleges that he cannot return to Egypt due to a dispute with his Muslim landlord who, according to the applicant, caused for threats on his life to be made. In effect, the applicant claims that he has been “singled out” because of his religion.

[3] This case is in relation to a lease that the applicant inherited after his mother’s death. It appears that under Egyptian Law, he was entitled to continue the lease at the same rental rate that his mother paid in 1971. Furthermore, the applicant had a previous dispute with the same landlord, but in relation to a second unit that he rented as an office.

[4] In May 2013, the applicant claims that he was illegally evicted and his property stolen, including a large amount of cash and valuables. The applicant testified that the police investigated only briefly and improperly concluded that the eviction was lawful. We understand that the applicant eventually brought a lawsuit against the landlord but he complains of the case proceeding slowly. As of the date of his refugee hearing, the case was before a panel of three judges, who transferred the matter to the expert’s office for a report in December 2015. According to the applicant, the expert report could take years.

[5] The applicant alleges that he received direct threats from the landlord’s associates. Thus, he testified that the first threat was on August 17, 2013, after he had filed a police report. The person said, according to the testimony, “we don’t want you to, we know that you are following the case, we don’t want you to be around. This is a warning to stop carrying on, following it”.

The second threat would have been made in November 2013 and words uttered were: “You will be killed. We will send you back in a coffin. Even if you get the flat back, we kill you.”

[6] Since September 2013, the applicant had been moving between his office and various hotels in Cairo. In December 2014, the applicant approached the United Nations Human Rights Office of the High Commissioner for help, but he was informed that they could not do anything as this is a civil dispute.

[7] Eventually, the applicant fled Egypt for the United States in February 2016, using an American multiple-entry visa. Having consulted an American counsel, he chose to cross the border with Canada where he thought there was a better chance of receiving the refugee status he was seeking. Hence, he made a refugee claim in Canada in March 2016. The RPD dismissed the application on November 10, 2016, which took the matter to the RAD. The RAD decision is the subject of the review.

II. Decision under review

[8] The applicant submitted new evidence in accordance with subsection 110(4) of IRPA. That new evidence was ruled admissible. It consists of news articles with respect to the religious discrimination that exists in Egypt concerning Christians. The other new evidence consists of the updated national documentation package as of March 31, 2017.

[9] The RAD decision simply finds that this case is about a dispute between a landlord and a tenant which may, or may not, be involving some possible criminality. That, in the view of the

RAD, does not meet the standard of section 96 of IRPA which calls for “a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion”. The RAD stated at paragraph 47:

[47] After a fulsome and independent analysis of the evidence adduced, I find that this Appellant has failed to establish that he has or will be persecuted on any Convention ground. I believe that the Appellant has and may continue to suffer some discrimination and the documentary evidence supports that. However, the issue at the core of this claim is a civil matter with possible criminal overtones. Being a victim of crime or of a civil dispute is not persecution as outlined in refugee law. There must be more than a mere chance of risk and a nexus for a Convention reason to meet the standard of section 96. Although religion did appear to give a nexus to the Convention, after a thorough examination of the facts on hand, I find that religion plays such a minor part, if any, in the Appellant’s dispute that it does not constitute religious persecution.

[10] The applicant is also unsuccessful in his attempt to claim that he is a person in need of protection, pursuant to section 97 of IRPA. Here, the RAD finds that “there must be more than a serious risk, there must be a risk on a balance of probabilities” (para 48). In effect, the RAD was of the view that this is a civil dispute which cannot rise to the level of supporting a refugee claim or making someone a person in need of protection. Specifically, the RAD found that “there is less there than a mere possibility that the Appellant would be persecuted in Cairo.” (para 49)

[11] The applicant was certainly unhappy with the lack of involvement of the police in Cairo in spite of his reports to the authorities. However, even if that were the case, that would not establish that the applicant is mistreated because he is a Christian. Read as whole, the reasons given by the RAD are based on the insufficient nexus with the religion of the applicant. The RAD states specifically that “(t)he only time the Appellant has actually had anything close to

religious discrimination rear its ugly head in this case occurred when, some three years or so before the landlord dispute began, a person unrelated to any of that core dispute was unhappy with the Appellant and threatened to send him back to Whatever place the Appellant came from, in a box. That, to me, sounds more like an “anti-foreigner” slur than a religious one” (para 40). There was simply insufficient evidence to support the allegation that religion or ethnicity were involved.

III. Arguments and standard of review

[12] The parties are in agreement, and I share the view, that the standard of review applicable to a case like this is reasonableness. It does not suffice that the applicant could show that there is another possibility, after the examination of the facts, other than the one reached by the RAD. Rather, the applicant’s burden is to show that the outcome reached by the RAD is not one of the possible, acceptable outcomes in view of the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9; [2008] 1 SCR 190, para 47).

[13] The applicant’s argument is, to a large extent, to argue his case on the basis that the eviction was illegal and that it was based on the applicant’s religion. The applicant also takes issue with the quality of the investigation that was conducted by the public authorities in Egypt, but he does not offer any evidence that the limited investigation that has taken place is because of his ethnicity or religion. On the contrary, there was evidence to the effect that the police thought the matter to be private. As pointed out by the Crown, whether or not this is the right decision by the Egyptian authorities is neither here nor there. What the applicant had to show was that the decision to consider the matter to be private was based on religion.

[14] Furthermore, the applicant seems to be satisfied with his own belief that the actions taken against him were based on his religion, as opposed to making a demonstration that such is the case. Indeed, it is noteworthy that the applicant disclosed, during the hearing, that the rent for the apartment had to be paid into Court between 2005 and 2013 because there was an obvious dispute with the landlord who was refusing to receive the rent paid every month. To put it another way, the dispute between the landlord and the applicant is not a new phenomenon. The evidence shows that there was in fact another dispute in the same building between the landlord and the applicant about another space.

IV. Analysis

[15] The applicant's burden was to show that the outcome is not one of the possible acceptable outcomes. That demonstration has not been made. Instead, the Court was invited to assess the dispute between the parties in Egypt and to accept that it was based on the religion of the applicant, the landlord being a Muslim. There is, in the view of the RAD, insufficient evidence to support that contention. In fact, the Court was able to ascertain that it was close to an absence of evidence of a nexus in the dispute between the landlord and the applicant. The mere fact that the landlord is Muslim and the applicant Christian does not establish a ground of persecution. The applicant seems to invite the adjudicator to assume that the difficulties encountered in Egypt are by reason of religion. It is a leap the RAD did not make and there is nothing unreasonable in that.

[16] As is well known, the mere fact that an applicant believes that the actions taken are religious persecution is of no moment. An objective basis for such belief must be shown and it

was not present in the evidence before the RPD and the RAD. Similarly, there was no demonstration on a balance of probabilities that it is more likely than not that the applicant would be personally subjected to a danger of torture, a risk to life, or a risk of cruel and unusual treatment or punishment if removed to his country of nationality. There was simply if not an absence of evidence, a paucity of evidence presented in this case. The burden to show on a balance of probabilities that the outcome reached is not one of the possible outcomes has not been discharged.

[17] The applicant submitted that “even the single failure by the RPD and the RAD to consider that the genesis of his problems in Egypt (eviction) has religious discrimination amounted to a reviewable error” (memorandum of fact and law, para 26). That, to my way of thinking, is bootstrapping at its best. The existence of documentary evidence showing discrimination against Christians in certain areas in Egypt, without more, does not show persecution in this case. In lieu of demonstrating a religious discrimination, the applicant argues that it should be taken for granted and that, in and out of itself, would constitute a reviewable error. It was for the applicant to show the nexus with religion or ethnicity and the failure to do so is fatal. Others have concluded that this is a civil case with, perhaps some criminal overtones. There was nothing unreasonable in the RAD decision.

[18] As a result, the judicial review application must be dismissed. The parties did not offer a serious question of general importance that would have to be stated in accordance with section 74 of IRPA. Indeed, there was none.

JUDGMENT in IMM-2745-17

THIS COURT'S JUDGMENT is that:

1. The judicial review application is dismissed;
2. There is no serious question of general importance to certify.

"Yvan Roy"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2745-17

STYLE OF CAUSE: ANTRANIG MIHRAN KRIUOR GHAZIGIAN v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

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DATED: DECEMBER 5, 2017

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