

Federal Court



Cour fédérale

Date: 20180525

Docket: IMM-4984-17

Citation: 2018 FC 543

Ottawa, Ontario, May 25, 2018

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

EL ASSADI KAMAL, BILAL

Applicant

And

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Background

[1] The Applicant, Bilal El Assadi Kamal, is a Palestinian national. He was born in Lebanon and has lived there most of his life with his parents and siblings. After finishing high school in South Lebanon, he received a scholarship from a Qatari foundation and studied mechanical engineering at the Texas A&M University in Qatar from August 2013 to May 2017.

[2] Unable to secure employment before his temporary resident visa expired, the Applicant left Qatar in May 2017.

[3] Upon his return in Lebanon, the Applicant faced challenges entering the work force, since Palestinians, unlike Lebanese nationals, are excluded from practising liberal professions such as engineering. The Applicant also realized that his father, a teacher in a small private school, could no longer pay for his living expenses. As a result, the Applicant left Lebanon two (2) months later to come to Canada where other members of his family already lived.

[4] He arrived in Canada from the United States on July 22, 2017 and sought refugee protection, alleging mistreatment in Lebanon due to unfair laws imposed by the government. He claims that, as Palestinians, he and his family live in Lebanon without any status and any rights, including the right to practise his profession as a mechanical engineer.

[5] In a decision dated October 24, 2017, the Refugee Protection Division [RPD] rejected the Applicant's claim for protection. The RPD determined that the Applicant had not established a well-founded fear of persecution based on a Convention ground and that he had not demonstrated on a balance of probabilities that he was a person in need of protection.

[6] The Applicant sought leave to appeal the RPD's decision to the Refugee Appeal Division. His appeal was dismissed on November 20, 2017 for lack of jurisdiction pursuant to paragraph 110(2)(d) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, as the Applicant had transited through the United States prior to coming to Canada.

[7] The Applicant now seeks judicial review of the RPD's decision.

[8] The Applicant first submits that the RPD applied the wrong test for determining a well-founded fear of persecution. Specifically, the Applicant argues that the RPD failed to consider in its analysis that the fear of persecution need not necessarily be based on the Applicant's own personal experiences in order to be accepted as a refugee. The experience of others, such as friends, relatives and other members of the same racial or social group, may show that the fear of persecution is well-founded. It is also not necessary for the Applicant to prove that he has been persecuted in the past or will be in the future. To support his argument that the RPD applied the wrong test, the Applicant refers to three (3) sentences in the RPD's decision where the RPD makes reference to the Applicant's own personal situation.

[9] I am not persuaded by the Applicant's argument. In my view, the RPD applied the proper test for determining whether the Applicant had a well-founded fear of persecution. The RPD considered both the subjective and objective basis for the Applicant's fear of persecution and whether cumulatively, the elements of discrimination amounted to persecution. The RPD ultimately concluded that the Applicant had not sufficiently established an objective basis for his claim of persecution due to his Palestinian identity.

[10] The RPD considered the conditions for Palestinians in Lebanon and noted that Palestinian refugees in Lebanon face widespread and systematic discrimination in regards to employment, education, medical care and social services. The RPD acknowledged that the Applicant would likely face discrimination by Lebanese nationals when seeking a job, that he would possibly

experience administrative challenges from the Lebanese government while obtaining a work permit and that as a result of these factors, he could experience a significant negative impact on his earnings. However, the RPD found that these restrictions would not lead to consequences of a substantially prejudicial nature. It is in the context of this discussion that the RPD referred to the Applicant's personal situation and found that, while the Applicant would face less favourable treatment in the labor market than Lebanese nationals, it did not amount to persecution. The same observation applies to the RPD's statements regarding the Applicant's experiences with respect to education and his access to medical and social services.

[11] Moreover, the determination of what constitutes persecution is a highly factual exercise which involves an analysis of many factors, including persistence, seriousness and the quality of the alleged incidents (*Liang v Canada (Citizenship and Immigration)*, 2008 FC 450 at paras 18-19, 22 [*Liang*]). While evidence about persecution faced by members of the family or other similarly situated people may be compelling because it tends to show that the Applicant may face the same risks, it is the Applicant who must face a serious possibility of persecution (*Awadh v Canada (Citizenship and Immigration)*, 2014 FC 521 at para 18). Thus, it was entirely appropriate for the RPD to take into account the Applicant's particular circumstances, including the lack of past persecution (*Liang* at para 22; *Abdelghani v Canada (Minister of Citizenship and Immigration)*, 2004 FC 133 at para 22; *Sheikh v Canada (Minister of Employment and Immigration)* (FCA), [1990] 3 FC 238 (QL) at para 13).

[12] The Applicant also submits that the RPD failed to conduct a proper analysis in determining that the claim of persecution was not established on a cumulative basis. He argues

that in addition to his inability to practise his profession and to own property in Lebanon, he and his aunt provided testimony at the RPD hearing explaining how other members of his family had been the subject of discrimination by reason of their nationality. The Applicant believes that the aggregate of these experiences leads to consequences of a substantially prejudicial nature, and cumulatively, amounts to persecution.

[13] The Applicant is correct in stating that the cumulative effects of discrimination may meet the definition of persecution. However, the dividing line between discrimination and persecution is highly contextual and may be difficult to establish. It involves questions of mixed fact and law and as such, the applicable standard of review is reasonableness (*Salim v Canada (Citizenship and Immigration)*, 2011 FC 1283 at para 6; *Sagharichi v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 796 at para 3).

[14] In reviewing a decision against the reasonableness standard, the Court must consider the justification, transparency and intelligibility of the decision-making process, and whether the decision falls within a range of possible, acceptable outcomes which are defensible in light of the facts and the law (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59 [*Khosa*]; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]).

[15] The RPD considered the cumulative effects of discrimination and harassment faced by the Applicant. The RPD considered that the aggregate experiences of the Applicant did not lead to consequences of a substantially prejudicial nature. It was reasonably open to the RPD to reach

this conclusion based on the evidence on the record. The Applicant has failed to demonstrate that the RPD's finding does not fall within the range of possible acceptable outcomes.

[16] Finally, the Applicant argues that the RPD's decision is unreasonable because it failed to properly assess the subjective and objective elements of the Applicant's fear of persecution. The Applicant argues that the RPD should have afforded more weight to his allegation that he did not leave Lebanon by choice. Rather, as life would be intolerable for him in Lebanon, his departure was a matter of survival.

[17] The Applicant has not persuaded me that the RPD's decision is unreasonable and unsupported by the record. As noted in the UNHCR Guidebook at paragraph 54, persons who receive less favourable treatment as a result of such differences are not necessarily victims of persecution. It is only in certain circumstances that discrimination will amount to persecution. This would be so where the measures of discrimination lead to consequences of a substantially prejudicial nature for the person concerned. Such measures include a serious restriction on one's right to earn a livelihood or one's access to normally available educational facilities. However, persecution does not result from the ability to work in the field of one's choosing. Rather, it flows from one's inability to work at all (*Xie v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 286 (QL) at para 12).

[18] In this case, while it is true that the Applicant cannot work as a mechanical engineer in Lebanon, he has not demonstrated that he could not work in other fields. Although he indicates in his affidavit that he has no other skills but engineering, he has been successful in finding

employment in Canada using other skills than those in his profession. There is no evidence on the record to show that in the two (2) months he was in Lebanon, he sought to obtain other employment (*Espinoza v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 721 (QL) at para 8). The evidence on the record also demonstrates that the Applicant's father is employed as a teacher in a school in Lebanon. While the Applicant testified about the difficulties experienced by his family members when they came to Lebanon in 1983, the objective evidence demonstrates that labour laws were amended in Lebanon in 2010 to allow Palestinian refugees the ability to work legally. The RPD also properly noted that despite the restrictions on education in Lebanon for Palestinian nationals, the Applicant was successfully educated both in Lebanon and abroad.

[19] In summary, the Applicant has not demonstrated that the RPD's decision does not fall within the range of possible, acceptable outcomes which are defensible in light of the facts and law (*Khosa* at para 59; *Dunsmuir* at para 47). Moreover, I find that the Applicant is essentially asking this Court to reweigh the evidence before the RPD and to come to a different conclusion. That is not the role of the Court on judicial review (*Khosa* at para 61).

[20] Accordingly, the application for judicial review is dismissed. No questions were proposed for certification and I agree that none arise.

JUDGMENT in IMM-4984-17

THIS COURT'S JUDGMENT is that:

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

“Sylvie E. Roussel”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4984-17

STYLE OF CAUSE: EL ASSADI KAMAL, BILAL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: MAY 9, 2018

JUDGMENT AND REASONS: ROUSSEL J.

DATED: MAY 25, 2018

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