

Federal Court



Cour fédérale

Date: 20190625

**Dockets: IMM-4460-18
IMM-4461-18**

Citation: 2019 FC 855

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, June 25, 2019

PRESENT: The Honourable Mr. Justice Annis

Docket: IMM-4460-18

BETWEEN:

SANDY IBRAHIM

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

Docket: IMM-4461-18

AND BETWEEN:

RUBA IBRAHIM

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Ruba Ibrahim [Ruba] and Sandy Ibrahim [Sandy], [“together the applicants”] are, through judicial review, challenging the legality of a decision rendered on August 20, 2019, by an officer of the Canadian Embassy in Beirut, Lebanon [the Officer], dismissing their applications for permanent residence on the grounds that they were neither Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [IRPA].

I. Facts

[2] Ruba is a 39-year-old Syrian citizen and Christian; she is married and has a six-year-old son who is a Canadian citizen. Sandy is a 35-year-old Syrian citizen and Christian; she is single and does not have any children. In Syria, the applicants lived with their parents in the town of Jaramanah, near the capital, Damascus. The applicants claim that this region has become problematic and unsafe since the outbreak of hostilities.

[3] In October 2011, a temporary resident visa was issued to Ruba.

[4] In January 2012, Ruba arrived in Canada, and in February 2012 she gave birth to her son.

[5] In March, Ruba left Canada to return to Syria.

[6] In 2015, Sandy's car was struck by a mortar. She claims she had to live in the basement because of the bombings. As a result, she and her sister decided to leave Syria on December 10, 2016, and take refuge in Lebanon. They travelled until December 2016.

[7] The applicants state that they left Syria in March 2015 to take refuge in Lebanon.

[8] In 2017, the applicants filed an application for permanent residence in the Convention refugee abroad class, more specifically in the country of asylum class. The applicant's husband and son are included in Ruba's application as dependents. Their application was sponsored by a group of individuals in Canada.

[9] On July 5, 2018, the Officer called Ruba on her Syrian telephone number and asked whether she was in Syria. The Officer's notes in the Global Case Management System [GCMS] indicate that Ruba at first confirmed and then denied that she was in Syria. She answered that they were living in Achrafieh, Lebanon. When the Officer asked her where her son was going to school, Ruba stated that her son had not been attending school since their arrival in Lebanon in 2016, since schools were expensive in Lebanon.

[10] The Officer noted in the GCMS that Ruba and her husband are both highly educated, and he expressed doubts regarding the claim that their son was not enrolled in school.

[11] Ruba was called in with her sister for an interview regarding her application at the Canadian Embassy in Beirut on August 2, 2018.

II. Impugned decision

[12] On August 2, 2019, the Officer interviewed Ruba, her husband and her sister. The Officer asked Ruba several times when she had left Syria for the last time; she confirmed that she had left Syria for the last time on October 10, 2016.

[13] After speaking with both sisters together, the Officer asked Ruba and her husband to leave the room so he could speak with her sister.

[14] When Ruba was again brought into the interview room with her husband, the Officer presented her with a photograph he had found on her sister's public Facebook account. The photograph showed Ruba, her husband, her son and her sister playing in the snow. According to Facebook, the photograph had been taken on January 19, 2018, in Saidnaya, Syria, north of Damascus.

[15] Ruba told the Officer that the photograph was an old one, taken in Syria before they left in 2016. She stated that she had no idea why it said the photo had been taken in 2018, and that Facebook meant nothing since anyone could post whatever they liked.

[16] When the Officer told her the answer her sister had given with regard to the photograph, namely that it had been taken during a journey to Faraya, Lebanon, in 2017, Ruba was unable to provide any explanation for the contradiction. She simply answered that she did not know what to say, repeating that the photographs were old.

[17] At this stage of the interview, the Officer told the applicants that he had serious concerns about their credibility, in view of the contradictory information they had provided with regard to the origin of the photograph and the lack of credible evidence substantiating their claim that they continuously resided in Lebanon for two and a half years.

[18] When the Officer asked them if they had documents showing that they had been living in Lebanon for nearly three years, the applicants responded that they had no documents with them at that time.

[19] In the light of that contradiction, the Officer concluded that the applicants had misrepresented circumstances vital to the assessment of their applications, namely their current place of residence and the date they were in Syria for the last time. The Officer drew a negative inference from the fact the applicants gave contradictory explanations when confronted with the photograph. The Officer concluded that the applicants were not credible and had not shown that they met the criteria to be recognized as Convention refugees, nor could they be considered persons in need of protection under IRPA sections 96 and 97. The Officer stated, with respect to the two decisions impugned:

Having taken into consideration the totality of the evidence before me, based on a balance of probabilities, I find that your declarations are more likely false than true and that your declarations regarding where you have been residing since 2016 are not credible.

Your declarations relate directly to your eligibility in the category in which you applied. Without true incredible [sic] testimony I am not satisfied that you meet the requirements of Article 96 or Regulation 147 of IRPA.

Thereby indicating that they did not qualify under paragraph 139(1)(e) of the Regulation in “the Convention refugee abroad class”.

[TRANSLATION]

J’ai examiné toute la preuve qui m’a été présentée et, selon la prépondérance des probabilités, je conclus qu’il est plus probable que vos déclarations concernant votre lieu de résidence depuis 2016 soient fausses que le contraire.

Ces déclarations sont directement reliées à votre admissibilité à la catégorie visée par votre demande. En l’absence d’un témoignage véridique, je ne suis pas convaincu que vous satisfaites aux exigences de l’article 96 de la LIPR ou à l’article 147 du Règlement.

Par conséquent, vous n’êtes pas admissible à la « catégorie des réfugiés outre-frontière au sens de la Convention » selon les termes de l’alinéa 139(1)e) du Règlement.

[20] The Officer therefore refused the applicants’ applications. They are challenging that decision in the present case.

III. Issues

- (a) Was there a breach of procedural fairness?
- (b) Was the Officer’s decision with regard to the reliability of the applicants’ official entry cards reasonable?
- (c) With respect to Ruba, was the Officer’s decision regarding the child’s best interests reasonable?

IV. Analysis

- A. *Was there a breach of procedural fairness?*

[21] The applicants argue that there was a breach of procedural fairness because the Officer did not allow them to submit other evidence that could have dispelled his concerns.

[22] The applicants claim that when the Officer asked them if they had other documents to that could prove that they had been in Lebanon since 2016, they replied that they had only the documents requested in the email from the Embassy, but that they could send him other evidence later. The detailed notes give no indication that the applicants asked for permission to file additional documents.

[23] The applicants did not submit any additional documents, either during the two weeks before the Officer rendered his decision or in the context of this judicial review, regarding their residence in Lebanon that might have had an impact on the Officer's decision.

[24] Officers are under no obligation to apprise an applicant of any concerns regarding the applicant's claim that arise directly from the requirements of the Act or Regulations and are unrelated to the veracity of documents (*Hassani v. Canada (Citizenship and Immigration)*, 2006 FC 1283, at paragraphs 23-24; *Zulhaz Uddin v. Canada (Citizenship and Immigration)*, 2012 FC 1005 at paragraph 38 [*Uddin*]). The burden of producing evidence in support of their claims lies with the applicants. It is not the officer's duty to prove the applicants' case (*Bukvic v. Canada (Citizenship and Immigration)*, 2017 FC 638 at paragraph 34).

[25] In the *Uddin* case, Justice O'Keefe stated, at paragraph 38:

[38] ...The onus is always on the applicant to satisfy the officer of all parts of his application. The officer is under no obligation to

ask for additional information where the applicant's material is insufficient (see *Sharma v Canada (Minister of Citizenship and Immigration)*, 2009 FC 786, [2009] FCJ No 910 at paragraph 8; and *Veryamani v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1268, [2010] FCJ No 1668 at paragraph 36)....

[26] In this case, nothing was preventing the applicants from submitting other documents in the two weeks following the interview, and I have no reason to believe that the applicants or their counsel attempted to file additional documents at that time. Lastly, the applicants did not file any documents in the context of this judicial review showing that they had additional documents substantiating their statements regarding their residences in Lebanon, which might have had an impact on the Officer's decision.

[27] In view of all the evidence, no lack of procedural fairness was demonstrated.

B. *Was the Officer's decision with regard to the reliability of the applicants' official entry cards reasonable?*

[28] The applicants argue that a document allegedly issued by a foreign authority must be presumed to be valid in the absence of any evidence to the contrary (*Masongo v. Canada (Citizenship and Immigration)*, 2008 FC 39 at paragraph 12). Accordingly, the applicants maintain that the Officer erred in concluding that the official Lebanese entry cards they had presented were not trustworthy. The credibility of documents themselves cannot be questioned without a valid reason (*Irshad v. Canada (Citizenship and Immigration)*, 2013 FC 1205 at paragraph 30; *Garrick v. Canada (Immigration, Refugees and Citizenship)*, 2017 FC 611 at paragraph 19).

[29] That being said, the Officer's decision that the official Lebanese government entry card had little probative value does not suggest that he cast doubt on its validity. Rather, the Officer's conclusion that the document could not be relied on as evidence that the applicants had been living in Lebanon since 2016 reflected the fact that it had not been translated into either of the two official languages.

[30] The applicants bore the burden of providing the Officer with all the evidence required to support their allegations. This includes the obligation to produce the excerpts that were not in either of the two official languages. On that, the *Claimant's Guide* states the following:

Do my documents need to be translated?

If your documents are not in English or French, you must have them translated into the official language (English or French) that you chose for your hearing. You must provide the translations and a translator's declaration to the RPD with the copies of the documents. The translator's declaration must include:

- the translator's name;
- the language and dialect, if any, translated;
- a statement that the translation is accurate; and
- the signature of the translator.

[31] Therefore, the Officer did not err in concluding that the official Lebanese entry card lacked probative value. In any event, an identity card could not have supported the applicants' credibility in light of the contradictions and lack of documents that otherwise prove residency in Lebanon since 2016.

C. *Was the Officer's decision regarding the best interests of Ruba's child reasonable?*

[32] Ruba argued that the Officer had erred in failing to consider the best interests of her son Victore, a Canadian citizen who does not have the right to attend school in Lebanon.

[33] The context of an evaluation conducted by a visa officer who is assessing a claim filed outside Canada in the country of asylum class in accordance with section 96 of the Act and section 147 of the Regulations, is equivalent to a claim for humanitarian and compassionate considerations made under subsection 25(1) of the Act. Section 96 of the Act and section 147 of the Regulations do not expressly require that a child's best interests be evaluated.

[34] Moreover, it was Ruba's responsibility to submit the relevant evidence and information on her child's situation if she wanted the Officer to take it into account; she did not submit any evidence relating to her son's best interests. The Officer cannot be faulted for not considering information that was not provided to him (*Pzarro Gutierrez v. Canada (Citizenship and Immigration)*, 2013 FC 623 at paragraph 40).

V. Conclusions

[35] For the above-mentioned reasons, the application for judicial review is dismissed. No question is certified.

JUDGMENT in dockets IMM-4460-18 and IMM-4461-18

THE COURT ORDERS AND ADJUDGES that:

1. The applications for judicial review be dismissed and that no question be certified.
2. The two proceedings be consolidated and heard together in accordance with rule 105 of the *Federal Courts Rules*, SOR/98-106.

“Peter Annis”

J.A.

Certified true translation
This 22nd day of July 2019.

Elizabeth Tan, Translator

FEDERAL COURT
SOLICITOR OF RECORD

DOCKET: IMM-4460-18

STYLE OF CAUSE: SANDY IBRAHIM v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

AND DOCKET: IMM-4461-18

STYLE OF CAUSE: RUBA IBRAHIM v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JUNE 5, 2019

JUDGMENT AND REASONS: ANNIS J.

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