

Federal Court



Cour fédérale

Date: 20190924

Docket: IMM-407-19

Citation: 2019 FC 1217

Ottawa, Ontario, September 24, 2019

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

**LOUI LUTFY SHAKER FRAIGE
HAYA IBRAHIM MO BARHOUM
TALEEN LOUI LUT FRAIGE
SARAH LOUI LUTF FRAIGE
YOUSEF LOUI LUT FRAIGE**

Applicants

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are a family of five, three of whom are minors. They all face removal to Jordan. They seek judicial review of a decision dated January 22, 2019 in which an Inland

Enforcement Officer (Officer) denied their request for deferral of the execution of their removal order [Decision].

[2] The standard of review for a negative deferral decision is reasonableness: *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at paragraph 42.

[3] For the reasons that follow, this application is allowed and the matter is remitted to a different Officer for reconsideration.

II. **Background Facts**

[4] The Applicants are all citizens of Jordan but have lived in Saudi Arabia since birth. They claim they are at risk in Jordan because, after coming to Canada, the father converted to Christianity. They contend that Muslims who convert to Christianity or religions other than Islam are at risk in Jordan.

[5] In support of their risk allegation, the Applicants submitted a number of country condition documents discussing the state of religious freedom in both Saudi Arabia and Jordan as well as in a number of other countries.

[6] In docket IMM-548-19, heard concurrently with this application, the Applicants sought judicial review of a decision by the Refugee Protection Division (RPD) refusing to reopen their application for refugee protection. The application had been declared abandoned because no Basis of Claim form (BOC) narrative was submitted by the Applicants' former counsel, an

immigration consultant. For reasons which are separately reported, that judicial review has been allowed and the matter will be sent back for redetermination by another panel member.

[7] The application to reopen, together with the evidence in support, was put before the Officer with the deferral request evidence and submissions. Included in the materials was a new affidavit by the father and a new Basis of Claim form (BOC).

[8] The new affidavit attested to there being about 1,000 members of the family of the Applicants in Jordan. All are strict Muslims. The father is the first family member to convert to another religion.

[9] The new BOC stated that the father's family learned of his conversion, possibly from a former roommate. The family telephoned him, shouting and threatening and said that if he did not change his mind, they would take his children. The father said he was surprised that "all his big family in Jordan" knew about his converted religion. He indicated that his wife's family had found out and tried to force her to separate from him but she refused and supported him.

III. Analysis

[10] The determinative issue in this judicial review is the Officer's selective and incomplete risk analysis. The Officer did not discuss significant contradictory evidence. That leads the Court to believe that the Officer overlooked the contrary evidence and made the decision based on an erroneous understanding of the facts: *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 157 FTR 35 at paragraph 17 [*Cepeda-Gutierrez*].

[11] Prior to the deferral application, the risk to the Applicants was not assessed at all. The RPD application was declared abandoned and an application to reopen it was denied by the RPD. The Applicants are not yet eligible to apply for a Pre-Removal Risk Assessment.

[12] Recently, Mr. Justice Grammond re-iterated that where a significant risk has not been assessed by previous decision-makers, an inland enforcement officer, and this Court, bear an increased responsibility to ensure that a person is not removed to a country where his or her life, liberty or security would be at risk: *Thuvo v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 48 at paragraph 8.

[13] Justice Grammond also recalled that the Federal Court of Appeal in *Atawnah v Canada (Citizenship and Immigration)*, 2016 FCA 144 has recognized that there is a constitutional imperative to assess the risk of a person who is about to be removed, saying that “a risk assessment and determination conducted in accordance with the principles of fundamental justice is a condition precedent to a valid determination to remove an individual” from Canada.

[14] In denying the request for deferral, the Officer mentioned the following considerations:

- the Applicants had the opportunity to “submit their risks” in their claim for refugee protection and failed to follow the procedures;
- Jordan is not a country with a Temporary Suspension of Removals (TSR);
- according to a US State Department article submitted by the Applicants, Jordan “safeguards ‘the free exercise of all forms of worship’”, the Constitution stipulates that “there shall be no discrimination based on religion”, and “there are no penalties under civil law” for converting to another faith;
- the threats made to the Applicants occurred in Saudi Arabia, and as they have not received threats from their family in Jordan, the risk alleged would not follow the family from Saudi Arabia to Jordan;

- there was insufficient evidence to establish that the Applicants could not seek the help of the Jordanian police if they were threatened by their family in Jordan.

[15] The Officer referred to the BOC claim of the father that, as he was a Christian, “returning to Jordan or to any Arab or Islamic country was (*sic*) direct threat to the lives of my family.”

[16] The Officer set out and relied upon three extracts from the U.S. Department of State article on Jordan entitled “International Religious Freedom Report for 2017” [Jordan Report] which had been submitted by the Applicants. Two of the extracts are:

The constitution declares Islam the religion of the state but safeguards "the free exercise of all forms of worship and religious rites" as long as these are consistent with public order and morality." The constitution stipulates there shall be no discrimination based on religion.

The constitution stipulate (*sic*) there shall be no discrimination based on religion.

[17] The statements are simply set out in the Decision. They are not discussed. Presumably, the Officer meant them to be taken at face value as evidence of why a deferral of the Applicants' removal is not required.

[18] The Jordan Report however contains a number of statements contradictory to the above. None are referred to or discussed by the Officer.

[19] For example, in the same paragraph as the two extracts, there are statements indicating that there is discrimination based on religion. The statements indicate, contrary to the extracts, that all forms of worship and religious rights are not accepted in Jordan:

Converts to Christianity from Islam reported security officials continued to interrogate them about their religious beliefs and practices.

The Ministry of Education rolled back revisions to the school curriculum, which sought to underscore the constitution's commitment to respect pluralism and the opinions of others while instilling "true Islamic values" in students, after widespread complaints from teachers' unions, parents' groups, and Muslim organizations. Critics stated that the curriculum distanced students from Islamic values and promoted the normalization of relations with Israel.

[20] Two opening sentences in the second paragraph, on the same page as the extracts, speak to the level of discrimination Christians, as a minority group, would experience in Jordan contrary to what the constitution stipulates:

Interfaith religious leaders reported an increase in online hate speech directed towards religious minorities and moderates, frequently through social media.

The harshest criticisms targeted converts from Islam to other religions.

[21] The father's evidence was that he feared returning to Jordan because there were over 1,000 family members there, most if not all of whom had been made aware of his conversion to Christianity. The last sentence on the first page of the Jordan Report speaks directly to that risk:

The government did not prosecute converts from Islam for apostasy, but some reported persistent and credible threats from family members concerned with protecting traditional honor (*sic*).

[22] The Officer found that at no time did the Fraige family receive any threats from the father's family in Jordan. Any threats occurred in Saudi Arabia. The Officer then concluded that

the risk would not follow the Applicants from Saudi Arabia to Jordan. In support of that statement, the Officer set out another excerpt from the Jordan Report:

The constitution does not address the right of Muslims to convert to another faith, nor are there penalties under civil law for doing so.

[23] If that statement was meant to show that Muslims may convert to another faith without reprisal, the documentary evidence indicates otherwise. The next sentence, omitted by the Officer, shows that the Applicants would be considered apostates:

The constitution and the law accord primacy to sharia, however, which prohibits Muslims from converting to another religion. Under sharia, converts from Islam are still considered Muslims but regarded as apostates.

[24] The Officer does not examine the risk of being an apostate, but that risk was specifically put before the Officer. It is the essence of the risk identified by the Applicants. It had to be addressed.

[25] One of the documents submitted to the Officer was a Library of Congress report entitled “Laws Criminalizing Apostasy”. A section dealt with apostasy in Jordan. It states that apostasy is prosecuted in the religious courts. If someone is convicted of apostasy, the Islamic courts have the power to void the person’s marriage.

[26] The article continued by saying that neither the penal code nor the criminal code specify a penalty for apostasy, but that religious laws are used to prosecute individuals for apostasy.

[27] The Jordan Report explains the role of Sharia courts in addressing apostasy:

Sharia courts, however, have jurisdiction over marriage, divorce, and inheritance, and individuals declared to be apostates may have their marriages annulled or be disinherited, except in the presence of a will that states otherwise. Any member of society may file an apostasy complaint against such individuals before the newly established Sharia Public Prosecution.

[28] The father specifically identified that his wife's family was trying to get her to separate from him. Family members had threatened that their children would be taken from them. That risk needed to be examined in light of the documentary evidence before the Officer, but it was not.

[29] An entire section of the Jordan Report addresses "Status of Societal Respect for Religious Freedom". It notes that converts from Islam to Christianity reported continued social ostracism, threats, and physical and verbal abuse, including beatings, insults, and intimidation, along with government surveillance.

[30] The Officer's cursory review of the Applicants' evidence and their selective reading of the country condition documents, coupled with the failure to recognize that the Applicants had not received any risk review at all, leads the Court to conclude that the Decision cannot stand. It fails both for the reasons set out in *Cepeda-Gutierrez* and because the reasons are unintelligible and lack transparency as required by *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 47.

[31] The application is granted. The Decision is set aside and returned for redetermination by a different Officer. There is no question for certification on these facts.

JUDGMENT in IMM-407-19

THIS COURT'S JUDGMENT is that:

1. The Application is allowed and the Decision is set aside.
2. The matter is returned for redetermination by a different Inland Enforcement Officer.
3. No serious question of general importance is certified.
4. No costs are awarded.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-407-19

STYLE OF CAUSE: LOUI LUTFY SHAKER FRAIGE, HAYA IBRAHIM MO
BARHOUM, TALEEN LOUI LUT FRAIGE, SARAH
LOUI LUTF FRAIGE, YOUSEF LOUI LUT FRAIGE v
THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 9, 2019

JUDGMENT AND REASONS: ELLIOTT J.

DATED: SEPTEMBER 24, 2019

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