Federal Court  Cour fédérale

Date: 20191031

Docket: IMM-1601-19

Citation: 2019 FC 1372

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, October 31, 2019

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

SANAA ISKANDAR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant is seeking judicial review of a decision dated February 18, 2019 [the decision], whereby the Refugee Appeal Division [RAD] of the Immigration and Refugee Board dismissed the applicant's appeal of a decision rendered by the Refugee Protection Division [RPD], which had rejected her refugee protection claim. For different reasons, the RAD upheld

the RPD's decision that the applicant was neither a Convention refugee under section 96 nor a person in need of protection under section 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

II. Background

[2] The applicant, Sanaa Iskandar, is a Lebanese Maronite Christian. She arrived in Canada on July 12, 2016, and filed a refugee protection claim on August 19, 2016, based on a fear of being killed by her younger brother, Tony, and her cousins because she had married a Muslim man. According to their tradition and culture, Tony had become the head of the family following the death of their father in April 2013.

[3] According to the claim, the applicant met Mohamad Beyrouthy, a Sunni Muslim man, in 2012, while they were both attending the same university. They became involved in a romantic relationship, which Tony had opposed right from the beginning.

[4] In January 2014, Tony and four of his cousins attacked Mr. Beyrouthy in the street and damaged his vehicle. Mr. Beyrouthy filed a complaint with the police; the police responded that they did not get involved in family disputes.

[5] On May 23, 2015, the applicant and Mr. Beyrouthy got married unbeknownst to Tony, who, according to the applicant, became angry when he learned the news. On May 26, 2015, the applicant and her husband were reportedly attacked by Tony and his cousins. A complaint was

filed with the police; Tony subsequently agreed to sign an undertaking to keep the peace before the Public Prosecutor.

[6] After obtaining a tourist visa in November 2015, the applicant joined her husband, who had travelled to the United Arab Emirates (UAE) in September for his work. On November 25, 2015, Tony, who was in the UAE at the time, called the applicant via telephone and threatened her but did not act on these threats.

[7] When Mr. Beyrouthy's work permit expired, both he and the applicant returned to Lebanon on January 4, 2016. Upon their arrival in Lebanon, they received further threats from Tony and his four cousins.

[8] Fearing for their lives, the applicant and her husband decided to flee Lebanon. Mr. Beyrouthy left for Canada first, on February 5, 2016, where he applied for a pre-removal risk assessment [PRRA], since he had already filed a refugee protection claim in 2008.

[9] The applicant left Lebanon on July 12, 2016, to seek refugee protection in Canada and join her husband. She filed her refugee protection claim on August 19, 2016, based on her fear of gender-related persecution and because of her family's threats against her life.

A. *RPD Decision*

[10] In its decision dated May 3, 2017, the RPD rejected the refugee protection claim, finding that the applicant was not credible because of numerous contradictions, omissions and

implausibilities in the evidence presented. The RPD also found that the applicant had adjusted her testimony, as she saw fit, whenever she was confronted with contradictions in her evidence and that she had exaggerated her story to corroborate her allegations.

[11] During the hearing before the RPD, there was a tense exchange between the member and counsel representing the applicant. The latter expressed concern about the member's intensive questioning of the applicant's claims that Tony had opposed her romantic relationship with Mr. Beyrouthy right from the beginning, in May 2013. According to the applicant, the member asked the same question more than three times, when the question of when Tony had learned about the relationship had clearly been answered twice. Also, according to the applicant, when questioning continued following an adjournment of the hearing for the purpose of restoring calm, the member allegedly persisted in making certain biting comments, demonstrating her disbelief and surprise about some of the applicant's answers.

B. *RAD Decision*

[12] The applicant appealed the decision rendered by the RPD before the RAD. In support of her appeal, she alleged that the RPD had erred in analyzing her credibility and that there was a reasonable apprehension of bias because of the exchange between her counsel and the member during the hearing. The RAD concluded that the evidence presented was not sufficient to demonstrate a reasonable apprehension of bias. It agreed that the RPD had made certain errors in assessing the applicant's credibility, and found that the remaining issues were not enough to undermine the entire refugee protection claim. However, the RAD concluded that the applicant had failed to establish the existence of a prospective risk of persecution in Lebanon and that she

had failed to rebut the presumption of state protection. The RAD therefore upheld the RPD's decision for different reasons and dismissed the appeal.

III. Analysis

[13] The applicant claims that the RAD decision was flawed in several respects. First, the applicant reproaches the RAD for erring in finding that she had failed to demonstrate that there was a reasonable apprehension of bias by the RPD. Second, she argues that the RAD, in conducting its independent review of the case file, made a number of unreasonable findings concerning the applicant's lack of credibility and that the most important finding was speculative. Third, she maintains that the finding concerning the lack of a prospective risk of persecution, which was the first reason for rejecting the refugee protection claim, was not based on the application of the proper test to determine whether there was a well-founded fear of persecution. Lastly, according to the applicant, the RAD's second reason for rejecting the claim, based on its finding of the existence of state protection, was unfair from a procedural standpoint, because the RAD did not give the applicant an opportunity to present new evidence and submissions on this new issue, which had not been addressed by the RPD, and was also unreasonable because the RAD failed to apply the correct test for operational efficiency adopted by this Court.

[14] There is no need to address the first two issues raised by the applicant, since the determinative issue in this case is whether the RAD's finding that the applicant failed to rebut the presumption of state protection was reasonable. For the following reasons, I believe that the evidence allowed the RAD to draw this conclusion.

A. *Risk of persecution and applicable test*

[15] I agree with the applicant's position that the RAD decision misstated the test governing the protection of refugees by conducting its prospective risk assessment to determine whether, upon returning to Lebanon, the applicant would be subjected to "more than a mere possibility of persecution" based on section 96 of the IRPA. At paragraph 2 of its decision, the RAD wrote: "I find the Appellant has failed to establish a prospective risk of persecution and rebut the presumption of state protection".

[16] The RAD appears to have required the applicant to establish on a balance of probabilities that she [TRANSLATION] "will be persecuted". This standard of proof is more onerous than the standard established by the Federal Court of Appeal in *Adjei v Canada (Minister of Employment and Immigration)*, [1989] 2 FC 680, at paragraphs 5 and 6. The correct test is whether an applicant has demonstrated that there is more than a mere possibility of persecution, not whether an applicant has proven persecution on a balance of probabilities.

[17] Even though the applicable standard was misstated by the RAD, the fact remains that the applicant was required to demonstrate that the authorities in Lebanon were unable or unwilling to intervene to protect her against persecution by members of her family.

B. *State protection*

[18] Except in situations where there has been a complete breakdown of the state apparatus, there is a presumption that a state is capable of protecting its citizens. In order to rebut this

presumption, an applicant must demonstrate, by way of clear and convincing evidence, that the state is unable or unwilling to protect its citizens. This evidence must be established on a balance of probabilities.

[19] First and foremost, the RAD concluded that the applicant's brother was no longer living in Lebanon. This finding was not only based on the applicant's contradictory testimony, but also on her written statements in the context of her visa application and her refugee protection claim.

[20] Nevertheless, the RAD recognized that even though the evidence indicated that the applicant's brother was no longer in Lebanon, the cousins who had attacked her were still in Lebanon and should be considered agents of persecution. It therefore reviewed the evidence concerning the protection offered by the authorities in Lebanon.

[21] The RAD carefully reviewed the documentary evidence presented by the applicant concerning the objective situation and family violence in Lebanon and noted that certain gaps persist in that country in terms of the application of laws. However, the RAD noted that the police had intervened and provided the protection requested after the applicant and her husband were attacked, following their marriage in May 2015.

[22] The applicant and her husband indicate that they were threatened when they returned to Lebanon in January 2016, but they did not go back to authorities to report these threats or the failure to comply with the undertaking to keep the peace.

[23] The applicant testified that they did not go back to authorities to report that her brother had failed to comply with the undertaking he had made to keep the peace. The RAD concluded that the fact that the applicant's brother or cousins had failed to comply with the undertaking they had signed to keep the peace was not sufficient to demonstrate that the state was not able to protect her.

[24] The RAD was right to conclude that the applicant had failed to take reasonable measures to exhaust the recourse options available to her in order to obtain protection in Lebanon and that she had failed to demonstrate that it was reasonable for her to do so. An applicant's subjective reluctance to engage authorities is not enough to rebut the presumption of state protection: *Ruszo v Canada (MCI),* 2013 FC 1004, para 33; *Navarro Canseco v Canada (MCI),* 2007 FC 73, para 17; *Torales Bolanos v Canada (MCI),* 2011 FC 388, para 60; *Gallo Farias v Canada (MCI),* 2008 FC 578, para l9.

[25] The RAD considered Guideline 4 on women refugee claimants fearing gender-related persecution. The tribunal concluded that these Guidelines did not permit the applicant to circumvent the obligation to ask authorities for protection simply because of a subjective reluctance.

[26] The applicant criticizes the RAD for conducting a selective reading of the documentary evidence on the situation in Lebanon and for failing to highlight the most damning passages concerning the situation of family violence in Lebanon. She claims that the RAD did not review the test for operational efficiency. I disagree.

[27] The general documentary evidence on the gaps in the application of the law and the protection offered to victims of family violence in Lebanon is not sufficient in and of itself to establish the existence of a risk. It is well established that it is the applicant's responsibility to establish a link between general documentary evidence and her specific situation (*Ayikeze v Canada (MCI)*, 2012 FC 1395, para 22).

[28] As mentioned earlier, the Lebanese authorities intervened to protect the applicant against her brother and cousins. The applicant did not demonstrate the link between her personal situation and the general documentary evidence on the problems in Lebanon. The protection offered by the state was not required to be perfect.

[29] In light of all of the evidence, the RAD reasonably concluded that the applicant had failed to rebut the presumption of state protection.

C. *Procedural fairness*

[30] The applicant alleges that there was a breach of procedural fairness stemming from the fact that the finding concerning state protection was a new issue that had not been addressed by the RPD and the fact that the RAD had not given her an opportunity to present submissions and new evidence in this regard. This argument has no merit.

[31] The applicant herself raised the issue of lack of state protection several times in the submissions she filed with her appeal. She also cited excerpts of documentary evidence and case law in this regard.

[32] In light of the fact that it is the applicant who raised the issue of a lack of state protection in the context of her appeal, and that she clearly had an opportunity to address this issue and present new evidence in that regard, she cannot claim to have been surprised when the RAD considered this issue and drew its own conclusions about the evidence.

D. *Lack of apprehension of bias*

[33] In the interest of being thorough, I must add that no errors were noted in the RAD's assessment of the alleged apprehension of bias before the RPD. Counsel for the applicant objected to the fact that the member continued to repeat the same question when, in his opinion, his client had already answered the question. The member noted the objection, but, since she believed that the applicant had not answered her question, she dismissed the objection and proceeded with the hearing. I agree with the respondent that an informed person viewing the matter realistically and practically, and having thought the matter through, would reach the conclusion that there was no evidence in the record to suggest that the RPD demonstrated any appearance of bias.

IV. Conclusion

[34] The RAD decision is reasonable in light of all of the evidence. There is therefore no need for the Court to intervene in this case.

[35] Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT in IMM-1601-19

THE COURT'S JUDGMENT is that:

The application for judicial review is dismissed.

"Roger R. Lafrenière"
Judge

Certified true translation
This 27th day of November, 2019.

Francie Gow, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1601-19
STYLE OF CAUSE:	SANAA ISKANDAR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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