Federal Court  Cour fédérale

Date: 20200508

Docket: IMM-1291-19

Citation: 2020 FC 601

Ottawa, Ontario, May 8, 2020

PRESENT: Mr. Justice McHaffie

BETWEEN:

SUHEILA QAYYEM
ABDUL KHALEK KAYEM
FADEL KAYEM
HALA KAYEM
DIYALA QAYYEM

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Abdul Khalek Kayem lived with his family in the Ain al-Hilweh refugee camp in Lebanon and ran a grocery store in Al-Ghazieh, outside the camp. In October 2017, a man he believes to be a member of a fundamentalist group asked him to transport a bag out of the camp. He refused. In the following weeks, he started receiving unidentified calls that he did not answer.

Three weeks after the refusal, unseen individuals fired gunshots near Mr. Kayem as he was on his way to work. Mr. Kayem believes the shots were directed at him because he refused the group's demands to transport the bag. Mr. Kayem, his wife, and three of their children fled Lebanon. They seek refuge in Canada, fearing that, if they return, they will be targeted by the group, and will face persecution throughout Lebanon as stateless Palestinians.

[2] The Refugee Protection Division (RPD) rejected the family's refugee claims. While believing Mr. Kayem's evidence, the RPD found that he had not demonstrated that the men who asked him to transport the bag were members of a fundamentalist group, that they would retaliate for such a refusal by killing him, or that the shooting incident was related to the refusal. The RPD also found that the family had an Internal Flight Alternative (IFA) in Beirut. The applicants believe the decision was unreasonable, and seek judicial review.

[3] While the evidence showed that stateless Palestinians face hardship and discrimination in Lebanon, such hardship and discrimination will not always be sufficient to establish a serious possibility of persecution or that relocation within Lebanon is unreasonable. The assessment depends on the country condition evidence, the claimants' personal circumstances, and the officer's evaluation of each. IFA findings with respect to other refugee claimants—even other stateless Palestinians in Lebanon—cannot be automatically applied. The RPD's conclusion that the applicants failed to show they would be at risk from the fundamentalist group or otherwise subject to persecution in Beirut, or that it would be unreasonable for them to relocate there, was reasonable on the evidence before it, and is determinative of this application.

[4] The application for judicial review is therefore dismissed.

II. Issues and Standard of Review

[5] The determinative issue on this application is whether the RPD's conclusion that the applicants had a viable IFA in Beirut was reasonable. If a claimant may safely and reasonably relocate within their country of nationality—or, if stateless, country of habitual residence—they are expected to do so rather than seek refugee protection in Canada. The concept of an IFA is inherent in the definition of a Convention refugee under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]: *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 at pp 592–593. Similarly, the purpose of the IFA test is helpful in assessing risk of harm under section 97 since a person in need of protection must face the identified risk "in every part of that country": *Sanchez v Canada (Citizenship and Immigration)*, 2007 FCA 99 at para 16; *IRPA*, s 97(1)(*b*)(ii).

[6] The RPD's determinations on the availability of an IFA are reviewed on the reasonableness standard: *Tariq v Canada (Citizenship and Immigration)*, 2017 FC 1017 at paras 13–14. The Supreme Court of Canada's decision in *Vavilov*, decided after this case was argued, simply confirms that the reasonableness standard applies: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25. Reasonableness review recognizes Parliament's intention to have the RPD determine the facts, apply their expertise and judgment, and evaluate whether a claimant meets the definitions of a Convention refugee or a person in need of protection: *Tariq* at para 14; *Vavilov* at para 30. This Court will not substitute its own view of a preferable outcome; rather, it will only interfere with the RPD's determination if it is not justified, transparent and intelligible: *Tariq* at paras 13–14.

III. The RPD's Determination of a Viable Internal Flight Alternative was Reasonable

[7] In assessing whether there is a viable IFA, the RPD must be satisfied, on a balance of probabilities, that (1) the claimant will not be subject to persecution (on a "serious possibility" standard), or a section 97 danger or risk (on a "more likely than not" standard) in the proposed IFA; and (2) in all the circumstances, including circumstances particular to the claimant, conditions in the IFA are such that it would not be unreasonable for the claimant to seek refuge there: *Thirunavukkarasu* at pp 595–597; *Hamdan v Canada (Citizenship and Immigration)*, 2017 FC 643 at paras 10–12. Once the potential for an IFA is raised, the claimant bears the onus of establishing that an IFA is not viable: *Thirunavukkarasu* at pp 594–595.

[8] The RPD's analysis addressed these two prongs of the IFA test as they related to the claimed persecution by the members of the fundamentalist group. It also addressed separately the applicants' fears of persecution as stateless Palestinians in Lebanon.

[9] With respect to the first prong of the analysis, the RPD was not satisfied that the applicants had shown that the man who asked Mr. Kayem to transport the bag belonged to a fundamentalist group. They nonetheless assessed the risk to them in Beirut even if he was a member of such a group, and found that Mr. Kayem did not fit the profile of someone the group would be motivated to seek out in Beirut. The RPD referred to evidence regarding a "turf war" between armed groups in the Ain al-Hilweh camp, but concluded that since Mr. Kayem had not been part of a conflict in the camp and was not part of a rival group, he had not demonstrated that the groups would pursue him or his family in Beirut.

[10] The applicants argue that those who live inside the camp and work outside are seen as "assets" to violent groups in the camp as they can move packages in and out of the camp and can be used to deliver messages. This is certainly consistent with Mr. Kayem's account of the demand made of him. However, the applicants did not identify evidence showing that such a group would pursue a non-member throughout Lebanon for refusing to cooperate, beyond Mr. Kayem's own statement of his expectations.

[11] The applicants assert that there was no evidence that Mr. Kayem or the other applicants would be safe from the group and that it was speculative for the RPD to conclude that they would be. However, this is not the relevant question. The applicants bear the onus of establishing that they would be at risk from the identified persecutors in the proposed IFA. Given the lack of evidence on the issue beyond the applicants' arguments and Mr. Kayem's statement, the RPD's conclusion that they had not met that onus was a reasonable one.

[12] The applicants similarly brand as speculation the RPD's observation that the applicants' family members still in Lebanon had not been threatened despite the passage of time since their departure. Again, however, the onus was on them to file any evidence of threats that might be relevant to the men's continued interest in them, and they pointed to no evidence of any such threats. The evidence that the two daughters of the family who remained in Lebanon were in hiding in the storage area of the store does not counter the RPD's statement, particularly in light of Mr. Kayem's evidence that his brother continued to work in the same grocery store where he worked. The RPD's reference to the lack of threats as being relevant to assessing whether the group was motivated to find and harm Mr. Kayem was reasonable.

[13] With respect to the second prong of the analysis, the RPD recognized that there was "much information about high levels of poverty and discrimination amongst stateless Palestinians in Lebanon." However, the RPD also considered the particular circumstances of the applicants, a necessary part of the second prong of the IFA analysis: *Thirunavukkarasu* at p 597. The RPD noted that Mr. Kayem's occupation as manager of a grocery store is one that could be continued elsewhere, and noted his brother's ability to relocate outside the refugee camp a number of years prior without significant problems. The RPD also noted that the family's vacations in Thailand, Jordan, Saudi Arabia, and the United Arab Emirates suggested that their situation was different from those stateless Palestinians described in the evidence as "living in poverty." The RPD therefore found that relocation to Beirut would not be unreasonable for the applicants, and that it was therefore a viable IFA.

[14] The applicants assert that it would be unreasonable for a stateless Palestinian to relocate to Beirut, as legal and social discrimination against stateless Palestinians exists throughout Lebanon and amounts to persecution. The applicants' argument on this issue thus also engages their claim as Convention refugees based on their profile as stateless Palestinians, which was rejected by the RPD for similar reasons. While acknowledging the "abundance of evidence" that stateless Palestinians suffer discrimination and racism in Lebanon, the RPD noted the applicants' particular circumstances—including their ability to secure jobs and schooling, and even travel outside the country for leisure—and concluded that they had not demonstrated that they would face persecution on return to Lebanon.

[15] The applicants point out, quite fairly, that the evidence indicates that comparative wealth does not exempt stateless Palestinians in Lebanon from discrimination. To the contrary, a recent news article on which the applicants relied noted that "even the most privileged among them endure discrimination," and that the influx of war refugees from Syria made the situation even more difficult.

[16] However, the RPD was not called upon to simply assess whether the applicants would suffer discrimination, which the RPD acknowledged was the case. In assessing whether Beirut was a viable IFA, the RPD had to determine whether the applicants had established that it would be unreasonable for them to move to Beirut. As the Minister notes, this inquiry engages a high standard, requiring "actual and concrete evidence" of conditions that would jeopardize the applicants' lives and safety in travelling or temporarily relocating to a safe area: *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164 (CA) at para 15. Evidence of widespread discrimination, including in areas of healthcare, education and employment, is certainly relevant to an assessment of the reasonableness of an IFA, and the RPD considered this evidence. But on the general evidence regarding the treatment of stateless Palestinians in Lebanon and the evidence of the applicants' circumstances in particular, I am unable to say that it was unreasonable for the RPD to find that the applicants had not met the high threshold under the second prong of the IFA test.

[17] The applicants refer to other decisions of the RPD that found other stateless Palestinians from Lebanon to have no IFA in that country, notably *Re WZ* (5 July 2017), MB6-08236 (CA IRB), and *Re X*, 2018 CanLII 121938 (CA IRB). The applicants submit that the Immigration and

Refugee Board must be consistent with its decisions, and that it was unreasonable for the RPD to find that the applicants had an IFA in Beirut. While I appreciate that it may be difficult for the applicants to understand why other stateless Palestinians from Lebanon are granted refugee protection and they are not, I cannot agree with the applicants' submission for the following three reasons.

[18] First and foremost, as in every case, the RPD was called upon to decide whether the applicants had established that they themselves were Convention refugees or persons in need of protection. That decision had to be made on the merits of the applicants' own case, based on both the personal and country condition evidence filed. Neither the RPD nor the Court can know the full extent and nature of the evidence put forward and considered in other cases, even when some of the evidence is referred to in the decision, and those decisions are not binding on the RPD: *Ruszo v Canada (Citizenship and Immigration)*, 2019 FC 296 at para 11. It would be an error for the RPD to neglect its fact-finding and discretionary mandate by simply adopting the conclusions arising in different cases.

[19] Second, the IFA decisions cited by the applicants bear significant differences to their own situation. In *Re WZ*, the principal claimant gave considerable evidence that he had been coerced and threatened by a named individual, known to be linked with extremists, for a period of several months, and was assaulted by them after refusing to assist them. Although the RPD found it difficult to determine the extremists' ability to pursue the claimant, they were satisfied based on this history and the claimant's testimony that the persecutor could find them throughout the country. In *Re X*, the appellant had been living in a Hezbollah controlled suburb south of Beirut,

and feared persecution by Hezbollah as a result of having aided anti-Assad Syrian refugees. The Refugee Appeal Division considered the possibility of the appellants moving from the Beirut area *to* a refugee camp and found this would be unreasonable as it would put their safety in jeopardy. Thus, while there are some parallels, neither of these situations fully describes the applicants' situation in this case, or sets out a general rule that no stateless Palestinian can ever be found to have a viable IFA in Lebanon.

[20] Third, the applicants' basic submission—that the RPD must be consistent—cannot be accepted as an absolute principle. Even if the decisions highlighted by the applicants showed a true inconsistency, which I do not believe is the case, Canadian administrative law has long recognized that inconsistency in an administrative tribunal's decisions is not a stand-alone ground of review: *Domtar Inc v Quebec (Commission d'appel en matière de lésions professionnelles)*, [1993] 2 SCR 756 at pp 796–801; *Vavilov* at paras 72, 129–132. Consistency and the value of treating like cases alike are important goals that promote the rule of law. However, administrative decision-making also has other goals, including timeliness, effectiveness, and accessibility, which are reflected in the reasonableness standard. That standard recognizes that different decision-makers may reach different outcomes that are each reasonable and justifiable, even in cases that may have similarities. This is particularly so in areas of fact-finding. One decision-maker's appreciation of the evidence of discrimination faced by a group in a country may differ from that of another, particularly as it relates to the specific context of an applicant. As long as that appreciation is based on a "justified, transparent and intelligible" assessment of the evidence, it will be reasonable.

[21] I find that the RPD appropriately and intelligibly reviewed the evidence and reached a coherent conclusion on whether it would be reasonable for the applicants to relocate to Beirut. Its finding was open to it on the record and the applicants have not satisfied me that the RPD ignored any material evidence or was otherwise unreasonable in its analysis. I therefore conclude that the RPD's assessment that the applicants have a viable IFA in Beirut was reasonable.

IV. Conclusion

[22] As the RPD's finding that there was a viable IFA for the applicants in Beirut was reasonable, the conclusion that the applicants were not Convention refugees nor persons in need of protection was similarly reasonable, and the rejection of their refugee claims must be upheld. The application for judicial review is therefore dismissed.

[23] Neither party asked that a question be certified and I agree that no certifiable question arises in the matter.

[24] Finally, in the interests of consistency and in accordance with subsection 4(1) of the *IRPA* and subsection 5(2) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, the style of cause is amended to name the respondent as the Minister of Citizenship and Immigration.

JUDGMENT IN IMM-1291-19

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. The style of cause is amended to name the respondent as the Minister of Citizenship and Immigration.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1291-19
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