

Federal Court



Cour fédérale

Date: 20200515

Docket: IMM-5414-19

Citation: 2020 FC 625

Ottawa, Ontario, May 15, 2020

PRESENT: The Associate Chief Justice Gagné

BETWEEN:

**MANAR ABDULAH MAHMOUD ABU DAKKA
ALAA KHALIL MOHAMMAD QDEIH
YAZAN MANAR ABDULLAH ABU DAKKA
SALY MANAR ABDULLAH ABU DAKKA
LARA MANAR ABDULLAH ABU DAKKA
YARA MANAR ABDULLAH ABU DAKKA**

Applicants

And

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are a family of six stateless Palestinians holding temporary Jordanian passports. They were all born in Saudi Arabia, where they lived all their lives before coming to Canada to claim asylum. The father attended university in Jordan from 1997 to 2001, and the family visited that country in 2010, 2015, and 2016.

[2] They claim that Saudi Arabia is oppressive and systematically discriminatory in its treatment of foreign nationals, especially Palestinians. As non-citizens, they lived under the sponsorship system in force in that country. The father claims that his sponsor was controlling and abusive and that he verbally and sexually harassed his wife. The mother and the minor daughters also claim that they were frequently intercepted and assaulted by the Committee for the Promotion of Virtue and the Prevention of Vice (commonly referred to as the religious or morality police) for wearing makeup and failing to comply with the religious dress code. In addition, the minor children were beaten and bullied by their classmates at school, especially the youngest daughter, who is hearing-impaired.

[3] They now challenge the decision of the Refugee Protection Division [RPD] rejecting their refugee claim because the discrimination they faced in Saudi Arabia did not rise to the level of persecution.

II. Decision under review

[4] The RPD first determined that the Applicants' country of former habitual residence was Saudi Arabia. With respect to Jordan, the panel found that the father had only lived in Jordan for a temporary purpose (i.e. attending university) and thus his time there did not constitute a significant period of *de facto* residence. The family's subsequent visits to Jordan for short pleasure trips did not detract from this finding. The RPD therefore excluded Jordan from its analysis.

[5] The RPD then considered the Applicants' allegations with respect to discrimination based on Saudi Arabia's laws, and assessed whether these laws constitute discrimination that rises to the level of persecution. The RPD noted that the objective documentary evidence indicates that Palestinians are subject to the same regulations as other foreigners in Saudi Arabia, and are not treated differently from other foreigners. Non-citizens do not have free health care privileges, nor do they have access to post-secondary education. It has also become difficult for non-citizens to find employment due to the Saudization laws, which aim to replace foreign workers with locals.

[6] The RPD concluded that Saudi Arabia has the right and ability to enact laws and regulations that it deems beneficial to its citizens in the areas of education, employment, and social services. These are laws of general application and the Applicants bear the onus of showing that they are inherently persecutory in relation to a Convention ground.

[7] The RPD found that the Applicants did not meet that onus, and concluded that the Applicants were not facing discrimination amounting to persecution due to Saudi Arabia's laws.

[8] In making that finding, the RPD noted that both parents received an education at the primary or secondary level in Saudi Arabia, and there was no evidence that any member of the family was ever denied medical treatment while living in Saudi Arabia.

[9] With respect to the sponsor's mistreatment of the father, the RPD found that the treatment, although not fair at all times, did not singularly or cumulatively rise to the level of persecution. Further, the RPD found that the experiences alleged by the Applicants, including the

minor Applicants' subjection to fights and bullying at school, did not rise to the level of persecution.

[10] The RPD recognized that the objective evidence indicates that violence and official gender discrimination against women are among the country's most significant human rights issues, but it noted that foreigners and citizens alike are expected to follow prevailing cultural norms in Saudi Arabia, and that the female Applicants' personal experiences in that regard did not constitute persecution. With respect to religious authorities, the RPD noted that they are no longer empowered with the functions they once had; they are severely regulated and can no longer investigate, detain or arrest anyone.

[11] The RPD found that the Applicants' respective experiences of living in Saudi Arabia are not serious enough to rise to the level of persecution, either singularly or cumulatively. Accordingly, it rejected their claims.

III. Issues and standard of review

[12] The Applicants raise the following issues:

- A. *Did the RPD err by failing to assess the risk of persecution in Jordan?*
- B. *Did the RPD fail to consider multiple grounds of discrimination and to explain why the discrimination suffered by the Applicants does not amount to persecution?*
- C. *Did the RPD fail to assess the minor Applicants' claims separately?*
- D. *Did the RPD err in its assessment of the female Applicants' claims about gender-based discrimination?*

[13] At the hearing, counsel for the Applicants focused his arguments on issues C and D. However, I am of the view that issue D is determinative of this application for judicial review and that it warrants the Court's intervention. These reasons will therefore only address the fourth issue raised by the Applicants.

[14] That said, the starting point for the analysis is that a rebuttable presumption of reasonableness is applicable in all cases (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at paras 10-11). The presumption can be rebutted in two types of situations (*Vavilov*, at paras 17 and 69), neither of which is present in the instant proceeding.

[15] For a decision to be reasonable, “it must bear the hallmarks of reasonableness—justification, transparency and intelligibility—and it must be justified in relation to the factual and legal constraints applicable in the circumstances” (*Zhu v Canada (Citizenship and Immigration)*, 2020 FC 318, at para 11; *Vavilov*, at para 99).

[16] In *Vavilov*, the Supreme Court embraced the culture of justification in administrative decision-making; the reviewing Court needs to focus on both the reasons and the conclusions of the decision maker and it is not to fill in too many blanks.

IV. Analysis

[17] In *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, the Supreme Court stated that, for treatment to amount to persecution, it must be a “sustained or systemic violation of basic human rights demonstrative of a failure of state protection.”

[18] The RPD rightfully pointed to case law that imposes on it the burden to carefully analyse the evidence adduced, properly balance the various elements contained therein, and draw its conclusion in a practical, factual context (*Sagharichi v Canada (Minister of Employment and Immigration)*, (1993) FCJ No. 796).

[19] With respect to the mother's gender-based claim, the evidence before the RPD shows that the Applicants' sponsor verbally and sexually abused her, and that she was discriminated against, harassed, detained and beaten with a stick on many occasions by the morality police for not wearing the black *niqab* or *Abaya* and for wearing make up in public. As a Palestinian refugee, she was unable to find a job and attain financial independence.

[20] I pause here to mention that there were no credibility issues raised by the RPD.

[21] Yet the RPD disposes of the mother's claim in the two following paragraphs:

[22] The objective evidence also indicates that violence and official gender discrimination against women are among the country's most significant human rights issues. Women are reported to be excluded from many aspects of public life and face significant discrimination under law and custom. They have fewer political and social rights than men and are treated by society as un-equals in political social spheres. Their ability to move freely within the country is noted to be severely restricted owing to the guardianship system.

[23] Regarding the associate claimant's claim and that of the female minor claimants, the panel accepts that the associate claimant has in the past been spoken to by the religious police about her non-compliance with the dress code and that the older of the female minor claimants has begun to experience this, too. However, the panel is of the view that the foreigners and citizens alike are expected to follow prevailing cultural norms in Saudi Arabia and that the female claimants' personal experiences in this regard did not constitute persecution...

[22] The RPD continues by stating that according to the country documentation, the religious police no longer have the power to arrest and detain people and that they are now less visibly present and active.

[23] The RPD does not seriously turn its mind to the evidence of persecution adduced by the female Applicants, other than to state that they were “spoken to by the religious police”. The RPD’s decision acknowledges – based on case law – that a law of general application can be found to be inherently persecutory in relation to convention grounds (*Zolfagharkhani v Canada (Minister of Employment and Immigration)*, [1993] FCJ No. 584 [*Zolfagharkhani*]) and that “violence and official gender discrimination against women are among Saudi Arabia’s most significant human rights issues”. It is therefore somewhat difficult to understand how the RPD goes on to simply conclude that the female Applicants were “expected to follow prevailing cultural norms in Saudi Arabia”.

[24] In my view, such a blanket statement is dangerous in the context of refugee claims. It implies that the laws of general application or the “prevailing cultural norms” have to be assessed in accordance with the country of origin’s standards, not against Canadian or even international human rights standards. This is not the case (see *Zolfagharkhani*).

[25] I also have difficulty understanding why the evidence specific to the female Applicants was not assessed within the context of the prevailing conditions in Saudi Arabia for all women. The female Applicants are Palestinian refugees rendered even more vulnerable by the sponsorship regime and the fact that they have no country to return to for protection. In fact, the

RPD's decision barely mentioned, if not undermined, the evidence specific to the female Applicants.

[26] In my view, the decision regarding the gender-based claim does not demonstrate rationality internal to the reasoning process, nor is it tenable in light of the factual and legal constraints that bear on it (*Vavilov*, at para 101).

V. Conclusion

[27] Since it was not reasonable for the RPD to fail to consider the evidence specific to the female Applicants and to dispose of their claim by simply stating that they were expected to follow "prevailing cultural norms in Saudi Arabia", the decision is set aside and the file sent back to the RPD for a new determination by a different member.

[28] The parties have not proposed any question for certification and none arises from the facts of this case.

JUDGMENT in IMM-5414-19

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted;
2. The decision of the Refugee Protection Division dated July 9, 2019 is set aside and the matter sent back for a new determination by a different member;
3. No question of general importance is certified.

“Jocelyne Gagné”

Associate Chief Justice

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5414-19

STYLE OF CAUSE: MANAR ABDULAH MAHMOUD ABU DAKKA,
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YARA MANAR ABDULLAH ABU DAKKA v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE BETWEEN
MONTREAL, QUEBEC AND TORONTO, ONTARIO

DATE OF HEARING: MAY 11, 2020

JUDGMENT AND REASONS: GAGNÉ A.C.J.

DATED: MAY 15, 2020

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