

Federal Court



Cour fédérale

Date: 20210219

Docket: IMM-6337-19

Citation: 2021 FC 162

Ottawa, Ontario, February 19, 2021

PRESENT: Madam Justice Walker

BETWEEN:

**OSAMA HABBOOB, SUAD HABBOUB,
BARAA HABBOUB, DANA HABBOUB
AND IBRAHIM HABBOUB**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants, Mr. Osama Habboob, his wife, Ms. Suad Habboub, and their three children, request the Court's review of an October 2, 2019 decision (Decision) of the Refugee Protection Division (RPD). The RPD concluded that the Applicants are neither Convention refugees nor persons in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA) and denied their claims for refugee protection.

[2] For the reasons that follow, the application is dismissed. First, I am not persuaded that a breach of procedural fairness occurred during the hearing before the RPD. The Applicants have not established that Mr. Habboob's decision to forego interpretation services was uninformed or curtailed his ability to adequately express himself, or that Ms. Habboub's testimony suffered because she did not fully understand her husband's evidence. Second, the RPD's consideration of the Applicants' fear of the general risks and uncertainties inherent in life in Gaza does not reveal a reviewable error. The panel reviewed the evidence provided by the Applicants, including their lives in Gaza and continuing association with Gaza during the 11 years they were based in the United Arab Emirates (UAE). The RPD explained its conclusions with reference to the evidence logically. Its rejection of the Applicants' refugee claims was justified in light of their personal histories and the country evidence for Gaza. There are no grounds justifying this Court's intervention.

I. Background

[3] The adult Applicants and two of their minor children are stateless Palestinians from Gaza. Their youngest child is a citizen of the United States.

[4] Mr. Habboob was born in Gaza in 1977. In 1995, he moved to Turkey to study engineering and remained in Turkey until 2007. Mr. Habboob moved to the UAE for work in 2007 and lived in the UAE for the next 11 years. Throughout his time in Turkey and the UAE, Mr. Habboob returned to Gaza numerous times.

[5] Ms. Habboub was born in Kuwait in 1984. She is not a citizen of Kuwait as it does not grant natal citizenship. In 1991, her family was deported and moved to Jordan where Ms. Habboub lived until 2000. In 2000, the family moved to Gaza. Ms. Habboub attended secondary school and university in Gaza.

[6] Mr. Habboob and Ms. Habboub met in Gaza and married in 2008, following which they relocated to the UAE where the two older children were born. They both have extended family in Gaza. In 2017, the adult Applicants and two children visited Mr. Habboob's brother in the United States. Mr. Habboob and the children returned to the UAE in early 2018 but Ms. Habboub remained in the US until the birth of their third child, after which she returned to the UAE with the baby.

[7] Mr. Habboob's UAE residency permit was cancelled in June 2018. The reason for the cancellation is in issue in this application but was not determinative of the RPD's rejection of the Applicants' refugee claims. Nonetheless, it is important to note that the Applicants are not able to return to the UAE as a result of the cancellation.

[8] The Applicants travelled to the United States in July 2018 and shortly thereafter came to Canada where they made refugee claims. The family's claims were heard by the RPD on September 9, 2019.

[9] The RPD found that Gaza is a country of former habitual residence of the adult Applicants and the two older children and that the Applicants have the right to return to Gaza as

they each carry passports issued by the Palestinian Authority. The panel refused the Applicants' refugee claims principally because it concluded that their fear of returning to Gaza was based on the general adverse living conditions in the country and the threat posed by military intervention from Israel. Therefore, the Applicants had not established a serious possibility of persecution on a Convention ground or that it is more likely than not that they are persons in need of protection. The RPD also found that Ms. Habboub had raised no prior ill-treatment as a woman while in Gaza, nor had she expressed a fear of future persecution based on her gender. The panel concluded that the Applicants do not have a well-founded fear of persecution of Ms. Habboub or the minor daughter in Gaza. Finally, the RPD acknowledged the existence of discrimination against foreign nationals in the UAE but stated that it does not amount to persecution. The RPD also acknowledged that the Applicants could not, at the time of the hearing, return to the UAE.

II. Issues

[10] The determinative issues in this application are:

1. Was the Applicants' right to procedural fairness breached because the RPD did not ensure they fully understood their ability to access translation services during their hearing?
2. Is the Decision unreasonable due to the RPD's failure to apply the Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution (*Gender Guidelines*) and errors in its sections 96 and 97 analysis?

[11] The Applicants make a number of ancillary submissions regarding errors in the Decision which I do not find to be material and which I will address briefly at the conclusion of my analysis.

III. Standard of Review

[12] The Applicants' allegation of unfairness during the RPD hearing requires the Court to adopt an approach that can best be described as a review of the RPD's process for correctness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34-56 (*Canadian Pacific*)). I will assess whether the RPD's treatment of Mr. Habboob's and Ms. Habboub's right to interpretation during the hearing was just and fair "with a sharp focus on the nature of the substantive rights involved and the consequences" of the hearing process (*Canadian Pacific* at para 54).

[13] The parties submit, and I agree, that the Applicants' submissions challenging the merits of the Decision must be reviewed for reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 25 (*Vavilov*)).

[14] A reasonable decision is one that is internally coherent and rational that is justified in relation to the facts and law that constrain the decision maker (*Vavilov* at para 85; *Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67 at para 32). It follows that reasonableness review begins with the decision made by the decision maker and considers whether the decision maker applied the relevant law to the facts of the case, and whether its chain of reasoning is internally coherent. The reasonableness standard requires respect and deference for the decision maker's role and findings of fact but remains a robust form of review. As a result, the person challenging the decision must satisfy the reviewing court "that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

IV. Analysis

1. *Was the Applicants' right to procedural fairness breached because the RPD did not ensure they fully understood their ability to access translation services during their hearing?*

[15] The Applicants submit that, while Mr. Habboob waived interpretation at the RPD hearing, his waiver was not irrevocable and the RPD should have better explained the fact that the Arabic interpreter remained available to him. Mr. Habboob states that he did not understand the notion of the interpreter being on standby and that he now realizes he should have testified in Arabic. The Applicants also submit that Ms. Habboub's testimony was prejudiced by the fact that she did not fully understand Mr. Habboob's evidence and that the first part of her testimony was given in English until she began speaking to the interpreter in Arabic.

[16] I find that the RPD committed no breach of the Applicants' right to procedural fairness, specifically their right to a fair hearing in which they were able to fully participate.

[17] With respect to Mr. Habboob's testimony, the RPD confirmed at the beginning of the hearing that the interpreter had spoken with the Applicants and that they understood each other. The interpreter informed the panel that Mr. Habboob preferred to speak in English while Ms. Habboub wanted to speak in Arabic. The RPD asked whether Ms. Habboub understood English and whether she could understand Mr. Habboob when he spoke in English, to which Ms. Habboub responded that she did. The panel stated, "Yes, it's because it's important for you to understand his testimony as well". The RPD informed the interpreter that she need not interpret simultaneously and that she could be on standby. When the interpreter asked whether

the RPD's statement applied to Ms. Habboub, the panel confirmed that it did unless Ms. Habboub testified in Arabic.

[18] The Applicants were represented by counsel at the RPD hearing. No complaint has been made against his competency. The adult Applicants are university educated and have travelled on numerous occasions, and Mr. Habboob has worked professionally. They are not unsophisticated. Having reviewed the transcript of the hearing, I find they expressed themselves to the RPD clearly as to their choice of language and their English comprehension. I emphasize that the RPD asked Ms. Habboub whether she was able to understand her husband when he spoke in English and explained the importance of the question. The RPD reasonably relied on her answer.

[19] I am not persuaded by Mr. Habboob's statement that he now realizes he should have testified using the Arabic interpreter. Mr. Habboob elected to proceed in English (*Abeer v Canada (Citizenship and Immigration)*, 2011 FC 1424 at para 8 (*Abeer*)). He states to the Court that he would have been better able to articulate his testimony using the interpreter but this submission is not sufficient to establish a breach by the RPD of his right to "continuous, precise, competent, impartial and contemporaneous" interpretation and to a fair hearing (*Mohammadian v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 191 at para 4).

[20] I have reviewed the transcript of the hearing against the particular areas of concern identified in Mr. Habboob's testimony. The Applicants characterize his struggles as obvious. I have considered the examples given by Mr. Habboob in his affidavit filed in support of this application highlighting where he would have been better able to explain his views. With respect,

I do not agree that Mr. Habboob struggled to provide testimony. He was able to express his answers in detail to the RPD and the interplay between the questions asked and answers provided do not indicate any misunderstandings. Most importantly, the RPD has accurately reflected Mr. Habboob's testimony in the Decision.

[21] The Applicants submit that the presiding member, without checking with them, stated that Ms. Habboub did not need an interpreter. This submission is contradicted by the transcript. Ms. Habboub argues that she would not have confirmed at the beginning of the hearing that she understood her husband when he spoke in English had she been better aware of the nature of the proceeding. However, the RPD explained to her why this was an important question and emphasized that she needed to understand Mr. Habboob's testimony. At the outset of her own testimony later in the hearing, the RPD asked whether she had understood her husband's testimony and she confirmed that she had. In addition, I have reviewed the transcript as it pertains to Ms. Habboub's testimony. She answered the RPD's preliminary questions in English without difficulty and was later informed she should proceed in Arabic by the panel when she first responded to a question in Arabic. The RPD's summary of Ms. Habboub's evidence in the Decision reflects her testimony.

[22] The Applicants rely on Justice Rennie's decision in *Abeer* but in that case the applicant had requested a Dari interpreter, was provided with a Farsi interpreter, and in the end testified in English. The result had a "direct and material impact" on the case (*Abeer* at paras 17-18). In this case, Mr. Habboob indicated, without prompting from the RPD, that he wished to testify in English. Ms. Habboub wished to testify in Arabic and was provided with an Arabic interpreter.

The RPD took reasonable steps to confirm Ms. Habboub was able to fully participate in the hearing and intervened as soon as she appeared to struggle in English.

[23] The transcript of the hearing indicates that the language and grammar used by the adult Applicants was not perfect but their testimony is clear. They were each able to convey the substance of their answers to the RPD with a reasonable level of detail. There was no indication of an unease or inability to participate that should have put the RPD on notice except when Ms. Habboub began to speak to the interpreter in Arabic, at which point the panel encouraged her to continue with the interpreter translating for her.

2. *Is the Decision unreasonable due to the RPD's failure to apply the Gender Guidelines and errors in its sections 96 and 97 analysis?*

[24] The Applicants submit that the RPD did not apply the *Gender Guidelines* and failed to be alert and sensitive to the fact that Ms. Habboub is a vulnerable woman who comes from a conservative society. I agree with the Applicants that the RPD is required to apply the *Gender Guidelines* and cannot merely parrot the important principles they reflect (*Odia v Canada (Citizenship and Immigration)*, 2014 FC 663 at paras 9, 18). However, I find that the RPD treated Ms. Habboub with respect and listened to her testimony carefully. There is no indication in the transcript that she appeared vulnerable or confused during her testimony. The Applicants' submissions, when viewed against the evidence, the transcript of the hearing and the attention paid by the RPD to Ms. Habboub's statements in the Decision, are not persuasive.

[25] The Applicants emphasize the RPD's alleged waiver of interpretation on Ms. Habboub's behalf and contest the panel's assessment of her testimony and conclusions. I have addressed the

issue of interpretation. The Applicants' arguments concerning the weight that should have been given to the possibility of discrimination against Ms. Habboub and her daughter upon a return to Gaza are not a basis for the Court to intervene.

[26] The Applicants rely on Ms. Habboub's testimony regarding the "bad treatment" of women in Gaza in support of their argument that the RPD failed to apply the *Gender Guidelines*. They point to her testimony that women are required to wear long clothing and to cover their faces, and are not permitted to move freely in Gaza or to enter government buildings. The RPD addressed these issues during the hearing and asked Ms. Habboub whether she had been negatively affected by the restrictions in the past. She replied that she had not been affected. The RPD asked Ms. Habboub why she did not mention gender concerns in her Basis of Claim form and she stated that her focus was on other more important issues. The Applicants take issue with the panel's statement that Ms. Habboub did not "express any concern that they might affect her in the future". In their view, her description of the restrictions meant she must fear them. Ms. Habboub's testimony does not support this submission. I find that the RPD's conclusion that Ms. Habboub had not described a subjective fear of persecution due to her gender was a rational result and does not reflect a failure to apply the *Gender Guidelines*.

[27] The RPD noted in its reasons that Mr. Habboob did not mention any concern regarding the treatment of women when asked to state his fears of returning to Gaza. The Applicants contest this statement with reference to Mr. Habboob's affidavit filed in support of this application. There, he states that he wanted to explain further the mistreatment of women in Gaza but struggled to do so due to the lack of interpretation provided to him. Mr. Habboob's

subsequent affidavit does not raise an issue in the RPD's evaluation of the evidence before it.

The Applicants also contest the RPD's statement that it was not referred to evidence of persecution of women in the National Documentation Package (NDP) for Gaza. I agree with the Applicants that there is evidence in the NDP on the subject of the treatment of women. The RPD stated in the Decision that it had consulted the NDP and explained that it found evidence of discrimination and not persecution. I find no contradiction in the RPD's statements.

[28] Mr. Habboob states in his affidavit that he has concerns about their daughter who is hearing-impaired. The Applicants submit that the RPD should have considered this impairment notwithstanding they did not articulate their fear of her increased vulnerability in a conflict zone due to the impairment. They argue that the RPD was required to assess the daughter's vulnerability because there was medical evidence of impairment in the record. The medical evidence in question consists of a doctor's statement in April 2013 regarding the daughter's protracted otorrhea that was treated with courses of antibiotics and eardrops. The doctor concludes his report by referencing her need for a pediatrics neurotologist for further management. There is also a discharge statement from Mafraq Hospital in 2013 stating that the daughter's tympanic membrane had been perforated and that an operation was performed. There is no evidence of any further course of medical attention. I find that the RPD did not err in omitting to raise potential impairment as an issue in the absence of submissions from the Applicants and current medical evidence substantiating ongoing impairment (*Sun v Canada (Citizenship and Immigration)*, 2010 FC 624 at para 19).

[29] The Applicants also submit that the RPD erred in its section 96 analysis. They argue that it is not safe for the family to return to Gaza because of general instability, humanitarian considerations and the location of their relative's house on the border, an easy target for tanks to strike should there be an escalation of conflict with Israel. The Applicants rely on this proximity and their allegation that the panel failed to adequately assess the arrest and five-year detention of Mr. Habboob's cousin due to a Fatah affiliation, to contest the RPD's section 97 analysis.

[30] The RPD addressed the Applicants' fear of returning to Gaza based on general insecurity, humanitarian conditions, and the possibility of falling victim to an attack by the warring forces. The panel cited Mr. Habboob's evidence during his interview upon entry to Canada, noting he had not personally experienced the type of incidents he fears in Gaza. Rather, his fears derive from the ongoing war and border issues.

[31] The Applicants correctly submit that it is not necessary to show that they have been personally targeted or persecuted in the past to establish the existence of risk under section 96 of the IRPA (*Olah v Canada (Citizenship and Immigration)*, 2017 FC 921 at para 14). However, a claimant cannot simply refer to the general situation in a country without establishing links to their personal circumstances (*Garces Canga v Canada (Citizenship and Immigration)*, 2020 FC 749 at para 52). The Applicants' description of their risk was limited to a general description of the situation in Gaza without elaboration. I find that the RPD reasonably concluded that the Applicants had not established a subjective fear of persecution based on a Convention ground.

[32] The RPD considered the Applicants' section 97 claims and found that their evidence did not establish personalized risk in Gaza. The panel reviewed Mr. Habboob's evidence regarding proximity to the border and his cousin's arrest in 1989 by the Israelis due to perceived affiliation with Fatah. Mr. Habboob testified that neither the cousin nor his family had had difficulties following the cousin's release in 1993. Therefore, counsel's submission that Israel might target the cousin's house, situated next door to the Applicants' home, was speculative.

[33] Based on my review of the evidence and Mr. Habboob's testimony, I find no reviewable error in the RPD's summary of the evidence, nor in its conclusions regarding sections 96 and 97 of the IRPA. The RPD's reasons for each of its findings are set out in the Decision intelligibly, providing the Applicants with a road map of its assessment of their refugee claims.

[34] Finally, the Applicants argue that the RPD misapprehended certain evidence, for example the adult Applicants' marriage in Gaza, which they state occurred in the UAE, its brief statement regarding the children's ability to access medical care in Gaza, and the date Mr. Habboob was contacted by the UAE authorities. The alleged errors are not significant errors that would have affected the panel's conclusion regarding the Applicants' failure to establish their refugee claims. Similarly, the RPD's assessment of the situation in the UAE, when read in connection with its conclusion that the Applicants had no right of return to the UAE, was not determinative of their claims.

[35] Accordingly, the application for judicial review is dismissed.

[36] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT IN IMM-6337-19

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

"Elizabeth Walker"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6337-19

STYLE OF CAUSE: OSAMA HABBOOB, SUAD HABBOUB, BARAA HABBOUB, DANA HABBOUB AND IBRAHIM HABBOUB v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE BETWEEN OTTAWA, ONTARIO (THE COURT) AND TORONTO, ONTARIO (THE PARTIES)

DATE OF HEARING: SEPTEMBER 23, 2020

JUDGMENT AND REASONS: WALKER J.

DATED: FEBRUARY 19, 2021

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