Federal Court Cour fédérale

Date: 20210812

Dockets: IMM-3162-20
IMM-3163-20

Citation: 2021 FC 838

Ottawa, Ontario, August 12, 2021

PRESENT: Mr. Justice Sébastien Grammond

Docket: IMM-3162-20

BETWEEN:

ELIAS BAHNA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-3163-20

AND BETWEEN:

BACHAR CHALHOUB

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Messrs. Bahna and Chahloub are citizens of Syria. Mr. Chahloub is Mr. Bahna's father-in-law. Together with their families, they applied for refugee status under the country of asylum class. A migration officer at the Canadian Embassy in the United Arab Emirates denied their applications. The officer found that Messrs. Bahna and Chahloub did not truthfully answer questions put to them at an interview, that they submitted fraudulent documents in support of their application and that they were not credible. As a result, the officer was left with insufficient credible evidence to determine that Mr. Bahna met the requirements of the country of asylum class. The officer found that Mr. Chahloub had a durable solution in Armenia, because he was likely eligible to obtain Armenian citizenship.

[2] Messrs. Bahna and Chahloub sought judicial review of the decisions of the officer. While separate, their applications were heard together and the present judgment applies to both.

[3] I am dismissing Messrs. Bahna and Chahloub's applications for judicial review. They are essentially asking me to overturn the officer's findings of fact and invoking arguments not put to the officer. On judicial review, it is not my role to substitute my own findings for those of the officer; nor may I allow applicants to bring new arguments. My role is simply to make sure that the officer's findings of fact were reasonable in light of the evidence. In this case, they were.

I. Background

[4] This case arises out of two applications for refugee status: one made by Mr. Chahloub for himself and his wife and the other one made by Mr. Banha for himself and his wife, Noura, who is the daughter of Mr. and Ms. Chahloub.

[5] In accordance with standard procedures, the migration officer interviewed the applicants with respect to the basis for the refugee claim on September 11, 2018. At some point during the review of the file, however, the officer became aware that Mr. and Ms. Chahloub's other daughter, Noha, had obtained an Armenian passport. Other documents in the file, including excerpts from the civil status registry and Mr. Bahna's certificate of marriage, indicated that certain members of the family were adherents to the Armenian Catholic Church. Moreover, Mr. and Ms. Chahloub have a son whose first name is Sarkis, which the officer recognized as a traditional Armenian name. As explained below, the applicants' Armenian ethnicity and ability to obtain Armenian citizenship is directly relevant to a condition for obtaining refugee status in Canada, namely the lack of a durable solution in another country.

[6] On January 8, 2020, the officer sent a procedural fairness letter to Mr. Chahloub and Mr. Bahna, informing them of concerns regarding their lack of truthfulness and their eligibility to apply for Armenian citizenship. On January 18, 2020, Mr. Bahna sent an email to the officer stating that neither he nor his family had Armenian citizenship nor were eligible to apply for it. On January 29, 2020, Mr. Chahloub did the same. He emphasized that none of his ancestors were

Armenian. He added that his daughter Noha was the only one in the family to have Armenian citizenship and that it could not be passed on to her parents.

[7] Both applicants were summoned to a second interview on February 26, 2020. During this interview, Mr. Chahloub stated that his family belonged to the Armenian Catholic Church, but denied that they were ethnically Armenian. Both applicants stated that an official of the Armenian government altered mentions of their ethnicity on official documents, so as to facilitate Noha's application for Armenian citizenship. At that point, the officer gave a verbal warning to the applicants that this explanation did not appear credible and reiterated the concern that they may have a durable solution in Armenia and that they may have submitted falsified documents.

[8] On February 29, 2020, Mr. Chahloub sent an email to the officer, to clarify ambiguities at the interview. He stated that the family had converted to the Armenian Catholic religion in 2015 to facilitate Noha's application for Armenian citizenship. He also suggested that Noha was invited to apply for Armenian citizenship as a result of her activism in support of the Armenian community in Syria.

[9] A decision was made on May 13, 2020. The officer found that Messrs. Bahna and Chahloub had not been truthful and that their credibility was affected. Having set aside the tainted information, the officer found that there was insufficient information to make a positive decision with respect to Mr. Bahna and dismissed his application accordingly. Mr. Chahloub's

application was dismissed because he had a reasonable prospect of a durable solution in Armenia.

[10] The officer's notes in the GCMS system provide more precision as to the grounds for the negative credibility findings. The officer underscores the fact that Noha obtained Armenian citizenship without ever living there. Given the structure of Armenian citizenship law, this suggests that Noha is ethnically Armenian. Moreover, the officer does not believe that an Armenian official would be able to alter the applicants' Syrian identity documents. Lastly, the officer finds that the explanation provided by Mr. Chahloub in his February 29, 2020 email, that the family converted to the Armenian Catholic religion in 2015, contradicted his previous statements.

II. Analysis

[11] To succeed, the applicants must show that the officer's decision is unreasonable. A decision may be unreasonable for failing to comply with the relevant legal and factual constraints: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraphs 105–107 [*Vavilov*]. In this case, the relevant legal framework is not in dispute and will be described briefly. The applicants mainly challenge the officer's factual findings. In this regard, "the decision maker may assess and evaluate the evidence before it and […], absent exceptional circumstances, a reviewing court will not interfere with its factual findings": *Vavilov*, at paragraph 125. Factual findings will be unreasonable only where "the decision maker has fundamentally misapprehended or failed to account for the evidence before it": *Vavilov*, at paragraph 126.

[12] Only a few aspects of the relevant legal framework need to be highlighted here. A person who applies for refugee status while abroad must apply for a visa. According to subsection 11(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act], a visa may be issued if a migration officer "is satisfied that the foreign national is not inadmissible and meets the requirements of this Act." Thus, applicants have the burden to provide sufficient information to show that they meet the requirements. Moreover, pursuant to section 16 of the Act, applicants must answer truthfully any questions put to them.

[13] The requirement that is at the forefront of this case is laid out by section 139(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations], which reads as follows:

139 (1) A permanent resident visa shall be issued to a foreign national in need of refugee protection, and their accompanying family members, if following an examination it is established that:	**139 (1)** Un visa de résident permanent est délivré à l'étranger qui a besoin de protection et aux membres de sa famille qui l'accompagnent si, à l'issue d'un contrôle, les éléments suivants sont établis :
[…]	[…]
(d) the foreign national is a person in respect of whom there is no reasonable prospect, within a reasonable period, of a durable solution in a country other than Canada, namely	**d)** aucune possibilité raisonnable de solution durable n'est, à son égard, réalisable dans un délai raisonnable dans un pays autre que le Canada, à savoir :
(i) voluntary repatriation or resettlement in their country of nationality or habitual residence, […]	(i) soit le rapatriement volontaire ou la réinstallation dans le pays dont il a la nationalité ou dans lequel il

avait sa résidence habituelle,
[…]

[14] Resolving the issues arising in this case is easier if one keeps in mind the distinction between an individual's identity markers, in particular citizenship, ethnicity or ancestry, residence and religion. While distinct, these concepts may be interrelated. These linkages may flow from the law. For instance, citizenship laws often use distinctions based on ethnicity, ancestry or residence. There may also be factual linkages, for example where people of a particular ethnicity are usually adherents of a particular faith.

[15] In essence, the applicants argue that the decision is factually unreasonable. They say they have no relationship whatsoever with Armenia. They deny that the relevant provisions of the Armenian citizenship law entitle them to citizenship. While they concede that Noha may have acted illegally in obtaining her Armenian passport, they say that this should not affect their applications, and they deny submitting any false documents. They assert that the officer's conclusions regarding Armenian citizenship are mere speculation.

[16] To assess these submissions, one must keep in mind that judicial review is not a trial *de novo*. Applicants cannot raise new grounds not invoked before the decision-maker. Quite simply, a decision is not unreasonable for failing to consider arguments that were not brought forward. Rather, reviewing courts should focus on the decision's overall logic and assess whether it is internally consistent and compatible with the relevant constraints: *Vavilov*, at paragraphs 99–101.

[17] The basic logic of the decision challenged is as follows. The officer first noted indicia suggesting that the applicants could obtain Armenian citizenship because they were ethnic Armenians. This would afford them a durable solution in that country. The officer shared these concerns with the applicants and called them for a further interview to enable them to provide an answer. The applicants sought to persuade the officer that they were not ethnic Armenians. However, their explanations were contradictory and not credible, and suggested that they had provided falsified documents. Thus, the officer found that the initial concerns remained valid.

[18] The applicants' most forceful submission is that their story is true, they are not ethnic Armenians and the officer should have believed them. In my view, however, the officer reasonably found that the applicants were neither truthful nor credible. Both applicants stated that documents showing their membership in the Armenian Catholic Church were altered by an Armenian official to facilitate Noha's application for citizenship. Either the explanation is incredible and false, or it is accurate and the documents, which were submitted by the applicants to the visa officer, were false. In either case, the applicants were not truthful. Moreover, in his February 29, 2020 email, Mr. Chahloub provided an entirely different explanation, namely that members of the family converted to the Armenian Catholic faith in 2015. If this is true, however, the previous explanation, to the effect that identity documents were altered by an Armenian official, was false. Faced with these conflicting statements, it was entirely reasonable for the officer to find the applicants untruthful and not credible.

[19] Consequently, the officer was entitled to find that Mr. Chahloub had not disproved that he and his wife were ethnic Armenians and thus entitled to Armenian citizenship. I note that a

similar finding was held to be reasonable in *Shahbazian v Canada (Citizenship and Immigration)*, 2020 FC 680.

[20] In this regard, the applicants submit that they have no connection with Armenia, as they have never been to that country. This, however, confuses ethnicity and residence. When a particular ethnic group comprises a significant diaspora, members of the group may very well never have set foot in the country that is the group's homeland. The applicants have not shown in what respect the officer's finding that their Armenian ethnicity entitled them to more favourable conditions for obtaining Armenian citizenship would be unreasonable.

[21] The applicants also submit that they would not qualify under Armenia's citizenship legislation. The basis for this argument is unclear. There is, however, a more fundamental difficulty. This argument was never explained to the officer with any degree of detail. The thrust of the applicant's submissions to the officer was that they were not ethnic Armenians. They did not attempt to show that even if they were, they would not be entitled to citizenship. They cannot now impugn the officer's decision for failing to address an argument they never adequately explained.

[22] Lastly, the applicants argue that the officer's findings regarding their ability to obtain Armenian citizenship are mere speculation. This argument, however, seeks to reverse the burden of proof. The applicants must show that they meet the requirements of the Act and Regulations, including the fact that they lack a durable solution elsewhere. Given the indications suggesting

that they may be entitled to Armenian citizenship, it was reasonable for the officer to require evidence that the applicants could not obtain such status.

[23] This disposes of Mr. Chahloub's application. Mr. Bahna's situation is slightly different, however. There is no indication that Mr. Bahna is ethnically Armenian. His application was only refused because there was insufficient credible information to determine his claim. The officer cited sections 11 and 16 of the Act, but not section 139 of the Regulations. This, in my view, is reasonable. This Court's case law recognizes that an application may be refused when the applicant's untruthfulness or lack of credibility precludes an assessment of whether they meet the requirements of the Act: *Alkhairat v Canada (Citizenship and Immigration)*, 2017 FC 285 at paragraph 9; *Noori v Canada (Citizenship and Immigration)*, 2017 FC 1095 at paragraph 18; *Sadeq Samandar v Canada (Citizenship and Immigration)*, 2019 FC 1117 at paragraphs 20–24; *Zeweldi v Canada (Citizenship and Immigration)*, 2020 FC 114 at paragraph 81.

III. Conclusion

[24] As a result, both applications for judicial review will be dismissed.

JUDGMENT in IMM-3162-20 and IMM-3163-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review in file IMM-3162-20 is dismissed.
2. The application for judicial review in file IMM-3163-20 is dismissed.
3. No question is certified.

"Sébastien Grammond"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-3162-20 AND IMM-3163-20
DOCKET:	IMM-3162-20
STYLE OF CAUSE:	ELIAS BAHNA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
AND DOCKET:	IMM-3163-20
STYLE OF CAUSE:	BACHAR CHALHOUB v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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