

Federal Court



Cour fédérale

Date: 20220331

Docket: IMM-3335-20

Citation: 2022 FC 452

Ottawa, Ontario, March 31, 2022

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

**SALIM MAHMOUD SALIM
AMAL SALIM (MINOR)
MARIAM SALIM (MINOR)**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Salim Mahmoud Salim (“Mr. Salim”) and his two children (the “minor applicants”) (collectively the “Applicants”) are stateless Palestinians who lived in the United Arab Emirates (“UAE”). The Applicants seek judicial review, pursuant to s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [“IRPA”], of a decision by the Refugee Protection

Division (“RPD”), which determined they were neither *Convention* refugees nor persons in need of protection as contemplated by sections 96 and 97 of the *IRPA*. The RPD concluded the Applicants lacked subjective fear and that the discrimination about which they complained, did not amount to persecution. In the course of its reasoning, the RPD concluded that the UAE was the Applicants’ only country of former habitual residence (“CFHR”).

[2] For the reasons set out below, I dismiss the application for judicial review.

I. Facts

[3] Mr. Salim no longer holds valid status in the UAE and claims he has no right of return to that country. He claims he and his children face persecution because they are stateless Palestinians. He claims that he lost his employment and was unable to find new employment, in part, because of his status as a stateless Palestinian. He also alleges that he faced discrimination from the police because of his Palestinian background. Mr. Salim claims the police confiscated his passport and attempted to detain him, even after they became aware that complaints from his second ex-spouse were false.

[4] Mr. Salim also claims that his ex-father-in-law, from his second marriage (“ex-FIL”) persecuted him in the UAE and threatened the lives of the minor applicants. The persecution from Mr. Salim’s ex-FIL allegedly arose as a result of the divorce proceedings between Mr. Salim and his former spouse. Mr. Salim claims that his ex-FIL, in addition to threatening him and the minor applicants, used his influence to cause his (Mr. Salim’s) termination from employment and his mistreatment by the police.

[5] The Applicants entered the United States of America (“USA”) on January 17, 2019 with travel visas. They remained in the USA until May 2019. They did not make a claim for asylum in the USA. The Applicants entered Canada on May 6, 2019, where they claimed asylum upon entry. It must be noted that prior to travelling to the USA, Mr. Salim applied for Canadian temporary resident visas (“TRV”) for himself and his daughters. While Canada accepted his application, it refused the TRVs for his daughters. Mr. Salim owns a condominium in Canada, which he says he bought for investment purposes. His sister is a Canadian citizen.

II. Decision under review

A. *Lack of subjective fear*

[6] The RPD concluded the Applicants displayed a lack of subjective fear by failing to apply for asylum in the USA despite having remained there for five months. Although Mr. Salim claims that he obtained legal advice in the USA advising him not to seek asylum in that country, the RPD concluded that he only provided evidence of attempts to obtain information or a free consultation. It concluded there was no evidence, contrary to that asserted by Mr. Salim, that he would not be successful in making an asylum claim in the USA.

[7] In reaching a conclusion that Mr. Salim was forum shopping, the RPD noted that he owns a condominium in Canada, that one of his sisters lives in Canada, that he and the minor applicants applied for TRVs to enter Canada prior to travelling to the USA, and, of course, the fact the applicants failed to claim asylum in the USA. A letter from his sister inviting him to visit

her in Canada, following his termination from employment in the UAE, did not assist Mr. Salim in his assertion that he was not forum shopping.

B. *No discrimination amounting to persecution*

[8] The RPD concluded that the Applicants do not have a well-founded fear of persecution based upon a *Convention* ground. While it accepted that Mr. Salim experienced employment problems in the UAE, it concluded those problems were unrelated to his Palestinian ethnicity. Mr. Salim testified that his employment was terminated in accordance with all contractual provisions. The objective evidence indicated that non-citizens have difficulty obtaining employment in the UAE because of the restrictive laws of general application regarding residency, citizenship and employment. The RPD concluded that Mr. Salim's employment challenges were the result of laws of general application affecting all non-citizens of the UAE. It further stated that a denial of a right to return to a country does not constitute persecution if it arises from a law of general application (*Hegi v Canada (Citizenship and Immigration)*, 2016 FC 242 [“*Hegi*”] at para 7).

[9] The RPD concluded that, while Mr. Salim may have suffered from discrimination by the police on several occasions because of his Palestinian ethnicity, any such discrimination was insufficient to establish persecution by the state.

[10] The RPD accepted the Applicants' assertions that individuals who are non-citizens of the UAE do not have access to free healthcare in the UAE. The RPD concluded that while this might amount to discrimination, it does not rise to the level of persecution. The RPD found that the

Applicants' experiences in the UAE, whether taken individually or cumulatively, do not rise to the level of persecution.

[11] The RPD rejected Mr. Salim's contention that his ex-FIL, who allegedly works for the Ministry of Interior, used his influence to persecute him (Mr. Salim). The RPD noted that Mr. Salim failed to provide any evidence that would corroborate his claim that his ex-FIL currently is employed, or was ever employed, by the Ministry of Interior. The RPD also observed that Mr. Salim failed to mention his ex-FIL as an agent of persecution during his interview by a Canadian Border Services Agency ("CBSA") officer, upon entry into Canada. Mr. Salim's Basis of Claim narrative refers to his ex-FIL as his only agent of persecution, while he indicated to the CBSA officer that his only agent of persecution was his ex-wife. The RPD concluded that Mr. Salim failed to establish that his ex-FIL was responsible for his termination, his legal issues or discriminatory treatment by police. It also found the discrepancies in Mr. Salim's statements undermined his credibility.

C. *Section 97 Analysis*

[12] The RPD found that the Applicants do not face a risk of torture or cruel and unusual punishment in the UAE. It rejected the allegation that Mr. Salim's ex-FIL threatened the lives of the minor applicants. The RPD assigned no weight to a letter, purportedly from Mr. Salim's uncle, asserting that a group of armed people had come to his home in Lebanon, looking for Mr. Salim and threatening the murder and rape of his daughters. The RPD expressed concern that the letter was not notarized and contained no identification particulars related to the purported author.

III. Issue and Standard of Review

[13] The only issue is whether the RPD decision meets the test of reasonableness as set out in (*Canada (M.C.I.) v Vavilov*, 2019 CSC 65, 441 DLR (4th) 1 [“Vavilov”] at para 25). None of the exceptions to the presumption of reasonableness review apply in the circumstances (*Vavilov* at para 17). “A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85). To set aside a decision, the reviewing court must be convinced that there are serious shortcomings in the decision. A superficial or peripheral flaw will not suffice to overturn the decision (*Vavilov* at para 100). Importantly, the reviewing court must consider the decision as a whole, and must refrain from conducting a line-by-line search for error (*Vavilov* at paras 85 and 102).

IV. Relevant provisions

[14] The relevant provisions are ss. 96 and 97 of the *IRPA*, set out in the schedule attached.

V. Applicants’ submissions

[15] The Applicants contend that the RPD erred in finding that they lacked subjective fear. They submit that it was reasonable for them to prefer to seek asylum from Canada rather than from the USA. They contend that since the minor applicants did not hold Canadian TRVs (and that they were in possession of US visas) any reasonable person in their circumstances would have fled to the USA. The Applicants contend that they did not travel to the USA to forum shop,

but rather simply because they had valid visas. The Applicants also submit that it is unreasonable to consider delay in claiming refugee protection to be indicative of lack of subjective fear (*Voyvodov v Canada (Minister of Citizenship and Immigration)*, 175 FTR 299 at para 10).

[16] The Applicants rely on the decision of this Court in *Canadian Council for Refugees v Canada (Immigration, Refugees and Citizenship)*, 2020 FC 770, 448 DLR (4th) 132 [*“Canadian Council for Refugees”*] in asserting that they made the right decision by not claiming asylum in the USA. They note that in *Canadian Council for Refugees*, this Court “arrived at a ruling that the USA is no longer a safe third country for refugees”. The Applicants submit that it was an error, in light of this decision, for the RPD to find that they lacked subjective fear because they did not claim asylum in the USA.

[17] The Applicants contend that the RPD made an unreasonable credibility finding based on the inconsistencies between Mr. Salim’s Basis of Claim narrative and the CBSA Officer’s interview notes. They submit that the fact that Mr. Salim only mentioned his wife as an agent of persecution before the CBSA Officer is not indicative of a lack of credibility. They contend that Mr. Salim “may have reasonably provided the appropriate response to the best of his understanding and psychological state at the time”.

[18] The Applicants submit that the RPD erred by relying on *Hegi* to conclude that a denial of return to a country does not constitute persecution, because in *Hegi*, unlike the present circumstances, the applicants’ residency permits had not expired.

[19] The Applicants submit that it was unreasonable for the RPD to find that their allegation that the PA would be indefinitely detained in the UAE was not supported by documentary evidence. They contend that a 2015 report contradicts the RPD's finding. I note here, as will be discussed later in these reasons, that that documentary evidence was not before the RPD.

[20] The Applicants further submit that the RPD failed to properly consider the risk of persecution from Mr. Salim's ex-FIL in the UAE, because, according to Mr. Salim, his ex-FIL has strong connections to the police and works with the Ministry of Interior. A similar argument is made with respect to the risk of persecution from Mr. Salim's second ex-spouse. The Applicants contend they demonstrated that the ex-spouse works with the Ministry of Interior and possesses the means and reach to persecute the Applicants in the UAE.

VI. Analysis

A. *Introductory Remarks and Summary*

[21] The Applicants have failed to discharge their burden of establishing that the RPD's decision is unreasonable (*Vavilov* at para 100). The bulk of their arguments constitute invitations for this Court to reweigh the evidence that was before the decision-maker, or to conduct a line-by-line treasure hunt for error, both of which it must refrain from doing (*Vavilov* at paras 102 and 125).

[22] As noted, the Applicants are stateless Palestinians. Mr. Salim's residency permit to that country has expired. The Applicants do not have, at the present time, the right to return to their only CFHR, the UAE. Any denial of return is the result of laws of general application. See,

Kreishan v Canada (Citizenship and Immigration), 2019 FCA 223, [2020] 2 FCR 299 at para 1.

The Applicants asserted in their Basis of Claim form that they face a risk of persecution from Mr. Salim's ex-FIL because of his influence as a member of the Ministry of Interior. The ex-FIL's past or present employment in the Ministry of Interior was not corroborated by any independent evidence. As to the threats that he allegedly uttered towards the minor applicants, the only evidence that corroborated this event was a letter from an unidentified author. Mr. Salim, according to findings made by the RPD, failed to demonstrate that any discrimination suffered by him amounted to persecution. Considering the above, I am of the opinion that it was reasonable for the RPD to conclude that the Applicants are neither *Convention* refugees nor persons in need of protection. The Applicants' arguments are more fully addressed below.

B. *Subjective Fear*

[23] The Applicants contend that travelling to the USA from the UAE was reasonable because they were in possession of US visas and the minor applicants' Canadian TRV applications had been refused. They also claim that delay in claiming refugee protection is not indicative of a lack of subjective fear. Respectfully, it is not the travel to the USA, nor necessarily the delay in claiming protection, which the RPD considered problematic. It is the fact that while in the USA for approximately five months the applicants made no claim for asylum. In addition, the evidence presented did not support the claims by Mr. Salim that he obtained legal advice that they would not be successful if they applied for asylum in the USA. It is trite law that the failure to claim protection in the first safe country of arrival can be indicative of a lack of subjective fear (*Jeune v Canada (Citizenship and Immigration)*, 2009 FC 835 at para 15; *Ndoungo v Canada (Citizenship and Immigration)*, 2019 FC 541 at para 17).

[24] On this issue of subjective fear and the failure to apply for asylum in the USA, the Applicants rely on *Canadian Council for Refugees*. This argument is without merit. The *Agreement between the Government of Canada and the Government of the United States of America for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries* (also known as the “Safe Third Country Agreement”); see *Canadian Council for Refugees* at paras 1-3), does not apply to the Applicants because Mr. Salim’s sister is a Canadian citizen and resides here (see, s. 159.5(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227). Moreover, the Federal Court of Appeal in *Canada (Citizenship and Immigration) v Canadian Council for Refugees*, 2021 FCA 72, 458 DLR (4th) 125 overturned this Court’s constitutional ruling in *Canadian Council for Refugees*.

[25] The Applicants challenge the RPD’s adverse credibility finding based on the discrepancies between Mr. Salim’s statements on arrival to the CBSA Officer and the statements in his Basis of Claim narrative regarding the agent of persecution. Recall that the CBSA interview notes indicate that Mr. Salim only referred to his ex-wife as an agent of persecution. His Basis of Claim narrative referred only to his ex-FIL as an agent of persecution. Such a credibility finding is fully within the domain of the administrative decision maker. It is not for this Court to re-weight or reassess the relevance or the context of the conflicting statements. In any event, this credibility finding was not determinative of the claim and therefore peripheral to the reasonableness of the decision (*Vavilov, supra*, at para 100).

[26] Contrary to the Applicants’ assertion, I am of the view that the RPD reasonably relied upon this Court’s decision in *Hegi* to conclude that no persecution occurs when a claimant is

denied a right of return based upon a law of general application. This Court has concluded on numerous occasions, including in *Hegi*, that a claim denied based upon a law of general application is not demonstrative of persecution (*Iraqi v. Canada (Citizenship and Immigration)*, 2019 FC 1049 at para 33; *Karsoua v Canada (Citizenship and Immigration)*, 2007 FC 58 at para 38; *Altawil v Canada (Minister of Citizenship and Immigration)* (1996), 114 FTR 241).

[27] The Applicants' argument that the RPD failed to consider a 2015 report when finding that there was no persuasive evidence that the Applicants would be treated like criminals, and imprisoned, upon return to the UAE, is without merit. That report was not before the decision maker. Subject to very limited exceptions, only evidence that was before the decision-maker can be considered during a judicial review (*Gitxsan Treaty Society v Hospital Employees' Union*, [2000] 1 FC 135, 177 DLR (4th) 687 at pages 144-145). Exceptions such as those recognized in *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22, 428 NR 297 at para 20), do not apply in the circumstances.

[28] The Applicants submit that the RPD failed to properly consider the risk of persecution from Mr. Salim's ex-FIL in the UAE. They claim he has strong ties to the police and works with the Ministry of Interior. However, these assertions were never accepted as facts by the RPD. The RPD reasonably found there was no independent evidence to support this allegation.

[29] Finally, the Applicants contend that the RPD failed to take into consideration evidence of Mr. Salim's, ex-spouse's capacity to influence prosecutorial decision-making. However, she was not mentioned in Mr. Salim's Basis of Claim narrative. It is trite law that an administrative-

decision maker is presumed to have considered the entirety of the evidence that was before him or her, and that he or she is not required to refer to every factual element and/or piece of evidence (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 at para 1). It is also trite law that all the relevant details of a claim must be included in the Basis of Claim narrative (*Ogaulu v Canada (Citizenship and Immigration)*, 2019 FC 547 at para 18). I am unable to conclude that the RPD's failure to examine Mr. Salim's ex-wife's capacity to influence prosecutorial decision-making is anything other than a peripheral flaw, if a flaw at all, to the merits of the decision (*Vavilov, supra*, at para 100).

[30] In any event, the RPD reasonably found the Applicants lack subjective fear. Such a finding is fatal to a refugee claim (*Wangchuk v Canada (Citizenship and Immigration)*, 2016 FC 160 at para 36).

VII. Conclusion

[31] For the reasons set out above, the within application for judicial review is dismissed. Neither party proposed a question for consideration by the Federal Court of Appeal and none appears from the record.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

No question is certified for consideration by the Federal Court of Appeal.

“B. Richard Bell”

Judge

SCHEDULE

Immigration and Refugee Protection Act, SC 2001, c 27 *Loi sur l'immigration et la protection des réfugiés, LC 2001, c 27*

Convention refugee

96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Person in need of protection

97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

Définition de réfugié

96 A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Personne à protéger

97 (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

- | | |
|---|---|
| <p>(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or</p> | <p>a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;</p> |
| <p>(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if</p> | <p>b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :</p> |
| <p>(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,</p> | <p>(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,</p> |
| <p>(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,</p> | <p>(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,</p> |
| <p>(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and</p> | <p>(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,</p> |
| <p>(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.</p> | <p>(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.</p> |
| <p>(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.</p> | <p>(2) A également qualifié de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.</p> |

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3335-20

STYLE OF CAUSE: SALIM MAHMOUD SALIM, AMAL SALIM
(MINOR), MARIAM SALIM (MINOR) v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JANUARY 10, 2022

JUDGMENT AND REASONS: BELL J.

DATED: MARCH 31, 2022

APPEARANCES:

Abdul-Rahman Kadiri FOR THE APPLICANTS

Nick Continelli FOR THE RESPONDENT

SOLICITORS OF RECORD:

Abdul-Rahman Kadiri FOR THE APPLICANTS
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario