Federal Court  Cour fédérale

Date: 20220927

Docket: IMM-5885-21

Citation: 2022 FC 1338

Ottawa, Ontario, September 27, 2022

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

GEORGE GHOSSN
MONA DIAB
RANA GHOSSN
FATEN GHOSSN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants are a family who were sponsored for permanent residence by the Barrhaven United Church under the Convention Refugees Abroad or the Country of Asylum Class. They are citizens of Syria, who say they now reside in Lebanon. An overseas visa officer (Officer) interviewed them, with the assistance of an interpreter. The Officer rejected the application for permanent residence because of doubts about their credibility.

[2] The Applicants seek judicial review of the Officer's decision, claiming that the Officer unreasonably focused solely on whether they lived in Lebanon, treating this as an eligibility criterion. In doing so, they say the Officer ignored the governing case law, and unreasonably failed to consider their allegations of risk. The Applicants contend that the Officer erred by focusing on minor discrepancies in their narratives relating to their residence in Lebanon, rather than appreciating their circumstances and the risks they face in Syria.

[3] The Applicants filed three separate Applications for Leave and Judicial Review, challenging the decisions made in each of their cases. In light of the overlap, and on consent of the parties, the files were consolidated by Order of this Court on October 13, 2021. A copy of these reasons will be placed in each of the files.

[4] For the reasons that follow, this application is granted. The Officer's decision is ambiguous as to whether the correct legal test was applied, and it thus fails to meet the required standard of intelligibility.

[5] For ease of understanding, the Applicants will be referred to by their first names.

I. Background

[6] The Applicants are a family of four: George Ghossn (the Principal Applicant), his wife Mona Diab (the Associate Applicant), and their adult daughters, Rana Ghossn and Faten Ghossn. They say they are citizens of Syria who now reside in Lebanon. They claim refugee protection because, as Christians, they face religious persecution in Syria. The Barrhaven United Church sponsored their application for permanent residence in Canada.

[7] The Applicants describe the violence and threats against Christians in Syria, as well as their efforts to seek refuge within that country. They say that when they returned to their home, prior to fleeing the country and seeking refugee status, armed groups arrived threatening to kill any Christians who did not leave. They then fled to Lebanon in September 2013, and say that they have lived there ever since. The Applicants acknowledge that they have briefly returned to Syria for various reasons but claim to have otherwise continuously lived in Lebanon since 2013.

[8] An Officer interviewed the Applicants with the assistance of an interpreter in Beirut, Lebanon. The Officer interviewed family members separately, and then the Officer provided them with an opportunity to address credibility concerns as a group. The Officer then issued a decision denying their application for permanent residence in the Convention Refugees Abroad Class or the Country of Asylum Class on the basis that the Applicants did not meet the requirements for immigration to Canada.

[9] The Officer based their decision on doubts regarding the Applicants' credibility – in particular, their claim that they resided in Lebanon since 2013. The main concerns canvassed by the Officer related to discrepancies or absent documentation detailing their entry into Lebanon, contradictions between them about their living quarters in Lebanon, and about how they supported themselves while they lived in that country, as well as differences in their narratives about how they learned of the Beirut explosion – which the Officer found to be a major event in Lebanon that occurred during the period the Applicants said they lived there. The Officer also noted a concern regarding how Rana and Faten renewed their Syrian passports (for which fingerprints were required) if they had not returned to Syria.

[10] The decision summarized the credibility concerns before concluding that the Officer was not satisfied that the Applicants had been truthful. The Officer therefore rejected their claims.

II. Issues and Standard of Review

[11] The only issue is whether the Officer's decision is reasonable. The standard of review that applies is reasonableness in accordance with *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[12] Under the *Vavilov* framework, a reviewing court "is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints" (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*] at para 2). The burden is on the Applicant to satisfy the Court "that any shortcomings or flaws relied on… are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100, cited with approval in *Canada Post* at para 33).

III. Analysis

[13] The Applicants' challenge to the decision centres on the argument that the Officer unreasonably treated their residence in Lebanon as a condition precedent to their eligibility for sponsorship under the Convention Refugee Abroad Class or the Country of Asylum Class. They say that the following passage of the decision letter shows that this is what the Officer did:

> Specifically, I have concerns that you were not truthful regarding your claim that you have been residing in Lebanon since 2015. You were unable to provide a reasonable explanation as to why you do not possess any documentation regarding your last entry

> and stay in Lebanon. There were also discrepancies noted between your testimony and that of your two daughters' as it relates to the configuration of your current residence in Lebanon and how the you and your family support yourselves financially. You were unable to answer questions regarding the Beirut explosion, despite stating that you were in Lebanon when it happened. These discrepancies raise concerns that relate directly to your eligibility.
>
> Based on the above, I am not satisfied that you have been truthful. Your responses relate directly to your eligibility in the category in which you have applied.

[14] The Applicants submit that the Officer's only concerns and questions related to their place of residence, and the Officer did not ask any questions about their claims about their risks in Syria. They say that the Officer treated residence in Lebanon as a condition of eligibility for their application, and the Applicants contend that previous cases in this Court have found this reasoning process to be unreasonable.

[15] In *Ameni v Canada (Citizenship and Immigration)*, 2016 FC 164, Justice Brown found that the visa officer's decision was unreasonable because the officer treated residence outside of their country of nationality as a mandatory requirement for eligibility under the Convention Refugee Abroad or Country of Origin Classes. Justice Brown noted that neither the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [*IRPA*], nor the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the *Regulations*] include such a requirement; instead, they simply require than an applicant "be" outside of the country of risk at the time of the application.

[16] Similar reasoning was applied by this Court in *Amani v Canada (Citizenship and Immigration)*, 2016 FC 1215, and in *Ward v Canada (Citizenship and Immigration)*, 2019 FC

863 [*Ward*]. The Applicants claim that *Ward* is a particularly persuasive authority because it involved virtually identical facts as in this case, and Justice Ahmed found the decision to be unreasonable.

[17] The Respondent argues that the Officer did not make the error alleged by the Applicant; rather, the Officer based their refusal on an overall credibility assessment. The Respondent notes that the Officer referred to subsection 16(1) of the *IRPA* in both the decision letter and the Global Case Management System (GCMS) notes that summarize the interviews conducted with the Applicants. This provision requires an applicant to answer all questions put to them truthfully for the purposes of an examination of their application, and to produce all relevant evidence and documents that the officer requires.

[18] In the GCMS notes, the Officer specifically states that the refusal grounds include eligibility in light of s. 16 of IRPA:

> Specifically, I have concerns that you were not truthful regarding your claim that you have been residing in Lebanon since 2015…
>
> After a review of the documents and an interview with the [Applicants], I am not satisfied on a balance of probabilities that the applicant meets the requirements under section 16 of the Immigration and Refugee Protection Act, as their lack of credibility affects their eligibility. Therefore, I am not satisfied that the [Applicants'] claim under A96 [Convention Refugee Abroad] and/or R 147 [Country of Asylum] is credible.

[19] The Respondent contends that the Officer's credibility finding was sufficient to deal with the application and, therefore, it was not necessary to also consider their claims of risk, citing *Noori v Canada (Citizenship and Immigration)*, 2017 FC 1095 at paras 17-18. The Respondent also argues that an officer's credibility findings deserve great deference, since this lies within the

heartland of the officer's role under the legislative framework, citing *Ramalingam v Canada (Citizenship and Immigration)*, 2011 FC 278 at para 47.

[20] The Respondent argues that the *Ward* decision relied on by the Applicants is distinguishable because, in that case, the officer made a finding that the applicants resided in Syria and therefore did not fall within the Convention Refugee Abroad or Country of Asylum Classes. In this case, according to the Respondent, the Officer did not make a finding of residence and did not hinge their final decision on the Applicants' place of residency.

[21] Rather than relying on the case law cited by the Applicants, the Respondent asserts that the decision in *Al Hasan v Canada (Citizenship and Immigration)*, 2019 FC 1155 [*Al Hasan*] fits more closely with the case before the Court. In *Al Hasan*, the applicants were Syrian residents who said they were residing in Lebanon, but one of them later admitted he had been lying about their place of residency. The officer denied their permanent residence applications because they were not truthful during the immigration process, and Justice Grammond upheld this decision as reasonable. The Respondent urges the Court to reach the same result here.

[22] I am unable to find that the Officer's decision in this case is reasonable, because it falls short of the justification required by *Vavilov*. This may well be an instance in which a result is *justifiable*, but not *justified* by the reasoning in the decision (see *Vavilov* at para 86).

[23] The cumulative effect of the jurisprudence reviewed above is this: in reviewing an application under the Convention Refugee Abroad or Country of Residence Classes, an officer cannot treat residence in a country different from the place of persecution or risk (generally, the

country of nationality) as an eligibility requirement. The applicant need only be outside of their country of risk at the time of the interview in order to be "eligible" for consideration under these categories. An officer is entitled, however, to assess the credibility of the applicant's claim, and one relevant consideration is whether the person has continued to live in the country where the risk or persecution exists. This is a core element of international refugee protection and it applies to an assessment of whether an applicant is a member of either class.

[24] Based on the case law, where the officer's credibility concerns relate to the applicant's place of residence, the law requires that the officer specify how that concern relates to the underlying credibility of the applicant's narrative about risk. Thus, for example, the credibility of an applicant who claims to face general persecution in their country of origin based on their religion may be undermined if the person continued to live in their home in that country and to practice their religion as they had previously. On the other hand, if the person fled to another region or joined an underground church, their credibility may be enhanced. However, if their story about having fled to a neighbouring country is called into question, this may be a relevant consideration but only insofar as it relates to an assessment of the credibility of their claim or otherwise affects their eligibility.

[25] The question in this case is whether the Officer made the error of treating the Applicants' residency as a condition for them to be eligible for consideration under the relevant classes, or instead whether the Officer simply found that they had not told the truth and had thus failed to meet the essential requirement of s. 16 of *IRPA*.

[26] The difficulty with the Officer's decision is that it tends to point in both directions. The only credibility concerns expressed in the decision and the GCMS notes relate to the Applicants' place of residence, and the Officer states that the discrepancies their evidence "raise concerns that relate directly to your eligibility." The Officer's concerns and questions related to the Applicants' evidence about when they went to Lebanon and whether and when they returned to Syria, as well as inconsistencies about their living arrangements, means of supporting themselves, and their narrative about the Beirut explosion. None of this relates to their risk in Syria or any other inadmissibility concern.

[27] I agree with the Respondent that the Officer's decision and GCMS notes also indicate a concern that the Applicants did not meet the requirements of s. 16 of *IRPA*, and therefore the Officer was not satisfied that they met the requirements for Convention Refugee Abroad under s. 96 of the *IRPA* or the Country of Asylum Class under section 147 of the *Regulations*. However, the decision is not clear that this was, indeed, the basis for the refusal.

[28] The structure of the decision letter demonstrates the problem. The Officer summarizes their concerns about the Applicants' narrative regarding residing in Lebanon in the paragraphs quoted earlier. It bears repeating that at the end of these paragraphs, the Officer states: "(t)hese discrepancies raise concerns that relate directly to your eligibility" and "I am not satisfied that you have been truthful." The Officer continues: "Your responses relate directly to your eligibility in the category in which you have applied." This reasoning supports the Applicants' argument that the Officer mistakenly treated their residence in Lebanon as an eligibility criterion.

[29] The decision goes on, however, to quote the *IRPA* and the *Regulations* as "relevant requirements for your application." These references include the provisions that describe the two relevant classes, namely s. 96 of *IRPA*, which defines a Convention Refugee as a person who is outside of their country of nationality, and s. 147 of the *Regulations* which provides that in order to fall within the Country of Asylum Class, the person must be outside of their country of nationality or habitual residence. The Officer then cites subsection 11(1) of *IRPA*, which requires that an officer must be satisfied that an applicant is not inadmissible before approving a visa. The legislative references tend to support the Respondent's argument.

[30] The problem, however, is that the Officer did not explain what is meant by "eligibility" and did not discuss how the statutory references that are cited applied to the Applicants' case. In order to justify the result to the Applicants, the Officer was required to indicate how the credibility findings relating to their place of residence were pertinent to the decision – and to show that residence was not treated as an eligibility requirement. While I accept the Respondent's argument that there is a way of reading the decision in this manner, I find that I am required to fill in too many blanks in order to do so. That is contrary to the requirements of *Vavilov*.

[31] The error in this case was that the Officer's decision is ambiguous about what "eligibility" criterion the Applicants failed to satisfy. Was it that they failed to demonstrate they lived in Lebanon, or that they failed to satisfy the Officer that they had fled Syria because of persecution as Christians? The decision is not clear. In this respect, this is an example of a decision that may be justifiable, but is not justified – and according to *Vavilov*, that makes the

decision unreasonable. This was a central feature of the Officer's decision and the flaws discussed above therefore demand that the decision be quashed.

[32] For all of these reasons, I find the decision to be unreasonable. The Officer's decision is quashed and the matter is sent back for reconsideration by a different Officer.

[33] There is no question of general importance for certification.

JUDGMENT in IMM-5885-21

THIS COURT'S JUDGMENT is that:

1. The application is granted. The decision is quashed, and the matter is sent back for reconsideration by a different Officer.

2. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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