Federal Court Cour fédérale

Date: 20230425

Docket: IMM-8019-21

Citation: 2023 FC 596

Ottawa, Ontario, April 25, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

LANA BABOYAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant is a 54 year-old citizen of Lebanon. After entering Canada as a visitor on March 15, 2019, she applied for refugee protection on February 29, 2020. The claim was based on the applicant's fear of persecution or harm at the hands of Hezbollah. The applicant also claimed to fear persecution in Lebanon because she is Christian, she had lived for many years in Syria, and she is a widow (her husband passed away in 2009).

[2] The Refugee Protection Division ("RPD") of the Immigration and Refugee Board of Canada ("IRB") rejected the claim on March 29, 2021. The RPD found that the determinative issue was the applicant's lack of credibility. The Refugee Appeal Division ("RAD") of the IRB dismissed the applicant's appeal of the RPD's decision on October 7, 2021.

[3] The applicant now applies for judicial review of the RAD's decision under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[4] For the reasons that follow, this application will be dismissed.

[5] The parties agree, as do I, that the RAD's decision should be reviewed on a reasonableness standard.

[6] 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" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). A decision that displays these qualities is entitled to deference from a reviewing court (*ibid.*). When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances (*Vavilov* at para 125). To set aside a decision on the basis that it is unreasonable, the reviewing court must be satisfied 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).

[7] The applicant's principal ground for judicial review relates to the RAD's determination that her residual profile did not give rise to a well-founded fear of persecution or a risk of harm under, respectively, sections 96 and 97 of the *IRPA*. In reaching this conclusion, the RAD agreed with the applicant that the RPD had erred in assessing her residual profile on the basis that she had been in a mixed marriage when in fact her late husband was also Christian. The RAD also found that the RPD had failed to consider evidence that was potentially relevant to the risks arising from the applicant's residual profile (namely, letters from two neighbours describing conditions in Lebanon) and that the RPD had failed to provide sufficient reasons for its conclusion that the applicant's residual profile did not support favourable findings under either section 96 or 97 of the *IRPA*.

[8] Having identified these flaws in the RPD's assessment of the applicant's residual profile, the RAD stated the following: "For this reason, the RPD decision must be set aside and re-determined, either by the RAD or, if this is not possible, by a differently constituted panel of the RPD."

[9] There is no question that this sentence is worded confusingly. However, I do not agree with the applicant that it gives rise to a fundamental incoherence in the RAD's decision – namely, that the RAD had meant to allow the appeal but then goes on to dismiss it. Instead, in my view, this was simply a clumsy way of expressing the RAD's duties under section 111 of the *IRPA* once an error in the RPD's analysis has been identified.

[10] The RAD found that the RPD's decision was wrong in fact or in mixed law and fact. Thus, paragraph 111(2)(a) of the *IRPA* was satisfied. However, under paragraph 111(2)(b) of the *IRPA*, this was sufficient to refer the matter back to the RPD only if the RAD cannot, without hearing evidence that was presented to the RPD, either confirm the RPD's determination or substitute the determination that should have been made. In the present case, the RAD found that it could confirm the RPD's determination that the applicant is not a Convention refugee or a person in need of protection on the basis of its independent assessment of the evidence and without the need to hear the evidence that was presented to the RPD. Accordingly, there was no basis to allow the appeal and refer the matter back to the RPD: see *Huruglica v Canada (Citizenship and Immigration)*, 2016 FCA 93 at paras 78 and 103. In short, as demonstrated by the balance of the decision, the RAD exercised its jurisdiction under section 111 of the *IRPA* appropriately. As a result, I am satisfied that, read in light of the decision as a whole, the RAD's reference to setting aside the RPD's decision was at worst a minor misstep (*c.f. Vavilov* at para 100). It is not material to the outcome, nor does it call the reasonableness of the decision as a whole into question.

[11] The applicant also contends that the RAD's assessment of her residual profile is unreasonable because it is based on a "fixation" with the absence of evidence concerning her financial circumstances.

[12] I do not agree. The applicant claimed she would face hardship amounting to persecution stemming from a variety of factors, including general economic conditions in Lebanon. At the same time, she did not provide any information about her personal financial circumstances. The

RAD simply stated: “It is difficult to assess the consequences of resettlement in Lebanon without knowing more about the Appellant’s financial circumstances.” In my view, this was a relevant consideration and the RAD did not give it undue weight in its overall assessment. Nor has the applicant persuaded me that the RAD’s assessment of her residual profile is unreasonable in any other respect. The RAD weighed all relevant considerations, including general conditions in Lebanon. The RAD did not misapprehend or ignore relevant evidence or draw unwarranted inferences. It simply was not satisfied that, given the applicant’s particular circumstances, she had a well-founded fear of persecution or was a person in need of protection. There is no basis for me to interfere with those conclusions.

[13] The applicant next takes issue with the RAD’s agreement with the RPD that she had omitted material information from her Basis of Claim (“BOC”) narrative and that this had an adverse impact on her credibility.

[14] At the RPD hearing, the applicant testified that in March 2019, four armed men stormed her home, threatening her and telling her to return to Syria with her children. According to the applicant, the men identified themselves as members of Hezbollah. This event would have happened shortly before the applicant left for Canada. The applicant also testified that in fact she had been harassed at her home by members of Hezbollah some six or seven times and had had to hide from them. However, the applicant did not include any of these events in her BOC narrative. Instead, she spoke only in general terms of being at risk at the hands of Hezbollah. The RAD agreed with the RPD that these were material omissions from the BOC narrative that the applicant had not adequately explained. The RAD also agreed with the

RPD that these omissions had an adverse impact on the credibility of the applicant's alleged fear of Hezbollah.

[15] The applicant has not persuaded me that this is an unreasonable determination. On the contrary, her submissions simply amount to an attempt to persuade me to re-weigh this evidence and reach a different conclusion about the significance of these omissions than the RAD did. As I have already stated, this is not the role of a court on judicial review.

[16] For the same reason, the applicant has not persuaded me that there is any basis to interfere with the RAD's determination that her delay of over 11 months in seeking protection in Canada (including several months after her visitor status had expired) adversely affected the credibility of her claim. The RAD understood that, in and of itself, delay in making a claim for protection was not necessarily inconsistent with the existence of subjective fear. However, having examined the applicant's particular circumstances, including the absence of a reasonable explanation for the delay, the RAD concluded that the applicant's conduct was inconsistent with the fear she claimed to have. This is a reasonable determination on the evidence.

[17] Finally, the applicant submits that the RAD erred in refusing to admit one item of new evidence she had provided in support of her appeal. To put this issue in context, some additional background is necessary.

[18] At the RPD, the applicant had provided a letter from a neighbour in Lebanon, N.T., dated February 6, 2021. In that letter, N.T. stated:

> The neighbours are still practicing the same bad practices. We still suffer from sectarianism and religious and sectarian fundamentalism. They asked me about your whereabouts and that of your son. They sent threats to you and they promised to inflict harm on you and your family. I call upon you not to return because your life will be in danger and there will be no one to protect you and defend you.

[19] In finding that this letter did not provide meaningful corroboration for the applicant's account, the RPD noted that neither this letter nor another from a second neighbour mentioned Hezbollah or any specific incidents of persecution the applicant suffered while in Lebanon. The RPD added that, given that the February 6, 2021, letter does not identify which religion the problematic neighbours are or who specifically asked about the applicant and her son, "the panel finds that this statement is vague and does not address the issues created by the claimant's testimony."

[20] On appeal, the applicant attempted to file a second letter from N.T., this one dated April 4, 2021. In that letter, N.T. states:

> I want to add a clarification regarding my previous letter.
>
> I go back and confirm that the entity that sent threats to you and your family belongs to Hezbollah group, and they are the same young men who broke into your house.
>
> The only reason that prevented me from mentioning the name of this group in my previous letter is my fear for my life and the lives of my children in the event that they realize that I warned you against them, for these people have no mercy in their hearts.
>
> That is why I decided to take a risk and send you this clarification, and I hope that you are safe away from this extremist group.

[21] The RAD refused to admit the April 4, 2021, letter for several reasons. There was no indication of how the applicant had received the letter. The letter was not accompanied by any identification. It was not in the form of an affidavit or statutory declaration. The writer claims to have been too fearful to mention Hezbollah in her earlier letter yet she does so in the second letter without any explanation of what has changed. Consequently, the explanation for the earlier omission is undermined by the fact that the group is named in the second letter. Finally, the RAD found it noteworthy that the first letter did not mention anyone breaking into the applicant's home but the second letter (which was written after the applicant had first revealed this incident at the RPD hearing) includes this detail yet without any explanation of how the writer knows about it. In short, the RAD found that the April 4, 2021, letter "was drafted to help the Appellant overcome an adverse credibility finding made by the RPD, but it is insufficiently credible to be admitted as new evidence."

[22] Once again, the applicant has not established any basis on which I could interfere with the RAD's determination. In a justified, transparent and intelligible fashion, the RAD explained why the April 4, 2021, letter was not admitted. This conclusion is altogether reasonable.

[23] For these reasons, the application for judicial review will be dismissed.

[24] The parties did not suggest any serious questions of general importance for certification under paragraph 74(d) of the *IRPA.* I agree that no question arises.

JUDGMENT IN IMM-8019-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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