

Federal Court



Cour fédérale

Date: 20231023

Docket: IMM-3203-22

Citation: 2023 FC 1401

Ottawa, Ontario, October 23, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

**SAAD JAAFAR SAL SALMAN
AMAL ABDULKAREEM ABDULHASAN ABDULHASAN**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The applicants are citizens of Iraq. Saad Jaafar Sal Salman (the principal applicant) is a Sunni Muslim. His wife Amal Abdulkareem Abdulhasan Abdulhasan (the associate applicant) is a Shia Muslim.

[2] In October 2020, after arriving in Canada on visitor visas, the applicants applied for refugee protection. Their claims were based on what they alleged was a well-founded fear of persecution by Asaib Ahl Al-haq (AAH), a Shia extremist militia, and by the Iraqi government. The applicants allege they had been targeted after the principal applicant refused to pay a bribe to a passport officer and spoke out against corruption. Shortly after this incident, the associate applicant was the victim of an attempted kidnapping. The applicants allege that the two incidents were connected.

[3] The Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada (IRB) heard the applicants' claims on September 8, 2021. The RPD rejected the claims in a decision dated October 6, 2021, because it found that the applicants were not credible with respect to a material element of their claim – namely, the connection between the incident at the passport office and the attempted kidnapping.

[4] The applicants appealed the RPD's decision to the Refugee Appeal Division (RAD) of the IRB. The RAD dismissed the appeal in a decision dated March 11, 2022. The RAD agreed with the applicants that the RPD erred in finding that their evidence was not credible. While the RAD agreed with the RPD that the link the applicants alleged between the incident at the passport office and the attempted kidnapping was entirely speculative, it found that this was not a matter of credibility but, rather, the insufficiency of the applicants' evidence. The RAD therefore concluded that the applicants had not established that their fear of persecution is well-founded. The RAD also concluded that the applicants did not face a serious possibility of persecution based on their residual profiles. Accordingly, the RAD dismissed the appeal and

confirmed the RPD's determination that the applicants are neither Convention refugees nor persons in need of protection.

[5] The applicants now apply for judicial review of the RAD's decision under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). They submit that the decision is unreasonable in two respects: first, because the RAD applied the wrong test in concluding that their fear of persecution is not well-founded; and second, because the RAD ignored or overlooked documentary evidence capable of supporting the applicants' claims for protection based on their residual profile.

[6] As I explain in the reasons that follow, I am not persuaded that the RAD fell into reviewable error in either of these respects. This application will, therefore, be dismissed.

II. BACKGROUND

A. *The applicants' narrative*

[7] The applicants lived in Dubai, in the United Arab Emirates (UAE), for over 20 years. They would return to Iraq frequently. One such visit occurred in August 2018, when the applicants went to visit family and to renew their Iraqi passports. They were staying with family in the Al-Mansour area of Baghdad.

[8] On August 12, 2018, the applicants went to the Al-Mansour passport office in Baghdad to check on the status of their passports. An officer told the principal applicant that the passports

were ready, but then started asking the principal applicant about his work and income in Dubai. The officer told the principal applicant that, to obtain their passports, he would have to give the officer a “thank you” gift. The officer explained that, if one wanted anything done in Iraq, it was necessary to pay a bribe. The principal applicant refused, accusing the officer of being corrupt, just like the current government. The officer then said the principal applicant was speaking like a political activist, having been brainwashed by Sunni countries like the UAE and that people like him, who live abroad and then return to Iraq to cause problems, must be stopped. While this was happening, the principal applicant noticed that another officer appeared to be recording the incident with his phone. Eventually, the applicants were able to collect their passports and left the office.

[9] Being concerned for their safety, the applicants decided to stay elsewhere for the rest of their visit. On August 16, 2018, the principal applicant returned to the UAE. The associate applicant stayed in Baghdad to spend some more time with her sisters.

[10] On September 2, 2018, the associate applicant and her sisters were returning home when a dark SUV came up next to them. A man rushed out of the vehicle towards the associate applicant, grabbed her hands, and tried to pull her into the vehicle. The associate applicant and her sisters started screaming, which attracted the attention of bystanders. The assailant then got back in the vehicle and fled. The associate applicant decided to cut her visit short and returned to the UAE two days later.

[11] According to the principal applicant, after this incident, he reached out to a cousin who is an officer with the Iraqi army to see if he could learn anything about the passport officer. The principal applicant did not know the officer's name or any other personal information, but he described the man's physical features and role in the office to his cousin. The cousin did some research and discovered that the officer has strong ties to AAH. He is well-known, connected with corrupt people, and is a member of the AAH militia. The principal applicant inferred from this that the AAH must have been responsible for the kidnapping attempt, because of what had happened in the passport office.

[12] The principal applicant's employment in the UAE ended on March 31, 2020. Due to the COVID-19 pandemic, the applicants remained in the UAE until August 2020, when they were able to leave for Canada.

B. *The RPD decision*

[13] The determinative issue for the RPD was credibility. The RPD found the applicants' allegation that the incident at the passport office and the attempted kidnapping were related to the AAH and/or the Iraqi government to be "purely speculative." While the RPD accepted that the incidents occurred, it did not find credible the allegation that they were related to the AAH or the government. In short, "There is simply no other basis, other than the claimants' speculative assertion, that the claimants were or will be of interest to the AAH or the Iraqi government." Moreover, the applicants had not provided any corroboration for the links they alleged. Notably, they had not provided any first-hand evidence from the principal applicant's cousin (the member of the Iraqi army who, according to the applicants, had discovered a link between the passport

officer and the AAH). The RPD found that the applicants had not made any reasonable effort to obtain corroborative evidence and they had not provided a reasonable explanation for why this was the case. As a result, the lack of any documentation corroborating the claims about the principal applicant's cousin "further undermines the claimants' credibility."

[14] The RPD also drew a negative inference from the applicants' failure to seek protection when they visited their son in Canada in August and September 2019. The applicants knew that their situation in the UAE was not secure, and, at some point, they would be required to return to Iraq. Their failure to seek protection in Canada earlier suggested that they did not genuinely fear the AAH or the government of Iraq. While this alone was not significant, "in light of other credibility concerns, it further undermines the claimants' credibility."

[15] Finally, the RPD concluded that the applicants' residual profiles as (in the case of the principal applicant) Sunni and as Iraqi nationals returning from abroad would not place them at risk. In so finding, the RPD noted that recent country documentation (in particular, a January 2021 UK Home Office report concerning Sunni Arabs in Iraq) suggested that simply being Sunni was not sufficient establish a basis for protection.

C. *The applicants' appeal to the RAD*

[16] In their appeal, the applicants submitted that the RPD erred in its assessment of their credibility in relation to the link between the AAH, the Iraqi government, and the attempted kidnapping. According to the applicants, it was not mere speculation that the associate applicant would be targeted shortly after the incident at the passport office. More broadly, the applicants

submitted that the RPD erred by effectively finding the applicants' account implausible and by requiring evidence to corroborate every element of their claim.

[17] Further, the applicants submitted that the RPD erred in making a negative credibility finding based on their failure to claim protection in Canada in 2019. According to the applicants, in light of the principal applicant's employment for over 20 years in the UAE, which was their sole source of income, it was not unreasonable for them to return there after their visit to Canada.

[18] Finally, the applicants submitted that the RPD failed to assess properly the cumulative impact of the principal applicant's Sunni identity and his outspoken criticism of the Iraqi government. Relatedly, the applicants submitted that the RPD erred by ignoring country condition evidence relevant to their residual profiles. As well, the applicants contended (on the basis of new evidence) that the reliability of the UK Home Office report on which the RPD relied had been called into question.

[19] In support of their appeal, the applicants provided two items of new evidence. One was an undated, handwritten letter from the principal applicant's cousin describing what he had learned about the passport officer and his connection to the AAH. Among other things, the cousin confirmed that the officer was responsible for planning the kidnapping of the associate applicant in order to "pressure" the principal applicant and ultimately arrest him if the attempt succeeded. The other item of new evidence was a media release dated June 3, 2021, concerning a recent decision of the United Kingdom Upper Tribunal (Immigration and Asylum

Chamber) that was critical of a particular UK Home Office report relating to Sri Lankan Tamil asylum seekers.

D. *The RAD decision*

[20] The RAD dismissed the appeal and confirmed the RPD's determination that the applicants are neither Convention refugees nor persons in need of protection.

[21] The RAD refused to admit either of the items of new evidence the applicants submitted. The applicants do not challenge this determination on judicial review.

[22] With respect to the merits of the appeal, the RAD found that the applicants had established their subjective fear of persecution in Iraq. The RAD found that they had provided credible and consistent evidence about the incident at the passport office and the kidnapping attempt. The RAD accepted this evidence as true on a balance of probabilities. Further, the RAD agreed with the applicants that the RPD erred in finding that their evidence concerning the link between the two incidents was not credible.

[23] Nevertheless, the RAD agreed with the RPD that the applicants' belief that they were targeted by the AAH and the Iraqi government is based on speculation and not sufficiently grounded in evidence. In short, the applicants' evidence was insufficient to establish that the incident at the passport office and the kidnapping attempt were connected. The RAD found it was more likely than not that the kidnapping attempt was an unfortunate random attack.

[24] Finally, the RAD upheld the RPD's finding that the objective evidence did not establish that the applicants face a serious possibility of future persecution in Iraq based on their residual profiles. Having regard to country condition evidence (including the UK Home Office report relied on by the RPD as well as an updated version of that report), the RAD found that the principal applicant had not established that his being Sunni put him at risk. While some Sunnis with particular profiles "are at elevated risk of harm," the principal applicant did not fall into these profiles (e.g. being affiliated with ISIS/ISIL or being of fighting age). Nor was the incident at the passport office sufficient to establish that the principal applicant had an "elevated risk profile" because he would be perceived as an opponent of the government. The RAD also concluded that there was insufficient evidence to establish that the associate applicant faces a serious possibility of persecution due to her mixed marriage.

III. STANDARD OF REVIEW

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

[26] 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 (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).

IV. ANALYSIS

A. *Did the RAD err in concluding that the applicants failed to establish a well-founded fear of persecution?*

[27] As set out above, the RAD concluded that the applicants had not established that their fear of future persecution is objectively well-founded. The applicants do not challenge the RAD’s conclusion that there was insufficient evidence to link the incident in the passport office and the attempted kidnapping, or to establish that the applicants have been or will be targeted by the AAH or the Iraqi government on the basis of their perceived political opposition to the Iraqi government. They submit, however, that the RAD erred in assessing their claim under section 96 of the *IRPA* based on their residual profile when it assessed the claim in terms of their “risk” profile and whether they faced an “elevated risk of harm.” According to the applicants, in doing so in connection with their section 96 claims, the RAD erroneously imported a legal threshold that only applies to claims under section 97 of the *IRPA*.

[28] I do not agree. The RAD stated the test for a well-founded fear (whether the applicants had established on a balance of probabilities a serious possibility of persecution) several times in the decision. I am not persuaded that the RAD was applying a different test when it concluded that the principal applicant had not established that he had an “elevated risk profile.” Rather, read in the context of the decision as a whole, it is clear that this was simply another way of

saying that the principal applicant had not established that his profile gave rise to a serious possibility of persecution. Despite the fact that the term “risk” only appears in section 97 of the *IRPA* and not also in section 96, unless something else suggests that the decision maker has not applied the proper test (which is not the case here), the mere use of this term in connection with a section 96 claim does not undermine the reasonableness of the decision.

B. *Did the RAD overlook relevant evidence?*

[29] The applicants submit that the RAD erred by being highly selective in analyzing the evidence in the National Documentation Package (NDP). According to the applicants, the RAD reviewed only two documents from the NDP in concluding that the applicants do not face a serious possibility of persecution in Iraq based on their residual profiles. On review, the applicants cite six items in the NDP that, they submit, demonstrate that Sunni Arabs in Iraq are targeted with violence and physical abuse, that they face arbitrary arrest and detention, and that they are suspected of supporting ISIS. The RAD’s failure to address sources capable of supporting the applicants’ position undermines the reasonableness of its rejection of the residual profile claim.

[30] For the following reasons, I am not persuaded that the RAD erred as the applicants allege.

[31] First, the applicants are incorrect when they state that the RAD considered only two documents from the NDP for Iraq. In fact, the RAD cites six documents from the NDP. Moreover, three of the six documents the applicants cite on review were mentioned by the RAD.

[32] Second, in their appeal to the RAD, which alleged (among other things) that the RPD had reviewed the NDP evidence selectively, the applicants cited only one of the six items they now cite on judicial review. The proper place to make their case on the basis of these documents was before the RAD, not before this Court on judicial review.

[33] Third, in support of their submission that the RAD reviewed the NDP selectively, the applicants cite six items from the NDP. These documents total over 700 pages in length. In their written submissions, the applicants did not provide any pinpoint citations to what they contend are the material parts of these documents. This was unhelpful to their case.

[34] Fourth, even with some specific references added in oral argument, the applicants have not identified any parts of the documents they rely on that are so material to their residual profile claim that the RAD's failure to address them undermines the reasonableness of the decision. To the contrary, the information in the reports the applicants rely on now is entirely consistent with the RAD's analysis and conclusions.

[35] In sum, the RAD rejected the principal applicant's residual profile claim because it was not satisfied that the principal applicant had a profile that would give rise to a well-founded fear of persecution. The applicants have not established that the RAD's understanding of the sorts of profiles that would give rise to a well-founded fear of persecution on the part of Sunni Muslims in Iraq is unreasonable in light of the country condition evidence. Nor have they established that the RAD unreasonably overlooked any relevant aspects of the principal applicant's profile.

Consequently, there is no basis to interfere with the RAD's rejection of the residual profile claim.

V. CONCLUSION

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

[37] 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-3203-22

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

DOCKET: IMM-3203-22

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MINISTER OF CITIZENSHIP AND IMMIGRATION

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