Federal Court  Cour fédérale

Date: 20231127

Docket: IMM-8472-22

Citation: 2023 FC 1579

Ottawa, Ontario, November 27, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

FOLAR GHAZI KAMAL BOLA
RAFAL HADEER KALYANA KALA
GHAZI FOLAR GHAZI POLA
RASHEL FOLAR GHAZI BOLA
(BY THEIR LITIGATION GUARDIAN
FOLAR GHAZI KAMAL BOLA)

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of a decision by a Migration Officer (the "Officer") dated July 8, 2022, rejecting their application for a permanent resident visa in Canada as

privately sponsored refugees under the Convention refugee abroad class or the country of asylum class, pursuant to section 139 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("*IRPR*"). The Officer found that the Applicants had a viable internal flight alternative ("IFA") in Duhok or Kurdistan and that humanitarian and compassionate ("H&C") considerations about the best interests of the children ("BIOC") did not warrant accepting their application.

[2] The Applicants submit that the Officer's decision is unreasonable because the Officer erred in the assessment of the Applicants' claim for persecution as Christians, the IFA analysis, and the H&C considerations in relation to the BIOC analysis.

[3] For the reasons that follow, I find that the Officer's decision is reasonable. This application for judicial review is dismissed.

II. Facts

A. *The Applicants*

[4] Folar Ghazi Kamal Bola (the "Principal Applicant"), his spouse Rafal Hadeer Kalyana, and their two children (collectively the "Applicants") are citizens of Iraq. The Principal Applicant is 32 years old, and his wife is 30 years old.

[5] The Principal Applicant stated that he was working as a cook in Mosul when the city fell to the ISIS/ISIL insurgency in 2014, whereupon he and his family left, moving to Duhok.

[6] The Principal Applicant stated that in 2017, he returned to Mosul for employment. He maintained that while in Mosul, he stated that he received threats owing to his Christianity, and was later taken captive, abused, and told to leave. He testified that he did, taking his family that was residing in Alqosh and moving back to Duhok between August 2019 and February 2020.

[7] In February 2020, the Applicants fled Iraq and flew to Lebanon. In July 2020, an application was submitted for refugee sponsorship for the Applicants in Canada through the Private Refugee Sponsorship Program.

B. *Decision under Review*

[8] In a decision dated July 8, 2022, the Officer refused the application, finding that the Applicants had not expressed a credible well-founded fear of persecution owing to their religion and had not articulated having been, or having continued to be, seriously and personally affected by civil war, armed conflict, or massive violations of human rights pursuant to sections 145 and 147 of the *IRPR*. The Officer also found the Applicants have a viable IFA in the Kurdish region of Iraq and that the H&C considerations for the children showed that the barriers the children would face would likely be language-based barriers.

[9] On the issue of persecution, the Officer acknowledges that the Principal Applicant received threats, was kidnapped, faced abuse, and was told to leave Mosul due to his Christianity. The Officer acknowledged, however, that the Principal Applicant testified that he had never witnessed mistreatment of Christians in Duhok, and that ISIS and radical extremist threats to Christians existed in Mosul, but not in Kurdistan.

[10] On the issue of an IFA, the Officer found that the Applicants had a viable, safe IFA in the Kurdish region of Iraq, whether in Duhok or elsewhere. The test to determine a viable IFA requires that: (1) there is no serious possibility of persecution or risk of harm in the IFA, and (2) it is reasonable in the Applicant's circumstances to relocate to the IFA (*Rasaratnam v Canada (Minister of Employment and Immigration) (C.A.)*, [1992] 1 FC 706). The second prong of the test places a high evidentiary burden on the Applicant to demonstrate that relocation to the IFA would be unreasonable (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1367).

[11] On the first prong of the test, the Officer found that the Applicants, as Christians, would not likely face persecution in the proposed IFA. The Officer acknowledged the stable security situation in the Duhok governorate, the good relations between Kurds and Christians, the safety in Kurdistan, a lack of obstacles to social mobility, and the fact that many officials are Christians to support this conclusion. The Officer also rejected economic considerations, such as limited employment opportunity, rent costs, or better economic prospects in Canada as sufficient to determine that the Applicants need protection.

[12] On the second prong of the test, the Officer rejected the Applicants' contention that Christian Arabs need a residency sponsorship to move to Kurdistan if they are not a local. The Officer bases this conclusion on the numerous interviews the Officer had done with Assyrian Christians, none of whom said they needed a residency permit. The Officer also acknowledged testimony from the Principal Applicant that he could move to a Christian neighbourhood in the proposed IFA.

[13] On the issue of H&C considerations, the Officer found that the barriers the children would face would be largely language-based in relation to their schooling and employment and that over and above these factors, there existed no serious possibility of persecution.

III. Issue and Standard of Review

[14] This application for judicial review raises the sole issue of whether the Officer's decision is reasonable.

[15] The standard of review is not disputed. The parties agree that the applicable standard is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) ("*Vavilov*"). I agree.

[16] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). 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). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[17] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns

about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100). The emphasis on reasonableness review is the reasons of the decision-maker, read "in light of the record and with due sensitivity to the administrative regime in which they were given" but not "assessed against a standard of perfection" (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 61, citing *Vavilov* at paras 91, 103).

IV. Analysis

[18] The Applicants submit that the Officer erred in assessing the Applicants' claim for persecution as Christians, the IFA analysis, the H&C analysis, and did not provide adequate reasons for the decision. I disagree. In my view, the determinative issue is the Officer's IFA analysis, and the Officer's decision on this issue is justified, transparent, and intelligible (*Vavilov* at para 15).

(1) IFA

[19] The Applicants submit that the Officer's conclusions about the IFA are unreasonable, as the Officer fails to mention a specific IFA in the decision, fails to identify and misapplies the two-pronged IFA test in the analysis, and ignores or misconstrues evidence of country conditions in Iraq. The Applicants also submit that the Officer erred by referencing previous interviews the Officer had done in the IFA analysis.

[20] The Respondent submits that the Applicants' argument about the Officer not proposing a specific IFA is made without reference to law or the evidence of the Principal Applicant discussing the Kurdish region as an IFA. The Respondent submits that an IFA negates a well-founded fear, that the Applicants failed to establish that the country condition evidence was misused, that the negative aspects of Christian life in the Kurdish region are not critical to the IFA analysis, and that the Officer did not err by inferring a viable IFA from the Principal Applicant's testimony. The Respondent further submits that the Officer had regards to the second prong of the IFA test in relation to the Applicants' ability to freely move to, integrate with, and ultimately live in the Kurdish region. The Respondent also contends that the Officer was allowed to rely on their experience to make findings of fact.

[21] I agree with the Respondent. Reviewing the decision holistically, the Officer's assessment of the viability of the proposed IFA reveals a rational chain of analysis and is justified, transparent, and intelligible (*Vavilov* at paras 85, 99-103).

[22] In my view, the Officer stated and applied the correct IFA test (*Iqbal v Canada (Citizenship and Immigration)*, 2018 FC 299 at para 22, citing *Estrada Lugo v Canada (Citizenship and Immigration)*, 2010 FC 170 at para 36). The Respondent is correct that there is no requirement that the Officer explicitly mention that the analysis in question is in regards to the "first" or "second" prong of the IFA test. The IFA analysis shows that the Officer commanded a nuanced understanding of conditions in Iraq and specific Kurdish neighbourhoods in reference to the persecution the Applicants would face in the proposed IFA, including findings about the stable security situation in the Kurdish region, Christians enjoying good relations with Kurds, Christians moving en masse to Alqoosh or Duhok, Christians living safely in the region, and

there being Christian ministers, generals, and director generals in the region. Furthermore, the Officer's interview with the Principal Applicant demonstrates that the Officer clearly raised and assessed issues about Duhok and the Kurdish region as IFAs:

> Q: So why not stay in Dahuk if it was a relatively safe?
> A: The language was a problem. They were discriminating against non-Kurdish
>
> Q: In what way?
> A: not giving jobs
>
> Q: Some Christians in the region though move up in the civil service or the army though right?
> A: Yes, thev Christians originally from there. But not the ones from elsewhere.
>
> […]
>
> Q: In my assessment, I am also determining whether you have an internal flight alternative. That means, whether it's safe for you and your family to relocate elsewhere in your home country. Throughout this interview we've discussed the relative safety for Christians in the Kurdish region. You've stated it's safe, but that you would face discrimination because you do not speak the language. I do not doubt that discrimination exists, but this does not appear to meet a threshold to define it as 'persecution'. Basically, something that threatens you and your families lives. Can you explain why this is not a solution for you and your family?
>
> A: in Alqoosh it's part of the central government [referring to Iraqi gov], but for Dahuk, the problem is you cant live there permanently if you are not a local. [emphasis added]

[23] The Respondent is also correct to note that the Officer substantively considered whether the Applicants could freely move to, integrate with, and ultimately live in the Kurdish region, all of which intelligibly attend to the second prong of the IFA analysis. The contention that the Officer erred in regards to the finding that Christian Iraqis do not require a residency permit in the Kurdish region is asking this Court to improperly reweigh and reassess evidence (*Vavilov* at

para 125) and the Applicants overall seek that this Court engage in a "line-by-line treasure hunt for error," which is not reasonableness review (*Vavilov* at para 102).

[24] The Applicants cite *Udoh v Canada (Citizenship and Immigration)*, 2012 FC 399 for the proposition that a specific IFA location must be identified (at para 20). However, as shown, the interview with the Principal Applicant clearly demonstrates that the Officer identified Duhok and the Kurdish region as specific IFA locations. I further accept that the Officer was entitled to rely on experience to help make these findings of fact (*Najjar v Canada (Citizenship and Immigration)*, 2022 FC 69 at para 27). The Officer's conclusion about the proposed IFAs is justified in relation to the factual and legal constraints that bore upon the decision (*Vavilov* at paras 99-101).

(2) H&C Considerations

[25] The Applicants submit that the Officer erred by applying the wrong H&C analysis to assess the BIOC; namely, that the proper analysis demands examining well-defined and specific interests of the children in relation to "hardship," rather than examining risk of persecution.

[26] The Respondent submits that the Officer's H&C analysis does not speak to a persecution analysis in acknowledging the facts surrounding the children's ability to have an education and seek employment in the proposed IFA.

[27] I agree with the Respondent. The Officer exercised discretion to consider the H&C factors and acknowledged that amidst Christians relocating to the Kurdish region following the

mid-2000s insurgency in the country, the children in this application could face educational and employment barriers owing to their lack of Kurdish language. The Officer's reasons note the H&C context at the outset and assessed these barriers accordingly. There is no error in this analysis that warrants this Court's intervention.

[28] The Applicants also, in their written submissions, sought costs in this matter. However, they did not bring up this issue at the hearing. In my view, costs are not justified. There is no evidence that the Respondent acted in a manner such that costs ought to be awarded, nor do I find that the Officer committed "blatant" or "very apparent" errors such that there are special reasons to grant costs in this matter.

V. Conclusion

[29] This application for judicial review is dismissed without costs. Reviewed holistically, the Officer's decision is justified, transparent, and intelligible. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-8472-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed without costs.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8472-22
STYLE OF CAUSE:	FOLAR GHAZI KAMAL BOLA, RAFAL HADEER KALYANA KALA, GHAZI FOLAR GHAZI POLA AND RASHEL FOLAR GHAZI BOLA (BY THEIR LITIGATION GUARDIAN FOLAR GHAZI KAMAL BOLA) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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