

Federal Court



Cour fédérale

Date: 20250630

Docket: IMM-661-24

Citation: 2025 FC 1170

Ottawa, Ontario, June 30, 2025

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

Hayat EL SKAFI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant Hayat El Skafi is a citizen of Lebanon. Her husband, who is not a party to this judicial review, is a stateless Palestinian. The couple left Lebanon after marrying and lived together in Syria from 1974 until they fled to Canada in 2022. They left Syria because of a dispute with a politically powerful neighbour resulting in their fear of physical harm and

imprisonment. Prior to the dispute, they previously had come to Canada on parent/grandparent super visas to visit their son and his family.

[2] The couple claimed refugee protection. Ms. El Skafi's claim was rejected. The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada found she did not have an objective basis for fear nor a personalized risk in Lebanon, her country of nationality, a place she has not lived in more than 50 years. Her husband's claim was accepted, however. The RPD found his subjective fear of persecution, based on his imputed political opinion in Syria, was objectively well-founded. The RPD's refusal of Ms. El Skafi's claim was upheld by the Refugee Appeal Division [RAD] on appeal [Decision].

[3] Ms. El Skafi seeks judicial review of the Decision. She argues that the test for cumulative discrimination in Lebanon amounting to persecution was not applied properly and, thus, the Decision is unreasonable. The Respondent contends that the RAD's reasons are clear and are not contradicted by the relevant jurisprudence.

[4] There is no disagreement that the sole issue in this matter is whether the decision is reasonable, further to the presumptive standard of review. On a reasonableness review, the Court must ask itself whether the challenged decision exhibits the hallmarks of contextual justification, transparency and intelligibility: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 10, 25, 99.

[5] Having considered the parties' written materials and their oral submissions, I find that Ms. El Skafi has not met her onus of showing that Decision is unreasonable (*Vavilov*, above at para 100). For the more detailed reasons below, this judicial review application will be dismissed, but with great reluctance in light of Ms. El Skafi's heartrending circumstances.

II. Analysis

A. *The Decision is not unreasonable*

[6] The question of whether the Decision is reasonable turns on the RAD's persecution assessment in the context of Ms. El Skafi's situation. In my view, the reasons are internally coherent and logical in that they add up; they are contextually justified, transparent and intelligible: *Vavilov*, above at paras 85, 104-105. Ms. El Skafi's submissions, while understandable in her circumstances, seek to hold the RAD to a level of perfection by essentially asking the Court to reweigh the evidence before the RAD that, I find, was thoroughly considered. What Ms. El Skafi asks, however, is not the role of a reviewing court on judicial review; nor can it be said that the RAD fundamentally misapprehended the evidence before it: *Vavilov*, above at paras 125-126. As I explain, *Vavilov* requires the Court to defer to the Decision here, despite the sympathy that Ms. El Skafi's plight evokes.

[7] Ms. El Skafi argues that the Decision is unreasonable because the RAD failed to appreciate fully the persecutory impacts she faces in Lebanon, or to apply the well-established legal tests for claims of cumulative discrimination amounting to persecution as set out at paragraphs 52-55 of the UNHCR Handbook (i.e. the handbook on procedures and criteria for

determining refugee status, issued by the Office of the United Nations High Commissioner for Refugees). The Respondent counters, and I agree, that the RAD reasonably refused the Applicant's appeal on the basis that the allegations of persecution, when considered cumulatively, are not objectively well-founded. Further, says the Respondent, the RAD considered the totality of the Applicant's profile and relevant risk factors.

[8] Convention refugee protection under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 requires an applicant to establish, on a balance of probabilities, fear of persecution on both subjective and objective bases regardless of whether the applicant relies on a single event or several taken together: *Canada (Citizenship and Immigration) v Munderere*, 2008 FCA 84 [*Munderere*] at paras 36, 45, leave to appeal refused, 2008 CanLII 42356 (SCC); *Canada (Citizenship and Immigration) v Viljanac*, 2014 FC 276 at para 16; *Abbass v Canada (Citizenship and Immigration)*, 2023 FC 628 [*Abbass*] at para 29.

[9] Ms. El Skafi asserts that the RAD did not apply the principle of intersectionality in the assessment of each element of her claim. As I understand the argument, Ms. El Skafi's position is that RAD should have accounted for the discriminatory nature of Lebanese nationality law (that prohibits a Lebanese woman from passing her nationality to a foreign spouse or their children, while a Lebanese man is not so prohibited) in assessing the claim elements independently and cumulatively.

[10] In my view, this is an example of the standard of perfection to which Ms. El Skafi seeks to hold the RAD. The RAD determined that Ms. El Skafi failed to establish an objective basis for

her claim that she would risk a serious possibility of persecution because her husband is Palestinian which, ostensibly, is tied to the asserted impact of the Lebanese nationality law.

[11] A focus of Ms. El Skafi's narrative is that she could not move back to Lebanon with her husband (or her children) because the Lebanese government does not allow Palestinian refugees from Syria to live in Lebanon.

[12] Further, before the RPD she testified, "[w]ell, in Lebanon, neither my husband nor my children can live with me. What am I going to live and do in Lebanon?"

[13] It is not clear to me that this is a reference to the gendered, discriminatory law in Lebanon that prohibits a woman's nationality being passed to a foreign spouse and children from that union, or simply a factual observation. Ms. El Skafi has not lived in Lebanon for almost 50 years as of time of the RPD hearing and her adult children live elsewhere with their own families. Her spouse also has not lived in Lebanon for a long period of time, having moved to Syria with Ms. El Skafi following their marriage in 1974.

[14] The RAD observed that Ms. El Skafi's spouse had a Lebanese residency permit from 2016-2019. A copy of it is contained in the certified tribunal record. The RAD thus found, not unreasonably in my view, that the permit contradicts Ms. El Skafi's statement that she could not move back to Lebanon with her husband.

[15] The RAD also was not persuaded that Lebanon started considering Ms. El Skafi to be Palestinian because of her spouse; the Decision provides coherent reasons justifying the position. In addition, the RAD accounted for Ms. El Skafi's Record of Submission of Refugee Claim in which she answered "no" to the question of whether she was afraid to return to her country of citizenship.

[16] In short, the RAD acknowledged the gendered, discriminatory law and concluded that there was no objective basis for Ms. El Skafi's claimed risk as a woman married to a Palestinian man in Lebanon. It is not clear to me how the RAD, in light of this finding of a lack of objective basis, nonetheless should have accounted for the Lebanese nationality law with the other elements of Ms. El Skafi's claim, or more specifically in the RAD's cumulative analysis.

[17] Further, as this Court recently held, it is reasonably open to the RAD to conclude that an inability to pass on citizenship to one's children may be discriminatory but does not reach the threshold of persecution: *Baakliny v Canada (Citizenship and Immigration)*, 2024 FC 130 [Baakliny] at para 27. This holding is in line, in my view, with other jurisprudence relied on by the RAD, in its cumulative assessment, that distinguishes between "persecution and mere unfairness": *Alkarra v Canada (Citizenship and Immigration)*, 2023 FC 1219 at para 39, citing *Sefa v Canada (Citizenship and Immigration)*, 2010 FC 1190 at para 10.

[18] In addition, Ms. El Skafi's testimony that "in Lebanon, neither my husband nor my children can live with me," taken together with the statement in her narrative that she is "part of this family and I can't separate myself from it," reflect, in my view, concerns over family unity. I

find this position does not lead necessarily to the conclusion that the RAD's determination, that Ms. El Skafi is not a person in need of protection, was unreasonable: *Baakliny*, above at para 14.

[19] Ms. El Skafi also argues that the RAD failed to consider whether her cumulative discrimination amounted to persecution. Looking at the Decision holistically, I disagree.

[20] The RAD was obligated to assess the cumulative effects of prospective discrimination (given that Ms. El Skafi had not resided in Lebanon for more than 50 years) and to provide sufficient explanation for its conclusions in its reasons: *Cova Torres v Canada (Citizenship and Immigration)*, 2023 FC 1672 at para 33, citing *Munderere*, above at paras 41-42, and *Abbass*, above at para 50. In my view, the RAD here did so.

[21] The RAD acknowledges the different elements of Ms. El Skafi's claim and considers them separately including the consequences that flow from them. I pause to add that the RAD also determined, with cogent and logical reasons, that there is no objective basis for Ms. El Skafi's claim of prospective risk of persecution based on her gender or age.

[22] As another example, the RAD considers Ms. El Skafi's religion as a Sunni Muslim (noting that this element was not argued explicitly) in the context of the objective evidence showing that political actors and those critical of Hezbollah are targeted. The RAD concludes, as part of its cumulative assessment, that she is not a political opponent or known critic of Hezbollah.

[23] Reading the RAD's reasons as a whole, I determine that the RAD reasonably adopted a similar approach for each of the specific elements of Ms. El Skafi's profile. The RAD considered the risk elements separately and applied an intersectional approach, as described in section 6 of the *Chairperson's Guideline 4: Gender Considerations in Proceedings Before the Immigration and Refugee Board*. The RAD indicates that it accounted for the "various identity factors in the Appellant's profile" that she would face in Lebanon (i.e. age, gender, religion, health and the security situation) but ultimately found they do not "rise to the level of persecution whether considered independently or cumulatively."

III. Conclusion

[24] For the above reasons, I conclude that Ms. El Skafi has not met her burden of showing that the Decision is not justified, transparent nor intelligible, or that it is not rooted in the evidentiary and legal constraints that bear on it: *Vavilov*, above at paras 99, 125. This judicial review thus is dismissed.

[25] Neither party proposed a serious question of general importance for certification. I find that none arises in the circumstances.

JUDGMENT in IMM-661-24

THIS COURT'S JUDGMENT is that:

1. The judicial review application is dismissed.
2. There is no question for certification.

"Janet M. Fuhrer"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-661-24

STYLE OF CAUSE: HAYAT EL SKAFI v THE MINISTER OF
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