

Federal Court



Cour fédérale

**Date: 20100318**

**Docket: IMM-3058-08**

**Citation: 2010 FC 312**

**OTTAWA, Ontario, March 18, 2010**

**PRESENT: The Honourable Louis S. Tannenbaum**

**BETWEEN:**

**EDMOND WEHBE  
RITA TABET**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The applicants seek judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board dated May 26, 2008 to the effect that the applicants were not Convention refugees, nor persons in need of protection.

[2] The applicants request that the decision be set aside and the matter referred back to a newly constituted panel of the Board for redetermination.

[3] Mr. Edmond Wehbe and his wife Ms. Rita Tabet (the applicants) were born in Beirut in 1966 and 1962 respectively and are citizens of Lebanon. Mr. Wehbe claims protection due to his political opinion, and supporter and former member of the Lebanese Forces (LF). Ms. Tabet claims protection as a member of a social group, as his wife.

[4] Mr. Wehbe is a Maronite Christian from a middle class family in Lebanon. His grandfather worked for the French embassy in Beirut and his father was primarily a Banker. Mr. Wehbe trained and worked as a lawyer in French and Lebanese law.

[5] Initially, Mr. Wehbe grew up in a majority Christian neighbourhood, Ain El Remmaneh, in a south eastern suburb of Beirut. At the age of eleven, Mr. Wehbe submits that he witnessed the horrors of conflict for the first time. His family moved after their apartment was shelled and burned, to another Christian area of East Beirut, Achrafieh-Tabaris. When he was fourteen years old this neighbourhood was also attacked by bombs.

[6] Mr. Wehbe states that the above described events moved him to join the LF as an informant of pro-Syrian individuals in his community. He worked as an informant from 1990 to 1994, part-time. He submits that a year later, after he ceased activities with the LF, he began receiving death threats by telephone. From 1995 until 2001, Mr. Wehbe states that he received calls from the Syrian secret service although the callers refused to identify themselves individually. On April 17, 2001, Mr. Wehbe testified that the threat became more serious to him. He alleges that he was detained and

interrogated by men claiming to be with the Syrian secret service forcing him to sign a document that he would not engage in further political activity and would leave Lebanon within three months.

[7] Mr. Wehbe claims that the above described incident “finally pushed him to flee the country with his wife” and left Lebanon three months later, arriving in the United States in July 2001. His wife joined him in January 2002 after she allegedly settled their affairs, such as selling property and so on, in Lebanon. They arrived in Canada and claimed refugee status in June 2002 after receiving advice from an Immigration consultant that Canada would be a better country to put a claim forward in the post-September 11th climate.

[8] There were a number of issues that the Board addressed in its decision: reavailment, subjective and objective fear, change of circumstances in Lebanon, failure to claim in other countries, delay in filing and credibility.

[9] The Board found that the explanations from the applicants as to why they left and returned to Lebanon several times to travel to Bulgaria, Russia, Greece and Syria unreasonable. Mr. Wehbe traveled to Greece in 1997, to Bulgaria twice in 1999, to Russia in 1999 and Syria at least twice before 1999, in November 1999 after his wedding, and in 2000 when he went to the American Embassy to obtain his U.S. Visa.

[10] In particular, the Board felt that the “trips in and out of Syria, cast serious doubt over the claimant’s allegation that he was receiving threatening telephone calls from the Syrian secret

service” and that their actions were not in keeping “with the behaviour one would expect of persons who are truly fearful of their lives and is demonstrative of a lack of subjective fear”.

[11] For the Board, Mr. Wehbe’s explanations that he crossed at remote border crossings into Syria which did not have a lot of controls and with taxi drivers who presented the passports seemed implausible. The Board also did not understand why Mr. Wehbe brought his wife to Syria after their wedding because, if the allegations of threats were true, this would have endangered her as well.

[12] His trips to Bulgaria, Russia and Greece were also puzzling to the Board in the context of the death threats. At a minimum, Mr. Wehbe would have made “serious inquiries” to government authorities to find out the possibility of asylum instead of relying on “lay people” such as a travel agent, an acquaintance who spoke Arabic and a bank teller during his travels for information. Further, the idea that Mr. Wehbe was not aware of the ability to obtain international protection is difficult for the Board to accept given his legal training.

[13] Ultimately, this evidence did not persuade the Board that the death threats from Syria security agents between 1995 to 2001 were true.

[14] The Board then addressed the incident of April 17, 2001 and summarizes Mr. Wehbe’s narrative of the event indicating that:

“the claimant left work and drove to the village of Bikfaya where he stopped to buy groceries on his way home. Once he arrived there he

was intercepted, forced to get into a car by a man who had showed him he was armed and stated he was with the Syrian secret service. It claims he was taken to their headquarters in Mount Lebanon, however, that when he entered the village his eyes were covered. It goes on to explain that he was questioned for about one hour and then told to sign a document pledging to not engage in any further political activities and promising to leave Lebanon within three months”

[15] The Board concluded that the incident on April 17, 2001 never took place because there was no reasonable explanation for the inconsistencies and discrepancies in the evidence presented by Mr. Wehbe.

[16] The Board also found implausibilities in the overall account of Mr. Wehbe. One, they questioned why the Syrians never gave him a “real scare” but instead continued to call him over six years without intercepting him. Two, how did the applicants live a “relatively normal life” traveling, getting married, attending school, and going to work while maintaining part-time surveillance activities for the LF for all of those years and eventually while under the shadow of death threats. Three, in light of the documentary evidence on LF informants, how is Mr. Wehbe alive today? Fourth, would the Syrians not be interested in learning the claimant’s role as an informant, or the LF operations and plans and not let Mr. Wehbe “off” with a pledge to stop and leave Lebanon. These questions led the panel to conclude that the threats and the incident in April 2001 never occurred.

[17] The Board then turned to the circumstances of the applicants’ departure from Lebanon and eventual claim for protection. While the Board did not have issue with the explanation that they

claimed refugee status in Canada because of the post-September 11th climate, the delay in any case was seen as not consistent with what one would expect from persons fleeing for their lives.

Ms. Tabet's later departure was also seen by the Board as further proof that she did not feel threatened as she remained in Lebanon until January 2002-six months after her husband left. The explanation of Ms. Tabet having to stay in Lebanon to organize things, place furniture in storage and sell items did not seem to be the actions of a fearful refugee.

[18] The Board concluded that while Mr. Wehbe may have provided support to the LF by occasionally providing surveillance, "his role and engagement was never such that it would draw the interests of the Syrians". It was significant to the Board that the applicants did not have any knowledge of people coming looking for Mr. Wehbe at his home or at the home of his family or friends and that nobody was questioned about him. Mr. Wehbe testified that he never would discuss such a thing on the telephone with his family and that in any case just because his family was silent on any of this did not mean it did not happen. Mr. Wehbe testified that he was especially careful to protect his wife from information that may be stressful because the emotional impact of the conflict in Lebanon had been significant requiring medication. Further, not only had he been spurned to leave by the threats but also by others looking out for his best interest knowing his life was in danger.

[19] The Board rejected these explanations as purely speculative. Mr. Wehbe would have asked his family if anyone was looking for him and especially in light of an unresolved refugee claim.

[20] The Board was also not persuaded that Mr. Wehbe had been threatened because of the very fact that people perceived to be anti-Syrian are still being harmed in Lebanon. Evidence cited by the Board shows that despite a Syrian withdrawal in 2005 Syrian operatives still remain and high level anti-Syrian politicians have been murdered.

[21] Mr. Wehbe's witness, Mr. Elias Bejjani, of the Lebanese Canadian Coordinating Council (LCCC) testified of the underground presence of Syrians and Mr. Wehbe submitted articles confirming the assassination of some members of the LF in 2002, 2004, and 2005. The Board notes, however, that there is no evidence that Syrian secret agents were responsible.

[22] Finally, as to the changing circumstances in Lebanon, the Board found that Lebanese authorities are endeavouring to prosecute those responsible for the killings. They noted that the election in 2005 was won by a majority of politicians opposed to Syrian interference. And, although Maronite Christians can be targeted by other religious groups, they are random and not individualized. The political instability in Lebanon continues but this is a milieu that all Lebanese face to some degree depending on their affiliations. In any event, the Board concluded it has been eighteen years since Mr. Wehbe ceased informant activities and eight years since he lived in Lebanon: "there is less than a mere possibility that the claimant would be of interest to anyone in Lebanon today".

[23] The applicants fear that they will also now be targeted by not only the Syrian secret service but also Hezbollah, Palestinian armed groups and Al Qaeda. The Board found that there was

insufficient evidence that supports past persecution of both applicants and less than a mere possibility that the applicants will be targeted by these groups in the future, if returned to Lebanon.

[24] The applicant submits that the Board failed to give any reason for rejecting the most important question: was there more than a mere possibility of persecution if Mr. Wehbe either resumed his activities or was perceived to have done so? Instead, the Board found that Mr. Wehbe may have provided his support to the LF but never to the extent that his actions would have drawn interest from the Syrians and stated that there is nothing in the evidence to suggest that Maronite Christians are persecuted today or that someone like Mr. Wehbe would be personally targeted.

[25] The applicants submit that they met the burden of proof in establishing a well-founded fear of persecution. Even if an individual incident of persecution is not accepted, it does not mean that a claimant did not experience persecution or have good grounds for fearing persecution; *Madelat v. Canada (Minister of Employment and Immigration)*, [1991] F.C.J. No. 49.

[26] The applicants also submit that the Board erred in law when it found that the travel away from Lebanon and nonavailment undermined the claim for protection before it. In *Prapaharan v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 272 the Federal Court stated that “it appears that the applicants’ main claims with respect to persecution seem to pre-date to the time after they had returned to Sri Lanka in 1998. Subsequent persecution after reavilment does not preclude a person from making a claim for refugee status without being faced with the reavilment



argument". The most serious incident of April 17, 2001 occurred after the trips to Bulgaria, Russia, Greece and Syria.

[27] According to the applicants, the conclusions of the Board that the April 17, 2001 incident did not occur and as such put the Mr. Wehbe's credibility into questions were unreasonable.

[28] The respondent argues that the Board made findings of implausibility and credibility that were reasonably open to them given the record. Further, the Board correctly stated and applied the definition of Convention refugee and a person in need of protection.

[29] Reasonableness is the standard of review for Board decisions and a high level of deference is due. Section 18.1 of the *Federal Courts Act* directs that Board decisions are reviewable if based on an erroneous finding of fact made in a perverse or capricious manner and without regard to the material before it.

[30] The respondent further submits that contrary to the applicants' submissions, the Federal Court and Federal Court of Appeal have recognized repeated visits to a country of alleged persecution can be assessed in relation to the existence of a genuine or well-founded fear; *Romero v. Canada (Minister of Citizenship and Immigration)* (13 May 2005), Doc. No. IMM-1904-04 (F.C.) and *Bogus v. Canada (Minister of Citizenship and Immigration)*, [1993] 71 F.T.R. 260; affirmed (26 September 1996) Doc. No. A-712-93 (F.C.A.).

[31] The respondent also argues and points out that the applicants' explanation that he only visited Syria before the alleged incident of April 17, 2001 does not add up when he also alleged that death threats by telephone were made to him from 1995 to 2001. Given the alleged death threats, the Board was "perfectly entitled to take into account the applicants' numerous trips to Lebanon and to Syria itself".

[32] The respondent states that the issue of the April 2001 incident, in any case, is moot given that the Board rejected it happened based on the Mr. Wehbe's account at the hearing being different than that offered in his PIF. Omissions of significant events can lead to negative inferences by the Board, for example see: *Lobo v. Canada (Minister of Citizenship and Immigration)* (20 April 1995), Doc. No. Imm-3387-94 (F.C.T.D.).

[33] The Board is also allowed to make credibility findings when an applicant's PIF is inconsistent with oral evidence presented at the hearing, for example see: *Barrera v. Canada (Minister of Employment and Immigration)* (1993), 18 Imm. L.R. (2d) 81, 99 D.L.R. (4th) 264, [1993] 2 F.C. 3.

[34] In *Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315 (F.C.A.) it is stated that the Board is entitled to decide credibility adversely in the face of inconsistencies and contradictions.

[35] In regards to the issue of delay, the respondent submits that the Board can consider delay in filing for protection in the country of protection, “as long as the delay is not the sole or decisive factor”; *Radulescu v. Canada (Minister of Citizenship and Immigration)* (16 June 1993), Doc. No. 92-T-7164 (F.C.T.D.). Failure to claim in a country that is a signatory country can be interpreted as conduct inconsistent with a well founded fear of protection; *Assadi v. Canada (Minister of Citizenship and Immigration)* (25 March 1997), Doc. No. Imm-2683-96 (F.C.T.D.). A failure to file a refugee claim also demonstrates a lack of subjective fear; *Ilie v. Canada (Minister of Citizenship and Immigration)* (22 November 1994), Doc. No. Imm-462-94 (F.C.T.D.). Further, the Board is not required to accept an applicant’s explanation of delay; *Bogus* above. In relation to the facts, the respondent submits that the allegation that Mr. Wehbe had been receiving threatening telephone calls from 1995 to 2001 made the delay issue all the more problematic and, as such, the Board was perfectly entitled to make negative findings on delay.

[36] The standard of review for questions of fact and mixed fact and law is reasonableness.

[37] This Court has applied a reasonableness standard of review to determinations of credibility: *Malveda v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 447; *Khokhar v. Canada (MCI)*, 2008 FC 449; *Aguirre v. Canada (MCI)*, , 2008 FC 571; *Arizaj v. Canada (MCI)*, 2008 FC 774.

[38] In reviewing the Board’s decision using a standard of reasonableness, the Court will consider "the existence of justification, transparency and intelligibility within the decision-making

process” and “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law”.

[39] The assessment on credibility lies at the heart of this claim. In particular, the Board tested the consistency of the facts presented by the applicants’ in addition to drawing conclusions based upon what was seen as implausibilities in the evidence.

[40] The Board found it implausible that the Syrian secret service had him sign a form stating that he would leave Lebanon within three months and cease political activities based in part on the fact that he was already planning to leave. Or, in the alternative, the Board stated that the incident is not in keeping with their view of the Syrian secret service and that Mr. Wehbe would have been killed as opposed to told to leave.

[41] The failure to claim elsewhere and the delay in claiming once Mr. Wehbe left Lebanon was considered by the Board to further undermine his and his wife’s credibility.

[42] The decision reached by the Board was a reasonable one in the circumstances and deference should be granted. Accordingly, the application for judicial review will be dismissed.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** the application for judicial review is dismissed. No question of general importance has been submitted for certification.

Louis S. Tannenbaum  
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Deputy Judge

**AUTHORITIES CONSULTED BY THE COURT**

- a. *Kurniewicz v. M.M.I.*, (1974) 6 N.R. 225
- b. *Wu v. M.E.I.*, T-50-89, 24 January 1989
- c. *Jamal Saleh v. M.E.I.*, 89 T- 667, 22 September 1989 (F.C.T.D.)
- d. *Placido Alves Capelos v. M.E.I.*, 89-T-657, 30 August 1989 (F.C.T.D.)
- e. *Molina v. M.E.I.* (1975), 12 N.R. 317 (F.C.A.)
- f. *MCI v. Chris John Shwaba*, 2007 FC 80
- g. *Salibian v. Canada (M.E.I.)*, [1990] 3 F.C. 250 (C.A.)
- h. *Madelat v. M.E.I.* and *Mirzabeglui v. M.E.I.*, A-537-89 and A-538-89
- i. *Prapaharan v. Canada (M.C.I.)*, 2001 FCT 272
- j. *Thuraiveerasingam Kandiah v. M.C.I.*, 2005 FC 181
- k. *Gabeyehu v. M.C.I.*, IMM-863-95 (F.C.T.D.)
- l. *Liblizadeh v. Canada (M.C.I.)*, IMM-5062-97 (F.C.T.D.)
- m. *Akhigbe v. Canada (M.C.I.)*, 2002 FCT 249
- n. *Ledezma v. Canada (M.C.I.)*, 2005 FC 90
- o. *De Urbina v. Canada (M.C.I.)*, 2004 FC 494
- p. *Gavryushenko c. Canada (M.C.I.)*, IMM-5912-99 (F.C.T.D.)
- q. *Sida v. Canada (M.C.I.)*, 2006 FC 545
- r. *Dunsmuir v. New Brunswick*, 2008 SCC 9
- s. *Eler v. M.C.I.*, 2008 FC 334
- t. *Canada (A.G.) v. Grover*, 2008 FCA 97

- u. *Martin v. Canada (Minister of Human Resources Development)*, December 16, 1999, A-229-98 (F.C.A.)
- v. *Rodriguez Estrella v. Canada (M.C.I.)*, 2008 FC 633
- w. *Malveda v. Canada (M.C.I.)*, 2008 FC 447
- x. *Anjete v. Canada (M.C.I.)*, 2008 FC 644
- y. *Mendez v. Canada (M.C.I.)*, 2008 FC 584
- z. *Naumets v. Canada (M.C.I.)*, 2008 FC 522
- aa. *Obeid v. Canada (M.C.I.)*, 2008 FC 503
- bb. *Da Mota v. Canada (M.C.I.)*, 2008 FC 386
- cc. *Pompey v. Canada (M.C.I.)*, 18 September 1996, IMM-16-97 (F.C.T.D.)
- dd. *Kanakulya v. Canada (M.C.I.)*, 11 October 2009, IMM-2990-01 (F.C.T.D.)
- ee. *Romero v. Canada (M.C.I.)*, 13 May 2005, IMM-1904-04 (F.C.)
- ff. *Bogus v. Canada (M.E.I.)*, [1993] 71 F.T.R. 260 (affirmed by the F.C.A. on September 26, 1996 in A-712-93)
- gg. *Lobo v. Canada (M.C.I.)*, 20 April 1995, IMM-3387-94 (F.C.T.D.)
- hh. *Uppal v. Canada (S.G.C.)*, 23 January 1995, IMM-552-94 (F.C.T.D.)
- ii. *Somasundaram v. Canada (M.C.I.)*, 21 September 1994, IMM-6030-93
- jj. *Barrera v. Canada (M.E.I.)* (1993), 18 Imm. L.R. (2d) 81
- kk. *Dhillon v. Canada (M.C.I.)*, 21 May 1999, IMM-3371-98 (F.C.T.D.)
- ll. *Jayasundara v. Canada (M.C.I.)*, 16 December 1998, IMM-5464-97 (F.C.T.D.)
- mm. *Aguebor v. Canada (M.E.I.)*, (1993), 160 N.R. 315 (F.C.A.)
- nn. *Radulescu v. Canada (M.E.I.)*, June 16, 1993, 92-A-7164 (F.C.T.D.)

- oo. *Assadi v. Canada (M.C.I.)*, 25 March 1997, IMM-2683-96 (F.C.T.D.)
- pp. *Ilie v. Canada (M.C.I.)*, 22 November 1994, IMM-461-94 (F.C.T.D.)
- qq. *Sellathamby v. Canada (M.C.I.)*, 8 June 2000, IMM-1854-99 (F.C.T.D.)
- rr. *Stoica v. Canada (M.C.I.)*, 12 September 2000, IMM-1388-99 (F.C.T.D.)
- ss. *Pissareva v. Canada (M.C.I.)*, 4 December 2000, IMM-1393-00 (F.C.T.D.)
- tt. *Letshou-Olemlso v. Canada (M.C.I.)*, [1990] 3 F.C. 45



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

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**DATED:** March 18, 2010

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