

Federal Court



Cour fédérale

**Date: 20110512**

**Docket: IMM-6111-10**

**Citation: 2011 FC 534**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Ottawa, Ontario, May 12, 2011**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**FAHIME EL ROMHAINE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Introduction**

[1] The application for judicial review involves the claim of an elderly, illiterate person who is a citizen of Lebanon and has been living with her son who has been abusing her for several years.

Elderly persons may be considered vulnerable persons under the *Guideline on Procedures with Respect to Vulnerable Persons Appearing Before the IRB* (December 15, 2006) (Guideline 8),

issued by the Chairperson of the Immigration and Refugee Board (IRB) pursuant to paragraph 159(1)(h) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA). This Guideline allows for procedural accommodations, including for the elderly:

2.1 For the purposes of this Guideline, vulnerable persons are individuals whose ability to present their cases before the IRB is severely impaired. Such persons may include, but would not be limited to, the mentally ill, minors, the elderly, victims of torture, survivors of genocide and crimes against humanity, and women who have suffered gender-related persecution. [Emphasis added.]

[2] The applicant is not only a vulnerable person, but also a woman experiencing domestic violence. According to *Guideline 4 concerning Women Refugee Claimants Fearing Gender-Related Persecution*, effective November 13, 1996 (Guideline 4), when the Refugee Protection Division (RPD) assesses harm caused in order to determine whether it is a form of persecution, it must consider a certain number of factors:

#### **B. ASSESSING THE FEARED HARM**

...

The circumstances which give rise to women's fear of persecution are often unique to women . . .

...

#### **C. EVIDENTIARY MATTERS**

When an assessment of a woman's claim of gender-related fear of persecution is made, the evidence must show that what the claimant genuinely fears is persecution for a Convention reason as distinguished from random violence or random criminal activity perpetrated against her as an individual. The central factor in such an assessment is, of course, the claimant's particular circumstances in relation to both the general human rights record of her country of origin and the experiences of other similarly situated women. . . .

[3] In this case, the RPD's decision did not fully analyze the relevant evidence. The application will therefore be allowed:

It is incumbent on the specialized tribunal to recognize and acknowledge the encyclopedia of references, dictionary of terms, thus, gallery of portraits which often are contradictory and, at the very least, require brief articulation as to why one set of facts and interpretations was chosen over another. Only then can an adequately expressed decision emerge in respect of a specific claimant.

*(Ndikumana v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1056, 299 F.T.R. 124 at paragraph 1).

## II. Judicial procedure

[4] This is an application for judicial review in accordance with subsection 72(1) of the IRPA of a decision by the RPD of the IRB dated September 24, 2010, that the applicant is not a Convention refugee under section 96 of the IRPA or a person in need of protection under section 97 of the IRPA.

## III. Facts

[5] The applicant, Fahime El Romhaine, was born on December 30, 1943, and is a citizen of Lebanon.

[6] After her husband died in 1989, Ms. Romhaine, who is currently 67 years old and illiterate, allegedly remained in the apartment she had always lived in, with her oldest son, Michel, the only one of her eight children who still lived at home.

[7] Ms. Romhaine alleges that she was forced to live with her son. He treated her well initially, but gradually began to mistreat her.

[8] In early 2008, Ms. Romhaine's daughter, Thérèse, who lives in Canada, invited her to attend her granddaughter's wedding and covered the cost of her trip to Canada. Ms. Romhaine obtained a visitor's visa and arrived in Canada on March 11, 2008.

[9] According to the testimony of her daughter, Thérèse, a few months later, when it was time for the applicant to return to Lebanon, her mother started to cry. She then revealed that Michel was abusive towards her.

[10] The applicant claimed protection in Canada in July 2008, four months after arriving in Canada.

#### IV. Impugned decision

[11] The RPD found that the applicant is not a Convention refugee or a person in need of protection. Although it was of the opinion that this is a sad family situation and took the claimant's vulnerability into account, it rejected her refugee claim.

[12] The RPD states that it was willing to acknowledge that the applicant, an elderly woman who is illiterate and a widow, may be a member of a particular social group within the meaning of section 96 of the IRPA. However, it was of the opinion that the applicant failed to demonstrate a serious possibility of persecution on a Convention ground should she return to Lebanon.

[13] According to the RPD, the applicant failed to demonstrate that she would be unable to find an alternative arrangement for continuing to live in Lebanon. The fact that her six other children

have their own lives and families or that there may have been some family conflicts is not sufficient in itself to demonstrate that there is no chance of reconciliation or of the applicant's other children taking care of her. Therefore, the applicant purportedly did not demonstrate that she would be unable to make an arrangement to obtain support or that she would indeed be persecuted should she have to live alone in Lebanon.

[14] The RPD found that it was not possible to draw an analogy between the situation of widows in Lebanon and that of widows in India. For the RPD, the applicant's hardships did not amount to persecution.

#### V. Issues

- [15] (1) Did the RPD err by failing to analyze all of the evidence in the record or by failing or neglecting to specify the reasons for its rejection when it found that the applicant did not have a well-founded fear of persecution?
- (2) Did the RPD apply, in its decision, Guideline 4 concerning women fearing gender-related persecution and Guideline 8 on vulnerable persons?

#### VI. Relevant statutory provisions

[16] The following provisions of the IRPA are relevant to this application:

##### **Convention refugee**

**96.** A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular

##### **Définition de « réfugié »**

**96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son

social group or political opinion,

appartenance à un groupe social ou de ses opinions politiques :

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

#### **Person in need of protection**

#### **Personne à protéger**

**97.** (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

**97.** (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

[17] Furthermore, Guideline 8 pertains to the situation of the applicant as an elderly and illiterate person:

**2. Definition of Vulnerable Persons**

2.1 For the purposes of this Guideline, vulnerable persons

**2. Définition d'une personne vulnérable**

2.1 Pour l'application des présentes directives, une

are individuals whose ability to present their cases before the IRB is severely impaired. Such persons may include, but would not be limited to, the mentally ill, minors, the elderly, victims of torture, survivors of genocide and crimes against humanity, and women who have suffered gender-related persecution.

personne vulnérable s'entend de la personne dont la capacité de présenter son cas devant la CISR est grandement diminuée. Elle peut, entre autres, être atteinte d'une maladie mentale; être mineure ou âgée; avoir été victime de torture; avoir survécu à un génocide et à des crimes contre l'humanité; il peut aussi s'agir d'une femme qui a été victime de persécution en raison de son sexe.

...

[...]

2.3 Persons who appear before the IRB frequently find the process difficult for various reasons, including language and cultural barriers and because they may have suffered traumatic experiences which resulted in some degree of vulnerability. IRB proceedings have been designed to recognize the very nature of the IRB's mandate, which inherently involves persons who may have some vulnerabilities. In all cases, the IRB takes steps to ensure the fairness of the proceedings. This Guideline addresses difficulties which go beyond those that are common to most persons appearing before the IRB. It is intended to apply to individuals who face particular difficulty and who require special consideration in the procedural handling of their cases. It applies to the more severe cases of vulnerability.

2.3 Les personnes qui comparaissent devant la CISR trouvent souvent le processus difficile pour diverses raisons, notamment à cause des contraintes de langue et de culture et parce qu'elles ont peut-être vécu des expériences traumatisantes qui sont à l'origine d'une certaine vulnérabilité. Les procédures de la CISR ont été conçues pour reconnaître la nature même du mandat de la CISR qui, de façon inhérente, fait intervenir des personnes pouvant être vulnérables. Dans tous les cas, la CISR prend des mesures pour assurer l'équité des procédures. Les présentes directives abordent des difficultés qui vont au-delà de celles auxquelles se heurtent habituellement la plupart des personnes qui comparaissent devant la CISR. Elles visent les personnes qui éprouvent des difficultés particulières et qui doivent faire l'objet de considérations spéciales sur le plan procédural



dans le traitement de leur cas.  
Elles s'appliquent aux cas de  
vulnérabilité les plus sévères.

[Emphasis added.]

(La Cour souligne.)

[18] Guideline 4 may also apply to the applicant, as a woman victim of violence. This Guideline establishes a framework of analysis that is relevant to set out here, especially with regard to determining a form of persecution:

**FRAMEWORK OF  
ANALYSIS**

**CADRE D'ANALYSE**

**1. Assess the harm feared by the claimant. Does the harm feared constitute persecution?**

**1. Évaluez le préjudice redouté par la revendicatrice. S'agit-il d'une forme de persécution?**

(a) For the treatment to likely amount to persecution, it must be a serious form of harm which detracts from the claimant's fundamental human rights.

a. Pour que le traitement équivaille vraisemblablement à une forme de persécution, il doit s'agir d'un préjudice grave qui va à l'encontre des droits fondamentaux de la revendicatrice.

(b) To assist decision-makers in determining what kinds of treatment are considered persecution, an objective standard is provided by international human rights instruments. The following instruments, among others, may be considered:

b. Pour déterminer si un traitement donné est considéré comme une forme de persécution, on peut se servir, comme norme objective, des textes internationaux sur les droits de la personne. Les décideurs peuvent tenir compte, entre autres, des textes suivants :

*Universal Declaration of Human Rights,  
International Covenant on Civil and Political Rights  
International Covenant on*

*la Déclaration universelle des droits de l'homme,  
le Pacte international relatif aux droits civils et politiques,  
le Pacte international relatif*

*Economic, Social and Cultural Right  
Convention on the Elimination of All Forms of Discrimination Against Women  
Convention on the Political Rights of Women,  
Convention on the Nationality of Married Women  
Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment  
Declaration on the Elimination of Violence Against Women*

*aux droits économiques, sociaux et culturels,  
la Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes,  
la Convention sur les droits politiques de la femme,  
la Convention sur la nationalité de la femme mariée,  
la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants,  
la Déclaration sur l'élimination de la violence contre les femmes.*

**2. Ascertain whether the claimant's fear of persecution is based on any of the grounds, singly or in combination, enumerated in the Convention refugee definition. Considerations:**

- It is necessary to ascertain the characteristic of the claimant which places her or members of her group at risk, and to ascertain the linkage of that characteristic to a Convention ground.
- Gender is an innate characteristic and it may form a particular social group.
- A subgroup of women may

**2. Déterminez si la crainte de persécution de la revendicatrice est fondée sur l'un des motifs énumérés dans la définition de réfugié au sens de la Convention ou sur une combinaison de ceux-ci :**

- il est nécessaire de déterminer les caractéristiques de la revendicatrice faisant qu'elle ou les membres de son groupe sont menacés, et d'établir les liens existant entre ces caractéristiques et les motifs de la définition de réfugié au sens de la Convention;
- le sexe est une caractéristique innée et peut être un motif d'appartenance à un groupe social;
- un sous-groupe de femmes

also form a particular social group. Women in these particular social groups have characteristics (possibly innate or unchangeable) additional to gender, which make them fear persecution.

peut également constituer un groupe social. Les femmes faisant partie de ces groupes sociaux ont des caractéristiques (peut-être innées ou immuables), outre leur sexe, les faisant craindre d'être persécutées;

- The gender-defined group cannot be defined solely by the fact that its members share common persecution.

- le groupe défini par le sexe ne peut **uniquement** être défini par le fait que les membres de ce groupe font tous l'objet d'une persécution semblable.

**3. Determine whether the claimant's fear of persecution is well-founded. This includes an assessment of the evidence related to the ability or willingness of the state to protect the claimant and, more generally, the objective basis of the claim. Considerations:**

**3. Déterminez si la crainte de persécution de la revendicatrice est fondée. À cette fin, évaluez la preuve liée à la capacité ou à la volonté de l'État de protéger la revendicatrice et, de façon plus générale, le fondement objectif de la revendication :**

- There may be little or no documentary evidence presented with respect to the inadequacy of state protection as it relates to gender-related persecution. There may be a need for greater reliance on evidence of similarly situated women and the claimant's own experiences.

- il est possible qu'il y ait peu ou pas de preuve documentaire de l'incapacité de l'État d'assurer la protection contre la persécution fondée sur le sexe. Il sera peut-être nécessaire de s'en remettre davantage à la preuve présentée par des femmes ayant vécu des situations similaires et à l'expérience passée de la revendicatrice;

- The claimant need not have approached non-state organizations for protection.

- il n'est pas nécessaire que la revendicatrice ait sollicité la protection d'organisations non gouvernementales;

- Factors including the social, cultural, religious, and economic context in which the claimant finds herself should be considered in determining whether it was objectively unreasonable for the claimant not to have sought state protection.
- Where a woman's fear relates to personal-status laws or where her human rights are being violated by private citizens, an otherwise positive change in country conditions may have no impact, or even a negative impact, on a woman's fear of gender-related persecution.
- pour évaluer s'il était objectivement déraisonnable pour la revendicatrice de ne pas avoir sollicité la protection de l'État, il faut tenir compte, entre autres, du contexte social, culturel, religieux et économique dans lequel se trouve la revendicatrice;
- si la crainte d'une femme est liée aux lois sur le statut personnel ou que ses droits fondamentaux sont violés par de simples citoyens, une amélioration dans la situation du pays pourrait n'avoir aucune incidence ou même avoir une incidence défavorable sur la crainte d'une femme d'être persécutée du fait de son sexe.

**4. If required, determine whether there is a possibility of an internal flight alternative.**

**Considerations:**

- Whether there would be undue hardship for the claimant, both in reaching the location of the IFA and in establishing residence there.
- Religious, economic, social and cultural factors, among others, may be relevant in determining the reasonableness of an IFA for a woman fearing gender-related persecution.
- tenir compte de la capacité de la revendicatrice de se rendre dans l'autre partie du pays qui offre une PRI et d'y rester sans difficultés excessives;
- les facteurs religieux, économiques, sociaux et culturels, entre autres, peuvent servir à évaluer le caractère raisonnable d'une PRI pour une femme qui craint d'être persécutée en

**4. S'il y a lieu, déterminez s'il existe une possibilité de refuge intérieur (PRI) :**

raison de son sexe.

## VII. Parties' claims

[19] The applicant claims that the RPD should have been sensitive to her critical situation because of her age, her mistreatment and the inability of the Lebanese authorities to protect her. The applicant's position is that the RPD erred in fact and in law, and that the reasons indicated by the RPD are unreasonable, unfounded and constitute errors in law.

[20] The respondent submits that the applicant's application must be dismissed because she did not raise any serious arguments against the RPD's decision. According to the respondent, in the applicant's memorandum, she cited only decisions made by this Court concerning credibility, but the RPD made no such finding in this case. Furthermore, it is settled law that the issue of whether treatment may be considered persecution is a question of fact that is within the exclusive purview of the specialized tribunal (*Ihaddadene v. Canada (Minister of Employment and Immigration)*, (1993), 42 A.C.W.S. (3d) 887).

## VIII. Standard of review

[21] The case law is consistent that assessing the evidence and the testimony, as well as attaching probative value to them, is up to the RPD (*Aguebor v. Canada (Minister of Employment and Immigration)*, (1993), 160 N.R. 315 (FCA)). The standard of review is reasonableness and a certain level of deference is owed to decisions by the specialized tribunal (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190).

[22] Regarding the application of the Guidelines, a decision by this Court reviewing a finding by the RPD determined, with respect to whether the RPD considered the Guideline on gender-related persecution, that the standard of reasonableness applied (*Juarez v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 890, at paragraph 12).

#### IX. Analysis

**(1) Did the RPD err by failing to analyze all of the evidence in the record or by failing or neglecting to specify the reasons for its rejection when it found that the applicant did not have a well-founded fear of persecution?**

[23] The applicant has the burden of demonstrating a reasonable fear of persecution for her application to be allowed. The Supreme Court established that fear of persecution has two components: subjective fear and objective fear ((*Canada*) *Attorney General v. Ward*, [1993] 2 S.C.R. 689). As such, “. . . the subjective component is based on the assessment of the applicant's credibility, and the objective fear is based on the documentary evidence submitted in support of the claim” (*Rezk v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 151, 149 A.C.W.S. (3d) 286 at paragraph 9, citing *Rajudeen v. Canada (Minister of Employment and Immigration)*, (1984), 55 N.R. 129 (FCA)).

#### Subjective fear

[24] In an analysis of fewer than two pages, the RPD found that the applicant had failed to demonstrate a serious possibility of persecution on a Convention ground should she have to return to Lebanon. However, the RPD did not reasonably assess the evidence submitted by the applicant.

[25] First, in its decision, the RPD addressed certain passages of the applicant's testimony, as well as the testimony of her daughter:

[10] . . . However, she [the applicant] stated that he would become irritated with her and that she would then seek refuge with neighbours. When the panel asked her whether he beat her, the claimant answered "no," although he yelled at her. She stated that her son was not doing well. Her daughter Thérèse stated that her brother Michel made life difficult for her mother (which, according to the interpreter at the hearing, is also the Arabic word for torture), and her lawyer used the term psychological torture.

[26] This excerpt is the only passage in the reasons for the RPD's decision that refers directly to Ms. Romhaine's fear and/or the harm she suffered from. It was well within the purview of the RPD to attach weight, if any, to the testimony given; however, the RPD then failed to assess the rest of the relevant evidence in the record that describes the acts of persecution. In fact, in her Personal Information Form (PIF), the applicant provided more detail on her subjective fear. In her form, she explained that she received an income after her husband's death, which helped support herself financially, as well as her son. However, when this income ran out, her son started to mistreat her:

[TRANSLATION]

. . . He no longer allowed me to eat; he no longer allowed me to sleep in the bedroom, but on the balcony. He brought his girlfriend home and chased me out of the house. The neighbours felt sorry for me and took me in and gave me food until last year when my daughter sent me an invitation to come visit, which I accepted. When I obtained the visa, he kicked me out of the house and my daughter's in-laws took me in until my daughter sent me money for the ticket in March 2008. When I came to Canada, I told my daughter everything and now it has been 5 months since I arrived. I am very comfortable with my daughter and I would like to stay in this country with her because I no longer have a house in Lebanon; I no longer have anybody. [Emphasis added.]

(As it appears in the applicant's Personal Information Form, Tribunal Record (TR) at page 50).

[27] This conduct demonstrates not only verbal abuse, but also physical abuse as well as alienation and isolation.

[28] The PIF is the only document in which the applicant provides details on her daily life in Lebanon with her son. The RPD failed to address this in its decision or refer to the facts described in it. The respondent's memorandum further cites *Ihaddadene*, above, at paragraph 2, by Justice Alice Desjardins, in which the issue was "unpleasantness" and "shoving". However, the Court noted that discriminatory acts may constitute persecution if they are sufficiently serious and occur over such a long period of time that it can be said that the applicant's physical, psychological or moral integrity is threatened. In this case, the applicant lived for just over 20 years with her son, and the acts of violence occurred over several years.

Objective fear

[29] As the only reference to the documentary evidence, the RPD distinguished the situation of the applicant, a widow and a citizen of Lebanon, from that of widows in India, and found the following:

[18] . . . Nothing in the documentary evidence indicates that widows in Lebanon are shunned from society. This is particularly true in this case because the claimant is Catholic, and the documentary evidence indicates that women in that community benefit from greater openness.

[30] The RPD failed to consider that each case turns on its own facts.

[31] To support this last finding, the RPD relied on a single passage in the documentary evidence, to which it refers in a footnote. No other document was indicated:



**3.9.3** Lebanon is made up of many heterogeneous communities and societies, and there are many very different mindsets throughout the country. There are, for example, tribal communities which have very strict laws on a woman's virginity but there is also, particularly among Lebanese Christians, a very open mentality that indulges and even permits common-law relationships. A woman's age and financial situation play a large role in determining the risks she faces. A woman of 40 or even 35 years may be spared, as well as a divorced woman. [Emphasis added.]

(Operational Guidance Note: Lebanon, OGN v. 3.0 Issued 10 June 2009, TR at page 15).

[32] Although this excerpt refers to violence towards women as experienced by various segments of the Lebanese population, it pertains more specifically to the Christian community's acceptance of common-law relationships, that is, relationships outside of wedlock for Lebanese Christians. Aside from this specific comment on the openness of Christian communities, the RPD failed to address the documentary evidence on the ostracization of battered women, widows or even the elderly in Lebanon. The documentary evidence submitted before the RPD provided additional comments on the situation for women in Lebanon, namely, the following:

**3.9.6** The law does not specifically prohibit domestic violence, and domestic violence against women remained a problem in 2008. There were no authoritative statistics on the extent of spousal abuse. Despite a law prohibiting battery with a maximum sentence of three years in prison for those convicted, some religious courts legally may require a battered wife to return to her home in spite of physical abuse. Women were sometimes compelled to remain in abusive marriages because of economic, social, and family pressures. Possible loss of custody of children and the absence of an independent source of income prevented women from leaving their husbands.

(Operational Guidance Note, above, TR at pages 15-17).

[33] Subsequently, the RPD did not address the issue of state protection or an internal flight alternative (IFA) and did not assess the conditions in Lebanon in this regard (which, moreover, it

was not required to do). However, the RPD did find that the applicant had two alternative arrangements, that is, to live with one of her other children in Lebanon or to live alone:

. . . The fact that her six other children have their own lives and families or that there might have been some family conflicts is not sufficient to demonstrate that there is no chance of reconciliation or of the claimant's children taking care of her. The claimant did not demonstrate that she would be unable to make an arrangement to obtain support or that she would indeed be persecuted should she have to live alone in Lebanon.

(Decision at paragraph 17).

[34] These alternative arrangements demonstrate that the RPD found that the applicant had no basis for her fear of persecution. However, the first solution, that is, that of living with one of her children, goes against what was said during the testimony at the hearing. The Board member cannot reasonably arrive at the conclusion that Ms. Romhaine could go live with one of her other children without explaining why she did not consider the testimony given, and without passing judgment on the credibility of the witnesses, particularly considering the fact that the applicant's testimonial evidence that her children refused to take care of her was corroborated by her daughter's testimony.

In her testimony, Thérèse explained the following:

[TRANSLATION]

Q. No, but why don't the others want to take her in?

A. Oh, because they have had arguments with her, and also, they do not have the means.

Q. And what were the arguments about?

A. My father, my father was . . . When my father died, she preferred the eldest. She had money; she stayed with my oldest brother because he was single. Once the money ran out, there was war as well; sometimes he works, sometimes he doesn't, so he is usually in a bad mood.

(TR at page 114).

[35] The situation started after Ms. Romhaine's husband died (in 1989), or at least, after her income ran out, and continued to worsen until 2008, when she left for Canada. It is hard to believe that none of Ms. Romhaine's children were aware of the violent situation that existed in the family home between the son, Michel, and their mother. The Board member failed to explain the reasons that led her to find that Ms. Romhaine's children would take care of her if they had not done so in previous years. With respect to her finding that Ms. Romhaine could live alone, the Board member again gives no explanation in her reasons that could support this solution. The Court determines that the Board member should have at the very least assessed the documentary evidence on the situation of women living alone in Lebanon, particularly the elderly.

[36] Furthermore, this Court has recently assessed the documentary evidence on the situation of violence towards women in Lebanon. Justice Michel Beaudry allowed the application on the basis of the documentary evidence that had to be assessed:

[18] In the record there is abundant documentary evidence on the situation in Lebanon addressing domestic violence with respect to women and poverty. This evidence establishes that when women report incidents of domestic violence, the police often ignore their complaint and in some cases female victims of domestic violence are bound by the order of certain religious tribunals to return home. The evidence also establishes that there is no agency in Lebanon to which female victims of domestic violence can turn. Considering the importance that the panel assigned to the applicant's financial position and her economic circumstances, this documentary evidence becomes significant and the panel had to expressly consider it, if only to assess the plausibility of the applicant's testimony in the context of the situation in Lebanon on the issue of state protection for female victims of domestic violence. In failing to carry out this analysis, the panel did not put the applicant's allegations in the context of the socio-economic reality of the country and specifically that of female victims of domestic violence in Lebanon. Considering the importance of this documentary evidence, I can only find that the panel made a decision without taking into account the evidence before it.

*(El Hage v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1177, 173 A.C.W.S. (3d) 581).

[37] The RPD therefore erred by finding, on a balance of probabilities, that there was no serious possibility of the applicant being persecuted in Lebanon and that alternative arrangements existed. On all of these points, the RPD failed to mention evidence that was so important to the case that it can be inferred from the failure to mention it in the reasons that it was actually omitted (*Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35, 83 A.C.W.S. (3d) 264). In coming to this conclusion, the RPD failed to consider that Ms. Romhaine is a vulnerable person who is dependent on her son and who alleged to no longer have an income. In assessing the evidence submitted in the record and the reasons as given in the decision, the RPD's decision cannot be reasonable.

a. **Did the RPD apply, in its decision, Guideline 4 concerning women fearing gender-related persecution and Guideline 8 on vulnerable persons?**

[38] It is clear in the transcript from the hearing that took place on September 2, 2010, that the applicant had difficulty testifying. Ms. Romhaine is an illiterate woman who had to use the services of an interpreter. The applicant had difficulty speaking clearly about the treatment her oldest son allegedly put her through, but from her testimony emerged the fact that Ms. Romhaine was living a situation of a mother caught between a rock and a hard place. She is a mother who is ashamed that her son is abusing her and that she finds herself in dangerous circumstances. The particular relationship between the victim, an elderly mother, a widow and someone who is financially, physically and psychologically dependent, and the persecutor, her son, made for a very difficult situation. The same vagueness was apparent when the Board member asked Ms. Romhaine to explain why she could not go live with one of her other children, particularly those who still live in Beirut:

[TRANSLATION]

Q. Could you go live with one of your other children?

A. I don't know what I am going to do. I don't have a house to live alone in, and I don't know what I am going to do.

(TR at page 108). (Her silence is her despair and it demonstrates that nobody in her family wants her in Lebanon.)

[39] The RPD came to the realization that the applicant was reluctant to speak ill of her son because of her state of mind (decision at paragraph 10) and it specified that “. . . this is a sad family situation and [we] ha[ve] taken the claimant's vulnerability into account . . .” (decision at paragraph 15). (However, the RPD nevertheless did not make its finding in keeping with this, despite the fact that it characterized the applicant's circumstances as being a “sad family situation” and demonstrating “the claimant's vulnerability”.)

[40] Below is a well-known passage by the Supreme Court on the battered woman syndrome that addressed, per Justice Bertha Wilson, the situation of battered women and their difficulty in testifying about their mistreatment:

[54] Apparently, another manifestation of this victimization is a reluctance to disclose to others the fact or extent of the beating . . .  
[Emphasis added.]

(*R. v. Lavallée*, [1990] 1 S.C.R. 852, 108 N.R. 321).

[41] The Board member did not ask the applicant or her daughter many questions about the mistreatment suffered and the inability to move in with her other children. On the one hand, this could be viewed as the Board member demonstrating sensitivity and respecting Guideline 4 by

questioning the applicant with sensitivity and respect and not insisting on difficult events. On the other hand, the Board member relied mainly on the testimony of the applicant and her daughter in her decision, without mentioning the PIF or the documentary evidence, and determined an absence of persecution. In light of the principles in Guideline 4 and in Guideline 8, it was unreasonable for the RPD to rely on this lack of information in the testimony to determine an absence of a serious possibility of persecution, without studying the evidence as a whole.

X. Conclusion

[42] Given the facts of this case, the Court's intervention is warranted and for these reasons, the application for judicial review is allowed and the matter is referred back to another Board member for redetermination.

**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES that** the application for judicial review be allowed and the matter be referred back to another Board member for redetermination. No serious question of general importance is certified.

“Michel M.J. Shore”

---

Judge

Certified true translation  
Janine Anderson, Translator

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

**DOCKET:** IMM-6111-10

**STYLE OF CAUSE:** FAHIME EL ROMHAINE v.  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** May 9, 2011

**REASONS FOR JUDGMENT  
AND JUDGMENT:** SHORE J.

**DATED:** May 12, 2011

**APPEARANCES:**

Anthony Karkar FOR THE APPLICANT

Suzon Létourneau FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Anthony Karkar FOR THE APPLICANT  
Counsel  
Montréal, Quebec

Myles J. Kirvan FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Montréal, Quebec