

Federal Court



Cour fédérale

Date: 20111202

Docket: IMM-638-11

Citation: 2011 FC 1403

Vancouver, British Columbia, December 2, 2011

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

WEAAM ZIRINI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER

[1] Mr. Zirini is a young man who comes to us from Israel. He seeks refugee status on the basis that he is persecuted there because of his Arab ethnicity. He concedes that no single adverse event in Israel amounts to persecution within the meaning of the United Nations Convention and section 96 of the *Immigration and Refugee Protection Act* [IRPA], but submits that cumulatively, in the aggregate, they do amount to persecution. This is the judicial review of the decision by a member of the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada who

determined that he is not a Convention refugee and not a person otherwise in need of Canada's protection.

[2] The case was argued against the backdrop of my own recent decision in *Salim v Canada (MCI)*, 2011 FC 1283. The same counsel appeared for both Mr. Salim and Mr. Zirini and the country documentation is largely the same. Counsel aptly described the *Salim* decision as the elephant in the courtroom. As masterful as he was in distinguishing that case and, with respect as was his duty, suggesting that it was wrongly decided, I am dismissing this application for judicial review.

[3] There are of course some differences on the facts and it was a different member of the RPD who rendered the decision. In the main, however, *Salim* applies.

[4] Although Mr. Zirini is an Israeli citizen by birth, he considers himself Palestinian and testified about frequent abuse and humiliation he and others endured at the hands of the Israeli police, discrimination he faced in employment, lack of access to education, and the disdain he faced from society as a whole.

[5] The RPD's qualification of country documentation emanating from the Government of Israel could not be considered, as the member did, as being "neutral and reliable" because the government was one of the agents of persecution.

[6] In reaching its conclusion that although Mr. Zirini may well be a second-class citizen who has faced discrimination and humiliation, not amounting to persecution, it is alleged that the Board ignored significant documentary and testimonial evidence and mischaracterized Mr. Zirini's problems with the Israeli police. Furthermore, the RPD's conclusions concerning the effects of his not having served in the military were unreasonable, as was its finding that state protection was available.

I. The Facts

[7] In my view, the facts break down into four broad categories: education, military service, police brutality, and societal attitudes.

[8] The evidence was that Mr. Zirini did not finish high school because his family was poor and he had to go to work to help out. The implication is that his family was poor because it was Arab and discriminated against. However, there are a number of Arabs who enjoy prominence in Israel, with accompanying wealth. Indeed, Mr. Salim was better educated and financially better off. The point is that he was able to work.

[9] Although there are some exceptions, the general rule is that Israeli Jews are subject to compulsory military service, while Arabs are not. They may volunteer, but the vast majority do not. Lack of military service is said to be used as a pretext to foster discriminatory hiring practices in both governmental and non-governmental circles.

[10] Mr. Zirini says he did not volunteer for military service because he did not want to be put in a position where he might have to kill Palestinians, and because he would be harassed and discriminated against by his own neighbours. This is a classic example of two solitudes.

[11] As an Arab in appearance, he was constantly subjected to security checks. Although it was conceded that heightened security concerns in Israel might justify racial profiling, the same did not justify the goading and insults to which he was constantly subjected. However, he was not the victim of police brutality, although he says some of his friends were.

[12] It seems to be a fact that many Jewish Israelis are suspicious and do not like their fellow citizens of Arab origin. The reverse also holds true.

II. The Law

[13] It is well-established that at some point cumulative discriminatory acts may constitute persecution. In *Canada (MCI) v Munderere*, 2008 FCA 84, 377 NR 259, Mr. Justice Nadon, speaking for the Federal Court of Appeal, stated that where evidence establishes a series of actions characterized to be discriminatory, but not persecutory, the cumulative effect of that conduct must be considered. It would be an error in law for the RPD not to consider the cumulative nature of those events.

[14] It was submitted that the member did not consider the events in the aggregate and simply stated facts without analysis. I disagree. Taken as a whole, the member was aware of the law, and

her findings of fact were well within the norm of reasonableness set out in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190. The reasons are more than adequate.

[15] The record also shows that the state does protect its Arab citizens.

III. Certified Question

[16] Mr. Zirini shall have until December 12, 2011 to propose a serious question of general importance which would support an appeal, as per section 74(d) of IRPA. If a question is posed, the Minister shall have one week therefrom to reply.

“Sean Harrington”
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-638-11

STYLE OF CAUSE: WEEAM ZIRINI v MCI

PLACE OF HEARING: Montreal, QC

DATE OF HEARING: November 22, 2011

**REASONS FOR ORDER
AND ORDER:** HARRINGTON J.

DATED: December 2, 2011

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