Federal Court  Cour fédérale

Date: 20130123

Docket: IMM-9210-11

Citation: 2013 FC 60

Ottawa, Ontario, January 23, 2013

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

RIDA ABDUL SATER
(A.K.A.: RIDA ABEL SATER)

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision by M. Sterlin (the "Officer") of the Immigration and Refugee Board, Refugee Protection Division (the "Board" and the "RPD", respectively), dated October 31, 2011, who rejected the claim of Rida Abdul Sater (the "Applicant"), deeming him not to be a convention refugee nor a person in need of protection.

[2] The Applicant's claim was joined with that of his older sister, Aya Abdul Sater, under Rule 49 of the *Refugee Protection Division Rules*, SOR/2002-228. The Applicant and his sister both claimed refugee status in Canada on the grounds of a well-founded fear of persecution in Lebanon, having converted from Islam to Christianity while living in the United States.

[3] The Board granted the sister's claim, finding her to be a refugee under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), but refused the Applicant's claim. The RPD hearing, the Applicant's counsel's arguments and the evidence produced before the Board focused heavily on the sister's claim. The Officer's reasons, however, canvas the arguments raised in support of the Applicant's claim and conclude that it should be rejected.

[4] Although the evidence produced suggests plausible grounds on which the Applicant's claim might have been accepted, this is not sufficient for this Court to intervene. Based on the reasons provided by the Officer and the evidence adduced by counsel, I ultimately conclude that the impugned decision was not unreasonable. Merely arguing that alternative inferences should or could have been drawn is not sufficient to justify judicial review when great deference is owed to the RPD's decision.

1. Facts

[5] The Applicant was born in Lebanon on March 26, 1993, and is a Lebanese citizen. The Applicant was raised as a Shiite Muslim and his father is a fundamentalist Shiite Muslim.

[6] In 2003, the Applicant came to the United States with his father and elder sister, Aya, using a valid visitor's visa. The Applicant was nine years old at that time. After a period of time, the father left the Applicant and his sister Aya (collectively, the "claimants") with another sister, Nisreen, who is a U.S. citizen. The Applicant lived in the United States for a period of seven years, from 2003 until 2010, without status for the majority of that time (upon expiry of his visitor's visa). Nisreen was married to a radical Shiite Muslim in the United States during the time the claimants lived with her.

[7] Aya became interested in Christianity in or around September 2007 and began attending church services and taking lessons in Christianity, bringing the Applicant along with her. Both Aya and the Applicant officially converted to Christianity on June 1, 2008. Nisreen's husband disapproved of the conversion and informed the claimants' father, who threatened to kill Aya, as evidenced by an undated letter (a translation of which is included at page 56 of the Application Record).

[8] Aya filed an asylum claim in the United States with the financial assistance of her church, in or about January 2009, but no such claim was submitted for the Applicant. The claimants allege that the church could not afford to sponsor claims for both siblings, that the Applicant could not advance a claim on his own behalf as he had not yet reached the age of majority, and that the family concluded that it would be futile to file a claim on behalf of the Applicant once his sister's claim was refused for having been filed outside of the country's one-year filing deadline.

[9] In April 2010, Aya found a Christian boyfriend, with whom she began an intimate relationship. The father was again informed of this relationship by Nisreen's husband. The husband did not want the claimants to remain in his home, and they ultimately left for Canada in October 2010, where they claimed refugee status at the Detroit-Windsor Port of Entry based on fear resulting from their conversion from Islam to Christianity. Nisreen and her husband ultimately divorced.

[10] Since arriving in Canada, the claimants have lived with an older brother, Khalil, who was granted refugee status in Canada after submitting a claim in October 2003. As noted above, Aya's claim for refugee status was granted, with the Board accepting her claim "based on a serious possibility of an honour killing on behalf of her father" (RPD Decision, para 9).

2. Decision under review

[11] In his decision, the Officer summarized the allegations set out in the common PIF narrative of the Applicant and his sister, analyzed Aya's claim, and then came to a separate determination regarding the Applicant's claim. He notes that the Applicant "gave little testimony, and only then at the request of the Panel" and that "[l]ittle evidence was submitted with respect to his particular claim." He notes also that a friend of the family, Mr. Wahib Dandach, gave some evidence on behalf of the male claimant. Mr. Dandach testified that the claimants' family could perhaps convince the Applicant to be a "weapon" against his sister, and that he could also be seen as a spy by his family if he were to attend church in Lebanon.

[12] In his reasons refusing the Applicant's claim, the Officer considered the hardship that the Applicant would face upon return to Lebanon, having spent most of his life with his sisters in the

United States. He accepts that the Applicant is Christian now, but notes that this was not a straightforward determination, given that the Applicant indicated that he had converted to Atheism, not to Christianity, in his Port of Entry Notes. Accepting the Applicant's argument that he declared he had converted to Atheism because he lost his new faith for a period of time, but now attends church regularly, the Officer found that the Applicant is both a Christian and an apostate under Islam.

[13] The Officer explained that he accepted Aya's claim because there was a serious possibility that she would fall victim, as a female, to an honour killing, but noted that this threat would not apply to the Applicant, both because he was male and because no direct threat had been made against him by his family. The Officer appeared at this point to assume that the family was aware that the Applicant had converted to Christianity and remained a Christian. The Officer similarly concluded that the Applicant's fear that he would be compelled to defend his sister was unfounded, particularly in light of the fact that the sister's claim was granted.

[14] The Officer refused various claims put forward by the family friend and examined whether there is a serious possibility that the Applicant would be persecuted as a Christian and a convert in Lebanon. In this regard, the Officer noted that Christians are entitled to freedom of religion in Lebanon, that a law against blasphemy with a maximum prison term of one year had not recently been enforced, that it was not clear that conversion in the United States would be considered blasphemy, and that the witness's allegations that apostates could be expelled from Lebanon or tracked down by their fathers should not be given as much weight as the documentary evidence.

3. Issue

[15] The only issue raised in this application for judicial review is whether the Officer erred in his determination that the Applicant would not be persecuted in Lebanon as a Christian and a convert.

4. Analysis

[16] There is no debate between the parties that the applicable standard of review is that of reasonableness. As the Supreme Court stated in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, at para 47, "...reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law."

[17] The most compelling argument put forward by the Applicant is that, having accepted that he is both a Christian and an apostate under Islam, it was unreasonable for the Officer to refuse the Applicant's claim in spite of evidence put before the Board demonstrating that apostates are severely punished in Muslim countries (including the Applicant's home country of Lebanon). The Applicant submits that this punishment can include death and that, having accepted the credibility of the sister's testimony that she would be punished by her family as an apostate, it was unreasonable to arrive at the opposite conclusion for the Applicant.

[18] Contrary to the Applicant's argument, it was reasonable for the RPD to distinguish the Applicant's circumstances from those of his sister. Based on the evidence before the Board, Aya's

gender made her more vulnerable in Lebanon. The panel accepted that there was a serious possibility that the Applicant's sister would fall victim to an honour killing at the hands of her father. There were documents before the panel establishing that honour killings of women by family members do occur in Lebanon. Based on the evidence before the RPD, the victims of this type of crime are always women. Therefore, the Applicant would not face this problem upon return to his country of citizenship because he is a male.

[19] The Applicant counters that he did not base his claim on the possibility of being a victim of an honour crime in Lebanon, but on religious grounds. The Applicant submits that he is in need of protection in Canada because he will suffer persecution in Lebanon as a convert from Islam to Christianity.

[20] As previously mentioned, the Officer specifically examined in its reasons whether there was a serious possibility that the Applicant would be persecuted as a Christian and a convert upon return to Lebanon. The Officer gave three reasons for his conclusion that the Applicant would not be persecuted in Lebanon as a Christian and a convert. He found that: (i) Christians are entitled to freedom of religion in Lebanon; (ii) the Lebanese law against blasphemy, which provides for a maximum prison term of one year, had not recently been enforced at the time of the decision; and (iii) the witness's allegations that apostates could be expelled from Lebanon or tracked down by their fathers should not be given as much weight as the documentary evidence to the contrary.

[21] While it is certainly arguable, as asserted by the Applicant, that the Officer's findings regarding the religious tolerance available to Christians and the applicability of Lebanon's

blasphemy law were irrelevant to the Applicant's claim or could have been interpreted differently, this is not sufficient to conclude that the Officer's decision was unreasonable. The same is true of the Applicant's submission that the Board erred in concluding that the threatening letter written by the father referred only to the sister. According to the Applicant, the father's letter speaks only about the sister Aya because the family considered that she was responsible for her brother's conversion, and believed that if they made Aya return to Islam she would convince her brother to follow her. Again, this is certainly one possible interpretation of the father's letter, but in order to show that the RPD's inferences are unreasonable, the Applicant must demonstrate that the inferences made by the Board are not in any way supportable on the evidence.

[22] While counsel for the Applicant asserted that Sharia law is a major force in Lebanon and that it governs family situations (including, according to the documentary evidence, questions of personal status), she did not definitively establish that apostasy qualifies as such a situation. Thus, for example, the fact that the Officer references Lebanon's penal code stipulations against "blaspheming God publicly" in the 2010 U.S. Department of State Religious Freedom Report but does not specifically discuss the application of Sharia law to personal status considerations cannot be considered a determinative error. The Report, in fact, provides as follows:

> In most cases the government permitted recognized religious groups to administer their own family and personal status laws, such as marriage, divorce, child custody and inheritance. The "Twelver" Shi'a, Sunni, Christian, and Druze confessions have state-appointed, government subsidized clerical courts that administered family and personal status law.
>
> Item 12.1, the U.S. Department of State Religious Freedom Report, at p. 3 (p. 80 of the Tribunal Record).

[23] Neither can it be considered an error for the Officer to ignore other references to the dangers faced by Muslim converts (including those who convert outside their home country) in the Islamic world generally, to the extent that the Applicant has failed to satisfy the Officer regarding their relevance to Lebanon. At the hearing, counsel conceded that the evidence before the Board related exclusively to other countries, but contended that the Becaa valley where the Applicant's family lives is very similar to those countries. However, no evidence was submitted in that respect.

[24] The Applicant similarly took issue with the RPD's comments that although the U.S. Department of State Religious Freedom Report indicated that there was a maximum prison term of one year for blasphemy in Lebanon, the report also stated that there were no persecutions under this provision during the reporting period. The Applicant submits that those individuals who had converted to Christianity abroad may have obtained protection elsewhere and that may be the reason for an absence of persecution of converts in Lebanon. As noted by the Respondent, this is pure speculation and the Applicant has failed to provide any support for this claim. Once again, the Applicant is merely arguing that alternative inferences should have been drawn by the RPD from the evidence before it; this is not sufficient to justify intervention by this Court and to allow the application for judicial review.

[25] Although the evidence suggests that the most common dangers faced by Muslim apostates come from their own families and that being disowned by one's family can have serious consequences in Lebanon, it was open to the Officer to conclude that the family was aware of the Applicant's conversion, but did not intend to subject him to the same treatment as would be faced by his sister. Similarly, while the panel may have erred in suggesting that the Applicant, as a

Christian convert, would be entitled to the same freedom of religion guaranteed to those born Christian in Lebanon, he clearly refused Mr. Dandach's arguments regarding the potential penalties for apostasy and the fact that the Applicant, as an adult, would still be considered a possession of his father, who could thus enlist the assistance of the police in tracking the Applicant down in Lebanon. It is well established that the RPD is entitled to prefer the documentary evidence over the testimonial evidence of the claimant or of any of his witnesses: see, for ex., *Zhou v Canada (Minister of Employment and Immigration)*, [1994] FCJ no 1087, 49 ACWS (3d) 558 (FCA).

[26] On the basis of the foregoing arguments, I am therefore of the view that the Applicant has failed to establish that the RPD's conclusion is not supportable in any way on the evidence. It may be, as the panel hoped, that the Applicant should be granted permanent residence on humanitarian and compassionate grounds. However, this Court is unable to find that the RPD erred or came to an unreasonable conclusion in finding that the Applicant is not a Convention refugee under s. 96 nor a person in need of protection under s. 97 of the IRPA. As a result, this application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question of general importance is certified.

"Yves de Montigny

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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