

Federal Court



Cour fédérale

Date: 20150506

Docket: IMM-4337-14

Citation: 2015 FC 589

Ottawa, Ontario, May 6, 2015

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

MANAL HINDAWI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The risk of honour killings must be given every measure of consideration as per the gender related guidelines, in regard to the narrative of the Applicant, and, in addition, to ensure that the fulsome backdrop of circumstances is understood in context in respect of the community from which the Applicant originates.

[2] The Court is not convinced that the evidence in respect of the threat to life faced by the Applicant of falling victim to an “honour killing” was fully and adequately canvassed and given reasonable consideration by the RPD (*Kanthisamy v Canada (Minister of Citizenship and Immigration)*, 2014 FCA 113 at para 99 [*Kanthisamy*]).

II. Introduction

[3] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision rendered on May 9, 2014, by the Refugee Protection Division [RPD] rejecting the Applicant’s refugee claim under sections 96 and 97 of the IRPA.

[4] The Applicant is a Arab Muslim woman and citizen of Israel who claims refugee protection on the basis of her fear of persecution at the hands of her abusive husband and her risk faced upon return of becoming victim of an “honour killing” by members of her extended family.

III. Factual Background

[5] The Applicant is from an Arab populated village in northern Israel that she describes as a tight knit Arab community holding traditional views about women, a woman’s role in life and the need to uphold community values and “family honour”.

[6] In 1998, the Applicant entered an arranged marriage and shortly thereafter gave birth to two sons, in 2002 and 2004. After the wedding, the Applicant’s husband became controlling and

emotionally abusive towards the Applicant. In August 2008, the Applicant's husband started to regularly rape her and subject her to degrading sexual acts that are considered *haram* (sinful) according to Islamic law.

[7] During a holiday trip to Egypt, the Applicant befriended Mohamed, a Syrian Arab and they exchanged emails. The Applicant occasionally communicated and confided in Mohamed via email and Facebook.

[8] In May 2010, the Applicant's husband accused the Applicant of having an affair with Mohamed. The husband forced the Applicant to delete her Facebook account and forbade her from contacting Mohamed again. The Applicant asked her husband for a divorce but he refused to grant it.

[9] The abuse of the Applicant's husband towards the Applicant increased.

[10] The Applicant continued to communicate periodically with Mohamed until 2012, when the Applicant's husband learned that the Applicant was still in contact with him, by finding Mohamed's number in the Applicant's jacket.

[11] The Applicant's husband called Mohamed and threatened him. Mohamed continued receiving threats of violence and death on his phone and through Facebook from the Applicant's husband, who used an alias.

[12] Fearing for her life, the Applicant decided she could not remain in Israel. On November 15, 2013, the Applicant fled to Canada and traveled via Turkey, where she spent two days with Mohamed in Istanbul, who himself had previously fled Syria in 2013.

[13] Since the Applicant's arrival in Canada, she and Mohamed received repeated death threats from her husband and members of her extended family, both directly and indirectly.

[14] The Applicant claims that she is the target of a probable "honour killing" by members of her family who have threatened to avenge her acts of perceived defiance.

IV. Impugned Decision

[15] In a decision dated May 9, 2014, the RPD concluded that the Applicant does not face a well-founded fear of persecution, nor is she a person in need of protection, under sections 96 and 97 of the IRPA.

[16] The Applicant's credibility was not at issue; the RPD found that the Applicant testified in a straight forward manner, and that her testimony was coherent and consistent.

[17] Rather, the RPD's finding of state protection was determinative in rejecting the Applicant's claim.

[18] Relying on the documentary evidence contained in the RPD's National Documentation Package for Israel, and noting that Israel is a multiparty parliamentary democracy, that holds free

and fair elections, the RPD identified the Applicant's burden of rebutting state protection as a high one.

[19] The RPD found that the Applicant's mere subjective reluctance to seek protection, especially given her "level of sophistication and wherewithal", is insufficient to rebut the presumption of state protection (RPD Decision, at para 59).

V. Legislative Provisions

[20] The following provisions of the IRPA apply to the determination of a refugee claim:

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 social group or political opinion,

(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

(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.

Person in need of protection

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 appartenance à un groupe social ou de ses opinions politiques :

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) 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.

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

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

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

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

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

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

(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

is also a person in need of protection.

catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

VI. Issues

[21] The central issues raised by the application is the following:

- a. Did the RPD err in its state protection analysis?
- b. Are the RPD's findings in respect of the risk of an "honour killing" faced by the Applicant reasonable?

VII. Standard of Review

[22] The RPD's assessment of the availability of state protection is a finding of fact, which falls within the RPD's expertise with respect to country conditions. These issues are therefore reviewable on the standard of reasonableness (*Jabbour v Canada (Minister of Citizenship and Immigration)*, 2009 FC 831 at paras 18 and 20 [*Jabbour*]; *Baku v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1163 at para 9).

VIII. Analysis

A. *Did the RPD err in its state protection analysis?*

[23] This is a case that turns on its facts.

[24] The onus rests upon the Applicant of providing clear and convincing evidence that she cannot avail herself of adequate state protection (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at p 724).

[25] In its state protection analysis, it is incumbent on the RPD to address not only a state's willingness in providing adequate state protection, but also the state's capacity to implement those measures, at the operational or practical level for the person concerned under his or her circumstances (*Zaatreh v Canada (Minister of Citizenship and Immigration)*, 2010 FC 211 at para 27).

[26] As the burden of proof for rebutting the presumption of state protection is correspondent with the level of democracy in a state, the Applicant bears a heavy burden of proving that she has exhausted the avenues available to her (*Hinzman v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171 at para 57 [*Hinzman*]; *Jabbour*, above at para 27).

[27] While social or community resources may exist to assist victims of violence, these do not necessarily amount to state protection in certain cases due to circumstances and context. As stated by Justice Catherine M. Kane "the existence of other agencies and resources is not a substitute for police protection" (*L.D.M.F. v Canada (Minister of Citizenship and Immigration)*, 2013 FC 938 at para 38).

[28] In the case at bar, the RPD found that the Applicant's subjective reluctance in seeking state protection is insufficient to rebut the presumption of state protection.

[29] This Court has confirmed that refugee claimants are not required to be courageous or risk their lives in seeking state protection merely to demonstrate its ineffectiveness. Claimants can be exempted from the obligation of exhausting all avenues of protection in the event of exceptional circumstances (*Rodriguez v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1291 at para 29; *Gonsalves v Canada (Minister of Citizenship and Immigration)*, 2008 FC 844 at para 16; *Hinzman*, above at para 57).

[...] Moreover, it is not reasonable to require refugee claimants to put their lives or the lives of their families in danger. In the same way, claimants do not have to suffer greater persecution (which may consist of repeated discriminatory acts amounting to persecution). This Court pointed out recently in *Shimokawa v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 445, [2006] F.C.J. No. 555 (QL), at paragraph 21: "... in seeking state protection, refugee claimants are not expected to be courageous or foolhardy. It is only incumbent upon them to seek protection if it is seen as being reasonably forthcoming. If the refugee claimants provide clear and convincing evidence that contacting the authorities would be useless or would make things worse, they are not required to take further steps." [My emphasis.] In short, it is unreasonable to force refugee claimants to ask for protection that has little chance of materializing or that will be a long time coming, simply to demonstrate that state protection is ineffective.

(*Chagoya v Canada (Minister of Citizenship and Immigration)*, 2008 FC 721 at para 5)

[30] This is consistent with the *Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution*, which provides that decision-makers must be sensitive to the gendered nature of a claim:

Decision-makers should consider evidence indicating a failure of state protection if the state or its agents in the claimant's country of origin are unwilling or unable to provide adequate protection from gender-related persecution. If the claimant can demonstrate that it was objectively unreasonable for her to seek the protection of her state, then her failure to approach the state for protection will not defeat her claim. Also, the fact that the claimant did or did not seek

protection from non-government groups is irrelevant to the assessment of the availability of state protection.

When considering whether it is objectively unreasonable for the claimant not to have sought the protection of the state, the decision-maker should consider, among other relevant factors, the social, cultural, religious, and economic context in which the claimant finds herself. If, for example, a woman has suffered gender-related persecution in the form of rape, she may be ostracized from her community for seeking protection from the state. Decision-makers should consider this type of information when determining if the claimant should reasonably have sought state protection.

[Emphasis added.]

[31] As such, although the Applicant's subjective fear is not determinative in assessing the availability of state protection, the jurisprudence requires that her perception be nonetheless considered by the RPD, in light of the general country conditions (*Aurelien v Canada (Minister of Citizenship and Immigration)*, 2013 FC 707 at para 13 [*Aurelien*]). As stated by Justice Donald J. Rennie in *Aurelien*, above:

[9] An applicant need not seek state protection if the evidence indicates it would not reasonably have been forthcoming. The Officer must consider whether seeking protection was a reasonable option for the applicant, in her circumstances. When the relevant circumstances include domestic abuse, the Supreme Court of Canada has outlined specific considerations that must be taken into account, including the psychological effects that abuse has on a victim. The issue as framed in *R v Lavallee*, [1990] 1 SCR 852, is what the applicant "reasonably perceived, given her situation and her experience." The test is thus subjective and objective.

[Emphasis added.]

(*Aurelien*, above at para 9; see also: *R v Lavallee*, [1990] 1 SCR 852 [*Lavallee*])

[32] The Applicant, whose testimony and evidence were found wholly credible by the RPD, explained the reasons why she could not, based on her circumstances, situation and context, approach the police for state protection. The Applicant's belief that police protection is not an option based on her allegations in her particular circumstances is supported, among others, by Dr. Abdo's expert report, which can assist in "dispelling the myths and provide an explanation as to why a battered woman remains in her situation, which amounts to a cycle of suffering" (*Abbasova*, above at para 56).

Seeking protection from the police in relation to the problems I faced in my marriage was out of the question. First, as an Arab Israeli I have little trust in the police in general. Second, sexual assault is a deeply personal matter, and was particularly so in my case, as the sexual acts that my husband forced upon me are haram (or "sin") in my community, and were deeply shameful to me. Moreover, I could not reveal these haram sexual acts to the police without also shaming my parents and my siblings, as ours is a society in which the sins of a woman are seen as the sins of her family as well. Moreover, because the sexual acts were haram had I revealed what my husband was doing to me to the police, I had no knowing what my husband would do to me to retaliate for humiliating him... if my life were threatened I knew that I would not be able to rely on the police for protection there have been numerous cases in which Muslim women have sought the protection of the Israeli police in relation to the threat of an honour killing but despite having sought state protection they have been murdered.

(Applicant's Basis of Claim narrative, Certified Tribunal Record, at p 29)

[33] It is noted that the Applicant was recognized by the RPD as credible and has been diagnosed as per the evidence with "a battered woman syndrome". Therefore, as a woman who has suffered cycles of abuse, and given her limited freedom and mobility in her community which result from living in an abusive and controlling relationship with her husband, the practicalities and realities faced by the Applicant in accessing police protection outside of her

village must be carefully canvassed in light of the principles established by the Supreme Court in Lavallee, above, in respect of “the battered woman syndrome”.

[34] Such circumstances require that the RPD look above and beyond the efforts made by the state to provide protection to its citizens and canvass whether it was reasonable to expect in the Applicant’s circumstances, situation and context, to seek such protection.

[35] In light of the above, it was unreasonable for the Board to find that the Applicant’s fear is a mere “subjective reluctance” to engage state protection, without having first explored the Applicant’s particular circumstances (*Jimenez v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1407 at para 8).

B. *Are the RPD’s findings in respect of the risk of an “honour killing” faced by the Applicant reasonable?*

[36] Furthermore, in respect of the Applicant’s risk of falling victim to an “honour killing” at the hands of members of her family, the RPD found that “no one in [the Applicant’s] family has been killed in such a manner and no one has been threatened with such a consequence” and “therefore, there is no evidence in the personal circumstances of the claimant to suggest that there is a serious possibility of an honour killing should the claimant return to Israel” (RPD Decision, at paras 56 and 57).

[37] This reasoning is problematic, in light of the evidentiary record which demonstrates that the Applicant’s husband and family members have threatened her with death and reprisals,

whether directly or indirectly (Hearing Transcript, CTR, at pp 315-354; Applicant's Personal Testimony, CTR, at p 38; Letter submitted by Mohamed, dated December 23, 2013, CTR, at pp 280-282).

[38] As pointed out by the Applicant, without evidence that another woman in the Applicant's family had committed an act perceived to be dishonourable or a breach of Islamic law, the RPD's reasoning cannot stand.

[39] Moreover, the Applicant has put forward evidence which demonstrates that similarly situated women face a real risk of being murdered in the name of upholding family honour as per the objective evidence below:

[...] Violence against women in the Arab Palestinian society in Israel has not abated, if anything it has increased in some places. During 2013 alone, Women Against Violence Organization (WAVO) in Nazareth reported the murdering of 14 women on the basis of the so-called "honour killing" (citation omitted).

The persistence of patriarchal control in various sectors within the Arab community in Israel is partly responsible for keeping the woman under the male patriarchal control, for considering her (her body) as the site of "purity" and "shame", resulting in silencing her and in many cases pressuring her to not report her abuse. It is no surprise, therefore that Palestinian women's reluctance to report to the police is to save the family from societal retribution, shunning and tarnished reputation.

Sexuality in general is a social taboo in the Arab society, particularly when the matter relates to sexual assault or rape. As Shalhoub-Kovorkian notes, despite the increase in cases of sexual violence against Palestinian women, the victims are often blamed for the violence against them. The victims in cases of "domestic violence" fail to report their traumatic experience for cultural, and personal reasons including the guilt feeling, blaming and the fear of retribution in addition to the lack of social services available for their protection. These feelings enhance the victim's belief in the

futility of reporting, and weaken her will to share her experience with others especially with officials.

[...]

Violence in Israel and especially violence against women has been in the increase in the past decade largely due to the militarization of this country. According to Jewish Women's Rights Activist's report in 2013, approximately 200,000 Israel women were victims of domestic violence. The study also revealed that during 2012, 7,335 women were treated in 89 centers for domestic violence across the country.

[...]

A study conducted by Aida Touma-Suleiman (2009), chair of WAVO in Nazareth concluded that a major part of the blame and responsibility for the cases of honour killing ought to be placed on the state and its institutions for failing to stop such crimes, or even curb such a phenomenon. Evidence provided for such claims are based on the study of 25 cases of the so-called honour killing. According to the study, in most cases the Police failed to pursue the cases further to find out if other family members knew about the possibility of the crime or whether other family members were involved and thus failing to punish all those responsible for the crime. Touma-Suleiman (2009), like Shalhoub-Kevorkian (2003) documented cases where even when women victims of violence reported their cases to the Police, they were still killed. As Touma-Suleiman assert, even when the police were informed that if the perpetrator is released from prison they can endanger the life of the victim, they still release the perpetrator resulting in various cases in the killing of the victim.

[Emphasis added.]

[40] Dr. Abdo's Report refers explicitly to the Applicant's refugee claim:

The case of this woman [the Applicant] is similar to other cases where women sacrifice their lives and happiness for the family (especially children), after 14 years of an abusive relationship she decided she had enough and needed to take her fate in her own hands. This candidate decided to live a life of peace have a relationship based on love and respect.

Judging from experience, knowledge of similar cases and a close understanding of the general living conditions of Arab women in Israel the claim made by this woman about her fears and apprehension in terms of how her decision will be met if she was to go back to her society are not out of line. Based on her story, this woman's need to protection seems to be grounded on objective and subjective conditions. This applicant is weary of the possibility of going back to her community and face the possible punishment of being killed based on what would be interpreted as "shameful" nor "dishonouring" act. Her application for consideration as a potential victim of "honour-killing" is not far-fetched from the reality of her life. After all, this woman left her husband, entered a new relationship, while officially married, and living alone...behaviour deemed outside the norms of a traditional patriarchal culture living under state racism, one which could threaten her life.

(Women, Patriarch and Violence in Israel: A Witness Expert Report by Nahla Abdo, CTR, at pp 304-305 and 315-316)

For the last two years, Nasrin resided in a shelter for battered Arab women due to concern that members of her husband's family would try to harm her or send mercenaries to do so.

[...]

[Nasrin] was murdered at the end of May in the middle of the day, just outside the shelter in which she resided in the village of Yasik in the north of the country. She is the 30th woman to be murdered in the past six years in the Ramle-Lod region for the purpose of "restoring family honour".

(Maariv, Arab Women, Imam protest honour killings in Israeli city, June 12, 2012, CTR, at p 131-132)

According to WAV, only 22 percent of women who seek assistance from them will file a police complaint due to a general distrust of the police.

[...]

Arab women are generally more reluctant than Jewish women to seek assistance following a sexual assault, because there is a tendency among portions of Arab society to view the woman as the guilty party in such cases, and the women are concerned about damaging "what is termed the family's honour." ... Arab victims of sex crimes do not enjoy the support of their society, and often, friends and relatives will publicly deny that an attack took place

when they know that it did ... It is particularly hard for Arab women to challenge sexual harassment in the work place, because it is so difficult for them to find work.

(IRB Responses to Information Request (ISR 102543.E), CTR, at pp 134 and 135)

[Emphasis added.]

[41] The Court is not convinced that the evidence in respect of the threat to life faced by the Applicant of falling victim to an “honour killing” was fully and adequately canvassed and given reasonable consideration by the RPD (*Kanthasamy*, above at para 99).

[42] While the RPD need not to refer to all the evidence before it, in this case, it failed to reference evidence that was pertinent to the threat to life and limb alleged by the Applicant.

IX. Conclusion

[43] The application is allowed and accordingly set aside for determination anew by a differently constituted panel.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted.

There is no serious question of general importance to be certified.

"Michel M.J. Shore"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

Joshua Blum FOR THE APPLICANT

Judy Michaely FOR THE RESPONDENT

SOLICITORS OF RECORD:

Jared Will & Associates FOR THE APPLICANT
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of
Canada
Toronto, Ontario