

Federal Court



Cour fédérale

Date: 20180420

Docket: IMM-4422-17

Citation: 2018 FC 425

Toronto, Ontario, April 20, 2018

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

**HADIL A. A. YOUNIS
AHMED A. M. KALLAB**

Applicants

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP CANADA**

Respondent

JUDGMENT AND REASONS

(delivered orally from the Bench on April 17, 2018)

[1] The Applicants have applied for judicial review of a decision of the Refugee Protection Division [the RPD] dated September 2017, [the Decision] in which the RPD concluded that they are neither Convention refugees nor persons in need of protection. This application is brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

[2] The Applicants are a married couple from Saudi Arabia. They are stateless Palestinians. Hadil Younis [the Principal Applicant] is 27 years-old and her husband Ahmed Kallab [the Co-Applicant] is 29 years of age. They have a daughter who was born in the United States on July 8, 2016 [the Daughter]. She is not involved in their refugee claim.

[3] In 2015, using money borrowed from his father (the Loan), the Co-Applicant opened a restaurant [the Restaurant] in partnership with a Saudi national. However, his partner cheated him out of the Restaurant and he lost his investment. In a court case brought by the Co-Applicant, a judge ruled that the Restaurant did not belong to him. There was no documentation before the RPD to establish that the Restaurant, the Loan or the court case had ever existed.

[4] In January 2017, the Co-Applicant was told that he was being terminated from his employment at a pharmaceutical company where he worked as an architectural engineer [the Termination]. He was also told that after his termination became effective on March 31, 2017 he would be jailed if he did not leave the country.

[5] On March 1, 2017, while the Co-Applicant was away on business, the Principal Applicant hired a taxi to take her Daughter to the hospital. The Principal Applicant alleges that the taxi driver, who was also a policeman, sexually assaulted and threatened her [the Assault]. He showed her his gun and stated that if she told anyone, or reported the incident to the police, he would kill her family. The Applicant and her Daughter walked back to their house and telephoned the Co-Applicant who drove 300 kilometres to return home.

[6] The Applicants fled Saudi Arabia on March 29, 2017 and arrived in the United States the next day. They entered Canada on April 26, 2017, and on May 5, 2017 submitted their Basis of Claim forms.

THE RPD DECISION

[7] The determinative issue was credibility. The significant findings were as follows:

- Regarding the birth of their Daughter: The Applicants allege that they were on vacation in the United States when their Daughter was unexpectedly born two months prematurely. They returned to Saudi Arabia one week later. They offered no evidence to demonstrate that the birth was premature or that the Daughter was well enough to travel one week after her early birth. The RPD found that the Daughter's birth was not unexpected, in part because the Principal Applicant had applied for health insurance for herself and her Daughter, before she arrived in the United States.
- Regarding their failure to claim in the United States: the RPD found that their failure to seek protection in the United States demonstrated a lack of subjective fear. The RPD rejected the explanation that the Applicants sought protection in Canada because the Principal Applicant has an uncle who lives in Montreal. This explanation was not accepted because the Applicants chose to live in Mississauga.
- Regarding the Applicants' flight to the United States: the flights were booked on March 1, 2017, allegedly in response to the Assault that day. However, the Principal Applicant testified that the Assault occurred late in the evening on March 1, 2017. It then

took the Co-Applicant three hours to drive home, so that he would have arrived on March 2. The RPD therefore found that the flight had been booked before the alleged Assault. For this reason the RPD concluded that the Assault had not occurred.

- Regarding the Co-Applicant's evidence about his loss of employment: there was no evidence such as a dismissal letter to corroborate the Termination. The RPD concluded that the Termination had not occurred and said "[i]f the husband had been terminated from his employment and his status in Saudi Arabia had been likewise terminated [...] the panel would reasonably expect to see proof of this. The panel draws an adverse inference owing to his lack of documentation."

[8] The RPD also determined that even if it were true that the Co-Applicant had lost his investment in the Restaurant, it was an economic loss which did not give rise to a refugee claim or a claim for protection.

THE ISSUES

[9] The significant issues are whether the RPD's Decision was unreasonable because the RPD concluded:

1. That the Co-Applicant's employment had not been terminated.
2. That the failure to claim in the United States was determinative and showed a lack of subjective fear.
3. That the Applicants were asylum shopping.

DISCUSSION

[10] It is noteworthy that the RPD's core findings were reasonable. There was no Assault and the Daughter's birth was not premature as alleged. In my view, given these conclusions it was reasonable for the RPD to require corroboration and, without it, to decide that the Termination had not occurred.

[11] However, the Decision is not perfect. The RPD overlooked part of the Applicants' explanation for their failure to claim in the United States which included the fact that the Co-Applicant had relatives in Mississauga. This explained their decision to live there. The RPD mistakenly concluded that the only relatives at issue were the Principal Applicant's uncle and cousins in Montreal. Accordingly, the finding that the Applicants did not explain their failure to claim in the United States was unreasonable. Further, although the RPD described this conclusion as determinative it is obvious that credibility was in fact the determinative issue.

[12] As well, the RPD's conclusion that the Applicants were asylum shopping, which in this context must have meant a consideration of both Canada and the United States, was inconsistent with its finding that they had a premediated plan to have their Daughter born in Canada.

CONCLUSION

[13] The RPD's errors about the explanation for the Applicants' failure to claim in the United States and about asylum shopping are not material in the context of this case. The dismissal of

their refuge claim was reasonable given the negative credibility findings about the Assault, the Termination and the Daughter's birth.

CERTIFICATION

[14] No question was posed for certification for appeal.

JUDGMENT

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

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: HADIL A. A. YOUNIS AHMED A.M. KALLAB v THE
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PLACE OF HEARING: TORONTO, ONTARIO

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APPEARANCES:

Marc J. Herman FOR THE APPLICANTS

Nadine Silverman FOR THE RESPONDENT

SOLICITORS OF RECORD:

Herman and Herman FOR THE APPLICANTS
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario