

Federal Court



Cour fédérale

Date: 20190910

Docket: IMM-713-19

Citation: 2019 FC 1155

Vancouver, British Columbia, September 10, 2019

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

**ROUA AL HASAN, ZIAD FAKOUSH,
AND LAYA FAKOUSH**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicants seek judicial review of the decision of a visa officer in Lebanon who rejected their application for permanent residence as refugees or as members of the country of asylum class. They allege that the officer made unreasonable credibility findings, failed to interview the child applicant and disregarded the objective risk the applicants are facing in Syria, their country of origin. I am dismissing their application, as I find that the officer made no such errors.

I. Background

[2] The applicants are a family of Syrian citizens. They allege that they have been forced to flee Syria as a result of Ms. Al Hasan's humanitarian activities. They have applied for permanent residence. Their application was initially denied by a visa officer in Lebanon, who had concerns about the applicants' credibility. An application for judicial review to this Court was settled and the matter was sent back for redetermination.

[3] On that second review of their application, the visa officer interviewed Ms. Al Hasan and Mr. Fakoush separately for part of the interview. Because their passports did not bear a stamp that is usually found on Syrian passports delivered to an applicant's relatives, the officer became suspicious that the applicants were not living in Lebanon and had returned to Syria. She questioned them as to the manner in which they obtained their passports. Ms. Al Hasan and Mr. Fakoush gave conflicting accounts. She then warned them that she had concerns about their credibility and gave them an opportunity to respond. Mr. Fakoush then admitted that he had not told the truth.

[4] The visa officer denied their application. She found that Ms. Al Hasan and Mr. Fakoush were not truthful during the examination with respect to the manner in which they obtained their Syrian passports, which suggested that they were living in Syria and not in Lebanon. As a result, she found that they had breached section 16 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act], and that they were inadmissible to Canada.

[5] The applicants now seek judicial review of that decision.

II. Analysis

[6] Despite counsel for the applicants' able advocacy, I am dismissing this application. The applicants have not shown that the officer's credibility assessment was unreasonable. Given the negative credibility finding and the nature of the claim, the officer did not have to conduct a risk assessment based on objective information. Moreover, it was not an error for the officer not to hear the testimony of Ms. Al Hasan and Mr. Fakoush's eight-year-old daughter.

[7] Before addressing the applicants' arguments in detail, I note that it is not in dispute that the officer's decision must be reviewed on a reasonableness standard. This means, in particular, that the Court must read the officer's reasons generously and, having regard to the evidence, supplement them with whatever is necessarily implicit, as indicated by the Supreme Court of Canada in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paragraph 16, [2011] 3 SCR 708:

Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion [...] In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

A. *Credibility*

[8] The applicants' main argument is that the officer's credibility assessment was unreasonable. In particular, they argue that the officer improperly relied on her local knowledge of the fact that Syrian passports issued to a relative of the bearer would have a particular stamp. They also argue that the officer failed to consider the applicants' explanations for the apparent discrepancy in their testimonies.

[9] I cannot give effect to those submissions.

[10] Visa officers may use their knowledge of local conditions in the area in which they are posted to assess an application: *Bahr v Canada (Citizenship and Immigration)*, 2012 FC 527; *Asl v Canada (Citizenship and Immigration)*, 2016 FC 1006; *Mohammed v Canada (Citizenship and Immigration)*, 2017 FC 992; *Yuzer v Canada (Citizenship and Immigration)*, 2019 FC 781.

[11] Depending on the circumstances, procedural fairness may require officers to inform applicants of their intention to rely on their locally acquired knowledge: *Nguyen v Canada (Citizenship and Immigration)*, 2019 FC 439 at paragraph 28. Here, no such concerns arise, as the officer told the applicants that to her knowledge, their passports lacked a stamp that would indicate that they were issued to a relative, and gave them an opportunity to respond.

[12] In any event, the officer's negative credibility finding was mainly based on Mr. Fakoush's admission that he did not tell the truth. The absence of a stamp on the passports

was merely the clue that led the officer to question Ms. Al Hasan and Mr. Fakoush. Obviously, Mr. Fakoush's admission is sufficient grounds for a negative credibility finding and a conclusion that the applicants contravened section 16 of the Act.

B. *Risk Assessment*

[13] The applicants also submit that, despite having found them not to be credible, the officer should have assessed their risk profiles based on objective country condition evidence. It is true that in certain cases, risk can be assessed independently of credibility. In *Canada (Citizenship and Immigration) v Sellan*, 2008 FCA 381, at paragraph 3, the Federal Court of Appeal stated that "where the Board makes a general finding that the claimant lacks credibility, that determination is sufficient to dispose of the claim unless there is independent and credible documentary evidence in the record capable of supporting a positive disposition of the claim." But this is so mainly where objective information links the claimant to a class of persons who are deemed to be at risk: see, for example, *Denbel v Canada (Citizenship and Immigration)*, 2015 FC 629 at paragraph 51. In this case, given their lack of credibility, the applicants were unable to establish a necessary element of the test for refugee protection or the country of asylum class, namely, that they are outside of their country of nationality. Thus, this is not a case where the officer was required to perform a separate assessment of risk.

[14] The applicants nevertheless argue that the officer never made any finding that they were not residing in Syria. That is incorrect. The officer wrote:

Based on my concerns noted above, I have concerns that they have willingly returned to Syria on many occasions, or have remained there, which does not show that they have reasonable fear of

persecution or unwillingness to avail themselves to their country of persecution, or that they continue to be personally and seriously affected by the conflict, requirements set by A96 and R147.

[15] While terse, these comments clearly convey the officer's finding that the applicants, who had the burden of proof, did not provide sufficient credible evidence of a crucial element of their claim.

C. *Testimony of the Child*

[16] The applicants also argue that the officer should have heard from Ms. Al Hasan's and Mr. Fakoush's daughter, who was eight years old at the time of the interview.

[17] That argument faces a significant hurdle: no one ever asked the officer to do so.

[18] Nevertheless, the applicants assert that the officer had a duty to consider the best interests of the child, and that, in a case where the child's parents' credibility was compromised, this meant that the officer had to take the initiative of interviewing the child. In this regard, submissions made by the applicants' counsel prior to the interview contained a mention to the effect that "no credibility concerns regarding Laya were raised" – but no explicit request to have her interviewed.

[19] I acknowledge that the *Convention on the Rights of the Child*, UN GA Res 44/25 (1989) [the Convention], ratified by Canada, provides useful guidance: *de Guzman v Canada*

(*Minister of Citizenship and Immigration*), 2005 FCA 436, [2006] 3 FCR 655. Article 12 of the Convention reads:

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

[20] I also acknowledge this Court's jurisprudence to the effect that an officer may interview a child, provided that safeguards appropriate to the child's age and other relevant circumstances are in place: *Jesuthasan v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 872.

[21] Article 12 of the Convention provides that a child's voice may be heard "through a representative." In this case, the child was represented by her mother, who was the principal applicant. The mere fact that the parents were unsuccessful in establishing their claim does not mean that the child lacked representation. There was no duty on the officer to interview the child when no one made a specific request to that effect.

[22] As this is sufficient to dispose of the argument, it would not be wise for me to discuss further the complex issues that may arise when children are involved in proceedings for the determination of refugee status.

D. *Objective Risk for the Child*

[23] The applicants also submit that the officer failed to assess properly the risk that children, and girls in particular, face in Syria, as described in objective country condition evidence that the applicant's counsel put before the officer in advance of the interview. I am unable to agree. The officer explicitly addressed that evidence, but concluded that the child would not face the risk described in it, because she was under the care of her parents and there was no evidence that they were deprived of basic necessities. I agree that, at first sight, the officer's reasons read like a consideration of humanitarian and compassionate factors, giving rise to concerns as to whether she applied the correct test. However, when read against the backdrop of counsel's submissions and the nature of the risks described in the evidence, it becomes clear that the officer directed her mind to the right issues and her decision in this regard is reasonable.

[24] Accordingly, the application for judicial review will be dismissed.

JUDGMENT in IMM-713-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. No question is certified.

"Sébastien Grammond"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-713-19

STYLE OF CAUSE: ROUA AL HASAN, ZIAD FAKOUSH AND LAYA FAKOUSH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

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