

Federal Court



Cour fédérale

**Date: 20200629**

**Docket: IMM-5338-19**

**Citation: 2020 FC 733**

**Ottawa, Ontario, June 29, 2020**

**PRESENT: Mr. Justice Diner**

**BETWEEN:**

**FIRASS AL BARDAN  
DINA HAJIR  
AMAR ALBARDAN  
JAD ALBARDAN  
OSSAMA ALBARDAN**

**Applicants**

**and**

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

**Respondent**

**JUDGMENT AND REASONS**

Overview

[1] This application judicially reviews a decision [Decision] of the Refugee Appeal Division [RAD] dismissing the Applicants' claim for refugee protection. The RAD reasonably found that the first tribunal erred by failing to address a risk of recruitment of his teenage sons by Hezbollah

in Lebanon. Thus, it went on to assess the risk as a “new issue”. However, in doing so, the RAD failed to address key features of the evidence – both objective and subjective. As a result, the appeal will be sent back to the RAD for redetermination.

I. Background

[2] The Applicants, a family of five, are citizens of Lebanon. Their claims are primarily based on the narrative of the Principal Applicant, the father of the family. He claims to have been harassed at work due to his support for the former Prime Minister, Rafik Hariri. Members of Hezbollah, a political party and militant group with a powerful presence in Lebanon, are suspected of being responsible for Mr. Hariri’s assassination in 2005.

[3] Ultimately, after involvement in various civil society movements, the Principal Applicant alleges that he was he badly beaten by members of Hezbollah. He then travelled alone to the United States [US] on a pre-existing US visa, where he inquired with two counsel about making a refugee claim. He was apparently told that he would be separated from his family for years during the processing of an asylum claim, and he took counsel’s advice to return home so the family could make a claim together. After returning to Lebanon, he states that he faced continued and increasing threats from Hezbollah and went into hiding.

[4] The Applicants received US visas in March 2016 but, as the Principal Applicant later explained, stayed in Lebanon in order to avoid prejudicing the children’s school year. They allege that, around the same time, Hezbollah members began attempting to recruit the family’s two teenage sons to fight in Syria. The Principal Applicant states that in response to changing

immigration policy, the family decided not to travel to the US and instead obtained Canadian visitor visas in June 2017. They arrived in Canada in August 2017 and sought refugee protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act].

[5] In a decision dated June 22, 2018, the Refugee Protection Division [RPD] dismissed the Applicants' claim. The RPD raised credibility concerns finding that claims of subjective fear of persecution were greatly reduced by contradictions between the Principal Applicant's narrative and testimony regarding, in particular, the dates of his protest activities, the description of his work in Lebanon, his re-availments to Lebanon and his delay in leaving Lebanon. The RPD also rejected the residual claim under section 97 of the Act, finding no evidence that anyone involved in opposition to Hezbollah would be a "person in need of protection". The Applicants appealed the RPD decision to the RAD.

## II. Decision under Review

[6] The RAD dismissed the appeal in its August 13, 2019 Decision. The RAD agreed with the RPD that the Principal Applicant's testimony regarding his activism was not credible, pointing to several contradictions in the evidence regarding the timing of his political activities.

[7] Specifically, the RAD agreed that credibility issues included the returns to Lebanon, and subsequent delay in leaving including not to claim in the US, finding that his alleged fear was incompatible with his behaviour. The RAD, for instance, rejected that the decision not to claim in the US could have been motivated by the Trump administration's immigration policies, because the US visas were issued months before the November 2016 election. The RAD, like the

RPD, rejected the explanation that the three-month delay in leaving Lebanon after Canadian visas were obtained was in order to allow the children to finish the school year. The RAD then determined that the documentary evidence was insufficient to restore credibility to the claims.

[8] Finally, the RAD agreed with the Applicants that the RPD erred in not assessing the allegations that the two younger male Applicants were the subject of recruitment attempts by Hezbollah. The RAD accepted the young male Applicants' testimony on this subject. However, the RAD found that this did not rise to the requisite level of risk since the evidence was that they refused to join without consequences and no force was involved.

### III. Analysis

[9] The Applicants raise two issues with the Decision, submitting that the RAD (1) ignored evidence that contradicted its findings regarding the recruitment of the two teenage male Applicants, and (2) erred in finding that the Applicants' behaviour was inconsistent with their subjective fear. As both challenge the merits of the Decision, they are assessed under the reasonableness standard on judicial review (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]). Under that standard, this Court must determine whether the Decision "bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99). I will next explain why the Decision did not meet the justification requirement, in light of the evidence presented.

A. *Evidence regarding the teenage sons*

[10] The Applicants pled, in their lead issue at the RAD, that the RPD erred in failing to address the evidence regarding Hezbollah's attempted recruitment of their sons. The RAD agreed that the RPD should have addressed the recruitment issue, but disagreed with the Applicants' position, writing in the final section of its Decision (at paras 23-24):

I see no reason to doubt the teenage male Appellants' testimony that they have been approached by people attempting to convince them to join their ranks and fight in Syria. They have also testified that they refused and that, subsequently, nothing else happened. This is consistent with the information contained in the NDP [National Documentation Package], which states that although Hezbollah emphasizes the benefits it provides to its members in order to entice new members to join, it does not use force or intimidation to recruit members [citing the National Documentation Package on Lebanon, 30 April 2018, Tab 7.4]. The young male Appellants did not allege that Hezbollah tried to forcibly recruit them. Rather, they allege that they were approached, and refused to join without any consequences.

I find that the young male Appellants have not demonstrated that they face a serious possibility of persecution from members of Hezbollah, or that they personally face a threat to their life or risk of cruel and unusual treatment or punishment.

[11] The Respondent argues that this conclusion was entirely reasonable, given the teenage sons' evidence at the RPD hearing, namely that they were each approached, asked to join Hezbollah, and offered money for doing so. They refused, and were not harmed while in Lebanon. On this basis, the RAD held there was no evidence of forced recruitment or harm after they had refused to join.

[12] This, however, only provides a partial response to the evidence, leaving certain aspects unaddressed both in terms of the evidence of subjective fear expressed by the Applicants, and objective fear arising from the country condition evidence they presented. It is true that the teenage sons did not claim to have been subjected to any harm, or even mention the words “forced recruitment” in their testimony. However, in their submissions to the RAD, the Applicants’ counsel stated:

The principal claimant alleged that a tactic used by Hezbollah is to entice young men to become fighters for Hezbollah in Syria and elsewhere by giving them money and promises of a better existence. His 30 year old nephew had been recruited and sent to Syria for Hezbollah. He died within a month. [Reference: Applicants’ Basis of Claim Narrative.]

The principal appellant testified that Hezbollah representatives began approaching his two teenage sons. He viewed these as threats against his family. [Reference: CD Recording of the Refugee Hearing at 02:52.]

[13] As is clear from the extract of the Decision reproduced above in paragraph 10 of these Reasons, this testimony was not mentioned in the RAD’s reasons.

[14] The submissions to the RAD, as noted above, made specific reference to the Applicants’ Basis of Claim [BOC] form. The following is a key passage from their BOC:

In addition to the fears we had for my safety, we began to have serious fears for our children’s safety. A tactic used by Hezbollah is to entice young men to become fighters for Hezbollah in Syria and elsewhere by giving them money and promises of a better existence. They brainwash vulnerable young men and religious fanatics in order to get them to fight on their side. My 30-year-old cousin Marwan Albardan was targeted by Hezbollah and he agreed to go to Syria for Hezbollah. However, he was not a soldier and had no experience in this type of organization and within one month he was dead. He died in August 2017 in unknown circumstances in Syria. My older son Osama has been approached

by Hezbollah recruiters to join them on several occasions. My younger son Jad is a tall 16-year-old and also received a few contacts from Hezbollah members seeking to get him to join. We began receiving threats against our children in early 2017 as a result of my activities in the gear up to the 2018 elections so our fears increased. We consider the situation too unsafe and unstable for our family to continue living in Lebanon.

[Emphasis added.]

[15] This evidence did not mention past harm to the children. But it did mention fear based on the targeting of the children for recruitment, and it commented on the death of their cousin as evidence of what had happened within the family.

[16] In the footnote to paragraph 23 of its Decision (reproduced above in paragraph 10 of these Reasons), the RAD referred to the objective evidence contained in the Immigration and Refugee Board [IRB] NDP at Tab 7.4. That evidence is a 2015 Response to Information Request [RIR] entitled *Lebanon: Recruitment practices of Hezbollah*, produced by the IRB's Research Directorate.

[17] The RAD's finding at paragraph 23 of its Decision that Hezbollah "does not use force or intimidation to recruit members", taken from the RIR, was not the only viewpoint expressed in that report. The RIR also contained a statement from a professor of international history at the London School of Economics [LSE] that there is "anecdotal evidence" that Hezbollah "has started forcibly recruiting since it has become more involved in the Syrian conflict". The RAD did not address this contrary part of the same RIR, which it relied on for the alternate view (i.e. that neither force nor intimidation were used by Hezbollah to recruit).

[18] Since the RAD conceded that it was tasked with reviewing the issue of the teenage sons' risk of recruitment anew, it was incumbent on the RAD to consider the totality of the evidence, namely the oral evidence from the three witnesses who testified to it (the father and both sons), along with the written evidence contained in the BOC, and the full picture portrayed by the country condition evidence.

[19] The RAD failed to engage with the Applicants' testimony and evidence regarding their fear of recruitment activity that occurred to them in the past, but also what they feared for the future. The lack of past incidents of violence, or worse, is not determinative of future risk.

[20] The Respondent argues that the RAD is presumed to have reviewed the entire record and need not refer to every piece of evidence. While this is entirely accurate, it does not absolve the decision-maker from mentioning and analyzing evidence that directly contradicts its conclusions. Failing to do so may lead a reviewing court to conclude that the decision was made without regard to the evidence, and was therefore unreasonable (see *Alexander v Canada (Citizenship and Immigration)*, 2020 FC 313 at para 9).

[21] In terms of the *Vavilov* hallmarks of reasonability, I cannot find that this conclusion is justified in relation to the relevant factual and legal constraints that bear on the Decision. Quite apart from failing to deal with central portions of the Applicants' evidence mentioned above, the RAD's statement that the teenage Applicants' testimony was "consistent with the information contained in the NDP" is problematic, given that the LSE professor's comments went unmentioned. A more accurate statement would have been that the testimony was consistent with



some of the evidence contained in the NDP – and specifically, within the RIR on recruitment by Hezbollah in Lebanon. The RAD should have acknowledged and addressed the professor’s viewpoint, particularly in light of the Applicants’ testimony. After all, the RAD member stated that she saw no reason to doubt the sons’ testimony (Decision at para 23).

[22] The Respondent retorts that “[w]hile there may have been components of the documentary evidence that were consistent with the possibility of forced recruitment, the RAD’s rejection of the Applicants’ claim was based on the shortcomings in the Applicants’ own evidence” (Respondent’s Further Memorandum of Argument at para 24, citing *Ahmed v Canada (Citizenship and Immigration)*, 2019 FC 1210 at para 31 [*Ahmed*]). However, this situation differs from *Ahmed* in that not only did the RAD selectively rely on country condition documentation to come to its conclusions, it also omitted to mention central components of the Applicants’ testimony consistent with that documentary evidence.

[23] *Vavilov* teaches that where the impact of a decision on an applicant’s interests is severe, the reasons provided must reflect the stakes (at para 133). The stakes are high in refugee claims, and “reasons are the primary mechanism by which decision makers demonstrate that they have actually *listened* to the parties. ... a decision maker’s failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it” (*Vavilov* at paras 127 and 128, emphasis in original).

[24] I note that two other recent decisions of this Court – both of which were released after this appeal was considered and issued – have similarly found the lack of engagement with the viewpoint of the LSE professor to be problematic, and sufficient to return the matter to the RAD. Justice Lafrenière wrote in *Khadra v Canada (Citizenship and Immigration)*, 2019 FC 1150 at paras 17-23 [*Khadra*]:

In *Zaiter*, the applicant was a Lebanese man (from the Beqaa Valley) who feared being forcibly recruited by Hezbollah. The applicant adduced evidence of forced recruitment, including an excerpt from the National Documentation Package for Lebanon (Response to Information Request dated October 29, 2015), which is also relied on by the Applicant in the present case [part of the same quotation as mentioned above in paragraph 16 of these Reasons from the professor].

The RPD dismissed Mr. Zaiter’s evidence, deciding it was less probative than the evidence of Hezbollah’s non-forced recruiting. The RAD agreed with the RPD that the use of the term “anecdotal” meant “that the professor giving this information also did not consider the information to be verifiable or reliable.” Justice Norris disagreed, stating as follows at para 16 of *Zaiter*:

Anecdotal evidence may be less reliable as an indicator of broader trends or patterns than evidence obtained through systematic study but this does not mean that it has not been verified or is inherently unreliable. The fact that the professor was prepared to share this information with the IRB Research Directorate and provided additional details [...] suggested that he or she had not dismissed it as unverifiable or unreliable. Even if these were merely isolated reports, they were consistent with what the applicant claimed had happened to him, including that the harassment had begun when he was living at home with his family in the Beqaa Valley.

In the same paragraph, Justice Norris also noted weaknesses in the evidence of Hezbollah’s non-forced recruiting:

Moreover, while the Response to Information Request also cites the opinions of other academics that Hezbollah does not forcibly recruit its

members, the evidentiary support for these opinions is not stated. We do not know whether they are the product of systematic study, anecdotal reports, or something else.

Justice Norris determined the RAD's decision to prefer objective documentary evidence regarding Hezbollah's non-forced recruiting over the applicant's testimony and objective documentary evidence regarding Hezbollah's forced recruiting was not reasonable. I respectfully adopt his reasons as my own.

In the present case, the RAD does not engage with the Applicant's objective documentary evidence on forced recruitment in any detail. Nor does it address articles produced by the Applicant describing Hezbollah's forced recruiting.

The RAD is not required to refer to every piece of evidence in the record in order for its decision to be reasonable. It remains that the RAD's failure to mention a critical piece of evidence may render its decision unreasonable. The RAD's burden of explanation increased with the relevance of the evidence in question to the disputed facts (see *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 (Fed TD) at para 17).

It is unclear why the RAD gave greater weight to the evidence of Hezbollah's non-forced recruiting over the Applicant's testimony and other objective evidence of Hezbollah's forced recruiting around the time the Applicant fled Lebanon. The reasons provided do not allow me to determine whether the RAD directed itself to the totality of evidence when making its findings of fact or may have overlooked or ignored contradictory evidence.

[25] When asked about *Khadra*, the Respondent argued that it was a distinguishable situation, in that there was a specific allegation of forced recruitment, in contrast to here, where the Applicants had not claimed to have been forcibly recruited: rather they were only enticed with money and then left alone.

[26] I note two weaknesses in this response. First, the absence of past persecution does not remove the requirement for the RAD to examine future risk. Indeed, refugee determination requires consideration of the forward-looking risk (see, for instance, *AB v Canada (Citizenship and Immigration)*, 2018 FC 237 at para 16, citing James C. Hathaway and Michelle Foster, *The Law of Refugee Status*, 2<sup>nd</sup> ed. (Cambridge: Cambridge University Press, 2014) at 165).

[27] Second, applicants – and particularly teenagers who have another language as their mother tongue – should not be expected to say a phrase adopted by objective evidence. Indeed, stating a phrase like “forcibly recruited” by rote could be criticized as appearing scripted. Instead of expecting the Applicants to recite a “specific combination of words”, the RAD must look to the evidence as a whole (*Villanueva v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1634 at para 19).

B. *Credibility findings regarding subjective fear*

[28] The Applicants took issue with some of the credibility findings regarding the travel history. Counsel for the Respondent conceded one point of confusion by the RAD regarding the timing of the Applicants’ decision not to seek asylum in the US after seeing the Trump administration’s immigration policies. While there are at least two concerning points raised within these arguments on credibility, I find the first issue discussed above, regarding the teenage sons, to be sufficiently serious to result in a reviewable error (*Vavilov* at para 100). There is thus no need to further comment on this second issue.

IV. Conclusion

[29] The RAD's Decision lacks justification, transparency and intelligibility with respect to the Applicants' persecution regarding fears about Hezbollah's prospective forced recruitment of the teenage sons. Accordingly, this application for judicial review is granted, and the matter is remitted to the RAD for redetermination.

**JUDGMENT in IMM-5338-19**

**THIS COURT'S JUDGMENT is that:**

1. This application for judicial review is granted.
2. The matter is remitted to the Refugee Appeal Division for redetermination.
3. No questions for certification were argued, and I agree none arise.
4. There is no award as to costs.

"Alan S. Diner"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5338-19

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