Federal Court Cour fédérale

Date: 20200610

Docket: IMM-5917-19

Citation: 2020 FC 680

Ottawa, Ontario, June 10, 2020

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

SOUREN SHAHBAZIAN
ARDEMIS AZIZ
ARENI SHAHBAZIAN
MEGHETY SHAHBAZIAN

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is a judicial review of an August 4, 2019 decision of a visa officer [the Officer] at the Embassy of Canada in Abu Dhabi, United Arab Emirates. The Officer found the Applicants did not fulfill paragraph 139(1)(d) of the *Immigration and Refugee Protection Regulations*

(SOR/2002-227) [*Regulations*] because, on a balance of probabilities, there was a reasonable prospect within a reasonable period of a durable solution in Armenia.

II. Background

[2] The Applicants are a husband and wife and their two daughters. Souren Shahbazian and his wife Ardemis Aziz were married in 2000. Since their marriage the couple has resided in Kuwait. The couple's two daughters Meghety and Areni were both born in Kuwait, in 2003 and 2010.

[3] All four Applicants are exclusively Syrian citizens. They indicate that they cannot go back to Syria due to the continued conflict.

[4] The husband and wife both speak Armenian. They have attended Orthodox Armenian churches during their time in Syria and Kuwait and their marriage and baptism records are from the Armenian Prelacy of Aleppo in Syria.

[5] The husband's sister landed in Canada in 2015. In 2018, the Armenian Community Centre in Willowdale, Ontario, attempted to sponsor the four Applicants under the private sponsorship program. The Applicants were interviewed on June 11, 2019, in Kuwait, by the Officer who is stationed in Abu Dhabi.

[6] When asked "Why are you seeking protection from Canada as a refugee. The country here the work is getting worse ebverytime (sic) it is not like before there is no opportunity for the

girls to continue their edu. Their future, I need better (sic) future, I need better future for the girls."

[7] During the interview, the Officer raised concerns that the Applicants were able to obtain Armenian citizenship, asking "You mentioned that you are orthodox christian, that you attend an orthodox Christian armenian church here in Kuwait, do you have access to Armenian citizenship or permanent residency?" To this the principal Applicant replied (according to the Global Case Management System [GCMS] notes) "the armenian church here will have nothing to do with armenia, this is part of the lebanese aremnia, when they came here they did that church" [*sic*]. The Officer's notes further indicate the principal Applicant had been speaking Armenian during the interview.

[8] The Officer followed up by asking "have you looked into the possibility of residing in Armenia?" The principal Applicant replied "no… there is no work in Armenia…you have to come with your money, I don't have the money to invest, they don't have jobs there... I can go and travel there but not to get a citizen or something there." The Officer said "I am concerned that you may have access to a durable solution (citizenship or PR) in Armenia." The principal Applicant's response was "how can I go I don't know there is no future I am not there." He further suggested that Armenia "is still not stable itself."

[9] On July 26, 2019, the Officer sent the Applicants a procedural fairness letter citing paragraph 139(1)(d) of the *Regulations* and indicating "I am concerned that you may have access

to a durable solution in Armenia." In response, the principal Applicant made a one-page submission about why living in Armenia would be difficult. The full letter stated:

> Nowadays, living in Armenia is something undeniably difficult, discouraging and considerably inappropriate. And therefore, is not something I desire or consider as a choice for the wellbeing of my family.
>
> Being very well acquainted with the general situation and economic downfalls in Armenia, especially regarding issues of inflation, low employment rates, insufficient monthly salaries that do not nearly cover the expenses of a basic family of four.
>
> Considering that I have two teenage daughters to raise, I very well know that I won't be able to support them financially, and provide well, even with the most basic needs and necessities. I simply won't be able to.
>
> In addition to these individual issues is the general political situation in Armenia, where, according to the developments, the situation is still unstable with no foreseeable developments in the near future.
>
> Therefore, Armenia is not beneficial for our family. I will not be able to provide my children a prosperous life there, nor a stable and comfortable living situation. While in Canada, after questioning and gathering information from friends and relatives, and carefully examining the situation, I have learned that one's standard of living improves both in terms of safety, security and employment. It would be very beneficial and helpful for me and my little family to establish a life in this great nation.

III. Decision

[10] On August 4, 2019, the Applicants were informed that their refugee application was refused because they did not satisfy paragraph 139(1)(d) of the *Regulations* which requires them to show there is "no reasonable prospect, within a reasonable period, of a durable solution in a country other than Canada." The Officer noted that the Applicants were given the opportunity to make submissions both at an interview and in response to the procedural fairness letter.

[11] The Officer's concerns were "not assuaged" by these submissions. The GCMS notes dated August 4, 2019 explain:

> …I am satisfied on balance of probability that the PA and his dependents have a durable solution in Armenia. At interview, I expressed my concern that the PA and his family may have a durable solution in Armenia. The PA stated that he had not looked into the possibility of residing in Armenia as a durable solution, and was not sure if he was able to obtain status in Armenia. Post-interview, I sent the PA a PFL raising my concern that the PA and his family may have a durable solution in Armenia. The PA responded stating that life in Armenia is difficult and that he does not consider it a choice for his family. The PA stated that he is "very well acquainted with the general situation and economic downfalls in Armenia…". I note that the PA demonstrated a strong familiarity of the socioeconomic conditions in Armenia, as would be reasonably expected of an individual of Armenian ethnicity or heritage. I note that According to the Law of the Republic of Armenian on Citizenship, "[a] person of Armenian ethnicity may acquire RA citizenship pursuant to a simplified procedure" (Armenia 1995, Art. 1). Given the above, I am satisfied on balance of probability that the PA and his family may have a reasonable prospect, within a reasonable period, of a durable solution in Armenia, and therefore are not eligible for resettlement to Canada under the Conventional refugee abroad class, or the country of asylum class as per R139(1)(d). Application Refused.

[12] On October 1, 2019, the Applicants applied for judicial review of this refusal.

IV. New evidence on judicial review

[13] The Applicants filed affidavits from the principal Applicant Souren Shahbazian as well as from Daniela Dobrota. Each affidavit contains new information. Souren Shahbazian's affidavit contains new information at paragraphs 15–16.

[14] Daniela Dobrota is a lawyer that filed an affidavit for this application. I caution against lawyers filing affidavits in an application. The affidavit outlines her online searches for the details of the Armenian citizenship law and attaches three slightly different versions of the citizenship law found online. These three different versions are from the websites of the Armenian Parliament, the Armenian Ministry of Foreign Affairs, and the Immigration and Refugee Board's National Documentation Package on Armenia.

[15] I will accept Daniela Dobrota's affidavit as it provides general background information that will assist the Court by providing open source provisions of Armenian law that the Officer cited but did not attach (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 20).

[16] To the extent that Souren Shahbazian's affidavit contains information that was not before the decision-maker, such as his "Syrian-Armenian" ethnicity, and his family's travel history beyond the last 10 years (their travel history in the last 10 years appears in the Certified Tribunal Record [CTR]) as well as his lack of awareness of citizenship laws, I will not consider those arguments. The details were not before the decision-maker and the Applicants have not shown they meet the exceptions for new evidence on judicial review. The Principal Applicant's lawyer acknowledged that he did not need to rely on the affidavit for his arguments.

V. Issues

[17] The issues are:

A. Was the decision procedurally unfair because the Officer did not give them the citizenship law he relied on and did not tell them why he felt they could have a durable solution in Armenia?

B. Was the conclusion that there was a durable solution in Armenia reasonable?

VI. Standard of Review

[18] The standard of review is correctness for the first issue concerning procedural fairness. On the second issue challenging the finding of a durable solution in Armenia, the standard of review is reasonableness.

VII. Analysis

A. *Was the decision procedurally unfair because the Officer did not give them the citizenship law he relied on and did not tell them why he felt they could have a durable solution in Armenia?*

[19] The Applicants argue the Officer should have raised their concerns about potential Armenian citizenship and provided them with the provisions of the 1995 Armenian law so that they could respond. They claim they were unable to make full answer and defence to the Officer's concerns making the decision procedurally unfair. At the hearing, the Applicants' counsel further argued the Officer should have told them about Articles 1 and 13 of the

Armenian citizenship law that gave a possible path to citizenship because otherwise it places too much of an onus on applicants to do research.

[20] Their view is that procedural fairness demands the "opportunity to fully participate in the decision-making process by being informed of information that is not favourable to the applicant and having the opportunity to present his or her point of view" (*El Maghraoui v Canada (MCI)*, 2013 FC 883 at para 22 [*El Maghraoui*]). The Applicants' position is that the Officer did not meet this standard by not giving them the citizenship law and not telling them why he felt they could be citizens and thus have a durable solution in Armenia.

[21] I do not find that the Officer breached any procedural fairness to the Applicants. Procedural fairness requires an applicant be provided with sufficient information to "correct any errors or misunderstandings" (*El Maghraoui,* above, at para 22). Not all documents and information relied upon need to be disclosed so long as the applicant knows the case to meet and has an opportunity to respond to the officer's concerns (*Jelaca v Canada (MCI)*, 2018 FC 887 at para 33). For example, in the context of refusals for medical reasons officers are "not normally obliged to disclose in the fairness letter the detail supporting the conclusion as long as the applicant effectively knows the grounds for the potential refusal and has the knowledge necessary to pursue the matter further" (*Oliveira v Canada (Citizenship and Immigration),* 2002 FCT 1283, cited in *Azizian v Canada (Citizenship and Immigration)*, 2017 FC 379 at para 22 [*Azizian*]).

[22] While the Officer did not specifically reference the 1995 Armenian citizenship law that was cited in the decision, the Officer sufficiently indicated the grounds for the potential refusal in both the interview and the procedural fairness letter. There is no precise definition of the term “durable solution,” and a durable solution does not necessarily need be citizenship as it will depend on the facts of the case (*Hafamo v Canada (Citizenship and Immigration)*, 2019 FC 995 at paras 18 –21). The situation “does not need to perfect” and the ability to obtain permanent legal status as either a refuge or permanent resident may meet the test so long as the solution is durable (*Uwamahoro v Canada (Citizenship and Immigration)*, 2016 FC 271 at para 15). Being offered a simplified procedure to citizenship status was reasonably interpreted to be a durable solution, and it was open to the Officer to raise this concern. Keeping in mind that the Applicants gave the Officer no evidence related to their being able to have a durable solution in Armenia other than vague economic reasons after the Officer told them he had concerns (see para 9).

[23] In the June 11, 2019 interview, the Officer asked “Do you have access to Armenian citizenship or permanent residence” and followed up by stating “I am concerned that you may have access to a durable solution (citizenship or PR) in Armenia.” The principal Applicant indicated that they had not looked into this possibility but there is no future in Armenia.

[24] Then, six weeks later, in the July 26, 2019 procedural fairness letter, the Officer copied the text of paragraph 139(1)(d) of the *Regulations*. The text of this provision informed the Applicants of the Officer’s concerns that there may be a reasonable prospect of a durable solution within the reasonable period of “voluntary repatriation or resettlement in their country of nationality or habitual residence or resettlement or an offer of resettlement in another

country.” The letter then states “I am concerned that you may have access to a durable solution in Armenia” and gave the Applicants 30 days to respond.

[25] Together the interview notes and the procedural fairness letter show the Applicants knew the grounds for a potential refusal due to a durable solution in Armenia, which could be permanent residence or citizenship.

[26] To the extent that the Applicants did not make full answer and defence to the Officer’s concerns, it is not because the Officer did not disclose specific provisions of the Armenian law. It is instead because the Applicants did not act to address the Officer’s concerns about their ability to resettle in Armenia (see para 9 above). They had to show they could not resettle in Armenia. The onus is on the Applicants and it is not the Officer’s role to do all the work in a vacuum of no evidence that addresses his concern that they had a durable solution in Armenia.

[27] As the Respondent’s counsel notes, there was a six-week period between the interview and the procedural fairness letter giving the Applicants plenty of time to take some action to show they could not have a durable solution in Armenia as this concern was flagged in the interview. However, the response to the procedural fairness letter, reproduced above, did not address their ability or inability to obtain citizenship or otherwise resettle in Armenia.

[28] Had they looked into Armenian law they would have seen the publicly-available legislation giving ethnic Armenians a path to citizenship. Given that these are open-source documents available through the government of Armenia’s website as well as the National

Documentation Package of the Immigration and Refugee Board, the Officer did not have to share them with the Applicants so long as the Applicants were informed of the case they had to meet (*Azizian*, above, at para 29).

[29] On this point the three versions of the Armenian law appear to be inconsequential as all three have the same general requirements of residency with the exception being the alternative path of being ethnically Armenian (see below para 35). Each Article 1 allows persons of "Armenian ethnicity" or "ethnic Armenians" to acquire citizenship either "in the simplified way" or "pursuant to a simplified procedure." Then each Article 13 clarifies that such persons are exempt from the usual 3-year residence requirement in Armenia using different language but achieving the same result. In any case, it would be reasonable for the Officer to assume that the Applicants were entitled to citizenship using a simplified path due to their ethnicity.

[30] While the Officer could have been more explicit about the details of their concerns, those underlying concerns were still clearly communicated to the Applicants so I do not see this as procedurally unfair. The Applicants were given the opportunity to address the possible durable solution including access to citizenship or lack thereof in Armenia.

B. *Was the conclusion that there was a durable solution in Armenia reasonable?*

[31] The Applicants argue it was unreasonable to conclude that: being members of the Armenian church; speaking the Armenian language and strong familiarity with events in Armenia made them ethnically Armenian. They further argue there is no definition of "ethnically

Armenian" in any version of the Armenian citizenship law and the precise application process is unclear. They add that it is unclear which version of the 1995 law the Officer was relying upon.

[32] For a permanent resident visa to be issued to a foreign national needing refugee protection and their accompanying family members, they must fulfill conditions including those set out in paragraph 139(1)(d) of the *Regulations.* This provision requires there is "no reasonable prospect, within a reasonable period, of a durable solution in a country other than Canada, namely (i) voluntary repatriation or resettlement in their country of nationality or habitual residence, or (ii) resettlement or an offer of resettlement in another country."

[33] The onus is on the Applicants to show there is no reasonable prospect of a durable solution in a country other than Canada (*Al-Anbagi v Canada (Citizenship and Immigration)*, 2016 FC 273 at para 16).

[34] In this case, the Officer noted both in the interview and in the procedural fairness letter that there may be possible durable solution in Armenia because there were indications that the Applicants were ethnically Armenian. The Officer justified this conclusion by mentioning three facts: they spoke Armenian as their native language, they belong to an Orthodox Armenian Church, and the principal Applicant acknowledged he was "very well acquainted with the general situation and economic downfalls in Armenia." When the Officer was presented with these facts, and the Officer was never given a subsequent reason to doubt the Applicants were ethnically Armenian in either the interview or in their response procedural fairness letter, it was open to the Officer to flag the concerns that there may be a durable solution in Armenia due to

Armenia's ethnicity-based citizenship laws. It must be noted that a durable solution (see para 32 above) includes a wide range of status of which the officer mentioned citizenship and permanent residency in Armenia.

[35] I do not accept the Applicants' argument that it was unreasonable to conclude the Applicants had Armenian ethnicity. Further at no time did they dispute that they were Armenian in ethnicity when this issue was raised. The onus is squarely on the Applicants to show no durable solution which was not done.

[36] The Applicants have presented three differing versions of the Armenian citizenship law in the Daniela Dobrota affidavit. The Applicants claim there are "wide variations" across the three versions. However, as discussed above, a closer look at the three laws show that under any version, there would be a simplified path to citizenship in Armenia under Articles 1 and 13 based on Armenian ethnicity. The Applicants have the onus of showing they do not have a durable solution so it was up to them to show they are not covered by this citizenship legislation, which they did not do.

[37] The combination of the Officer's finding that they were ethnically Armenian and the text of the Armenian citizenship law made it reasonable to suggest they had a durable solution in Armenia. The response to the procedural letter reproduced above (para 9) shows they did not make submissions on their inability to acquire citizenship or permanent residency in Armenia but rather they only focused on why they would prefer to go to Canada instead of Armenia. And it

must be kept in mind that Armenian citizenship was not the only option that gave them a durable solution in Armenia (see *Uwamahoro*, above).

[38] From this exchange, it was open to the Officer to conclude that the Applicants had not discharged their onus of showing no durable solution in Armenia. The Applicants did not provide a counterargument to the Officer as to why there is no durable solution in Armenia and are they now trying to flip the onus to the Officer.

[39] In *Issa v Canada (Citizenship and Immigration)*, 2019 FC 1365, the applicant was sent a procedural fairness letter about a possible durable solution in Greece and chose not to reply to the Officer's concerns about Greece. Due to the statutory regime placing the onus on applicants, in that case Justice St-Louis dismissed the applicant's application for judicial review:

> [19] The jurisprudence is clear that in light of the statutory framework of paragraph 139(1) of the Regulations, the burden of proof rests solely on the applicant to establish that he had "no reasonable prospect, within a reasonable period, of a durable solution in a country other than Canada" (*Salimi v Canada (Minister of Citizenship and Immigration*), 2007 FC 872 at para 7; *Qurbani v Canada (Citizenship and Immigration)*, 2009 FC 127 at para 18); *(Karimzada v Canada (Citizenship and Immigration),* 2012 FC 152 at para 25). Mr. Issa had the burden of establishing that his status in Greece did not constitute a durable solution under section 139 of the Regulations, which, unfortunately, he did not do, despite having been given the opportunity.

[40] Similarly, in this case the Applicants did not provide the Officer with a reason why resettlement in Armenia, including through citizenship, was not a durable solution. While the Applicants responded to the Officer, their written response reproduced above shows they did not meaningfully engage with the durable solution concerns and instead focused on economic

hardship in Armenia. On judicial review, the Applicants have not shown the Officer's conclusion to be unreasonable.

VIII. Conclusion

[41] For the reasons set out above, this application is dismissed.

[42] No certified questions were presented and none arose.

JUDGMENT IN IMM-5917-19

THIS COURT'S JUDGMENT is that:

1. This application is dismissed;

2. There are no questions for certification.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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