

Federal Court



Cour fédérale

Date: 20231110

Docket: IMM-10031-22

Citation: 2023 FC 1500

Ottawa, Ontario, November 10, 2023

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

AYMAN YOUSSEF FARES FARES

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of the Refugee Appeal Division [RAD] dated September 22, 2022, finding that the Applicant is not a Convention Refugee pursuant to section 96 of the *Immigration and Refugee Protection Act*, SC 2002, c 27 [IRPA] nor a person in need of protection pursuant to section 97 of IRPA.

[2] The Applicant, Ayman Youssef Fares Fares, is a citizen of Colombia and Venezuela, both countries in which he alleges a risk to his life and a fear of the Revolutionary Armed Forces of Colombia [FARC]. The Applicant also resided in Panama, but is unable to return because his permanent residence status in that country has expired.

[3] The Applicant is the son of parents who are Lebanese, and is therefore automatically entitled to Lebanese nationality. He does not allege a fear of returning to Lebanon, but argues that his parents are deceased and that he cannot obtain the necessary documents to secure Lebanese citizenship.

[4] The RAD dismissed his application because it found that the Applicant had not established a serious possibility of persecution under section 96, or a risk under subsection 97(1), in Lebanon, and that he had not made a reasonable effort to obtain Lebanese citizenship.

[5] Having considered the record before this Court, including the parties' written and oral submissions, as well as the applicable law, the Applicant has failed to discharge his burden to demonstrate that the RAD's decision is unreasonable. For the reasons that follow, this application for judicial review is dismissed.

II. Facts

[6] The Applicant was born in Columbia to parents who the Applicant attested were born in Lebanon. The Applicant has Columbian and Venezuelan citizenship. He also resided in Panama with a permanent resident status, but that status has now expired and he cannot return to Panama.

[7] The Applicant fears the FARC.

[8] The Applicant does not claim any issue with Lebanon. Because his parents were born in Lebanon, he is entitled to Lebanese nationality. However, he argues that his parents are deceased and that he cannot obtain the documents necessary to secure his Lebanese citizenship.

[9] The RPD held that the Applicant was indeed unable to return to Panama and that he faced a prospective risk to his life in Venezuela and Colombia. The RPD also found that the Applicant could not secure his Lebanese citizenship and that Lebanon was not a country of reference in his claim.

[10] The Minister of Citizenship and Immigration [the Minister] appealed the RPD's decision and on September 22, 2022, the RAD allowed the appeal, finding that the RPD had misapprehended the evidence and had erred in finding that Lebanon was not a country of reference.

[11] The RAD held that the Applicant's parents were from Lebanon, that the eligibility for Lebanese citizenship is automatic (this issue was conceded at the hearing of the appeal), that the Applicant did not make reasonable efforts to secure his Lebanese citizenship and that he had no fear of persecution in Lebanon.

III. Issues and Standard of review

[12] The only issue before this Court is whether the RAD's decision that the Applicant has not made reasonable attempts to obtain citizenship in Lebanon is reasonable.

[13] The standard of review of the RAD's decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65) [*Vavilov*] at paras 10, 25; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [*Mason*] at paras 7, 39-44). The focus on reasonableness review is “the decision actually made by the decision maker, including [...] the reasoning process and the outcome” (*Vavilov* at para 83). A reasonable decision is one that is “based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85; *Mason* at para 8). To avoid judicial intervention, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov* at para 99; *Mason* at para 59). Reasonableness review is not a “rubber-stamping” exercise; it is a robust form of review (*Vavilov* at para 13; *Mason* at para 63). A decision may be unreasonable if the decision maker misapprehended the evidence before it (*Vavilov* at paras 125-126; *Mason* at para 73). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

IV. Analysis

A. *The RAD reasonably found that the Applicant's parents were born in Lebanon and that there is no evidence that their births were not registered*

[14] First, the RAD found that the RPD misapprehended the evidence in finding that the Applicant did not know whether his parents were born in Lebanon. To the contrary, the Applicant declared throughout his immigration forms and under oath before the RPD that his parents were born in Maroun, Lebanon.

[15] The RAD's conclusion that the Applicant's parents were born in Lebanon is therefore based on the Applicant's own evidence and is therefore reasonable.

[16] The Applicant argues that because his parents are deceased, it is impossible for him to prove that his parents were born in Lebanon. He has attempted to establish his parents' birthplaces by sending letters to the Lebanese authorities. The Applicant alleges to have received letters stating that his parents' names were not found in the voters list or in the birth registration records and argues that the RAD unreasonably found that there was no evidence that his parents were not registered in Lebanon.

[17] The RAD reviewed a letter from the Lebanese authorities and ruled that they did not confirm nor deny that the Applicants' parents were Lebanese citizens, nor did they indicate that the parents were not identified in birth registration records. The letter sent by the Applicant identified himself, and included the names of his parents to prove his identity, and requested

information from the Lebanese authorities as to whether his name was in the voters list and found in birth registration records. Obviously, his name was not.

[18] The RAD also found, however, that the letter did not seek information as to whether his parents' birth registration records could be found. The letter from Lebanon only relates to the Applicant himself and not as to whether or not his parents were citizens of Lebanon. This letter did not provide any evidence about the registration of the Respondent's parents.

[19] Indeed, the September 2017 letter from the Lebanese Republic Ministry of Interior & Municipalities states:

Statement topic: regarding a non-registered person in town's records.

We, The Under Signed, The Town Reeve Of Maroun Al-Ras + Selected Council Members,

Stated That Mr. Ayman Youssef Fares -Born In Manori-Colombia-Date Of Birth March 3, 1973.

Mother's Name: Latife Fares

Father's Name: Youssef Fares

This name with these specifications does not exist in our voters lists related to election.

**Also does not exist in town's birth registration records
[emphasis added]**

[20] In my view, the RAD's factual finding that the letter did not indicate that the Applicant's parents were not found in birth registration records is reasonable. The Applicant clearly disagrees with the RAD's finding of fact. Unfortunately, his request is essentially that the Court performs

an examination of the evidence *de novo* and re-weighs the RAD's evidentiary assessment.

Unfortunately, this is not the Court's role on judicial review (*Zhang v Canada (Citizenship and Immigration)*, 2023 FC 1308 at para 36; *Vavilov* at paras 124-125).

B. *The RAD reasonably found that the Applicant failed to show reasonable efforts to exercise this right*

[21] The Applicant argues that although there is documentary evidence stating that the grant of Lebanese nationality is "automatic", in practice the administrative process of applying for Lebanese citizenship under the present circumstances is stilted and unclear.

[22] The Applicant submits that in the case of individuals born outside Lebanon of Lebanese parents, the Lebanese citizenship application process has to be made at the Embassy of Lebanon of the country where the Applicant was born, in this case Colombia. However, the Applicant cannot go back to Columbia because of an established risk of persecution.

[23] The Applicant also asserts that he has no way of proving that his parents were born in Lebanon or have Lebanese citizenship. Relying on articles 2.7 and 10.2 of the National Documentation Package [NDP], there are significant practical impediments preventing him from even requesting his parents' birth and marriage certificates, the latter of which is required for him to exercise his citizenship rights. He also argues that privacy and access to information laws prohibit him to request his parents' birth or marriage certificates, which represents a "significant impediment that may reasonably be considered capable of preventing the claimant from

exercising his or her citizenship rights” (*Tretsetsang v Canada (Citizenship and Immigration)*, 2016 FCA 175 at para 72 [*Tretsetsang*]).

[24] The Applicant argues that because of the circumstances of his parents’ death which occurred more than 40 years ago and based on the NDP, an access to information request submitted to Lebanon or to Colombia to petition his parents’ birth marriage certificate would likely require that he obtain the consent of his parents’ executor or estate trustee, whose identity is unknown to the Applicant.

[25] Finally, the Applicant argues that the RAD failed to correctly apply the test set out in *Canada (MCI) v Williams*, 2005 FCA 126 [*Williams*] and *Tretsetsang* and to properly examine the facts regarding the Applicant’s “control” in acquiring Lebanon’s citizenship.

[26] In my view, the RAD’s decision is reasonable. The main issue with the Applicant’s arguments is that the RAD found that he had not made any reasonable attempt to obtain Lebanese citizenship. In *Williams*, the FCA held:

[22] [...] The condition of not having a country of nationality must be one that is beyond the power of the applicant to control.

The true test, in my view, is the following: if it is within the control of the applicant to acquire the citizenship of a country with respect to which he has no well-founded fear of persecution, the claim for refugee status will be denied. [...]

[27] [...] What the case law has established is that, where citizenship in another country is available, an applicant is expected to make attempts to acquire it and will be denied refugee status if it is shown that it is within his power to acquire that other citizenship. It is, here, within the respondent’s power to renounce his Rwandan citizenship and to obtain a Ugandan citizenship. That

other citizenship is there for him to acquire if he has the will to acquire it. [...]

[Emphasis added]

[27] Then, in *Tretsetsang*, the Federal Court of Appeal specified that only a significant impediment to a claimant's attempt to obtain citizenship is sufficient to exclude that country as a country of reference:

[72] Therefore, a claimant, who alleges the existence of an impediment to exercising his or her rights of citizenship in a particular country, must establish, on a balance of probabilities:

(a) The existence of a significant impediment that may reasonably be considered capable of preventing the claimant from exercising his or her citizenship rights of state protection in that country of nationality; and

(b) That the claimant has made reasonable efforts to overcome such impediment and that such efforts were unsuccessful such that the claimant was unable to obtain the protection of that state.

[73] What will constitute reasonable efforts to overcome a significant impediment (that has been established by any particular claimant) in any particular situation can only be determined on a case-by-case basis. A claimant will not be obligated to make any effort to overcome such impediment if the claimant establishes that it would not be reasonable to require such claimant to make any such effort.

[Emphasis added].

[28] Further, in *Naz v Canada (MCI)*, 2022 FC 1074, the Court clarified the decisions in *Williams* and *Tretsetsang*, and identified two questions in assessing whether a claimant has a right to acquire citizenship:

[21] To summarize, I agree with Mr. Naz that there are, in essence, two questions that flow from *Williams* and *Tretsetsang*: (1) Does the claimant currently have citizenship, or a legal right to citizenship that is within their control and not in the discretion of the authorities? (2) If so, has the claimant shown (a) there is a significant impediment to exercising that citizenship right of state protection, and (b) they have unsuccessfully made reasonable efforts to overcome the impediment?

[29] In my view, the RAD reasonably applied this legal framework in its analysis, and found that the Applicant has a legal right to Lebanese citizenship that is within his control and that he failed to make a reasonable attempt to obtain citizenship.

[30] The Applicant had to meet his burden of establishing that he encountered significant impediment preventing him from exercising his citizenship rights or at least that he had done reasonable efforts to overcome this impediment. He was not able to discharge his burden of proof.

[31] As held by the RAD, the Applicant made the following efforts to secure his right to Lebanese citizenship:

- He obtained a letter from the Lebanese Republic Ministry of Interior & Municipalities confirming that his own name does not appear in the voter list or birth registration;
- He obtained a letter from the Republic of Lebanon Ministry of Interior & Municipalities and the Mayor of Maroun Al Ras confirming that his own name does not appear in the voter list or birth registration; and
- His Counsel's office contacted the Embassy of Lebanon in Ottawa to inquire about the process of securing his right to Lebanese citizenship.

[32] The RAD held that these efforts were not sufficient and that the Applicant ought to have, in addition to his “efforts”:

- Contacted the Embassy of Lebanon in Colombia to complete the process of his citizenship;
- Hired counsel in Colombia to help him complete the Lebanese citizenship application process and find documents regarding his parents’ marriage certificate;
- Despite the alleged privacy legislation, attempt at gaining his parents’ records in Columbia and Lebanon;
- Followed up with his parents’ hometown, or in Lebanon as a whole, to request evidence regarding his parents’ citizenship or marriage.

[33] However, he has not undertaken any of these actions. I agree with the RAD’s conclusion at paragraph 33 of its reasons that this is not a situation where the Applicant has tried and failed; he did not try at all. The Applicant has therefore failed to meet the second prong of the test established in *Tretsetsang*.

[34] The Applicant also cites the case of *Dolker v Canada*, 2015 FC 124 at paragraph 27 where the Court held:

“... that no Canadian authority requires an applicant to first seek and be refused citizenship in a safe country where they are entitled to do so before claiming refugee status in Canada”.

[35] With due respect, the Applicant’s argument on that case is incomplete. As submitted by the Respondent in his memorandum of argument, the Court also held in that case that neglecting to take any steps to seek refuge in a safe country should not serve as an invitation to apply for citizenship in Canada:

[29] With all due respect to Justice Russell, there is nothing in *Williams* that says an Applicant need not even apply for citizenship. *Williams*, at paragraph 22, speaks to whether it is within the control of a person to acquire citizenship. *Nothing in that case encourages an Applicant not to make reasonable efforts to secure such citizenship.*

[30] Wilful neglect or even neglect to apply for citizenship where a person has a right to apply should not serve as an invitation to try your luck in Canada. [...]

[Emphasis added]

[36] The RAD's decision that the Applicant has not established having made all reasonable attempts to determine whether or not his parents were Lebanese and to secure citizenship in Lebanon is reasonable.

C. *The RAD reasonably found that the Applicant does not need to return to Colombia*

[37] The Applicant submits that the objective evidence is clear and unambiguous to the effect that since he was born outside of Lebanon, his Lebanese citizenship application must be processed at the Embassy of Lebanon in Colombia.

[38] The Applicant reiterates that the RPD found that the risk to his life in Colombia was deemed a significant impediment preventing him to return to that country to exercise his citizenship rights. He argues that because the RPD was the administrative body that reviewed the evidence, heard his testimony and conducted the risk analysis in his claim finding that he should not be forced to return to Colombia, this finding should be owed deference.

[39] I disagree with the Applicant.

[40] First, the decision under review before this Court is the RAD's decision. The RAD reviewed the RPD's decision under the correctness standard of review by conducting an independent assessment of all the evidence which is what it should have done as required in *Canada (MCI) v Huruglica*, 2016 FCA 93 at paragraph 103.

[41] Second, the RAD held that the Applicant did not provide evidence demonstrating that he would need to "physically" visit the Embassy of Lebanon in Colombia to obtain his Lebanese citizenship. Indeed, the Applicant made no attempt to proceed, on the basis of his argument that it was impossible for him to obtain evidence of his parents' birthplaces. The RAD was entitled to make such finding based on the evidence submitted.

[42] As held by the RAD, the evidence only demonstrates that the Applicant's citizenship application would be processed in Colombia. However, it does not state anything about whether or not he ought to travel to Colombia to do it. No other evidence was filed before the RPD or the RAD stating that he needed to travel to Colombia to secure his Lebanese citizenship and that there was no other method (such as hiring counsel or an agent in Columbia) to process his application.

V. Conclusion

[43] In my view, the RAD's decision is intelligible, transparent and justified (*Vavilov* at paras 15, 98). The RAD properly considered all of the evidence that was before it, and found that Lebanon is a country of reference for which the Applicant did not demonstrate reasonable efforts to obtain citizenship. The application for judicial review is dismissed.

[44] The parties do not propose a question for certification and I agree that none arises in the circumstances.

JUDGMENT in IMM-10031-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

"Guy Régimbald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10031-22

STYLE OF CAUSE: AYMAN YOUSSEF FARES FARES v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: NOVEMBER 8, 2023

JUDGMENT AND REASONS: RÉGIMBALD J.

DATED: NOVEMBER 10, 2023

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