

Federal Court



Cour fédérale

Date: 20250415

Docket: IMM-16390-23

Citation: 2025 FC 698

Ottawa, Ontario, April 15, 2025

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

MAHA JAROUDI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Maha Jaroudi [Applicant], is seeking judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada rejecting the Applicant's refugee protection claim [Decision]. In its Decision, the RAD confirmed the determination of the Refugee Protection Division [RPD], finding that the Applicant is neither a

Convention refugee nor a person in need of protection, since the Applicant did not establish a prospective risk of persecution or harm should she return to Lebanon.

[2] For the reasons that follow, the application for judicial review is dismissed. The Applicant has not demonstrated that the Decision is unreasonable.

II. Background and Decision Under Review

[3] The Applicant is an elderly Sunni Muslim woman, who lived in Beirut. Following the death of her husband on March 26, 2021, the Applicant found herself living alone in Lebanon during an unprecedented economic and security crisis. Three of the Applicant's children live in Canada and the other is working in Abu Dhabi. Her siblings (other than her older sister) have also left Lebanon permanently. Because she is a Sunni Muslim and she lives in a predominantly Shia neighbourhood, the Applicant stated that she is vulnerable to harm from Hezbollah and Amal militias who treat Sunni Muslims with suspicion. She alleges that she cannot speak out against the government without fear of reprisals.

[4] On April 21, 2021, the Applicant arrived in Canada where she claimed refugee protection on December 17, 2021. On April 3, 2023, the RPD found that the Applicant did not establish that she would face a prospective risk of persecution or personal harm should she return to Lebanon. The Applicant appealed the RPD's decision alleging that it erred in its assessment of section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] particularly as it relates to the application of the intersectionality approach based on the *Guideline 4: Gender Considerations in Proceedings Before the Immigration and Refugee Board*.

[5] On November 30, 2023, the RAD dismissed the appeal, finding that the Applicant did not credibly demonstrate that she faces a risk of persecution or a risk of harm in Lebanon, on a balance of probabilities. The RAD found that the Applicant presented insufficient evidence of persecution or risk of harm and did not establish that she would face, on account of her gender, age or religion, a prospective risk of persecution in Lebanon. The RAD recognized that the RPD failed to properly assess the Applicant's profile in the context of her age and addressed this issue in the Decision.

[6] The RAD concluded that, while the Applicant alleges that she may face harassment on account of her gender, age or religion in Lebanon, when these factors are considered individually or cumulatively, they do not amount to a prospective risk of a serious possibility of persecution or personalized harm. The RAD's Decision is the subject of this judicial review.

III. Issues and Standard of Review

[7] The issue on judicial review is whether the RAD's Decision was unreasonable on the merits of the Decision, and whether the RAD breached procedural fairness by referring to and relying on a previous version of the National Documentation Package [NDP].

[8] The parties submit that the standard of review with respect to the merits of the Decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 10, 25). I agree that reasonableness is the applicable standard of review.

[9] On judicial review, the Court must consider whether a decision bears the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov* at para 99). A reasonable decision will always depend on the constraints imposed by the legal and factual context of the particular decision under review (*Vavilov* at para 90). A decision may be unreasonable if the decision-maker misapprehended the evidence before it (*Vavilov* at paras 125-126). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

[10] A claim of procedural fairness is determined on a standard of review more akin to the standard of correctness. The Court must analyze whether the proceedings were fair in light of all the circumstances (*Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 [*Baker*] at paras 21-28; *Canadian Pacific Railway Limited v Canada (Attorney General)*, 2018 FCA 69 at paras 54-56; *Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14).

[11] The fundamental question remains whether the Applicant knew the case to be met and whether she had a full and fair opportunity to respond to it. The duty to act fairly is twofold: (1) the right to a fair and impartial hearing before an independent decision-maker, and (2) the right to be heard (*Fortier v Canada (Attorney General)*, 2022 FC 374 at para 14; *Therrien (Re)*, 2001 SCC 35 at para 82). Everyone is entitled to a full and fair opportunity to present his or her case (*Baker* at para 28).

[12] The nature and extent of the duty will vary with the specific context and the different factual situations dealt with by the administrative decision-maker, as well as the nature of the disputes it must resolve. The more important the decision is to the lives of those affected and the greater its impact on that person or those persons, the more stringent the procedural protections that will be mandated (*Baker* at paras 25–26).

IV. Analysis

A. *The Updated NDP*

[13] The parties both agree that the RAD should consider the most recent NDP in assessing risks, even if that new version only becomes available after the parties' submissions (*Singh v Canada (Citizenship and Immigration)*, 2024 FC 1097 [*Singh*] at para 16 citing *Kamara v Canada (Citizenship and Immigration)*, 2024 FC 13 [*Kamara*] at para 31; *Oymali v Canada (Citizenship and Immigration)*, 2017 FC 889 at paras 28-29; see also *Siddique v Canada (Citizenship and Immigration)*, 2022 FC 964 at para 21).

[14] However, an applicant must demonstrate that the updated information is sufficiently different, novel and significant and could change the decision, for the Court to consider whether the RAD erred in relying on a prior version of an NDP (*Kamara* at para 33).

[15] In other words, it may still be reasonable for the RAD to rely on an older version of the NDP unless there is “different, novel and significant” information in the updated NDP that was unavailable when an applicant made their argument (*Singh* at para 17).

[16] The Applicant argues that the RAD breached procedural fairness when referring to and relying on an outdated NDP in the Decision published in November 2023. An updated NDP had been published on August 31, 2023, three months before the Decision was rendered, but after the Applicant made her submissions before the RAD. The Applicant states that this updated NDP would have been available to the RAD and should have been used when it made its Decision. The Applicant explains that this updated NDP included extensive additions, many of which are relevant to the Applicant's claim.

[17] The Applicant identified the references in the NDP that she submits are novel, different and significant. She alleges that the updated NDP contains documents that are entirely new compared to the version the RAD relied upon and demonstrates that the security situation has drastically evolved and worsened. The Applicant, as a vulnerable person, would be directly affected by all these changes.

[18] The Respondent acknowledged that the Applicant's case is very sympathetic, but states that there are no reviewable errors. The Respondent submits that there was no breach of procedural fairness with respect to the issue of the updated NDP. The references provided by the Applicant between the version of the NDP referred to in the Decision compared to the updated NDP did not demonstrate that the updated information was different, novel and significant. There is no evidence that the updated NDP would have changed the outcome of this case.

[19] The Respondent also provided comparisons between the two versions of the NDP. The Respondent describes that on one hand, there may have been a progression with respect to the

information in the previous NDP, but not to the extent that it became “different, novel and significant”. On the other hand, other information in the updated NDP is substantially similar to the information found in the previous NDP. The distinction is that in the previous NDP, the general term “vulnerable persons” was used whereas the updated NDP lists those who form part of the “vulnerable persons” category. The Respondent states that the risk identified by the Applicant in the updated the NDP is not relevant to her specific profile, and thus, does not contribute to her prospective risk.

[20] I agree with the Respondent’s submissions. The Applicant had argued that her risk was associated to being a vulnerable person based on her profile. The references in the updated NDP relate essentially to the economic crisis, security concerns and access to healthcare with respect to vulnerable persons in Lebanon.

[21] Having read the passages referred to by both parties, I cannot conclude that the information in the updated NDP was “different, novel and significant” and could change the outcome of the Applicant’s case. The RAD had already assessed the Applicant as a vulnerable person in its analysis and these issues were addressed in its Decision. The RAD reasonably concluded that the Applicant’s risk was a generalized risk to the population and was not personalized to the Applicant.

[22] As such, I find that the RAD’s reliance on a previous NDP in this circumstance would not justify the Court’s intervention.

B. *The Decision Is Not Unreasonable*

[23] Additionally, the Applicant alleges that the RAD failed to properly evaluate her claim because it did not apply the intersectionality approach. The Decision does not reflect expressly how one factor worked against another factor but rather, dealt with them in silos. The Applicant pointed to the parts of the Decision where her risk was analyzed under separate headings as a single woman, an elderly woman, a Sunni Muslim and her medical condition. In sum, the Applicant submits that the RAD considered all her different factors and spoke to these factors in different and individual sections. However, the RAD did not meaningfully consider all these factors together, and whether they increased her risk. The fact that the RAD stated it considered the intersectionality of her profile in and of itself is not sufficient to conclude that the RAD assessed her factors cumulatively.

[24] The Respondent submits that the RAD completed a thorough analysis of the Applicant's profile and correctly applied the intersectional approach. The Respondent disagrees with the Applicant's characterization of the Decision as assessing the Applicant's profile in silos. The Applicant focused solely on the headings, and isolated certain information. However, reading the Decision holistically, as *Vavilov* instructs, it is clear that the RAD did not assess the Applicant's profile and factors individually. The RAD's Decision considered the Applicant's prospective risk based on the profiles presented, went through all the profiles and conclude that either individually or cumulatively, it was not sufficient to demonstrate a risk. For example, the Decision referenced the Applicant's testimony about her life in Lebanon before arriving in

Canada. Her evidence did not, in the Respondent's submission, demonstrate that any of the events that she identified as a risk were connected to her being an elderly Sunni woman.

[25] According to the Respondent, the Applicant's arguments amount to a disagreement with the RAD's conclusion. The Applicant is asking the Court to reweigh the evidence, which it cannot do on judicial review.

[26] I agree with the Respondent's submission that the Applicant's testimony before the RPD did not support a connection between the events she listed as being the nexus of her fear of persecution and her profile as an elderly Sunni woman or to her profile defined in any other way.

[27] The Applicant's argument on the silo approach focused on the individual headings in the Decision outlining each factor before the section identified as "Intersectionality". If a reader were to read only these individual headings, one would be inclined to agree that the approach seemed isolated to individual factors only. I also agree that simply identifying an intersectionality section or stating that the analysis was a cumulative one is not necessarily determinative if a review of the decision's reasoning demonstrated that the elements of the Applicant's risk profile were analyzed as though they existed in discrete silos (*Neeranjana v Canada (Citizenship and Immigration)*, 2023 FC 1564 [*Neeranjana*] at para 32).

[28] However, on judicial review, the reviewing Court must read the Decision holistically based on the record before the decision-maker (*Vavilov* at para 97). Whether the RAD has

reasonably applied an intersectionality analysis will always be fact-specific all while considering a holistic and contextual evaluation of an Applicant's profile.

[29] Here, the RAD was cognizant that an intersectionality analysis was required. The Decision identified the Applicant's submissions on her risk as it related to various factors and addressed these submissions in the Decision. The RAD concluded that it disagreed with the Applicant's submissions and explained why. The RAD also assessed the evidence before it. The Applicant testified that she only expressed her political views privately. She also denied having experienced any issues because of not wearing a veil.

[30] As such, in reviewing the Decision as a whole, the factors were considered cumulatively. The RAD's conclusion that there was insufficient evidence to support the Applicant's fears of persecution based on her profile was grounded in the evidence before it.

[31] I can also find no error in the RAD's conclusion on the distinction between harassment and persecution. In this case, the Applicant demonstrated that she may face harassment in Lebanon. However, the RAD found that when considered individually or cumulatively, the Applicant did not establish that her factors and profile amount to a prospective risk of a serious possibility of persecution or personalized harm.

[32] The case law interprets persecution to mean discrimination that amounts to a serious and persistent violation of basic or core human rights (*Neeranjana* at para 34, citing *Liang v Canada*

(*Citizenship and Immigration*), 2008 FC 450 [*Liang*] at paras 16-19, *Taib v Canada (Citizenship and Immigration)*, 2021 FC 768 at para 20).

[33] The RAD was therefore required to assess whether cumulative discrimination and harassment constitute persecution, which is highly factual and requires that individuals' particular circumstances and context be taken into account (*Liang* at para 22). Reading the Decision holistically, I cannot find that the RAD failed to do so. The Applicant's context was considered and assessed.

[34] I am sympathetic to the Applicant's circumstances. However, as the RAD pointed out, it could not consider the Applicant's claim for asylum under sections 96 and 97 of the IRPA based on humanitarian and compassionate grounds. As described above, according to the scope of the Decision under review before this Court, I cannot find that the Decision was unreasonable.

V. Conclusion

[35] The application for judicial review is dismissed. The RAD's Decision meets the hallmarks of reasonableness, being coherent and rational in its analysis of the evidence and arguments provided. The Decision was responsive to the Applicant's submissions and is not unreasonable.

[36] The parties do not propose any question for certification and I agree that in these circumstances, none arise.

JUDGMENT in IMM-16390-23

THIS COURT'S JUDGMENT is that:

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

"Phuong T.V. Ngo"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-16390-23

STYLE OF CAUSE: MAHA JAROUDI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL (QUÉBEC)

DATE OF HEARING: MARCH 20, 2025

JUDGMENT AND REASONS: NGO J.

DATED: APRIL 15, 2025

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