

DECIDED
5 February 2020

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- [1] XXXX XXXX XXXX XXXX (Principal Appellant), XXXX XXXX XXXX XXXX XXXX (Second Appellant; citizen of Jordan), XXXX XXXX XXXX XXXX (First Minor Appellant), and XXXX XXXX XXXX (Second Minor Appellant; citizen of the United States), , appeal a decision of the Refugee Protection Division (RPD), dated June 27, 2019, rejecting their claims for refugee protection. The Principal and First Minor Appellant are Stateless Palestinians without status in any country. Withdrawal of claims for Second Appellant and Second Minor Appellant
- [2] At the time this appeal was perfected, the Second Appellant withdrew her claim for refugee protection from Jordan, and the Second Minor Appellant withdrew his claim for refugee protection from the United States.¹ The RPD found that the Second Appellant and the Second Minor Appellants were neither Convention Refugees nor persons in need of protection. These negative determinations remain unchallenged.
- [3] The Refugee Appeal Division (RAD) will only consider the appeals of the Principal Appellant and the First Minor Appellant in its decision.

[4] In accordance with paragraph 111(1)(a) of the Immigration and Refugee Protection Act (IRPA),² the Refugee Appeal Division (RAD) dismisses the appeal.

BACKGROUND

- [5] The Appellants allege to fear persecution in Saudi Arabia due to their ethnicity as stateless Palestinians, and also fear imprisonment, torture, detention and prosecution without due process because their iqamas have expired and they cannot legally enter the country. Without valid iqama documents, and having failed to return to Saudi Arabia in accordance with the return date on their exit visas, the Appellants allege that they would have no legal status to remain in Saudi Arabia, and this would result in them being arbitrarily arrested and indefinitely detained. After the Principal Appellant was terminated from his employment, the Appellants left Saudi Arabia on XXXX XXXX XXXX 2018 for the United States. From the United States, they travelled by car to the Canadian border where they made their refugee claims on XXXX XXXX XXXX 2018.
- [6] The RPD heard the Appellants' claims on June 18, 2019 and issued a split decision on June 24, 2019: the RPD accepted the claims of the Principal Appellant's two minor daughters, and denied the Principal, Second, First and Second Minor Appellants' claims.³ As indicated above, the Second Appellant and the Second Minor Appellant have since withdrawn their appeals.
- [7] The Principal Appellant and the First Minor Appellant submit that the RPD erred in its decision by failing to take into account the forward-looking aspect of the refugee claims, if they were to return to Saudi Arabia. Saudi Arabia is the only country of former habitual residence for the Appellants. The RAD carefully considered the merits of the appeal in its decision.

ANALYSIS

No application for new evidence or an oral hearing

- [8] The Appellants are not making an application to submit new evidence under subsection 110(4) of the IRPA, nor are they requesting an oral hearing pursuant to subsection 110(6) of the IRPA. RPD erred in part in its assessment of Appellants' forward-looking risk in Saudi Arabia
- [9] The RAD finds that the RPD did briefly consider the Appellants' forward-looking risk if they were to return to Saudi Arabia. The RAD finds that the RPD's analysis was erroneous in part, but the RPD did come to the correct conclusion. The RPD indicated that the Principal Appellant was unaware of the outcome of detention for the Palestinian person he knew who was detained.⁴ The RPD further found that the onus was on the Appellants to secure a sponsor so they can return to Saudi Arabia in a legal manner.⁵ The RPD concluded that the Appellants risked punishment for breaking laws of general application if they returned to Saudi Arabia without jobs, and without legal status.⁶

- [10] The Appellants submit that the RPD erred by assessing their claim based on the fictional circumstances of the Appellants being able to return to Saudi Arabia after finding new jobs, and new employers, and therefore being able to obtain new iqamas.⁷ The Appellants submit that the RPD must instead ask what would happen to the Appellants as stateless persons if they were to return to the frontiers of their country of former habitual residence, in their present circumstances, on the present day.⁸
- [11] The RAD agrees with the Appellants that the forward-looking assessment should take into account the Appellants' present circumstances, rather than what they should do in the future. Therefore, the RPD erred by basing part of its analysis on the Appellants being able to find employers in the future, and therefore being able to obtain iqamas so they can legally enter the country. The refugee claim analysis is forward-looking, and is to be assessed based on a claimant's circumstances as of the date of the hearing.⁹ On the date of the hearing, the Appellants did not have an employer to sponsor them, and therefore they were unable to renew their iqamas.
- [12] After reading the RPD's decision, the RAD finds that the RPD did make a very brief finding regarding whether the Appellants would face a serious possibility of persecution if they were to return to Saudi Arabia without status: However, if the claimants choose to return illegally, they risk punishment for breaking laws of general application. The laws do not only apply to people of Palestinian descent, but to all foreigners who fail to enter Saudi Arabia legally. Similar laws exist in other countries and are not inherently persecutory.¹⁰
- [13] After conducting its own independent analysis, the RAD finds that the RPD was correct in its conclusion. The forward-looking risk is tied to the potential consequences regarding the denial of their right to return to Saudi Arabia. The Appellants' residency permits (their iqamas) were expired at the time of the RPD hearing. The Appellants allege that they are unable to find an employer to sponsor them due to the discriminatory hiring practices, and so they are unable to renew their iqamas, which they require in order to legally reside in Saudi Arabia.¹¹
- [14] At the hearing, the Principal Appellant explained that he did not think he would be allowed to enter the country, because his entry and exit visa was also expired, along with his visa.¹² The RAD agrees, and finds that the Appellants would be denied entry into Saudi Arabia, as they would not be able to obtain valid documentation to enter the country. However, the RAD also considered whether the denial of a right to return to the country would constitute persecution in its analysis below. Denial of a right to return does not constitute persecution for the Appellants
- [15] As cited in the Federal Court case of Maarouf ¹³, denial of a right to return to a country does not in and of itself constitute persecution. It is the Appellants' burden of proof to demonstrate that denial of a right to return would result in a serious possibility of persecutory treatment.

- [16] According to the documentary evidence, Palestinians are subject to the same residency rights as other foreigners. Foreigners are not permitted to work until they obtain residence permits. According to Article 54 of Saudi Arabia's Residence Regulations, foreigners who violate these provisions "shall be deprived of residence right and deported from the country".¹⁴ However, Saudi Arabia has exempted Palestinian nationals found to be in violation of labour laws from deportation, due to administrative irregularities.¹⁵
- [17] The documentary evidence indicates that overstaying in Saudi Arabia upon visa expiry includes penalties such as "custody, fining and deporting".¹⁶ However, upon reviewing the article, the RAD finds that these penalties apply to people who currently reside in Saudi Arabia and remained after their visas expired, and then they found to have overstayed their visa. This is distinguished from the Appellants' situation.
- [18] The consequences apply equally to all foreigners residing in Saudi Arabia, and not just to Stateless Palestinians. The RAD does not find that the consequences of being denied the right to return and consequently, to enter Saudi Arabia, would constitute persecution based on any of the Convention grounds. Insufficient evidence to demonstrate that denial of a right to return would provide Appellants with a claim under s. 97
- [19] The RAD considered whether the consequences of denial of a right to return would be considered a risk to life, of torture or of cruel and unusual punishment, as defined under section 97. The Principal Appellant testified that he feared that he and his family would be jailed if they were to return to Saudi Arabia without valid iqamas allowing them to remain in the country.¹⁷ The Appellants submit that this would amount to cruel and unusual punishment, and risk to their lives.¹⁸
- [20] The RAD accepts that detainees are often treated with impunity and violence by law enforcement officers. Courts continue to sentence individuals to corporal punishment, including flogging, whipping or lashings.¹⁹ Other abuses reported by former detainees include beatings, sleep deprivation and long periods of solitary confinement for non-violent detainees.²⁰ Furthermore, prison and detention centres reported problems such as overcrowding and inadequate conditions.²¹ However, the RAD finds that there is insufficient objective evidence to demonstrate that the Appellants would personally face a likelihood of imprisonment, torture, or of cruel and unusual punishment if they returned to Saudi Arabia.
- [21] There is very little objective evidence available regarding the consequences of Palestinians attempting to return to Saudi Arabia without valid iqamas. The Appellants did not provide any additional objective articles at the hearing or on appeal regarding the likelihood of imprisonment for Palestinians without valid iqamas who wish to enter the country. With so little objective evidence available on the consequences, it is uncertain what would happen to them if they were denied the right to return to Saudi Arabia. It remains the Appellants' burden to prove that they would face a risk to life, of torture or of cruel and unusual punishment, and the RAD finds that the Appellants have not met that burden. Given the lack

of objective evidence regarding imprisonment of Palestinians returning to Saudi Arabia without proper documentation, the RAD finds that the Appellants' allegations of imprisonment are speculative.

- [22] Following the review of the RPD record, and from the documentary evidence, the RAD finds that the forward-looking risk of returning to Saudi Arabia with expired iqamas and without a valid employer to sponsor them does not amount to a serious possibility of persecution; nor would the Appellants face, on a balance of probabilities, a personalized risk to their lives, of torture, or of cruel and unusual treatment or punishment.
- [23] After carefully considering all of the evidence in this claim, the RAD finds that the RPD's decision is correct and it is upheld.
- [24] Therefore, the RAD finds that the Appellants would not face a serious possibility of persecution due to the laws of general application in Saudi Arabia, nor would they face a risk to their lives, of torture, or of cruel and unusual treatment or punishment.

CONCLUSION

- [25] The RAD dismisses the appeal and confirms the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection, pursuant to section 111(1)(a) of the Immigration and Refugee Protection Act (IRPA). (signed) "M. Lee" M. Lee February 5, 2020 Date 1 Exhibit P-2, Appellant Record, Appellants' Memorandum, at page 5, paragraph 8. 2 Immigration and Refugee Protection Act, S.C. 2001, c. 27, as amended. 3 Exhibit RPD-1, RPD Record, RPD Reasons and Decision, at page 4. 4 Exhibit RPD-1, RPD Record, RPD Reasons and Decision, at page 10, paragraph 25. 5 Exhibit RPD-1, RPD Record, RPD Reasons and Decision, at page 10-11, paragraph 28. 6 Exhibit RPD-1, RPD Record, RPD Reasons and Decision, at page 11, paragraph 29. 7 Exhibit P-2, Appellant Record, Appellants' Memorandum, at page 12, paragraph 25. 8 Exhibit P-2, Appellant Record, Appellants' Memorandum, at page 11, paragraph 23. 9 *Majebia v. Canada* (MCI), 2016 FCA 274 at paras. 8-9. 10 Exhibit RPD-1, RPD Record, RPD Reasons and Decision, at page 11, paragraph 29. 11 RPD Hearing Recording, June 18, 2019, at 1:02:00. 12 RPD Hearing Recording, June 18, 2019, at 1:03:42. 13 *Maarouf v. Canada* (Minister of Employment and Immigration), [1993] FCJ No 1329 (FCTD). 14 Exhibit RPD-1, RPD Record, at Exhibit 9, National Documentation Package (NDP) for Saudi Arabia, version 29 March 2019, item 14.2, Response to Information Request, ZZZ106013.E, 14 November 2017. 15 Ibid. 16 Ibid. 17 RPD Hearing Recording, June 18, 2019, at 1:04:48. 18 Exhibit P-2, Appellant Record, Appellants' Memorandum, at page 21, paragraph 47. 19 Exhibit RPD-1, RPD Record, at Exhibit 9, National Documentation Package (NDP) for Saudi Arabia, version 29 March 2019, item 2.1, Saudi Arabia. Country Reports on Human Rights Practices for 2018. United States Department of State. 13 March 2019. 20 Ibid. 21 Ibid.

RAD File / Dossier de la SAR : TB9-18877 TB9-18878 / TB9-18879 / TB9-18880 RAD.25.02 (April 04, 2019) Disponible en français 7 Immigration and Refugee Board of Canada Refugee Appeal Division Commission de l'immigration et du statut de réfugié du Canada Section d'appel des réfugiés RAD.25.02 (April 04, 2019) Disponible en français

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