

CANADA / JUDGMENT

VB9-02966

COURT

Refugee Protection Division

DECIDED

14 February 2020

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RPD File / Dossier de la SPR : VB9-02966

VB9-04221

UCI / IUC : XXXX XXXXXXXXX

Private Proceeding / Huis clos

TRANSCRIPT OF THE REASONS AND DECISION

Claimant(s)

XXXX XXXX XXXXXXXXX XXXX XXXX XXXX

Demandeur(e)(s) d'asile

Date(s) of hearing

February 14, 2020

Date(s) de l'audience

Place of hearing

Vancouver, BC

Lieu de l'audience

Date of decision

and reasons

February 14, 2020

Date de la décision

et des motifs

Panel

Chad Prowse

Tribunal

Counsel for the claimant(s)

Robin David Bajer

Barrister and Solicitor

Conseil(s) du (de la/des)

demandeur(e)(s) d'asile

Designated Representative

N/A

Représentant(e) désigné(e)

Counsel for the Minister

Documents only

Conseil du (de la) ministre

Interpreter

Bassel Youssef

Interprète

DECISION

MEMBER: This is the decision of the Refugee Protection Division in the claims of Miss XXXX XXXX, the principal claimant and Mr. XXXX XXXX, the associate claimant. I've considered your testimony and the other evidence in your case and I'm ready to render my decision orally. In the event that written reasons are issued, they will reflect those that I'm giving to you now.

Ma'am, Sir, I'm sorry to say the, the decision I've reached is not a positive one. I understand that you will find this disappointing. However, I will be providing my reasons to you in person.

The claimants claim refugee protection pursuant to Sections 96 and 97(1) of the Immigration and Refugee Protection Act. This is the resumption of the de-, decision of the claims for refugee protection made by Miss XXXX-, XXXX and Mr. XXXX. The claimants alleged the following in their Basis of Claim forms and, and narrative.

In brief, principal claimant alleges that she's from the town of XXXX in Tunisia. She has siblings there and in Sousse. Her husband, the associate claimant is a Palestinian born in and at the time of her Basis of Claim form and narrative, was living in Saudi Arabia. The principal claimant has always felt restricted by her family's cultural norms. She is a XXXX XXXX without her family's knowledge. The principal claimant's family did not approve of her husband because he is Palestinian. The law in Tunisia is that female family members of the military are not permitted to

marry non-Tunisians. The principal claimant and her husband stayed with her sister XXXX (ph) in Sousse who had visited Tunisia from XXXX.

They were married in Tunisia in XXXX 1996. They travelled to XXXX for one day to complete the paperwork. Only the principal claimant's sisters and her mother attended the wedding. Her father consented to the marriage because he wanted her to be happy. Before her marriage, the principal claimant met with someone from the Ministry of Interior who told her that she was not permitted to marry her husband. She was given some documents to sign to allow her husband to enter the country. Her brothers opposed the marriage however, due to her father's consent they were unable to stop her.

In XXXX 1996, the cla-, the principal claimant moved to Saudi Arabia to be with her husband. She and her husband had temporary residence there. The principal claimant lived with her husband in Saudi Arabia for about 22 years. She visited Tunisia in 2001, 2013, 2014, 2015, 2017 and 2017-, 18. Only XXXX knew her whereabouts. The cla-, principal claimant alleges that she is afraid of her male relatives who are or were in the, were in the military. They will force her and her husband to divorce. Try to harm them both if they enter the country.

The associate claimant was born in Saudi Arabia in 1969 and has lived there ever since, according to his narrative. He was mistreated by his sponsors in Saudi Arabia from 2005 onwards. He was underpaid or denied his rightful payments. When he complained to his sponsor, his sponsor had him declared an escaped resident which prevented him from getting medical assistance and impacted his rights in various other ways.

When the associate claimant approached Saudi authorities for assistance, they arrested him without charge and detained him for XXXX XXXX in 2012. Although he was able to obtain a new sponsor after borrowing money to pay authorities, his new sponsor also mistreated him, disrespecting him for religious and other reasons. Once again, he was denied his rightful salary. His sponsor refused to give him exit permission as well. However, the associate claimant was ultimately able to get his final exit visa. The, according to the associate claimant as a holder of a final exit visa for Saudi Arabia, he has a no, he has no right to return there. He identifies his religion as Shia.

I find that the principal claimant is not a Convention refugee in that she does not have a well-founded fear of persecution for a Convention ground in Tunisia. I also find that she is not a person in need of protection. And that her removal to Tunisia would not subject her personally to a risk to her life or to a risk of cruel and unusual treatment or punishment. And in that, there are no substantial grounds to believe that her removal to Tunisia would subject her personally to a danger of torture. My reasons follow.

With respect to the associate claimant, where stateless persons have multiple countries of former habitual residence, they must demonstrate on a balance of probabilities that there is a serious possibility that they would be persecuted in any country of former habitual residence. And that they cannot return to any other country of former habitual residence where they would not face persecution. I find that the associate claimant is not a Convention refugee or a person in need of

protection in that he has not demonstrated that he cannot return to Morocco, a country of former habitual residence where he would not face persecution. The determinative issues in this claim are credibility and Morocco as a former country of former habitual residence for the associate claimant.

With respect to identity, on a balance of probabilities I find that the principal claimant is a citizen of Tunisia. Her identity as a citizen of Tunisia est-, is established by her testimony and the supporting documentation filed, including a copy of her Tunisian passport. On a balance of probabilities, I find that the associate claimant is a stateless person of Palestinian origin whose countries of former habitual residence are Saudi Arabia and Morocco. This is established by the associate claimant's testimony and the supporting documentation filed, including his Palestinian authority passport, his Egyptian travel document for Palestinian refugees and his residence registration card for Morocco. The associate claimant accepts that Saudi Arabia is a country of former habitual residence. He disputes whether Morocco is a country of former habitual residence. I will analyze this issue in more detail later.

Turning to credibility. When a claimant swears to the truth of certain allegations, this creates a presumption that those allegations are true, unless there is reason to doubt their truthfulness. Additionally, when assessing credibility, the Panel is entitled to rely on its rationality and common sense. I find that the claimants provided insufficient credible evidence to establish that the principal claimant has a well-founded fear of persecution in Tunisia, on the basis of her brothers or male family members opposition to her marriage to her husband, a person of Palestinian origin.

The Minister of Immigration, Refugees and Citizenship Canada intervened in this claim on the basis of credibility. Among other evidence, the Minister disclosed publicly available social media information. Facebook and Instagram account information purportedly belonging to the principal claimant, associate claimant and two of the principal claimant's brothers whose Facebook accounts are XXXX XXXX XXXX XXXX XXXX (ph) and XXXX XXXX XXXX XXXX XXXX. The Minister submits that this evidence shows that the principal claimant and associate claimant are Facebook friends with the principal claimant's brothers. Both of whom are in the military and who allegedly intend to harm the claimants on the basis of their marriage.

According to the Minister, the principal claimant has a Facebook account under the name of XXXX XXXX. The associate claimant has two Facebook accounts. One under the name of XXXX XXXX and the other under the name of XXXX XXXX. XXXX XXXX's public Facebook profile states that he is married to XXXX XXXX. He's also friends with XXXX XXXX. XXXX XXXX is friends with XXXX XXXX and XXXX XXXX XXXX XXXX XXXX. The 2013 profile picture of XXXX XXXX XXXX XXXX XXXX was liked by XXXX XXXX.

The claimants' testimony about their Facebook accounts was sometimes evasive. There were discrepancies between their explanations for being friends with the alleged agents of persecution. And their answers were sometimes convoluted, incoherent or contained implausibilities. The claimants ultimately testified that the social media accounts in question

belonged to them and the principal claimant's brothers. However, the associate claimant was initially evasive about whether one of the Facebook accounts, namely the account in the name of XXXX XXXX belongs to him. He said that he did not remember, but admitted that it was him. And provided more detailed testimony after several follow-up questions.

His testimony about whether he knew the identity of the Facebook user XXXX XXXX XXXX XXXX XXXX was likewise evasive. Initially, he said that he did not know the identity of this person, then admitted that he knew that it was the principal claimant's brother after being pressed on the matter. The claimants did not have a reasonable or consistent explanation for becoming friends on Facebook with the alleged agents of persecution. The associate claimant testified that he became friends with the principal claimant's brothers because the principal claimant is trying to re-establish her relationship with her family members in Tunisia.

He said that XXXX XXXX's account is mainly used by his son, the principal claimant's nephew XXXX (ph) who is 16 years old. He testified that to his knowledge, XXXX is not aware that his son is using his Facebook account to communicate with the principal claimant. And that he would be against this as he's opposed to re-establishing any relationship with the claimants.

The principal claimant testified that she communicates with XXXX using XXXX Facebook account. However, she testified that XXXX is aware of this. And that he is not opposed to his son communicating with the principal claimant. She also said that XXXX has another Facebook account that he uses to communicate with his friends.

These explanations are problematic for a number of reasons. Firstly, it is unlikely that the claimants would have such a radically different understanding of the principal claimant's communication with their family in Tunisia if what they allege is true. The claimants alleged that the principal claimant's brothers intend to harm them. The associate claimant is friends with XXXX on Facebook. And has publicly revealed his current location and other personal information. It is reasonable to expect him to know whether or not one of the agents of persecution is using the account or not and how.

Secondly, the principal claimant's testimony that her brother XXXX allows his son to communicate with and build a relationship with her using his Facebook account is completely at odds with her other allegations in her narrative. Not only does she allege that XXXX intends to harm her and her husband, she also alleges that her brother's opposition to her marriage is connected to his belief that it will harm his military career. Therefore, however computer illiterate he may be as the claimants allege, it stands to reason that XXXX would not wish to create the appearance that he has a relationship with either claimant.

Thirdly, no reasonable explanation has been provided for why the principal claimant would communicate with XXXX' account when XXXX has another Facebook account. The principal claimant is afraid of her brother. Why would she not take this simple precaution of communicating with XXXX using his own account. Why would she even be friends on Facebook with XXXX if the only purpose of interacting with his account is to communicate with XXXX.

Fourthly, despite the fact that it would likely be easy for the claimants to provide supporting evidence of their allegation that it is XXXX and not XXXX who uses or who has access to the Facebook account such as private or public messages or posts, they have not provided any such evidence. The only post on XXXX' Facebook pro-, profile page visible in the Minister's disclosure is a photo of XXXX and his wife uploaded in 2018. Moreover, the claimants have not provided any explanation for their Facebook friendship with the principal claimant's other brother, XXXX XXXX XXXX XXXX. While the associate claimant testified that XXXX passed away around three years ago, the available evidence indicates that the associate claimant became friends with him in 2013. Well before he died.

I find that the claimants have pro-, not provided a credible explanation for the fact that they are Facebook friends with at least some of the alleged agents of persecution. And that this significantly undermines their credibility and their allegations of subjective fear. There is no evidence that the claimant took precautions on social media, such as through privacy restrictions, to prevent the principal claimant's brothers from discovering information about them or their whereabouts. The claimant's XXXX XXXX Facebook account identifies his city of residence as Casablanca, Morocco. He testified that any citizen of Tunisia may enter Morocco for three months without a visa. There's no evidence that he tried to conceal this information from his Facebook friend XXXX XXXX XXXX XXXX XXXX, one of the alleged Tunisian agents of persecution.

The principal claimant returned to Tunisia on at least six occasions since her marriage to her husband. She visited Tunisia in 2001, 2013, 2014, 2015, 2017 and 2018. On at least one visit in 2013, she traveled to Tunisia with the associate claimant. The principal claimant alleges that she is afraid that her family members in the military will, will prevent her husband from entering the country. And will harm them both if they enter the country. While the principal cust-, claimant testified that she did not visit her family members on these return trips other than her sympathetic sister XXXX, there's no evidence that she was in hiding or took any serious precautions to enter or exit the country or otherwise avoid the agents of persecution.

I find that this undermines her allegation that she has a well-founded fear of persecution in Tunisia. And that she has a subjective fear of her brothers. There's no credible evidence that the claimant's marriage to her husband is or was illegal. Or is or was opposed by Tunisian authorities. While I accept that the principal claimant's brothers opposed her marriage and that they were questioned by their military superiors about her marriage, there is no credible evidence that they have threatened her directly or indirectly since 2001. That they persisted in targeting her after 2001. Or that she faces more than a mere possibility of being persecuted by them or by anyone else if she returns to Tunisia. I note that there is no evidence that the principal claimant's brothers were dimis-, dismissed from the military on the basis of the relationship. Or that their relationship hurt their military careers.

Therefore, having considered all of the evidence before me, I determined there's not a serious possibility that the principal claimant would be persecuted in Tunisia. Section 97(1) of the Act defines a person in need of protection. And the elements necessary to establish a claim under

Section 97(1) are not identical to those necessary to establish whether a person is a Convention refugee under Section 96 of the Act. Consequently, a negative credibility determination, which may be determinative of a refugee claim under Section 96 of the Act is not necessarily determinative of a claim under Subsection 97(1) of the Act.

However, in the case at hand there's not sufficient evidence that would provide a foundation on a balance of probabilities for establishing a personal risk for the prin-, principal claimant pursuant to Section 97(1) of the, of the Act.

For these reasons, I have determined that the principal claimant is neither a Convention refugee nor a person in need of protection.

Turning to the associate claimant's claim. I find that Morocco is a country of former habitual residence for the associate claimant. In addition to the test outlined in Tab 8 already, the principles underlying the concept of country of former habitual residence are outlined in Maarouf, M-A-A-R-O-U-F. According to which the relationship of the claimant to the country is broadly comp-, comparable to that of a citizen and his/her country of nationality. And the concept implies that the stateless person was admitted to a country with a view to continuing residence of some duration without necessitating a minimum period of residence.

Firstly, I will examine whether Morocco is a country of former habitual residence. Secondly, I will examine the associate claimant's allegation that he cannot return there. Thirdly, I will determine whether or not the claimant has a well-founded fear of persecution in Morocco.

Firstly, I find that Morocco is a country of former habitual residence for the associate claimant. While counsel referred to tests for habitual residence under other statutes, such as a requirement to have resided in a country for a period of greater than six months. Such a minimum period of residency is not a requirement for the purpose of this analysis. Counsel also submit-, submitted that Saudi Arabia is the associate claimant's most significant country of former habitual residence. As well as his last country of former habitual red-, residence.

However, I find that these are not relevant considerations in this context. The Panel is required to examine every country of former habitual residence. The associate claimant has resided in Morocco for roughly 18 months since XXXX 2015. He testified that he resided there because he was working on a project which ended in XXXX 2018. His wife also resided in Morocco at this time, spending roughly the same amount of time in the country as the associate claimant. The associate claimant possesses a three-year valid Moroccan residence card issued XXXX XXXX, 2018. And expiring XXXX XXXX, 2021.

According to information disclosed by the associate claimant from the Moroccan authorities, the validity of this registration of residence card varies from one to ten years and the card is renewable. Additionally, after a residence period exceeding four years in Morocco, it is possible to obtain a ten-year residence card.

According to evidence disclosed by the Minister, the associate claimant declared to U.S. authorities that he is a permanent resident of Morocco when he applied for a non-immigrant visa on XXXX XXXX, 2019. I'm just gonna verify that date. Sorry. That should be XXXX 2019.

On one of his Facebook accounts, the associate claimant identifies his place of residence as Casablanca, Morocco. The associate claimant describes life in Morocco as good, noting that it was also close to Tunisia for his wife. The associate claimant testified that his Moroccan residence card is no longer valid and that he does not have permanent residence in Morocco. However, I find that Morocco is a country of former habitual residence as the associate claimant's relationship to the country is broadly comparable to that of a citizen. And that he was admitted to the country with a view to continuing residence of some duration without necessitating a minimum period of residence.

The associate claimant was admitted to the country for a period of at least three years, according to the residence card. On the basis of the available evidence, this status is renewable. The reason he said that he could not stay longer on each visit to Morocco was that he had to return to Saudi Arabia to maintain his residency there. He's able to work in Morocco legally and developed a substantial attachment to the country. Spending time there with his wife and identifying it as his place of residence on Facebook.

There is no requirement that the claimant's status in Morocco be equivalent to citizenship or even permanent residence. Nor does the fact that the claimant's status document have an expiry date. Meaning that it is not a country of former habitual residence.

I find that the associate claimant has not provided credible sufficient evidence to establish that he cannot return to Morocco. His residence card expires in 2021. I note that despite testifying that he no longer had status after the end of his work project in XXXX 2018, he remained in the country on the strength of this document until XXXX XXXX, 2018.

In XXXX 2019, he stated that he still had permanent residence status in Morocco on his U.S. visa application. He has not provided any supporting evidence that his residence card ceases to be valid upon the completion of his work project. There was no such stipulation in the information he has provided from Moroccan authorities about his card. Nor has he provided any supporting evidence about the work project in question, such as a work contract or letter to corroborate what he is saying about the dates.

Finally, as already noted that the associate claimant's testimony contained credibility problems. And I therefore find that his mere assertion that his unexpired card is no longer valid is inadequate to establish what he is saying on a balance of probabilities.

Finally, there is no evidence that the associate claimant faces a serious possibility of persecution on a Convention ground in Morocco. Or that on a balance of probabilities, his removal to Morocco would subject him personally to a risk to his life or to a risk of cruel and unusual treatment or punishment. Or on substantial grounds, reason to believe that his removal would subject him personally to a danger of torture in Morocco. As already noted, the associate

claimant described his life in Morocco as good. As the associate claimant can return to Morocco, there is no reason to consider the claim against Saudi Arabia.

And for those reasons, I find also that the associate claimant is neither a Convention refugee nor a person in need of protection. That concludes the hearing.

----- REASONS CONCLUDED -----

I, Patricia Chandler, declare that this transcript is accurate.

February 21, 2020

Immigration and Refugee

Board of Canada

Refugee Protection Division

Commission de l'immigration

et du statut de réfugié du Canada

Section de la protection des réfugiés

RPD.61.01 (October 4, 2019)

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RPD File / Dossier de la SPR :

VB9-02966

VB9-04221

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Prepared on 25 October 2026 · Esheria