

CANADA / JUDGMENT

TB3-09530

COURT

Refugee Protection Division

DECIDED

19 February 2014

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IMMIGRATION AND REFUGEE BOARD

- REFUGEE PROTECTION DIVISION -

Reasons for the Decision in a Hearing under the
Immigration and Refugee Protection Act, concerning

XXXX XXXX XXXX XXXX

HELD AT: Toronto, Ontario

DATE: February 19, 2014

BEFORE: Mr. Joseph Dalrymple - Member

APPEARANCES:

XXXX XXXX XXXX XXXX - Claimant

Ali Dakakni - Counsel for Claimant

Ivan Isho - Interpreter

PRESIDING MEMBER: Sir, I have considered your testimony and the other evidence before me and I am ready to render my decision orally. A written form of these reasons will be provided to you and to your counsel in due course. I reserve the right to edit that decision for matters of spelling, syntax, grammar and punctuation. I also reserve the right to make reference to statutory and case law, as well as any of the documentary evidence before me.

The claimant has alleged that he is a stateless Palestinian, most recently resident in the United Arab Emirates and he is claiming refugee protection pursuant to sections 96 and 97(1) of the Immigration and Refugee Protection Act.¹

Sir, I find that you have not established that there is a serious possibility of persecution on a Convention ground or that on a balance of probabilities you would personally be subjected to danger of torture or face a risk to life or a risk of cruel and unusual treatment or punishment should you return to the United Arab Emirates.

My reasons are as follows.

You have alleged that you were born to Palestinian parents in the United Arab Emirates. You lived your entire life in the Emirates. You were educated there. You were employed there as well. The fact of your residence in that country is confirmed by an Egyptian travel document issued to Palestinian refugees which contains various visas issued to you from time to time by the United Arab Emirates.

You have alleged that while still living in the Emirates you became acquainted with a young woman. Her name was XXXX XXXX XXXX XXXX XXXX. Her surname was XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX and the two of you met while studying together. You attempted to pursue a romantic relationship however when the young woman's family became aware of the liaison between the two of you they took serious offence, you were threatened by the girl's family and you've alleged that on XXXX XXXX, 2012 you were apprehended by two individuals acting at the behest of the young girl's family. You have testified that you were detained for something like 24 hours.

You have testified that you were brutally beaten throughout the course of that detention, although you indicated that when you were ultimately released you did not require medical attention, having been slapped and insulted verbally for the most part.

You have testified that the girl's family made it clear to you that if you attempted to resume the relationship you could expect even worse treatment. Apparently, despite her family's disapproval the young woman persisted though in attempting to contact you. You reached the conclusion that you were at risk because she persisted in trying to have a relationship with you and you ultimately reached the decision that you had no choice but to leave the Emirates.

You travelled to Canada where you have two brothers living via one day spent in the United States. You have alleged that should you return to the United Arab Emirates you face the risk of serious harm and even the possibility of death.

At the beginning of the hearing, I set out a long list of issues. It is not necessary for me at this time to address all of them. I am simply going to address those that are critical to my determination of your claim. I did indicate at the outset that identity is an issue in every case. The only identity document I have before me is your Egyptian travel document which I alluded to earlier. You provided me with a copy of an earlier Egyptian travel document, that plus the original, which is in my possession now are the only two travel documents you have or identity documents for that matter. I am sorry, I should qualify that, I believe you also have a birth certificate and one other document which situates you in the United Arab Emirates.

I have reached the conclusion based on the Egyptian travel document that you are in fact who you say you are and that you were at one time resident in the United Arab Emirates. I will have a few more comments to make on identity subsequently in my decision.

Sir, the Convention relating to the Status of Refugees, sets out the definition of a refugee - let me rephrase that. A refugee is defined in the IRPA in part as a person outside their country of citizenship or former habitual residence, if they are a stateless person. That definition requires me to consider whether you in fact have a country of citizenship or whether you are in fact stateless.

I have reached the conclusion that you are a citizen of the Palestinian Authority and I reached that conclusion because you stated so unambiguously in your generic application form for Canada which is before me in evidence as part of Exhibit 1. The form at question nine asks you to indicate your citizenship and you indicated unambiguously Palestinian Authority Gaza/West Bank. I realize that you may have indicated that was your citizenship because when you completed the form you used an electronic template which had a dropdown list which indicated the Palestinian Authority as being one of your possible choices of citizenship. But that is the selection you made and you apparently did so without qualification because there is nothing else in the document to indicate any qualification.

There is nothing else in the document to indicate that you were anything other than a citizen of the Palestinian Authority. And here I'd like to add you signed the document; in doing so you attested that the contents of the document were truthful, complete and correct. There is nothing in the materials before me to indicate that there was any difficulty of comprehension on your part. There is nothing before me to indicate that there was any problem of interpretation, in fact just the opposite. The forms that you submitted at your eligibility interview are very easy to understand, they are straightforward, and they are clear cut. So at the end of the day, sir, having indicated that you are a citizen of the Palestinian Authority I am finding as a matter of fact that you in fact were a citizen of the Palestinian Authority.

This is important because given that I have found that you have citizenship in the Palestinian Authority, that is the only country that I am allowed to reference in determining whether you would be persecuted or harmed in some fashion. And in this regard we had this exchange - I asked you - actually I want to back up a step.

You indicated to me that you could not travel to the Palestinian Authority because of logistical reasons. I believe, if I understood you correctly, you said the Egyptians would not permit you to travel there because your name was not recorded in an Israeli registry of some sort. Sir, those kinds of logistical issues are not determinative. In other words logistical issues, if you have a country of nationality, logistical issues in getting there do not stand in the way of having to assess your claim vis-à-vis that country.

I asked you during the hearing if travel documents, in other words logistical matters, if travel documents were not an issue would you be afraid of anyone or anything in the Palestinian Authority and you answered unambiguously, "no". Based on that answer, I have concluded that you are not at a risk of persecution should you return to the Palestinian Authority and I have also concluded that you would not be personally subjected to a danger of torture or face a risk to life or risk of cruel and unusual treatment or punishment upon your return to the Palestinian

Authority.

Here I want to add in passing that I do not have to make any assessment vis-à-vis any entitlement to return to Egypt because it is not necessary to my analysis of this claim.

Sir, having said all of that, if I am mistaken in my analysis to date there is still a problem and, sir, that is - the problem is this. Quite frankly, sir, I do not believe the story you've told me about your experiences in the United Arab Emirates. And I say that for two reasons. As I have already noted, you said that you were kidnapped or detained on the XXXX XXXX XXXX, 2012 by two individuals, acting at the behest of your girlfriend's family. You have said that you were detained for 24 hours, you were beaten, you were tortured; you have said that you were made to sign an agreement that you promised to have no further contact with the girl. But when you were interviewed by the Canada Border Services Agency, and again now I am referring to Exhibit 1, the Generic Application Form for Canada and more specifically - I am sorry, I am misspoken - alluding to Exhibit 1, Schedule 12, Additional Information, the question 9(a). Sir, you were asked the question, "Have you ever been sought, arrested or detained by the police or military or any other authorities in any country including Canada" and you answered that question unambiguously, "no".

Then again in Exhibit 1, Schedule A, question 6(j) you were asked the following question, "Have you ever (j) been detained, incarcerated or put in jail" and you answered, "no" to that question. Sir, those statements given at your eligibility interview appear to be blatantly inconsistent with the story that you have alleged in your Basis of Claim Form and in your oral testimony today.

Now, I acknowledge that you attempted to distance yourself from the statements attributed to you at the eligibility interview by saying, for example, that the plain clothed individuals who apprehended you were not police. You also said that they took you somewhere and it was a police station but you were not actually jailed. Sir, the two questions that were put to you were in my opinion straightforward. I note particularly as concerns the latter of the two questions, you were asked, "Have you ever been detained, incarcerated or put in jail". That sentence is disjunctive as opposed to conjunctive. What I mean by that is you were asked if any of three options apply to you, that is to say were you detained, option one, were you incarcerated, option two, were you put in jail, option three, and you answered, "no".

The two men who picked you up, albeit that they were not in uniform, albeit that they drove a civilian car, took you to a police station and interrogated you there, detained you there and in light of that alleged history, I have come to the conclusion that your allegations as to that detention cannot be reconciled with the statements that you made to the Canada Border Services Agency.

I have a second credibility concern which is, I asked you what the people who detained you did to you before you were released from detention. You talked about them tampering with your telephone, and you talked about them tampering with your laptop. This was apparently done to remove any images of the young woman with whom you were involved. But you failed to volunteer the fact alleged in your narrative that these individuals made you sign an agreement

not to contact the young woman in any manner, failing which they indicated to you you would be imprisoned, your parents would be harmed as might your siblings and you would face deportation out of the country.

That is an important element of the events that you have alleged. When I asked you about things that were done to you I would have expected you to volunteer that. Your failure to do so leads me to doubt your credibility.

To reiterate then, XXXX XXXX XXXX XXXX, I have considered all of your evidence and I determine that there is not a serious possibility that you would be persecuted in your country of nationality which I determine to be the Palestinian Authority or that on a balance of probabilities you would be personally subjected to a danger of torture or face a risk to life or risk of cruel and unusual treatment or punishment in the Palestinian Authority. Accordingly, I conclude that you are not a Convention refugee or a person in need of protection and I therefore reject your claim.

I do not have any original documents to return to you. Accordingly, this hearing is concluded.

---- REASONS CONCLUDED ----

1 Immigration and Refugee Protection Act, S.C. 2001, c.27 as amended.

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