

CANADA / JUDGMENT

VB8-04334

COURT

Refugee Appeal Division

DECIDED

1 September 2020

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RAD File / Dossier de la SAR : VB8-04334 Private Proceeding / Huis clos Reasons and decision ?
Motifs et décision Person who is the subject of the appeal XXXX XXXX Personne en cause Appeal
considered / heard at Montreal, QC Appel instruit / entendu à Date of decision September 1, 2020
Date de la décision Panel Bianca Eleonora Suciu Tribunal Counsel for the person who is the
subject of the appeal Sebastian H Nejat Conseil de la personne en cause Designated
representative N/A Représentant(e) désigné(e) Counsel for the Minister Kamal Gill Conseil du
ministre REASONS FOR DECISION

INTRODUCTION

- [1] The appellant, M. XXXX XXXX, is a citizen of Lebanon. He appeals the decision of the Refugee Protection Division (RPD) rendered on July 20, 2018, rejecting his claim filed pursuant to sections 96 and 97 of the Immigration and Refugee Protection Act (the Act).
- [2] The RPD found that the appellant is not a refugee or a person in need of protection because he has a viable Internal Flight Alternative (IFA) in Beirut. The appellant submits that the RPD erred in concluding that he has a viable IFA in Beirut. He asks the Refugee Appeals Division (RAD) to grant the appeal or to return the file to the RPD for a re-examination by a different panel or to make any other order as necessary.
- [3] The Minister filed an intervention on May 22, 2020. The appellant did not file a reply.
- OVERVIEW
- [4] The appellant is a member of the XXXX clan from XXXX. He alleges that his life is at risk because of a feud between the XXXX and the XXXX clans and because of a physical altercation with a rival clansman whom he defeated.
- [5] In the XXXX of 2015, a member from his clan accidentally killed two boys from the XXXX clan in a car accident. A few months later, the XXXX member was lured into the village of the XXXX clan and killed. Subsequently, the brothers of the XXXX member avenged his death by killing that XXXX perpetrator. This led to heightened conflict and violence between the two clans in the village.

- [6] In XXXX 2017, the appellant commenced a relationship with a girl from the XXXX clan. When the girl's family found out, they forbid her from seeing the appellant. Shortly after, the appellant was berated and attacked by a member of the XXXX clan for the relationship. He attacked back, defeated his opponent and fled the scene. Later that day, six men from the XXXX clan went to his home looking for him. They taunted his family, fired shots in the air and made threats against the appellant.
- [7] The appellant never returned home and rotated living with relatives in Beirut, which is located at XXXX km from his village, limiting his outings. He visited his family back in his village once a week at night to get money from his father. He learned from friends that the rival clan members were aware he was living in Beirut.
- [8] A friend introduced the appellant to a travel agent who helped him obtain a student visa. The appellant arrived in Canada on XXXX XXXX, 2017. DECISION
- [9] Based on my independent analysis of all the evidence on the file, including the recording of the hearing, I concur with the RPD's assessment that the appellant has a viable IFA in Beirut, which is a determinative issue in the appeal. Therefore, I confirm the RPD's determination pursuant to which the appellant is neither a Convention refugee nor a person in need of protection under the Act. The appeal is dismissed. STANDARD OF REVIEW
- [10] The RAD is required to independently assess all the evidence and determine whether the RPD was correct in relation to each alleged error of law, fact or mixed fact and law. In exceptional situations, where the RAD finds that the RPD had a meaningful advantage, it will defer to its findings and reasons will be provided in that situation¹. In this case, the applicable standard of review is that of correctness. POSITION OF THE PARTIES Appellant's arguments
- [11] The appellant argues that the RPD erred in concluding that he has a viable IFA in Beirut. Particularly, he advances that the RPD cannot speculate on the issue of capacity or the resources available to his agents of persecution to locate him in Beirut.² Furthermore, he contends that urban areas cannot be assumed to be an IFA by virtue of their population size alone, especially in this case where Beirut is a mere XXXX km away from the appellant's village.³
- [12] The appellant submits that the threats to his family, his time in Beirut, and his subjective fear while there, do not support the RPD's conclusion that the agents of persecution did not have the motivation to find and harm the appellant in Beirut, nor that a viable IFA exists there. In particular, it is submitted that according to the evidence:
- a) He moved with irregular frequency within Beirut every other day and sometimes twice a day.
 - b) He did not stay in one location for more than one week at a time.

- c) Other than his very limited XXXX XXXX XXXX-related activities, he only went out every two weeks or so to go for a car ride with a friend.⁴
- [13] He further argues that his secretive, nightly returns to his village do not speak to the appellant's lack of perception of risk. He advances that he was not asked about the precautions he took and the RPD erroneously concluded that he had not provided a reasonable explanation for returning there, despite the fact that the appellant testified that he relied on his father for financial support.⁵ He adds that the RPD erroneously asserted that he was being supported by his relatives in Beirut despite his testimony to the contrary.⁶
- [14] It is further argued that the variances in describing the frequency of his trips back to his village are very minor considering the passage of time and that there was no set schedule for the trips.⁷
- [15] The appellant submits that there is no evidence to support the RPD's finding that he continued to "engage in activities that involved a significant level of public exposure" in Beirut or that he "occasionally went out socially with a friend," other than his very limited XXXX and XXXX activity with a particular XXXX XXXX centre and his bimonthly secretive nightly drives.⁸
- [16] It is submitted that by turning its attention and analysis almost exclusively on the issue of the IFA, the RPD implicitly accepted that the appellant faced a risk to his life if he returned to Lebanon.
- [17] Finally, he argues that the RPD did not challenge his testimony that he could not work freely or freely move around in Beirut or stay in one location for more than a week. The RPD erred by concluding that because he hadn't been threatened while he was hiding in Beirut, he would not be at risk if he returned to live openly there.⁹ Minister's intervention
- [18] The Minister submits that the appellant has not met his burden of proving, on a balance of probabilities, that there is a serious possibility of persecution throughout the country including in the proposed IFA city or that the IFA is unreasonable.¹⁰
- [19] The Minister submits that the appellant's evidence in relation to the altercation which resulted in threats is inconsistent. According to the evidence, he could not have been in hiding in mid XXXX or early XXXX because the threats had not taken place yet, at least according to Mr. XXXX's letter.¹¹
- [20] Furthermore, the complaint filed by the appellants' father also contradicts his testimony. According to the complaint, his son XXXX XXXX had received threats, not the appellant. During his interview at the port of entry, the appellant was asked if he used any other names and he responded no. It is unclear who XXXX XXXX is because according to the appellant's BOC, he had one brother whose name is XXXX XXXX. His father's complaint also contradicts that he went into hiding in XXXX XXXX XXXX and that no complaint was made to the authorities because it was futile to do so.¹²

- [21] Furthermore, his father states in his complaint that the members of the rival tribe would come look for him at midnight. This contradicts the appellant that he went to visit his family at night so that the members would not apprehend him.¹³
- [22] Lastly, it the Minister argues that it is evident from the information in the complaint that this document was fabricated sometime after the appellant's departure from Lebanon.¹⁴
- [23] Contrary to the appellant's assertion the Minister argues that he was asked about the precautions he took when he went to his village.¹⁵
- [24] It is further submitted that the RPD did not err in considering the motivation, ability, and willingness of the members of the XXXX tribe to look for the appellant in Beirut or elsewhere, other than going to his family's home in the village. This does not establish that they have an influence or ability to locate him in Beirut. The appellant's evidence that the XXXX tribe knew that he was in Beirut is speculative, as he provided no proof that they ever threatened or approached him while he was there, despite the fact that openly disclosed his place of employment and other social activities on social media.¹⁶
- [25] Finally the Minister argues that the appellant did not provide any reasons, besides the risk to his life from members of the XXXX tribe, as to why he could not relocate to Beirut and did not contest the RPD's conclusion that the relocation would not cause him undue hardship.¹⁷

ANALYSIS

Credibility

- [26] In his intervention, the Minister challenges the appellant's credibility as to the events that he alleges he lived while in XXXX. I note that the appellant did not avail himself of his right to file a reply with respect to these issues for the benefit if the RAD.
- [27] I agree with the Minister that there are important discrepancies in the evidence as to when the threats occurred and when the appellant went into hiding. According to the letter from XXXX XXXX XXXX, members of the XXXX family went to the appellant's house to fire shots and utter threats against him on XXXX XXXX, 2017, and XXXX XXXX, 2017, while pursuant to the statement made to the police by the appellant's father, as well as, the letter from the appellant's brother, the threats happened in XXXX 2017. The appellant has not submitted any reasonable explanations or evidence regarding these discrepancies, which raise a doubt as to the veracity of the alleged events.
- [28] Furthermore, I agree with the Minister that the complaint to the police made by his father raises further serious credibility concerns. Firstly, no objective evidence was submitted to explain why the complaint does not name the appellant as the person who was targeted by the XXXX clan, but rather refers to someone called XXXX XXXX. The complaint also appears to have been fabricated sometime after the appellant left the country in order to corroborate his story. The complaint is dated XXXX XXXX, 2017 but refers to the issuance of the visa and the appellant's departure from Lebanon. Such information was not available in XXXX when

the father made the complaint, because those events hadn't yet occurred. No evidence was submitted to explain these important irregularities.

- [29] I conclude that these significant contradictions severely affect the appellant's credibility as to the foundation of his claim.
- [30] Furthermore, as explained below, I agree with the RPD that the appellant has a viable IFA in Beirut. Internal flight alternative The test for finding a viable internal flight alternative
- [31] The test¹⁸ for determining whether there is an IFA is two-pronged. Firstly, the Board must be satisfied on the balance of probabilities that there is no serious possibility of the claimant being persecuted in the proposed IFA or being exposed to one of the risks enumerated in section 97 of the IRPA. Secondly, the condition in the proposed IFA must be such that it would not be objectively unreasonable in all circumstances, including those particular to the claimant, for them to seek refuge there.
- [32] The onus is on the claimant to demonstrate that there is no viable refuge in a different part of the country, before resorting to international protection. I find that the appellant has not met his burden of proof. First prong-prospective risk
- [33] The appellant refers to a RAD decision to advance that the RPD cannot speculate on the issue of capacity and resources available to agents of persecution to locate him in Lebanon. I am of the view that in the case under review, the RPD did not speculate but rather relied on relevant factors in assessing this issue.
- [34] Namely, the RPD correctly noted there is no evidence to show that there was any attempt to locate the appellant in Beirut during the XXXX months that he lived there. Despite the fact the appellant alleges that he moved around to different relatives' homes often and at an irregular pace because his agents of harm knew that he was in Beirut, nothing indicates that his agents of harm have tried to locate any of those relatives to track him down. Nor have they been able to track the appellant at his place of work.
- [35] I agree with the RPD that the appellant did not attempt to conceal information on his Facebook account which would have been of assistance to anyone who was serious about finding The appellant lists his place of residence as "Beirut" and the fact that he worked for the XXXX XXXX XXXX. This further militates towards a conclusion that his agents of harm lacked the capacity to locate and apprehend the appellant in Beirut.
- [36] Furthermore, it is difficult to believe that the appellant was able to make regular visits to his village, which he indicated is no bigger than XXXX square km, without being seen or apprehended by his agents of persecution. Especially considering his father's declaration that the members of the XXXX family would come to his house at midnight. The RPD correctly concluded that the fact that his agents of persecution were not able to apprehend him during his nightly visits to his village, despite the fact that they were allegedly monitoring his house, further demonstrates a lack of capacity to find the appellant in Beirut. It was not erroneous for the RPD to consider in its analysis the size of the IFA and that such a

large metropole offers sufficient anonymity to the appellant in light of all the other factors considered.

- [37] I also agree with the RPD that the evidence shows that the appellant lacked subjective fear. Contrary to the appellant's allegation, the RPD questioned him about the precautions he took to go to his village. The appellant explained that he went there at night, in the back seat of a friend's car and always returned to Beirut before sunrise. Nonetheless, I am of the view that those precautions are not objectively reasonable in the context where it is suggested that his family was being monitored by the XXXX family and that the risk of being apprehended was higher at night. While I accept that the appellant relied on financial support from his father, he has not provided a reasonable explanation as to why the money could not have been transferred to him in a different manner that did not require him to go to his village once a week.
- [38] I also draw a negative inference from the fact that the appellant engaged in a XXXX XXXX XXXX XXXX XXXX Course while supposedly in hiding which required him to leave his house daily.¹⁹ This is in stark contrast with his written narrative pursuant to which he limited his outing to XXXX once a week at the XXXX XXXX and to his bimonthly secret night outings with his friend, during the XXXX months he was in hiding
- [39] Finally, the appellant testified that he learned from his friends that his agents of harm had returned to his house three months before the hearing before the RPD. First, I agree with the RPD that his testimony around this issue was very vague. Secondly, I draw a negative inference both from his failure to amend his BOC in order to mention this important information, as well as, from his omission to mention this fact in the beginning of the hearing despite being asked if there was anything missing from his BOC. I, therefore, conclude that the appellant has submitted no credible evidence to show that his agents of harm are still looking for him or have threatened his family since he left his village in XXXX 2017.
- [40] I am of the view that the reasons identified above are sufficient to conclude that the appellant has not established, by a balance of probabilities, that he would be subjected to a serious possibility of persecution or to a risk to his life or to cruel and inhumane punishment or treatment if he relocates to Beirut. B. Second prong-the reasonableness of the IFA
- [41] The Federal court of appeal has set a very high threshold for the unreasonableness test. According to the Court: It requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. ... This is in sharp contrast with undue hardship resulting from loss of employment, loss of status, reduction in quality of life, loss of aspirations, loss of beloved ones and frustration of one's wishes and expectations.²⁰

[42] I agree with the Minister that the appellant did not provide any reasons, other than the risk to his life from members of the XXXX tribe, as why he could not relocate to Beirut. He did not contest the RPD's conclusion that the relocation would not cause him undue hardship, with which I concur.²¹

[43] I therefore conclude that the appellant has a viable IFA in Beirut.

CONCLUSION

[44] Pursuant to subsection 111 (1) (a) of the Act, the RAD confirms the decision of the RPD pursuant to which the appellant, XXXX XXXX, is neither a Convention refugee, nor a person in need of protection pursuant to sections 96 and 97 of the Act.

[45] The appeal is dismissed. (signed) Bianca E. Suciu Bianca Eleonora Suciu September 1, 2020
Date BES/tm

1. Minister of Citizenship and Immigration v. Huruglica, 2016 FCA 93 (Huruglica). 2 Appellant's memorandum, para 11. 3 Appellant's memorandum, para. 12. 4 Appellant's memorandum, para.13. 5 Appellant's memorandum, para. 14. 6 Appellant's memorandum, para. 15. 7 Appellant's memorandum, para. 16. 8 Appellant's memorandum, para. 17. 9 Appellant's memorandum, para. 18. 10 Minister's memorandum, para. 18. 11 Minister's memorandum, paras. 3-7. 12 Minister's memorandum, paras. 8-10. 13 Minister's memorandum, para.11. 14 Minister's memorandum, paras.12-13. 15 Minister's memorandum, para. 19. 16 Minister's memorandum, paras. 21-24. 17 Minister's memorandum, paras. 26-27. 18 Rasaratnam v. Canada (Minister of Employment and Immigration), [1992] 1 FC 706 (CA), 19 See transcription of hearing at p. 39. 20 Ranganathan v. Canada (Minister of Citizenship and Immigration), 2000 CanLII 16789 (FCA), para.15. 21 Minister's memorandum, paras. 26-27.

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