

CANADA / JUDGMENT

Ass'ad Hawari v. Canada (Citizenship and Immigration)

2022 FC 629

COURT

Federal Court

DECIDED

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Decision Content

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Ottawa, Ontario, May 2, 2022

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

MOHAMMAD HAMED ASS'AD HAWARI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

- [1] This is an application for judicial review of the September 9, 2020, decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada confirming the June 24, 2019, decision of the Refugee Protection Division [RPD] that the Applicant was not a Convention refugee nor a person in need of protection.
- [2] For the reasons that follow, I find that the decision under review is reasonable and this application must be dismissed.

Background

- [3] The Applicant is a stateless Palestinian who was raised in Jordan. His parents were both born in Palestine and were Jordanian citizens for some time.
- [4] In 2010, the Applicant's father, when attempting to renew his passport, was informed that his Jordanian citizenship had been revoked because he had residency in the West Bank. However, the father's West Bank residency had been revoked by the Israeli government in 2009. The Applicant's father was also informed that the citizenship of the Applicant and his siblings had also been revoked.
- [5] When the time came for the Applicant to renew his passport, he was informed that his Jordanian citizenship was revoked, and he was provided with a 5-year passport with no national identity number, indicating that he was no longer a citizen.
- [6] In 2011, the Applicant travelled to Germany, where he met with a lawyer and inquired about the possibility of making a refugee claim in Europe. He was informed that his case was not strong, and so he did not make a claim.
- [7] Prior to 2012, the Applicant was employed at a charter airline. Even before applying to renew his passport, the Applicant began to be subjected to heightened security screening. In 2012, the Applicant was fired from his job. While no official reason was given, the Applicant suspects that it was due to delays caused by the enhanced security checks. The Applicant attempted to obtain work with another airline and was hired for a probationary period, but he was subsequently terminated after failing to obtain a security clearance due to his lack of citizenship.
- [8] The Applicant then obtained employment in Saudi Arabia, and he had residency rights in Saudi Arabia as a result of this employment.
- [9] In November 2017, the Applicant's father fell ill. According to the Applicant, as a non-citizen he lacked access to proper medical treatment. The Applicant returned to Jordan and made requests to various government officials to have his father's citizenship restored.

- [10] The Applicant met with a purported government employee, Mohamed El Fayeze [El Fayeze]. El Fayeze agreed to use his government connections to assist in reinstating the citizenships of the Applicant, his father, and his brothers for 20,000 Jordanian dinars (approximately \$38,000 CAD). This was to be paid in two equal installments: the first immediately and the second upon the Applicant's father's citizenship being reinstated.
- [11] On January 7, 2018, El Fayeze attempted to modify the agreement and demanded the second payment immediately. The Applicant refused and falsely told El Fayeze that he had recorded their conversation in an effort to scare him. El Fayeze told the Applicant he would regret recording the conversation and would take revenge.
- [12] On January 8, 2018, the Applicant was detained by security officials and taken to a police station. The Applicant was questioned about his identity, nationality, the contacts in his phone, and the reasons for losing his citizenship. The officer then told the Applicant that he knew the Applicant had been in touch with El Fayeze and that the Applicant and his family would disappear if he attempted to confront him. The Applicant told the officer that El Fayeze had taken his money and that he wanted to solicit help from the authorities, but the officer warned him not to do so.
- [13] On January 9, 2018, the Applicant received a call from El Fayeze. He told the Applicant that he was aware that the Applicant had threatened to bring the matter to the authorities and that he would catch up to the Applicant and shoot him before he could do so. The Applicant immediately left for Saudi Arabia. That evening, two men came to the Applicant's family's home looking for him.
- [14] On January 21, 2018, the Applicant travelled to Toronto and received a visitor's permit until July 21, 2018. On February 1, 2018, the Applicant was informed that his employment in Saudi Arabia had been terminated. His exit/re-entry visa for Saudi Arabia, which had been sponsored by his employer, expired on April 15, 2018, and the Applicant no longer has a right to enter Saudi Arabia.
- [15] The Applicant applied for refugee protection in Canada in August 2018. The Applicant claims that he originally intended to apply for protection in the United States, but immigration consultants and lawyers advised him that the U.S. would not accept his claim.
- [16] In July 2018, the Applicant's father re-acquired his Jordanian citizenship, which also resulted in the Applicant's siblings re-acquiring citizenship. However, the Applicant's parents were unable to re-acquire citizenship for the Applicant despite having been granted a power of attorney. The government officials insisted that the Applicant must attend in person to obtain his citizenship, despite his siblings not being required to attend in person.
- [17] The Applicant believes that if he appears in Jordan, he will not be given citizenship. The Applicant believes that his family was given citizenship due to El Fayeze's influence, which he did in order to trick the Applicant into returning to Jordan.

- [18] The re-acquired citizenships were conditional on the Applicant's father reacquiring West Bank residency – something that the Applicant says was not possible as Israeli authorities would not allow his father to enter the West Bank to do so. The Applicant's father passed away on March 26, 2019, without having obtained West Bank residency. The Applicant is concerned that his and his family's citizenships will again be revoked due to their inability to obtain residency rights in the West Bank.
- [19] On June 24, 2019, the RPD dismissed the Applicant's application for refugee protection.
- [20] The RPD found that the Applicant is a stateless Palestinian. The RPD accepted the Applicant's testimony that he is unable to return to Saudi Arabia and noted that the Applicant did not allege any fears in Saudi Arabia. As such, the RPD only analyzed the Applicant's claim in relation to Jordan.
- [21] The RPD found that there was no objective basis for the risk to the claimant in Jordan because there was no reasonable motivation for El Favez, the agent of the Applicant's persecution, to pursue the Applicant now or in the future.
- [22] The RPD noted that the reason that the Applicant was being extorted was due to the Applicant seeking to restore his father's citizenship; however, his father did re-acquire his Jordanian citizenship.
- [23] The RPD also noted that the Applicant had not expressed any concerns about being able to return to Jordan other than his belief that it was a trap. The RPD found this to be speculative and unsupported by evidence.
- [24] The RPD noted that the Applicant had testified that El Favez may want to protect his reputation or to obtain full payment from the Applicant. The RPD found these motivations to be unreasonable. The RPD found that someone of El Favez's purported power or influence would be unlikely to be concerned about a harm to his reputation from an extortion allegation made a year and a half ago, nor would he feel threatened by the Applicant, a stateless Palestinian of little influence.
- [25] The RPD also found it implausible that such a person would create a trap to bring the Applicant back to Jordan for the relatively small sum of 10,000 Jordanian dinars (approximately \$19,000 CAD).
- [26] The RPD also noted that there had been no threats to the Applicant or his family, who continued to reside at the same address, since his departure from Jordan. This indicated that El Favez was not motivated to pursue the Applicant.
- [27] The RPD found that the Applicant was unable to demonstrate a well-founded fear of persecution based on his nationality should he return to Jordan.
- [28] In the RPD's view, the Applicant was unable to provide any evidence of treatment that would amount to persecution due to his status as a stateless Palestinian. The RPD noted that the Applicant had been gainfully employed in Jordan almost continuously from 2005 to 2012, his

brothers continued to work during the 8 years in which they did not have citizenship, and the Applicant's father was able to access medical care while stateless. The RPD also noted that, in his testimony, the Applicant was unable to identify any difficulties his brothers experienced in the 8 years in which they did not have citizenship, other than being stopped and asked for identification at checkpoints, and that the only difficulty that he indicated he might face was a longer process for obtaining a driver's license.

- [29] The RPD reviewed the country documentation, which indicates that while stateless Palestinians in Jordan are not entitled to receive free public health care or tertiary education, stateless Palestinians are not denied health care, education, or housing. Furthermore, while there are certain rights restrictions for stateless Palestinians, including fewer employment opportunities, they are not cut out of the job market entirely. The RPD noted that Palestinians make up the majority of the population of Jordan and while the situation for Palestinians is not ideal, it is better than in other Arab countries.
- [30] The Applicant appealed to the RAD. On September 9, 2020, the RAD dismissed his appeal having conducted its own independent assessment of the evidence.
- [31] The RAD found that the RPD did not err in finding there was no motivation for El Fayeze to pursue the Applicant. The RAD reiterated the RPD's findings that the Applicant's family had regained their citizenships with no indication of El Fayeze's involvement (especially given that El Fayeze had not been paid the full amount to do so) and had never heard from El Fayeze or his associates after the Applicant left Jordan. The RAD found that the death of the Applicant's father and the two years that had now elapsed without El Fayeze being reported to any authorities by the Applicant or his family further supported a finding that El Fayeze was not motivated to pursue the Applicant. The RAD also noted that the Applicant had testified that his interaction with the police was more of a warning than a threat (i.e. warning him that reporting El Fayeze might cause trouble, but not indicating that this trouble would come from the police).
- [32] The RAD acknowledged that the RPD's statement that the sum of money was too small to motivate El Fayeze to pursue the Applicant was possibly unduly speculative. However, the RAD found even if it were unduly speculative, it would not undermine the RPD's overall determination regarding El Fayeze's motivation based on the other evidence.
- [33] The RAD rejected the Applicant's argument that the revocation of his citizenship alone was sufficient persecution or, in the alternative, his threat to El Fayeze constituted an imputed political opinion.
- [34] The RAD acknowledged that arbitrary revocation of citizenship may constitute persecution but found that in this case it did not. The Applicant did not flee Jordan until 8 years after his citizenship had been revoked and did not allege any serious rights violations suffered by him or his siblings in that time. The RAD found that the Applicant was able to mitigate his job loss by finding alternative employment. The RAD found that the evidence did not point to the Applicant's loss of citizenship being linked to vested government hostility or the removal

of residency rights – even without citizenship, the Applicant remained eligible to reside in Jordan.

- [35] The RAD found that there was no nexus to imputed political opinion. The RAD noted that the transaction with El Fayez was secret and outside of legal channels. The RAD found that while threatening to report El Fayez may have been risky, there was no evidentiary basis to tie it to political opinion. Even when viewed from the perspective of El Fayez, the RAD found that the Applicant's threat was transactional in nature, arising out of his concern for his father's health, and not based on a political opinion either against the state or against El Fayez's tribe.
- [36] The RAD agreed with the RPD that the Applicant did not have a well-founded fear of persecution based on his status as a stateless Palestinian. The RAD noted the RPD's consideration of the national documentation and the lack of specific examples of hardship faced by the Applicant and his siblings. The RAD acknowledged a letter from the Applicant's father that described his family's life after losing citizenship as much more difficult than before, but the RAD found the contents of this letter overly vague and so afforded it little weight.
- [37] The RAD found that in Jordan certain individuals have disproportionate access to power and that these individuals carry this advantage in their encounters with government; however, the private sector is dominated by Palestinian-Jordanians and Palestinians. The RAD recognized that stateless Palestinians do not have access to subsidized public health care but noted that the Applicant's father was still able to benefit from such care due to the local hospital staff not verifying his citizenship.
- [38] The RAD acknowledged that the RPD erred by comparing the treatment of Palestinians in Jordan with those in other countries. However, it found that this error did not taint the entirety of the RPD's analysis.
- [39] The RAD found that the RPD's process was procedurally fair. The Applicant was represented by counsel, the hearing lasted over 4 hours, and counsel was not hindered in asking questions. The Applicant was also afforded an opportunity to make post-hearing written submissions.

Issue

- [40] The sole issue in this application is whether the RAD's decision is reasonable.

Analysis

- [41] The Applicant raises three areas where he submits the decision is unreasonable: (1) the nature of the threats alleged by the Applicant, (2) the alleged serious violations of human rights after his citizenship was revoked, and (3) the assessment of conditions for stateless Palestinians in Jordan.

1. Nature of the Alleged Harm

- [42] The Applicant submits that the RAD misapprehended the nature of the threats alleged by the Applicant, thus rendering its decision unreasonable.
- [43] The Applicant submits that it is immaterial that his family has regained citizenship. El Fayeze still believes that he is owed money by the Applicant and that the Applicant has a recording of him that could harm his reputation.
- [44] The Applicant submits that the RAD's analysis is based on improper speculation into El Fayeze's motivations. The Applicant submits that there is no evidence to establish that El Fayeze is not concerned by the alleged recording nor that the sum of money is too small to motivate him.
- [45] The Applicant submits that it is an error to expect agents of persecution to act rationally according to Canadian standards (see *Selliah v Canada* (Minister of Citizenship and Immigration), 2006 FC 493 at para 6; *Taboada v Canada* (Minister of Citizenship and Immigration), 2008 FC 1122 at para 34; *Yoosuf v Canada* (Minister of Citizenship and Immigration), 2005 FC 1116 at para 8). Negative plausibility findings should only be based on clear facts, with a clear rationalization process, and with reference to relevant evidence (see *Santos v Canada* (Minister of Citizenship and Immigration), 2004 FC 937 at para 15).
- [46] The Applicant submits that there was evidence, including from the country documentation, that Jordanian tribes use violence to protect their reputations, which is what the Applicant feared.
- [47] The Applicant argues that the RAD based its finding on speculation despite a "glut of credible evidence" that the RAD did not find credible. This evidence includes the Applicant's travel documents, his and his family's identification documents, and a letter from his mother confirming that she has been unable to restore his citizenship despite having a power of attorney. The Applicant submits that the RAD did not address the issue of the Applicant having to appear in person to obtain his citizenship while his siblings did not.
- [48] The Applicant submits that there is no clear evidence that he would be able to have his citizenship restored upon his return to Jordan and that, even if it were restored, there is a real chance that it would be revoked given that it was conditional on his father renewing his West Bank residency.
- [49] The Applicant takes issue with the RAD saying that the Applicant received a "warning" and not a "threat" when approached by the authorities. The Applicant submits that the RAD ignored the evidence that that El Fayeze contacted him after he was interrogated and threatened him, and that two men came to his family home the same day looking for him.
- [50] In large part, the Applicant is asking the Court to make a finding of unreasonableness on this alleged basis by conducting a microscopic review of the decision. I am not persuaded that any of the errors were made as alleged.

- [51] It was reasonable for the RAD to conclude that El Fayeze had no motivation to pursue the Applicant at this time. The RAD reviewed the circumstances of the Applicant's interactions with El Fayeze and, based on these circumstances, reached the conclusion that El Fayeze was unlikely to pursue the Applicant if he were to return to Jordan.
- [52] The evidence before the RAD on which it based this conclusion was that there has been no interaction with El Fayeze or his associates since the days immediately after the Applicant telling El Fayeze he had recorded their conversation. The RAD found this inconsistent with El Fayeze remaining concerned about being reported by the Applicant. This conclusion was reasonable.
- [53] Furthermore, the RAD noted that El Fayeze did not appear to have made good on his end of the bargain. This reasonably suggests that El Fayeze would not consider the Applicant as owing him money as he had never performed services he offered.
- [54] The Applicant has expressed concern that El Fayeze is attempting to trick him into returning to Jordan. The RAD reasonably concluded that there was no evidence to support this belief and that the Applicant's fear is purely speculative.

2. Human Rights Violations after Revocation of Citizenship

- [55] The Applicant submits that the RAD erred in finding that he did not allege any serious violations of human rights after his citizenship was revoked. The Applicant notes that as a result of his lack of citizenship he lost his employment due to harassment by authorities impacting his duties and had to find work in another country. The Applicant submits that he did not wait 8 years to flee Jordan as the RAD claims. The Applicant notes that he went to Europe in 2011 and sought legal advice regarding making a claim and had to seek work in another country. The Applicant submits that his going to Europe in 2011 to potentially make a refugee claim also demonstrates that the circumstances he faced were serious.
- [56] The Applicant submits that there is a clear refugee nexus based on his nationality, which is the reason his citizenship was revoked. The Applicant submits that Canadian and international law clearly demonstrate that stripping a person of citizenship can constitute persecution (see *Maarouf v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 723 (FCA)). The Applicant submits that Jordan has a history of disregarding the right to nationality. Jordan has a history of arbitrarily revoking citizenships and has not ratified the 1961 United Nations Convention on the Reduction of Statelessness.
- [57] The Applicant submits that his interactions with El Fayeze are based on both his nationality and an imputed political opinion. The Applicant notes that the initial revocation of his citizenship has a clear nexus to the 1951 Refugee Convention and so the consequences of the Applicant resorting to irregular means to vindicate his rights also have a nexus to the Convention.

- [58] The Applicant submits that finding an imputed political opinion does not require his conduct to be construed as an attack against the state apparatus. The Applicant cites *Klinko v Canada (Minister of Citizenship and Immigration)*, [2000] 3 FC 327 (FCA) [Klinko] at paragraph 35, where the Appeal Division of the Federal Court found that in cases where “the corrupt elements so permeate the government as to be part of its very fabric, a denunciation of the existing corruption is an expression of ‘political opinion.’” El Fayeze put himself forward as someone working for the government or having government connections, and, according to the Applicant, the threat to report him amounts to an opposition to government corruption, making it an imputed political opinion. There was evidence before the RAD of the widespread corruption in Jordan.
- [59] The Applicant submits that the RAD erred in finding he did not face a forward-facing risk. The Applicant submits that there is clear evidence to demonstrate an objective basis for the Applicant’s fear of retribution from El Fayeze, there is clear evidence that he faced persecution as a result of his citizenship being revoked (including the initial revocation itself), and it is clear that there is a real risk that his citizenship will be revoked again in the future based on past actions and the fact that the restoration of citizenship was conditional on his father obtaining West Bank residency.
- [60] I agree with the submission of the Respondent that the RAD’s assessment of the nexus to a Convention ground was reasonable. The RAD held that there was no evidence pointing to the stripping of the Applicant’s citizenship being linked to vested government hostility or the removal of residence rights. Nor did the Applicant provide specific details of persecution he faced from losing his citizenship.
- [61] I also agree that the RAD reasonably rejected the submission respecting imputed political opinion. It was reasonable to conclude that El Fayeze viewed the agreement as transactional and not political. *Klinko* is distinguishable as that case addressed widespread corruption impacting social groups, while the present case deals with a secret private agreement.
3. Conditions for Stateless Palestinians in Jordan
- [62] The Applicant submits that the RAD erred in its assessment of conditions for stateless Palestinians in Jordan and says that they face many forms of discrimination cumulatively amounting to persecution. This includes no automatic right to a work permit and the denial of essential public services, such as health care and education. The Applicant submits that the RAD’s statement that the private sector in Jordan is “dominated” by Jordanian Palestinians is misleading as public sector work is not available to them and so the only remaining option is work in the private sector.
- [63] I find that the RAD’s assessment of difficulties that stateless Palestinians experience in Jordan was reasonable. The RAD considered the Applicant’s ability to reside in Jordan, access health care and employment, and receive a passport, along with the relevant national documentation.

- [64] It is clear that stateless Palestinians face hardship in Jordan, including having fewer employment opportunities and reduced rights. However, stateless Palestinians still retain the rights to work and to reside in the country. While stateless Palestinians do not have access to subsidized health care and education, they are also not denied those services entirely.
- [65] The Applicant lost his employment due to his lack of citizenship and moved to Saudi Arabia for work. However, there was no evidence that it would have been impossible for the Applicant to find work in Jordan. Indeed, the Applicant's brothers lived and worked in Jordan continuously in the period in which their citizenships were revoked. The Applicant is well educated, has significant work experience, and describes himself as a hard worker.
- [66] Overall, based on the evidence before it, it was reasonable for the RAD to conclude that the discrimination faced by the Applicant did not amount to persecution.

Conclusion

- [67] For these reasons, the application will be dismissed. No question was posed for certification.

JUDGMENT IN IMM-4952-20

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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