

CANADA / JUDGMENT

TB9-08334

COURT

Refugee Appeal Division

DECIDED

28 September 2020

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RAD File No. / No de dossier de la SAR : TB9-08334 TB9-08335 Private Proceeding/ Huis clos
Reasons and Decision - Motifs et décision Persons who are the subject of the appeal XXXX XXXX
XXXX XXXX XXXXXXXXXX XXXX XXXX XXXX Personnes en cause Appeal considered / heard at
Toronto, ON Appel instruit / entendu à Date of decision September 28, 2020 Date de la décision
Panel Me H. Shepherd Tribunal Counsel for the persons who are the subject of the appeal Me
Meryam Haddad Conseil des personnes en cause Designated representative N/A Représentant(e)
désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION

INTRODUCTION

- [1] I allow the appeal. The principal appellant (PA), XXXX XXXX XXXX XXXX XXXX and the associate appellant (AA), XXXX XXXX XXXX XXXX XXXX are citizens of Yemen. The appellants requested neither the admission of new evidence nor that an oral hearing be held. The transcript of the hearing is available. Summary of the Basis of Claim Form
- [2] The PA fled rather than concede to the demand that he join the Houthis. His wife fears being kidnapped, raped or killed by the Houthis and the non-Houthis. The Refugee Protection Division's conclusions
- [3] The Refugee Protection Division (RPD) rejected the claims for the following reasons:
- i) The appellants are not credible. ii) The appellants do not have a subjective fear because they did not claim refugee protection in the United States (US) and they delayed leaving the country. iii) The AA's fears are not mentioned in her written account. iv) The PA's brother's mistreatment is not described in his written account.
 - v) There is a lack of corroborating evidence from the family on the subject of recruitment by the Houthis. vi) There is an internal flight alternative (IFA) in Aden. Grounds for appeal
- [4] The appellants submit that the RPD erred for the following reasons:

- i) The RPD requested corroborating documentary evidence when there is detailed objective evidence in the National Documentation Package. ii) The RPD referred to Chairperson's Guideline 41 and Guideline 12 but never applied them. iii) The conclusions on the subjective fear are contrary to the case law. iv) The RPD erred in all of its findings on the appellants' credibility.
 - v) The analysis of the objective fear was not done independently of the panel's doubt as to the appellants' credibility. vi) The test applied to the IFA is deficient and the analysis is erroneous. vii) The panel did not analyze the fear of being perceived as US enemy agents.
- Summary of the Refugee Appeal Division's reasons for decision
- [5] The determinative issues are credibility, the internal flight alternative and the conditions in the country. The RPD erred in making adverse inferences regarding the lack of subjective fear and regarding credibility. The appellants are from the north and are at risk of persecution by the Houthis due to their association with American and western values. They do not have an IFA in Aden because of their northern origins.

DETERMINATION

- [6] The appeal is allowed. I substitute my own determination that the appellants are Convention refugees.³

ANALYSIS

- [7] My role is to examine all of the evidence and determine whether the RPD's decision is correct.⁴
- [8] The RPD erred in concluding that the fact that the appellants did not claim refugee protection in the US and their delay in leaving that country indicated a lack of subjective fear. The PA was legally admitted to the US as a student and studied there until he received a XXXX XXXX XXXX XXXX in May 2017. The AA arrived in 2014, also with legal status. They came to Canada on XXXX XXXX, 2017, shortly after graduating from university, to claim refugee protection. Given their legal status in the US, the appellants did not have compelling reasons to claim refugee protection at that time. They came to Canada and made refugee protection claims with due diligence. I also note that the US has a limitation period of one year for applying for asylum.
- [9] The RPD erred in making an adverse inference regarding the failure to provide supporting documents as required under rule 11 of the Refugee Protection Division Rules.⁵ Federal Court case law has established that such an inference can be made from a failure to provide a satisfactory explanation for a lack of documents, but not solely from their absence. The RPD was not able to evaluate whether the explanations were reasonable because it did not ask the appellants to explain why no supporting documentation had been submitted.⁶

- [10] Both appellants were born in the north in an area now controlled by the Houthis. They both lived in Sanaa before leaving the country. The RPD erred in not evaluating the risk in the north with regard to residing and studying in the US. Neither of the appellants has lived in Sanaa since the Houthis took control. The regime does not tolerate political opponents and the US supports the opposing military forces.⁷ The social and political culture in the US is diametrically opposed to the Houthis' beliefs and values. The Houthis would probably consider the appellants to be persons of interest. The group continues to harass and prosecute without legal basis academics, students, politicians, journalists and minority groups.⁸ The appellants risk persecution in the north.
- [11] Although the PA's sister lives in Aden, she married 20 years ago and is well established in the city. The PA is not in a similar situation. Some members of the AA's family do not have the same roots in Sanaa as she does, and they are also well established in Aden. Furthermore, the AA is married to a person from the north with no history in Aden. The appellants' situation is distinct from that of the other family members in Aden.
- [12] All significant information is to be stated in the written account. Although a reference to a cousin's expulsion from Aden to the north should have been included, this factor is not determinative. The RPD noted the issue of the expulsion of people with northern origins from Aden. This observation is supported by the U.S. Department of State report.⁹
- [13] According to Human Rights Watch, the armed conflict in Yemen has created the greatest humanitarian crisis in the world.¹⁰ Over 17,500 civilians have been killed or injured since 2015, and more than 20 million people are suffering from food insecurity. Of these, 10 million are threatened with famine. The Office of the United Nations High Commissioner for Refugees agrees with this assessment.¹¹ As people from the north who have not lived in Aden recently (for the AA) or at all (for the PA), they risk persecution and expulsion due to their place of origin.
- [14] The appellants have a nexus to the Convention Relating to the Status of Refugees due to their northern ethnicity and the political opinion imputed to them due to their place of origin.
- [15] The appellants are at risk of persecution in the north and Aden is not a safe or reasonable IFA.

CONCLUSION

- [16] The appeal is allowed. Under subsection 111(1) of the Immigration and Refugee Protection Act, I substitute my own determination that the appellants are Convention refugees. (signed) H. Shepherd H. Shepherd September 28, 2020 Date Original language: French IRB translation 1 Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution. Update, Guideline issued by the Chairperson pursuant to subsection 65(3) of the Immigration Act. Immigration and Refugee Board of Canada (IRB), Ottawa, Effective date: November 13, 1996. 2 Chairperson's Guideline 1: Civilian Non-Combatants Fearing Persecution in Civil War Situations. Guideline issued by the Chairperson pursuant to

subsection 65(3) of the Immigration Act. IRB, Ottawa, Effective date: March 7, 1996. 3 Immigration and Refugee Protection Act (S.C. 2001, c. 27). 4 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93(CanLII); see also Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145 (CanLII), [2019] 2 FCR 597. 5 Refugee Protection Division Rules (SOR/2012-256), rule 11. 6 Amarapala v. Canada (Minister of Citizenship and Immigration), 2004 FC 12 (CanLII) at para. 10. 7 Exhibit SAR-1, National Documentation Package on Yemen (May 29, 2020), Tab 14.3. Response to Information Request YEM105787.E. 8 Ibid. at Tab 2.4.? 9 Ibid. at Tab 2.1. 10 Ibid. at Tab 2.4. 11 Ibid. at Tab 2.5.

RAD File No. / No de dossier de la SAR : TB9-08334 TB9-08335 RAD.25.02 (January 2020)
Disponible en français 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 (January 2020) Disponible en français

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Prepared on 26 October 2026 · Esheria