

CANADA / JUDGMENT

MB9-26386

COURT

Refugee Appeal Division

DECIDED

14 January 2020

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RAD File No. / No de dossier de la SAR : MB9-26386 MB9-26387 / MB9-26388 / MB9-26389 Private Proceeding / Huis clos Reasons and Decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX Personnes en cause Appeal considered / heard at Montréal, Quebec Appel instruit / entendu à Date of decision January 14, 2020 Date de la décision Panel Ayanna Roberts Tribunal Counsel for the persons who are the subject of the appeal Me Jacques Beauchemin Conseil des personnes en cause Designated representative XXXX XXXX XXXX Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION OVERVIEW

- [1] XXXX XXXX XXXX (principal appellant), XXXX XXXX XXXX (associate appellant), and XXXX XXXX XXXX and XXXX XXXX XXXX (minor appellants) are stateless Palestinians with travel documents issued by Lebanon. The adult appellants (the principal appellant and the associate appellant) lived in Lebanon as children before moving to the United Arab Emirates (UAE) in 1999. The minor appellants were born in the UAE.
- [2] The appellants left the UAE on XXXX XXXX, 2018, because the principal appellant lost his job and, therefore, his residence permit. Afraid of being deported to Lebanon, the authority that had issued their travel documents, they travelled to the United States, then crossed the Canadian border and claimed refugee protection. The appellants fear returning to Lebanon because of the persecutory treatment of Palestinians by Lebanese authorities and society. Furthermore, the principal appellant's brothers were members of Fatah, a faction of the Palestine Liberation Organization (PLO) in the 1980s and 1990s. His brothers left Lebanon on account of persecutory treatment in the early 1990s and were granted asylum in Europe, where they currently live. The principal appellant fears that his family would have problems with the Lebanese armed forces and militia groups because of the history between those organizations and his family.
- [3] The Refugee Protection Division (RPD) concluded that the appellants were not persecuted in the UAE and rejected their refugee protection claims for that reason. The RPD did not come to a conclusion on the persecutory treatment of Palestinians in Lebanon. The appellants allege that the RPD erred by failing to assess their fear in Lebanon and contend that discrimination against Palestinians in the UAE and Lebanon constitutes persecution. They state that the RPD erred by failing to assess their fear in Lebanon from the perspective of

section 97 of the Immigration and Refugee Protection Act (IRPA).

- [4] The appeal is allowed. The appellants are Convention refugees. The adult appellants would face cumulative discrimination that constitutes persecution in Lebanon and are not entitled to return to the UAE. The minor appellants would face discrimination that amounts to persecution in the UAE as separated children who are Palestinian. The RPD erred by failing to analyze the appellants' refugee protection claims from the perspective of section 97 of the IRPA.

ANALYSIS

Determinative issue

- [5] The determinative issues are: * As Palestinians, would the adult appellants be persecuted in Lebanon? * Can the adult appellants return to the UAE? * Would the minor appellants be persecuted in the UAE? Applying the framework of analysis: Country of reference
- [6] The RPD did not err by concluding that the countries of reference for the adult appellants are the UAE and Lebanon, and that for the minor appellants only, the UAE is a country of reference. The appellants do not dispute the RPD's conclusion in this regard. The Refugee Protection Division erred by failing to complete the analysis of the appellants' persecution in Lebanon
- [7] The RPD concluded that the appellants failed to establish a well-founded fear of persecution in the UAE, resulting in the rejection of their refugee protection claims. The RPD did not conduct an analysis of the adult appellants' fear in Lebanon, as it had already concluded that their fear of persecution in the UAE had not been established.
- [8] The appellants contend that the RPD erred in its interpretation and application of Thabet¹ in its analysis of their fear of persecution. According to their interpretation, the case law requires them to demonstrate that one of their two countries of habitual residence persecuted them and that they are unable or unwilling to return to the other country.
- [9] In Thabet, the Court concludes as follows: In order to be found to be a Convention refugee, a stateless person must show that, on a balance of probabilities he or she would suffer persecution in any country of former habitual residence, and that he or she cannot return to any of his or her other countries of former habitual residence.²
- [10] Coming to this conclusion, the Court states: Likewise, where a claimant has been resident in more than one country it is not necessary to prove that there was persecution at the hands of all those countries. But it is necessary to demonstrate that one country was guilty of persecution, and that the claimant is unable or unwilling to return to any of the states where he or she formerly habitually resided.³

- [11] Based on this case law, the adult appellants must demonstrate that they were persecuted in at least one of their two countries of reference and that they cannot return to the other country of reference, even if they were not persecuted in that other country. Persecution in Lebanon The adult appellants would be subjected to persecution in Lebanon as stateless Palestinians
- [12] The RPD erred, as it did not conduct an analysis of the cumulative discrimination that Palestinians are subjected to in Lebanon, having already concluded that they failed to establish that they would be persecuted in the UAE.
- [13] The appellants allege that the objective evidence shows that Palestinians in Lebanon are subjected to systemic discrimination from the state. They allege that the RPD erred by disregarding the evidence that they had submitted, which indicates that Palestinians cannot work in Lebanon.
- [14] According to their testimony, if they return to Lebanon, the appellants will have to settle in a Palestinian refugee camp. They allege that they would face discrimination in terms of access to employment, that they would be prohibited from becoming property owners, that their children would not be able to attend public school, that they would not have access to health services and that there are security issues in the camps.
- [15] The documentary evidence supports the appellants' contentions that, as Palestinians, they would be subjected to systemic discrimination from the state and society in Lebanon.⁴ It indicates that the poverty rate for Palestinians in Lebanon is between 65 percent and 90 percent.⁵ Access to employment is very limited for Palestinians, who are barred from working in some 20 types of professions despite new legislation designed to improve their integration into the labour market.⁶ The jobs offered to Palestinians are often informal, without insurance and very low-paying.⁷ Their access to health, education and social services is very limited.⁸
- [16] Palestinians cannot own property and tend to live in Palestinian refugee camps on account of their poverty, which limits their access to housing outside those camps.⁹ Controls on the movement of people in those camps impose additional limitations on their access to employment and essential services.¹⁰
- [17] My analysis of the objective evidence and the appellants' testimony leads me to conclude that the discrimination the appellants would be subjected to as Palestinians amounts to persecution. I conclude that this persecution stems from discriminatory policies towards Palestinians imposed by Lebanon as a state, and also from attitudes prevalent in Lebanese society. Persecution in the United Arab Emirates The adult appellants are not entitled to return to the United Arab Emirates
- [18] Having concluded that the adult appellants would be subjected to persecution in Lebanon, it is necessary to analyze whether they can return to the UAE.

- [19] The appellants testified that they cannot go back to the UAE because they do not have the residence visas needed to return there. The principal appellant lost his job on XXXX XXXX, 2017, and did not find another. This lack of employment caused the appellants to leave the UAE because they were at risk of losing their home and being deported to Lebanon.
- [20] As holders of Lebanese travel documents for Palestinians, the appellants cannot return to the UAE without a sponsor-an employer or a member of their family.¹¹ The appellants did not mention having a family member in the UAE who can sponsor them. The appellants left the country because of a lack of employment after looking for work for six months. For these reasons, I conclude that the appellants are not entitled to return to the UAE. The minor appellants would be persecuted in the United Arab Emirates
- [21] As for the minor appellants, their designated representative, their father, did not articulate any fear on their behalf. However, having concluded that the adult appellants have a well-founded fear of persecution in Lebanon and cannot return to the UAE, the RPD's conclusion would result in the children's returning to the UAE without their parents. This requires an analysis of the children's well-being as Palestinians within the context of the possibility of persecution in the UAE.
- [22] The objective evidence does not address the situation of stateless children who are in the UAE without their parents. However, the objective evidence regarding stateless Palestinians states that they are non-citizens who cannot access free, public social services, including education and health services.¹² Citizens can access these public and private services. There is no indication that the state would take charge of the minor appellants as separated children. Without a parent or sponsor who could pay for their tuition, housing and health care expenses, the minor appellants would be unable to meet their basic needs. The minor appellants would be in this situation because they are stateless Palestinians. In light of this evidence, I conclude that the minor appellants would face cumulative discrimination that amounts to persecution. Section 97 analysis
- [23] The appellants allege that the RPD erred by failing to conduct a separate analysis based on section 97 of the IRPA. They allege that they submitted credible evidence that they would be targeted by various Palestinian factions in Lebanon because of the family's historical association with the PLO. Although I have concluded that the RPD erred by rejecting their refugee protection claims under section 96 without completing the analysis from the perspective of section 97, since I have already confirmed that the appellants are Convention refugees, I will not address these arguments in this decision.

CONCLUSION

- [24] The appeal is allowed. Pursuant to paragraph 111(1)(b) of the IRPA, the Refugee Appeal Division sets aside the determination of the RPD and substitutes its own determination, namely, that the appellants are Convention refugees. (signed) Ayanna Roberts Ayanna Roberts January 14, 2020 Date IRB translation Original language: French 1 Thabet v. Canada

(Minister of Citizenship and Immigration), 1998 CanLII 9063 (FCA), [1998] 4 FC 21, <<http://canlii.ca/t/4mj3>>, consulted 2019-12-30. 2 Idem. 3 Idem. 4 National Documentation Package (NDP), Lebanon, November 29, 2019, Tab 13.1: "Treatment of Palestinian refugees, including information on identity documents, mobility rights, property rights, access to social services, education and employment, and living conditions." Immigration and Refugee Board of Canada. November 15, 2011. LBN103848.E. NDP, Lebanon, November 29, 2019, Tab 13.5: "Treatment of Palestinians by society and authorities; state protection; treatment of Sunni Palestinians from refugee camps near Beirut by Hezbollah (2012-December 2013)." Immigration and Refugee Board of Canada. December 10, 2013. LBN104692.E. 5 NDP, Lebanon, November 29, 2019, Tab 1.6: Country Policy and Information Note. Lebanon: Palestinians. United Kingdom. Home Office. June 2018. 6 NDP, Lebanon, November 29, 2019, Tab 13.7: Stateless Palestinian Refugees in Lebanon. Country of Origin Information for the Asylum Determination Process. Report from Danish Immigration Service's Fact Finding Mission to Beirut, Lebanon. 25 May to 6 June 2014. Denmark. Danish Immigration Service. October 2014. Refugee Protection Division record. Au Liban, les Palestiniens s'insurgent contre le plan " anti-travail illégal " [in Lebanon, Palestinians are rising up against the anti-illegal work plan]. La-croix.com. Pages 233-236. 7 NDP, Lebanon, November 29, 2019, Tab 13.7: Stateless Palestinian Refugees in Lebanon. Country of Origin Information for the Asylum Determination Process. Report from Danish Immigration Service's Fact Finding Mission to Beirut, Lebanon. 25 May to 6 June 2014. Denmark. Danish Immigration Service. October 2014. 8 NDP, Lebanon, November 29, 2019, Tab 13.5: "Treatment of Palestinians by society and authorities; state protection; treatment of Sunni Palestinians from refugee camps near Beirut by Hezbollah (2012-December 2013)." Immigration and Refugee Board of Canada. December 10, 2013. LBN104692.E. 9 NDP, Lebanon, November 29, 2019, Tab 13.11: Protection Brief: Palestine Refugees Living in Lebanon. United Nations Relief and Works Agency for Palestine Refugees in the Near East. June 2018. 10 NDP, Lebanon, November 29, 2019, Tab 13.2: The Situation of Palestinian Refugees in Lebanon. United Nations High Commissioner for Refugees. February 2016. 11 NDP, United Arab Emirates, March 29, 2019, Tab 14.1: "Exit procedures and documents required for resident foreigners who leave the country, including whether the residence permit is cancelled when the resident leaves the UAE; whether the holder of a valid residence permit can return to the UAE, particularly more than six months after departure; whether foreign workers can remain in the UAE after retirement; whether a sponsor can cancel a residence permit while the holder is abroad (2014-April 2016)." Immigration and Refugee Board of Canada. 2016. ARE105443.E. 12 NDP, United Arab Emirates, March 29, 2019, Tab 14.2: "Palestine and United Arab Emirates: residence status of stateless Palestinians, including access to employment, education, health care and other services, and the ability to travel in and out of the country; the requirements and procedures to ..." Immigration and Refugee Board of Canada. November 24, 2017. ZZZ106014.E.

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Refugee Appeal Division Commission de l'immigration et du statut de réfugié du Canada Section
d'appel des réfugiés RAD.25.02 (April 4, 2019) Disponible en français

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Prepared on 27 October 2026 · Esheria