Date: 20030910

Docket: IMM-4835-02

Citation: 2003 FC 1057

OTTAWA, ONTARIO, THE 10th DAY OF SEPTEMBER, 2003

Present: THE HONOURABLE MR. JUSTICE MARTINEAU

BETWEEN:

MAHMOUD KADOURA

Applic

ant

-and-

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respond

ent

REASONS FOR ORDER AND ORDER

[1] This is an application for judicial review of the decision by the Refugee Protection Division of the Immigration and Refugee Board (the Board), dated September 16, 2002, that the applicant is not a "Convention Refugee" or a "person in need of protection" under sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. C-27 (the Act).

THE FACTS

[2] The applicant, a stateless person of Palestinian origin, was born on July 28, 1981, in Abu Dhabi in the United Arab Emirates (U.A.E.). His parents, also stateless, lived in Lebanon before going to the U.A.E., where the applicant's father found work.

[3] In 1999, the applicant decided to pursue his studies in Canada. From September 1999 to March 2001, the applicant studied computer engineering at Concordia University in Montréal. In December 2000, the applicant's father told him that it was impossible for him to continue to help him financially. On April 26, 2001, the applicant claimed refugee status.

[4] The applicant alleges that he will be persecuted if he were to return to Lebanon. Similarly, he alleges that it is impossible for him to return to the U.A.E. In this regard, even though he was born in the U.A.E., he explains that it would be impossible for him to return to his family in Abu Dhabi because of the fact that, at the age of 18, any person who does not have a work permit or who is not registered in full-time studies cannot obtain residence, which constitutes persecution.

[5] The applicant also believes that his return to the refugee camp in Lebanon (where his parents once lived) is inevitable. The various political factions within the camp would most likely attempt to pressure him to take part in their terrorist activities. He would then have to refuse and his refusal would be interpreted as a political stand against the group

concerned in favour of another, which would put his life in danger. Further, he claims that he will be persecuted by the Lebanese state because of the discriminatory measures imposed upon refugees in terms of limited employment opportunities and inadequate medical care.

THE BOARD'S DECISION

[6] The Board found that the applicant is not a "Convention refugee" and is not a "person in need of protection". The Board also found there was no credible basis for his refugee claim under subsection 107(2) of the Act.

[7] Firstly, the Board found that the applicant's country of habitual residence is not Lebanon but rather the U.A.E., primarily because the applicant has spent most of his life in Abu Dhabi. The Board also ruled that ". . . since he had not lived in Lebanon, he could not consider it to be 'another' permanent residence and claim persecution by this country." Consequently, the Board considered the applicant's claims to the effect that he had a fear of persecution in his country of habitual residence, in this case the U.A.E.

[8] Secondly, the Board found that the conditions imposed by the U.A.E. for obtaining a residence permit did not amount to persecution.

Moreover, contrary to what he indicated in his narrative, the claimant admitted at the hearing that he could return to the country of his habitual residence to see his family, but only on a temporary visitor's visa for a few months. To obtain a residence permit for a longer duration, he would have to be a full-time student or be working for a private or state company. The panel does not feel that these conditions are a breach of a fundamental right of the claimant. They constitute legal restrictions imposed by the country, likely in a legitimate attempt to regulate not only foreigners entering and leaving its territory, but also its attractive job market.

Indeed, the claimant freely chose to come study in Canada, even though he could have stayed in Abu Dhabi. He did not leave the country because of persecution. Moreover, he returned there a number of times. On this point, the document that he filed as P-10, namely, the cancellation of his residence permit, merely certified that the claimant had not been living in the country for some time and that he needed to make his own applications in the future, since he had reached adult age. It did not deny him re-entry to the country of his habitual residence on one of the grounds in the Convention and, consequently, does not *a priori* constitute persecution. [5]

Moreover, as regards the financial situation of the claimant's family, the panel feels that there was no nexus between this point and any of the grounds in the Convention.[6]

Consequently, as to the persecution by the country of the claimant's habitual residence, the United Arab Emirates, the panel concludes that the claimant was not subject to any persecution in the past and would not be subject to any if he were to return.

(my emphasis)

[9] Consequently, the Board dismissed the applicant's refugee claim, and hence this judicial review application.

ANALYSIS

[10] I will begin with an analysis of the Board's findings on the issue of the applicant's habitual residence and then on that of the well-founded fear of persecution.

1. Habitual residence

[11] Sections 96 and 97 of the Act read as follows:

96. A Convention refugee is a person who, by reason of a well-founded fear of	96. A qualité de réfugié au sens de la Convention C le réfugié C la personne qui,

persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(2) A person in Canada who is a member of a class of persons prescribed by the regulations

craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes C sauf celles infligées au mépris des normes internationales C et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada

as being in need of protection is also a person in need of protection.

(my emphasis)

et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

(mon soulignement)

[12] As can be seen under paragraphs 96(*b*) and 97(1)(*a*), the terms "refugee" and "person in need of protection" apply in particular to persons who do not have a country of nationality and who find themselves outside the country of their "former habitual residence" (my emphasis). According to the jurisprudence of this Court, if a claimant resided in more than one country, it is not necessary that he prove that there was persecution in each of those countries. However, the claimant must show that he was persecuted in at least one of these countries and that he is unable or unwilling to return to the countries where he had his habitual residence (*Thabet v. Canada (Minister of Citizenship and Immigration*), [1998] 4 F.C. 21 (C.A.)).

[13] On this point, it is useful to consider the words of the Federal Court of Appeal in *Thabet, supra,* to the effect that:

If it is likely that a person would be able to return to a country of former habitual residence where he or she would be safe from persecution, that person is not a refugee. This means that the claimant would bear the burden, here as elsewhere, of showing on the balance of probabilities that he or she is unable or unwilling to return to any country of former habitual residence. This is not an unreasonable burden. This is merely to make explicit what is implicit in Ward and in the philosophy of refugee law in general.

[14] The Board did not exceed its jurisdiction in questioning if, on the facts, Lebanon was one of the applicant's countries of "habitual residence". In *Kruchkov v. Canada (Solicitor General)*, [1994] F.C.J. No. 1264 (QL), the Honourable Madam Justice Tremblay-Lamer observed that the determination of the country of habitual residence of a stateless person is essentially of a factual nature. In this regard, in *Maarouf v. Canada (Minister of Citizenship and Immigration)*, [1994] 1 F.C. 723, at page 739, the Court emphasized that the requirement of "habitual residence" presupposes the existence of a relationship with the State that is comparable to that which exists between a citizen and his country of nationality. This is therefore a situation in which a stateless person was admitted into a given country with a view of establishing continuous residence there for a certain time, without requiring a minimum period of residence. The definition of "country of habitual residence" should not be so unduly restrictive as to pre-empt providing shelter to a stateless person who has demonstrated a well-founded fear of persecution on any of the grounds listed in the Convention. Further, the applicant does not have to be legally able to return to a country of habitual residence. The denial of the right to return, in fact, may in itself constitute an act of persecution by the State. Nevertheless, the person must establish *de facto* residence for a significant period in the country in question: *Maarouf, supra*, at page 739; see also J.C. Hathaway, "The Law of Refugee Status." (Toronto: Butterworths, 1991) at page 61. It is conceded that the U.A.E. is the "habitual residence" of the applicant. But what about Lebanon?

[15] In this case, the Board's finding that the applicant cannot raise a reasonable fear of persecution with respect to Lebanon because it is not a country where the applicant had his "habitual residence" seems reasonable to me under the circumstances. In fact, according to the evidence in the record, the applicant was born in the U.A.E. where he always lived and where he completed all of his pre-university studies. His parents still live in the U.A.E. with his brother and sister. Further, the applicant maintains close ties with his family and even returned home a few times when he was studying in Canada. The applicant did not habitually reside in Lebanon because his father was then working in the U.A.E. Finally, the travel documents and other documents in the applicant's possession issued by the Lebanese authorities are not conclusive. Even if he has a right to reside in Lebanon, he has never actually resided there.

2. Fear of persecution

[16] The finding of the existence of a reasonable fear of persecution for any one of the grounds listed in the Convention is a mixed question of fact and law. In certain circumstances, as mentioned earlier, denying the right to return to a country can in itself amount to an act of persecution. In this case, the Board's finding to the effect that the applicant had not established a serious possibility that he would be persecuted in the country of his habitual residence (the U.A.E.) is supported by the evidence in the record and seems to be equally reasonable to me, under the circumstances.

[17] More specifically, it is evident from the decision that the Board examined the very question of whether the applicant could return to the U.A.E. I also believe that the Board could reasonably find that the legal restrictions imposed by the U.A.E. did not breach any of the applicant's fundamental rights and did not constitute persecution. On this point, the applicant admitted that he could still return to his country of habitual residence, the U.A.E., but that he would only be able to obtain a temporary visitor's visa. This is a direct consequence of the decision made voluntarily by the applicant, who preferred to leave the U.A.E. to come and study in Canada. The cancellation or non-issuance of the applicant's residence permit does not, therefore, constitute an act of persecution. The conditions imposed on the applicant have no connection with any of the grounds listed in the Convention. In short, re-entry into the country of habitual residence was not denied as provided in the Convention. Consequently, there are no grounds to intervene in this case.

CONCLUSION

[18] As it has not been determined that the Board made a reviewable error of fact or law, I am unable to intervene. Consequently, the application for judicial review is dismissed. However, the applicant proposes that the following two questions be certified:

[Translation]

1. In the case of a refugee claim by a stateless person, must a country in which the applicant has a right to re-entry and where he has a right of residence be considered a country of habitual residence, even if the applicant has not established a *de facto* residence there for a significant period of time?

2. Where an stateless refugee claimant is not given protection from the country where he has established a *de facto* residence but where otherwise he would not have the right to return, must the Refugee Protection Division make a determination on the risks of persecution of the stateless person with respect to the country where he has a right of residence and to which he will be removed by the Canadian authorities?

[19] Having heard the matter and having given counsel the opportunity to submit written arguments, I found that it was not appropriate, in this case, to certify a question of general importance, primarily because this Court has previously determined that, in order to establish "habitual residence", the claimant must have established a *de facto* residence for a significant period of time in the country in question (*Maarouf, supra*, at page 739). On the other hand, the second question raised for certification does not seem to be determinative to me. In fact, it is not up to this Court, in the context of this application for judicial review, to ask itself if the Minister could legally deport the applicant to Lebanon. The following remarks shall suffice.

[20] At the hearing, the applicant's counsel alleged that the applicant would inevitably be returned to Lebanon by the Canadian authorities. Canada has not ratified the *Convention relating to the Status of Stateless Persons*, 360 U.N.T.S. 117. Consequently, a stateless person who does not qualify as a Convention refugee or a "person in need of protection" under sections 96 and 97 of the Act has no recourse in Canada (*Maarouf, supra*, at page 736; *Arafa v. Minister of Employment and Immigration* (1993), 70 F.T.R. 178, at paragraph 10), other than to make a request for exemption to the Minister on humanitarian grounds (*Kruchkov, supra*, paragraph 11). That being the case, I do not state any opinion on the merits of making such an application.

[21] I also note that Lebanon is not one of the countries referred to in subsection 241(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, as amended, which reads as follows:

241. (1) If a removal order is enforced under section 239, the foreign national shall be removed to:	241.(1) En cas d'exécution forcée, l'étranger est renvoyévers l'un des pays suivants:

(a) the country from which they came to Canada;

(b) the country in which they last permanently resided before coming to Canada;

(c) a country of which they are a national or citizen; or

(d) the country of their birth.

(2) If none of the countries referred to in subsection (1) is willing to authorize the foreign national to enter, the Minister shall select any country that will authorize entry within a reasonable time and shall remove the foreign national to that country.

(3) Despite section 238 and subsection (1), the Minister shall remove a person who is subject to a removal order on the grounds of inadmissibility referred to in paragraph 35(1)(a) of the Act to a country that the Minister determines will authorize the person to enter.

a) celui d'oùil est arrivé;

b) celui oùil avait sa résidence permanente avant de venir au Canada;

c) celui dont il est le citoyen ou le national;

d) son pays natal.

(2) Si aucun de ces pays ne veut recevoir l'étranger, le ministre choisit tout autre pays disposéà le recevoir dans un délai raisonnable et l'y renvoie.

(3) Malgrél'article 238 et le paragraphe (1), si l'étranger fait l'objet d'une mesure de renvoi du fait qu'il est interdit de territoire au titre de l'alinéa 35(1)a) de la Loi, le ministre le renvoie vers le pays qu'il détermine et qui est disposéà le recevoir.

[22] At this stage of the proceedings, however, there is no evidence in the record that would allow me to determine that none of the countries referred to in subsection 241(1) (in this case the U.A.E.) is willing to authorize the entry of the applicant or that the Minister intends to deport the applicant to Lebanon.

[23] In conclusion, a certified question must transcend the interests of the immediate parties to the litigation and contemplate issues of broad significance, while being determinative of the appeal being reviewed (*Canada (Minister of Citizenship and Immigration) v. Liyanagamage* (1994), 176 N.R. 4 (F.C.A.)). This is clearly not the case here.

ORDER

THE COURT ORDERS that the applicant's application for judicial review of the decision of the Board dated September 16, 2002, be dismissed. No question of general importance shall be certified.

"Luc Martineau"

JUDGE

Certified True Translation

Kelley A. Harvey, BA, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

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