Date: 20041022

Docket: IMM-10120-03

Citation: 2004 FC 1471

Montréal, Quebec, October 22, 2004

Present: The Honourable Madam Justice Danièle Tremblay-Lamer

BETWEEN:

BILAL MARCHOUD

Applica
nt

and

MINISTER OF CITIZENSHIP

AND IMMIGRATION

Responden
t

REASONS FOR ORDER AND ORDER

[1] This is an application for judicial review of a decision by the Refugee Protection Division of the Immigration and Refugee Board (the panel) that the applicant is not a Convention refugee.

[2] The applicant was born in Lebanon, where he lived until he was four years old (1975-1979). From the age of 5 to 23 years old(1980-1998), he lived in Yemen for one year then in the United Arab Emirates (UAE). Between 1998-2001, he was a university student in North Carolina in the United States.

[3] The applicant arrived in Canada on November 3, 2001. He claimed refugee status on November 4, 2001.

[4] The panel determined that the UAE was the applicant's only country of habitual residence. For that reason, it did not have to assess the applicant's fear of Lebanon.

[5] The applicant had explained to the panel that his economic status would be precarious if he were to return to the UAE since he would need a sponsor to work there and a sponsor could demand a percentage of his salary. The panel determined that the fact that there were restrictions on the UAE job market amounted to discrimination and not to persecution.

[6] Further, the panel noted that the applicant had left his country of residence voluntarily to study in the United States. In the panel's opinion, this stateless person did not find himself outside his country of habitual residence for reasons mentioned in the Convention's definition.

[7] The panel therefore found that the applicant was not a "Convention refugee" or a "person in need of protection" within the meaning of the provisions of sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act).

[8] The applicant argued that Lebanon, not just the UAE, was a country of habitual residence and should have been designated as such by the panel.

[9] The applicant lived in the UAE for 18 years, completing all of his primary and secondary school education in that country. During this period, he visited Lebanon only once, for a week in 1994. As in the matter of *Kadoura v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 1328 (QL), the travel documents issued by the Lebanese authorities are not conclusive. Even if he had a right to reside in Lebanon, he had not lived there since the age of four.

[10] Determining the country of habitual residence of a refugee claimant is a question of fact (*Kruchkov v. Canada (Solicitor General*), [1994] F.C.J. No. 1264 (QL)).

[11] Taking into account the fact that the applicant spent the majority of his life outside Lebanon, where he only returned once for one week, I am satisfied that the panel's finding that Lebanon was not a country of habitual residence was not patently unreasonable.

[12] The applicant argues that the panel must study the fear of persecution in the event of a return to any of the countries referred to by the claimant. The applicant relies on *Elbarbari v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 111 to support this argument.

[13] In that case, however, Egypt, the United States and Iraq were designated as countries of habitual residence. The Court determined that the panel should have decided on the risk of persecution in all of the countries where the applicant had had habitual residence, which is not the case here since the UAE is the applicant's only country of habitual residence. The panel did not have to decide on the risk of persecution in Lebanon because it was not a country of habitual residence. This is precisely what the Court of Appeal explains in *Thabet v. Canada (Minister of Citizenship and Immigration)*, [1998] 4 F.C. 21 (C.A.) at paragraph 30:

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 <u>of former habitual residence</u>. (Emphasis added.)

[14] The applicant contends if he were to return to the UAE, he would have to find a sponsor, which would cause him significant economic harm. The panel determined that even though that situation could be considered as discriminatory, it was not persecution within the meaning of the Convention.

[15] I consider that finding reasonable and, accordingly, this Court must extend judicial deference to it (*Al-Mahamud v. Canada (Minister of Citizenship and Immigration)* (2003), 30 Imm. L.R. (3d) 315 (F.C.)).

[16] The applicant also argues that the panel erred in determining that he could return to the UAE without assessing the possibility of a refoulement by the UAE to Lebanon.

[17] In my opinion, the panel did not have to carry out this assessment under paragraphs 96(*b*) and 97(1)(*a*) of the Act since it is clearly stated therein that the terms "refugee" and "person in need of protection" include persons who have no nationality and who find themselves in a country where they have their habitual residence. Further, such an analysis would be moot since the risk should be assessed on the day of the hearing and not when such a refoulement by the UAE might later take place.

[18] For all of these reasons, the application for judicial review is dismissed.

[19] The applicant's counsel asked that the following question be certified:

When the panel determines the country of habitual residence of a stateless refugee claimant, must it assess the protection offered to the claimant by that country, when that claimant only has tenuous status there and is in danger of being returned by that country of habitual residence to another country where the claimant has a right to reside and where he fears persecution?

[20] The Court is not satisfied that the proposed question transcends the interests of the parties to the dispute and that it is of general importance. No question will be certified.

ORDER

THE COURT ORDERS that the application for judicial review be dismissed.

"Danièle Tremblay-Lamer"

Judge

Certified true translation

Kelley A. Harvey, BA, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: **IMM-10120-03**

STYLE OF CAUSE: **BILAL MARCHOUD**

Applicant

and

MINISTER OF CITIZENSHIP

AND IMMIGRATION

Respondent

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING October 19, 2004

REASONS FOR ORDER AND ORDER:

TREMBLAY LAMER J.

DATE OF REASONS: October 22, 2004

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