

Immigration and
Refugee Board of Canada

**Refugee Protection
Division**



Commission de l'immigration
et du statut de réfugié du Canada

**Section de la protection des
réfugiés**

RPD
File No. / N° de dossier de la SPR : TB9-12087
TB9-12117
TB9-12143

Private Proceeding / Huis clos

Reasons and Decision – Motifs et Décision

Claimant(s)	XXXX XXXX XXXX XXXXXXXXXXX XXXX XXXXXXXX XXXX	Demandeur(e)(s) d'asile
Date(s) of Hearing	January 30, 2020 February 17, 2020	Date(s) de l'audience
Place of Hearing	Toronto, Ontario	Lieu de l'audience
Date of Decision and reasons	June 18, 2020	Date de la décision et des motifs
Panel	D. MARCOVITCH	Tribunal
Counsel for the Claimant(s)	Lilyan Shaba	Conseil(s) du (de la/des) demandeur(e)(s) d'asile
Designated Representative(s)	XXXX XXXX XXXX	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	N/A	Conseil du (de la) ministre

2020 CanLII 126777 (CA IRB)

REASONS FOR DECISION

[1] XXXX XXXX XXXX, (the “principal claimant” or “PC”), and the minor claimants, XXXX XXXX and XXXX XXXX (the “minor claimants”), seek refugee protection as against the United Arab Emirates (“UAE”) pursuant to section 96 and section 97(1)(a) and (b) of the *Immigration and Refugee Protection Act* (IRPA).¹

[2] The claims were joined under Rule 55 of the RPD Rules.

[3] The PC, as the father of the minor claimants, was appointed as their designated representative.

[4] Pursuant to the UAE Court order for sole custody² and the Special Power of Attorney³ allowing the minor claimants to travel with the PC to any destination and for any purpose.

ALLEGATIONS

[5] The claimants’ allegations can be found in detail at Exhibit 2. In summary, the claimants allege that as stateless Palestinians who are no longer living in the UAE and no longer have valid residency permits or sponsorship that they have been persecuted and have no right to return to the UAE. The claimants also allege that the PC’s ex-father-in-law (“ex-F-I-L”, from his second marriage) was persecuting them in the UAE and threatened the lives of the minor claimants, particularly if they should end up living in Lebanon. The ex-F-I-L persecution allegedly arose as a result of divorce proceedings wherein his ex-wife was seeking extra alimony funds and property rights.

[6] The PC lost his UAE employment, was unable to get new employment and travelled to the USA in XXXX 2019 and then travelled to Canada in XXXX 2019.

DETERMINATION

[7] After considering the totality of the evidence and submissions, I have determined that the claimants are not Convention refugees, pursuant to section 96 of the *IRPA*, nor are they persons in need of protection pursuant to section 97 of the *IRPA*.

ANALYSIS

[8] The determinative issues in this claim are identity, credibility, what constitutes a country of former habitual residence (“CFHR”), whether discrimination amounted to persecution, the well-foundedness of the claim under section 96, and whether the claimants are persons in need of protection.

Identity

[9] All three claimants were born in the UAE. The PC was born in the UAE to Palestinian parents and is therefore a stateless Palestinian. The minor claimants are the children of the PC, a stateless Palestinian, and their mother, who is a Jordanian national. I find that it is clear from the NDP for Jordan that the minor claimants are unable to gain Jordanian citizenship through their mother, as Jordanian women are unable to pass their Jordanian citizenship on to their children or spouses.

[10] Further as children of stateless Palestinians, the minor claimants are unable to obtain UAE citizenship under the UAE legislation.

[11] The claimants provided various identity documents. They are in possession of passports/travel documents issued by Lebanese authorities in Lebanon.⁴

[12] I have considered the documentation of all of the claimants issued in the UAE (UAE residence visa and birth certificates among others) as well as the travel documents issued for the claimants by Lebanese authorities as stateless Palestinians. Based on the PC’s testimony and the supporting documentation provided, I am satisfied that the claimants are who they purport to be, and that they are stateless Palestinians who were born in, and lived in the UAE.⁵

Credibility

[13] Credibility is an issue in every claim. There were some issues with the PC's allegations against the ex-father-in-law of his second ex-wife, which will be discussed in greater detail below. Credibility was also an issue in the claimants' allegations of being persecuted as stateless Palestinians in UAE. As they are stateless, the claims filed by the claimants for refugee protection must be assessed on the basis of their country or countries of former habitual residence (CFHR).

Lack of Subjective Fear

[14] The claimants arrived in the USA on XXXX XXXX XXXX 2019, yet did not claim asylum there despite staying until XXXX XXXX XXXX 2019, when the claimants entered Canada. The PC alleges that he sought legal advice which recommended that he did not seek asylum based on his particular situation. I acknowledge that the PC provided evidence of some of his attempts to get legal advice, with regard to both immigration options and asylum options.⁶ However, it appears that the PC has only provided records of attempts to get information or to get free consultations. The PC has not provided any correspondence or evidence that confirms his allegations that he was advised he would not be successful in an asylum application. Further, it does not appear that the PC contacted the organizations to which he was referred to in the email found at page 58 of Exhibit 6. I note that the PC provided evidence of his condominium ownership in Ontario and that he had been in Canada in 2014 and 2015. I find that the PC had accommodations available to him in Canada as well as with one of his sisters, which would have made for a much easier landing in Canada than in the USA. I also note that the claimants are in fact living in the condominium he owned prior to leaving the UAE. I find on a balance of probabilities that the PC's attempts to get asylum or follow through with other immigration processes available to him in the USA were cursory and that he knew he would be attempting to come to Canada before he left the UAE, particularly given that he applied for temporary resident visas for his daughters (which were rejected on his first application, but his was not) prior to travelling to the USA.⁷ I note that within the claimant's Temporary Residence Visa Application package⁸, there is a letter from the PC's sister, dated XXXX XXXX XXXX 2018, in which she invites him and the minor claimants to visit their home in Mississauga for "their spring holiday". However, as of that date, the PC already knew he had been terminated and had not secured a new

job in the UAE, so I find on a balance of probabilities that the PC already knew that he wanted to come to Canada as a final destination and so did not wish to actually make a claim for asylum in the USA. I find on a balance of probabilities that the claimants were forum shopping and this undermines their subjective fear.

[15] I find on a balance of probabilities that the PC has displayed a lack of subjective fear by failing to actually apply for asylum or any other immigration process while in the USA, despite there being opportunities for him to do so.

Can Palestine be Considered a Country of Former Habitual Residence?

[16] In this case, although the claimants have Palestinian refugee passports/travel documents issued by Lebanese authorities, they have never lived in the Palestinian territories, nor have they visited that country. The claimants are not in possession of a permit to enter Palestine, which is necessary for stateless Palestinians in order to travel to and to enter Palestine.⁹ The PC testified that he and the minor claimants were born in UAE and lived there nearly their entire lives, except when he travelled to Lebanon as a child and once in 2017 (for two weeks) to renew Lebanese travel documents, and except for travel overseas for holidays or brief education in the USA.

[17] Based on the PC's testimony and the legal parameters of what is considered to be a country of former habitual residence, I find that Palestine is not a country of former habitual residence for these particular claimants.

Can Lebanon be Considered a Country of Former Habitual Residence?

[18] The PC testified that he went to Lebanon a couple of times as a child prior to turning age 10 or so. He went again in 2017 to renew his Lebanese travel document/passport and to get the same passports issued for the minor claimants. The PC never worked in Lebanon or set up residence there. His only ongoing connection to Lebanon is an uncle and brother who allegedly live in a Palestinian refugee camp.

[19] There are millions of stateless Palestinians across the world, with travel documents issued by various countries, such as Lebanon, Jordan and Egypt. I have taken into consideration the documentary evidence concerning the situation of Palestinians with Lebanese travel documents¹⁰,

as well as the personal history of the PC and his trips into Lebanon. I find on a balance of probabilities that Lebanon is not a country of former habitual residence for these particular claimants.

[20] Based on the foregoing analysis, I find that the UAE is the only CFHR for these particular claimants.

Have the Claimants Faced Discrimination Amounting to Persecution in the CFHR, Namely the UAE?

[21] The central issue to be assessed in this case is whether the claimants have a well-founded fear of persecution in their country of former habitual residence by reason of one of the Convention grounds. In making this determination, I must assess whether the claimants have established that, on a balance of probability, they have a subjective fear and that this subjective fear, when objectively assessed in the context of country conditions, is one that is well founded. As the definition of Convention refugee is forward looking, the claimants must establish that there is a “serious possibility” that they would be persecuted if returned to the UAE. It follows, therefore that the fear of persecution is to be assessed at the time of the hearing. The claimants must establish that the fear is reasonable and justified considering the objective situation in UAE. In other words, the claimants must establish that their fear of persecution has a valid basis. I find that the claimants do not have a well-founded fear of persecution based on the following analysis. The fact that the claimants are stateless is not sufficient to ground a claim for refugee protection.¹¹ Claimants must provide sufficient credible and trustworthy evidence that they are outside their country of former habitual residence for the reasons listed in the Convention refugee definition.¹²

Employment

[22] The PC alleged that he worked for XXXX XXXX XXXX for People of XXXX and he has provided an experience certificate in this regard which shows him to have been working for that company from XXXX 2009 to XXXX XXXX XXXX 2019.¹³ It appears that the PC advanced within the organization (according to testimony) and received reviews of Excellent (2016), Good (2017) and Very Good (2018). The PC did not allege that he experienced discrimination at work, except perhaps for inferring that the circumstances surrounding his ultimate termination (which

he alleges was due to the interference of his ex-father-in-law) was also a function of his being a stateless Palestinian. The documentary evidence indicates that non-citizens have more difficulty obtaining work in the UAE because of the restrictive citizenship laws. I find that the PC was not persecuted because he is a stateless Palestinian, but because of laws of general application regarding to residency, citizenship and employment in the UAE.

[23] I accept that the PC experienced problems finding employment in the UAE. However, I find the difficulties encountered by the claimants do not relate to any of the five grounds in the Refugee Convention. I find that the claimants' situation is no different than that of other foreign nationals in the UAE who must find employers willing to sponsor them and undergo the arduous residency permit process. The PC himself testified that the UAE has been enacting a policy of Emiratization wherein non-UAE citizens are being fired or not having their contracts renewed, so that UAE citizens could be hired instead. The PC explained that he learned that no one was hired to replace him, so he did not believe that his termination was a result of Emiratization. The PC testified that a friend from his old employer told him this (an unsubstantiated allegation), but the PC also acknowledged that it was possible that a third-party contractor may have been hired to do his old work. Given the two possibilities and that his friend may not know all the reasons behind his former employers' business decisions, I find that the PC's allegations in this regard are speculative. I find on a balance of probabilities that the PC's difficulties in finding employment in the UAE do not amount to persecution of stateless Palestinians in particular.

[24] I note that the PC has not corroborated his allegations that he was treated particularly unfairly by his employer in this, or any other regard, due to his Palestinian background with any reliable evidence. In fact, the PC testified that his employer complied with all contractual provisions and his termination was done in accordance with those terms. While the PC believes that his ex-F-I-L was behind the premature termination, the PC confirmed that it was still speculative. The PC alleged that his employer terminated his contract as a result of pressure from his ex-F-I-L (also a Palestinian¹⁴) who allegedly worked for the Ministry of the Interior. This alleged pressure from the PC's ex-F-I-L was on account of personal issues surrounding the PC's divorce from his daughter, rather than anything to do with being Palestinian (as both his ex-wife and ex-F-I-L are Palestinian as well). Ultimately, I find that the PC has not provided any corroborative information that his ex-F-I-L works/worked in security for the Ministry of the

Interior. The only information in the file which mentions the UAE Ministry of the Interior, is in the PC's interview notes at the border (Exhibit 1), wherein he states that it is his ex-wife who works for the Ministry of the Interior and that she was threatening his life (with no mention of his ex-F-I-L). I find that the PC's failure to mention his ex-F-I-L as an agent of persecution in the border interview notes, coupled with his failure to provide any corroborative evidence in respect of his ex-F-I-L's involvement in his persecution undermines his credibility and the credibility of his allegations that his ex-F-I-L had any involvement in his termination, legal issues or negative police attention.

[25] The PC provided many UAE Court documents showing the many issues and acrimony that he went through in the process of finalizing the divorce from his second ex-wife. In none of those documents is the ex-F-I-L mentioned, despite the PC's contention that the ex-F-I-L was behind all of the allegations being advanced by the ex-wife. The PC explained that in his border interview he did mention his ex-F-I-L, but that it was not included in the interview notes. I find that the PC's answer in the border notes that his ex-wife was why he was making a refugee claim was a clear answer to a clear question. Further, the PC makes no allegations in his BOC narrative or testimony that his ex-wife was personally threatening his life or that of the minor claimants; rather, he alleges that it was his ex-F-I-L who was behind his negative police encounters. Even then, I find that the PC has not established on a balance of probabilities that any of the alleged police action (temporary confiscation of passport, delays re waiting for service, hearsay attempted detention), were not part of the normal operation of UAE law when complaints are made. While I accept on a balance of probabilities that he may have been discriminated against/treated poorly by the police in the police station on account of being Palestinian, it neither establishes persecution by the state or influence by the ex-F-I-L, as a complaint by the PC's ex-wife could have had the same result. It is not my job to look into the gritty details of the acrimonious divorce and Court proceedings to determine if something was unlawfully done; rather it is for the claimants to prove on a balance of probabilities that his treatment by the police was outside of their powers and motivated by the malice of the PC's ex-F-I-L. I find that the PC has not provided sufficient credible and corroborative evidence to meet this burden. While the PC was frustrated and nervous about his treatment from the police, every time he went to Court to deal with issues raised by his ex-wife, it would appear that the Courts were responsive to his submissions and Court filings. Ultimately, I find on a balance of probabilities that the claimants were not

persecuted on account of their Palestinian nationality and that it has not been established that the PC's ex-F-I-L was responsible for either his job termination or discriminatory treatment by police.

[26] The PC alleged that his ex-F-I-L threatened to take revenge on the PC "by your daughters" in XXXX 2018. On XXXX XXXX XXXX 2019, the PC's mother told him that the PC's uncle had called from Lebanon to advise that a group of armed people had come to his home looking for the PC and threatened that the PC's daughters would be raped in front of him. In this regard, the claimants submitted a corroborating support letter alleged to have come from the PC's uncle in Lebanon.¹⁵ However, the support letter at Exhibit 7 is not from a notary and does not have any identification attached regarding who wrote the letter. I find that I cannot place any weight on this support letter as I am unable to determine if the person that wrote the letter was in fact the PC's uncle. As a result, I find that the support letter from the PC's uncle does not corroborate the PC's allegations that his ex-F-I-L threatened the minor claimants or that his ex-father-in-law is behind any of the claimants' difficulties.

[27] I accept that even though the claimants were born in the UAE, they are not entitled to UAE citizenship and must have a sponsor to remain in the country. However, I do not find this to be the case merely because the claimants are stateless Palestinians. I do not consider this to be discrimination, but rather a law of general application. The UAE is no different from other sovereign nations with immigration laws and regulations in regards to residency. I find the laws of citizenship in the UAE would apply equally to all individuals whose parents are not nationals of the UAE, not just the claimants, and they do not face discrimination which would amount to persecution on this basis.

[28] The claimants allege that if they were to return to the UAE that the PC would be unable to work and their access to health care, post-secondary education and employment would be restricted. While individuals who are not citizens of the UAE do not have access to free health care, I am of the opinion that it constitutes discrimination against those who are not citizens of the UAE, however, I find on a balance of probabilities that it is not persecution. I find that the claimants' experiences in the UAE, whether taken individually or cumulatively, do not rise to the level of persecution. I note that the PC has not corroborated his allegations that he was treated

particularly unfairly by his employer in this, or any other regard, due to his Palestinian background with any documentary evidence, particularly as the UAE was enacting a policy of Emiratization, wherein non-UAE citizens were losing their jobs/contracts in favour of UAE citizens. I find that the PC has not provided sufficient credible or trustworthy evidence to establish that the claimants have faced any discriminatory measures which do not also apply to other non-citizens in the UAE for a Convention reason, namely for the reason of their Palestinian nationality, as they have alleged.

[29] I note and accept that the PC's residence permit has expired and he does not presently have a sponsor in the UAE which would allow him to get new residence permit. Without a valid residence permit, the claimants do not have a right to return to the UAE. However, the Federal Court decision in *Hegi* dealt with this issue and referred to previous jurisprudence in finding that a denial of a right to return to the UAE does not constitute persecution if it arises from a law of general application.¹⁶

[30] I find that although the PC encountered legal difficulties in ending his marriage the administrative issues that he currently faces were nonetheless due to laws of general application that applied to any holder of a temporary residence permit, and not just stateless Palestinians. I therefore find that such state action does not constitute persecution and at worst would lead to prosecution pursuant to a law of general application should they return to the UAE. For the reasons elaborated upon above and below, I find on a balance of probabilities that the PC has not established that the claimants would be persecuted on a Convention ground or a risk to life or of cruel and unusual treatment or punishment or of torture should they return to the UAE.

[31] Lastly, the PC testified on behalf of the minor claimants. He testified that his young children would be discriminated against since they are unable to go to public school in the UAE which is only available to UAE citizens. While the PC might be unable to afford to pay for private schooling since the PC is no longer employed in the UAE, there is nothing in the documentary evidence that indicates these particular minor claimants are being discriminated against to a point of persecution because they are unable to attend private schools.

[32] In conclusion, I accept that the claimants may have experienced problems finding employment in the UAE for the aforementioned reasons. However, I find the difficulties

encountered by the claimants do not relate to any of the five grounds in the Refugee Convention. I find that the claimants' situation is no different than that of other foreign nationals in the UAE who must find employers willing to sponsor them and undergo the arduous residency permit process. I accept that non-citizens in the UAE face discrimination in the employment sector and have limited access to medical care and education. However, I find that cumulatively the discrimination faced does not amount to persecution. Based on the evidence before me, I conclude that the claimants were not subject to any persecution in the past and would not face persecution if they were to return to the UAE.

[33] To summarize, the claimants may have been victims of discrimination at various points in time because of their Palestinian nationalities, and that is unfortunate. However, as stateless individuals living in the UAE, the claimants are also subject to the country's immigration laws. Nevertheless, I am of the opinion that the alleged difficulties, even when considered cumulatively, do not constitute persecution in the claimants' particular case.

Section 97

[34] The PC believes that he would be treated like a criminal and sent to jail upon return to the UAE since he no longer has a sponsor and his residency permit has expired and he would be considered illegal and thus, subject to deportation; and since he has no country to be returned to he will be put in jail and mistreated. There was no persuasive evidence before me that the claimants would be treated like criminals and sent to jail upon return to the UAE since there is no indication that he has done anything to raise the ire of government authorities. I have reviewed the articles about UAE detentions and torture¹⁷ and find that people detained in those articles had different profiles than that of the claimants. Further, as discussed above, I find that the claimants have not established on a balance of probabilities that the ex-F-I-L has threatened the claimants or has the reach or means to threaten the lives of the claimants on a forward looking basis. I find on a balance of probabilities that the claimants do not face a risk of torture or cruel and unusual punishment.

[35] Therefore, the claimants did not establish, on a balance of probabilities, that if they were to return to the UAE, that they would be subjected to one of the risks set out in subsection 97(1) of the IRPA.

CONCLUSION

[36] In light of the preceding facts and having assessed all the evidence, I have determined that the claimants did not discharge their burden of establishing that there is a “serious possibility” of persecution on one of the Convention grounds. They also failed to demonstrate, on a balance of probabilities, that they would be personally subjected to a danger of torture, a risk to life or a risk of cruel and unusual treatment or punishment if they were to return to the UAE.

[37] Therefore, the refugee claims are rejected.

(signed)

D. Marcovitch

D. MARCOVITCH

June 18, 2020

Date

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, as amended, sections 96 and 97(1).

² Exhibit 6, page 85/86

³ Exhibit 6, page 87

⁴ Exhibit 1

⁵ Exhibits 1, 6 and 7

⁶ Exhibit 6, pages 49-65

⁷ Exhibit 2.1, Basis of Claim form narrative

⁸ Exhibit 5

⁹ Exhibit 8, Palestine Territory NDP, 31 March 2020.

¹⁰ Exhibit 8, National Documentation Package, Lebanon, 31 March 2020, 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. 15 November 2011. LBN103848.E.

¹¹ *Thabet v. Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 9063 (FCA), [1998] 4 FC 21

¹² *Maarouf v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 723, Canada: Federal Court

¹³ Exhibit 6, page 27

¹⁴ Exhibit 6, page 79

¹⁵ Exhibit 7

¹⁶ *Hegi et al v. MCI*, 2016 FC 242

¹⁷ Exhibit 7