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2023 FC 628

Mohammad Abbass (*Applicant*)

v.

The Minister of Citizenship and Immigration (*Respondent*)

INDEXED AS: ABBASS V. CANADA (CITIZENSHIP AND IMMIGRATION)

Federal Court, Norris J.—By videoconference, September 21, 2022; Ottawa, May 1, 2023.

Citizenship and Immigration — Status in Canada — Convention Refugees and Persons in Need of Protection — Application for judicial review of Immigration and Refugee Board, Refugee Protection Division (RPD) decision rejecting applicant's refugee protection claim under Immigration and Refugee Protection Act (IRPA), ss. 96, 97 — Applicant born in Lebanon — Inherited Palestinian nationality, statelessness from parents — Before coming to Canada, applicant lived entire life in Ain al-Hilweh refugee camp — Camp reputed to be most politicized, militarized Palestinian refugee camp in Lebanon — Armed clashes forced applicant to flee, take shelter in storage facility outside camp for two weeks until violence subsided — Attended elementary, secondary school in camp — Later graduated from Beirut Arab University — After completing university studies, applicant flew to New York City in 2018 on U.S. visitor visa — Claimed refugee protection at Canadian port of entry — Admitted to Canada under exception to Safe Third Country Agreement because having sister in Canada — RPD framed issue before it as whether problems encountered by applicant mere discrimination or whether, in their totality, amounting to persecution — Also considered whether hardship suffered by applicant and risk he was exposed to, was any different from all others in same situation — Looking first at s. 96 claim, RPD concluded, inter alia, that applicant's inability to return to Lebanon, to work in his profession, to own real property not persecutory — Turning to s. 97 claim, RPD found that all problems, dangers faced by applicant no different, no greater than those faced by others in similar situation — Main issue whether RPD decision exhibiting requisite degree of justification, intelligibility, transparency — RPD's decision not justified in relation to facts, law constraining RPD, including unique position of stateless persons under law of refugee protection, requirement to consider cumulative impact of discriminatory treatment — Depending on particular circumstances of claim for protection as Convention refugee, several questions can arise, including whether adverse treatment is by reason of Convention ground; if so, whether adverse treatment amounting to persecution or is "merely" discrimination; whether discrete forms of adverse treatment, in their cumulative impact on particular claimant given their particular circumstances, giving rise to well-founded fear of persecution — RPD's determination that cumulative effect of "problems" encountered by applicant did not amount to persecution unreasonable — Decision maker must actually perform analysis of cumulative effects — That did not happen here — Consequently, RPD's decision offering no insight whatsoever into how that analysis was done nor any explanation for why

RPD reached conclusion it did — Being unable to return to Lebanon, no question that applicant therefore satisfied IRPA, s. 96(b) — Whether applicant a Convention refugee turned on whether applicant outside Lebanon by reason of well-founded fear of persecution on Convention ground — Answer to this question turned on applicant's state of mind when he left Lebanon in 2018 — RPD did not grapple with this issue meaningfully or even at all — No explanation in decision for why RPD found that aggregate experiences of applicant did not give rise to well-founded fear of consequences of substantially prejudicial nature — Complete absence of analysis of central question rendering decision unreasonable — RPD took unreasonably restrictive view of applicant's experiences in Lebanon — RPD's approach overly simplistic, reductive — RPD failed to capture full scope of basis of applicant's alleged well-founded fear of persecution — Reducing elements of applicant's claim to points it highlighted, RPD's reasons calling into question whether decision maker alert, sensitive to matter before it — RPD decision set aside, matter remitted for redetermination by different decision maker — Application allowed.

STATUTES AND REGULATIONS CITED

Federal Courts Citizenship, Immigration and Refugee Protection Rules, SOR/93-22, r. 5(2).

Immigration and Refugee Protection Act, S.C. 2001, c. 27, ss. 3(2)(b),(3)(f), 4(1), 72(1), 96, 97.

TREATIES AND OTHER INSTRUMENTS CITED

United Nations Convention Relating to the Status of Refugees, July 28, 1951, [1969] Can. T.S. No. 6, Art. 1A(2).

CASES CITED

APPLIED:

Canada (Citizenship and Immigration) v. Vavilov, 2019 SCC 65, [2019] 4 S.C.R. 653; *Mete v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 840, 46 Imm. L.R. (3d) 232; *Canada (Citizenship and Immigration) v. Munderere*, 2008 FCA 84, 291 D.L.R. (4th) 68.

CONSIDERED:

R. v. Appulonappa, 2015 SCC 59, [2015] 3 S.C.R. 754; *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689; *Chan v. Canada (Minister of Employment and Immigration)*, [1995] 3 S.C.R. 593; *Canada (Citizenship and Immigration) v. Galindo Camayo*, 2022 FCA 50, [2022] 4 F.C.R. 220; *Thabet v. Canada (Minister of Citizenship and Immigration)*, [1998] 4 F.C. 21 (C.A.); *Rajudeen v. Canada (Minister of Employment and Immigration)* (1984), 55 N.R. 129 (F.C.A.); *Iraqi v. Canada (Citizenship and Immigration)*, 2019 FC 1049.

REFERRED TO:

Society of Composers, *Authors and Music Publishers of Canada v. Entertainment Software Association*, 2022 SCC 30, [2022] 2 S.C.R. 303; *Azzam v. Canada (Citizenship and Immigration)*, 2019 FC 549; *Chehade v. Canada (Citizenship and Immigration)*, 2017 FC 282; *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, (1998), 157 F.T.R. 35, [1999] 1 F.C. D-53 (T.D.); *Mohammed v. Canada (Citizenship and Immigration)*, 2009 FC 768, 348 F.T.R. 69; *Ban v. Canada (Citizenship and Immigration)*, 2018 FC 987; *Ruszo v. Canada (Citizenship and Immigration)*, 2019 FC 397, 66 Imm. L.R. (4th) 330; *Kokeny v. Canada (Citizenship and Immigration)*, 2022 FC 993.

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Lebanon: Readmission of Palestinian Refugees from Lebanon, Report based on a Fact Finding Mission to Beirut, Lebanon, from 7 to 10 January 2020, Denmark: Danish Immigration Service, 2020.

United Nations High Commissioner for Refugees. *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, UN Doc HCR/1P/4/ENG/REV.4 (reissued February 2019).

United Nations High Commissioner for Refugees. *The Situation of Palestinian Refugees in Lebanon*, February 2016.

APPLICATION for judicial review of a decision by the Refugee Protection Division of the Immigration and Refugee Board (*X (Re)*, 2021 CanLII 153408 (I.R.B.)), rejecting the applicant's refugee protection claim. Application allowed.

APPEARANCES

Marc J. Herman for applicant.

Christopher Ezrin for respondent.

SOLICITORS OF RECORD

Herman & Herman, Toronto, for applicant.

Deputy Attorney General of Canada for respondent.

The following are the reasons for judgment and judgment rendered in English by

NORRIS J.:

I. OVERVIEW

[1] The applicant is a 28 year-old stateless Palestinian whose country of former habitual residence is Lebanon. He sought refugee protection in Canada under section 96 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) on the basis of his fear of persecution in Lebanon. He also sought protection under section 97 of that Act.

[2] In a decision dated March 23, 2021 [*X(Re)*, 2021 CanLII 153408], the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada (I.R.B.) rejected the claim, finding that the applicant is neither a Convention refugee nor a person in need of protection.

[3] The applicant now applies for judicial review of this decision under subsection 72(1) of the IRPA. He submits that the RPD committed a reviewable error by engaging in a selective reading of the objective country conditions evidence. He also submits that the RPD's conclusion that his experiences in Lebanon as a stateless Palestinian did not amount to persecution within the meaning of section 96 of the IRPA is unreasonable.

[4] As I explain in the reasons that follow, with one important exception, I do not agree that the RPD's decision was based on a selective reading of the documentary evidence to the applicant's detriment. The one exception concerns evidence capable of supporting the applicant's contention that Lebanon's refusal to allow him to return to that country is itself persecutory. The RPD rejected the applicant's contention, concluding that this was simply the result of a law of general application that did not draw a

distinction based on a Convention ground. In reaching this conclusion, the RPD failed to engage with evidence suggesting that the law in question was being applied differently to Palestinian refugees who had left Lebanon compared to others in a similar position. Apart from this, the evidence the applicant submits the RPD should have expressly adverted to in its decision would only have added further support to factual findings the RPD made in the applicant's favour. I do agree, however, that the RPD's determination that the applicant's experiences as a Palestinian refugee in Lebanon did not ground a well-founded fear of persecution is unreasonable. As a result, this application for judicial review will be allowed and the matter will be remitted for redetermination by a different decision maker.

II. BACKGROUND

[5] The applicant was born in Saida (or Sidon), Lebanon, in August 1994. His grandparents were forced to flee Palestine in 1948 and sought refuge in Lebanon. At the time, his father was a year old. The applicant's mother was born in Lebanon to Palestinian parents. The applicant inherited his Palestinian nationality and his statelessness from his parents. He is registered as a refugee with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). Lebanon issued the applicant a Special Card for Palestinian Refugees in January 2013.

[6] Before coming to Canada, the applicant lived his entire life in the Ain al-Hilweh refugee camp. (The English spelling of this Arabic name has several variations.) Located south of Saida, the camp was established in 1948. It is the largest Palestinian refugee camp by population in Lebanon. It is densely populated and notoriously over-crowded. As a result of the influx of refugees from Syria in the last decade, it has grown in size to over 120 000 people. Its residents typically work in menial jobs, if they are able to find work at all. Poverty is widespread.

[7] The camp is reputed to be the most politicized and militarized Palestinian refugee camp in Lebanon. A number of armed factions are active there, including radical Islamist groups and secular groups like Fatah. According to a 2016 United Nations High Commissioner for Refugees (UNHCR) report, in late August 2015, tensions between rival groups resulted in six days of fighting between the members of Fatah and the Salafist Jund Al-Sham and their respective allies. Six Palestinians were killed and some 3 000 Palestinian refugees were displaced. See *The Situation of Palestinian Refugees in Lebanon* (UNHCR, February 2016), at pages 22–23. Armed clashes have continued since then. For example, in August 2017, the applicant and his family had to flee their home and take shelter in a storage facility outside the camp for two weeks until the violence subsided.

[8] Access to the camp is through military check points. Young men in particular are subjected to intense scrutiny anytime they enter or leave the camp. The applicant described being harassed constantly by guards at the entrance to the camp. With a view to controlling the infiltration of militants and weapons, the Lebanese army began building a wall around the camp in November 2016.

[9] The applicant attended elementary and secondary school in the camp. With the financial assistance of an uncle in the United Arab Emirates, the applicant then attended Beirut Arab University. He commuted daily between his home and the university. The applicant graduated with a bachelor's degree in mechanical engineering in June 2018.

[10] In October 2017, the applicant obtained a Travel Document for Palestinian Refugees from Lebanon. (It expired in October 2022.) In December 2017, he obtained a U.S. visitor visa.

[11] A few months after completing his university studies, the applicant flew to New York City on September 18, 2018. He then made his way to the Fort Erie, Ontario, port of entry where, on September 20, 2018, he claimed refugee protection. The applicant was admitted to Canada under an exception to the Safe Third Country Agreement because he has a sister who lives in Canada.

III. DECISION UNDER REVIEW

[12] The RPD accepted that the applicant had established his identity as a stateless Palestinian and that Lebanon was the country of reference. The RPD [at paragraph 15] also found the applicant to be a "credible and trustworthy witness."

[13] The RPD [at paragraph 17] framed the issue before it as "whether the problems encountered by the claimant were mere discrimination or whether in their totality, they amounted to persecution." The RPD "also considered whether the hardship suffered by the claimant and the risk that he was exposed to, was any different from all others in the same situation."

[14] In its decision, the RPD noted [at paragraph 18] that the applicant's counsel had provided extensive post-hearing written submissions. As the RPD understood those submissions, the applicant's counsel "made the following points, each of which she submits amounts to persecution or danger under subsection 97(1)":

(a) The applicant is unable to return to Lebanon because he is a stateless Palestinian.

(b) The applicant is a qualified mechanical engineer but, as a stateless Palestinian, he is prohibited from practicing this profession in Lebanon. Instead, he is only able to obtain menial employment at best.

(c) The applicant is legally prohibited from owning real property in Lebanon.

(d) The applicant is at risk of forcible recruitment by various armed groups that are active in the camp and in fact had been threatened with kidnapping by a member of Fatah, a secular Palestinian nationalist group that is active in the camp.

(e) Being a young man and, thus, someone who would be perceived as a security threat, the applicant would be subjected to rigorous and humiliating inspections and searches every time he left or returned to the camp.

(f) The applicant was personally in danger in the camp because of the ongoing armed conflict between rival groups, as well as the increased risk of contracting COVID-19 there.

[15] As will be discussed below, while the applicant's claim certainly involved all these elements, this simple list is not exactly how his position was framed in the Basis of Claim (BOC) narrative or in his counsel's post-hearing submissions.

[16] In any event, looking first at the section 96 claim, the RPD concluded as follows with respect to each of the considerations it identified:

(a) **Inability to return to Lebanon**: The RPD found that the applicant is unable to return to Lebanon. Since May 2018, Lebanese authorities have generally not allowed stateless Palestinians residing abroad to return to Lebanon unless they have a valid residence permit in the country in which they are currently staying. However, since this is a law of general application that draws a distinction based on a non-Convention ground (i.e. whether one holds a valid residence permit in another country), it is not persecutory.

(b) **Inability to work in his profession**: The RPD accepted that in Lebanon stateless Palestinians are prohibited from practicing the so-called liberal professions, which includes engineering. Thus, the RPD accepted that the applicant would be prohibited from practicing his profession. However, merely prohibiting someone from working in the field of their choosing does not constitute persecution. Persecution results only from being unable to work at all.

(c) **Inability to own real property**: The RPD accepted that Lebanese law prohibits any person who does not hold citizenship from a recognized State from owning real property. While this law has the practical effect of prohibiting stateless Palestinians from owning real property, it is a law of general application that draws a distinction based on a non-Convention ground (i.e. holding citizenship of a recognized State). Consequently, it is not persecutory.

(d) **Risk due to refusal to join Fatah**: The RPD accepted as credible the applicant's account of an encounter with a member of Fatah during the August 2017 incident. However, the RPD did not find it reasonable to interpret this encounter as involving a threat to the applicant. The applicant described an armed and hooded Fatah member he encountered during the battle telling him that if he joined the group they would protect him and his family and there would be no need for them to flee. According to the applicant's BOC narrative, when he refused, "this led to him threatening to kidnap me and put me in prison." The RPD concluded that the Fatah member had meant this as a warning rather than a threat—in other words, if the applicant did not join Fatah, he would be at risk of kidnapping by Islamic extremists. The RPD found that it was not reasonable to interpret the comment as meaning that the applicant was at risk of being kidnapped by members of Fatah if he did not join. In any event, neither this individual nor anyone else associated with Fatah made any other attempt to force the applicant to join the group after this encounter. The applicant had not been threatened with forced recruitment into any other group, either. Consequently, the RPD found that there was not more than a mere possibility of the applicant facing forced recruitment into one of the warring factions in the camp.

(e) **Increased scrutiny of the applicant entering or leaving the camp**: The RPD appears to have accepted that, as a young man, the applicant would be subjected to increased scrutiny and inspection every time he entered or left the camp where he lived. However, these measures "are applied against to all men of the claimant's age cohort for legitimate security reasons and are applied across the board irrespective of the political or religious ties of the individual" [at

paragraph 35]. Since these measures are taken for a non-Convention ground (i.e. security), they do not amount to persecution.

[17] Turning to the section 97 claim, the RPD found [at paragraph 38], that all of the "problems and dangers" faced by the applicant are "no different and no greater than those faced by others in a similar situation." There was no persuasive evidence that the applicant is at risk of forced recruitment into an armed group because he has an education. Apart from the incident with the Fatah member discussed above, there was no evidence that any of the armed factions in the camp had personally targeted the applicant. Any risk the applicant would face due to COVID-19 "would be no greater than that faced by others and is a generalized risk" [at paragraph 39]. As a result, the RPD concluded that the applicant had not established, on a balance of probabilities, that he would personally be subject to any of the risks enumerated in subsection 97(1) of the IRPA.

[18] Accordingly, the RPD rejected the applicant's claim, finding that he is neither a Convention refugee nor a person in need of protection.

IV. STANDARD OF REVIEW

[19] It is well-established that the merits of a decision by the RPD rejecting a claim for protection should be reviewed on a reasonableness standard.

[20] A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Canada (Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at paragraph 85). A decision that displays these qualities is entitled to deference from the reviewing court (*Vavilov*, at paragraph 85). For a decision to be reasonable, a reviewing court "must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic, and it must be satisfied that there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived" (*Vavilov*, at paragraph 102, internal quotation marks and citation omitted). On the other hand, "where reasons are provided but they fail to provide a transparent and intelligible justification …, the decision will be unreasonable" (*Vavilov*, at paragraph 136).

[21] The applicant submits that a reviewing court should consider whether the RPD applied the correct test in determining whether he is a Convention refugee under section 96 of the IRPA and, further, that if the RPD applied the incorrect test, this alone would warrant the Court's intervention.

[22] I do not agree. Reasonableness is the default standard of review of administrative decisions and none of the exceptions recognized by the Supreme Court of Canada apply here: see *Society of Composers, Authors and Music Publishers of Canada v. Entertainment Software Association*, 2022 SCC 30, [2022] 2 S.C.R. 303, at paragraphs 26–28. That said, established legal tests are among the constraints with respect to which an administrative decision must be justified. A decision maker's failure to apply an established legal test can call into question the overall reasonableness of the decision, especially if the decision maker does not explain or justify a departure from settled interpretations, long-standing case law, or binding precedent: see *Vavilov*, at paragraphs 111–112; see also *Azzam v. Canada (Citizenship and Immigration)*, 2019

FC 549, at paragraphs 11–12. Thus, whether or not the RPD applied the “correct” legal test, the determinative question on review is whether the decision exhibits the requisite degree of justification, intelligibility and transparency (*Vavilov*, at paragraph 100).

V. ANALYSIS

A. *Introduction*

[23] Among the objectives of the IRPA is “to fulfil Canada’s international legal obligations with respect to refugees” (see paragraph 3(2)(b)). Furthermore, that Act “is to be construed and applied in a manner that … complies with international human rights instruments to which Canada is signatory” (see paragraph 3(3)(f)). As well, as a general principle of statutory interpretation, “legislation is presumed to comply with Canada’s international obligations, and courts should avoid interpretations that would violate those obligations. Courts must also interpret legislation in a way that reflects the values and principles of customary and conventional international law” (*R. v. Appulonappa*, 2015 SCC 59, [2015] 3 S.C.R. 754, at paragraph 40).

[24] The discussion that follows draws on the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (Reissued February 2019) (Refugee Handbook). The Refugee Handbook is not legally binding on Canadian decision makers. Nevertheless, the Supreme Court of Canada has recognized an earlier version of this document as a valid source for the interpretation of the Refugee Convention and as a “highly persuasive” and “highly relevant” authority in Canada: see *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689, at pages 713–714; and *Chan v. Canada (Minister of Employment and Immigration)*, [1995] 3 S.C.R. 593, at page 620 (*per* La Forest J., dissenting) and pages 658–659 (*per* Major J.). As the Federal Court of Appeal recently observed, the Refugee Handbook “operates as an important constraint on administrative decision makers such as the RPD” (*Canada (Citizenship and Immigration) v. Galindo Camayo*, 2022 FCA 50, [2022] 4 F.C.R. 220, at paragraph 84). By shedding light on the meaning of the Refugee Convention, the Refugee Handbook can thus be a valuable resource when it comes to interpreting section 96 of the IRPA, a key part of the legal framework by which Canada has implemented in domestic law its obligations under the Convention.

[25] As I will discuss below, I have concluded that the RPD’s decision is not justified in relation to the facts and law that constrain the RPD, including the unique position of stateless persons under the law of refugee protection and the requirement to consider the cumulative impact of discriminatory treatment. Before turning to the RPD’s decision, however, it may be helpful to review the test for refugee protection for persons who are stateless as well as the distinction between persecution and discrimination in the context of claims for refugee protection.

B. *Stateless Persons*

[26] Section 96 of the IRPA states:

Convention refugee

> **96** A Convention refugee is a person who, by reason of a well-founded fear of 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.

[27] This provision tracks closely the definition of “Refugee” in Article 1A(2) of the Refugee Convention [*United Nations Convention Relating to the Status of Refugees*, July 28, 1951, [1969] Can. T.S. No. 6] (i.e. the 1951 Convention as modified by Article 1(2) of the 1967 Protocol).

[28] As does the Refugee Convention, paragraphs 96(a) and (b) of the IRPA draw a distinction between persons having a country of nationality and stateless persons. Also like the Refugee Convention, these provisions stipulate different tests for determining whether a person is a Convention refugee depending on whether the person has a country of nationality or is stateless. Nevertheless, several essential elements of the test for determining Convention refugee status are the same for members of both groups.

[29] Whether the person seeking protection as a Convention refugee has a country of nationality or is stateless, they must establish a well-founded fear of persecution. As the Refugee Handbook explains, this means that “it is not only the frame of mind of the person concerned that determines his refugee status;” that frame of mind “must be supported by an objective situation” (at paragraph 38). Accordingly, under section 96 of the IRPA, the claimant must establish that the fear alleged is genuine (the subjective element) and that the persecution that is feared is a serious possibility (the objective element) (*Chan*, at page 659). Both the existence of the fear and the fact that it is objectively well-founded must be established on a balance of probabilities (*Chan*, at page 659). As well, the persecution must have a nexus to a Convention ground—i.e. that the persecution is “for reasons of race, religion, nationality, membership of a particular social group or political opinion.” Finally, the claimant must establish that it is because of this fear that they are outside their country of nationality or the country of their former habitual residence (as the case may be) (cf. Refugee Handbook, at paragraphs 94–96).

[30] All of these elements apply equally to claimants with a country of nationality and claimants who are stateless. The different tests in paragraphs 96(a) and (b) stem from the obvious fact that stateless persons have no country of nationality of whose protection they could avail themselves (*Thabet v. Canada (Minister of Citizenship and Immigration)*, [1998] 4 F.C. 21 (C.A.), at paragraph 17; Refugee Handbook, at paragraph 101). Thus, in the case of a person with a country of nationality, that person is a Convention refugee if they are outside their country of nationality by reason of their well-founded fear of persecution and they are unable or, by reason of that fear, unwilling to avail themselves of the protection of that country. In the case of a stateless person, on the other hand, that person is a Convention refugee if they are outside their country of former habitual residence by reason of their well-founded fear of persecution and they are unable or, by reason of that fear, unwilling to return to that country. In both cases, an inability “implies circumstances that are beyond the will of the person

concerned” (Refugee Handbook, at paragraph 98) while an unwillingness must be “owing to” (in the Refugee Convention [Article 1A(2)]) or “by reason of” (in the IRPA [at section 96]) the fear of persecution. (For the sake of simplicity, I have framed this discussion on the assumption that the claimant has only one country of former habitual residence, as is the case with the applicant. Additional considerations arise when there is more than one such country: see *Thabet*.)

[31] The Refugee Handbook observes that “once a stateless person has abandoned the country of his former habitual residence for the reasons indicated in the definition, he is usually unable to return” (at paragraph 101). Similarly, the Federal Court of Appeal noted in *Thabet* that it is “unlikely that many countries of former habitual residence will grant their former residents the right to return, but there may be lands that do normally accept back former habitual residents” (at paragraph 29). In such a case, “as long as the claimant does not face persecution in a country of former habitual residence that will take him or her back, he or she cannot be determined to be a refugee” (at paragraph 29).

[32] On the other hand, where a stateless person is unable to return to their country of former habitual residence, the focus of the test for refugee protection will be on why they are outside that country in the first place. Not all stateless persons who have left the country of their former habitual residence are refugees. To be a Convention refugee, the person “must be outside the country of their former habitual residence for the reasons indicated in the definition” (Refugee Handbook, at paragraph 102)—in other words, owing to (in the Convention) or by reason of (in the IRPA) a well-founded fear of persecution (*Chehade v. Canada (Citizenship and Immigration)*, 2017 FC 282, at paragraph 20). The Refugee Handbook explains (at paragraph 39) with regard to the Convention definition:

> It may be assumed that, unless he seeks adventure or just wishes to see the world, a person would not normally abandon his home and country without some compelling reason. There may be many reasons that are compelling and understandable, but only one motive has been singled out to denote a refugee. The expression “owing to well-founded fear of being persecuted” – for the reasons stated – by indicating a specific motive automatically makes all other reasons for escape irrelevant to the definition….

[33] Nevertheless, as the same paragraph goes on to state, other reasons for escaping may not be altogether irrelevant to the process of determining refugee status, “since all the circumstances need to be taken into account for a proper understanding of the applicant’s case” [at paragraph 39].

[34] In contrast to section 96 of the IRPA, section 97 does not draw any distinction in the test for determining whether a person is in need of protection under that provision depending on whether the person has a country of nationality or is stateless. The test is the same for both: Would removing that person to their country of nationality or their country of former habitual residence (as the case may be) subject them personally to either a danger of torture (paragraph 97(1)(a)) or a risk to their life or a risk of cruel and unusual treatment or punishment (paragraph 97(1)(b))? Unlike the test under section 96, for stateless persons, neither an inability nor an unwillingness to return are part of the test for protection under section 97. While there may be an air of unreality to the test in cases where the person is unable to return to the country in question because, for

example, that country will not admit them, the question still remains: Would the person be in danger or at risk if Canada were to remove them to that country?

C. *The Distinction between Persecution and Discrimination*

[35] As set out above, to be entitled to protection as a Convention refugee under section 96 of the IRPA, a claimant must have a well-founded fear of persecution on a ground listed in the Convention. Neither the Refugee Convention nor the IRPA defines the term “persecution”. In *Rajudeen v. Canada (Minister of Employment and Immigration)* (1984), 55 N.R. 129 (F.C.A.), the Federal Court of Appeal simply cited two dictionary definitions of “persecute” without further analysis of the meaning of the term. Subsequently, in *Mete v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 840, 46 Imm. L.R. (3d) 232, Justice Dawson (then a member of the Federal Court) stated that *Rajudeen* “defined persecution in terms of: to harass or afflict with repeated acts of cruelty or annoyance; to afflict persistently; to afflict or punish because of particular opinions or adherence to a particular creed or mode of worship; a particular course or period of systematic infliction of punishment directed against those holding a particular belief; and persistent injury or annoyance from any source” (at paragraph 4). This amalgamation of the two dictionary definitions cited in *Rajudeen* was subsequently quoted with approval by the Federal Court of Appeal in *Canada (Citizenship and Immigration) v. Munderere*, 2008 FCA 84, 291 D.L.R. (4th) 68, at paragraph 41.

[36] The Refugee Handbook states that a threat to life or freedom and other serious violations of human rights on account of an enumerated ground constitute persecution under the Refugee Convention (at paragraph 51). It then goes on to explain [at paragraph 52]:

> Whether other prejudicial actions or threats would amount to persecution will depend on the circumstances of each case, including the subjective element to which reference has been made in the preceding paragraphs. The subjective character of fear of persecution requires an evaluation of the opinions and feelings of the person concerned. It is also in the light of such opinions and feelings that any actual or anticipated measures against him must necessarily be viewed. Due to variations in the psychological make-up of individuals and in the circumstances of each case, interpretations of what amounts to persecution are found to vary.

[37] Not all adverse treatment, even in relation to a Convention ground, constitutes persecution. As the Refugee Handbook explains (at paragraph 54):

> Differences in the treatment of various groups do indeed exist to a greater or lesser extent in many societies. Persons who receive less favourable treatment as a result of such differences are not necessarily victims of persecution. It is only in certain circumstances that discrimination will amount to persecution. This would be so if measures of discrimination lead to consequences of a substantially prejudicial nature for the person concerned, e.g. serious restrictions on his right to earn his livelihood, his right to practice his religion, or his access to normally available educational facilities.

[38] However, concluding that differences in treatment only amount to discrimination is not the end of the analysis. As Justice Dawson stated in *Mete*, “in cases where the evidence establishes a series of actions characterized to be discriminatory, and not persecutory, there is a requirement to consider the cumulative nature of that conduct. This requirement reflects the fact that prior incidents are capable of forming the foundation of present fear” (at paragraph 5). Justice Dawson goes on to note that this

principle is expressed in the Refugee Handbook, quoting the following part of paragraph 53:

> In addition, an applicant may have been subjected to various measures not in themselves amounting to persecution (e.g. discrimination in different forms), in some cases combined with other adverse factors (e.g. general atmosphere of insecurity in the country of origin). In such situations, the various elements involved may, if taken together, produce an effect on the mind of the applicant that can reasonably justify a claim to well-founded fear of persecution on "cumulative grounds"….

[39] Paragraph 53 of the Refugee Handbook also states the following about a well-founded fear of persecution on cumulative grounds:

> …. Needless to say, it is not possible to lay down a general rule as to what cumulative reasons can give rise to a valid claim to refugee status. This will necessarily depend on all the circumstances, including the particular geographical, historical and ethnological context.

[40] Tying all these ideas together, the Refugee Handbook states (at paragraph 55):

> Where measures of discrimination are, in themselves, not of a serious character, they may nevertheless give rise to a reasonable fear of persecution if they produce, in the mind of the person concerned, a feeling of apprehension and insecurity as regards his future existence. Whether or not such measures of discrimination in themselves amount to persecution must be determined in light of all the circumstances. A claim to fear persecution will of course be stronger where a person has been the victim of a number of discriminatory measures of this type and where there is thus a cumulative element involved. [Footnote cross-referencing paragraph 53 omitted.]

[41] After reviewing these and other authorities, the [Federal] Court of Appeal states in *Munderere* that it is "clear that the Board is duty bound to consider all the events which may have an impact on a claimant's claim that he or she has a well founded fear of persecution, including those events which, if taken individually, do not amount to persecution, but if taken together, may justify a claim to a well founded fear of persecution" (at paragraph 42).

[42] In summary, depending on the particular circumstances of a claim for protection as a Convention refugee, several questions can arise, including: Is the adverse treatment by reason of a Convention ground? If so, does it amount to persecution or is it "merely" discrimination? Even if discrete forms of adverse treatment do not have a nexus to a Convention ground or do not, in and of themselves, amount to persecution, do they, in their cumulative impact on the particular claimant given his or her particular circumstances, give rise to a well-founded fear of persecution?

[43] All of these questions arise in the present case. As I will explain below, in my view, the RPD's answer to the third question in particular is unreasonable because it lacks justification, transparency and intelligibility.

D. *The Applicant's Section 96 Claim*

[44] As set out above, the RPD considered six factors in determining whether the applicant is a Convention refugee under section 96 of the IRPA. In my view, that assessment is unreasonable in several respects. However, before examining these flaws in the decision, I will briefly explain why I agree with the applicant that, in one key

respect, the RPD committed a reviewable error by engaging in a selective reading of the documentary evidence.

[45] As *Vavilov* holds, “a reasonable decision is one that is justified in light of the facts” (at paragraph 126). The decision maker “must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them” (at paragraph 126). The reasonableness of a decision “may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it” (at paragraph 126).

[46] Long before *Vavilov*, it was well-established in the refugee context that a decision maker’s failure to account for evidence that supports a claimant’s position can jeopardize the reasonableness of a decision rejecting a claim for protection: see *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667, 157 F.T.R. 35, [1999] 1 F.C. D-53, (T.D.), at paragraph 15.

[47] In the present case, the RPD accepted that the applicant is unable to return to Lebanon. It found, however, that this did not amount to persecution because the law in question, which prohibits stateless persons from returning to Lebanon unless they hold a residence permit in the country in which they currently reside, is unrelated to the grounds listed in the Convention. What the RPD failed to consider is that there was objective evidence suggesting that, although the law technically applied to every stateless returnee lacking residency elsewhere, as it was being applied in practice by Lebanese authorities, stateless Palestinians lacking residency elsewhere were effectively prohibited from returning while others lacking residency elsewhere were being permitted to return to Lebanon despite this. See *Lebanon: Readmission of Palestinian Refugees from Lebanon, Report based on a Fact Finding Mission to Beirut, Lebanon, from 7 to 10 January 2020* (Denmark: Danish Immigration Service) (I.R.B. National Documentation Package for Lebanon (30 November 2020), item 13.2). Although the RPD cites this report in its decision, it does not address the detailed evidence it contains concerning the differential treatment of stateless Palestinians attempting to return to Lebanon compared to others. That evidence suggests that, contrary to the RPD’s finding, it was not simply because they did not possess a certain type of document that stateless Palestinians were being prevented from returning to Lebanon. The RPD was not required to accept this evidence. However, for the determination that the law in question is “a law of general application and is not persecutory” to be reasonable, this evidence had to be addressed [at paragraph 22]. This was not done.

[48] The applicant also contends that the RPD unreasonably ignored pertinent evidence concerning conditions in Lebanon for stateless Palestinians. I do not agree. The RPD’s discussion of the documentary evidence relating to the circumstances of stateless Palestinian refugees in Lebanon (including those living in the Ain al-Hilweh camp) is certainly not extensive. However, the RPD agreed with the applicant’s account of those circumstances on a factual level in most if not all the respects it addressed (see paragraph 16, above). The reports the applicant cites on review simply add more support to those conclusions. They have little bearing on the legal characterization of those circumstances, the main point on which the RPD disagreed with the applicant.

[49] On the other hand, I do agree with the applicant that the RPD's legal characterization of the circumstances on which he based his claim for refugee protection is flawed in several key respects. I turn to them now.

[50] First, the RPD's determination that the cumulative effect of the "problems" encountered by the applicant did not amount to persecution is unreasonable. That said, I do not agree with the applicant that the RPD simply failed to consider the cumulative effect of the factors it identified in the decision, as it was required to do. The RPD expressly states [at paragraph 17] that it had "consider[ed] whether the problems encountered by the claimant were mere discrimination or whether in their totality, they amounted to persecution" (emphasis added). Even though it did not expressly conduct a cumulative analysis or actually state its conclusion that, in their totality, the "problems" encountered by the applicant did not amount to persecution, it must be presumed that the RPD did what it said it had done. However, the decision maker "cannot simply affirm that it has considered the cumulative nature of discriminatory acts, but must actually perform an analysis of those cumulative effects" (*Iraqi v. Canada (Citizenship and Immigration)*, 2019 FC 1049, at paragraph 25). That did not happen here. Consequently, the RPD's decision offers no insight whatsoever into how that analysis was done nor any explanation for why the RPD reached the conclusion it did. This renders the decision unreasonable: see *Mohammed v. Canada (Citizenship and Immigration)*, 2009 FC 768, 348 F.T.R. 69, at paragraphs 64–67; *Ban v. Canada (Citizenship and Immigration)*, 2018 FC 987, at paragraphs 28–29; *Ruszo v. Canada (Citizenship and Immigration)*, 2019 FC 397, 66 Imm. L.R. (4th) 330, at paragraphs 25–27; and *Kokeny v. Canada (Citizenship and Immigration)*, 2022 FC 993, at paragraphs 21–22.

[51] Second, as noted above, the RPD accepted that the applicant is unable to return to Lebanon. It was reasonable—indeed, necessary—for the RPD to then ask whether the reason the applicant would be denied entry to Lebanon itself constituted an act of persecution: see *Thabet*, at paragraph 32. As I have already discussed, the RPD's conclusion that, standing on its own, this was not itself an act of persecution is unreasonable. Moreover, and in any event, the RPD unreasonably failed to appreciate that this did not exhaust the legal significance of the fact that the applicant is unable to return to Lebanon.

[52] Being unable to return to Lebanon, there is no question that the applicant therefore satisfied paragraph 96(b) of the IRPA. There is no need to consider whether he is unwilling to return to that country by reason of a well-founded fear of persecution on a Convention ground, the other part of the disjunctive test in paragraph 96(b). Consequently, whether the applicant is a Convention refugee turned on whether he is outside Lebanon by reason of a well-founded fear of persecution on a Convention ground. Under the legal framework set out above, the answer to this question turned, to a significant degree, on the applicant's state of mind when he left Lebanon in September 2018. The applicant adduced substantial evidence going to exactly this question yet the RPD does not grapple with this issue meaningfully or even at all. This calls into question whether the RPD was actually alert and sensitive to the matter before it (*Vavilov*, at paragraph 128).

[53] Third, following from the two preceding points, one cannot find any explanation in the decision for why the RPD found, as it must have done (even though it did not state

this expressly) that the cumulative impact of the conditions under which the applicant was living in Lebanon, together with all the other disadvantages he experienced there as a stateless Palestinian, did not instill in him a well-founded fear of persecution.

[54] To reiterate the test as it is framed in paragraph 53 of the Refugee Handbook (a test adopted by Justice Dawson in *Mete* and the Federal Court of Appeal in *Munderere*):

> … an applicant may have been subjected to various measures not in themselves amounting to persecution (e.g. discrimination in different forms), in some cases combined with other adverse factors (e.g. general atmosphere of insecurity in the country of origin). In such situations, the various elements involved may, if taken together, produce an effect on the mind of the applicant that can reasonably justify a claim to well-founded fear of persecution on "cumulative grounds"….

[55] The RPD did not doubt the applicant's account that it was because of conditions in Lebanon (including in the camp in which he had lived his entire life) that the applicant left that country in September 2018. It did not doubt that the applicant had been subjected to serious adverse conditions in the Ain al-Hilweh camp. It found the applicant to be a credible historian of his own experiences. It did not question the applicant's account (which was corroborated by objective country conditions evidence) that the camp is overcrowded, impoverished, and riven by religious and political tensions and violence. It did not question the sincerity of the applicant's apprehension about being caught up in political or sectarian conflicts. It did not doubt that there was a general atmosphere of insecurity for stateless Palestinians in Lebanon generally or in the Ain al-Hilweh camp in particular. It accepted that, being a young man, the applicant would be subjected to intense scrutiny whenever he entered or left the camp through the military checkpoints. It accepted that the applicant was legally prohibited from working in his profession and from owning real property in Lebanon. And yet, despite all this, the RPD never explains why these conditions, taken together, and viewed in the applicant's particular geographical, historical and ethnological context, did not give rise to a well-founded fear of persecution on the part of the applicant. Put another way, nowhere in the decision is there any explanation for why the RPD found that the aggregate experiences of the applicant did not give rise to a well-founded fear of consequences of a substantially prejudicial nature. Once again, the complete absence of analysis of a central question renders the decision unreasonable.

[56] Fourth, I agree with the applicant that the RPD took an unreasonably restrictive view of his experiences in Lebanon as the foundation of his claim by reducing those experiences to the six items listed in paragraph 14, above. (In fact, it is only five of the six that could inform the applicant's well-founded fear of persecution at the time he left Lebanon. As the applicant explained in his supplementary BOC narrative, he only learned that he would be unable to return after he had left.) I agree that the RPD's approach is overly simplistic and reductive. It failed to capture the full scope of the basis of the applicant's alleged well-founded fear of persecution, grounded as it was in his own experiences growing up in the refugee camp and corroborated by country conditions evidence that documented the often dire circumstances of stateless Palestinians in Lebanon. As presented to the RPD in his BOC narratives, in his testimony, and in his counsel's submissions, there was a great deal more to the applicant's claim than the six (or five) "problems" the RPD addressed. By reducing the elements of the applicant's claim to the points it highlighted, once again, the RPD's

reasons call into question whether the decision maker was actually alert and sensitive to the matter before it.

[57] I would note, finally, that the applicant has not directly challenged the RPD's determination that, since the increased security measures implemented against young Palestinian men entering or leaving the camp was for a non-Convention reason (namely, security), they do not amount to persecution. As a result, it is not necessary for me to address the reasonableness of this determination. My silence on this point should not be taken to mean that I consider this determination to be reasonable.

E. *The Applicant's Section 97 Claim*

[58] On review, the applicant has not challenged the RPD's separate determination under section 97 of the IRPA that he is not a person in need of protection. Consequently, there is no need for me to address it here.

VI. CONCLUSION

[59] In summary, considered together, I am satisfied that the flaws I have identified above are sufficiently serious and central to the RPD's determination under section 96 of the IRPA that the overall reasonableness of the decision is called into question. The matter must, therefore, be redetermined. Furthermore, even though I have not found any reviewable errors in the RPD's conclusion that the applicant is not a person in need of protection under section 97 of the IRPA, given the close connection between these two aspects of the applicant's claim for protection, it is appropriate for the matter to be returned to the RPD in its entirety so that both issues can be redetermined on the basis of the record before the new decision maker.

[60] Finally, the original style of cause names the respondent as the Minister of Immigration, Refugees and Citizenship. Although that is how the respondent is now commonly known, its name under statute remains the Minister of Citizenship and Immigration: *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, subrule 5(2) and IRPA, subsection 4(1). Accordingly, as part of this judgment, the style of cause is amended to name the respondent as the Minister of Citizenship and Immigration.

JUDGMENT IN IMM-2486-21

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended to reflect the Minister of Citizenship and Immigration as the correct respondent.

2. The application for judicial review is allowed.

3. The decision of the Refugee Protection Division dated March 23, 2021, is set aside and the matter is remitted for redetermination by a different decision maker.

4. No question of general importance is stated.