

Federal Court



Cour fédérale

Date: 20190924

Docket: IMM-460-19

Citation: 2019 FC 1210

Ottawa, Ontario, September 24, 2019

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

MUATAZ AWAD ABDELHALIM AHMED

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This Judgment and Reasons relate to an application for judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada dated December 31, 2018 [the Decision], which dismissed the Applicant's appeal from the decision of the Refugee Protection Division [RPD] dated February 19, 2018. The RAD affirmed the RPD's

rejection of the Applicant's claims for refugee protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act, SC 2001, c 27* [IRPA].

[2] As explained in greater detail below, this application is dismissed, because, having considered the Applicant's arguments, I find no basis to conclude that the Decision is outside the range of acceptable outcomes which informs the reasonableness standard of review.

II. **Background**

[3] The Applicant, Muataz Awad Abdelhalim Ahmed, is a Sudanese citizen who was born and raised in Saudi Arabia. Until recently, he lived and worked in Saudi Arabia under a sponsored work visa.

[4] Mr. Ahmed seeks refugee protection based on an alleged fear of persecution in Sudan, because the Sudanese government perceives that he is a supporter of the opposition Broad National Movement [BNM]. He claims this affiliation began as a child, when he helped his father host BNM meetings in their home. His father was allegedly arrested and tortured for this involvement; as a result, his father moved to Saudi Arabia, where the Applicant was born. Mr. Ahmed claims he continued his political activities as an adult in Saudi Arabia and after he came to Canada.

[5] Mr. Ahmed alleges that Sudanese authorities detained and beat him for delivering donations to a BNM member in early January 2016, while he was in Sudan on holiday. He says

that, with the help of an agent, he obtained a new passport and other documentation and was able to return to Saudi Arabia at the end of January 2016.

[6] In September 2016, Mr. Ahmed's employer gave notice that it would not renew his contract, which resulted in cancellation of his work visa. He fled Saudi Arabia to avoid being deported to Sudan; and, in March 2017, he crossed from the United States to Canada, where he claimed refugee status on political grounds.

III. **Decision under Review**

[7] The subject of this application for judicial review is the RAD's dismissal of Mr. Ahmed's appeal of the rejection by the RPD of his refugee claim. Before the RAD, he submitted evidence from his father, fellow activists, and the agent who obtained documentation for him, as well as photographs of himself protesting the Sudanese government in Canada. The RAD declined to admit the new evidence. It noted that the RPD had raised various credibility concerns with Mr. Ahmed at the hearing, including problems with his evidence and the lack of corroborating documents, and that it did not issue its decision until three months later. As such, the RAD found Mr. Ahmed had not reasonably explained why he did not provide the new documents to the RPD before its rejection of his claim. The RAD also found these documents merely restated the evidence previously submitted.

[8] The RPD had drawn a negative credibility inference because Mr. Ahmed could not provide any documentation to corroborate his father's involvement in the BNM and its predecessor party. As Mr. Ahmed alleged a long family history of active involvement in

Sudanese opposition politics, the RPD found this lack of evidence to be central to his claim. It did not accept his explanation that he did not consider such corroborating documents important because his political affiliations, not those of his father, were at issue. It also rejected his explanation that documentation of such activities is not available because Saudi Arabia does not allow political engagement. The RAD agreed with the RPD's finding.

[9] The RPD was also concerned about the lack of evidence surrounding the transaction leading to Mr. Ahmed's arrest. He alleged that he was arrested while delivering donations to a BNM member in Sudan, but he could not provide any corroborating details about the transaction or the person to whom he delivered the money. The RPD found his testimony vague and rejected his explanation that he did not know the recipient personally and did not know his whereabouts. The RPD considered country condition documentation about the BNM's activities in Sudan, and the authorities' mistreatment of BNM members, but drew a negative inference concerning the credibility of Mr. Ahmed's allegation that he delivered funds to the BNM in Sudan. On appeal, he argued that the RPD was selective in its review of the country documents and erred by failing to refer to specific documentary evidence.

[10] The RAD affirmed the RPD's conclusions, noting there was no evidence to rebut the presumption that the RPD had considered the evidence before it, and finding that the country condition evidence was insufficient to establish Mr. Ahmed's allegation. The RAD was similarly concerned that he could not provide specific details about the transaction, the recipient of the funds, or the BNM generally.

[11] The RPD also had credibility concerns about Mr. Ahmed's ability to obtain a new passport and exit the country days after being detained in Sudan. It found his testimony inconsistent on when and how he had obtained a Certificate of Civil Registration [Certificate] issued by the police and on whether his passport was checked when he was leaving the country in January 2016. It then considered country condition documentation to the effect that legislation required all persons who depart from Sudan to have an exit visa and that such visas will not be granted to those accused of an offence. On appeal, Mr. Ahmed argued that the RPD erred by failing to appreciate his explanations that his friend obtained the relevant documents as his agent and bribed an airport official.

[12] The RAD agreed with the RPD and found not credible that an agent could obtain a genuine passport, a Certificate (issued by the police), and an exit visa for Mr. Ahmed, if he had been detained as he alleged. It also found not credible the allegation that he was able to leave the country mere days after he was detained and put on strict reporting requirements. It rejected his explanation that no one looked at the passport in the Sudanese airport, given that the passport contained an exit stamp dated the day of his departure from the airport.

[13] The RAD considered Mr. Ahmed's political activities in Canada but noted that he had not challenged the RPD's analysis and finding on this point. Based on the evidence, the RAD affirmed he failed to show that his activities in Canada had made him a target.

[14] Overall, the RAD found that Mr. Ahmed had not credibly established his allegations of persecution, due to his perceived or actual political profile, or that he is known to and/or wanted

by the Sudanese authorities. The RAD affirmed the decision of the RPD that Mr. Ahmed is neither a Convention refugee nor a person in need of protection.

IV. **Issues and Standard of Review**

[15] The Applicant raises the following list of issues for the Court's consideration:

- A. Did the RAD err by a microscopic examination of peripheral matters?
- B. Did the RAD err in its assessment of a lack of corroborative evidence?
- C. Did the RAD err in refusing to admit new evidence?
- D. Did the RAD err in its finding concerning the credibility of the allegation that the Applicant delivered funds to the BNM in Sudan?
- E. Did the RAD err in upholding the RPD's selective review of country documents?
- F. Did the RAD err in finding that the Applicant's testimony about the BNM was very vague?
- G. Did the RAD err in making an adverse credibility finding based on the Applicant's new passport, Certificate, and exit from the country?

[16] These issues are all reviewable on a standard of reasonableness.

V. **Analysis**

A. Did the RAD err by a microscopic examination of peripheral matters?

[17] The Applicant argues that the RAD erred by basing credibility findings on a microscopic examination of peripheral matters, through its focus on the Applicant's father's involvement with the BNM. He submits that the RAD effectively treated his father as though he were a claimant, and he argues that the RAD failed to engage with his submission that the information about his father's political involvement was provided merely as context for the Applicant's own claim.

[18] I find no merit to this submission. The RAD expressly noted the Applicant's argument that his family history in opposition politics was only peripheral to his claim. The RAD disagreed with this argument, reasoning that the Applicant alleged a very lengthy and active family history in opposition politics that spanned several years in both Sudan and Saudi Arabia. The RAD emphasized that the Applicant alleged both he and his father engaged in opposition politics *together* while in Saudi Arabia. As such, it is clear that the RAD did engage with the Applicant's argument. It simply rejected that argument and explained why it did not consider the Applicant's father's involvement to be the peripheral to his claim. There is no basis to find that this aspect of the RAD's Decision is unreasonable.

B. Did the RAD err in its assessment of a lack of corroborative evidence?

[19] The RAD made adverse credibility findings arising from the lack of corroborative evidence, related to (1) the Applicant's father's involvement with the BNM and (2) the

Applicant's alleged delivery of funds to the BNM in Sudan. The Applicant challenges both aspects of this analysis, arguing that, in the absence of contradictory evidence, it represents a reviewable error to draw negative inferences from the absence of corroboration. He also submits the RAD failed to consider his explanation for the absence of corroborative evidence (see, e.g., *Magyar v Canada (Citizenship and Immigration)*, 2015 FC 750 at paras 40-43).

[20] I agree with the Respondent's position that the adverse credibility determination resulted from more than the lack of corroborative evidence. The RAD concluded that the Applicant had provided vague testimony about the alleged delivery of funds to the BNM, the recipient of the funds, and the BNM itself. The RAD was also skeptical about the Applicant's testimony that he obtained the Certificate and a new passport, and was able to exit the country, within days after being released from detention with reporting requirements. I will consider below the Applicant's arguments surrounding the reasonableness of those findings. However, subject to that analysis, the RAD's reasoning was not contrary to applicable jurisprudence in relying on the lack of corroborative evidence in drawing negative inferences.

[21] Nor can it be said that the RAD failed to consider the Applicant's explanations for the lack of corroborative documentation. With respect to his father's involvement in opposition politics, the RAD noted the Applicant's testimony that he did not think corroborating documents were important and could not get them because Saudi Arabia does not allow political engagement. However, the RAD rejected these explanations as unreasonable, finding it would be reasonable to expect some supporting documents to be available over the alleged lengthy and

active political history, including the Applicant's father's alleged formal and active membership in two political parties and hosting meetings for several years at his own house.

[22] The Applicant also takes issue with the RAD upholding the RPD's negative inference based on the lack of "any" corroborating documents. He submits that this finding fails to consider that he filed supporting documentation in the form of a letter from the President of the BNM, identifying the Applicant as a member of the BNM and stating that he was subjected to arbitrary arrest and torture by the Sudanese authorities in 2016. I agree with the Respondent's position that a careful reading of the Decision does not support this argument. The relevant finding by the RAD related to the lack of any corroborating documents to establish the Applicant's family history in opposition politics. In other words, this portion of the Decision concerned corroborative evidence of the Applicant's father's involvement, to which the letter from the President of the BNM, relating to the Applicant himself, was not responsive.

C. Did the RAD err in refusing to admit new evidence?

[23] Section 110(4) of IRPA permits the introduction of new evidence on appeal to the RAD where the evidence arose after the RPD's rejection of the appellant's claim, the evidence was not reasonably available, or the appellant could not reasonably have been expected in the circumstances to have presented the evidence, at the time of the rejection.

[24] The Applicant sought to introduce evidence from his family and friends in Saudi Arabia and Sudan, as well as evidence related to his participation in activities in Canada. The RAD noted that the RPD specifically raised various credibility concerns with the Applicant at the RPD

hearing, including problems with his evidence and the lack of corroborating documentation; and, the Applicant had three months following the hearing to provide any such documentation before the RPD's rejection of his claim. The RAD therefore held that the statutory requirements for admission of the new evidence were not met.

[25] The Applicant challenges this conclusion, pointing out that the RPD did not request further information or documentation related to the credibility or corroboration concerns that resulted in the adverse inferences. Rather, at the conclusion of the hearing, the RPD asked the Applicant's counsel only to make very brief submissions on a Response to Information Request surrounding the BNM's presence in Sudan.

[26] I agree that the RPD did not ask the Applicant to provide additional information or documentation of the sort that he subsequently sought to introduce in his appeal. However, the RAD found that the relevant issues had been raised at the RPD hearing, during the Applicant's testimony, and therefore he could have been reasonably expected to have provided these documents to the RPD. I find nothing unreasonable in the RAD's analysis arising from the fact that the RPD did not revisit these issues at the conclusion of the hearing. The RAD also considered, and rejected, the argument then advanced by the Applicant that his failure to adduce such documents was attributable to bad or inadequate counsel.

D. Did the RAD err in its finding concerning the credibility of the allegation that the Applicant delivered funds to the BNM in Sudan?

[27] In upholding the RPD's credibility concerns surrounding the Applicant's allegation that he transported money to the BNM in Sudan in January 2016, and was arrested as a result, the RAD concluded that his testimony on the subject was vague. The Applicant takes issue with this analysis, arguing that the RAD improperly expected him to be able to explain the actions or motives of the alleged agent of persecution (see *Varatharasa v Canada (Citizenship and Immigration)*, 2017 FC 11 at para 18). He relies on a portion of the transcript of his testimony, in which the RPD asked him several questions about why he would be arrested for having the money.

[28] However, the Decision does not indicate the RAD was concerned about the Applicant's inability to explain the motives of the Sudanese authorities. Rather, the RAD noted the Applicant was unable to provide any specific details about the transaction, the individual who received the money, or the BNM itself. Based on my review of the transcript, it is not unreasonable for the RAD to have characterized the Applicant's testimony on these topics in this manner. For instance, the RAD referred to the Applicant giving vague testimony as to the size of the BNM in Sudan, his inability to specify or estimate the size of its membership, and his inability to name any BNM leaders other than the head of the organization. The Applicant's further arguments, in support of his position that the RAD erred in finding his testimony about the BNM to be vague, will be considered in addressing that specific issue below.

E. *Did the RAD err in upholding the RPD's selective review of country documents?*

[29] The Applicant argued before the RAD that the RPD was selective in its review of the country condition documentation and that its failure to refer to specific documentary evidence represented a reviewable error. The RAD disagreed with this argument, noting that the RPD is presumed to have considered the evidence before it, and finding no evidence to indicate otherwise. After considering what it described as the Applicant's vague testimony, the RAD found he had failed to provide sufficient trustworthy and credible evidence to establish his allegation that he had delivered money to the BNM in Sudan. Furthermore, the country condition evidence was insufficient to establish such allegation.

[30] In challenging this finding, the Applicant recognizes the presumption that the RPD considered the evidence before it, correctly notes that this presumption is rebuttable, and submits that the RAD erred by failing to explain how it reached its conclusion that the RPD had not conducted a selective review of the documentary evidence. In his Memorandum of Argument submitted to the RAD, the Applicant identifies several pieces of country condition evidence related to mistreatment of dissidents (including members of the BNM) and other human rights abuses by Sudanese authorities. He submitted to the RAD that this evidence represented objective support for his claim and that the RPD's failure to address this evidence represented an error.

[31] In my view, the RAD's reasoning in rejecting this argument is transparent from the Decision and is within the range of acceptable outcomes, which informs the reasonableness

standard. The Applicant provided no evidentiary support to rebut the presumption that the RPD had considered the country condition documentation. While there may have been components of the documentary evidence that were consistent with the Applicant's allegations, the RPD's rejection of those allegations was based on the shortcomings in the Applicant's own evidence. The country condition evidence was not sufficient to establish the claim.

F. *Did the RAD err in finding that the Applicant's testimony about the BNM was very vague?*

[32] In relation specifically to the RAD's finding that the Applicant's testimony about the BNM was vague, he submits that the RAD erred by failing to identify a standard against which his knowledge of the BNM was being compared or by setting too high a standard (see, e.g., *Yilmaz v Canada (Citizenship and Immigration)*, 2003 FC 844 at para 5 [*Yilmaz*]; *Shah v Canada (Citizenship and Immigration)*, 2003 FCT 137 at para 4).

[33] I disagree that the Decision demonstrates such an error. In *Yilmaz*, the tribunal's error was requiring a level of political knowledge typical of an active member of a party, rather than a mere supporter. In the present case, I read the Decision as concluding that the Applicant did not have a level of knowledge that would be expected of a person of his asserted profile, i.e. someone who alleged he had been an active member of the BNM for several years.

[34] I also disagree with the Applicant's submission that the RAD unreasonably characterized his testimony in this area as vague. He submits that, while the RAD characterized his testimony as vague in referring to the BNM as both "large" and "not large", it is apparent from a review of

the transcript that he was merely describing the organization as large but not as large as other parties. He also notes that the information he provided about the leader of the party is consistent with the documentary evidence. However, this argument would require the Court to interfere with the RAD's assessment of the evidence in a manner that extends beyond the Court's mandate in judicial review. Based on my review of the relevant portion of the transcript, it was within the range of reasonable outcomes for the RAD to have considered the Applicant's knowledge vague and limited.

G. Did the RAD err in making an adverse credibility finding based on the Applicant's new passport, Certificate, and exit from the country?

[35] The Applicant argues that the RAD erred by failing to consider that someone with a genuine passport and Certificate will not encounter the barriers to departure from Sudan indicated by the documentary evidence. While the RAD inferred from the Applicant's ability to obtain the passport and Certificate that he had not actually been detained by Sudanese authorities, he submits that the only evidentiary basis provided to support this conclusion related to the ability to obtain an exit visa. The Applicant also argues that the RAD failed to consider his evidence that he employed an agent to assist him with the process for leaving the country.

[36] I find no reviewable error in this component of the RAD's analysis. The RAD considered the Applicant's explanation that he employed an agent to obtain the genuine passport and Certificate, but it found that testimony to be vague and concluded it was not credible. Moreover, he testified that no one asked to see his passport at the airport, despite the fact that there was an exit stamp in his passport with the date of his departure from the airport. The Applicant says that

has no knowledge as to how the exit stamp was placed in the passport. I find the RAD's conclusion, that the Applicant's explanation was not persuasive, to be well within the range of reasonable outcomes.

VI. **Conclusion**

[37] Having considered the Applicant's arguments, I find no basis to conclude that the Decision is unreasonable. This application for judicial review must therefore be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-460-19

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

“Richard F. Southcott”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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JUDGMENT AND REASONS SOUTHCOTT, J.

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