

Federal Court



Cour fédérale

Date: 20200625

Docket: IMM-3707-19

Citation: 2020 FC 721

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, June 25, 2020

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

ELWALEED AHMED OSMAN ABDELGADIR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Background

[1] This is an application for judicial review of a decision of the Refugee Appeal Division [RAD] dated May 23, 2019. The RAD dismissed the applicant's appeal and confirmed the decision of the Refugee Protection Division [RPD] that the applicant is neither a Convention

refugee nor a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c. 27.

[2] The applicant is a citizen of Sudan. In his claim for refugee protection, he alleged a fear of the Sudanese authorities on the basis that he had a romantic relationship with the daughter of the former head of the Sudanese security forces.

[3] He claimed to have begun this relationship in June 2010. On October 10, 2010, at approximately 2 a.m., unidentified men reportedly came to his home and took him to a location where he was detained and beaten. During his detention, which lasted two days, he learned for the first time who the father of this girl was. The men ordered him to break off his relationship with the girl or they would kill him. He never spoke to the girl again. Later, he learned from his sister that the girl was pregnant. On January 5, 2011, the applicant left Sudan for the United States, where he made an asylum claim that was denied. A travel ban was issued against him by the Sudanese government.

[4] Five years later, the applicant returned to Sudan. Upon arrival at the airport, he was arrested and detained for several hours. Approximately one month later, two security agents picked him up at home and took him to an office where he was questioned about his past and beaten. On October 3, 2016, he clandestinely left Sudan for the United States. Fearing U.S. immigration policy, the applicant entered Canada on April 24, 2017, and made a claim for refugee protection the following day.

[5] On March 19, 2018, the RPD rejected the claim on the basis that the applicant was not credible. The RPD found that the applicant had neither established that he had had an intimate relationship with the daughter of the former head of the Sudanese security forces or that he had been detained and tortured between October 10 and 12, 2010, as a result of that relationship. Furthermore, the RPD found that his return to Sudan in 2016 and his failure to take steps to ensure his safety in Sudan were inconsistent with the behaviour of a person who feared for his life in Sudan. Finally, it determined that the documentary evidence adduced by the applicant ought not be given any probative value, as it lacked precision, contained elements omitted by the applicant in his Basis of Claim [BOC] form, and merely repeated the applicant's allegations that were found not to be credible.

[6] The applicant appealed that decision to the RAD. The RAD found that the RPD had not erred in considering that the applicant lacked credibility and that the documentary evidence presented by the applicant had no probative value.

[7] In his application for judicial review, the applicant submits that the RAD erred in its assessment of his credibility and rejected without explanation the documentary evidence that corroborated his allegations.

II. Analysis

[8] The standard of review applicable to RAD decisions on credibility and the assessment of evidence is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 143 [*Vavilov*]; *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93

at para 35; *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (QL) at para 4 (CA); *Noël v Canada (Citizenship and Immigration)*, 2020 FC 281 at para 16).

[9] Where the standard of reasonableness applies, “[t]he burden is on the party challenging the decision to show that it is unreasonable” (*Vavilov* at para 100). The Court’s focus “must be on the decision actually made by the decision maker, including both the decision maker’s reasoning process and the outcome” (*Vavilov* at para 83) to determine whether the decision 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” (*Vavilov* at para 85). Particular attention must be paid to the written reasons of the decision maker, and they must be interpreted holistically and contextually (*Vavilov* at para 97). Nor is it to be a “line-by-line treasure hunt for error” (*Vavilov* at para 102). If “the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision”, it is not for this Court to substitute its preferred outcome (*Vavilov* at para 99).

[10] The applicant alleges that the RAD failed to address an argument he raised on appeal, namely that the RPD should have taken the religious and socio-cultural context of Sudan into account in assessing his credibility. He also criticizes the RPD for failing to assess his reasons for returning to Sudan in 2016.

[11] The Court finds these criticisms to be ill founded.

[12] In *Vavilov*, the Supreme Court of Canada reiterated that the written reasons provided by an administrative tribunal must be read as a whole. The fact that they do not refer to all the arguments raised by the parties does not in itself constitute a basis for overturning the decision. The decision maker is not required to draw an explicit conclusion on every element of the reasoning that led to its conclusion (*Vavilov* at para 91; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

[13] In the present case, a careful reading of the decision and the applicant's appeal memorandum demonstrates that the RAD did consider the argument raised by the applicant. However, it found that it was not necessary to respond to it since the RPD had not relied solely on the applicant's contradictory testimony about his discussions with the girl to conclude that he was not credible. The RAD noted that the RPD also relied on the fact that the applicant had not taken any steps to ensure his safety upon his return to Sudan in 2016. In that regard, it noted that the applicant did not challenge this conclusion in his appeal memorandum and pointed out that it is well established that voluntarily returning to a country where there is a fear of persecution is behaviour that demonstrates a lack of subjective fear. The RAD further added that the applicant's unsatisfactory explanations on this issue gave the RPD reason to question the applicant's credibility.

[14] The applicant alleges that he was detained, beaten and threatened with death before he first left Sudan. He further alleges that his family received threats after he left Sudan and that a travel ban had been issued by the Sudanese government. At his hearing, the RPD asked him if he had made any efforts before leaving the United States to ask his family or friends if the situation

in Sudan was safe for him. The applicant responded that he had not. Like the RPD, the RAD found this behaviour to be inconsistent with that of a person who genuinely feared for his life. The Court finds this conclusion to be reasonable.

[15] The applicant also complains that the RAD rejected his documentary evidence without analyzing it. He submits that this evidence supports his allegations.

[16] The Court cannot agree with this argument.

[17] The reasons of the RAD must be considered in light of the arguments presented by the applicant in his appeal memorandum. The RAD responded directly to the applicant's argument that the RPD had "offhandedly" rejected virtually all of his evidence on the basis that he was not credible. The RAD stated that its own analysis of the record showed that the RPD had indeed analyzed the content of this evidence and identified its shortcomings. In particular, the RAD pointed out that the RPD had noted that the evidence contained information that had not been provided by the applicant in his BOC and statements that merely repeated the applicant's allegations that had not been found credible. The RAD was of the view that it was open to the RPD to give no probative value to the documentary evidence.

[18] The Court finds this conclusion to be reasonable. The mother's letter and the brothers' affidavits do not establish a basis for the claim that the applicant is being targeted by the Sudanese authorities because of his intimate relationship with the daughter of the former head of the Sudanese security forces. With respect to the affidavit of the applicant's sister, the RPD

found that her credibility was tainted by the fact that she claimed in her affidavit that all family members had been “tortured” by Sudanese state agents after the applicant’s departure in 2011, while the applicant made no reference to this in his FDA or in his testimony. The RPD and the RAD could reasonably doubt this evidence and find that it did not make up for the applicant’s lack of credibility. However, it is well established that a lack of credibility with respect to the central elements of a claim may extend to other elements of the claim and apply generally to documentary evidence adduced to corroborate a version of events (*Ogaulu v Canada (Citizenship and Immigration)*, 2019 FC 547 at para 26; *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 24).

[19] Moreover, it is important to recall that findings regarding the credibility of a refugee protection claimant and the assessment of the evidence command a high degree of deference from this Court. While the applicant may disagree with the findings of the RAD and the RPD, it is not for this Court to re-evaluate and re-weigh the evidence to reach a conclusion that would be favourable to the applicant (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59, 61).

[20] For these reasons, the application for judicial review is dismissed. No issue of general importance has been submitted for certification, and the Court is of the view that this case does not raise any.

JUDGMENT in IMM-3707-19

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

“Sylvie E. Roussel”

Judge

Certified true translation
This 30th day of July 2020.

Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3707-19

STYLE OF CAUSE: ELWALEED AHMED OSMAN ABDELGADIR v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JANUARY 30, 2020

JUDGMENT AND REASONS: ROUSSEL J.

DATED: JUNE 25, 2020

APPEARANCES:

Claudette Menghile

FOR THE APPLICANT

Philippe Proulx

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Claudette Menghile
Counsel
Montréal, Quebec

FOR THE APPLICANT

Attorney General of Canada
Montréal, Quebec

FOR THE RESPONDENT