



**Date: 20210727**

**Docket: IMM-4586-20**

**Citation: 2021 FC 793**

**Ottawa, Ontario, July 27, 2021**

**PRESENT: The Honourable Madam Justice St-Louis**

**BETWEEN:**

**AHMED SHAWGI MUSTAFA AHMED**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] Mr. Ahmed Shawgi Mustafa Ahmed seeks judicial review of the decision the Refugee Appeal Division [RAD] rendered on August 27, 2020.

[2] The RAD dismissed Mr. Ahmed's appeal, confirmed the Refugee Protection Division [RPD]'s decision that Mr. Ahmed is neither a Convention refugee, under section 96 of the

*Immigration and Refugee Protection Act* (SC 2001, c 27) [the *Immigration Act*] nor a person in need of protection, under its subsection 97(1).

[3] For the reasons set out below, the Application for judicial review [the Application] will be dismissed.

## II. Facts and context

[4] Mr. Ahmed is a citizen of Sudan. In 2003, he left Sudan for Uganda. In 2011, Mr. Ahmed went to the United States to visit a US citizen, whom he had met a few months before. In his application for a US visitor's visa, Mr. Ahmed indicated he was married to Ms. Shaimaa Khalil Abdel Rahman Midhat.

[5] In brief, while in the United States, Mr. Ahmed wed a first time, petitioned for US status, but failed as his wife withdrew the petition, and they divorced. He wed again, and petitioned again for a US status. The US authorities informed him they intended to deny his petition, and raised the fact, *inter alia*, that Mr. Ahmed had not, in either petitions, declared he was married in Sudan, per his initial visitor's visa application, nor provided a divorce certificate. On May 2017, Mr. Ahmed responded to the US Immigration authorities, through his US lawyer, who important for these proceedings, then provided the divorce decree of Mr. Ahmed and his first wife, Ms. Midhat dated August 11, 2011, in Sudan.

[6] In April 2018, Mr. Ahmed entered Canada and claimed refugee protection based on fear of the government authorities as he refused, in 2003, to assist the government in transporting

weapons and personnel using his civil airline company. Along with his Basis of Claim Form [BOC], Mr. Ahmed submitted a three and a half page narrative that outlined his story beginning in 1984.

[7] On January 8, 2019, the RPD heard Mr. Ahmed's claim, where he testified and swore that all documents provided were genuine. On February 14, 2019, the RPD denied the claim. The RPD found the determinative issue to be one of credibility, and raised issues with the fact that the claimant omitted key allegations hence (1) he omitted from his BOC having repeatedly been contacted by government officials and had refused to comply with them before being approached in person, while the explanation that he was depressed was uncorroborated and that he was writing short was not adequate; (2) he omitted from his BOC that he was threatened at the time he was approached in person; and (3) the divorce certificate he provided to the US authorities, tendered to the RPD, indicate he was in Sudan in August 2011 while he did not mention this. The RPD dismissed two letters submitted as evidence.

[8] Mr. Ahmed appealed before the RAD and argued that the RPD erred (1) in undermining his credibility based on the BOC form contents; (2) in its breach of procedural fairness leading him to believe that the divorce certificate from Soudan was not an issue; (3) in its assessment of Mr. Ahmed's supporting documents.

[9] On July 4, 2019, and after his appeal was perfected, Mr. Ahmed applied to file new evidence, "that previously were not available to be filed with the claim for refugee protection or with the Appellant's record" (page 142 of the Application Record). These documents included a

letter, dated May 4, 2019, from Mr. Medhat, one of the named witnesses on the 2011 divorce certificate, whereby affirming he acted as proxy for Mr. Ahmed, who was not present then.

Mr. Ahmed then submitted that he could not have anticipated that the evidence would have been needed for his claim.

### III. The Decision

[10] In a decision dated August 27, 2020, the RAD dismissed the claim, also due to credibility concerns. The RAD identified the main reasons why the RPD dismissed the claim and Mr. Ahmed's arguments on appeal.

[11] The RAD accepted all new evidence, except for the May 4, 2019 letter from M. Medhat. The RAD cited the criteria of subsection 110(4) of the *Immigration Act*, which allows for the acceptance of evidence that (1) arose after the RPD's decision; (2) was not reasonably available at the time of the decision; or (3) could not reasonably have been expected to have been brought to the RPD before the decision. The RAD added that the evidence then needs to be new, credible or relevant before being admitted (citing, *inter alia*, *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 [*Singh*]). The RAD also cited Rule 29 of the *Refugee Appeal Division Rules*, SOR/2012-257, which requires the RAD to consider why the evidence was not submitted at the perfection of the appeal.

[12] The RAD found that Mr. Ahmed knew about the RPD's finding about returning to Sudan in 2011 in preparing his appeal, but that, although it was relevant to the appeal, Mr. Ahmed had provided no explanation as to why it was not provided at perfection.

[13] The RAD rejected Mr. Ahmed's request for a hearing, given that the evidence did not relate to his credibility and was not central to its decision. The RAD then noted that its role was to consider whether the RPD made the correct decision.

[14] The RAD then confirmed that (1) the phone calls before Mr. Ahmed was arrested are a major and central omission that was not reasonably explained; (2) the threats made on the day the military came to Mr. Ahmed's office are a central and important omission that impacts his credibility; (3) there was no breach of procedural fairness in regards to the divorce certificate, and it is more likely than not that Mr. Ahmed was in Sudan in 2011; and (4) the two letters should not be dismissed, but given little weight considering they are not notarized, their authors were not offered as witness, they are brief and do not mention how either party was involved in or learnt about what happened.

[15] The RAD acknowledged that the situation has deteriorated in Sudan since the COVID-19 pandemic, but concluded these risks to be generalised, and would not affect Mr. Ahmed. He has not established he was, or would be, targeted.

[16] The RAD found, given the credibility concerns, that Mr. Ahmed had not established the allegations. The RAD dismissed the appeal and confirmed the RPD decision.

#### IV. Arguments raised by Mr. Ahmed

[17] Before the Court, Mr. Ahmed submits that (1) the RAD's refusal to admit the letter from Mr. Medhat is unreasonable; (2) the RAD unreasonably focused on microscopic inconsistencies;

(3) the RAD's decision was made without regard to the material before it; and (4) the RAD erred in finding that Mr. Ahmed faces generalised risk in Sudan.

V. Parties' Submissions and Analysis

A. *Standard of Review*

[18] I agree with the parties that the presumptive standard of review is reasonableness, and nothing refutes the presumption in this case (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]).

[19] When the reasonableness standard of review is applied, the 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 [...] is justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85). It is not for the Court to substitute its preferred outcome (*Vavilov* at para 99).

[20] On judicial review, the Court must refrain from reweighing and reassessing evidence (*Vavilov* at para 125).

[21] A high degree of deference is required when the impugned findings relate to the credibility and plausibility of a refugee claimant's story, given the RPD and the RAD's expertise

in that regard and their role as the trier of fact: *Vall v Canada (Citizenship and Immigration)*, 2019 FC 1057 at paragraph 15. The RAD is a specialised decision-maker, warranting deference (*Vavilov; Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 [*Huruglica*]).

Where credibility is at issue, the RAD may provide deference to the RPD's findings where the RPD had a meaningful advantage in assessing the evidence, a determination made by the RAD on a case-by-case basis (*Huruglica*).

B. *Refusal of the New Evidence is reasonable*

[22] Mr. Ahmed first submits that the RAD's decision to refuse the new evidence he submitted is unreasonable. Specifically, he takes issue with the RAD's confirmation of the RPD's finding that (on a balance of probabilities) he returned to Sudan in 2011 to complete his divorce.

[23] He explains that, upon understanding the RPD's concern in its decision, he provided a witness statement from the person who represented him (by proxy) at the divorce proceedings. The RAD refused to admit the evidence, finding that Mr. Ahmed had failed to explain why it was not produced earlier. Mr. Ahmed submits that the RAD failed to consider the fact that he could not reasonably have been expected to provide this evidence, as he could not have expected that his credibility would be impugned by the RPD (citing *Isugi v Canada (Citizenship and Immigration)*, 2019 FC 1421 [*Isugi*]).

[24] He adds the RAD failed to meaningfully grapple with the arguments for accepting the evidence (citing *Khan v Canada (Citizenship and Immigration)*, 2020 FC 438 [*Khan*]).

Mr. Ahmed states that he had explained that the divorce certificated mistakenly stated that he had attended in person. He states that the RAD was obliged, but failed, to consider his argument that he could not know before received the RPD decision that this would be at issue (*Isugi*). He adds that the Court is left to speculate as to the RAD's assessment of the criteria set out in subsection 110(4) of the *Immigration Act*. He also adds that he was relying on a third party in Sudan to obtain the evidence and that Sudan was in the midst of upheaval and political turmoil at the time. He explains that he needed the time to contact the witness, for the witness to prepare the statement, and for his counsel to review and explain its contents. The RAD also failed to consider the relevant, probative, and new evidence that the affidavit would bring to the appeal. Mr. Ahmed also notes that the RAD recently lengthened the time limits to file documents, which is a recognition by the RAD that he needed more than 30 days to file the evidence. He adds that an explanation was provided as per Rule 29 of the *Refugee Appeal Division Rules* and refers the Court to pages 140 and following of the Application Record. He also adds that the country conditions documents that were submitted provided an implicit explanation as to why the letter had not been provided at the time the appeal was perfected.

[25] The Minister responds that the RAD's refusal to admit the evidence was reasonable. He notes that the RAD admitted all of the evidence except for the witness statement, as Mr. Ahmed had failed to explain why the evidence was not available earlier. The Minister notes the requirements of 110(4) of the *Immigration Act*; the criteria of credibility, relevance, newness, and materiality (*Mavangou v Canada (Citizenship and Immigration)*, 2019 FC 177); and the requirement that Mr. Ahmed provide submissions (Rule 29 of the *Refugee Appeal Division Rules*). The Minister notes that Mr. Ahmed knew that the RPD had concerns about his presence



in Sudan in 2011, yet he did not include the evidence in his Appellant's Record. The Minister notes that the Record was provided on March 25, 2019, after he received notice of the decision on February 14, 2019. The Minister also responds that, in *Isugi*, an explanation was provided for the late filing, while in *Khan*, the concern was regarding the relevance of the evidence. The Minister also disagrees that the change in the RAD rules is a recognition of the inadequacy of the delays. He notes that the RAD had flexibility to vary the rules, but no obligation to do so.

[26] In reply, Mr. Ahmed stresses that the RAD found that the evidence was relevant, but nonetheless chose not to admit it given the timeline and that the RAD found that "the truth mattered less than explaining delay." He also submits that the RAD erred in imposing a new condition that the new evidence be submitted with his record, while the requirement under subsection 110(4) of the *Immigration Act* is that the evidence be submitted after the rejection of his claim by the RPD (*Singh*).

[27] I find that Mr. Ahmed mischaracterises the RAD's decision, as it is clear from the face of the decision that the RAD did consider that the evidence could be provided after the RPD's decision was rendered. It is also clear from the decision, with proper referencing, that Mr. Ahmed needed to explain why the evidence was not provided at perfection. The Court is not left to speculate on the criteria set out in subsection 110(4) of the *Immigration Act*. Instead, it is clear that the issue is the failure to provide a justification for the delay, per Rule 29 of the *Refugee Appeal Division Rules*.

[28] The RAD did not create a new requirement that Mr. Ahmed provide the documents with his Appellant's Record. Instead, this requirement is specifically provided for in Rules 29(1) and 29(4)(c) of the *Refugee Appeal Division Rules*. The admission of evidence after perfection requires an application per Rule 37, which in turn requires reasons as to why it should be admitted. Before the Court, Mr. Ahmed raised a number of explanation for the delay that were unfortunately not before the RAD. He has not convinced me that the RAD had to search through the country documents for an explanation of the delay or that it was necessary, for the RAD to consider the evidence on country conditions as an implicit explanation.

[29] I find that the RAD properly stated, cited, and applied the relevant provisions. The RAD's decision is therefore reasonable

[30] Furthermore, the evidence reveals that the divorce certificate, examined by the RPD and the RAD, clearly indicates, in the English translated version, the name of two individuals serving as witnesses, it also confirms that "*The adult competent Ahmed Shawgi Mustafa from Al-Riyadh region has attended. Following the verification of identity and the visual recognition of the above mentioned witnesses, he voluntarily divorced his wife []*" and mentions that one of the copies was given to Mr. Ahmed. This issue was discussed during the RPD hearing where the translator confirmed there was no mention of a "proxy" in the document.

[31] As noted earlier, this divorce certificate was presented by Mr. Ahmed's US lawyer to the US immigration authorities in order to support his arguments against the intended refusal of his second spousal petition; its content was thus well known to Mr. Ahmed. In addition, Mr. Ahmed

affirmed all the documents were true at the start of his RPD hearing. The divorce certificate unequivocally states that Mr. Ahmed was in attendance, in Sudan, in August 2011 and that he identified the two persons acting as witnesses.

[32] Mr. Ahmed has not convinced me that the RAD decision on this issue is unreasonable.

C. *The RAD did not focus on Microscopic Inconsistencies*

[33] Second, Mr. Ahmed submits that the RAD unreasonably focussed on microscopic inconsistencies in finding that he was not credible because, while his testimony described receiving threatening phone calls from the military asking him to transport military equipment, that information was not included in his BOC form narrative. Mr. Ahmed notes that inconsistencies must be significant and central to the claim (citing, *inter alia*, *Sheikh v Canada (Minister of Citizenship and Immigration)*, 190 FTR 225 (2000)).

[34] Mr. Ahmed notes that he explained that he did not include the information in BOC narrative because, according to him, the most significant issues were his arrest and not the procedures that followed, and because the refusals felt normal, as he was following aviation rules. He submits that this explanation is plausible and that the RAD exaggerated the importance of this omission in noting that the phone calls were the first of a number of escalating actions by the authorities. He further submits that the RAD failed to engage with his explanation. The RAD's finding is therefore not supported by the evidence.

[35] Mr. Ahmed adds that the RAD's finding that, due to his education and work history, he should have included the information lacks transparency and intelligibility. This makes the resulting adverse credibility finding unreasonable.

[36] Mr. Ahmed further submits that the RAD unreasonably exaggerated the significance of perceived discrepancies between his narrative and testimony regarding the threats that were made to him. The RAD found that being ordered or pressured to do something is different from being threatened. (The mention of threats appears in his testimony, while the mention of an order appears in his Basis of Claim narrative.) He notes that the substance of both versions, with the additional explanations he provided, is the same, and that the RAD exaggerated the importance of a peripheral inconsistency.

[37] The Minister responds that the RAD's credibility findings are reasonable. The inconsistencies were not microscopic, but were described by the RAD as major and central. The RAD further noted that Mr. Ahmed included peripheral details regarding his company, relationships, education, and interrogation. The omission of the phone calls from the Basis of Claim form was therefore significant. The Minister also notes the delayed mention of threats and the RAD's finding that Mr. Ahmed returned to Sudan in 2011. Regarding the latter, he notes that, at the RPD hearing, a translator translated the document and confirmed that there was no error in translation (as argued by Mr. Ahmed). The RAD also considered the fact that Mr. Ahmed's passport did not have a stamp at the relevant date, but found that Mr. Ahmed had explained that he was able to leave the country by land without his passport being stamped. This cast doubt on his fear of return to Sudan.

[38] As noted above, on judicial review, it is not for the Court to substitute its preferred outcome (*Vavilov* at para 99) to that of the decision-maker. Mr. Ahmed's arguments are best characterised as a disagreement with the RAD's reasoning. First, it is uncontested that Mr. Ahmed did omit facts he offered during his testimony from his written narrative. The questions posed to the RPD and the RAD was to determine if these omissions were central or peripheral, and whether the explanations for the omissions were satisfying. The RAD, after a thorough review, confirmed the omissions were central to the claims, the explanation unsatisfying and that it consequently impacted Mr. Ahmed's credibility.

[39] This Court is not to consider whether the omissions are central and whether there was a reasonable explanation for the omissions from his narrative. It is restricted to considering whether the RAD's reasoning on the issues is an "internally coherent and rational chain of analysis and [...] is justified in relation to the facts and law" (*Vavilov* at para 85).

[40] It is. The RAD could reasonably find that the omissions were significant, and it provided a reasonable and intelligible justification for its decision.

[41] Furthermore, from a careful review of the decision, I do not find that the RAD considered that, due to his education and work history, Mr. Ahmed should have included the information in his narrative. Instead, the RAD found that the information should have been included, given the fact that Mr. Ahmed included other peripheral details on these topics and provided a long and detailed narrative. This finding is again reasonable and intelligible.

D. *The RAD's Decision and the Material before the RAD*

[42] Third, Mr. Ahmed submits that the RAD's decision was made without regard to the material before the RAD. He notes that the RAD afforded little weight to the letters from his mother and friend, noting that the letters are very brief and do not mention how the authors were involved in or learned about what allegedly happened to Mr. Ahmed. Mr. Ahmed submits that the RAD erred in making a rolling credibility finding, dismissing the documents because of its prior credibility concerns. He notes that the RAD needs to deal separately and squarely with the evidence before coming to an overall credibility finding (citing, *inter alia*, *Ren v Canada (Citizenship and Immigration)*, 2015 FC 1402). He also notes that the evidence supported his testimony. The RAD therefore reached its decision without regard to the evidence.

[43] Mr. Ahmed further submits that the RAD erred in dismissing the documents on the basis that they are very vague. He notes that the letter from his mother is critical because it addressed a key finding made by the RAD that he returned to Sudan in 2011. The letter also notes that he was detained.

[44] The Minister responds that the RAD concluded that Mr. Ahmed had not established his allegations. The RAD noted that the statements are not notarised; the authors did not testify; and the letters are brief and do not mention how the authors were involved in or learnt about what happened to Mr. Ahmed. The RAD also noted that Mr. Ahmed's mother's assertion that the authorities still look for him was insufficient to overcome the other credibility concerns. The Minister submits that the RAD's findings are reasonable and that it was within the RAD's

purview to assign weight to documents, the reasons for which are intelligible and transparent (citing, *inter alia*, *Olusola v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 46 [*Olusola*]). Mr. Ahmed essentially disagrees with the RAD's conclusions.

[45] I agree with the Minister that Mr. Ahmed simply disagrees with the RAD's weighing of the evidence, a task which falls squarely within its purview. From reading the decision, I find that the RAD did deal separately and exhaustively with the two letters, and that the reasons for affording them little weight are not related to its other credibility findings. Instead, the RAD found that the letters could not outweigh the other findings. This finding is both intelligible and reasonable.

E. *Mr. Ahmed's Risk in Sudan*

[46] Fourth, Mr. Ahmed submits that the RAD erred in finding that he faces a generalised risk in Sudan as a result of the fact that the security and political situation has deteriorated since the COVID-19 pandemic. He submits that this finding is unreasonable because the RAD failed to consider that the deterioration in Sudan includes the continued risk of persecution on the basis of his political opinions. This is due to the same agents of persecutions retaining power in the transitional governments. He cites documentary evidence before the RAD that that effect, which the RAD misapprehended or failed to consider.

[47] In response, the Minister again submits that the RAD's findings are reasonable and that it was within the RAD's purview to assign weight to documents, the reasons for which are

intelligible and transparent (citing, *inter alia*, *Olusola*). Mr. Ahmed essentially disagrees with the RAD's conclusions.

[48] I again agree with the Minister, for the reasons noted above. It remained unsubstantiated, before the RAD, how the COVID-19 pandemic alone creates an individualised risk for Mr. Ahmed. The fact that the same individuals *remain* in power seemingly falls within his earlier submissions. It was therefore reasonable for the RAD to find as much.

## VI. Conclusion

[49] The decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision-maker, per the teachings in *Vavilov*. For these reasons, the Application will be dismissed.



**JUDGMENT in IMM-4586-20**

**THIS COURT'S JUDGMENT is that:**

1. The Applications for judicial review is dismissed;
2. No question is certified.

"Martine St-Louis"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4586-20

**STYLE OF CAUSE:** AHMED SHAWGI MUSTAFA AHMED v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** JULY 12, 2021

**JUDGMENT AND REASONS:** ST-LOUIS J.

**DATED:** JULY 27, 2021

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