

Federal Court



Cour fédérale

Date: 20240422

Docket: IMM-4863-22

Citation: 2024 FC 592

[ENGLISH TRANSLATION]

Ottawa, Ontario, April 22, 2024

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

**MOMEN KHALIL
ADAM KHALIL
SHAIMAA ABDELMEGUID S. MOHAMED
DARINE KHALIL**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by the Refugee Appeal Division (RAD) that confirmed the determination by the Refugee Protection Division (RPD) that the applicants are neither Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The applicants submit that the RAD's decision is unreasonable because it failed to consider both the totality of the evidence and their situation in its own context.

[3] For the reasons that follow, the application for judicial review should be dismissed.

I. Background

[4] The principal applicant (the applicant), his spouse, and their two minor children are Egyptian citizens. The family's refugee protection claims are based on the applicant's Basis of Claim Form. Here is his account.

[5] When they were living in Egypt, the applicant worked at the Cairo International Airport control centre. The applicant claims that on March 6, 2017, he was arrested by national security officers who were waiting for him when he arrived at work and detained him for 22 hours. The officers questioned him about the fact that his father was a member of the Muslim Brotherhood and that the applicant had criticized the government in discussions with colleagues. The applicant also alleges that he was tortured. The applicant alleges that some of these colleagues suffered the same fate.

[6] The applicant further notes that he experienced retaliation at work:

- He was transferred and demoted to his former position in another department, resulting in a significant pay cut.

- As of the end of March 2017, he was required to report monthly to the national security agency office at the airport to register.
- In July 2017, and then in September 2017, his employee card was renewed for a period of only three months, contrary to the usual one-year renewal, on the grounds that he did not receive the security clearance.

[7] In December 2017, the applicant and his family took steps to travel to Canada for a period of six months to visit the applicant's mother-in-law. She worked as a vice-consul at the Consulate General of Egypt in Montréal. The applicant also has a brother who allegedly was an employee of the Ministry of Foreign Affairs of Egypt.

[8] On January 28, 2018, the applicant was granted a year's unpaid leave to take care of his sick father, although he claims that he only requested two months' annual vacation leave, followed by four months' unpaid leave. He sees it as another case of retaliation for his father's membership in the Muslim Brotherhood and his own criticism of the government.

[9] On February 7, 2018, the applicants left Egypt and arrived in Canada with their visitor visas. In June 2018, the applicants requested a six-month extension of their visas. On July 17, 2018, the applicant's brother informed him that one of his colleagues had been dismissed in June and later arrested and accused of writing about politics on Facebook. On July 19, 2018, the applicant's brother apparently informed him that security services had come to his home and told him that there was an arrest warrant for him upon his return to Egypt.

[10] Shortly thereafter, the applicants claimed refugee protection in Canada. The RPD rejected their refugee protection claims in October 2021. The determinative issue was credibility.

[11] The RAD dismissed the applicants' appeal in April 2022. The determinative issue was credibility. The RAD agreed with the RPD's credibility assessment and found that the multiple inconsistencies and the incoherence in the applicant's written account undermined his credibility.

The RAD's analysis focused on the following elements.

A. *Arrest in March 2017*

[12] The applicant states that he was arrested and questioned by national security officers. He notes that the officers stated that his father was a member of the Muslim Brotherhood, and they questioned him about the criticism of the government that he had expressed to his colleagues. After that, he was released on his promise not to criticize the government anymore.

[13] The RPD noted that his profile does not match the groups that are subjected to state repression, as defined in the National Documentation Package for Egypt. Furthermore, he states that he was released after promising not to discuss politics at work anymore, but this treatment does not match the evidence regarding the treatment of political dissidents by state authorities.

[14] The fact that he was allowed to continue to work in a secure area of the airport and that his colleagues who were also interviewed kept their positions undermined his credibility. The RPD noted an inconsistency between the applicant's conduct and his account. He stated that he has no concerns for his safety because he thought that the matter with the security officers was over. However, in his account, he states that he fled Egypt because he feared persecution by the security officers.

[15] The RAD confirmed the RPD's finding on the applicant's credibility with respect to his arrest in March 2017. The RAD noted that the applicant's testimony was confusing and inconsistent and that his answers to the questions on this incident were unconvincing.

B. *Retaliation at work*

[16] The RPD discussed the applicant's allegations regarding his treatment at work, including the following elements:

- He states that he was demoted to punish him for his political opinion, but the documents he presented do not corroborate this claim.
- He stated that he was forced to renew his work permit more often than before and that his colleagues were subjected to the same treatment. However, there is no evidence to establish a link to his political opinion, and he kept his job until he left the country.
- He stated that he had been on unpaid leave for one year, but the evidence showed that his employer had granted him leave after he had asked for it. There is no evidence that it is retaliation against the applicant.

[17] The RAD rejected the applicant's arguments against the RPD's findings on these points:

[38] The RAD does not agree with the appellants' arguments. The RPD provided clear and intelligible reasons as to why the principal appellant has not established the well-foundedness of the allegations underlying his claim. In this regard, the RPD's credibility concerns were also brought to the attention of the principal appellant during the hearing, particularly with respect to inconsistencies in his own evidence.

[39] The RPD considered the principal appellant's responses unreasonable given the circumstances. The RAD agrees with this conclusion.

C. *Incidents after he left Egypt*

[18] The applicant states that he decided to claim refugee protection in Canada after being informed that the Egyptian security officers had told his brother that he was on a wanted list and that he would be arrested if he returned. The RPD identified several inconsistencies in this story, noting the following:

- The applicant lived in the country without any problems for one year after his alleged arrest.
- His mother-in-law and brother were both employed by the government but were never questioned about him.
- He had no problem leaving the country in February 2018 despite documents proving that dissidents had been intercepted at the airport.

[19] The RAD did not identify any errors in this analysis, concluding that the applicant's explanation was unsatisfactory. The fact that the security officers did not take action against the applicant until after his departure, that his mother-in-law had not been contacted for information about the applicant, and that the applicant's testimony was inconsistent with respect to his contact with his colleagues, contributed to undermining the credibility of this part of his account.

[20] The RAD also rejected the applicant's submission that the RPD did not initiate a separate analysis under section 97 of the IRPA.

[21] For all these reasons, the RAD rejected the applicants' refugee protection claim. They are seeking judicial review of the RAD's decision.

II. Issues and standard of review

[22] This application for judicial review raises only one question: Is the RAD's decision reasonable?

[23] The appropriate standard of review for a RAD decision is reasonableness, based on the analytical framework set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], and recently upheld in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21. A decision will be unreasonable when the Court is satisfied that there are sufficiently serious shortcomings in the decision "such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (at paragraph 100). Under the principle of justification, where the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes (*Vavilov* at paragraph 133).

III. Analysis

[24] The applicants submit that the RAD did not consider the applicant's personal profile, in particular the fact that he experienced retaliation because his father was a member of the Muslim Brotherhood. They also argue that the RAD did not consider the chronology of events and therefore did not note the cumulative effect of the various incidents.

[25] With respect to the applicant's personal profile, the applicants argue that neither the RPD nor the RAD considered the fact that the Egyptian authorities knew that his father was a member of the Muslim Brotherhood organization, as he noted in his account and which was raised by his persecutors during his questioning. Noting that this information was not questioned by the decision makers, the applicants assert that this information was likely to affect the findings on the applicant's credibility.

[26] According to the applicants, the lack of an explanation as to why this element was not considered makes the RAD's decision unreasonable. They state that this information is essential to understand the authorities' conduct with respect to the applicant both at the time of his questioning and by his employer afterward, as well as to explain the fact that the authorities put his name on a list of wanted persons.

[27] The applicants are of the view that the fact that the applicant's father is a known member of the Muslim Brotherhood, combined with the fact that the applicant had criticized the regime in a conversation at work, helps to explain the authorities' interest in him, his detention, his questioning, and the actions taken against him at work immediately after.

[28] In the applicants' opinion, the lack of analysis of the sequence of events is a second error. The fact that these events followed each other can only be explained by the authorities' desire to punish the applicant for his political opinion.

[29] The applicants' argument cannot work. The RAD's analysis is clear, consistent, and focused on the evidence on the record. These are indicators of a reasonable decision, under the analytical framework set out in *Vavilov*.

[30] The applicants recognize that the RAD has acknowledged that the authorities are of the view that the applicant's father was a member of the Muslim Brotherhood, and that this fact was raised during the applicant's questioning by security authorities. This is not overlooked in the analysis. However, the RAD noted the evidence in the National Documentation Package regarding the authorities' treatment of members of this organization. It is also relevant that the only reference regarding the applicant's father's involvement in the organization is in his account:

He also told me that they knew that my father was a member of the Muslim Brotherhood. As a matter of fact, my father is about 80 years old and he has been harassed many times by the Police and other Security Services because of his long beard and his religious devoutness in the mosque.

[31] It should also be noted that the applicant denied any political involvement or opposition activity against the regime. After being detained and questioned, he promised the security authorities that he would no longer talk about politics at work.

[32] Given the evidence on the record, and the fact that the RAD specifically mentioned the applicant's father's involvement in the organization, I reject the applicants' argument that the RAD did not consider this fact and failed to meet its obligation to explain its conclusion on this point. In light of the foregoing, I consider that the arguments are simply tantamount to asking the Court to reassess the evidence. This is not the role of a reviewing court (*Vavilov* at paragraph 125).

[33] Furthermore, *Vavilov* requires that a reviewing court deal with the decision under review as a whole; it is not a "treasure hunt" (at paragraph 284). In the case at hand, the RAD considered several of the applicant's allegations to be implausible, including the fact that he

continued to work at the airport in the security area after his questioning, that he was able to leave Egypt using his passport without any problems with the authorities, and that his mother-in-law and brother work for the Egyptian government, despite his father's connection to the Muslim Brotherhood. The RAD also noted that the authorities did not question the mother-in-law about the applicants. This is an evidence-based analysis, and the line of analysis is clear. This is a reasonable analysis.

[34] It is not necessary to deal with the applicants' submissions regarding the lack of analysis of their refugee protection claim under subsection 97(1) of the IRPA. Given the RAD's findings about the applicant's credibility, and the fact that the refugee protection claims of the other family members are based on his account, it is not unreasonable for the RAD to conclude that the RPD did not err in concluding that such an analysis was not necessary. This is reasonable given the circumstances of the case.

[35] In summary, I consider the RAD's decision to be reasonable. I am not persuaded by the applicants' arguments. The application for judicial review should be dismissed.

[36] There is no question of general importance to certify.

JUDGMENT in IMM-4863-22

THIS COURT ORDERS as follows:

1. The application for judicial review is dismissed.
2. There is no question of general importance to certify.

“William F. Pentney”

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4863-22

STYLE OF CAUSE: MOMEN KHALIL, ADAM KHALIL,
SHAIMAA ABDELMEGUID S. MOHAMED
AND DARINE KHALIL
v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JUNE 14, 2023

**JUDGMENT AND
REASONS:** PENTNEY J

DATED: APRIL 22, 2024

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