

Federal Court



Cour fédérale

**Date: 20130819**

**Docket: IMM-7787-12**

**Citation: 2013 FC 881**

**Ottawa, Ontario, August 19, 2013**

**PRESENT: The Honourable Mr. Justice Manson**

**BETWEEN:**

**AMR MOSTAFA DEYAB**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of the decision of a member of the Refugee Protection Division of the Immigration and Refugee Protection Board [the Board], pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. The Board dismissed the applicant's claim for refugee protection, concluding that he was not a convention refugee or person in need of protection under sections 96 and 97 of the Act.

[2] On May 1, 2013, Justice Simpson struck the Applicant's memorandum of argument and affidavit dated September 3, 2012 in response to the Respondent's application that the Applicant's affidavit contained inadmissible argument and opinion. A fresh memorandum of argument and affidavit was filed by the Applicant on May 31, 2013.

I. Background

[3] The Applicant is a citizen of Egypt. He came to Canada in 2001 and studied until 2006 on a student visa. He returned to Egypt for a month in December, 2004. During that visit, he became engaged in an argument with officials of Hosni Mubarak's National Democratic Party. He claims that he was beaten by police during a brief detention.

[4] Following this incident, he returned to Canada in January, 2005, where he remained until his student visa expired in January, 2007. Having no status, he was removed to Egypt in September, 2009. When he arrived in Egypt he was detained by police for eight days. The Applicant alleges he was beaten and food and drinks were withheld during his detention.

[5] He alleges that his detention was based on charges against him that had been laid following his altercation with government officials during his trip to Egypt in 2004. Unbeknown to him, he was sentenced in absentia in 2008 to two years in jail and hard labour. Despite this sentence, he managed to secure his release on September 11, 2009, through unofficial means.

[6] Despite being wanted by the police, he remained in Egypt for several months and managed to evade capture by the authorities. During that time, he obtained a visa to the United Kingdom and

the United States, and an Egyptian passport. The Respondent alleges the Applicant obtained a German visa but the Applicant disputes this. He also applied for a visitor visa to Canada and an authorization to return to Canada but was refused.

[7] During his time in Egypt in 2009 he also had a confrontation with a visa officer in Cairo about religious freedom which resulted in further charges being laid against him.

[8] He left Egypt on February 2, 2010 with the aid of a friend who helped him through airport security without being detected by the authorities. He arrived in Canada via the United Kingdom and the United States, on February 24, 2010.

[9] The determinative issue for the Board was the credibility of the Applicant.

[10] First, the Board did not find it credible that the Applicant would not apply for refugee status after returning to Canada following his initial confrontation and beating by police in 2004.

[11] Second, the Board is concerned that during an interview by a Fort Erie immigration officer on February 24, 2010, he responded to the question “why are you asking for Canada’s protection?” with the answer: “because I have my family in Canada. I stayed in Canada.” This concern is rooted in the fact that the Board believes that the Applicant would have mentioned his fear of Egyptian authorities should they have existed. This concern is bolstered further by the Applicant’s response to the Board’s questions about this issue during the hearing. His explanation that he did not have counsel present was not convincing to the Board, as he had numerous interactions with immigration

officials in the past and there were no indications that he suffered from medical or psychological problems that would inhibit his communication with the Board.

[12] Third, the Board found that the court documents showing the Applicant's 2008 conviction are unreliable. The Board notes that page 20 of Exhibit C-4 (page 501 of the Respondent's record) has been altered and that is unlikely that a friend of the Applicant's could have obtained these documents in Egypt without the Applicant being present.

[13] Fourth, the Board does not believe that the Applicant could have been detained by police for eight days without his sentence for the 2008 conviction being discovered, nor does it believe that he could have secured his release illegally and remain undetected in the country for five months, especially since he was active in obtaining a new passport and applying for various visas during that time.

[14] Fifth, the Board drew a negative credibility inference from page 1 of Exhibit C-5 (page 503 of the record), which states that the Applicant was served with notice of a hearing for the charges arising from the Applicant's confrontation with the Egyptian visa officer in 2009. The Board notes that the Applicant alleges he was in Canada at this time. Consequently, the Board concludes that this document was falsified.

[15] Sixth, the Board has concerns over the security alert provided on page 5 of Exhibit C-5 (page 507 of the record). The Board's concern is rooted in how the Applicant obtained a copy of this bulletin. The Applicant claims it was sent in November 2010 with other court documents in an

email, but he was unable, by the time of the hearing, to produce proof of that email exchange, nor a reasonable explanation as to why it was not obtained.

[16] Beyond the issue of credibility, the Board held that there is insufficient evidence to find that the Applicant's troubles in Egypt amounted to persecution, not prosecution. The Board notes that the post-hearing submission of the Applicant from his alleged Egyptian counsel, Mr. Riyad, does little to change this, and, in fact, confirms it.

## II. Issues

[17] The issue raised in the present application are as follows:

A. Is the Applicant's affidavit of May 31, 2013, inadmissible?

B. Was the Board's decision on credibility unreasonable?

## III. Standard of review

[18] The applicable standard of review on issues of credibility is reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47-48, 51; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 46, 59).

## IV. Analysis

A. *Is the Applicant's Affidavit of May 31, 2013, Inadmissible?*

[19] The Respondent argues that the Applicant's affidavit is inadmissible because it contains legal argument and opinion. The Respondent notes in particular that paragraphs 9-21 are effectively

point-by-point discussions of the Board's reasoning followed by suggestions as to why the Board's conclusions are wrong.

[20] The Applicant's May 31, 2013 affidavit is different from the original affidavit filed on September 3, 2012. The May 31, 2013 affidavit effectively eliminates language which directly criticizes the Board's reasoning (with the exceptions of para 12 and 21) and argues for alternative conclusions. Instead, the May 31, 2013 affidavit argues by implication. It does so by stating a conclusion of the Board and then pointing to contrary evidence on the record, plainly implying that the Board is incorrect in its conclusions.

[21] The purpose of affidavits in light of rule 81(1) is stated in *Van Duyvenbode v Canada*, 2009 FCA 120 at para 2:

An affidavit must be premised upon personal knowledge. Its purpose is to adduce facts relevant to the dispute without gloss or explanation

Emphasis added

[22] In *Armstrong v Canada (Attorney General)*, 2005 FC 1013 at para 42, Justice François Lemieux states:

42 On the one hand, many paragraphs contain legal argument and many of them refer to appropriate provisions of the governing legislation or regulations and at times quote from dictionaries in order to provide the ordinary meaning to words found in legislation or regulations. Such references are improper but, in my view, such paragraphs need not be struck...because there is no prejudice to the respondent. In addition, there is no useful purpose in doing so as those paragraphs are proper argument and can properly be made by counsel for the applicant in his memorandum of argument when he files his motion record.

Emphasis added

[23] This reasoning applies to the instant application. The Applicant's affidavit is largely reiterative of the factual record before the court. It does not include fresh assertions of fact and does not prejudice the applicant, as it effectively acts to highlight previous statements of and documentation filed by the Applicant. As discussed and agreed to by counsel during the hearing, the affidavit is allowed, but shall be given no weight where it is merely argumentative, critical of the Board's reasoning or involves opinions or legal arguments.

*B. Was the Board's Decision on Credibility Unreasonable?*

[24] The Applicant makes several arguments to counter the Board's conclusions as to the Applicant's credibility.

[25] With respect to the Board's concern that the Applicant had no proof of how he obtained a copy of the security bulletin issued against him, the Applicant states that he provided a copy of communication from his lawyer which addresses those concerns on June 4, 2012. The Applicant asserts that this communication rebuts the Board's concerns.

[26] During the hearing, the Applicant relied primarily on Exhibit G to the affidavit of the applicant, namely a letter from his Egyptian counsel, Mr. Riyad, and the statement in that letter that "...the two lawsuits contravene the Constitution that guarantees the freedom of belief and expression", as being misunderstood or misapplied by the Board member in finding that the Applicant was simply being prosecuted, not persecuted, in Egypt.

[27] The communication from Mr. Riyad is corroborative of only a small portion of the Applicant's testimony, contains hearsay, and is not from an individual who is disinterested in the outcome of the claim.

[28] There is no obligation for the Board to have discussed all the evidence in its reasons and in this case the Board disbelieved the Applicant's testimony based on inconsistencies, omissions and implausibility findings (*Florea v Canada (Minister of Citizenship and Immigration)*, [1993] FCJ No 598 (CA); *Foyet v Canada (Minister of Citizenship and Immigration)*, [2000] 187 FTR 81).

[29] Mr. Riyad's correspondence also suffers from the evidentiary weaknesses noted by the Respondent and it fails to rebut most of the Board's credibility findings. In particular, it fails to address the fact that the Applicant managed to get out of detention while he was facing a prison sentence, that he managed to evade capture and escape Egypt after five months of living there, and that he did not mention his fears of persecution to immigration officials. These findings were all based on the evidence and are reasonable. In addition, there is no evidence before the Board or the Court that the proceedings in Egypt against the Applicant have resulted in a finding or sanctions against the Applicant.

[30] I agree with the Respondent that the Board's credibility findings were reasonable on the Dunsmuir standard.



**JUDGMENT**

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

1. The Applicant's application is dismissed;
2. No question to be certified.

"Michael D. Manson"

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Judge

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

**DOCKET:** IMM-7787-12

**STYLE OF CAUSE:** Deyab v. MCI

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** August 15, 2013

**REASONS FOR JUDGMENT  
AND JUDGMENT BY:** MANSON J.

**DATED:** August 19, 2013

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