

Federal Court



Cour fédérale

**Date: 20160816**

**Docket: IMM-2289-15**

**Citation: 2016 FC 936**

**Ottawa, Ontario, August 16, 2016**

**PRESENT: The Honourable Madam Justice Elliott**

**BETWEEN:**

**ALI MOHAMMED DERAR AHMED**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review brought pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c27 [IRPA] of a decision dated April 15, 2015 [Decision], wherein the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada determined that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 (1) of the *IRPA*.

[2] For the reasons that follow, this application is dismissed.

I. **Background Facts**

[3] The Applicant is a citizen of Sudan who claims to fear persecution by the Sudanese government on the basis of political opinion.

[4] While attending university in India, the Applicant participated in a student group that advocated for civil liberties and protested against the Sudanese government. After graduation in 2010, the Applicant moved to Qatar for work and continued his political activities, allegedly participating in campaigns to expose corruption within the Sudanese government and raising money for opposing political groups.

[5] In 2013, the Applicant became involved in charitable relief efforts in Qatar following the flooding in Sudan as part of a group called “Nafeer”, which was an initiative instigated by Sudanese youth. They were committed to direct distribution of emergency flood relief in Sudan to avoid donations being lost to corrupt government officials. They also publicly criticized the Sudanese government for its inaction. As a member of the Nafeer steering committee in Qatar, the Applicant collected money and donated items for victims of the flooding, which the Sudanese embassy in Qatar refused to send to Sudan.

[6] In October 2014, the Applicant returned to Sudan for the first time since 2005, and was allegedly detained and interrogated by immigration officials about his participation in student groups in India, opposition groups in Qatar, and the Nafeer movement. He was accused of collaborating with enemies of the state and was beaten with a club.

[7] The Applicant claims he was released after agreeing to cooperate with Sudanese officials and to act as an operative in Qatar. He was told he would be contacted in Qatar upon his return.

When the Applicant returned to Qatar two weeks later, his political colleagues, upon learning of his ordeal with the Sudanese authorities, advised him to leave the country given the close domestic ties between Qatar and Sudan.

[8] The Applicant travelled to the United States in December 2014, and made his way to Canada where he made a refugee claim on January 24, 2015.

I. **Decision under Review**

[9] The determinative issue for the RPD was the Applicant's lack of credibility. The RPD accepted his Sudanese passport, birth certificate, Qatar temporary work card and Qatar driving licence to establish the Applicant's identity. Given the overall credibility issues, the RPD found that the Applicant did not satisfy the burden of establishing a serious possibility of persecution in Sudan on a Convention ground in accordance with section 96 of the *IRPA*. It also found that he would not personally be subject to a risk to life, or a risk of cruel and unusual treatment or punishment, or a danger of torture upon return to Sudan.

[10] The Board found that the Applicant lacked credibility generally, which extended to all of his relevant testimony. It concluded there was insufficient credible and trustworthy evidence to establish that the Applicant had been targeted by Sudanese authorities.

[11] The RPD concluded on a balance of probabilities that the Applicant did not have serious problems with the Sudanese authorities while in India. More specifically, the RPD did not believe the Applicant when he claimed he started to have problems with authorities because of his activities within the National Democratic Front while he was studying in India. He said he

booked premises and informed students about upcoming events. When the RPD probed further, he provided two general examples that were not highly personal to him.

[12] The Applicant also mentioned at the RPD hearing that when he was in India, he received a telephone call from the Sudanese Consul requesting that he stop activities against the government. When asked by the RPD why this fact was not included in his Basis of Claim narrative [BOC], the Applicant stated he had no official proof of the phone call. The Decision notes this omission as an important element weighing against the Applicant's credibility concerning problems he allegedly faced in India.

[13] With respect to his involvement with Nafeer, the RPD found that the documentary evidence demonstrated that Nafeer aimed to help victims of the flooding disaster by providing emergency relief and was active in Sudan and in North America and the Middle East, particularly through social media. It operated in July and August 2013, but was forced to reduce operation by September 1, 2013, due to government interference. Source information on Nafeer indicated that Sudanese authorities interrogated and then released Nafeer members in August 2013, and the Board noted that no subsequent arrests of Nafeer members are mentioned in the documentary evidence.

[14] The Board did accept documentary evidence of the Applicant's personal involvement with Nafeer in Qatar, but noted that the Applicant testified Nafeer was no longer functioning in Qatar and he was not still involved in political activities.

[15] The RPD noted documentary evidence demonstrates that Sudanese authorities have committed serious human rights violations and that "repression of any form of dissent and

protest” has been characteristic under the al-Bashir/National Congress Party regime.

Accordingly, the Board questioned why the Applicant was allegedly released after his October 2014 arrest. When he explained he was let go because he pretended to agree to cooperate with Sudanese authorities, the RPD found it implausible that the authorities would trust the Applicant, particularly since he claimed they had suspected him for years of contra-government activities. Additionally, the RPD noted the Applicant travelled without issue out of Sudan and Qatar with a valid passport from the Sudanese authorities. The RPD concluded that on a balance of probabilities, the Applicant was not detained and interrogated in Sudan in October 2014.

[16] The RPD also afforded little weight to evidence from the Applicant related to his alleged resignation from his employment in Qatar. The letter from his employer simply indicated there was a termination. The Applicant stated he did not have the resignation form he filled out, which the RPD noted, along with the fact “that the panel does not find the claimant credible regarding key areas of his testimony” as reasons for providing little weight to that evidence.

[17] Finally, the RPD also did not give much weight to an affidavit from one of the Applicant’s sisters in Sudan: it mentions she is “aware” of the Applicant’s activities, but fails to include how she learned this information and from whom. The RPD reasoned that if she learned it from the Applicant, then as the Board did not find the Applicant credible, the affidavit is of little weight.

## II. Issues and Standard of Review

[18] The only issue is whether the RPD determination on credibility was unreasonable. Credibility was the determinative finding and if it was unreasonably determined then the Decision itself is unreasonable.

[19] It is well established that the RPD's findings on credibility are reviewable on the standard of reasonableness. This means the reviewing Court should not substitute its own findings for those of the RPD where the conclusions it reached were reasonably open it: *Alahaiyah v Canada (Citizenship and Immigration)*, 2015 FC 726 at para 14.

[20] Reasonableness review requires deference to the decision-maker. The Court is not to re-weigh the evidence but must be satisfied that the decision-making process results in a decision that falls within the range of possible, acceptable outcomes defensible on the facts and law. Reasonableness review is "concerned with the existence of justification, transparency and intelligibility within the decision-making process": *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*].

### III. **Submissions of the Parties**

#### A. *Applicant's Submissions*

[21] The Applicant submits the RPD rejected his claim because of the single omission in his BOC that the Sudanese Consul telephoned him while he was in India. He says that the RPD then added plausibility findings and inferences and made a general finding of lack of credibility. For example, he says two known members of Nafeer were shot and killed by authorities and when the RPD found Nafeer members had not been arrested after August 2013 it ignored any evidence to the contrary.

[22] The Applicant also says his activities in India during the period 2005 – 2010 were not the significant events contributing to his fear. His activities in Qatar and with Nafeer are what put him at risk. Therefore, the omission in his BOC of the telephone call from the Consul does not justify an overall finding that he lacked credibility.

[23] With respect to the Applicant being able to travel on his own passport and being released by Sudanese authorities after he was arrested and beaten in October 2014, the Applicant relies on *Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776, to say that what appears implausible from a Canadian perspective may be ordinary or expected in other countries. He says the RPD “appeared to be oblivious of the fact that secret police and intelligence organizations frequently employ opponents whom they “turn” by some combination of coercion, blackmail or bribery”. He submits that the RPD finding overlooks the fact that the agreement with the NISS required him to return to Qatar in order to spy for them.

[24] In analysing the employment termination letter, the Board found the Applicant not credible with respect to “key areas” of his testimony. The Applicant argues this conclusion is unjustified on the basis of the evidence and Board’s own findings that: (i) the Applicant had been a member of Nafeer in Qatar; (ii) had engaged in political activities while there; and (iii) accepted that Nafeer members faced arbitrary arrest in summer of 2013. These “key areas” of the Applicant’s testimony were not rejected.

#### B. *Respondent’s Submissions*

[25] The Respondent claims that the Board reasonably drew a negative inference with respect to the Applicant’s credibility from his testimony that he had received a personal phone call from Sudanese authorities while in India. They say that although the Applicant argues too much significance was placed on this one omission, it was significant. The Applicant provided no other support for his testimony that he first became a person of interest to the Sudanese government while he was studying in India, which interest continued in Qatar and eventually led to his October 2014 detention. Raising the telephone call at the hearing was his attempt to support his

story. As the RPD should have considered the totality of his profile, not including the telephone call in his BOC was significant, not peripheral.

[26] The Respondent submits that the two examples the Applicant provided of problems with the Sudanese government while he was in India were only generic: (1) students who received grants from the Sudanese government were favoured; and (2) the Sudanese Embassy refused to repatriate the body of a dead student who had been involved in anti-government political activities. The Respondent says the RPD reasonably held that these actions did not amount to serious problems for the Applicant personally.

[27] The Respondent points to the submissions made before the RPD by the Applicant's previous counsel to the effect that his refugee claim was based on political opinion and on being a member of a particular social group, Nafeer. Once the RPD reasonably believed the Sudanese government was not pursuing members of Nafeer after August, 2013 the Decision was reasonable.

#### IV. **Analysis and Conclusion**

[28] The Applicant's claim revolves around his political activities, primarily membership in Nafeer and the repercussions he suffered or could suffer as a result of those activities if he returns to Sudan.

[29] The documentary evidence before the RPD clearly stated that Nafeer operated in July and August 2013, but was forced to reduce operation by September 1, 2013, due to government interference. Source information on Nafeer indicated that Sudanese authorities interrogated and



then released Nafeer members in August 2013, and the RPD noted that no subsequent arrests of Nafeer members are mentioned in the documentary evidence.

[30] The Applicant testified that Nafeer was no longer functioning in Qatar and he was not still involved in political activities. Counsel for the Applicant submitted that two known members of Nafeer were shot and killed by authorities after September 1, 2013 and the RPD ignored that evidence in determining no arrests were made after that date.

[31] The record contains a story that was posted as a press release dated October 4, 2013, on a website dedicated to “defending human rights defenders”. It expresses deep concern for the safety of human rights defenders arrested in anti-government demonstrations that took place after September 23, 2013. Three people were shot and killed while another twenty-three, who were named, were detained and another two, also named, were arrested but released. Having reviewed this article I am unable to draw the conclusion put forward by counsel to say it shows that members of Nafeer were still being arrested or killed. The thrust of the article is that human rights defenders were among the over eight hundred people arrested in connection with anti-government demonstrations. The article does not say or, as I read it, imply, that two people were killed because they were members of Nafeer. Rather they were killed because they were publicly demonstrating against the government as were hundreds of other people. The RPD is not required to mention this particular evidence and is presumed to have considered it. I do not find the conclusion they drew about membership in Nafeer post-September, 2013 runs contrary to this evidence. Membership in Nafeer was noted in the article but not stated to be the reason for the shooting that occurred.

[32] The only evidence the Applicant could offer as to his personal risk was his allegation that he was arrested, detained and beaten in October 2014 when he returned to Sudan. In light of his claim that he had been “on the radar” of the authorities for several years, the RPD queried the Applicant about his release by the Sudanese authorities. He said he was released because he pretended to co-operate with them and made an agreement to that effect. The RPD was concerned that the Applicant had left Sudan using his own passport. They found it implausible that the authorities would trust him if they had suspected him for years to be a political activist who was opposed to the government and had been checking on him for an extended period of time. As a result, the RPD found on a balance of probabilities that he was not detained and interrogated in Sudan in October, 2014.

[33] Both these findings on credibility were reasonably open to the RPD to make based on the evidence before it. The conclusions drawn were within the range of possible, acceptable outcomes defensible on the facts and law.

[34] As well, the RPD found the Applicant did not prove on a balance of probabilities that he had resigned from his employment in Qatar. They did not find the Applicant’s explanation persuasive because: (i) he did not submit a copy of the alleged resignation to the Board; (ii) the letter provided did not indicate the Applicant had resigned; and (iii) the Applicant’s testimony in “key areas” was found not credible. It appears the Applicant is asking the Court to re-weigh that evidence, but nothing turns on the termination letter as it was not an integral part of the credibility findings made by the RPD.

[35] In sum, I find the credibility findings of the RPD to be reasonable. They were not made without regard to the evidence. The RPD was able to see and hear the Applicant and was in the

best position to assess his credibility. Doing just that, in conjunction with its assessment of the objective evidence, the RPD reasonably called into question the aspects of his narrative beyond his time in India, most specifically, his story of being detained in 2014.

[36] The Applicant has not persuaded me that the findings by the RPD were either speculative or implausible. The RPD did not solely rely on the failure of the Applicant to mention in his BOC the telephone call from the Consul. I have found it was within the margin of appreciation afforded to the RPD as a specialized tribunal to make the decisions on credibility that they did. The determination by the RPD that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 (1) of the *IRPA* is also reasonable given the credibility findings.

[37] In keeping with the requirements laid down in *Dunsmuir*, it is my determination that the reasons given and the decision-making process are justified, intelligible and transparent and the outcome falls within the range of possible, acceptable outcomes.

[38] This application is dismissed.

[39] Neither party posed a question for certification.

**JUDGMENT**

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

1. The application is dismissed.
2. No question is posed for certification.

“E. Susan Elliott”

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Judge

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

**DOCKET:** IMM-2289-15

**STYLE OF CAUSE:** ALI MOHAMMED DERAR AHMED v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 26, 2016

**JUDGMENT AND REASONS:** ELLIOTT J.

**DATED:** AUGUST 16, 2016

**APPEARANCES:**

D. Clifford Luyt FOR THE APPLICANT

Monmi Goswami RESPONDENT

**SOLICITORS OF RECORD:**

D. Clifford Luyt FOR THE APPLICANT  
Barrister and Solicitor  
Toronto, Ontario

William F. Pentney RESPONDENT  
Deputy Attorney General  
of Canada  
Toronto, Ontario