

Federal Court



Cour fédérale

**Date: 20200612**

**Docket: IMM-2950-19**

**Citation: 2020 FC 686**

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

**Ottawa, Ontario, June 12, 2020**

**PRESENT: Associate Chief Justice Gagné**

**BETWEEN:**

**AMAL MOHAMED MOHAMED HOZAIEN,  
HEBATALAH RAGAB BARAKAT SHEHATA,  
MOHAMED RAGAB BARAKAT SHEHATA MAHMOUD**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Nature of the case

[1] Amal Mohamed Hozaien (the female applicant) is a citizen of Egypt who came to Canada in April 2017 with her two teenagers to claim refugee protection. On behalf of herself and her

children, she is now seeking judicial review of the decision of the Refugee Appeal Division [RAD] which confirmed the rejection of her claim for a lack of credibility.

## II. Facts

[2] The applicants allege a fear of the Egyptian government, which suspects that the applicant's husband has ties with the Muslim Brotherhood, and also of certain members of the Muslim Brotherhood who reproach him for having chosen the wrong side, that is, the ruling party.

[3] In 2013, the applicant's husband, who is a real estate agent, allegedly had some influential members of the Muslim Brotherhood as clients. He was arrested by Egyptian authorities in March 2016 and held until his unconditional release in June 2017 as a result of a lack of evidence of any association with the Muslim Brotherhood.

[4] In August 2016, the female applicant received a visit from the authorities, who were looking for evidence. At the same time, she received threatening calls from members of the Muslim Brotherhood. She therefore decided to take refuge with a cousin in Beni Suef.

[5] In September 2016, members of the Muslim Brotherhood set fire to her home in New Cairo. She therefore decided to leave Egypt for the United States in November 2016, where she stayed with her children until their arrival in Canada in April 2017. The applicant's two eldest children are young adults who have been living in Canada for some time.

[6] The female applicant alleges that although her husband was released unconditionally, he still receives regular calls from police authorities who continue to question him about certain members of the Muslim Brotherhood. He currently lives in Banah with his sister and is trying to flee Egypt.

### III. Impugned decision

[7] The RAD confirmed the RPD's decision regarding the lack of credibility of the applicant's account, and therefore did not find it necessary to rule on the RPD's conclusion to the effect that, in any event, the applicants have an internal flight alternative in Beni Suef or Alexandria.

[8] The RAD saw no error in the RPD's analysis of the applicant's credibility. First, it was also of the opinion that the female applicant had adjusted her testimony when confronted with objective documentary evidence stating that the government does not target all those associated with or perceived to be associated with the Muslim Brotherhood; rather, it targets those who participate in political activities or who openly criticize the government. After first stating that the Muslim Brotherhood members were merely clients of her husband, who had never been involved with this organization, she then stated that he had helped them organize events and conferences. When asked by the RPD why she did not mention this fact earlier, she replied that she had misunderstood the question.

[9] Like the RPD, the RAD noted a contradiction in the sequence of events reported by the applicant. At first, she stated that the events that led her to fear for her safety allegedly occurred

on August 9, 2016, and that she left New Cairo for Beni Suef the following day. However, the complaint she filed with the Attorney General is dated August 3, 2016. When confronted with this inconsistency, she simply stated that she had got the dates wrong of when she received the threatening calls and when she left for Beni Suef. Since these events were at the heart of the applicants' refugee claim, the RPD and the RAD were not satisfied with this explanation. The RPD and the RAD further noted that the applicants did not indicate on their immigration form that they had lived in Beni Suef for three months before leaving Egypt. They also did not accept the explanation given by the female applicant that she believed that she only had to give her official address.

[10] As for the documentary evidence produced in support of the applicants' account, the RAD did not give it any more weight than the RPD. It concluded that this evidence was not independent and reliable since it contained several anomalies: the official complaints filed by the female applicant did not bear an official stamp or header; the expert report on the fire at her home was undated; and some of the excerpts from this report were incomplete or unintelligible.

[11] The RAD therefore confirmed the RPD's decision and rejected the applicants' claim for refugee protection.

#### IV. Issues and standard of review

[12] This application for judicial review raises only one issue: did the RAD err in its analysis of the applicant's credibility?

[13] The standard of review applicable to the examination of this issue is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at para 16).

[14] Thus, the Court will only intervene to safeguard the legality, rationality and fairness of the administrative process. The Court must, however, examine both the justification and the conclusions reached and ask itself whether the decision, as a whole, is justified in relation to the relevant factual and legal constraints that bear on the decision. The burden is on the party challenging the decision to show that it is unreasonable (*Vavilov*, at para 100).

#### V. Analysis

[15] It is important to start by noting that the Court must show great deference to the RAD's factual findings and its analysis of the female applicant's credibility. Furthermore, contrary to the applicants' submissions, the RAD owed a degree of restraint to the findings of the RPD, which was able to analyze not only all of the applicant's testimony but also the ease with which this testimony was given (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93, at paras 69–70).

[16] I can also not accept the applicants' argument that the RAD did not carry out its own review of the evidence and, ultimately, the applicants' refugee protection claim.

[17] The RAD examined the RPD's three main negative conclusions with respect to the applicant's credibility and came to its own conclusions, which it justified in a consistent and logical manner.

[18] First, the applicants argue that it was wrong to claim that the female applicant adjusted her testimony after being confronted with documentary evidence that the Egyptian authorities have neither the time nor the resources to target all individuals who have had ties (such as the applicant's husband's business ties) with the Muslim Brotherhood. They allege that the female applicant confirmed four times before this alleged adjustment that her husband was neither a member nor a supporter of the Muslim Brotherhood, and that he had not participated in or been involved in any political activity with the party. However, here is what the applicants' memorandum states at paragraph 3.20:

[TRANSLATION]

It is only after the RPD cited objective evidence from the National Documentation Package that the government targets primarily individuals engaged in political activities that the female applicant stated that her husband had engaged in some activities in response to requests from members of the Muslim Brotherhood who were his clients.

[19] The applicants add that she did not specifically mention political activities and that the RAD extrapolated by concluding that this is what she meant. I believe that this is a hollow argument and that it was open to the RAD to conclude that the female applicant had adjusted her testimony to give more importance to her husband's involvement in the Muslim Brotherhood. It was also open to the RAD to draw a negative inference regarding the applicant's credibility.

[20] The applicants also attempted to minimize the impact of the documentary evidence used by the RPD to confront the applicant. They referred the Court to other documents in the National Documentation Package, including two Request for Information responses to the RPD, from 2013 and 2016 respectively, which address the treatment of alleged members of the Muslim Brotherhood. These include an excerpt from the December 11, 2016, edition of *Daily News Egypt*, which reads as follows:

[T]hose subjected to enforced disappearance by the NSA [National Security Agency] were perceived supporters of Mohamed Morsi and/or the [Muslim Brotherhood]. They were mostly males ranging from adults in their fifties to boys aged 14. They include students, academics and other activists, peaceful critics and protesters, and family members of perceived government critics. According to lawyers involved in their cases, around 90% of those who are subjected to enforced disappearance are subsequently processed through the criminal justice system on charges such as planning or participating in unauthorized protests or attacking members of the security forces. (Amnesty International, July 13, 2016, 20)

[21] After having read this document as well as several other more recent documents from the National Documentation Package for Egypt (National Documentation Package, Egypt, June 29, 2018; Tab 2.2, Amnesty International *Report 2017/18: The State of the World's Human Rights*, p. 3; Tab 2.7, Heinrich-Böll-Stiftung, *Egypt's failing "War on Terror"*, p. 5; Tab 4.8, Carnegie Endowment for International Peace, *Legislating Authoritarianism: Egypt's New Era of Repression – Targeting Islamists*, p. 27), which confirm that the authorities usually target people who openly criticize the government or participate in protests, I do not see how this excerpt contradicts the conclusion drawn by the RAD. It was open to the RAD to conclude that the applicant's testimony that her family would be targeted simply because of her husband's business transactions with certain members of the Muslim Brotherhood lacked credibility.

[22] Second, the applicants argue that the RAD was overzealous in criticizing the female applicant for a six-day error in the sequence of her story. According to applicants, such an insignificant error alone cannot justify the rejection of their claim for refugee protection.

[23] To begin with, this is one of the three main factors that justified the RAD's conclusion.

[24] Furthermore, it is important to note that the applicants' Basis of Claim Form is relatively vague about the sequence of events and silent on the precise dates on which the female applicant was allegedly visited by Egyptian authorities and received threatening calls from members of the Muslim Brotherhood.

[25] The RPD therefore had a duty to verify the sequence and the details of the events described in support of the applicants' refugee protection claim. When the female applicant specified that she received a first call on her cell phone on August 9, 2016, and another on her landline during the night of August 9 to 10, 2016, and that she allegedly left New Cairo to go to Beni Suef on August 10, 2016, it was perfectly logical for the RPD to confront her with the complaint filed on August 3, 2016, a document that she herself produced. It was also reasonable for the RAD not to be satisfied with the explanation that this was a simply a matter of getting the dates wrong. The RPD is a specialized tribunal with the mandate of verifying the validity of the refugee protection claims before it; it does so by interviewing claimants and asking them to provide details of the events they have experienced. The date the applicants received their life-threatening threats is not peripheral to their claim for refugee protection, and the RPD should expect their testimony in this regard to be persuasive.



[26] I see no error in the SAR's analysis that would justify this Court's intervention.

[27] Third, the applicants argue that the RAD discredited the documentary evidence supporting their story for [TRANSLATION] "dubious reasons, mainly because it concluded prematurely that the female applicant lacked credibility".

[28] To begin with, I do not share the point of view expressed by the applicants since, in my view, the RAD's conclusions and its justifications are reasonable.

[29] In fact, the RAD has concluded that the documentary evidence produced by the applicants is insufficient to compensate for the lack of credibility of the female applicant's testimony, since this documentary evidence is neither reliable nor independent.

[30] According to the applicants, it is wrong to claim that the official complaints lodged at the office of the Attorney General did not have an official stamp or header, and that these anomalies affect their probative value.

[31] The version of these documents available to the Court is probably a photocopy of a photocopy, meaning that they are difficult to read. However, there is indeed no header on these documents, which can be found on pages 340 to 353 of the Certified Tribunal Record, and the only legible stamps are those of the *El Gawhara Office* translation agency. Only the documents on pages 340, 342 and 344 appear to have stamps other than those of the translation agency, but it is impossible to know their content or meaning.

[32] Since it is likely that the RPD had the originals of these documents, I see no reason to intervene and substitute my examination of these documents to the examinations of the RPD or RAD.

[33] It is therefore my opinion that the claimants have not met their burden of demonstrating that the RAD's analysis and conclusions were unreasonable, and that its decision as a whole is transparent, intelligible and justified [*Vavilov* at para 15].

## VI. Conclusion

[34] For all these reasons, the applicants' application for judicial review is dismissed.

[35] The parties did not submit any question of general importance for certification, and no such question arises from the facts of this case.

**JUDGMENT in IMM-2950-19**

**THE COURT’S JUDGMENT** is as follows:

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

“Jocelyne Gagné”  
\_\_\_\_\_  
Associate Chief Justice

Certified true translation  
This 22nd day of June 2020.

Johanna Kratz, Reviser

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

**DOCKET:** IMM-2950-19

**STYLE OF CAUSE:** AMAL MOHAMEDMOHAMED HOZAIEN,  
HEBATALAH RAGAB BARAKAT SHEHATA,  
MOHAMED RAGAB BARAKAT SHEHATA  
MAHMOUD v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** HEARING HELD BY TELECONFERENCE  
BETWEEN MONTRÉAL, QUEBEC; WESTMOUNT,  
QUEBEC AND OTTAWA, ONTARIO

**DATE OF HEARING:** JUNE 8, 2020

**JUDGMENT AND REASONS:** GAGNÉ A.C.J.

**DATE OF REASONS:** JUNE 12, 2020

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