

Federal Court



Cour fédérale

**Date: 20210111**

**Docket: IMM-6449-19**

**Citation: 2021 FC 34**

**Ottawa, Ontario, January 11 2021**

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

**BETWEEN:**

**SABER ABUZAIID MEKKI SHROUB**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondents**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] The Applicant, Mr. Saber Abuzaid Mekki Shroub, seeks judicial review under s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] of a decision rendered by the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada, dismissing an appeal from a decision of the Refugee Protection Division (RPD) that he was not entitled to refugee protection under ss. 96 or 97 *IRPA*.

[2] Following a six-month assignment to the Embassy of Sudan in Washington, D.C., Mr. Shroub crossed into Canada on foot and sought asylum in May 2017.

[3] For the reasons that follow, the application is granted and the matter is remitted for reconsideration by a different member of the RAD.

## II. **Background**

[4] Mr. Shroub is a citizen of Sudan originally from the South Kordofan province in the Nuba Mountains region.

[5] He claims that he enlisted in the Sudanese police force in 2006 and, after training, was assigned to work at the passport office located in Khartoum. In June 2008, he claims that he was deployed to the city of Kadugli to install electronic equipment and to conduct a pilot project for issuing passports. While there, and on a patrol with military units in late December 2008, he claims that he disobeyed an order from a military officer. Shortly thereafter he was transferred to Khartoum where, he claims, security forces detained him in early January 2009. He says that he was accused of being a rebel, interrogated and tortured.

[6] Following his release and treatment at a hospital, Mr. Shroub returned to his employment at the passport office headquarters in Khartoum, where he worked in a clerical capacity until 2016. That year, he claims, he bribed an official in the Sudanese government to obtain a position at the Embassy of Sudan in Washington, D.C. Mr. Shroub arrived in Washington, D.C. on

November 1, 2016 and worked in an administrative capacity at the Embassy until May 1, 2017 processing passport and ID card applications.

[7] He was to return to Sudan on May 2, 2017. Instead, Mr. Shroub and three of his colleagues from the Embassy travelled north to the U.S. border, entered Canada on foot and claimed protection.

[8] Mr. Shroub appeared before the RPD on May 3, 2018. On June 13, 2018, the RPD denied his claim. The RPD determined that Mr. Shroub had failed to establish a serious possibility of persecution pursuant to s. 97(1) *IRPA*. The RPD found that Mr. Shroub was not credible with respect to: his professional occupation while in Sudan; that he worked at the Embassy of Sudan in Washington, D.C; that he would be sought by authorities on his return to Sudan; and in his testimony regarding the 2009 events.

[9] On appeal to the RAD, Mr. Shroub filed additional documents of which several were found to be admissible. The RAD declined to admit an internal Sudanese government letter dated May 2, 2017 pursuant to s. 29(4) of the *Refugee Appeal Division Rules*, SOR/2012-257 [*RAD Rules*], on the grounds that the letter had no probative value and could have been previously obtained by Mr. Shroub.

[10] The RAD declined to grant Mr. Shroub an oral hearing, finding that the newly admissible evidence did not have a material effect on the decision under appeal. The RAD determined that it owed the RPD no deference on credibility and conducted its review on the correctness standard.

It found that Mr. Shroub had not been credible in his testimony before the RPD and had not exhibited a credible fear of persecution.

[11] While the RAD accepted that Mr. Shroub had worked at the Embassy in Washington, D.C., it found that he failed to adduce evidence that he faced a risk in Sudan due to having sought asylum in Canada after completing his work term at the Embassy.

[12] Mr. Shroub's appeal was dismissed on October 3, 2019.

### III. Issues

[13] While the reasonableness of the RAD's decision on the merits of the appeal was challenged, in my view the sole determinative issue on this application is whether the RAD erred in rejecting the May 2, 2017 letter.

### IV. Relevant Legislation

[14] The following provisions of the *RAD Rules* are relevant:

#### **Documents — new evidence**

**29 (3)** The person who is the subject of the appeal must include in an application to use a document that was not previously provided an explanation of how the document meets the requirements of subsection 110(4) of the Act and how that evidence relates to the person, unless the document is being

#### **Documents — nouvelle preuve**

**29 (3)** La personne en cause inclut dans la demande pour utiliser un document qui n'avait pas été transmis au préalable une explication des raisons pour lesquelles le document est conforme aux exigences du paragraphe 110(4) de la Loi et des raisons pour lesquelles cette preuve est liée à la personne, à moins que le document ne soit présenté en réponse

presented in response to evidence presented by the Minister.

à un élément de preuve présenté par le ministre.

**Factors**

**Éléments à considérer**

(4) In deciding whether to allow an application, the Division must consider any relevant factors, including

(4) Pour décider si elle accueille ou non la demande, la Section prend en considération tout élément pertinent, notamment :

- (a) the document's relevance and probative value;
- (b) any new evidence the document brings to the appeal; and
- (c) whether the person who is the subject of the appeal, with reasonable effort, could have provided the document or written submissions with the appellant's record, respondent's record or reply record.

- (a) la pertinence et la valeur probante du document;
- (b) toute nouvelle preuve que le document apporte à l'appel;
- (c) la possibilité qu'aurait eue la personne en cause, en faisant des efforts raisonnables, de transmettre le document ou les observations écrites avec le dossier de l'appelant, le dossier de l'intimé ou le dossier de réplique.

[15] The following provision of the *IRPA* is relevant:

**Evidence that may be presented**

**Éléments de preuve admissibles**

**110 (4)** On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.

**110 (4)** Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.

V. **Analysis**

A. *Standard of Review*

[16] The RAD's decisions are reviewed on a reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at paras 30-35.

[17] There is no disagreement between the parties that the presumption of reasonableness review should apply in this instance. Specifically, the standard of review of the RAD's decision on whether to admit new evidence both under s. 29(4) *RAD Rules* and s. 110(4) *IRPA*, is reasonableness: *Siddiqui v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1028 at para 87; *Canada (Minister of Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 29.

[18] None of the exceptions identified in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 that would displace the presumptive standard apply in this matter.

B. *Whether the RAD erred in declining to admit the May 2, 2017 letter?*

[19] Mr. Shroub concedes that the letter predates the RPD hearing but submits that he only became aware of it in September 2019 and that it was therefore new evidence.

[20] The Respondent contends that the RAD's decision with respect to the letter was reasonable and consistent with s. 29(4) *RAD Rules*.

[21] Subsection 29(4) *RAD Rules* requires that the RAD consider any relevant factors in deciding whether to allow an application to provide additional documents once the record has been filed but must consider: the document's relevance and probative value; any new evidence the document brings to the appeal; and whether the person who is the subject of the appeal could have with reasonable efforts submitted the document earlier. Proper consideration of these factors can support grounds for dismissing the evidence: *Denbel v Canada (Minister of Citizenship and Immigration)*, 2015 FC 629 at para 44.

[22] In submitting new evidence, an applicant must include an explanation of how the additional document meets the requirements of s. 110(4) *IRPA* and how the evidence relates to the applicant: s. 29(3) *RAD Rules*. In this instance, Mr. Shroub claimed in his affidavit that he had only become aware of the letter when he had received it from a former colleague following the RPD decision and after having filed the appeal record.

[23] A RAD decision has been found unreasonable where it failed to consider all three factors under s. 29(4) of the *Rules*; *Arisekola v Canada (Citizenship and Immigration)*, 2019 FC 275; where the RAD's reasons stem from material factual errors: *Semykina v Canada (Citizenship and Immigration)*, 2019 FC 249 at paras 27-28; or where the reasons lack in transparency such that it is unclear why the RAD refused to admit the evidence: *Agyemang v Canada (Minister of Citizenship and Immigration)*, 2016 FC 265 at paras 23-24.

[24] In this instance, the RAD failed to consider the "relevance and prohibitive value" of the May 2, 2017 letter. The letter was relevant and material to an assessment of whether Mr. Shroub

was sought by the government of Sudan after failing to repatriate in May 2017. The failure to adduce such evidence was held by the RAD to adversely affect Mr. Shroub's credibility on this issue.

[25] The authenticity of the letter was a question going to the weight of the evidence, rather than its probative value. The RAD merely asserted that the letter had no probative value and provided no explanation as to how the question of its authenticity factored into its assessment of whether Mr. Shroub was being sought by the Sudanese authorities for having defected. On its face and despite a discrepancy as to how his position at the Embassy was described, the letter clearly identifies the Applicant as one of the defecting employees. In the result, the RAD failed to consider the probative value of the letter Mr. Shroub sought to admit, and therefore failed to adequately apply the required factors of s. 29(4) *RAD Rules*.

[26] In my view, this constitutes a reviewable error sufficient to find that the decision is unreasonable. I make no findings with respect to other aspects of the RAD decision including those relating to the plausibility of certain elements of Mr. Shroub's claim relating to his conduct following the 2009 events described in his narrative. However, I note that it was conceded by the Respondent at the hearing that both the RPD and the RAD misinterpreted the content of a summons issued in July 2017 that contains a reference to a 2008 Sudanese police law. Both tribunals had mistakenly construed that reference as relating to an accusation made against Mr. Shroub in 2008. This misunderstanding may have affected their assessment of the summons.



[27] Neither party proposed a serious question of general importance and none will be certified.

**JUDGMENT IN IMM-6449-19**

**THIS COURT'S JUDGMENT is that** the application is granted, and the matter is remitted for reconsideration by a different member of the Refugee Appeal Tribunal. No question is certified.

"Richard G. Mosley"

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Judge

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

**DOCKET:** IMM-6449-19

**STYLE OF CAUSE:** SABER ABUZOID MEKKI SHROUB v THE  
MINISTER OF CITIENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HEARD VIA VIDEOCONFERENCE AT OTTAWA  
AND MONTREAL

**DATE OF HEARING:** DECEMBER 3, 2020

**JUDGMENT AND REASONS:** MOSLEY J.

**DATED:** JANUARY 11, 2021

**APPEARANCES:**

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