

Federal Court



Cour fédérale

**Date: 20210115**

**Docket: IMM-3200-19**

**Citation: 2021 FC 58**

[ENGLISH TRANSLATION, REVISED BY THE AUTHOR]

**Ottawa, Ontario, January 15, 2021**

**Present: Mr. Justice Sébastien Grammond**

**BETWEEN:**

**MOHAMMED ELZUBIER ABDELGADIR**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Mr. Abdelgadir is seeking judicial review of the rejection of his refugee protection claim. He states that the Refugee Appeal Division [RAD] erroneously dismissed the explanations he provided to justify the significant contradictions and omissions in his testimony. I dismiss his application because the RAD's negative findings regarding Mr. Abdelgadir's credibility were reasonable.

I. Background

[2] Mr. Abdelgadir is a citizen of Sudan. In 2010, he was allegedly imprisoned twice and tortured because of his participation in anti-government protests. He claims Sudan's security forces forced him to sign a written undertaking to stop participating in such activities. In 2011, he left Sudan for Saudi Arabia.

[3] In 2013, he returned to Sudan to visit his father, who was seriously ill. He took with him eight boxes of supplies and medication for the residents of his village. This drew the attention of the Sudanese authorities, who allegedly detained him again for 14 days and tortured him. He claims he was ordered to cooperate with the government and join the Islamic party, which was in power at the time. Immediately following his release, Mr. Abdelgadir returned to Saudi Arabia, where he lived until 2015.

[4] In 2015, Mr. Abdelgadir accompanied his employer to the United States, where he filed a first refugee protection claim. In February 2017, he went to Canada and filed another refugee protection claim.

[5] The Refugee Protection Division [RPD] rejected Mr. Abdelgadir's claim. It concluded that his testimony was not credible because of significant discrepancies between his US and Canadian refugee protection claims, and because his return to Sudan in 2013 was inconsistent with the alleged fear of persecution. In particular, Mr. Abdelgadir indicated completely different periods of detention in his two refugee protection claims and his immigration forms. Moreover,

he did not mention the mistreatment he allegedly experienced in Sudan in support of his US refugee protection claim.

[6] Before the RAD, Mr. Abdelgadir filed an affidavit outlining his recent participation in a protest against the Sudanese government in Montreal. He alleged that his participation in the event would be known to the Sudanese authorities because he made it public on his Facebook account. The RAD allowed Mr. Abdelgadir to file this new evidence but refused to find that the Sudanese government would be informed of his activities in Canada. Moreover, the RAD agreed with the RPD's findings and concluded that Mr. Abdelgadir's allegations were not credible.

[7] Mr. Abdelgadir filed an application for leave and for judicial review of this decision. A judge of this Court granted leave on October 23, 2019, and the hearing was scheduled for January 21, 2020.

[8] However, in the interim, counsel for Mr. Abdelgadir filed a motion to be removed as solicitor of record, as he had lost all contact with his client. Two attempts to serve this motion on Mr. Abdelgadir in person failed, as he had moved. On February 12, 2020, Prothonotary Steele granted the motion to be removed as solicitor of record and ordered the applicant to retain new counsel or appear personally before March 6, 2020, and to communicate his full contact information within the same timeframe. To date, Mr. Abdelgadir has not complied with the order.

[9] In the meantime, the hearing of the application was postponed. On June 30, 2020, noting that the applicant's contact information was still unknown and considering his presence at a hearing was unlikely, the Minister requested that the application be decided on the basis of the written submissions filed for the application for leave. At the request of the Court, the Minister undertook the following actions:

- a review of the IRCC and CBSA files to ensure that the applicant had not provided a new address or any additional information that would allow him to be contacted;
- a phone call to his most recent phone number, which has been out of service since at least October 2019;
- a phone call to the number Mr. Abdelgadir provided to US authorities in 2015, which went to an automated and anonymous voice mailbox;
- a message sent to the email address noted in the certified tribunal record, which did not reach the addressee; and
- a message sent to a second email address that seems to belong to Mr. Abdelgadir. After this message was sent, the Minister received an automated reply stating that no delivery notification had been sent by the destination server.

[10] On November 25, 2020, Justice Bell ordered that the application be decided on the basis of written submissions.

## II. Analysis

[11] The Court reviews decisions of the RAD according to the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]. Regarding questions of fact, the Court intervenes only in “exceptional circumstances” (*Vavilov*, at paragraph 125), that is, when “the decision maker has fundamentally misapprehended or failed to

account for the evidence before it” (*Vavilov*, at paragraph 126). In particular, this Court will only intervene sparingly in findings of credibility: *Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315 (FCA). It is not sufficient to reiterate the same arguments presented to the RPD or the RAD without explaining why it was unreasonable to dismiss them: *Moute v Canada (Minister of Citizenship and Immigration)*, 2005 FC 579, at paragraph 17. Yet, this is what Mr. Abdelgadir did. For the following reasons, I conclude that he failed to show that the RAD rendered an unreasonable decision.

[12] A claimant’s credibility can be negatively affected by the omission of major events in a statement provided prior to the hearing before the RPD or contradictions between the claimant’s versions of the narrative given at various stages of the refugee protection claim process: *Garay Moscol v Canada (Citizenship and Immigration)*, 2008 FC 657, at paragraph 21. In this case, the RPD and the RAD relied on the fact Mr. Abdelgadir contradicted himself with regard to the duration of his detention and failed to mention important facts in his US refugee protection claim.

[13] To explain the discrepancies between the statements regarding the duration of his detention, Mr. Abdelgadir stated he had difficulty understanding English and had made a mistake when converting the Islamic dates to Christian ones. The RPD and RAD reasonably dismissed this explanation. As the RPD noted, the tribunal did not require the dates, but rather the duration of the detention, which would not vary depending on the type of calendar. The differences noted in Mr. Abdelgadir’s three versions are significant and involve a central aspect of his refugee protection claim, namely his detention, three times, by the Sudanese government.

[14] Mr. Abdelgadir asserted that the omission of his mistreatment in his US refugee protection claim was due to his lawyer's mistake. He admitted, however, that he had forgotten to mention his return to Sudan in 2013 to his US lawyer. The RAD dismissed this explanation and maintained that this is exactly the type of information a lawyer preparing a refugee protection claim would want to include. It was open to the RAD to draw an unfavourable conclusion about Mr. Abdelgadir's credibility based on this type of reasoning resting on common sense and rationality: *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924, at paragraph 26. Given the insufficiency of Mr. Abdelgadir's written submissions in this regard, I cannot say that the RAD's findings are unreasonable.

[15] Mr. Abdelgadir also challenges the RAD's finding that his return to Sudan shows a lack of subjective fear. Moved by a desire to help people in his village, he did not properly assess his situation before returning to Sudan with a significant load of supplies, which would not go unnoticed by the Sudanese authorities. However, despite Mr. Abdelgadir's good intentions, the case law clearly establishes that a voluntary return to the country of origin can be a significant impediment to proving a subjective fear of persecution: *Forvil v Canada (Citizenship and Immigration)*, 2020 FC 585, at paragraph 59; *Sainnéus v Canada (Citizenship and Immigration)*, 2007 FC 249, at paragraph 12; *Houssou v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1375, at paragraph 3. Moreover, by taking several boxes of supplies with him, Mr. Abdelgadir returned to Sudan in a manner that was sure to draw attention. It is implausible that he would have acted in this manner if he truly feared being tortured and detained. The altruistic nature of his actions does not change the fact that it was reasonable for the RAD to infer from such behaviour that Mr. Abdelgadir did not seriously fear the Sudanese authorities.

[16] Moreover, Mr. Abdelgadir alleges that the Sudanese authorities target refugee claimants who return to the country and this concerns him because they questioned his father in 2015 to get him to reveal his whereabouts. In light of the RAD's other findings regarding the credibility of the applicant's allegations, and the lack of evidence that refugee protection claimants are at serious risk of persecution upon their return to Sudan, it was reasonable for the RAD to reject this argument.

[17] With regard to the new evidence Mr. Abdelgadir filed to prove that he participated in a demonstration in Canada, the RAD determined that it was insufficient to show there was a serious possibility of arrest upon his return to Sudan. Although Mr. Abdelgadir's affidavit indeed established that he participated in a demonstration, it was not sufficient to support his allegation that he was being monitored by the Sudanese authorities. Given the lack of evidence showing that the Sudanese authorities were aware of Mr. Abdelgadir's activities, the RAD's finding in this regard is not unreasonable.

[18] Lastly, Mr. Abdelgadir alleges that the RAD assessed the RPD's decision against a standard of reasonableness instead of reviewing the case afresh. I reject this argument. The RAD's decision focused on the contradictions in Mr. Abdelgadir's evidence and reached findings similar to those of the RPD. It is open to the RAD to agree with the RPD after having conducted its own analysis of the case, especially when the contradictions the RPD raised regarding credibility are significant: *Huruglica v Canada (Citizenship and Immigration)*, 2014 FC 799, at paragraphs 54 and 55; *Ortiz v Canada (Citizenship and Immigration)*, 2016 FC 180,

at paragraph 20. Moreover, Mr. Abdelgadir does not cite any passages from the decision that would support the inference that the RAD did not correctly review the application.

[19] I am of the opinion that the RAD's findings are reasonable and based on the evidence. As a result, I dismiss the application for judicial review.



**JUDGMENT in IMM-3200-19**

**THIS COURT'S JUDGMENT is as follows:**

1. The application for judicial review is dismissed.
2. No question is certified.

“Sébastien Grammond”

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Judge

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

**DOCKET:** IMM-3200-19

**STYLE OF CAUSE:** MOHAMMED ELZUBIER ABDELGADIR v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**ON WRITTEN SUBMISSIONS CONSIDERED AT OTTAWA, ONTARIO**

**JUDGMENT AND REASONS:** GRAMMOND J.

**DATED:** JANUARY 15, 2021

**WRITTEN SUBMISSIONS:**

Mohammed Elzubier Abdelgadir

SELF-REPRESENTED APPLICANT

Philippe Proulx

FOR THE RESPONDENT

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