

Federal Court



Cour fédérale

**Date: 20220510**

**Docket: IMM-2172-21**

**Citation: 2022 FC 683**

**Ottawa, Ontario, May 10, 2022**

**PRESENT: The Associate Chief Justice Gagné**

**BETWEEN:**

**JULIANA ANWAR SULIMAN ABSKHIRON  
KAREN MICHAEL MANNO NAKHLA  
MINA MICHAEL MANNO NAKHLA  
MARIAM MICHAEL MANNO NAKHLA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicants are a mother and her three minor children. They came to Canada in May 2018 and claimed refugee protection based on their fear of persecution in Sudan and Egypt on the grounds of the principal Applicant having been accused and convicted of proselytizing in

Sudan. They now seek judicial review of the decision of the Refugee Appeal Division [RAD] refusing their claim.

## II. Facts

[2] According to the principal Applicant's Basis of Claim form [BOC], she is a Coptic Orthodox Christian. Her father was an Egyptian Coptic Christian pastor who moved to Sudan where the principal Applicant was born. While she was growing up and through her university studies, she remained involved in Coptic churches and eventually participated in activities with Evangelical churches in and around Khartoum, which included counselling Christian women.

[3] The principal Applicant's religious and counselling activities caused her to be in contact with the Sudanese authorities on two occasions.

[4] Around Christmas of 2016, she was handing out food with her friend Sarah on behalf of the Evangelical church. They were both summoned to the Public Order Police office and were accused of having preached Christianity to Muslims. The principal Applicant was interrogated for about two hours and was allowed to leave.

[5] Shortly thereafter, the principal Applicant counselled a Christian woman who was married to a Muslim man. The husband had been living abroad for a while but upon his return to Sudan, he became angry that his wife had baptised his daughter into Christianity with the help of the principal Applicant. He filed an official claim with the police accusing the principal Applicant, his wife, and the priest of converting his daughter to Christianity.

[6] On December 17, 2017, the principal Applicant was arrested, questioned about her religious activity, and released. In February and March 2018, she attended court hearings and faced charges related to her religious activities. Her lawyer told her she was unlikely to have a favourable verdict, and so she decided to leave Sudan. The principal Applicant has since learned that she was convicted of one count of blasphemy and one count of enticing a person to embrace Christianity.

[7] The Applicants arrived in Canada in May 2018 and filed their refugee claim based on the principal Applicant's account. The Refugee Protection Division [RPD] found the identity of the principal Applicant and her credibility to be the determinative issues.

[8] The main identity issue is that in their refugee claim, the Applicants only identified themselves as citizens of Sudan, when in reality they hold dual citizenship, Sudanese and Egyptian. The principal Applicant had declared her Egyptian citizenship in previous applications for Temporary Residence visas and had travelled on an Egyptian passport. At the hearing before the RPD, she claimed to believe that although she had an Egyptian passport, she was not an Egyptian citizen. The RPD member found that the Applicants were citizens of Egypt and dismissed their claim.

### III. Decision Under Review

[9] The RAD also found that the principal Applicant lacked credibility, but for slightly different reasons than those of the RPD. Contrary to the position she took before the RPD, the principal Applicant did not contest, before the RAD, the fact that the Applicants have dual

citizenship. Rather, the principal Applicant stated that she genuinely believed that in order to be a citizen of Egypt, one has to detain an Egyptian citizenship card, which none of the Applicants had. She stated that her belief was induced by the immigration officer she met at one of the three meetings she had to discuss her refugee claim.

[10] The RAD found that the evidence supported a finding that the principal Applicant failed to disclose her Egyptian citizenship to the RPD.

[11] The RAD also found that it was open to the RPD to draw a negative inference about the credibility of the principal Applicant's involvement with the Evangelical churches and her release from detention, considering the lack of corroboration.

[12] It found that the RPD erred in failing to adequately consider the principal Applicant's explanation for her delay in leaving Sudan after the December 2017 detention, but ultimately found that her explanation was insufficient on its own independent assessment.

[13] Finally, the RAD agreed with the RPD's finding that the nature of the risk allegedly facing the principal Applicant in Egypt was speculative.

#### IV. Issues and Standard of Review

[14] I agree with the parties that the applicable standard of review is one of reasonableness, the presumptive standard set forth by the Supreme Court of Canada in *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65. In their Memorandum of fact and law, the Applicants

raised several issues but at the hearing, they focused on the following ones which, I agree, are determinative of this case:

- A. *Did the RAD reasonably find that the principal Applicant failed to disclose her Egyptian citizenship?*
- B. *Did the RAD err in making negative inference from the fact that the principal Applicant failed to provide corroborative evidence of her involvement with the Evangelical churches?*
- C. *Did the RAD err in importing its negative credibility findings to its assessment of the documentary evidence?*

V. Analysis

- A. *Did the RAD reasonably find that the principal Applicant failed to disclose her Egyptian citizenship?*

[15] The Applicants argue that the RAD failed to consider the principal Applicant's testimony and explanations with regard to her belief that she was not an Egyptian citizen. She states she had an honestly held but mistaken belief that she was not a citizen of Egypt. Because she was consistent in her mistaken belief, the RAD member unreasonably upheld the negative credibility finding of the RPD with regard to the Applicants' citizenship.

[16] At its heart, the principal Applicant's refugee claim was denied because she misrepresented her citizenship status. In my view, the RAD's decision is reasonable.

[17] The issue of identity is at the heart of the RPD's expertise, and as such the RPD is owed considerable deference (*Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at para 48, cited recently in *Okbet v MCI*, 2021 FC 1303 at para 44). The reviewing court must refrain from reweighing and reassessing the evidence considered by the decision maker (*Vavilov* at para 125; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 64).

[18] The RAD considered the principal Applicant's explanation of her alleged honest and mistaken belief that an Egyptian passport was not proof of Egyptian citizenship. However, it chose to reject it. The RAD gave more weight to the evidence provided by the Minister during the RPD hearing, in particular a copy of the principal Applicant's application for TRV from December 2016, in which she clearly indicated that she was a citizen of Egypt. At the hearing, she confirmed that she filled out that application herself. In doing so, she clearly acknowledged having a dual citizenship.

[19] At the hearing, the Minister's counsel referred to some GCMS notes he apparently had in his possession but was not part of the evidence before the RAD. He read the following excerpt: "Visa notes state that client holds U.S. visa in Egyptian passport" and later: "Upon examination, the client stated that the Egyptian passports were illegally obtained and taken by the Sudanese authorities..."

[20] Based on this information, the Applicants argue that the principal Applicant did inform the Canadian authorities that they hold Egyptian passports. I disagree. First, it seems that the principal Applicant was confronted with information the officer had in his file rather than having

volunteered the information. Second, it is now uncontested that the Applicants are citizens of Egypt and that their passports were legally obtained and are valid. Third, this would be inconsistent with the Applicants BOC and narrative in which they only disclose their Sudanese citizenship. There is not a word in that document about dual citizenship and, in fact, there are only two lines at the end of the narrative concerning Egypt – besides the fact that she states that her co-accused now lives in Egypt with her child.

[21] In my view, considering the flagrant inconsistency between her previous TRV application and her refugee claim, it was reasonable for the RAD to find that the principal Applicant had attempted to withhold that the Applicants have dual citizenship. I see no reason for the Court to disturb that finding.

B. *Did the RAD err in making negative inference from the fact that the principal Applicant failed to provide corroborative evidence of her involvement with the Evangelical churches?*

[22] The Applicants argue that they were not required to present corroborating evidence on the principal Applicant's activities with the Evangelical churches because to do so would reverse the presumption of truthfulness that has long been accepted by this Court. They argue that the RAD would have been required to provide reasons for rejecting her oral testimony on this topic.

[23] In my view, the RAD's negative finding about the principal Applicant's involvement with Evangelical churches was reasonable. According to *Maldonado v Canada (Minister of Employment & Immigration)*, [1980] 2 FC 302, "[w]hen an applicant swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there be

reason to doubt their truthfulness” (para 5). I find that the principal Applicant’s credibility issue with regard to her citizenship of Egypt is sufficient to rebut *Maldonado*’s presumption of truthfulness. It was therefore reasonable for the RAD to expect corroborative evidence with respect to her involvement in the Evangelical churches, which was at the heart of the Applicants’ refugee claim. The RAD considered the principal Applicant’s testimony on that topic and found:

[43] In my independent assessment, the principal Appellant’s testimony to this point paints an equivocal picture of the degree of her connection to and membership in the evangelical church community in Sudan. Given the principal Appellant’s testimony that her activities on behalf of evangelical Protestant churches in Sudan was central to her risk in that country, I would expect her to have tried to obtain documents to support this allegation.

[24] The RAD did consider the principal Applicant’s explanation that she had no contact with her friend – except exchanges on Facebook – since she was arrested and detained, and was unable to secure corroborative evidence. It simply did not find it sufficient in light of the entire circumstances. It was open for the RAD to do and, again, I see no reason to interfere.

C. *Did the RAD err in importing its negative credibility findings to its assessment of the documentary evidence?*

[25] The Applicants further submit that the RAD unreasonably discounted the letter written by her lawyer in Sudan, based on what it did not say while ignoring what it did say. It also unreasonably discounted the order of the Khartoum Criminal Court solely based on the principal Applicant’s lack of credibility. In doing so, they argue that the RAD failed to properly assess this documentary evidence and to give it a clear and independent credibility finding (*Sitnikova v MCI*, 2017 FC 1082, at para 27; *Nti v MCI*, 2020 FC 595 at para 3).



[26] I agree with the Applicants that it might not be reasonable for the RAD to simply disregard independent documentary evidence solely on the basis of credibility concerns, especially where, like in this case, those concerns are with respect to a different issue (the Applicants' dual citizenship).

[27] However, I also agree with the Respondent that even if the RAD had erred in rejecting this evidence without a proper assessment, it would have no impact on its decision to refuse the Applicants' refugee claim. This documentary evidence concerns the Applicants' fear of returning to Sudan not to Egypt. And as a result of the Applicants' dual citizenship, it was still open for the RAD to find that the Applicants would not face a forward looking risk if they were to return to Egypt.

[28] In these circumstances, I am of the view that the Court's intervention is not warranted.

## VI. Conclusion

[29] For the above reasons, this Application for judicial review is dismissed. Overall, the decision is reasonable. While I do think the RAD's assessment of the lawyer's letter and order from the Khartoum Court was flawed, this is not fatal when looking at the decision as a whole (see *Vavilov* at paras 15, 102). The parties have proposed no question of general importance for certification and none arises from the facts of this case.

**JUDGMENT in IMM-2172-21**

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

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

“Jocelyne Gagné”  
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Associate Chief Justice

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

**DOCKET:** IMM-2172-21

**STYLE OF CAUSE:** JULIANA ANWAR SULIMAN ABSKHIRON, KAREN  
MICHAEL MANNO NAKHLA, MINAL MICHAEL  
MANNO NAKHLA, MARIAM MICHAEL MANNO  
NAKHLA v THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** MARCH 9, 2022

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

**DATED:** MAY 10, 2022

**APPEARANCES:**

Lorne Waldman FOR THE APPLICANT

Nicole Rahaman FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Lorne Waldman FOR THE APPLICANT  
Toronto, ON

Attorney General of Canada FOR THE RESPONDENT  
Toronto, ON