Federal Court  Cour fédérale

Date: 20220525

Docket: IMM-2096-21

Citation: 2022 FC 747

Toronto, Ontario, May 25, 2022

PRESENT: Justice Andrew D. Little

BETWEEN:

AYMAN MOSTAFA ABDELHAMID TALAB
MARWA SALEH AHMED OMARA
& Through Their Litigation Guardian Ayman Mostafa Abdelhamid Talab
MOSTAFA AYMAN MOSTAFA TALAB
BASMA AYMAN MOSTAFA TALAB
RAWAN AYMAN MOSTAFA TALAB
MOHAMED AYMAN MOSTAFA TALAB
ABDALLA AYMAN MOSTAFA TALAB
HANIN AYMAN MOSTAFA ABDELHAMID TALAB
MAWADA AYMAN MOSTAFA ABDELHAMID TALAB

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by the Refugee Appeal Division (the "RAD") dated March 15, 2021. The RAD concluded that the applicants were not

Convention refugees or persons in need of protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the "IRPA").

[2] For the following reasons, the application will be dismissed.

I. Facts and Events Leading to this Application

[3] The applicants are a family and are all citizens of Egypt. They based their claims for *IRPA* protection on Mr Talab's alleged fear of persecution by Egyptian authorities due to his political opinion.

[4] Mr Talab claimed that he came to the attention of Egyptian authorities through his work as an administrator at a college in 2001. College security observed a lot of his work activities, and reported to state security. He claimed that he refused to follow instructions about student election nominations and was subsequently threatened and socially distanced from his colleagues.

[5] In 2005, Mr Talab left Egypt to work in Saudi Arabia. He returned to Egypt once a year. On arrival and departure at the airport, he was harassed by state security and waited for hours for his passport to be returned.

[6] Mr Talab's uncle "Reda" is a vocal opponent of the government who associates with members of the Muslim Brotherhood. In August 2008, Mr Talab was detained for three days and asked about his uncle's activities. After his release, he remained in Egypt until October 2008. Mr Talab visited Egypt again in 2013, 2015 and 2018 during summer vacations.

[7] On November 30, 2017, police raided Mr Talab's family compound and arrested his uncle Reda and his cousin. Uncle Reda was released after three days. His cousin was released after four months. A letter from Mr Talab's mother advised that police also came looking for him at that time. A letter from his uncle confirmed that authorities were looking for him and had an arrest warrant.

[8] A couple of months later, a friend of Mr Talab was arrested and disappeared.

[9] In April 2018, Mr Talab started the process of applying for Canadian visitor visas for all of his family.

[10] In May 2018, Mr Talab visited Canada with two of his children. He also planned a second trip with the other children.

[11] In June 2018, Mr Talab's employment in Saudi Arabia ended. On learning this news, his mother fell ill and was hospitalized for 18 days. At the same time, his father-in-law was suffering from cancer.

[12] Mr Talab and his family decided to go to Egypt. They booked flights from Saudi Arabia to Egypt and simultaneously booked flights to Canada departing three weeks later.

[13] On arrival in Egypt, Mr Talab's passport was held for almost 2 hours before the family could leave the airport.

[14] After two weeks in Egypt, Mr Talab learned that the state security forces were looking for him and were preparing an arrest warrant and summons for him to appear. The family went into hiding before departing on their flight to Canada.

[15] On August 10, 2018, the applicants arrived in Toronto.

[16] On September 4, 2018, the applicant's uncle Reda was arrested again. He was still in prison when the applicants made their initial claim for *IRPA* protection on September 14, 2018. He was not released for six months.

[17] By decision dated October 7, 2020, the Refugee Protection Division ("RPD") concluded that the applicants were not Convention refugees or persons in need of protection under the *IRPA*.

[18] For the RPD, the determinative issues were credibility and subjective fear. Mr Talab's testimony was vague with inconsistencies and omissions when compared to his Basis of Claim form. The RPD did not accept his explanation for returning to Egypt to see his sick mother. The RPD did not accept the validity or existence of the summons in November 2017. It found insufficient evidence to link his uncle and cousin's arrests in 2017 and 2018 with either Mr Talab's detention in 2008 or his alleged persecution in 2017.

[19] The applicants appealed to the RAD.

II. The Decision under Review

[20] The RAD dismissed the appeal by decision dated March 15, 2021.

[21] The applicants tendered new evidence. The RAD admitted a letter dated December 12, 2020, from an uncle of Mr Talab (not uncle Reda). However, the RAD decided not to convoke an oral hearing because the letter did not meet the criteria in *IRPA* subsection 110(6). It did not raise a serious issue with respect to Mr Talab's credibility, it was not central to the decision and did not justify allowing or rejecting the applicants' claims.

[22] The RAD found that the RPD erred in its credibility assessment of Mr Talab. The RAD found that the RPD did not have a proper foundation for its conclusion that the applicants were not credible.

[23] However, the RAD concluded that the applicants did not establish that they had a forward-facing fear of persecution if they returned to Egypt. The RAD reached the following material conclusions:

a) **Reavailment**: the RPD made no error in concluding that the applicants' return to Egypt in 2018 (i.e., their reavailment) showed a lack of subjective fear. The RAD adopted the RPD's analysis of the issue as its own. The RAD found that the applicants had not provided a credible explanation for their return or for why they failed to take any precautions on returning to Egypt, which demonstrated a lack of subjective fear. In addition, their ability to enter Egypt with only a minor delay and to leave Egypt without incident undermined the claim of persecution;

b) **Summons**: the November 2017 summons was not genuine. The RAD was principally concerned that the summons did not contain a date of issue or an address for Mr Talab to attend. The RAD found that there were national security offices throughout Egypt and it was reasonable to expect that a summons would

tell the person which office to attend. The RAD noted that the summons used terms to describe Egyptian security forces that were not in the National Documentation Package ("NDP") for Egypt. In the absence of a date of issue and a title of a recognized Egyptian government agency, the RAD found that a foreign government did not issue the summons. The RAD gave it no weight to establish the applicants' claims for protection;

c) **Arrests**: the RPD made an error by finding no evidence to link Mr Talab and his uncle Reda and cousin. However, it did not make an error when it found no link between the 2017 and 2018 arrests of Reda and the cousin with Mr Talab's detention in 2008 and his alleged persecution by authorities in 2017. The new letter from the other uncle mentioned the 2017 arrest warrant, but it was insufficient to show that the applicants would face forward-looking harm on return to Egypt because Mr Talab entered the country in July 2018 and left in August 2018 without incident.

[24] In addition, the RAD found that the RPD made no error in its consideration of a letter from Mr Talab's mother. That letter was insufficient to overcome the RAD's concerns with the summons and did not establish that the applicants would face harm if they returned to Egypt. The RAD also determined that it was unlikely Mr Talab would be detained or otherwise mistreated upon return to Egypt based on his social media activities. As insufficient evidence established that Egyptian authorities were interested in Mr Talab, it followed that Egyptian authorities would have no interest in Mr Talab's spouse and children.

[25] The RAD dismissed the appeal and found that the applicants were neither Convention refugees nor in need of protection under the *IRPA*.

[26] In this Court, the applicants challenged many of the RAD's conclusions.

III. Was the RAD's Decision Reasonable?

A. *Standard of Review of the RAD's Decision*

[27] The standard of review of the RAD's substantive decision is reasonableness. The applicant submitted that the reasonableness standard of review applied to all issues raised on this application. Both parties focused their submissions on that standard.

[28] The reasonableness standard was described in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65. Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov*, at paras 12-13 and 15. The reviewing court starts with the reasons of the decision maker, which are read holistically and contextually with the record that was before the decision maker: *Vavilov*, at paras 84, 91-96, 97, and 103; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, at paras 28-33.

[29] The Court's review considers both the reasoning process and the outcome: *Vavilov*, at paras 83 and 86. A reasonable decision is one that is based on an internally coherent and a rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker: *Vavilov*, esp. at paras 85, 99, 101, 105-106 and 194; *Entertainment Software*

Association v Society of Composers, Authors and Music Publishers of Canada, 2020 FCA 100, at paras 24-36.

[30] For a reviewing court to intervene, it must be satisfied that there are "sufficiently serious shortcomings" in the decision such that it does not exhibit sufficient justification, intelligibility and transparency. A "minor misstep" is insufficient: the problem must be sufficiently central or significant to render the decision unreasonable: *Vavilov*, at para 100. The Supreme Court in *Vavilov* identified two types of fundamental flaws: a failure of rationality internal to the reasoning process in the decision; and when a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it: at paragraph 101.

B. *Application of the* **Vavilov** *Standard*

[31] The applicants submitted that the RAD made numerous errors in its decision. I will address them under four headings.

(1) Reavailment

[32] The applicants submitted that the RAD adopted the RPD's reasoning on reavailment, which contained two negative credibility inferences, while at the same time it overturned the RPD's credibility findings overall. They also submitted that the RAD concluded that they failed to take "any precautions" on returning to Egypt, but ignored evidence of precautions they did take in case they needed to flee, including the purchase of airline tickets to Canada. Further, the applicants submitted the RAD ignored decisions of this Court holding that a return to the country of origin to visit a sick and elderly parent cannot justify a finding of reavailment. They also

contended that the RAD decision did not recognize when their subjective fear and objective risk crystallized. They noted that events occurred after their return to Egypt that heightened their perceived level of danger and caused them to go into hiding.

[33] In my view, there is no basis for the Court to intervene on the RAD's reavailment analysis. First, I do not find the internal contradictions submitted by the applicants. The RAD found that it had no reason to doubt the applicants' testimony "as it related to their actual experiences", but that did not mean that it had to "accept all of their submissions or arguments regarding why they experienced the events they did or the motivation of others". That distinction is reflected in its subsequent analysis. Second, the RAD's analysis reflected and accounted for the evidence. The RAD's analysis expressly accounted for the only other alleged precaution taken by the applicants - the purchase of the airline tickets to Canada - in the sentence immediately before it stated that they had not taken any precautions. The RAD's reasons also expressly recognized, in two different places, that it was when they learned about an arrest warrant that they went into hiding. That showed the RAD's appreciation of the impact of the arrest warrant on their perceived sense of danger and their alleged subjective fears of persecution.

[34] I conclude that the applicants have not demonstrated that the RAD made a reviewable error on the arguments they advanced.

(2) The November 2017 Summons

[35] The applicants submitted that the RAD erred in law by failing to apply the presumption that documents purporting to be issued by a foreign government are genuine (citing *Rasheed v Canada (Minister of Citizenship and Immigration)*, 2004 FC 587; *Wang v Canada (Citizenship and Immigration)*, 2018 FC 668). The applicant submitted that rather than properly rebutting the presumption of genuineness, the RAD constructed a flawed "work-around" in which it found the summons was not issued by a foreign government and therefore was not protected by the presumption of genuineness. The applicant submitted that the RAD was required first to rebut the presumption of genuineness before finding that the summons was not issued by a foreign government.

[36] This argument cannot succeed. The RAD accepted some of the applicants' arguments on appeal relating to the appearance of the summons and the signatures on it. However, the RAD also expressed its concern "with the lack of a date of issue and the lack of an address to attend" and that it stated the date to attend twice, which was "unusual". To the RAD, the most significant omission was the lack of an address to attend. It found that the objective evidence was that there were national security offices throughout Egypt and it was reasonable to expect the summons to tell the recipient which office they should attend. After considering the translations of certain terms in the summons such as "National Security Forces" and "National Security Apparatus", the RAD concluded:

> The Appellants [i.e., the applicants] also argue that since the summons was issued by a foreign government, the Federal Court has held that it is presumed to be authentic. In the absence of a date of issue and a title of a recognized Egyptian government agency, I

> find that the summons was not issued by a foreign government and therefore I am under no obligation to presume it is authentic.

[37] I find no substantive legal error in the RAD's analysis. The RAD did not doubt the presumption that a document that on its face purports to be issued by a foreign government is presumed to be authentic: *Rasheed*, at para 19. In my view, the substance of the RAD's analysis was that the evidence rebutted the presumption, even if the second sentence quoted above is somewhat awkwardly phrased to suggest that the RAD was under "no obligation to presume" its authenticity. In substance, the RAD did not make the legal error alleged by the applicants.

[38] The applicants challenged the RAD's consideration of the translated summons issued against Mr Talab in November 2017. The RAD noted that the NDP for Egypt "typically used" the terms "National Security Agency" and "National Security Sector", rather than "National Security Forces" and "National Security Apparatus" that appeared in the applicants' filed translation of the summons. The applicant argued that (i) the RAD merely noted that translators disagreed on how to translate one Arabic word into English; (ii) the documents in the NDP for Egypt did use one term used in the translation of the summons; and (iii) the RAD relied on an outdated version of the NDP when it did not find the term "National Security Apparatus" found in the summons.

[39] I do not accept this position. The applicant filed both the summons and its translation. There was no evidence before the RAD to support the applicants' submissions about how the original Arabic words in the summons could be translated in multiple ways into English. In addition, the translation of Mr Talab's statement repeatedly used yet another phrase, "State

Security Apparatus". While the applicants' submissions at the hearing in this Court suggested they could not have anticipated the RAD's concerns, the Court's case law is clear that they were responsible for the contents of the documents they filed to support their claims and the RAD was not required to raise these concerns with them: *Moïse v Canada (Citizenship and Immigration)*, 2019 FC 93, at paras 9-10; *Omirigbe v Canada (Citizenship and Immigration)*, 2021 FC 787, at para 40; *Han v Canada (Citizenship and Immigration)*, 2021 FC 1390, at para 31.

[40] Based on its footnote, the RAD referred to documents in the March 31, 2020, version of the NDP for Egypt, which the applicants submitted was updated in October 2020 before the RAD's decision dated March 15, 2021. However, the applicants have not demonstrated that any newer NDP documents contained evidence that Egyptian government communications or official documents (such as a summons) used "National Security Forces" and "National Security Apparatus" as the title of Egyptian security forces. The NDP documents referred to an entity named "National Security Agency" and to "security forces" in a generic sense. One document also mentioned "Central Security Forces" that appears to be a different entity. The applicants have not demonstrated that the RAD made a reviewable error: see *Worku v Canada (Citizenship and Immigration)*, 2019 FC 784, at para 33; *Lin v Canada (Citizenship and Immigration)*, 2019 FC 450, at para 26.

[41] Finally, the applicants submitted that the RAD relied solely on documents in the NDP to impugn the genuineness of the summons, contrary to *Lin v Canada (Citizenship and Immigration)*, 2012 FC 157, at para 54. This submission must also fail. In *Lin*, Russell J. stated at paragraph 54:

> The RPD's reasoning would mean that even genuine documents would not be acceptable. The fact that inauthentic documents are available does not relieve the RPD of the duty to determine whether particular documents presented by a claimant are genuine or not. The Respondent argues that the "fraudulent documents" ground merely supports the RPD's earlier finding that the Applicant's evidence is not acceptable because it is not supported by the objective evidence referred to by the RPD. In my view, this would mean that the RPD excluded evidence on the sole basis that it contradicts its own information package, and not because it has any inherent defects.
>
> [Emphasis added.]

[42] In this case, the RAD's analysis did not just consider information in the NDP for Egypt. It considered the contents of the summons itself, as contemplated by *Lin*. The RAD had concerns that it lacked a date of issue, did not specify the office at which the applicant had to appear and twice stated when to appear. It also considered the words used the summons. The RAD simply did not make the error alleged by the applicants.

[43] I conclude that the applicants have not identified a reviewable error in the RAD's analysis of whether the summons was authentic.

(3) The Arrests and their Link to Mr Talab

[44] The applicants argued that the RAD ignored the evidence in Mr Talab's Basis of Claim narrative when it found that there was "no evidence that links [Mr Talab's] 2008 detention with his uncle or cousin" and "[a]lso, there is no evidence before me that links Egyptian authorities' interest in the uncle or cousin to interest in [Mr Talab]" [emphasis added].

[45] I agree with this submission in one respect. The applicants are correct that Mr Talab's Basis of Claim narrative stated that while detained in 2008, he was questioned for 30-45 minutes about his relationship with his uncle. The RAD's first statement of "no evidence" related to the 2008 detention was factually incorrect, in that there was some evidence of a link. In my view, the misstatement was not fundamental to the overall analysis on this issue.

[46] The second "no evidence" statement, the rest of the paragraph and the RAD's conclusion on the issue are reproduced below:

> […] Also, there is no evidence before me that links Egyptian authorities' interest in the uncle or cousin to interest in [Mr Talab]. In particular, I note that the cousin's summary of detention does not mention [Mr Talab]. The letter from the uncle that I have accepted as new evidence does state that, in relation to the November 2017 raid on the family compound, authorities had a warrant to apprehend and arrest [Mr Talab]. However, when I consider that [Mr Talab] was not arrested when he entered Egypt into July 2018 and was allowed to leave Egypt without incident in August 2018, I find that the uncle's mention of the warrant is not sufficient to establish that the [applicants] would face forward-looking harm should they return to Egypt.
>
> I find that there is insufficient evidence that [Mr Talab] would face a serious possibility of persecution because of his relationship to his uncle and cousin.

[47] While one might have concerns about the second sentence in isolation, when read with the balance of the paragraph, it appears that the RAD's statement was based (wholly or in part) on evidence about events in November 2017. In addition, the RAD's conclusion about a forward-looking possibility of persecution on return to Egypt was based on the fact that Mr Talab was not arrested when he entered Egypt in July 2018 or when he left Egypt in August 2018, after he had learned that security forces were preparing a warrant for his arrest. Accordingly, I cannot

conclude that the RAD's second statement is necessarily incorrect when viewed with the rest of the analysis surrounding it.

[48] In this context, the applicants also submitted that the RAD erred (i) by giving little weight to the existence of the arrest warrant for Mr Talab and (ii) by relying on his relative ease of entry and egress from Egypt in 2018 while failing to identify country condition evidence that Egyptian authorities had the capability to detect his entry or intervene on his departure. There is no merit in either of these submissions. The RAD was entitled to weigh the evidence and this Court is not permitted to reassess or reweigh it on a judicial review application: *Vavilov*, at para 126. The applicants cited no authority or legal principle to support their submission that the RAD was obliged to identify country condition evidence showing that Egyptian authorities had the ability to detect his departure from Egypt. It also seems incongruent for the applicants to make this submission, while at the same time maintaining that one basis for Mr Talab's subjective fear was being detained at the airport every time he entered or exited Egypt while security had his passport.

[49] Despite one misstatement in its reasoning, I am not persuaded that the RAD made a reviewable error in its overall assessment of the evidence linking the arrests of Mr Talab's uncle and cousin to his fears of persecution because of his relationship with them.

(4) No Oral Hearing

[50] The RAD briefly stated its conclusion under *IRPA* subsection 110(6) as follows:

> The letter from the uncle of the Principal Appellant does not raise a serious issue with respect to the credibility of the Appellants, is not central to the decision and does not justify allowing or rejecting the Appellants' claim. The request for an oral hearing is denied.

[51] The applicants' position was that the RAD unreasonably did not convoke a hearing under *IRPA* subsection 110(6), despite accepting new evidence. On this view, the RAD erred in applying all three parts of the criteria in *IRPA* subsection 110(6). According to the applicants, the new letter from the other uncle raised a serious credibility issue, as it confirmed the relationship between Mr Talab and uncle Reda and the cousin - an issue that led the RPD to question Mr Talab's credibility. In addition, the applicants argued that Mr Talab's relationship to his uncle and cousin was central to the decision as a whole and that the letter corroborated Mr Talab's narrative, which justified granting the *IRPA* claims.

[52] Generally, the RAD must proceed without an oral hearing: *IRPA*, subsection 110(3). The RAD has the discretion to hold a hearing if it admits new evidence and if the requirements of *IRPA* subsection 110(6) are met: *Abdi v Canada (Citizenship and Immigration)*, 2019 FC 54, at paras 29-30; *Kreishan v Canada (Citizenship and Immigration)*, 2019 FCA 223, [2020] 2 FCR 299, at para 43; *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96, [2016] 4 FCR 230, at para 71. Paragraph 110(6)(*a*) requires that the new documentary evidence raises a "serious issue with respect to the credibility of the person who is the subject of the appeal" before the RAD.

[53] In my view, the RAD made no reviewable error when it concluded that the contents of the other uncle's letter did not raise a serious issue about the credibility of the applicant Mr

Talab. The translation of the letter from uncle Abdulwahed Mohamed Salem Talab dated December 12, 2020, shows that the letter principally concerned “a raid by security services” of the author’s home and Mr Talab’s home in November 2017. The RAD did not doubt that the raid occurred. The RAD also observed that the letter stated that the authorities had a warrant to apprehend and arrest Mr Talab. In the RAD’s view, considering the evidence about Mr Talab’s ability to enter and exit Egypt in July and August 2018, the uncle’s mention of the warrant was “not sufficient” to show that the applicants would face a forward-looking harm if they returned to Egypt. Given the RAD’s weighing of the evidence and the absence of any express or implicit finding affecting the credibility of the applicant Mr Talab’s evidence about the events, I see no reviewable error in the RAD’s conclusion that the letter did not raise a serious issue about the applicant’s credibility. The RAD reasonably concluded that the requirements of *IRPA* paragraph 110(6)(*a*) were not met.

[54] Accordingly, I agree with the respondent that the RAD committed no reviewable error when it decided not to hold an oral hearing.

IV. Conclusion

[55] The application is therefore dismissed. Neither party proposed a question for certification and none will be stated.

JUDGMENT in IMM-2096-21

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No question is certified under paragraph 74(*d*) of the *Immigration and Refugee Protection Act.*

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2096-21
STYLE OF CAUSE:	**AYMAN MOSTAFA ABDELHAMID TALAB, MARWA SALEH AHMED OMARA, & Through Their Litigation Guardian Ayman Mostafa Abdelhamid Talab, MOSTAFA AYMAN MOSTAFA TALAB, BASMA AYMAN MOSTAFA TALAB, RAWAN AYMAN MOSTAFA TALAB, MOHAMED AYMAN MOSTAFA TALAB, ABDALLA AYMAN MOSTAFA TALAB, HANIN AYMAN MOSTAFA ABDELHAMID TALAB MAWADA AYMAN MOSTAFA ABDELHAMID TALAB v THE MINISTER OF CITIZENSHIP AND IMMIGRATION**
PLACE OF HEARING:	TORONTO, ONTARIO
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