

Federal Court



Cour fédérale

**Date: 20220525**

**Docket: IMM-2420-21**

**Citation: 2022 FC 757**

**Ottawa, Ontario, May 25, 2022**

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

**BETWEEN:**

**Wael Abouelhadid Abdellatif Nasr  
Nani Gamal Arafat Elmetwali Elsalakaw  
Louay Wael Abouelhadadeed Abdellatif Nasr  
Login Wael Aboulhadid Abdellatif Nasr  
Lilian Wael Abouelhadid Nasr**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review of a March 24, 2021 decision of the Refugee Appeal Division [the RAD] of the Immigration and Refugee Board of Canada dismissing an appeal of a decision of the Refugee Protection Division [the RPD] finding that the Applicants are not refugees or persons in need of protection.

[2] The decision under review was reached in a procedurally unfair manner and is unreasonable based on the evidence before the RAD. As a consequence, it must be set aside.

## **Background**

[3] The Applicants, Wael Abouelhadid Abdellatif Nasr [the Principal Applicant], his wife, and their minor children, are Egyptian nationals. They came to Canada on September 13, 2019, and made a claim for refugee protection.

[4] The Applicants' basis of claim is as follows: In May 2019, the Principal Applicant opened a nursery school in the city of 6<sup>th</sup> of October, Egypt. Shortly after the school opened, the mother of one of the children, Ms. Aref, wanted to become a partner in the business. She claimed that she could use her connections in the police and army to allow the school to avoid paying taxes and to obtain free water, electricity and state security. The Principal Applicant turned her down.

[5] Ms. Aref was angry and, with the aid of her brother, a corrupt police officer, brought criminal charges against the Principal Applicant, claiming that her child had been physically assaulted by one of the instructors at the nursery school. The Principal Applicant was arrested, and he was interrogated by Ms. Aref's brother.

[6] The Principal Applicant was arrested again two weeks later. He was interrogated by Ms. Aref's brother and her husband, an army officer, who told him that he was being arrested for

making a Facebook post about President Morsi after his death. The Principal Applicant was imprisoned for three days and beaten.

[7] The Applicants sold the nursery school to a different army officer and fled to Canada, where they made a refugee claim. The Principal Applicant alleges that, after he left Egypt, he was sentenced to one month's imprisonment in absentia based on Ms. Aref's allegations.

[8] The RPD rejected the Applicants' claim on March 20, 2020. The RPD found that the Applicants were "generally credible" but did not have a nexus to a Convention ground and that they had a viable internal flight alternative in Alexandria.

[9] The Applicants appealed. They submitted two new pieces of evidence: a July 8, 2020 email from the Principal Applicant's lawyer in Egypt, Mr. Al-Hawary [the Al-Hawary Email], and a copy of a June 12, 2020, arrest warrant issued against the Principal Applicant [the Arrest Warrant]. The Al-Hawary Email indicates that a state security case has been opened against the Principal Applicant based on his Facebook post.

[10] On January 26, 2021, the RAD sent a Notice of a New Issue [the Notice] to the Applicants, advising them that the RAD was concerned with the authenticity of eight of their documents that were before the RPD. The RAD's concerns are described as follows:

The RAD member finds the dates of the documents and the alleged issuing authorities to be problematic. The RAD member notes that police stations with detention facilities in Egypt are listed in the Global Detention Project report: [link to the report]

The RAD requested that the Applicants provide the Arabic originals of the eight documents together with any submissions regarding the RAD's concerns.

[11] In response, the Applicants provided re-translations of three of the eight documents [the Re-translations] and a February 21, 2021 letter from Al-Hawary [the Al-Hawary Letter] providing a timeline of the legal proceedings against the Principal Applicant and explaining how each of the documents were obtained. Al-Hawary also explains that he was unable to obtain any of the original documents from the police stations in 6<sup>th</sup> of October due to the influence exerted by Ms. Aref's brother and because he was unwilling to get involved in the state security case regarding the Facebook post.

[12] The Applicants submitted a true copy of the judgment issued against the Principal Applicant in the nursery abuse case and submitted that if they were to provide only one original or certified copy, this would be the most important "as it represents the culmination of the legal proceedings" against the Principal Applicant. In response to the RAD's concern with the issuing authorities, the Applicants noted that the two issuing police stations were included in the report linked to by the RAD.

[13] The Applicants requested that, if their response did not satisfy the RAD, the RAD either contact the Applicants or convene an oral hearing.

## The RAD Decision

[14] Unlike the RPD, the RAD did not consider the determinative issue to be the existence of a viable internal flight alternative. Instead, the RAD found that the determinative issue was credibility.

[15] The RAD outlined the following four categories of new evidence on appeal: (1) the Al-Hawary Email, (2) the Arrest Warrant; (3) the Re-translations; and (4) the Al-Hawary Letter. The RAD considered whether this new evidence met the requirements of subsection 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 as well as the tests for newness, credibility, and relevance set out in the jurisprudence. The RAD found that all of the evidence met the requirements of subsection 110(4) of the *Act*, but that only the Re-translations met the test for credibility.

[16] The RAD found that the Al-Hawary Letter and the Al-Hawary Email were not credible because they used the same incorrect names of the police stations (discussed below) and because the Applicants had failed to comply with the request to provide the original documents.

[17] The RAD acknowledged that there were no sample police reports in the National Documentation Package for comparison. However, the RAD noted that the police documents provided were “poor quality scans of largely hand-written documents or form-type documents completed by hand, some of which appear to have only simplistic logos, easily reproducible, and few, if any, security features.”

[18] The RAD noted that the name of the municipality where the Applicants' nursery school was located is "6<sup>th</sup> of October," a suburb of Cairo. The RAD says that it informed the Applicants about the concerns it had with respect to the names of the police stations referenced in the document:

I notified the Applicants that I verified the names of the police stations in the "6<sup>th</sup> of October" in the Notice of a new issue sent to them in January 2021. I informed the Appellants that the *Global Detention Project* indicates that there are 3 police stations in this municipality and that they are called the "6<sup>th</sup> October 1<sup>st</sup> police station", the "6<sup>th</sup> October 2<sup>nd</sup> police station", and the "6<sup>th</sup> October 3<sup>rd</sup> police station".

The RAD noted that despite this, and despite the Applicants' confirmation that these names are correct, many of the documents produced by the Applicants use the name "October 1st police station" and "October 2nd police station", including in official documents issued by those police stations.

[19] The RAD acknowledged that it may be common practice to refer to these stations by these shortened names while writing casually but found it was not reasonable that official documents from these stations, including their letterhead, would not use the official name. Because of this, and because of the additional concerns noted above, the RAD considered the documents using the incorrect names to be inauthentic.

[20] The RAD noted that the Al-Hawary Letter and Email used the used the same incorrect names. The RAD found that while Al-Hawary "should not be held to the same standard as the issuing authority in terms of the accuracy of his references to the names of the police stations", the fact these errors were consistent with documents that the RAD found to be inauthentic was

“suspect” and that this repetition of errors was “more than mere coincidence and it diminishes the credibility of the lawyer’s letter and email.” The RAD also found the credibility of the Al-Hawary Email and Letter to be diminished because they discuss documents that the RAD found to be inauthentic.

[21] The RAD was also not satisfied with the explanation in the Al-Hawary Letter as to why original documents could not be provided. The RAD noted that the Principal Applicant had told the RPD that he had personally received a summons on June 4th, and yet there was no explanation as to why the original of this document was unavailable. The RAD also noted that while Al-Hawary was able to obtain a true copy of the judgment against the Principal Applicant, there was no explanation as to why is would be unable to obtain similar true copies of other documents issued by the public prosecution office. The RAD found that the failure to produce at least some original documents significantly affected the credibility of the Applicants’ documents.

[22] The RAD also found the Arrest Warrant to not be credible. According to the RAD, “[t]he main problem with the document is that it is not addressed to any person or to any police station....it does not specify which police service’s assistance is being requested.”

[23] As a result of the above concerns, the RAD only admitted the Re-translations as new evidence.

[24] The RAD considered the Applicants’ request for an oral hearing. The RAD found that the only new evidence that was admitted was the Re-translations. The RAD found that, since the

Re-translations do not raise a serious issue of credibility that would be central to the decision, an oral hearing could not be held.

[25] The RAD found that, for the reasons set out above, the documents relating to alleged malicious prosecution against the Principal Applicant were not authentic. As a result, the RAD found that the Applicants' allegations of risk were "unworthy of belief."

[26] The RAD reviewed several inconsistencies and omissions in the Applicants' claim before the RPD. The RAD acknowledged that while these inconsistencies were minor, they still served to further diminish the Applicants' credibility.

[27] The RAD found the claim that there was a national security case against the Principal Applicant to not be credible. The RAD agreed with the RPD's findings that the Principal Applicant did not show a fear of state officials generally and that he did not immediately flee Egypt. The RAD found that the Facebook post in question was relatively neutral and was unlikely to be the basis of a national security case. The RAD also found that since the claims of malicious prosecution in the nurse case were not credible, the claim of a national security case was also not credible, as the Applicants alleged the same agents of persecution.

[28] As the Applicants had not alleged a credible risk of persecution, the RAD dismissed their appeal.



## Issues

[29] In my view, there are two issues raised that require analysis:

1. Whether the process leading to the decision was conducted in a procedurally fair manner;  
and
2. Whether the decision is reasonable.

## Analysis

### 1. *Procedural Fairness*

[30] As noted above, the RAD delivered a Notice of a New Issue to the Applicants. It was appropriate for it to do so as otherwise the Applicants would have been unaware of the concerns of the RAD. However, what the Notice states is the RAD's concern is that certain documents "are not genuine" because the "RAD member finds the dates of the documents and the alleged issuing authorities to be problematic."

[31] The RAD member states at paragraph 24 of her decision the following:

I notified the Appellants that I verified the names of the police stations in the "6<sup>th</sup> of October" in the Notice of a new issue sent to them in January 2021. I informed the Appellants that the *Global Detention Project* indicates that there are 3 police stations in this municipality and that they are called the "6<sup>th</sup> October 1<sup>st</sup> police

station”, the “6<sup>th</sup> October 2<sup>nd</sup> police station”, and the “6<sup>th</sup> October 3<sup>rd</sup> police station”.

[32] Nowhere does in the Notice does it notify the Applicants that the RAD member verified the names of the police stations. Nothing in the Notice informs the Applicants that the three police stations in the city of 6<sup>th</sup> of October are called the “6 th October 1st police station”, the “6 th October 2nd police station”, and the “6 th October 3rd police station”. There is simply a vague reference to concerns with “the alleged issuing authorities” and a link to the Global Detention Project’s list of police stations.

[33] Consequently, the Applicants would have been unaware that the real concern of the RAD was that the documents referenced “October 1st police station” and not “6th October 1st police station,” and “2nd October police station” and not “6th October 2nd police station.”

[34] Given that this discrepancy lies at the heart of the RAD decision, this had to be clearly put to them for response. It was not and thus the decision cannot stand.

## 2. *Unreasonableness of the Decision*

[35] I agree with the Applicants that the decision under review is rife with unfounded assumptions, speculation, and conclusions not based on the evidentiary record. These include the following.

[36] At paragraph 26, the RAD notes that the documents reference “October 1st police station” and “October 2nd police station” rather than “6th October 1st police station” and “6<sup>th</sup> October 2nd police station” and, although it has no police report to compare these to, states that this is an “error that it is reasonable to assume, the police stations would not make on official documents.” There is simply no basis for such an assumption. Moreover, the RAD, at paragraph 28 of the decision, notes the possibility that it may be “common practice” to shorten the name of the police stations.

[37] The RAD, at paragraph 31, accepts that the Egyptian lawyer should not be held to the “same standard as the issuing authority in terms of accuracy of his references to the names of the police stations” but then finds his credibility undermined because he used those shortened names. In doing so, the RAD holds the Egyptian lawyer to the very standard to which it states he should not be held.

[38] The Al-Hawary Letter was tendered to address the RAD’s concerns with the credibility of the other documents in this matter. However, rather than assessing whether these documents were authentic in light of the Al-Hawary Letter, the RAD found these documents to be inauthentic and then used this finding to find the Al-Hawary Letter to not be credible. In my view, the RAD effectively prematurely reached a conclusion and then used that conclusion to dismiss documents than run counter to that conclusion.

[39] Frankly, having nothing with which to compare the “official” documents, the assumption that the police stations and lawyers all use the shortened name is just as reasonable and likely as the assumption the RAD made.

[40] At paragraph 34, the RAD draws an adverse inference from the Principal Applicant’s failure to provide the original Arrest Warrant given that, according to the RAD, he testified that “he himself received the summons dated June 4, 2019.” As his counsel notes, he did not testify that he received the “original” of this document. While that may be Canadian practice, what evidentiary basis does the RAD have for the assumption that the document he received was the original?

[41] At paragraph 35, the RAD addresses the “true copy” of a certificate issued by the October 2<sup>nd</sup> prosecution and draws a negative inference from inability to produce an original. The document states: “This Certificate was issued at the request of the defendant’s attorney [...] this certificate was delivered under No. 274 for the year 2020, copy at October 2<sup>nd</sup> Police.” The RAD’s conclusion is that “[t]his wording suggests the lawyer was given an original and a copy was retained at the police station.” Frankly, it makes little sense that the police station or prosecution office would provide the original and keep only a copy for its own records. The Applicants are unlikely to be able to provide anything more official than a true copy.

## **Conclusion**

[42] This decision will be set aside. Neither party proposed a question to be certified.

**JUDGMENT IN IMM-2420-21**

**THIS COURT'S JUDGMENT is that** the decision of the Refugee Appeal Division is set aside, the appeal is remitted to a different member for determination, and no question is certified.

"Russel W. Zinn"

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Judge

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

**DOCKET:** IMM-2420-21

**STYLE OF CAUSE:** WAEL ABOUELHADID ABDELLATIF NASR ET AL v  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** FEBRUARY 16, 2022

**JUDGMENT AND REASONS:** ZINN J.

**DATED:** MAY 25, 2022

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