

Federal Court



Cour fédérale

Date: 20220602

Docket: IMM-2104-21

Citation: 2022 FC 810

Ottawa, Ontario, June 2, 2022

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

**ABDELRAHMAN IBRAHIM GALAL
ABOUTALEB**

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Aboutaleb, made a claim for refugee protection on the basis that he fears persecution by Egyptian authorities due to threats he received in relation to his ex-wife, who is a high-profile political activist with refugee protection status in Sweden. The Refugee Protection Division [RPD] refused his claim on the basis of credibility. Mr. Aboutaleb appealed

this decision to the Refugee Appeal Division [RAD]. The RAD did not accept the RPD's credibility determination and found Mr. Aboutaleb to be credible, but determined Mr. Aboutaleb had not established that he would face a forward-facing risk in Egypt.

[2] Mr. Aboutaleb challenges the RAD's dismissal of his appeal on a number of grounds. The determinative issue is the RAD's analysis of the agent of persecution's future behaviour. I agree with Mr. Aboutaleb that the RAD relied exclusively on speculation to determine that Mr. Aboutaleb would no longer be of interest because he was now divorced and his son lived with his ex-wife in Sweden.

[3] Based on the reasons set out below, I grant this judicial review.

II. Background Facts

[4] Mr. Aboutaleb is a citizen of Egypt. He was married to a high-profile activist and frequent TV commentator on social and political issues in Egypt. In October 2015, when his now ex-wife was out of the country, she learned that she was on a wanted list and would be arrested upon return. She fled to Sweden, sought asylum and now lives there with permanent status.

[5] After Mr. Aboutaleb's now ex-wife fled to Sweden, she was falsely charged and convicted of being a member of the Muslim Brotherhood, fraud, and working against the government. Her brother and father were both arrested and put in jail.

[6] Mr. Aboutaleb closed his real estate business, which he alleged was facing arbitrarily high business taxes after his ex-wife came to the attention of the Egyptian authorities.

[7] In February 2018, Mr. Aboutaleb and his ex-wife verbally agreed to a divorce, which he claims is sufficient to finalize it according to their faith; the divorce was legally filed in May 2019.

[8] In February 2019, Mr. Aboutaleb was required to present himself to the police, where he was interrogated about his ex-wife's whereabouts. He was told by the authorities that they were watching his son's school and they threatened to use his son to convince his ex-wife to return to Egypt. Approximately a week later, Mr. Aboutaleb and his son fled Egypt, arrived in Canada and made a refugee claim.

[9] On July 4, 2019, Mr. Aboutaleb and his son had their refugee hearing. Mr. Aboutaleb's ex-wife and the mother of his son came to Canada for the hearing. The refugee claim was refused in a decision dated September 16, 2019. The principal basis the claim was rejected was on the grounds of credibility.

[10] On November 4, 2019, Mr. Aboutaleb submitted an appeal of the RPD's refusal of his claim and that of his son. Fearing that his son may someday face deportation from Canada to Egypt, Mr. Aboutaleb decided to send his son to live with his mother in Sweden, where he now had a right to permanent resident status based on his mother's acceptance as a Convention

Refugee. On November 30, 2019, Mr. Aboutaleb applied to withdraw his son's claim and his son went to live in Sweden soon after.

[11] On January 18, 2021, the RAD requested further submissions on the issue of forward-facing risk in Egypt. On February 14, 2021, Mr. Aboutaleb provided further evidence and submissions on this issue, including new information about taxes he was accused of evading for his business that he had already closed seven years prior.

[12] On March 5, 2021, the RAD dismissed the appeal. The RAD held that the "RPD did not have a proper foundation upon which to conclude the Applicant was not credible", but dismissed the appeal on the basis that a forward-facing fear had not been established.

III. Issue and Standard of Review

[13] As noted above, the determinative issue in this case is whether the RAD unreasonably speculated about the motivations and behaviour of the agents of persecution. There is no dispute between the parties as to the appropriate standard of review to apply. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. This case raises no issue that would justify a departure from that presumption.

IV. Analysis

[14] The RAD's finding that Mr. Aboutaleb did not face an objective basis for his fear of persecution was based exclusively on the RAD's speculations about how the Egyptian authorities would behave. The decision turned on the RAD's view that now that Mr. Aboutaleb was divorced and his son no longer lived in Egypt, the authorities would no longer be interested in pursuing Mr. Aboutaleb because they would reason that he no longer had any ability to influence his ex-wife and the mother of his son. This key determination was not a reasoned inference based on evidence; it was based solely on speculation that relied on unsupported assumptions about how the agents of persecution would behave.

[15] As noted by Justice Diner in *Soos v Canada (Minister of Citizenship and Immigration)*, 2019 FC 455 [*Soos*], “[w]hat someone will do in the future is by definition speculative. Certainly, the Board is entitled to make reasoned inferences based on the evidence before it” (at para 13). The inferences must, however, be based on clear and non-speculative evidence (*Soos* at para 14; *He v Canada (Minister of Citizenship and Immigration)*, 2017 FC 1089 at para 8).

[16] The RAD accepted Mr. Aboutaleb's core allegations as credible. The RAD accepted that he had been threatened and interrogated in 2019, four years after his ex-wife had fled Egypt. The RAD assumed that Mr. Aboutaleb could explain to the Egyptian authorities that given that his ex-wife and son were in Sweden, they should no longer be interested in him. This finding rested on a number of assumptions.

[17] First, the RAD was of the view that, even though it accepted that Mr. Aboutaleb maintained a close relationship with his ex-wife, the authorities would not be interested in pursuing him anymore because of the divorce. There is no basis for the RAD reaching this conclusion. Mr. Aboutaleb provided evidence about the closeness of his relationship with his ex-wife after the divorce, including that she attended his refugee hearing in Canada, and that they share a relationship parenting their son. Second, despite accepting that the Egyptian authorities engage in human rights violations with impunity and target political dissidents, the RAD rested its central determination on its view that Mr. Aboutaleb could simply reason with his persecutors and that they would accept his explanation. This Court has cautioned against decision-makers assuming that the agents of persecution will behave rationally (*Yoosuff v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1116 at para 8; *Senadheerage v Canada (Minister of Citizenship and Immigration)*, 2020 FC 968 at para 19; *Reyad Gad v Canada (Minister of Citizenship and Immigration)*, 2011 FC 303 at para 11).

[18] Justice Phelan described a similar problem in *Builes v Canada (Minister of Citizenship and Immigration)*, 2016 FC 215, where the decision-maker rested their determination on speculation about the motives, means and future intentions of the agents of persecution:

[16] As noted in *Londono v Canada (Citizenship and Immigration)*, 2008 FC 354, 166 ACWS (3d) 343, determinations on the plausibility of who will be attacked and when must be made with caution because of the difficulty of predicting who will be targeted and for what level of involvement.

[17] The RPD speculated, without any basis, as to the agents of persecution's motives, means and future intentions. They assumed that, if they were right about motive (to stop human rights work), they would behave sensibly and rationally toward the Applicants. There is no evidence to support any of this.

[19] The RAD's determination that Mr. Aboutaleb had not established an objective basis to his forward-facing fear of persecution rested on speculation and therefore is unreasonable. I did not address Mr. Aboutaleb's other arguments that related principally to the RAD's treatment of the tax penalties he faced because I found the RAD's reliance on speculation to be determinative of the application.

[20] The application for judicial review is granted. Neither party raised a question for certification and none arise.

JUDGMENT IN IMM-2104-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and sent back to be redetermined by a different officer;
2. No question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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THE MINISTER OF CITIZENSHIP AND
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DATE OF HEARING: MAY 30, 2022

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: JUNE 2, 2022

APPEARANCES:

Keith MacMillan FOR THE APPLICANT

Leanne Briscoe FOR THE RESPONDENT

SOLICITORS OF RECORD:

Refugee Law Office – LAO FOR THE APPLICANT
Hamilton, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario