

Federal Court



Cour fédérale

Date: 20220913

Docket: IMM-46-21

Citation: 2022 FC 1288

Ottawa, Ontario, September 13, 2022

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

ALI AHMED IBRAHIM MAHAMOUD

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ali Ahmed Ibrahim Mahamoud is a citizen of Sudan. He seeks judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [IRB].

The RAD confirmed the determination of the Refugee Protection Division [RPD] of the IRB that

Mr. Mahamoud is neither a Convention refugee nor a person in need of protection pursuant to ss 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The RPD and the RAD identified several material inconsistencies in Mr. Mahamoud's testimony. Credibility determinations lie within the heartland of the discretion of triers of fact, and cannot be overturned unless they are perverse, capricious or made without regard to the evidence.

[3] Viewed cumulatively, the RAD's adverse credibility findings were reasonable. The application for judicial review is dismissed.

II. Background

[4] Prior to his arrival in Canada, Mr. Mahamoud lived in a region of Sudan that encompasses the Gezira Agricultural Scheme, one of the largest irrigation projects in Africa. In 2005, the Sudanese government enacted new regulations in relation to the irrigation project. Mr. Mahamoud says these resulted in the expropriation of land from farmers, including his family, without adequate compensation.

[5] Mr. Mahamoud asserts that the Sudanese government implemented a variety of measures to harass and intimidate anyone who protested against the expropriations, including by terminating their employment or denying them jobs in the civil service. Sudan also used the National Intelligence and Security Service [NISS] to repress perceived or actual opposition.

[6] According to Mr. Mahamoud, in April 2017 his brother Ibrahim was detained due to his political activities. In his Basis of Claim [BOC] form, Mr. Mahamoud said the family looked for Ibrahim at hospitals and police stations, but could not find him. They assumed he had been taken by the NISS and feared for his safety. Ibrahim was released approximately one month later, but then arrested again on June 10, 2017. He remains missing to this day.

[7] In his testimony before the RPD, Mr. Mahamoud acknowledged that his BOC narrative contained an error. He clarified that the family looked for Ibrahim at hospitals and police stations after his second arrest, not the first.

[8] Mr. Mahamoud said that on July 2, 2017, a NISS officer came to his home and summoned him to their office. He was interrogated, insulted and beaten. He and his family were threatened. He was eventually released on the condition that he continue to provide information about his family and their activities. He was told this would also secure his brother's release.

[9] Mr. Mahamoud decided to flee the country. With the help of his uncle, who is a retired lawyer, he travelled to Egypt and applied for a visitor's visa at the Canadian Embassy in Cairo. He claimed to be an engineer who had been invited to attend a conference in Toronto.

[10] Mr. Mahamoud arrived in Toronto and made a claim for refugee protection on August 27, 2017. The RPD rejected the claim on August 8, 2018. The determinative issue was credibility. The RPD found several material inconsistencies in Mr. Mahamoud's account of Ibrahim's arrest,

the family's search for him at hospitals and police stations, and the timing of Mr. Mahamoud's decision to leave Sudan.

[11] Mr. Mahamoud appealed the RPD's decision to the RAD, and sought to adduce new evidence pursuant to s 110(4) of IRPA. The RAD denied the request, and dismissed the appeal on December 10, 2020.

III. Issue

[12] The sole issue raised by the application for judicial review is whether the RAD's decision was reasonable.

IV. Analysis

[13] The RAD's decision is subject to review against the standard of reasonableness. The Court will intervene only where "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 100).

[14] The criteria of "justification, intelligibility and transparency" are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls

within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86).

[15] The RAD is not a traditional “appellate” body (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 [*Huruglica*] at paras 56, 78-79, 103). It performs a hybrid role that permits it to review the record of proceedings before the RPD, conduct an independent credibility analysis, and convene an oral hearing if warranted (*Huruglica* at para 103).

[16] With respect to questions of credibility, the RAD must consider whether the RPD enjoyed any “meaningful advantage” in hearing the oral testimony of the applicant directly (*Huruglica* at paras 69-73). In this case, the RAD found that the RPD did not have a meaningful advantage, and its credibility assessment was owed no deference. The RAD applied the standard of correctness throughout its decision.

[17] Mr. Mahamoud says that he voluntarily corrected his BOC narrative during the hearing before the RPD. He argues that his clarification was objectively reasonable. The family was present during Ibrahim’s first arrest by the NISS, and they therefore knew what had happened to him. They searched for him only after the second arrest. The reversal of the sequence of events was a drafting error, not a material inconsistency.

[18] Mr. Mahamoud maintains that the RAD unreasonably found this to be a “new explanation”. However, he says he provided substantially the same explanation to the RPD. He

disputes the RAD's statement that the RPD "confronted" him with inconsistencies in his testimony, or that he was unable to provide satisfactory responses.

[19] The RAD found Mr. Mahamoud's testimony to be "shifting and evolving". In his BOC narrative, he said "my family searched" for Ibrahim, while in his oral testimony he said that he accompanied his family and Ibrahim's friends to a number of police stations. He then clarified that, although he was present, he did not speak to the police at the reception desk: "when you go to the police they only let one person come in. I was with them but I did not enter".

[20] The RAD noted that Mr. Mahamoud had previously said he provided Ibrahim's name to the police at reception, and was told he was not there and the police would do nothing to help. Mr. Mahamoud says this does not accord with the transcript of his testimony, in which he said: "usually there is a reception in these sections, you ask, you give the name of the person and ask him if he is registered to them or no." He says he never meant to imply that he himself spoke with anyone at the police station.

[21] The RAD also found inconsistencies between Mr. Mahamoud's BOC narrative and his oral testimony respecting the family's land. In the BOC form, he said that the family's land had been "taken away by the government". In oral testimony, he said that the government had approached the family's neighbours and encouraged them to encroach on the land. When asked whether it was the neighbours or the government who took his family's land, he responded: "it is not really the neighbours ... this is the government and those neighbours follow the orders of the

government”. The RAD found “there is a major difference” between the family’s land being expropriated under laws enacted in 2005 and neighbours encroaching on their property.

[22] The RAD was also dissatisfied with Mr. Mahamoud’s account of the circumstances leading to his departure from Sudan. Mr. Mahamoud said he was interrogated by the NISS on July 2, 2017. However, the letter of invitation to the Toronto conference that he used to obtain his Canadian visitor’s visa was dated June 22, 2017. Mr. Mahamoud said he had no knowledge of how the letter of invitation was obtained, or whether it was genuine or fraudulent. The letter was issued by an organization based in India, and contained some grammatical errors and formatting anomalies. But there is no dispute that the conference took place in Toronto on the dates indicated.

[23] The RAD found the grammatical errors and other anomalies to be minor, and concluded on a balance of probabilities that the letter of invitation was issued by the organizing committee on June 22, 2017. The RAD therefore held that Mr. Mahamoud had a pre-existing intention to leave Sudan, and his departure was not motivated by his interrogation by the NISS.

[24] Mr. Mahamoud argues that the RAD’s willingness to overlook the deficiencies in the invitation letter does not accord with its scrutiny of the supportive letters he provided. The RAD discounted a letter written by his father because he “referred to himself in the third person in his own letter”.

[25] With respect to the remaining letters, Mr. Mahamoud complains that the RAD unreasonably focused on what they did not say, rather than on what they did (citing *Mahmud v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 8019 (FC) at para 11 and *Teganya v Canada (Citizenship and Immigration)*, 2012 FC 42 at para 25). The RAD found that a letter from his uncle provided little detail of how the local committee learned of Ibrahim's arrest. The letters from Mr. Mahamoud's sister and brother-in-law did not mention why the NISS was looking for him; only that the NISS had asked about his whereabouts.

[26] Mr. Mahamoud says the alleged inconsistencies in his testimony amounted to minor differences, and were neither central nor material to his claim of persecution. He relies on Justice Alan Diner's decision in *Pooya v Canada (Citizenship and Immigration)*, 2018 FC 1019 for the proposition that the IRB should be concerned with material, not collateral, details or omissions from a claimant's BOC (at para 18, citing *Feradov v Canada (Citizenship and Immigration)*, 2007 FC 101).

[27] Mr. Mahamoud was assisted by counsel in the preparation of his BOC, and he also had an opportunity to amend his narrative in advance of the hearing before the RPD. It was not unreasonable for the RAD to expect him to provide accurate information about the events surrounding his brother's alleged detentions. These events were central, not peripheral, to his claim. The RAD's conclusion that his answers evolved and shifted over time was reasonably supported by the transcript of his testimony.

[28] Mr. Mahamoud's BOC narrative referred explicitly to the unfair expropriation of his family's land by the government:

This land has been taken away by the government, and I have been told that the government has also shortchanged our family and is not paying appropriate compensation. This has caused a lot of anger in my family against the government.

[29] But in oral testimony, Mr. Mahamoud described encroachment by neighbouring landowners. It was open to the RAD to find there was a material difference between the two accounts.

[30] The RAD accepted that Mr. Mahamoud had no intention of attending the conference in Toronto, and had obtained the letter of invitation under false pretenses. However, the RAD sufficiently explained its reasons for concluding that both the conference and the letter were genuine.

[31] While Mr. Mahamoud says the RAD considered only what the supportive letters did not say, rather than what they did, the letters provided little in the way of corroborative evidence. They did not substantiate central elements of Mr. Mahamoud's claim.

[32] As Justice Vanessa Rochester held recently in *Ali v Canada (Citizenship and Immigration)*, 2022 FC 1207 (at para 26):

Credibility determinations are part of the fact-finding process, and are afforded significant deference upon review (*Fageir v Canada (Citizenship and Immigration)*, 2021 FC 966 at para 29 [*Fageir*]; *Tran v Canada (Citizenship and Immigration)*, 2021 FC 721 at para 35 [*Tran*]; *Azenabor v Canada (Citizenship and Immigration)*, 2020 FC 1160 at para 6). Such determinations by the RPD and the RAD demand a high level of judicial deference and should only be overturned “in the clearest of cases” (*Liang v Canada (Citizenship and Immigration)*, 2020 FC 720 at para 12 [*Liang*]). Credibility determinations have been described as lying within “the heartland of the discretion of triers of fact [...] and cannot be overturned unless they are perverse, capricious or made without regard to the evidence” (*Fageir* at para 29; *Tran* at para 35; *Edmond v Canada (Citizenship and Immigration)*, 2017 FC 644 at para 22, citing *Gong v Canada (Citizenship and Immigration)*, 2017 FC 165 at para 9).

[33] Viewed cumulatively, the RAD’s numerous adverse credibility findings with respect to Mr. Mahamoud’s testimony were reasonable.

V. Conclusion

[34] The application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

“Simon Fothergill”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-46-21

STYLE OF CAUSE: ALI AHMED IBRAHIM MAHAMOUD v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

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