

Federal Court



Cour fédérale

**Date: 20230309**

**Docket: IMM-9028-21**

**Citation: 2023 FC 326**

**Ottawa, Ontario, March 9, 2023**

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

**BETWEEN:**

**AHMED MOHAMED AHMED EISHRA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] This is an application for judicial review of a Refugee Appeal Division [RAD] decision dated November 16, 2021 which upheld the Refugee Protection Division's [RPD] determination that the Applicant is not a Convention refugee or a person in need of protection pursuant to sections 96 and 97 of the Immigration and Refugee Protection Act, S.C. 2001, c 27 [IRPA].

[2] For the reasons that follow, the application is dismissed.

## II. **History**

### A. *Background*

[3] The Applicant is a 69-year-old Egyptian citizen who claimed protection in Canada because he fears persecution at the hands of Egyptian authorities for his perceived political opposition to the Egyptian government.

[4] The Applicant is married with six children. He made a living in Egypt as a car mechanic and taxi driver, before retiring in 2018. He says he became politically active during the 2011 revolution. At that time, he says, he became vocal about the need for justice and freedom in Egypt.

[5] The Applicant testified before the RPD that Egyptian officials believed that he was a member of the Muslim Brotherhood because he would meet up with friends from that group, and would sit with them and discuss Egypt's situation. The Applicant testified that he believes those people may have given his name to the authorities.

[6] In November 2018, the Applicant received a threatening visit from the Egyptian secret police. They brought the Applicant to an unknown location without charge or warrant where he was interrogated for several days. He was notably questioned about an earlier trip to Canada

where he visited his son. The police also asked him about meeting opposition individuals and about his own opposition views concerning the Egyptian regime. He was eventually released.

[7] Two months later, in January 2019, the Applicant says he was arrested, detained and interrogated about the same information for several days. The Applicant described this second detention as being more violent and cruel than the first one. Further arrests and detentions occurred with the last taking place in August 2019. The Applicant fled to Canada in October 2019.

B. *The RPD Decision*

[8] The panel found that the Applicant had not satisfied his burden of establishing that he faced a serious possibility of persecution on a Convention ground, or that he would personally be subjected to a risk to his life or a risk of cruel and unusual treatment should he return to Egypt.

[9] The RPD concluded that the Applicant's testimony presented significant omissions and inconsistencies with his Basis of Claim (BOC) narrative, and was also inconsistent with the documentary evidence he submitted. The panel also found these documents were insufficient to overcome the credibility concerns that were raised by his testimony.

[10] The Applicant submitted a note from his physician indicating that he was forgetful and under a memory loss "work up". The RPD indicated that it was cognizant of the note but did not find it sufficient to rehabilitate the panel's multiple concerns with the Applicant's testimony and documentary evidence. The note was too brief, in the panel's view, to properly explain the nature

and seriousness of the Applicant's memory issues. The panel stated that it refrained from drawing negative credibility findings exclusively from the Applicant's inability to recall specific details, but rather drew its finding from larger inconsistencies in the Applicant's overall evidence. Among these were an inability to name the friends with whom, he testified, he met with frequently and were the cause of his arrest and detention by the authorities. Moreover, this information had not been included in the Applicant's BOC. When asked why, the Applicant said he thought it was not necessary to mention this information.

[11] The RPD also noted the Applicant's failure to disclose in his BOC that he had relocated when his problems with the authorities began. This was mentioned for the first time in his testimony. The panel found his explanation for this omission, that he thought he had and was "psychologically tired" at the time, unreasonable considering that he had submitted a minor amendment to his narrative shortly before the hearing. It was open then to include additional details he had previously forgotten.

[12] In considering the objective documentary evidence, the RPD found that the Applicant's allegations of multiple detentions without charges were inconsistent with the evidence regarding the Egyptian authorities' treatment of perceived dissidents. That evidence is that about 90% of those in the Applicant's situation are subsequently processed through the criminal justice system.

[13] Additionally, letters from the Applicant's wife and two of his sons were found to be inconsistent with his testimony in respect to the detentions. The RPD notes that none of the letters corroborates the allegation that the Applicant was detained as often as he testified, and the

letters are also inconsistent between each other on this matter. The Applicant's explanation for the inconsistencies was not accepted. Moreover, the letters from family members omitted important details.

[14] The Applicant's explanation for why he was able to leave Egypt without difficulty was also found to lack credibility.

[15] The Applicant submitted medical information regarding his treatment in Canada for what he testified were conditions arising from his detention in Egypt. The doctor's note submitted indicates that the Applicant has several conditions, including forgetfulness, but did not, in the RPD's view, corroborate his claim that he was treated for previous injuries caused by beatings.

C. *The RAD Decision*

[16] The RAD agreed with the Applicant that the RPD had made errors in its findings about his departure and the absence of criminal charges. It nonetheless found that the overall negative credibility determination by the RPD is correct and that the Applicant had not credibly established his allegations.

[17] After assessing the evidence, the RAD found that the material credibility concerns were not reasonably explained and that the presumption of truthfulness was rebutted. The RPD's errors in two of its findings were not fatal to the overall decision.

[18] The RAD found that the RPD correctly considered the Applicant's doctor's note. The RAD agreed with the RPD that the note is "too brief to explain the nature of the claimant's memory issues, how serious they are, whether they can be mitigated, whether they are constantly present, etc." The note did not reasonably explain the significant material credibility concerns.

[19] The RAD noted the following concerns after having independently assessed the record:

- The Applicant testified he was targeted by Egyptian authorities because they thought he was a member of the Muslim Brotherhood, but there is no mention of this in his BOC;
- The Applicant was unable to name all four of the Muslim Brotherhood members he was hanging out with frequently, and there is no mention of them in his BOC;
- The Applicant testified that he relocated within Egypt to avoid detention, but answered "no" to this question in his BOC.

[20] The RAD found that the RPD correctly considered the Applicant's explanations for these inconsistencies and correctly found them insufficient. The RAD did not find that the Applicant's forgetfulness would reasonably cause him to omit the very reason why the Egyptian authorities are persecuting him or the efforts he took to seek safety inside Egypt. The RAD added that those credibility concerns are not minor or peripheral in nature but rather go to the very heart of his claim.

[21] The RAD observed that the Applicant's submissions on appeal did not identify any errors in the RPD's findings regarding the medical note and support letters. Nor did the RAD find any on its independent assessment of the evidence.

[22] The Applicant's lack of credibility was found to be determinative of the claim. As a result, it was not necessary to engage in an assessment of whether the alleged treatment by the Egyptian authorities amounted to persecution.

### III. Issues

[23] In my view, the sole issue is whether the RAD's decision was unreasonable based on its credibility assessment including its consideration of the supporting documentation.

### IV. Analysis

#### A. *Standard of review*

[24] The standard of review of a RAD decision is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

#### B. *Was the RAD's credibility assessment unreasonable?*

[25] It is not in dispute that the Board has a duty to consider relevant evidence pertaining to an applicant's cognitive or psychological problems, and how it may impact their memory and ability to testify. But such problems may not be dispositive of credibility concerns. As Justice Russel wrote in *Khatun v Canada (Minister of Citizenship and Immigration)*, 2012 FC 159 at para 86:

[...] Just because the Applicant may suffer from cognitive and psychological problems does not mean that credibility is not an issue or that all inconsistencies can be attributed to those problems. The RPD must still assess credibility, and provided it takes into

account the evidence of cognitive or emotional impairment, the Court must be loath to interfere because the Court does not have the advantage of seeing and hearing the witness testify.

[26] In my view, the RAD in this instance did take into account the evidence of the Applicant's forgetfulness. It was apparent that he had memory problems from his testimony – to the extent that he could not recall his wife's full last name. However, the RAD did more than merely state that it had considered the report. It engaged in an analysis as to how this weakness was taken into account. Additionally, the RAD was mindful of the difficulties of testifying through an interpreter and the Applicant's nervousness.

[27] The onus was on the Applicant to provide sufficient evidence to support his allegations. This included demonstrating that the credibility issues that arose from his testimony could be explained by his memory loss. This was discussed by Justice Ahmed in a recent decision. In *Chen v Canada (Citizenship and Immigration)*, 2022 FC 1122 at para 37 he wrote:

[...] Given the significance of the alleged memory loss issues, I find it was reasonable of the RAD to expect the Applicant to provide evidence of the memory loss or at the very least set out the issue in his BOC. As rightly noted by the Respondent's counsel during the hearing, the Applicant has also not provided an affidavit to explain how his memory loss affected his testimony, or why no accommodations were requested during the hearing. The onus remained on the Applicant to prove that the credibility issues that arose from his testimony were due to head trauma and associated memory problems. I find that the RAD reasonably determined that there was insufficient evidence of the Applicant's memory issues to explain the credibility concerns.

[28] The medical evidence in this case was very brief and vague. It did not explain, for example, what was described as a "mini-mental state examination score of 21, under memory



loss work up.” No evidence was provided of the significance of that score, what a regular score is or any other information about the impact of the Applicant’s forgetfulness. This is in marked contrast to the evidence in several other IRB decisions to which the Court’s attention was drawn by the Applicant : *X(Re)*, 2020 CanLII 126463 (CA IRB) at para 25; *Remennik v Canada (MCI)*, 2013 CanLII 98825 (CA IRB) at para 9; *Winard v Canada (MCI)*, 2005 CanLII 75986 (CA IRB) at para 3.

[29] A Federal Court decision cited by the Applicant indicates that the test is relied upon by physicians to determine cognitive capacity but the findings in that case were based on the opinions of specialists including a forensic psychiatrist: *Canada (MCI) v Fast*, 2001 FCT 1269 at paras 22-23. Other decisions of this Court relied upon by the Applicant in his submissions involved much more detailed medical reports: *Pilashvili v Canada (MCI)*, 2022 FC 706; *Mendez Santos v Canada (MCI)*, 2015 FC 1326.

[30] The other medical note, which diagnosed that the Applicant suffered from asthma, a chronic cough and Hepatitis C, was also not linked by any evidence to the injuries, which the Applicant claimed to have suffered while in detention. There was no clear, understandable diagnosis that could be applied to explain the weaknesses in the Applicant’s testimony. It is not the role of the RAD to make findings of a medical nature.

[31] The RPD’s finding that the medical note was inconsistent with the Applicant’s allegations that his physician treated him for past injuries was not challenged before the RAD. Similarly, the credibility findings made by the RPD regarding the support letters were not

challenged by the Applicant before the RAD. A review of an assessment by the RAD must be made in the context of the submissions made by the Applicant at the time: *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 103; *Kanawati v Canada (Citizenship and Immigration)*, 2020 FC 12 at para 23.

C. *Conclusion*

[32] The Applicant's omissions from his BOC and inconsistencies between the narrative and his testimony were reasonable grounds of concern. The failure to mention his association with members of the Muslim Brotherhood was not a collateral detail that might have been overlooked. It went to the very basis of his claim, centered as it was on his perceived association with individuals with whom he met regularly and whom he believed to be members of that organization.

[33] The failure to challenge significant findings by the RPD before the RAD undermines the Applicant's case on judicial review. In light of the vagueness of the medical evidence submitted, it was reasonable for the RAD to find that the evidence of some cognitive insufficiency did not overcome the negative credibility findings.

[34] The RAD's overall assessment of the claim and grounds for appeal was reasonable.

[35] No questions were proposed for certification.

**JUDGMENT in IMM-9028-21**

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

1. The application is dismissed.
2. No questions are certified.

"Richard G. Mosley"

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Judge

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

**DOCKET:** IMM-9028-21

**STYLE OF CAUSE:** AHMED MOHAMED AHMED EISHRA v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** FEBRUARY 15, 2023

**JUDGMENT AND REASONS:** MOSLEY J.

**DATED:** MARCH 9, 2023

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