

Date: 20080117

Docket: IMM-6085-06

Citation: 2008 FC 60

Ottawa, Ontario, January 17, 2008

PRESENT: The Honourable Mr. Justice Lemieux

BETWEEN:

GEORGE REDA KAMEL BADAWEY ABRAHAM

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

Introduction

[1] George Reda Kamel Badawy Abraham (the “applicant”), is 29 years of age, a citizen of Egypt and a Coptic Christian who sought refugee status in Canada because of his fear of Islamic Fundamentalists in his country of nationality but was refused recognition by decision dated November 15, 2006 of a member of the Refugee Protection Division (the “tribunal”) who did not believe his story finding him not credible for several reasons. It is this decision the applicant seeks

to set aside in his judicial review application. At the tribunal's hearing, he was not represented by legal counsel or by a consultant.

[2] His story may be summarized as follows. The applicant is a civil engineer who alleges since 2003, he supervised mostly on each Friday the completion of the interior construction of a Coptic church in Bachom, the village in which he resided, which has very few homes all of them occupied by Coptic Christians. This village is a two hour car drive from Cairo. According to a photograph in the record, the building being constructed does not look like a church; it was designed to look as a guest house. Its construction began in 2001 and was completed in time for the Easter service in 2005. Its construction had been interrupted prior to 2003 because the person who oversaw the building had been threatened and his car vandalized.

[3] He testified the Islamic Fundamentalists, who resided in the same apartment building as he did in Cairo, found out it was a church when the Easter services were held in 2005. In August 2005, he alleged he was attacked and kidnapped by the Islamic Fundamentalists but released through the intervention of an influential member of the Muslim Brotherhood who was persuaded through an intermediary friend of the family to intervene to obtain his release from captivity. After his release, he obtained medical treatment for his injuries. It was the member of the Muslim Brotherhood who recommended to the Abraham family the applicant flee Egypt. He arrived in Canada on October 1, 2005 making a refugee claim on October 3, 2005. In Canada, he was reunited with his brother who had obtained landed immigrant status as a pharmacist prior to the applicant's arrival.

The tribunal's decision

[4] As noted, the tribunal based its decision on the lack of the applicant's credibility for which it gave a number of reasons which may be summarized as follows:

(a) Under Section 96 of IRPA

- (1) The applicant's identity as a civil engineer was not established: The tribunal concluded that he had not studied to be a civil engineer because he only presented a "temporary certificate", he listed his highest education as "B.Sc.", and when asked what he would do as a civil engineer, he made no mention of plans, drawings, or permits which the tribunal found implausible. The tribunal found he had not studied to be an engineer.
- (2) The applicant had no documents linking him with the church in Bachom: The applicant stated he had no documents linking him with the church in Bachom. He had, however, presented a letter from a Bishop indicating he had helped in supervising a construction of a church, but it did not mention the name of the church or its location. He also did not present any news articles regarding the church in Bachom. The tribunal found, due to lack of such documents, he was not linked to the alleged church.
- (3) The person who donated the land for the Bachom church had no problems: The applicant stated Bachom is a village with very few homes and all are Coptic Christians. The person who donated the land for the church, a Coptic Christian,

lives beside the church building, yet he did not have any problems. The tribunal found that it is implausible that the person who donated the land for the church has not been harmed “whereas the claimant has a fear of return”.

- (4) The discovery of the building as a church: The tribunal said the applicant was asked if he had been involved in the project since 2003 and if the Islamic Fundamentalists who allegedly kidnapped him in 2005 had lived in the same building. The tribunal wrote: “He started to testify that it was because the Easter service was held in 2005. The panel does not find it plausible that, indeed the Islamic Fundamentalists knew that the building was being constructed by the previous engineer why wait until 2005?”
- (5) The delay in harming the applicant: It was not plausible that the Islamic Fundamentalists would wait until 2005 to harm the applicant if he was involved with the Bachom church construction in 2003.
- (6) Pictures of the Bachom church: The pictures the applicant presented of the exterior of the Bachom church did not identify it as a church and it seemed to be very big for the use of only a few villagers. The tribunal further found the picture did not indicate the church was in Bachom. The tribunal also found the photograph of the inside of the church could be from any church since there are many churches in Egypt and “Coptic Christians do practice their faith”.

- (7) No report to the police: The August 2005 incident in which he was kidnapped and assaulted was not reported to the police. The tribunal said the applicant indicated he did not report because he would get no help from government individuals who had helped them before.
- (8) The applicant's family had no problems: The applicant's family, which is well-to-do and well known, have not suffered any consequences and continue to work and live in the same area. After reciting points (7) and (8) above, the tribunal wrote: "The panel does not find his testimony credible and finds he has not established a well-founded fear."
- (9) The lack of corroboration: There was nothing to corroborate the applicant's kidnapping and detention. For example, there was no affidavit from the guard for the building whom the applicant had indicated in his PIF had told his parents he saw the applicant with two men. The tribunal added: "There was no affidavit from the guard, though the claimant states his father sent him all the documents he presented."
- (10) Delay: The applicant waited one month before making his refugee claim.

(b) Under Section 97 of IRPA

- (11) The general treatment of Coptic Christians in Egypt: Coptic Christians make up 10% of Egypt's population of 72 million. They have freedom of belief and

practice under the Constitution, with some restrictions, and because their practice does not conflict with Shari'a law, they worship without harassment. Coptic Christians do not face the risk of harm envisioned by section 97 of *IRPA*.

- (12) There was no evidence of any specific, personal risk: Although sectarian violence arises from time to time, it was not personal to the applicant as a Coptic Christian.

[5] Moreover, the applicant presented medical documents to support the fact he was injured when allegedly detained by the Islamic Fundamentalists. The tribunal ruled, however, these documents would be accorded no weight because his testimony was found not to be credible. The tribunal concluded they were obtained for his refugee claim.

The position of the parties – the acknowledged errors

[6] Counsel for the respondent, in his memorandum, agreed the evidence could not support two of the tribunal's credibility findings: 1) that the applicant was not a civil engineer (point # 1) and, 2) that he delayed one month before making his refugee claim in Canada (point # 10). Counsel for the respondent also agreed that the tribunal's credibility decision not to have regard to the medical documents could not stand if the Court held the remaining credibility findings were patently unreasonable.

[7] In argument, counsel for the applicant did not challenge or qualify a number of the tribunal's findings:

- He did not challenge the fact the pictures of the exterior of the Bachom church did not identify it as a church and it seemed to be very big for the use of only a few villagers (point # 4).
- He did not challenge (point # 7) the fact there was no police report of the August 2005 incident but he argued it could not serve as the basis for the tribunal disbelieving the applicant because approaching the police had no purpose since he acted on the recommendation of the Muslim Brotherhood member to flee the country.
- Counsel did not challenge the fact the applicant's family did not have any problems from the applicant's persecutors (point # 8).

[8] He argued the findings of (1) the lack of corroboration of the applicant's detention and kidnapping (point # 9), (2) no evidence of any specific personalized risk (point # 12) and (3) the general treatment of Coptic Christians in Egypt (point no. 11) were either not relevant or logically fell by the way side if the tribunal erred in not believing the applicant's story.

[9] With the two concessions made by counsel for the respondent that the evidence showed the applicant was a civil engineer and had not delayed making his claim when he arrived in Canada, the applicant's counsel concentrated on the following findings of the tribunal which he argued were drawn in error by misreading the testimony given, the documents produced or by the tribunal not being sensitive to the fact the applicant was unrepresented at the hearing before the tribunal:

- (1) No supporting document linking him with a church in Bachom (point # 2). He argued the applicant had produced one such document;
- (2) While not contesting the finding the person who donated the land for the Bachom church had no problems (point # 3), the tribunal ignored the applicant's testimony as to why this was the case;
- (3) The tribunal's finding when the Islamic Fundamentalists discovered the building was a church (point # 4). Once again, applicant's counsel argues the tribunal ignored his evidence;
- (4) While conceding the applicant did not go to the police to report his kidnapping and abuse, the tribunal drew an unreasonable inference and ignored his evidence why that was so (point # 7).

[10] The essence of the applicant's submission on the remaining credibility grounds was that the tribunal erred by misinterpreting the evidence, or ignored it or did not have due regard to the fact he was not represented by counsel.

[11] The applicant's counsel raised another error committed by the tribunal albeit not one related to the applicant's credibility. Applicant's counsel states the record shows the tribunal refused to hear the applicant's brother as a witness and that this was a breach of procedural fairness.

Analysis

Standard of review

[12] Counsel for both parties were of the view the standard of review with respect to the issues raised in this judicial review application is patent unreasonableness; I agree. It is settled law that credibility findings are findings of fact. Section 18.1(4)(d) provides as a ground to grant relief where a federal tribunal based “its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it” which is equivalent to the standard of review of patent unreasonableness.

[13] In *Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247, Justice Iacobucci described at paragraph 52, a patently unreasonable finding is one which is “clearly irrational” or evidently not in accordance with reason, so flawed that no amount of curial deference can justify letting it stand. In *Voice Construction Ltd. v. Construction & General Workers’ Union, Local 92*, [2004] 1 S.C.R. 609, Justice Major wrote: “A definition of patently unreasonable is difficult, but it may be said that the result must almost border on the absurd.”

[14] In this connection, I refer to the Supreme Court of Canada’s decision in *C.U.P.E, local 301 v. Montreal (City)*, [1997] 1 S.C.R. 793 where Justice L’Heureux-Dubé wrote at paragraph 85 as follows:

85 We must remember that the standard of review on the factual findings of an administrative tribunal is an extremely deferent one: *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825, per La Forest J., at pp. 849 and 852. Courts must not revisit the facts or weigh the evidence. Only where the evidence viewed reasonably is incapable of supporting the tribunal's findings will a fact finding be

patently unreasonable. An example is the allegation in this case, viz. that there is no evidence at all for a significant element of the tribunal's decision: see Toronto Board of Education, supra, at para. 48, per Cory J.; Lester, supra, at p. 669, per McLachlin J. Such a determination may well be made without an in-depth examination of the record: National Corn Growers Assn. v. Canada (Import Tribunal), [\[1990\] 2 S.C.R. 1324](#), per Gonthier J., at p. 1370.

[15] Justice Décaré in *Aguebor v. Minister of Employment and Immigration*, [1993] F.C.J. No. 732 (FCA) wrote the following in respect of plausibility findings at paragraph 4:

4 There is no longer any doubt that the Refugee Division, which is a specialized tribunal, has complete jurisdiction to determine the plausibility of testimony: who is in a better position than the Refugee Division to gauge the credibility of an account and to draw the necessary inferences? As long as the inferences drawn by the tribunal are not so unreasonable as to warrant our intervention, its findings are not open to judicial review. In *Giron*, the Court merely observed that in the area of plausibility, the unreasonableness of a decision may be more palpable, and so more easily identifiable, since the account appears on the face of the record. In our opinion, *Giron* in no way reduces the burden that rests on an appellant, of showing that the inferences drawn by the Refugee Division could not reasonably have been drawn. In this case, the appellant has not discharged this burden.

[16] After considering the arguments, having reviewed the transcript, the applicant's personal information form and his affidavit in support of this judicial review application, it appears to the Court that the heart of the applicant's case is that the evidence on the record does not support the credibility findings the tribunal drew; it is argued the tribunal ignored the evidence or misread it.

[17] Counsel for the applicant points to the fact counsel for the respondent already admitted the tribunal erred when it conceded the evidence could not support the tribunal's finding he was not an engineer; the same can be said of its finding on the applicant's delay in making his refugee claim.

[18] In particular, counsel for the applicant argued the error the tribunal made when it did not believe he was an engineer was significant and symptomatic of the tribunal's flawed approach in this case, namely, that it was too quick to draw inferences and made implausibility findings which were based on assumptions not supported in the evidence.

[19] I am of view there is merit to the applicant's argument; the tribunal made significant errors in respect of the following findings which warrant the Court's intervention and coupled with the admitted errors lead me to the conclusion the tribunal's decision must be set side.

[20] First, in my view, it was unreasonable and arbitrary for the tribunal to draw the conclusion the applicant was not kidnapped, assaulted and threatened because neither the applicant nor his family reported the incident to the police. This conclusion ignores the evidence he was freed by his captors through the intervention of the influential member of the Muslim Brotherhood who advised the applicant and his parents he should leave the country because the Muslim Brotherhood member could not further intervene to protect the applicant.

[21] Second, the evidence in the record indicates his persecutors were Islamic Fundamentalists who resided in the same apartment building in Cairo where he lived in his parents' apartment when going to University and after graduation. The evidence shows that certain Islamic Fundamentalists in and around Bachom which as noted is a two hour drive from Cairo had been aware of the church's construction between 2001 and 2003 and had threatened the first engineer who had supervised the construction of the exterior of the church. The applicant's involvement in 2003 to 2005 was to drive from Cairo to Bachom mainly on Fridays to supervise the interior finishing of

the church. The tribunal simply assumed the applicant's persecutors were the same persons who threatened the first engineer and led to the tribunal's conclusion his perpetrators knew a church was being constructed in Bachom leading it to disbelieve the applicant. There is no evidence in the record to support this imputed knowledge by those who kidnapped him which was critical to the tribunal's determination of why his persecutors acted in August 2005 to harm him after the Easter services were performed in Bachom in a building that was not designed and did not look like a church.

[22] Third, the tribunal came to the view the applicant was not linked to the church due to the lack of two documents. The first document mentioned was the letter put in evidence from the Bishop of El-Sharkiya dated September 25, 2005 stating the applicant: "Served the church by supervising the construction work in the church." The tribunal concluded this letter was defective because the name of the church was not mentioned in the letter. The other document mentioned by the tribunal was the lack of news articles about the church, as well. The tribunal found that: "Due to lack of such documents, he was not linked to this alleged church." I find the tribunal's conclusion patently unreasonable. First, at page 273 of the certified tribunal record, he was asked whether the village of Bachom had a newspaper to which the applicant answered: "Just a small village for farmers." Taken in context, the applicant's answer was no. In terms of the Bishop's letter the tribunal found it defective because the name of the church was not mentioned in the letter. The tribunal's conclusion cannot stand because the applicant explained the church was licensed as a building affiliated to the bishopric of El Sharkiya. The tribunal ignored this evidence.

[23] These errors by the tribunal coupled with the admitted ones are sufficient, in my view, to infirm the tribunal's central conclusion the applicant did not bring forth any credible evidence to back up his fear of persecution. These errors are significant and are central to the tribunal's determination. The tribunal's decision cannot be left to stand.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this judicial review application is allowed, the tribunal's decision is set aside and the applicant's claim is remitted to the Refugee Protection Division for redetermination. No certified question was proposed.

“François Lemieux”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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STYLE OF CAUSE: George Reda Kamel Badawy Abraham
v. the Minister of Citizenship and Immigration

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**REASONS FOR JUDGMENT
AND JUDGMENT:** Lemieux J.

DATED: January 17, 2008

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