

Federal Court



Cour fédérale

Date: 20190109

Docket: IMM-2446-18

Citation: 2019 FC 23

Ottawa, Ontario, January 9, 2019

PRESENT: The Associate Chief Justice

BETWEEN:

SAMIR MAHIL AHMED BELLA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Mr. Samir Mahil Ahmed Bella is a 28-year-old citizen of Sudan who fled his native country and requested refugee protection in Canada. He disagrees with the determination of the Refugee Protection Division [RPD] rejecting his refugee claim on the grounds that he has not credibly established that he faces a serious possibility of persecution by the Sudanese National Security Forces, due to his pro-Darfur political opinion.

II. Facts

[2] The Applicant is from Omdurman, in the Khartoum province of Sudan. He explains in his narrative that when he was in high school, he started to attend secret political meetings with students from Darfur. On December 5, 2005 (he was 15 years old at the time), he participated in a meeting at the University of Khartoum which was raided by the Sudanese National Security Forces and the police. The Applicant was accused of working against the government, tortured, beaten and electrocuted. He was forced to sign a declaration that he would abandon all political activities.

[3] The Applicant states that to avoid conscription and further problems with the authorities, his family sent him to study in India, where he completed a Bachelor of Science in Information Technology at the Sikkim Manipal University in Pune.

[4] In 2011, he returned to Sudan after the signing of the Doha Document for Peace in Darfur. However, he continued to take part in secret political meetings opposing the government. In 2012, the National Security Forces raided a meeting he attended. Three of his colleagues were arrested but he managed to escape. He first went to a friend's home in the city of El-Gadarif, before hiding at the house of his relatives in the town of Singa. He states that he was able to leave the country through his uncle's connections.

[5] He travelled to Canada, where he made a refugee claim.

III. Impugned Decision

[6] On April 19, 2018, the Applicant's refugee claim was rejected by the RPD who made a series of negative credibility findings with respect to various conflicting dates in his narrative and oral testimony. The RPD concluded that the Applicant was not credible in relation to his political opinion, a central element of his claim.

[7] Furthermore, the Applicant could not reconcile the various discrepancies in the periods of time he allegedly spent studying in India.

[8] For example, the Personal Information Form [PIF] indicates that the Applicant went to Pune, India in February 2008 to study and that he returned to Sudan in January 2011. The Applicant told the panel that he was actually studying in India for five or six years, which contradicts the information in his PIF. He then told the panel that maybe he went to India in 2006, or maybe in 2007 when he finished high school. In summary, the Applicant provided three different years when he would have started his studies in India, and he was unable to identify the period of time spent in India.

[9] The Applicant also supplied a diploma from the Sikkim Manipal University in Pune, India, which purportedly shows that he graduated with a Bachelor of Science in Information Technology in April 2008. However, he could not have graduated in April 2008 if, as his PIF indicates, he first travelled to India in February 2008.

[10] The RPD found these discrepancies to be significant.

[11] Regarding the secret meeting allegedly held at the University of Khartoum in December 2005, the RPD found the Applicant's testimony to be vague with respect to what he actually did at the meeting. The RPD found it not credible that a 15-year-old boy would be politically active in a university student group.

[12] In addition, the Applicant was not able to speak knowledgeably about these political activities.

[13] The RPD did not believe that the Applicant was detained and tortured. First, he states that he was mentally affected by this experience and that he has not spoken to anyone about it, not even his counsel. However, the RPD found that this testimony made no sense as the alleged incident is described in the narrative of his Basis of Claim Form. While he claims to have been affected by this incident, the Applicant has not sought any psychological or medical treatment while in Canada, claiming that in his culture, "go[ing] to a psychologist means you are sick".

[14] The RPD found that the Applicant did not appear to be a genuine victim of torture, as he had an excellent command of English, and spoke in a confident and assured manner. The Applicant did not appear concerned about the contradictory testimony he gave during the hearing. As a result, the RPD found that he fabricated his testimony in order to buttress his claim for protection.

[15] The RPD noted that the Applicant had no problems between the 2005 alleged incident and when he left for India in 2008; yet, his family still arranged for him to study abroad.

[16] In his narrative, the Applicant wrote that he decided to return to Sudan after “an agreement between some factions of the fighting forces in Darfur was signed in Doha, Qatar”. While the Applicant left India in January 2011, the conference leading up to the Doha Document for Peace in Darfur took place in May 2011, and the Protocol was not signed until July 2011. The Applicant explained the discrepancy by saying he was sufficiently confident the negotiations would be successful in January 2011 to return to Sudan. The RPD found this explanation to be another fabrication.

[17] The RPD noted that the Applicant did not have any problems when he returned to Sudan in 2011 and he did not even have to complete his compulsory military service. The RPD did not accept the Applicant’s explanation that since he was away for a long time, he was no longer a subject of interest for the government or the security forces. Further, it is incompatible with his assertion that if he is returned to Sudan, he will immediately be arrested and persecuted. The RPD did not believe that the Applicant was ever a subject of interest for the government or the security forces, and found that he was not involved in other political meetings in 2012.

IV. Issues and Standard of Review

[18] This application for judicial review raises a single issue:

Did the RPD make a reviewable error in its assessment of the Applicant’s credibility?

[19] This issue is reviewable under the reasonableness standard and the RPD's findings of credibility are entitled to substantial deference (*Kaur v Canada (Citizenship and Immigration)*, 2012 FC 1379 at paras 33-34).

V. Analysis

[20] In my opinion, the RPD was entitled to find that the Applicant was not a credible witness and to dismiss his testimony. Due to the many vagueness, inconsistencies, contradictions and omissions in the Applicant's testimony and documentary evidence, it was reasonable for the RPD to disbelieve the Applicant on the central elements of his claim.

[21] When the Applicant was asked when he left Sudan to study in India, he provided several different dates: 2005, 2011, 2006 and 2007 before settling on February 2008. He also provided a copy of the diploma he claims to have received from Sikkim Manipal University, which indicates he graduated in 2008. He could not possibly have started to study in February 2008 and have graduated in April 2008. Furthermore, while he claims to have returned to Sudan in 2011, he testified that he could not provide "any valuable explanation" for the period of time between 2008 and 2011.

[22] Although counsel for the Applicant conceded at the hearing that it is impossible by reading the material on file to determine the Applicant's time spent in India, the Applicant argues that the RPD did not explain why this would be relevant to his fear of persecution in Sudan or to the incidents that gave rise to it; in other words, time spent in India is not relevant to his refugee claim.

[23] The time spent by the Applicant in India might not be central to his claim, but it is essential that the evidence be uncontested that he was in Sudan at the time he states having been persecuted by the Sudanese authorities. In addition, the more time he would have spent in Sudan without suffering any persecution from the authorities, the least likely he would be subject to such persecution if he were returned there.

[24] I therefore agree with the Respondent that the Applicant's presence in Sudan was crucial to establish whether or not he had actually been detained and whether he was at risk of persecution.

[25] Regarding the 2005 incident, the RPD was able to assess the Applicant's demeanour at the hearing and found that he was making up his testimony as he was being asked questions. For instance, while he first said that the secret meeting took place in a room, he later changed his testimony to say that it took place in a hall. The vagueness and the accumulation of inconsistencies, contradictions and omissions allowed the RPD to reasonably find his story not credible. The Applicant gave limited and very general testimony about his involvement in the meetings at the University of Khartoum:

MEMBER: Okay and tell me about the meeting that was organized.

CLAIMANT: Well, it is a meeting from the Sons of Darfur and they meet together once every two weeks or every ... it varies and we talk about solutions and try and find peaceful solutions to the situations, just to raise awareness of what is happening in Darfur.

MEMBER: How would you raise awareness?

CLAIMANT: Sometimes other people would join the meeting and they would listen and we would just explain what is happening there and we try to find solutions, like peaceful solutions to that.

[26] In addition, the Applicant provided no evidence other than his testimony to substantiate his claim that he participated in those meetings. In that context, it was reasonable for the RPD to reject his testimony based in part on his age and on the fact that he did not describe these meetings or his involvement in much detail.

[27] The RPD found equally not credible the Applicant's version of his return to Sudan in 2011. While the Applicant initially testified that he came back to Sudan in January 2011 due to the signing of a peace accord regarding the situation in Darfur, the Doha Document for Peace in Darfur was finalized in May 2011, five months after the Applicant returned to Sudan, and was only signed in July 2011. It was reasonable for the RPD to find that the Applicant was not credible when he changed his version by claiming to have returned because he knew the peace accord would be signed.

[28] Due to the lack of evidence that the Applicant was ever politically active, it was reasonable for the RPD to disbelieve that the Applicant continued to attend secret political meetings in 2012 and that he narrowly escaped capture.

[29] The RPD reasonably concluded that the Applicant has not established that he faces persecution or a personalized risk to his life or cruel and unusual treatment or punishment, or a danger of torture.

VI. Conclusion

[30] For these reasons, this application for judicial review is dismissed. The parties proposed no question of general importance for certification and none arises from the facts of this case.

JUDGMENT in IMM-2446-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. No question of general importance is certified.

"Jocelyne Gagné"
Associate Chief Justice

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2446-18

STYLE OF CAUSE: SAMIR MAHIL AHMED BELLA v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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JUDGMENT AND REASONS: GAGNÉ A.C.J.

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