Federal Court  Cour fédérale

Date: 20200213

Docket: IMM-2445-19

Citation: 2020 FC 234

Ottawa, Ontario, February 13, 2020

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

AHMED ABDELWAHAB MEDAWI MOHAMMED

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] In this judicial review application, launched pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c 27 [IRPA or the *Act*], the applicant challenges a decision of the Refugee Appeal Division (RAD) which confirmed a decision of the Refugee Protection Division (RPD), which had denied a claim for refugee status.

I. Facts

[2] The applicant, Ahmed Abdelwahab Medawi Mohammed, is a Sudanese citizen. He is a musician and has a twin brother who appears to have had some involvement with the Sudan's National Intelligence and Security Service [NISS]. He was pressured to spy for the benefit of the NISS on his colleagues within the United Nations World Food Programme. Having refused the "invitation", he left Sudan in September of 2016 and sought refugee protection in Canada with his wife and children.

[3] There was, according to the applicant, a series of harassing incidents in the months that followed:

- October 4, 2016: NISS officers stopped the applicant while driving home from a party at which he performed as a musician. The officers seemed to have thought he was in fact his twin brother. The applicant produced an identity document and told the officers that his brother had fled Sudan. The applicant reports that the officers threatened to punish his brother.

- November 17, 2016: the applicant was again arrested by NISS officers on his way home from a party at which he had performed. The officers warned him that playing music is against sharia law, accused him of being a communist, insulted him and asked about his brother.

- December 31, 2016: once again, the applicant was arrested by NISS officers at a New Year's Eve party at which he was performing with his friend, Yasir Abdullah. His keyboard was seized. An officer insulted him while another hit him. He was told to stop playing music. The applicant claims that he was forced to sign an undertaking not to perform music again.

The Basis of Claim (BOC) relates that, following his arrest by the NISS officers, the applicant was taken to their office where he was interrogated by an officer who accused the applicant of encouraging immoral and indecent activities. He was, once again, accused of being a communist. It appears that the applicant's instrument was confiscated. The applicant declares in his BOC that he stopped playing music at parties. Indeed, he felt that his life was becoming difficult, which prompted him to contact friends and acquaintances in Saudi Arabia and in Dubai in order to arrange work visas for him.

- February 18, 2017: the applicant was, once again, stopped on his way home from the wedding of his friend, Noor Aljaleel. It is unclear whether the applicant was stopped by three officers or just one. If there was only one officer, he accused him of being a non-believer and a communist. That officer then slapped him. However, there may have been two other officers sitting on the truck at the scene of the incident.

[4] The applicant's brother, who, by the end of October 2016 was in Canada, told him on October 29, 2016 that he had been hospitalized. Three days later, he advised his twin brother that he had been diagnosed with leukemia. That is relevant because, towards the end of February 2017, the applicant's brother reported that he needed a stem cell transplant; the two brothers are a perfect match. Arrangements were therefore made for the applicant to come to Canada on a Canadian visa. For 10,000 Sudanese pounds, someone agreed to facilitate his departure at the international airport. The applicant left Sudan on April 30, 2017 and arrived in Cairo, Egypt, on the same day. A Canadian visitor visa was issued on May 16, 2017 and he left Egypt on May 20, 2017. The applicant is married and is the father of two daughters. However, no one accompanied him to Canada. Seeking refugee protection, the BOC was completed some two months later and is dated July 12, 2017. The said BOC was amended once in order to reflect a change of address.

[5] However, the story does not end there. The applicant also raises two activities in which he participated while in Canada that could give rise to a *sur place* refugee claim. First, on January 31, 2018, he participated in recording a protest song entitled "No Restrictions". That song, claims the applicant, has become somewhat popular in Canada's Sudanese community and in Sudan itself. The second activity occurred on April 18, 2018, as he performed at an event in Toronto in support of political prisoners in Sudan. Another brother, who still lives in Sudan, has apparently received calls from government supporters, as well as he received a visit from NISS officers expressing displeasure in these activities.

II. Refugee Appeal Division decision

[6] The RPD decision denying relief came on November 17, 2017. The appeal to the RAD resulted in a decision dated March 26, 2019. The RPD rejected the applicant's claim that he was persecuted by the security forces; he fears he will be detained in order to force his brother's return to Sudan. The RPD found the credibility lacking, "based on material inconsistencies and omissions in the claimant's evidence and testimony at the hearing" (RPD decision, para 8).

[7] Before the RAD, the applicant sought to introduce new evidence pursuant to subsection 110(4) of IRPA. Some items were also considered pursuant to rule 29 of the *Refugee Appeal Division Rules*, SOR/2012-257. It is subsections 3 and 4 which are relevant to these proceedings; they read:

Documents — new evidence	**Documents — nouvelle preuve**
(3) The person who is the subject of the appeal must include in an application to use	**(3)** La personne en cause inclut dans la demande pour utiliser un document qui n'avait pas

a document that was not previously provided an explanation of how the document meets the requirements of subsection 110(4) of the Act and how that evidence relates to the person, unless the document is being presented in response to evidence presented by the Minister.	été transmis au préalable une explication des raisons pour lesquelles le document est conforme aux exigences du paragraphe 110(4) de la Loi et des raisons pour lesquelles cette preuve est liée à la personne, à moins que le document ne soit présenté en réponse à un élément de preuve présenté par le ministre.
Factors	**Éléments à considérer**
(4) In deciding whether to allow an application, the Division must consider any relevant factors, including	**(4)** Pour décider si elle accueille ou non la demande, la Section prend en considération tout élément pertinent, notamment :
(a) the document's relevance and probative value;	**a)** la pertinence et la valeur probante du document;
(b) any new evidence the document brings to the appeal; and	**b)** toute nouvelle preuve que le document apporte à l'appel;
(c) whether the person who is the subject of the appeal, with reasonable effort, could have provided the document or written submissions with the appellant's record, respondent's record or reply record.	**c)** la possibilité qu'aurait eue la personne en cause, en faisant des efforts raisonnables, de transmettre le document ou les observations écrites avec le dossier de l'appelant, le dossier de l'intimé ou le dossier de réplique.

[8] The test for admitting evidence under subsection 110(4) of IRPA is spelled at subsection 110(4) which reads:

(4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected	**(4)** Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas

in the circumstances to have presented, at the time of the rejection.	normalement présentés, dans les circonstances, au moment du rejet.

[9] Out of the six items the applicant wanted admitted before the RAD, only one was rejected:

1) undated statement from Mr. Yasir Faroug Elkhatim Abdullah. This is the sole item that was not admitted into evidence because, in the view of the RAD, there was no adequate explanation for why this letter was not available or why the applicant could not have been expected to provide it to the RPD;

2) captioned photographs of a music recording session dated January 31, 2018;

3) undated copy of the lyrics of the song "No Restrictions";

4) undated statement of Mahmoud Abdelwahab Mudawi Mohamed: this refers to an incident that allegedly took place on February 27, 2018, well after the RPD decision;

5) affidavit from Osman Badorahmed Bador dated April 30, 2018: this affidavit describes the participation in the January 31, 2018 recording session of the song "No Restrictions", together with the applicant;

6) affidavit of the applicant dated May 2, 2018.

[10] The RAD decided not to hold an oral hearing because none "of the documents admitted into evidence raise a serious issue with the Appellant's credibility" (RAD decision, para 25).

[11] There are five issues that were addressed by the RAD. They are presented in the following paragraphs.

(1) Prospective risk of persecution in Sudan as the twin brother of a Sudanese dissident

[12] The applicant does not face a prospective risk of persecution: the applicant argued before the RAD that the RPD erred in failing to consider that he had a claim on the basis that he is the twin brother of a Sudanese dissident. The RAD noted that the RPD references the applicant's allegations that he fears the NISS would detain him to force his twin brother to return to Sudan. The applicant testified that the NISS began harassing him after his brother left Sudan, but it was noted that they only questioned him once about his twin brother and that they did not question anyone else in his family about him. Thus, the RAD found that the applicant does not face a prospective risk of persecution in Sudan because of his twin brother. The RAD wrote at paragraph 36 of its decision:

> [36] The fact that the Appellant was asked about his brother only once when detained and interrogated by authorities in Sudan does not give rise to any apprehension that he would be similarly targeted in the future, since it is reasonable to expect that the authorities would have referred to the Appellant's brother while interrogating the Appellant after that one incident, if they were indeed actively pursuing the Appellant's brother up until the Appellant's departure from Sudan. The evidence, however, does not support a finding of prospective risk. I find on a balance of probabilities that the Appellant is not being sought by the authorities in Sudan because of his family relationship to his twin brother Mohammed.

(2) Failure to obtain eyewitness corroboration of the alleged events of December 31, 2016

[13] The RPD drew a negative credibility inference because the applicant did not provide a letter from Mr. Abdullah who allegedly witnessed the applicant's arrest. The applicant testified

to the RPD that he did not ask for a letter from Mr. Abdullah because he would be putting himself at risk by providing one. However, as found by the RAD, the RPD noted that the applicant had been successful in getting letters from several other individuals whom he had asked to put themselves at risk by providing letters for him. As a matter of fact, the applicant testified that he turned his mind to putting other people at risk by providing a letter, yet he asked for these letters. In the view of the RAD, "(t)his undermines the credibility of his explanation, that he was "reluctant to ask"[35] Mr. Abdullah because he feared that Mr. Abdullah would face problems from the authorities in Sudan" (RAD decision, para 43. Footnote omitted). Also, the applicant put in his factum before the RAD that "while in Canada, [he] had no control over obtaining documents from Sudan" (RAD decision, para 44). Such statement is seen as being somewhat defective since he received supportive documents from Sudan that postdate his arrival in Canada (letter from his spouse and letter from Mahmoud Abdelwahab Mudawi Mohamed). That made the RAD conclude:

> [45] In light of the foregoing, I find that the RPD did not err in drawing a negative credibility inference from the Appellant's failure to obtain a supporting letter from Mr. Abdullah to corroborate his allegation that the incident of December 31, 2016 did, in fact, take place.

By the time of the RAD hearing, Mr. Abdullah had fled to Ethiopia and was therefore able to provide a letter in support of the applicant's RAD appeal. I note that the letter from Mr. Abdullah was not admitted into evidence, while the five other items were.

(3) Applicant's testimony that he signed an undertaking not to play music on December 31, 2016

[14] The applicant testified that after his arrest on December 31, 2016, NISS officers forced him to sign an undertaking not to perform music again. His BOC does not include this allegation. The applicant testified that the BOC narrative had been read back to him after it was drafted and that he remembered that the statement that he had been forced to sign an undertaking "was included in, in the content, it's, it's mentioning that I, I was made, I was told not to, not to, to play music" (RAD decision, para 49, referring to the exchange before the RPD). Not surprisingly, the applicant was asked for clarification and, according to the RAD, "when the RPD asked him a third time why the undertaking was not referred to in his BOC narrative, the Appellant responded that "there was that mentioned but maybe it's included in this, in this, in the content of this idea of being told not to play music" " (RAD decision, para 50).

That made the RAD to conclude at paragraphs 53 and 54 of its decision:

> [53] The undertaking is material to my assessment of the December 31, 2016 incident because if the Appellant's account were found credible and consistent, it would be evidence of an incident in which the Appellant was directly targeted by officers in Sudan's NISS on account of his own participation in activities deemed to violate social norms in Sudan, rather than because of any connection to his brother and any imputed political opinion arising from that sibling connection. This would have given the Appellant a ground of claim independent of any connection to his twin brother.
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> [54] The Appellant's evidence about this incident, however, was internally inconsistent and his explanations are inadequate to remedy the discrepancy. I find that the RPD did not err in making a negative credibility finding. I also find based on this material omission that the alleged incident of December 31, 2016 did not, in fact, take place.

(4) Discrepancy in the applicant's testimony about the February 18, 2017 incident

[15] The RPD rejected the applicant's account of the incident of February 18, 2017 as being not credible. The BOC states that on February 18, 2017, a single NISS officer stopped and slapped the applicant. When discussing the incident in testimony, the applicant stated that this incident involved three officers. In explaining the discrepancy, he said that he was stopped by three officers, but slapped by only one. The RAD also rejected this explanation and made a negative credibility inference. It noted that the applicant's testimony was not directly responsive to the RPD's questions about the discrepancy. It also noted that the BOC details other interactions with NISS officers in which he refers to being approached by "two officers", "NISS officers", and Sudan officers. In other words, the applicant knows when to use the plural. The RAD observes that "(t)he RPD noted that in all the Appellant's descriptions of his other interactions with Sudan's intelligence service he indicated clearly that he was stopped by multiple officers, and that his description of the February 18, 2017 incident was "inconsistent with the way he has described the incident in his BOC and inconsistent with the way he has described the other incidents" " (RAD decision, para 55).

The RAD conclusion is found at paragraph 59. It reads:

> [59] Given that the Appellant described all his previous encounters as having involved multiple NISS officers, his description in his BOC of the final alleged incident of February 18, 2017 as having involved only one officer is significant. Based on my review, I find that the RAD did not err in rejecting the Appellant's explanation of the inconsistency between his testimony about this incident and the account given in his BOC narrative. The RPD's finding that the incident of February 17, 2018 did not take place must therefore stand.

(5) The RPD's assessment of the supporting documents

[16] The RPD placed minimal weight on letters from the applicant's wife and friend, both of which refer to the undertaking the applicant claims to have signed. The RAD confirmed the RPD's assessment of these letters because it had found – based on the inconsistencies in the BOC and testimony, noted above – the applicant fabricated his claim about the undertaking.

[17] Thus, the RPD placed little weight on the letter from Abdalsalam Nugdalla because, obviously, he was not present for the key incident central to the claim. The RAD found that the RPD did not err in giving little weight to the Nugdalla letter because it simply states that musicians in Sudan are generally harassed. That does not help establish that the NISS harassed Mr. Nugdalla or the applicant for that matter.

[18] As for the letter of Mr. Ahmed, who writes that he helped the applicant flee Sudan, it is a letter of little importance since it has not been established that there would have been any impediments or trouble leaving the country. The applicant disagrees and finds in the National Documentation Package (NDP) for Sudan that "travellers may be prevented from leaving the country" (RAD decision, para 73). It is not so much that the RAD disagreed, but it points out that only certain persons may be prevented from leaving the country, such as politicians, journalists and human rights activists. The RAD also noted that the applicant conceded in his testimony that the Sudanese authorities did not direct him to remain in Sudan. In fact, the decision to seek help in order to leave the country was prompted by a subjective fear of apprehension.

[19] As for the rest of the documentation submitted by the applicant, the RPD did not err in placing little weight on it. These documents (education documents, work documents and photographs) tend to corroborate activities in Sudan but they bring little to the assessment of the credibility of the evidence on the issues in dispute in this case. Indeed, as already pointed out, the letter from Mr. Nugdalla cannot carry much weight, as he was not present in any of the incidents that were central to the applicant's claim.

[20] The RAD also reviewed the new evidence, which was admitted into these proceedings. The photographs of the music recording session as well as the lyrics of the song recorded ("No Restrictions") bring little to this case. The affidavit of Mr. Bador confirms that he recorded the song with the applicant and that the song has been distributed throughout the Sudanese community in Toronto, even reaching Sudan through the internet. He says that it has become somewhat popular in the Sudanese community. Finally, according to an undated statement made by a brother (Mahmoud), he was confronted by agents of the Sudanese security service at his home on February 27, 2018. The statement alleges that the agents told Mahmoud that the production of the song by his brother incited chaos in the country. There was a very clear message that needed to be delivered to the applicant; stop or the family will suffer.

[21] The RAD gives minimal weight to the statement of Mr. Mohamed's brother because it views it as being vague. It does not even refer specifically to the song "No Restrictions". There is no evidence, which would prove the breadth of the dissemination of the song, or any information from an objective source about the reaction of Sudan's government to the song.

[22] The Bador affidavit is given "no weight for the purpose of establishing that the Appellant's song "No Restrictions" has been characterized as a song of political protest by Sudan's government as its bare assertions to this effect are not corroborated by evidence from objective sources without an interest in the outcome of this appeal" (RAD decision, para 91).

[23] The participation in a benefit concert in April 2018 did not fare much better. The RAD says:

> [92] The same is true of the Appellant's affidavit's mention of his "[involvement] with fellow musicians in promoting messages about freedom and political struggles in Sudan" after his arrival in Toronto. While I accept that the Appellant performed music "at a Sudanese community event where donations were collected for political prisoners in Sudan and their families"[83] in April 2018, I expect that he would have attached objective evidence of his participation in this event as an exhibit to his affidavit, or at least included more details about the event itself in his affidavit.
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> [Footnote omitted.]

[24] Relying on the jurisprudence of *Teklewariat v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1026, the RAD considers that there is insufficient evidence to establish a *sur place* risk based on in-Canada activities because the applicant has to provide some evidence to show that the activities in Canada have come to the Sudanese authorities. There is no such thing on this record.

[25] As a result, the RAD dismisses the appeal and confirms the decision of the RPD.

III. Arguments and analysis

[26] There is no doubt that the standard of review in this case is reasonableness. The applicant concedes that it is the standard of reasonableness that applies and the respondent dealt with the case on the basis that it is the standard of reasonableness that governs. The recent decision in *Canada (Minister of Citizenship and Immigration) v Vavilov,* 2019 SCC 65 [*Vavilov*] confirms a presumption that reasonableness is the applicable standard (para 16). Exceptions exist where the legislature has indicated a different standard, but also where the rule of law requires a correctness standard. Three general categories have been identified: constitutional questions, general questions of central importance to the legal system as a whole and questions related to jurisdictional boundaries between two or more administrative bodies (*Vavilov*, para 17). There is simply nothing of the sort in this case.

A. *The applicant's submissions*

[27] The applicant makes submissions concerning a "sur place" claim as well as with respect to the decision to deny the refugee claim based on incidents alleged to have taken place in Sudan.

[28] Concerning the "sur place" claim, the applicant contends that the RAD in fact sought evidence that would go beyond the requirements for establishing the claim. It suffices, says the applicant, that there be credible evidence of a claimant's activities while in Canada that are likely to substantiate any potential harm upon return. In the view of the applicant, requiring that there be proof of targeting by the Sudanese authorities sets the bar higher than recognized by the law.

[29] Second, the applicant takes issue with the assessment of the "sur place" claim. The minimal weight given to a letter from the applicant's brother by the RAD deserves better, being "unreasonably microscopic". The applicant espouses the view that the letter should have been considered with Mr. Bador's affidavit which establishes that the applicant co-wrote the song which enjoyed seemingly a measure of popularity. In a similar vein, the applicant complains that the RAD gave little weight to letters written by people with whom he has a personal connection. Finally, the country conditions support the "sur place" claim. Sudanese authorities monitor dissidents active abroad, which may expose dissidents to risk upon return.

[30] As for the claim based on incidents alleged by the applicant as having occurred in Sudan, there is more than a mere possibility of persecution in Sudan. He is at risk both because of his twin brother's involvement with the NISS and the fact that he is a musician. Thus, he has a profile that would attract unwanted attention in Sudan. Furthermore, minor inconsistencies were brought to an unwarranted level: that is claimed to be so about the undertaking not to play music and the lack of clarity whether he was arrested by one or three officers in one of the incidents alleged to have taken place. The letter of the individual who assisted the applicant at the Khartoum airport showed the applicant's subjective fear: it should have been considered in that light. Similarly, the fact that Mr. Abdullah submitted a letter only after the matter was heard by the RPD (when the applicant sought to explain the absence of evidence from Mr. Abdullah), because by then he was in Ethiopia and not Sudan, should have been considered in view of the change in circumstances.

B. *The respondent's submissions*

[31] For the respondent, the "sur place" claim and the initial claim were reasonably rejected. There were inconsistencies between the BOC and the applicant's testimony before the RPD: the omission to report a written undertaking is material as the testimony was detailed. Similarly, the BOC states that the applicant was harassed in one of the reported incidents (February 2017) by one officer, while the incident became one where three officers were present when the applicant testified before the RPD. That was also a central element of the refugee claim which called for an accurate presentation. The RAD does not have to accept explanations and the findings are reasonable.

[32] The treatment of the evidence is also reasonable. In particular, the RAD rejected the Abdullah letter, submitted as new evidence before the RAD, because not only it is undated but the explanation given for its late admission was insufficient. More generally, the applicant's profile was clearly examined by the RAD, which dealt with each argument and explained why certain events were found not credible, as well as explaining its treatment of the evidence.

[33] The "sur place" claim does not fare any better, says the respondent. Relying on *Eshetie v Canada (Citizenship and Immigration)*, 2019 FC 1036, the Minister finds that the key issue is whether the activities in Canada are likely to have caught the attention of the authorities in Sudan. The RAD found that they did not. The RAD found that the Applicant failed to establish a forward looking risk of persecution in Sudan for five reasons. First, the Applicant's brother's statement did not name the song "No Restrictions" by title. Second, none of the evidence speaks

to how widely known the song is. Third, Mr. Bador, in his affidavit, did not corroborate his claim that the song was one of political protest. Fourth, the Applicant did not provide objective evidence of his performance in support of political prisoners in Sudan. Fifth, the Applicant's affidavit did not indicate that he has been targeted by Sudanese authorities. The Respondent argues that these reasons render the RAD's decision reasonable.

[34] The "sur place" claim was reasonably rejected because of a lack of evidence that the events in this country had come to the attention of the authorities in the country of origin. Cases like *Huntley v Canada (Citizenship and Immigration)*, 2014 FC 573, *Zhang v Canada (Citizenship and Immigration)*, 2016 FC 765, *Li v Canada (Citizenship and Immigration)*, 2018 FC 877 [*Li*] and *Jiang v Canada (Citizenship and Immigration)*, 2018 FC 1064 support the proposition that more than mere speculation is needed. For instance, in *Li*, the Associate Chief Justice of this Court wrote:

> [30] As to the RAD's alternative finding that the evidence does not show that Mrs. Li's practice in Canada came to the attention of the Chinese authorities, I find that it is reasonable, as supported by the decision of this Court in *Zhang v Canada (Citizenship and Immigration)*, 2016 FC 765 at paras 27-30. In this case, Justice Alan Diner found that it was reasonable to reject a *sur place* claim in the absence of evidence that the refugee claim had come to the attention of the authorities in the claimant's country of origin.

The evidence provided by the applicant's brother was vague; further, there is no objective evidence about how well known the song was such that an appropriate inference could be drawn, such that it would be unreasonable not to make it.

C. *Analysis*

[35] As the case was heard just a few days before *Vavilov* was to come down, the Court has requested that further submissions be allowed following the decision. Counsel for Mr. Mohammed produced short submissions (5 pages) on December 30, 2019 while counsel for the respondent's submissions followed on January 17, 2020 with equally concise submissions (7 pages).

[36] The applicant's counsel focussed his attention on the second part of the majority reasons in *Vavilov*, the performance of the reasonableness review. He finds two fundamental flaws in the RAD decision which make the decision unreasonable. First, the reasoning must be both rational and logical (*Vavilov*, paras 102 and 103). It is submitted that the performance of music at a Sudanese community event in Toronto is unduly discounted by a lack of objective corroboration. That is not how I read paragraph 92 of the RAD reasons for decision. The event being part of the evidence in support of the "sur place" claim, the RAD had expectations that more details about the event itself would have found their way into the affidavit. After all, the burden is to establish that activities in Canada are likely to have caught the attention of the authorities in Sudan. Without evidence on the performance and its impact, it is difficult to see how it is unreasonable to find little probative value in that evidence.

[37] The same can be said about paragraph 93 of the decision. The applicant offers an argument made in his memorandum of fact and law, but this time it is dressed up in somewhat different clothing. He reads the words in paragraph 93 "claimants who assert a *sur place* risk

based on in-Canada activities must provide some evidence to show that their activities in Canada have made them a target" as raising the bar beyond what is appropriate because of the difficulty in obtaining evidence of targeting. The respondent acknowledges that this constitutes an inelegant way of concluding, but when read in context, with the findings made by the RAD, it was merely articulating that the evidence was insufficient.

[38] It is true that the Court's case law establishes the requirement that some evidence must be adduced that the activities in Canada might give rise to a negative reaction in Sudan. As was said in *Gebremedhin v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 497, "(t)he legal threshold for a sur place claim should not be confused with the standard of proof" (para 28). An applicant must not only adduce evidence, but he must, on a balance of probabilities, satisfy the decision maker that there is sufficient, and thus credible, evidence of the serious possibility of persecution because of activities in Canada. That includes evidence that a claimant has come to the notice of authorities, but also how they are likely to be viewed (*Hannoon v Canada (Citizenship and Immigration)*, 2012 FC 448). Paragraphs 87 to 92 of the RAD reasons explain, adequately in my view, why the evidence is insufficient to conclude to a serious possibility of persecution. If the use of the word "target" may leave the impression of certainty as to the intentions of foreign authorities, that is unfortunate. However, read in context with the preceding paragraphs, it is clear in my view that such was not the RAD's intent. It is the insufficiency of the evidence to show that the song had significant reverberations in Sudan that mattered. And that is the conclusion reached by the RAD: in view of the evidence, that was a conclusion that was open to the RAD.

[39] The *Vavilov* Court stressed that, not only is the burden on an applicant, but minor shortcomings are not enough to set aside a decision otherwise adequate. The Court specifies that "the court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable" (para 100). Indeed, the Court endorses yet again that "(r)easonableness review is not a "line-by-line treasure hunt for error": *Irving Pulp & Paper*, at para. 54, citing *Newfoundland Nurses*, at para. 14" (para 102).

[40] The applicant also raises the argument that the obtaining of evidence of the Sudanese state's specific targeting is not possible. But, once again, I would not read paragraph 93 as suggested by the applicant. He contends, as I understand the argument, that the RAD wants certainty that he has become a target. The use of the word "must" is given inordinate emphasis. Rather, the RAD requires ("must") that there be some evidence that will show that the activities in Canada have reached the foreign authorities, which might give rise to a negative reaction. In so doing, the RAD was merely echoing the language used by this Court in *Teklewariat v Canada (Citizenship and Immigration)*, 2016 FC 1026:

> [14] The applicant's arguments that the Officer did not consider the *sur place* claim have therefore no merit. It was reasonable for him to conclude that the applicant did not have the profile of someone who would be of interest to the Ethiopian authorities, or that they were aware of her activities in Canada. While the documentary evidence indicates that the Ethiopian government may be spying on citizens living abroad, it also indicates that the victims of such surveillance are generally contacted by phone calls. The applicant has not provided any evidence that her activities in Canada have made her a target and so, the Officer's conclusions on that point were reasonable.
>
> [My emphasis.]

[41] The other type of fundamental flaw is that the decision under review is untenable in light of the relevant factual and legal context. The applicant notes that the *Vavilov* Court finds unreasonableness where "the decision maker has fundamentally misapprehended or failed to account for the evidence before it" (para 126). The argument is made concerning the "sur place" claim, but it never reaches a fundamental misapprehension. The applicant disagrees with the decision but, as he puts it himself, the assessment of the evidence is said by him to be "misguided". In my view, it is not even misguided. It is rather that the applicant disagrees with the assessment made by the decision maker. That does not make a decision unreasonable.

[42] The applicant is right to insist that the reasons must reflect the impact of the decision on the individual's rights (*Vavilov*, para 133). But that should not be confused for having a different standard of reasonableness. The *Vavilov* Court was careful to stress that point:

> [89] Despite this diversity, reasonableness remains a single standard, and elements of a decision's context do not modulate the standard or the degree of scrutiny by the reviewing court. Instead, the particular context of a decision constrains what will be reasonable for an administrative decision maker to decide in a given case. This is what it means to say that "[r]easonableness is a single standard that takes its colour from the context": *Khosa*, at para. 59; *Catalyst*, at para. 18; *Halifax (Regional Municipality) v. Nova Scotia (Human Rights Commission)*, 2012 SCC 10, [2012] 1 S.C.R. 364, at para. 44; *Wilson*, at para. 22, per Abella J.; *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38, [2016] 2 S.C.R. 80, at para. 57, per Côté J., dissenting but not on this point; *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32, [2018] 2 S.C.R. 293, at para. 53.

Here, the RAD decision is a careful examination of the arguments raised with reasons given for the outcome reached. Perfection was not the standard before *Vavilov* and it is still not the standard (*Vavilov*, para 91).

[43] Both with respect to the “sur place” claim and to the alleged incidents in Sudan, the evidence offered by the applicant is very thin. Once is factored in some omissions and contradictions, it is difficult to see how the decision is unreasonable. The reasons for decision are to be read in light of the record. Reviewing courts “should be attentive to the application by decision makers of specialized knowledge, as demonstrated by their reasons” (*Vavilov*, para 93). The decision is justified, and it is transparent and intelligible. It is certainly possible to disagree with the reasons, but that does not make them unreasonable.

IV. Conclusion

[44] It bears repeating that “(i)t is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from “reweighing and reassessing the evidence considered by the decision maker” …” (*Vavilov*, para 125). That is in my view what the applicant’s counsel has artfully sought to achieve in this case. It is in this context that the Court, in *Vavilov*, requires that it be shown a fundamental misapprehension of the facts or a failure to account for the evidence before it (para 126).

[45] The applicant has not discharged his burden in challenging the reasonableness of the decision. The judicial review application must therefore be dismissed. The parties agree that there is no question to be certified, pursuant to section 74 of the *Act*. I concur.

JUDGMENT in IMM-2445-19

THIS COURT'S JUDGMENT is that:

1. The judicial review application is dismissed.

2. There is no serious question of general importance that ought to be certified.

"Yvan Roy"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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