

Federal Court



Cour fédérale

**Date: 20210917**

**Docket: IMM-2937-20**

**Citation: 2021 FC 966**

**Ottawa, Ontario, September 17, 2021**

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

**BETWEEN:**

**NABIL NOORELDEIN HAMZA FAGEIR**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION CANADA**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Nabil Nooreldein Hamza Fageir is a citizen of Sudan and a resident of Saudi Arabia. He seeks judicial review of the refusal by a migration officer [Officer] of his application for permanent residence as the husband and dependent of Hiyam Khalil Seedahmed Khalil.

[2] Ms. Khalil is a citizen of Sudan and a successful refugee claimant in Canada. She holds permanent resident status in Canada as a protected person.

[3] The Officer was not satisfied that Mr. Fageir's and Ms. Khalil's marriage was genuine. The Officer based this conclusion on a number of factors, including: (a) the limited evidence of communication between the couple; (b) wedding photographs that appeared to be staged and inconsistent with a traditional Sudanese ceremony; (c) the short period of cohabitation following the wedding; (d) inconsistencies between Mr. Fageir's responses during his interview and information contained in his sponsorship application; and (e) text messages that demonstrated the couple had confirmed basic details about their marriage and personal histories prior to the interview, including details the Officer expected a genuine married couple would already know.

[4] The Respondent concedes that the limited evidence of communications between the couple, the wedding photographs, and the short period of cohabitation are not, in themselves, sufficient to sustain the Officer's decision. The Respondent therefore relies only on the Officer's findings respecting inconsistencies in the information provided by Mr. Fageir, his limited knowledge of the marriage and Ms. Khalil's personal history, and the manner in which the couple prepared for Mr. Fageir's interview.

[5] The Officer's credibility determinations are a part of the fact-finding process, and are afforded significant deference upon review. 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.

[6] The Officer's decision is justified, intelligible and transparent, and falls within the range of acceptable outcomes defensible in respect of the facts and law. It is therefore reasonable.

[7] The application for judicial review is dismissed.

## II. Background

[8] Mr. Fageir and Ms. Khalil come from the same town in Sudan, and have known each other and their respective families for a long time. Mr. Fageir says he met Ms. Khalil around 2013 in Sudan when he was on a short visit from Saudi Arabia, and they kept in touch occasionally after that.

[9] Ms. Khalil was previously married in 1999 and divorced her first spouse in 2002. Mr. Fageir was previously married in 2013 and divorced his first spouse in 2017. Mr. Fageir has a seven-year-old daughter from his first marriage who lives in Sudan with his former wife.

[10] When the couple decided to marry in February 2018, Mr. Fageir was working as a driver in Saudi Arabia. Ms. Khalil was a student and was pursuing her refugee claim in Canada. She could not return to Sudan, and so the couple travelled to Ethiopia, a safe third country.

[11] The marriage took place on July 23, 2018 and was registered with civilian authorities. The couple stayed together in Ethiopia until August 20, 2018. They explained that extended

cohabitation was not possible, due to the limited leave available to Mr. Fageir and Ms. Khalil's ongoing refugee claim against Sudan.

[12] Neither of their families attended the wedding due to financial and other constraints. The couple nevertheless maintained that both of their families knew of their relationship. They submitted letters of support from family members.

### III. Issue

[13] The sole issue raised by this application for judicial review is whether the Officer's refusal of Mr. Fageir's application for a permanent resident visa was reasonable.

### IV. Analysis

[14] The Officer's decision is subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 10). The Court will intervene only if "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100). These criteria 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, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[15] In the written decision dated June 22, 2020, the Officer noted that Mr. Fageir was sent a procedural fairness letter on June 20, 2019 indicating there were concerns regarding the *bona fides* of his relationship with Ms. Khalil. Mr. Fageir was interviewed in Abu Dhabi on March 10, 2020 with the assistance of an Arabic speaking interpreter. At no time during the interview did he indicate there was any difficulty in understanding the Officer's questions.

[16] According to the Officer's written decision:

Based on information available to me, I am not satisfied that your marriage to Hyem Khalil Seedahmed Khalil is genuine and was not entered into primarily for the purpose of acquiring permanent residence in Canada.

I have reached this conclusion because you have limited cohabitation of a month post wedding, have limited proof of communication and communication found at interview is not consistent with a married couple. You were being advised as to details such as marriage date, place and Hyam Khalil Seedahmed Khalil's personal history for the benefit of answering potential interview questions. Further, wedding photos on file are not consistent with a traditional Sudanese wedding, are minimal and appear staged.

[17] The Officer's notes in the Global Case Management System [GCMS] form a part of the decision under review (*Ebrahimshani v Canada (Citizenship and Immigration)*, 2020 FC 89 at para 5). The Officer's GCMS notes in this case are unusually detailed, and include pages of what appears to be a verbatim transcript of the questions asked during Mr. Fageir's interview, and the answers he provided.

[18] The portion of the Officer's GCMS notes that may be said to comprise additional reasons reads as follows:

Translation of Mr. Nabil's WhatsApp reveals that Hyam, the sponsor, was relaying information to the applicant that a genuine spouse would on a balance of probabilities already know. Examples of this information are: wedding date and place; date they were introduced; her previous husband's name (which he stated verbatim at interview); date of her entry to Canada, what University she studied at (sponsor neglected to mention subject she studied as he did not know at interview); the wedding gifts Mr. Nabil had purportedly given her, the arrival and departure date to Addis for the wedding, etc ... There is also a discussion of preparing for the interview and to remember all the dates. Hyam or Aras her brother (?) "If there is something you don't know, just say "I don't remember"." Hyam also mentions "For employment history don't mention Syria". There is no mention of any of the documents on file that PA spent any time in Syria and may be an omission of file information on travel and/or employment history.

[19] The Respondent notes the following anomalies in the answers given by Mr. Fageir to questions posed during his interview on March 10, 2020:

- (a) Ms. Khalil fled Sudan to save her life, and her first husband had divorced her due to her political activism. Yet Mr. Fageir said that neither Ms. Khalil nor her father were politically active in Sudan.
- (b) Mr. Fageir said that he had kept in touch with Ms. Khalil after meeting her in 2013. Ms. Khalil fled Sudan three years after they started talking to each other.
- (c) Mr. Fageir said he began talking regularly to Ms. Khalil in May of 2017, which was during the time her refugee claim was being processed in Canada.

- (d) Despite Mr. Fageir's claim that he spoke to Ms. Khalil daily, he was unable to provide any information about her bid for international protection to avoid persecution and death in Sudan.
  
- (e) Mr. Fageir initially said he had met Ms. Khalil in Sudan in February of 2013. He then changed his response and said he had met Ms. Khalil in 2010. When the Officer requested clarification, Mr. Fageir changed his response again, and said that he had met Ms. Khalil in 2013 but could not remember where.

[20] Counsel for Mr. Fageir cautions that the notes of questions and answers do not constitute reasons, in the same way that a transcript of legal proceedings does not constitute a judgment. I agree. However, the Officer's detailed account of the questions and answers may provide an evidentiary basis for the conclusions reached.

[21] Mr. Fageir says that the Officer's GCMS notes betray a reliance on stereotypes and speculation. He argues that the Officer failed to engage with the evidence of the couple's compatibility, and other favourable evidence confirming the genuineness of the relationship such as numerous letters of support from family members.

[22] The Respondent concedes that the limited evidence of communications between the couple, the wedding photographs, and the short period of cohabitation are not, in themselves, sufficient to sustain the Officer's decision. The Respondent therefore relies only on the Officer's findings respecting inconsistencies in the information provided by Mr. Fageir, his limited

knowledge of the marriage and Ms. Khalil's personal history, and the manner in which the couple prepared for Mr. Fageir's interview.

[23] The Respondent notes that Mr. Fageir's visa application included documents pertaining to Ms. Khalil's refugee claim in Canada, yet he appeared to know almost nothing about the reasons she sought Canada's protection. Mr. Fageir could not identify the reason, or even the timeframe, for Ms. Khalil's divorce from her first husband, yet he could immediately provide her former husband's full name. The Officer observed that Mr. Fageir could recall certain details with absolute precision, but gave contradictory or incomplete answers to other questions, or simply said "I don't remember". Mr. Fageir said he needed to be reminded of basic details respecting his marriage to Ms. Khalil, because he tended to forget them.

[24] Mr. Fageir did not initially reveal his communications with Ms. Khalil using WhatsApp. These were disclosed only in the course of the interview, after the Officer inspected Mr. Fageir's mobile phone. The Officer's GCMS notes of the questions and answers read as follows:

In looking at your chat history, why did the What's app chat only start in Feb 2020? I deleted previous conversations as sometimes I do that. Why would she be telling you what your wedding date and other dates are? She was worried that I would forget about details as I usually forget. Well earlier you were able to site off exactly her ex-husband's name. Now I see that it was provided to you on this What's app, that's why you even knew his middle name. Why would you have gotten a document from a lawyer with the questions that I may ask? The lawyer sent the types of questions that you might ask we did not even ask the lawyer for it. Why were the dates on the printed version of your chat not included on what you are giving me? She printed those for me. I have to empty my phone often b/c its an old phone. I have to scan many documents for my work and so the phone gets full. That is not what you stated earlier. Earlier you said they were printed in Saudi



before you came. Yes, but I had cleared the history so she provided that for me.

[25] Mr. Fagier's counsel takes particular exception to the Officer's apparent reliance on the lawyer's communication respecting questions that might be asked during the interview, citing *Kavihuha v Canada (Citizenship and Immigration)*, 2015 FC 328. That case concerned procedural fairness and the competence of counsel. Justice Russel Zinn observed (at para 27):

There is a reason competent counsel meets with and prepares witnesses for their testimony. This is especially the case where, as here, the process is new and in a foreign country. Where, as here, the relevant events occurred years before the hearing, it is only common sense that memory will not be as sharp on dates of those events if the witness has not had an opportunity to review those facts with counsel.

[26] I disagree that the Officer drew an adverse inference from the couple having received the assistance of counsel to prepare for the interview. The Officer's concern arose from Mr. Fageir's initial non-disclosure of the WhatsApp messages, what they revealed about the manner in which he had prepared for the interview, and the contrast between the answers he had prepared for and those he had not.

[27] Most of the interview questions were directed towards Mr. Fageir's familiarity with Ms. Khalil and her personal history. The Officer's questions did not concern sensitive information that Ms. Khalil might have chosen not to disclose to her new husband, but simple biographical matters such as what Ms. Khalil had studied in Sudan, why her first marriage was unsuccessful, and the political activism of both Ms. Khalil and her father.

[28] Mr. Fageir points to a number of questions that he answered correctly: *e.g.*, Ms. Khalil uses the bus and not a car; she is studying English in Calgary. However, the Officer did not suggest that Mr. Fageir and Ms. Khalil were complete strangers. Rather, based on all of the evidence, the Officer concluded that the couple did not appear to have the depth of mutual knowledge and understanding one would reasonably expect to find in a genuine marital relationship.

[29] The Officer's credibility determinations are part of the fact-finding process, and are afforded significant deference upon review. 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" (*Tran v Canada (Citizenship and Immigration)*, 2021 FC 721 at para 35, citing *Azenabor v Canada (Citizenship and Immigration)*, 2020 FC 1160 at para 6 and *Yan v Canada (Citizenship and Immigration)*, 2017 FC 146 at para 18).

[30] The Officer's decision is justified, intelligible and transparent, and falls within the range of acceptable outcomes defensible in respect of the facts and law. It is therefore reasonable.

## V. Conclusion

[31] The application for judicial review is dismissed. Neither party proposed that a question be certified for appeal.

**JUDGMENT**

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

"Simon Fothergill"

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Judge

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

**DOCKET:** IMM-2937-20

**STYLE OF CAUSE:** NABIL NOORELDEIN HAMZA FAGEIR v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION  
CANADA

**PLACE OF HEARING:** BY VIDEOCONFERENCE BETWEEN CALGARY  
AND EDMONTON, ALBERTA, AND OTTAWA,  
ONTARIO

**DATE OF HEARING:** SEPTEMBER 1, 2021

**JUDGMENT AND REASONS:** FOTHERGILL J.

**DATED:** SEPTEMBER 17, 2021

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