Federal Court  Cour fédérale

Date: 20220302

Docket: IMM-942-21

Citation: 2022 FC 290

Toronto, Ontario, March 2, 2022

PRESENT: Madam Justice Go

BETWEEN:

MOHAMED FOUAD ELDIASTY HUSSIN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Mohamed Fouad Eldiasty Hussin [Applicant], a citizen of Egypt, seeks judicial review of the Refugee Appeal Division [RAD]'s decision [Decision] finding that he was not a Convention refugee or person in need of protection under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The RAD overturned the conclusion of the Refugee

Protection Division [RPD] that the Applicant lacked credibility, but ultimately rejected the claim on the basis that the Applicant's fear of the Egyptian government lacked an objective basis.

[2] I find the Decision reasonable and thus dismiss this application.

II. Background

A. *Factual Context*

[3] The Applicant participated in the 2011 "January Revolution" in Tahir Square, where he protested for democracy and freedom. He later participated in various demonstrations and at the end of 2011 joined the Freedom and Justice Party. In 2013, in support of president-elect Mohamed Morsi, the Applicant participated in the sit-in at Rabaa al-Adawiya Square, which he left before it was broken up and turned into a massacre.

[4] In October 10, 2014, while travelling to a nearby village, the Applicant was stopped in a "security ambush." He was arrested, along with everyone else in the same vehicle. They were taken to a police station. On December 13, 2014, a judge acquitted the Applicant and his fellow defendants. The Applicant was not released immediately after the acquittal. An elected member of the parliament from the Applicant's home town intervened and persuaded the officer in charge to delete the Applicant's name from the case and release him. Altogether, the Applicant was detained for two months, during which time he was beaten.

[5] The prosecution later appealed his acquittal. The Applicant's employer refused to allow him to return to work citing "security instructions until the date of appeal." On February 2, 2015, the Applicant's acquittal was upheld on appeal, but he was nonetheless later dismissed from work.

[6] The Applicant found new work in a company managed by someone from Saudi Arabia. The Applicant travelled to Europe and Saudi Arabia for work in 2015 without incident. However, the Applicant stated that the government security services went to his house repeatedly, so he decided to live separately from his wife and children to not endanger them.

[7] The Applicant got a second job in November 2016. A week later, the company's security advised the Applicant that the national security services wanted him for reasons unknown and was on their way. He left quickly to avoid arrest.

[8] In January 2017, a former co-defendant from the 2014 arrest advised the Applicant that he was questioned and tortured by a national security officer, who wanted to fabricate a case against the Applicant and have him arrested sooner or later. The Applicant decided to apply for a Canadian visa in February 2017. The Applicant left via Cairo airport on April 27, 2017. He arrived in Toronto the next day and made his refugee claim in August 2017.

B. *Decision under Review*

[9] The RPD concluded that the Applicant lacked subjective fear, did not have a profile that would lead him to be targeted if he were to return to Egypt, and lacked credibility. On appeal, the

RAD reversed the RPD's credibility finding, but nonetheless concluded that the Applicant's claim lacked an objective basis.

[10] The RAD accepted that the Applicant had been a member of the Freedom and Justice Party since December 2011, had participated in a number of demonstrations over the years, and had expressed opinions about the government in Egypt to those close to him. However, the RAD found there was no evidence that authorities in Egypt have any awareness of these opinions or think that the Appellant is a threat. Rather, according to the RAD, the Applicant's interactions with Egyptian authorities indicate that they do not see him as a threat because: (1) he was not arrested at a protest but rather at a checkpoint while travelling, (2) there was no evidence the authorities connected him to the Freedom and Justice Party during his detention, (3) he was acquitted at his trial and the acquittal was upheld on appeal, (4) there was no evidence that his former employer dismissed him on the order of Egyptian authorities, and (5) objective evidence indicates that individuals on a control list are not allowed to leave Egypt, whereas the Applicant successfully left repeatedly in 2015 and then in 2017.

[11] The RAD further concluded that although the Applicant was credible, this does not mean that everything he said must be accepted as true. The RAD did not give weight to what the Applicant had been told by others: namely, that his friend had said the authorities were fabricating a case against him, that his father had been threatened because of the Applicant's activities, and that his manager had warned him to stop his activities. The RAD concluded that the Egyptian authorities have no ongoing interest in the Applicant.

III. Issues and Standard of Review

[12] The Applicant argues that the RAD erred in its application of s. 96 and s. 97 of the *IRPA*, and in finding that he did not have a profile which would make him a target of the Egyptian authorities. The Applicant submits the RAD's reasons lacked a rational chain of analysis, and that the RAD erred in requiring corroboration for testimony it had found credible. The Respondent argues that the RAD's finding that Egyptian authorities had no ongoing interest in the Applicant was reasonable in light of the evidence, and that the RAD was entitled to find that credible testimony had limited probative value.

[13] The parties agree that all three issues are reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], and *Elmi v Canada (Citizenship and Immigration)*, 2020 FC 296 at para 9.

[14] Reasonableness is a deferential, but robust, standard of review: *Vavilov*, at paras 12-13. The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified: *Vavilov*, at para 15. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker: *Vavilov*, at para 85. Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences: *Vavilov*, at paras 88-90, 94, 133-135.

[15] For a decision to be unreasonable, the applicant must establish that the decision contains flaws that are sufficiently central or significant: *Vavilov*, at para 100. Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances: *Vavilov*, at para 125. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep": *Vavilov*, at para 100.

IV. Analysis

A. *Did the RAD err by ignoring evidence and relying on irrational reasoning?*

[16] In finding that the Applicant lacked a political profile to make him a target of the Egyptian authorities, the Applicant submits the Decision exhibits failures of rationality and is fundamentally flawed. In particular, the Applicant cites several errors in the Decision regarding his profile and his previous arrest, Egypt's exit control list, and the threats to his family.

[17] I will deal first with the Applicant's argument that it was illogical for the RAD to state that Egyptian authorities were not aware of his political opinions and do not think of him as a threat. With respect to the RAD's statement that nothing showed the Egyptian authorities had connected him to the Freedom and Justice Party during his two-month detention, the Applicant argues this is false given that he was charged for participating in a demonstration. The Applicant argues that the RAD ignored the content of these charges against him. He reiterates that he was arrested, detained and charged for his perceived political opinion.

[18] At the hearing before the Court, the Applicant further argued the fact that the authorities could not connect the Applicant to the Freedom and Justice Party was immaterial as the Applicant was known in his community for his political opinion and that was why they charged him in October 2014.

[19] I find the Applicant's submissions in this regard contradicted by his own testimony at the RPD, where he testified that his 2014 arrest was "random" as he was arrested at a checkpoint while travelling with strangers. The Applicant also testified that he was detained and prosecuted for a demonstration he did not attend. In essence, there is no evidence to tie his previous political activities to his detention. Moreover, he was eventually released and acquitted, and the acquittal was upheld on appeal. However unjust and draconian the treatment the Applicant had received, the RAD's conclusion that the Applicant's detention and subsequent acquittal "do not assist [the Applicant] in establishing his claim" was reasonable. The Applicant was not an organizer and had never made any public statements against the government. I thus find reasonable the RAD's conclusion that the Applicant had not sufficiently established a political profile in view of the evidence that the Applicant had only expressed his political views to those close to him.

[20] With respect to the Applicant's argument that not all judges in Egypt are corrupt, I do not read the RAD's finding the Applicant's acquittal to have been "somewhat unusual" to suggest otherwise. Rather, as the Respondent submits, the RAD found the Applicant's acquittal did not support his claim. The Respondent notes, and I agree, that the National Documentation Package [NDP] Item 9.10 cited by the Applicant supports the RAD's finding, as it states that convictions are regularly based on poorly reasoned judgements, that thousands of individuals have been

subjected to politically motivated prosecutions and convicted following unfair trials, and that politicization of the judiciary is structural and systemic. To say that the Applicant's acquittal was "somewhat unusual" in light of the documentary evidence was thus reasonable.

[21] The Applicant argues that the RAD read the NDP evidence selectively when it found that if the Applicant had been of interest to the Egyptian authorities, he would have been placed on a "control list" and prevented from leaving Egypt. The Applicant argues Item 14.1 of the NDP referenced by the RAD does not imply that *every* political opponent is placed on a control list. I reject the Applicant's submission for two reasons.

[22] First, I note the NDP Item 14.1 states in part:

> Individuals on a control list are not allowed to exit Egypt. This can include persons being sought by the police, persons convicted of certain offences, etc. According to my contact, it can include people with "political problems." A number of Ministries and agencies have the authority to place people on the control list. (Canada 25 Nov. 2013)

[23] The above quoted evidence regarding exit controls in Egypt reasonably supports the RAD's finding, as does the evidence showing that security checks at airports are routine and involve the checking of an individual's passport against a list of those not permitted to travel abroad. The Applicant is essentially asking the Court to reweigh the evidence by re-interpreting what may or may not be "implied" by the NDP.

[24] Second, the RAD's finding is reasonable in view of the Applicant's own travel history. The RAD noted that the Applicant has three interactions with border authorities without incident since his detention and acquittal, and that his departure for Canada was some time after he had

heard that authorities were planning a case against him. The RAD then concluded, on a balance of probabilities, that if Egyptian authorities were interested in the Applicant, they would have placed him on the control list and would have detained him on one of the three times he exited or entered Egypt. I find this conclusion reasonable in light of the evidence.

[25] Turning now to the Applicant's argument that the RAD erred in concluding that he had "failed to establish that the authorities have threatened him or his family since 2011," once again, I reject the Applicant's submission. The RAD's finding that neither the Applicant nor his family were threatened for his political activities was reasonable given the evidence that the Applicant's detention was random and not based on participation in any protest, and that the Applicant only expressed his political opinions to those close to him.

[26] While the Applicant may disagree with how the RAD weighed the evidence, I find the Applicant has not established that the RAD failed to consider the totality of the objective evidence, or that it misapprehended or ignored evidence.

B. *Did the RAD err in requiring corroboration?*

[27] The Applicant argues that the RAD erred in requiring corroboration from the Applicant's father, when the Applicant's credibility is not in doubt, citing *Dundar v Canada (Citizenship and Immigration)*, 2007 FC 1026 at paragraph 22.

[28] The Applicant also cites Justice Grammond's summary of the case law relating to corroborating evidence in *Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968, [*Senadheerage*] in which he stated at paragraph 36:

> To summarize, a decision-maker can only require corroborative evidence if:
>
> 1. The decision-maker clearly sets out an independent reason for requiring corroboration, such as doubts regarding the applicant's credibility, implausibility of the applicant's testimony or the fact that a large portion of the claim is based on hearsay;
> 2. The evidence could reasonably be expected to be available and, after being given an opportunity to do so, the applicant failed to provide a reasonable explanation for not obtaining it.

[29] The Applicant argues that the RAD did not follow this legal framework because it did not make any negative credibility findings.

[30] I note however, Justice Grammond made it clear in *Senadheerage* at paragraph 41 that "[e]nsuring the trustworthiness of hearsay may be valid grounds for requiring corroboration." In *Senadheerage*, Justice Grammond was concerned that "the RAD may have required corroboration because of its flawed implausibility findings, instead of a desire to buttress the trustworthiness of hearsay" as "[n]one of this is made explicit in the decision": at para 41. In this case, the RAD was explicit about why it was seeking corroboration from the Applicant's father:

> The Appellant argues that authorities have threatened him and his family since 2011. When asked about this at the RPD hearing, the Appellant testified that his father had received many threats and had told the Appellant that he must stop. I accept that the Appellant's father told him to stop, but there is nothing before me that the Appellant actually saw his father being threatened. Even though I have found the Appellant to be credible, without corroboration from his father, I do

> not have to accept the Appellant's word regarding threats. I find that, on a balance of probabilities, the Appellant's father was not threatened by Egyptian authorities in relation to the Appellant's activities.

[31] The RAD provided its rationale as to why without corroboration from his father, the RAD decided not to accept the Applicant's word. I find no basis to interfere with this finding.

[32] Similarly, as the Respondent has noted, the RAD was aware that the national security service agents were on their way to see the Applicant at his work in 2016 - however, the allegation that they were planning to fabricate a big case against the Applicant was not within his personal knowledge.

[33] The Respondent cites Justice McHaffie's response to a similar argument in *Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799:

> [25] The Olusolas also argue that the "presumption of truth" required the RAD to accept Ms. Olusola's statement that the police were pursuing her, even in the absence of corroborative evidence: *Maldonado v Minister of Employment and Immigration*, [1980] 2 FC 302 (CA) at p 305. However, the *Maldonado* presumption is simply that a sworn witness is telling the truth. It is not a presumption that everything the witness believes to be true, but has no direct knowledge of, is actually true. Ms. Olusola had no personal knowledge of facts that would establish the Nigerian police's ongoing interest in pursuing her. She had indirect knowledge from her husband that the police had questioned him about her whereabouts, and that there had been no subsequent attempts by the police to find her. While she may have truthfully believed that the police were pursuing her, the *Maldonado* presumption does not require the RAD to accept this as objectively true.

[34] I find the above passage applicable to this case. It was reasonable for the RAD to believe the truthfulness of the Applicant's testimony about what his father and former co-accused may

have told him, yet still determine that the Applicant has failed to provide sufficient evidence to support the inferences he seeks to draw from the evidence.

C. *Applicant's New Argument*

[35] At the hearing before the Court, the Applicant submitted that the Convention refugee definition is forward looking. The Applicant argued that his previous trips in 2015 were short and for business persons only, so the airport authorities had no reason to pull him over for security checks. However, if he were to go back to Egypt now, after such a considerable amount of time abroad, his return would raise a red flag, he would be stopped and his past would come up. As the Applicant never raised this point in his appeal, I cannot fault the RAD for not considering this argument, however legitimate the Applicant's concern may be. Should new evidence of forward looking risk arise, the Applicant may be able to present this in the context of a pre-removal risk assessment.

V. Conclusion

[36] The application for judicial review is dismissed.

[37] There is no question for certification.

JUDGMENT in IMM-942-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-942-21
STYLE OF CAUSE:	MOHAMED FOUAD ELDIASTY HUSSIN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	FEBRUARY 2, 2022
JUDGMENT AND REASONS:	GO J.
DATED:	MARCH 2, 2022

APPEARANCES:

John Rokakis	FOR THE APPLICANT
Giancarlo Volpe	FOR THE RESPONDENT

SOLICITORS OF RECORD:

John Rokakis Barrister and Solicitor Windsor, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT