

Federal Court



Cour fédérale

**Date: 20220603**

**Docket: IMM-1322-21**

**Citation: 2022 FC 812**

**Ottawa, Ontario, June 3, 2022**

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

**BETWEEN:**

**MORAD FATHY ABDELHAFIZ ABDALLA  
SAMAH EZZAT MOHAMED SAADAWY  
LAMAR MOURAD FATHY ABDELHAFIZ ABDALLA  
LUJAIN MOURAD FATHY ABDELHAFEZ  
ABDALLA  
LAMIS MOURAD FATHY ABDELHAFEZ ABDALLA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Introduction

[1] This is a judicial review of the Refugee Appeal Division [RAD] confirming that the Applicants were not refugees or persons in need of protection because, as the Refugee Protection Division [RPD] found, they had a viable Internal Flight Alternative [IFA] in Alexandria, Egypt.

[2] In granting this judicial review, the principal reason is the RAD's unjustified refusal to consider new evidence. The relevant new evidence provision is s 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27:

**Evidence that may be presented**

**110 (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 in the circumstances to have presented, at the time of the rejection.

**Éléments de preuve admissibles**

**110 (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 normalement présentés, dans les circonstances, au moment du rejet.

II. Background

[3] The Applicants are citizens of Egypt and a family of five. Their claim for refugee protection was based on the Applicants being targeted and threatened by members of the Al-Shaiba family as part of a blood feud/honour killing.

[4] The Principal Applicant became a target in the blood feud after his father died in 2008. As a result, the Applicants relocated 13 times – 12 times within Cairo and once in Alexandria where they lived in hiding.

[5] The RPD refused the Applicants' claim on the basis of the IFA in Alexandria. The RPD noted that the Applicants had lived in Alexandria previously and had not received threats or been involved in incidents of harm.

[6] The RPD dismissed the impact of previous threats the Applicants received in Cairo because of the insufficiency of evidence that the Al-Shaiba family was the source and the large gaps between threatening phone calls evidenced a lack of motivation to harm.

[7] The RPD further found that, in terms of adverse conditions, it was not objectively unreasonable for the Applicants to locate to the IFA, particularly given their post-secondary education and various employment experiences.

[8] In the RAD proceeding, the Applicants submitted new evidence concerning attacks on the Principal Applicant's sister and the attempted kidnapping of his nephew. That evidence included a police report related to the sister's incident, medical reports regarding the sister and nephew, a police report regarding the nephew's incident and two declarations of the Principal Applicant's sisters regarding the events and disclosure to the Applicants.

[9] The RAD acknowledged the Applicants' claim that even though the attacks on the Principal Applicant's sister and nephew occurred prior to the RPD's refusal, they were unable to inform the RPD of the attacks because the incidents were not known to or reported to the Applicants by their family until after the rejection. However, the RAD rejected this explanation.

[10] The RAD rejected the claim because the Applicants did not provide proof of how or when they were told by family of these incidents and because the RAD did not find documents or a video credible. The credibility finding was based on the time and nature of the evidence and the homemade quality of the documents.

[11] The RAD noted that the police and medical reports of the kidnapping were handwritten and the medical reports appeared to be form letters. The video was said to be dark and difficult to discern.

[12] The RAD refused to hold a hearing and held that there was no breach of procedural fairness in the translation and interpretation provided by the interpreter at the RPD hearing.

### III. Analysis

[13] The parties agree and I concur that the standard of review in accordance with *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, is reasonableness.

Reasonableness requires a deferential but robust form of review.

[14] The RAD is entitled to deference in respect of its conclusions on the new evidence issue but only if its decision has justification, transparency and intelligibility. This decision does not have those hallmarks.

#### A. *New Evidence*

[15] In my view, the RAD's failure to reasonably justify its rejection of the new evidence was unreasonable. As such, it calls into question the reasonableness of the viable IFA finding.

[16] There is no reason for the Applicants to suspect that they had to go further in the proof they submitted. It was unfair and unreasonable for the RAD to suggest otherwise.

[17] The RAD's conclusion was tantamount to suggesting that the Applicants and/or members of the family forged documents or obtained them fraudulently in order to show the Al-Shaiba family as the aggressor.

[18] While the RAD may reject evidence as untrustworthy, it must provide an adequate basis for so doing and one which a party knows could be raised. In the present case, the RAD did not provide reasons for doubting the authenticity of official stamps, letterheads or signatures which appeared on the police and medical reports.

[19] A concern expressed by the RAD was that the police and medical reports were handwritten even though on letterhead and/or with official stamps. The RAD provided no support for a conclusion that in Egypt these forms of documents were not authentic nor did the RAD give the Applicants an opportunity to address this matter.

[20] Given the importance of the evidence which is confirmatory of the Applicants' fears, and the consequences of rejecting that evidence, the RAD had at least an obligation to provide a fulsome analysis.

[21] The RAD also failed to address the circumstances under which it could consider new evidence. Section 110(4) sets out a disjunctive test by use of the word “or”: see *Olowolaiyemo v Canada (Citizenship and Immigration)*, 2015 FC 895 at para 19. As such, the Applicants were entitled to rely on evidence demonstrating that the new evidence was not reasonably available to them when the RPD determined the matter.

B. *Internal Flight Alternative*

[22] In rejecting new evidence confirming the Al-Shaiba family as the aggressor with a continuing motive to locate and harm the Applicants, the RAD misdirected itself on the risk and the viability of the IFA. The IFA of Alexandria would have to be reconsidered against this background of continuing risk. Reliance on the past uneventful stay in Alexandria would not necessarily stand scrutiny against a proper risk consideration, particularly given that the Applicants’ time in Alexandria was when they were in hiding.

IV. Conclusion

[23] Therefore, the Court concludes that the RAD decision is unreasonable and must be quashed. The judicial review will be granted and the matter referred back to a differently constituted panel.

[24] There is no question for certification.

**JUDGMENT in IMM-1322-21**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is granted;
2. The decision of the Refugee Appeal Division is quashed and the matter is to be referred back to a differently constituted panel; and
3. There is no question for certification.

"Michael L. Phelan"

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Judge

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

**DOCKET:** IMM-1322-21

**STYLE OF CAUSE:** MORAD FATHY ABDELHAFIZ ABDALLA, SAMAH  
EZZAT MOHAMED SAADAWY, LAMAR MOURAD  
FATHY ABDELHAFIZ ABDALLA, LUJAIN  
MOURAD FATHY ABDELHAFEZ ABDALLA,  
LAMIS MOURAD FATHY ABDELHAFEZ ABDALLA  
v THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** MARCH 1, 2022

**JUDGMENT AND REASONS:** PHELAN J.

**DATED:** JUNE 3, 2022

**APPEARANCES:**

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Meenu Ahluwalia FOR THE RESPONDENT

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