

Federal Court



Cour fédérale

Date: 20220927

Docket: IMM-1970-21

Citation: 2022 FC 1348

Ottawa, Ontario, September 27, 2022

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

**SAMIR KHALIL MOHAMED SALAMA
ISLAM H H QESHTA
HALA SAMIR KHALIL MOHAMED SALAMA
HABIBA SAMIR KHALIL MOHAMED SALAMA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are a family: Samir Khalil Mohamed Salama (“Mr. Salama”) and Islam H H Qeshta (“Ms. Qeshta”) are married and have two minor children. They made a claim for refugee protection because of their fear of persecution in Egypt and the United Arab Emirates

(“UAE”) primarily on the basis of their perceived ties to the Muslim Brotherhood, their Palestinian heritage, and Mr. Salama’s birth in and connection to the North Sinai region of Egypt. Their claims for refugee protection were dismissed by the Refugee Protection Division (“RPD”). They challenged this decision by appealing it to the Refugee Appeal Division (“RAD”).

[2] The RAD denied the Applicants’ appeal. In this judicial review, the Applicants are asking that the Court send the matter back to be redetermined because they argue the decision is unreasonable on a number of grounds. I find that the determinative issue is the RAD’s failure to admit Mr. Salama’s Twitter posts as new evidence.

[3] At the RAD, the Applicants filed new evidence and argued that they had a *sur place* claim based on Mr. Salama’s political expression on social media. I agree with the Applicants that the RAD unreasonably refused to admit Mr. Salama’s Twitter posts into evidence due to credibility concerns. The RAD failed to address Mr. Salama’s affidavit that attached the Twitter posts as an exhibit and that affirmed he had created the posts. In the context of this claim, where the Applicants argued that the risk of persecution was based on a number of factors to be considered cumulatively, I find that the failure to admit the Twitter posts is sufficiently significant to require that the RAD’s decision be sent back for redetermination. It is not necessary for me to address the Applicants’ other arguments.

[4] For the reasons set out below, I grant the judicial review.

II. Background

[5] The Applicants are of Palestinian decent. Mr. Salama and the two minor children hold Egyptian citizenship. Ms. Qeshta is a stateless Palestinian, having no citizenship in any country. The RPD and the RAD found that Ms. Qeshta could obtain Egyptian citizenship through her marriage, and therefore her claim could be assessed as against Egypt. The Applicants did not challenge this determination regarding Ms. Qeshta's ability to obtain citizenship in Egypt on judicial review.

[6] The Applicants asked that the RPD and the RAD consider their fear of persecution on a cumulative basis. There were a number of factors raised that the Applicants argued put them at risk in Egypt, including: Mr. Salama's detention and interrogation in Egypt in 1992 regarding alleged ties to the Muslim Brotherhood, Mr. Salama's interrogation in the UAE in 2018, being Palestinian, Mr. Salama's birth in the North Sinai region of Egypt, and Mr. Salama's political activities on social media while in Canada opposing the Egyptian government.

[7] The RPD dismissed the Applicants' refugee claim on January 8, 2020. The Applicants appealed this refusal to the RAD. In support of their appeal to the RAD, the Applicants filed new evidence. The RAD dismissed the Applicants' appeal on March 2, 2021.

III. Issues and Standard of Review

[8] As noted above, the determinative issue in this application for judicial review is the RAD's decision to not admit Mr. Salama's Twitter posts into evidence. In reviewing the RAD's

reasons, I apply a reasonableness standard of review. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. None of the exceptions to the presumption of a reasonableness standard of review apply in this case.

IV. Analysis

[9] After the Applicants filed their Appellants' Record with the RAD, they made a request to file additional material. This additional material included Mr. Salama's Twitter posts that he made after the RPD rejected the Applicants' refugee claim and after the Applicants filed their Appellants' Record with the RAD. In deciding whether to admit this material, the RAD considered Rule 29 of the *Refugee Appeal Division Rules*, SOR 2012-257; section 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27; and the additional constraints of relevance and credibility set out by the Federal Court of Appeal in *Canada (Minister of Citizenship and Immigration) v Singh*, 2016 FCA 96 at paragraphs 38-49.

[10] The RAD did not admit Mr. Salama's Twitter posts because it had "a concern about the credibility of the document as regards its source." The RAD could not confirm on a balance of probabilities that "the Principal Appellant is the author of the posts and therefore [found] that the posts do not meet the Raza/Singh factor of credibility."

[11] In making this determination, the RAD failed to consider that Mr. Salama swore an affidavit affirming that he was the author of these Twitter posts and had attached the posts he

was seeking to admit to his affidavit. The RAD failed to address Mr. Salama's sworn testimony that he had created the posts and instead considered the issue as if the only evidence filed was the posts themselves. Mr. Salama's affidavit is clearly relevant to the issue of who authored the posts. The RAD failed to address relevant evidence that was before it and its assessment is therefore unreasonable (*Vavilov* at para 126).

[12] The Respondent argues that even if this Court found that the RAD was unreasonable in not admitting the Twitter posts, the decision as a whole is reasonable and this minor misstep is not a basis to send the decision back to be redetermined. Specifically, the Respondent argued that elsewhere in the RAD's decision, the RAD had considered, in relation to WhatsApp messages about attending a political protest, Mr. Salama's political activities in Canada as a *sur place* claim and found that as a low-profile political activist, he may be questioned upon return to Egypt but he is "unlikely to be detained or otherwise mistreated."

[13] As this is a case where the Applicants raised multiple aspects of their identity and profile that they allege put them at risk on a cumulative basis, I find the error of not admitting the Twitter posts is not "peripheral to the merits of the decision" and is "sufficiently... significant to render the decision unreasonable" (*Vavilov* at para 100). Given that the risk alleged is based on a cumulative profile, I find that the matter has to be sent back for the RAD to consider all of the Applicants' risk factors together, including Mr. Salama's activity on Twitter if the RAD decides to admit this evidence on redetermination.

[14] The application for judicial review is granted. Neither party raised a serious question of general importance for certification and I agree that none arises.

JUDGMENT IN IMM-1970-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted;
2. The decision of the RAD, dated March 2, 2021 is set aside;
3. The matter is sent back to be redetermined by a different RAD member; and
4. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1970-21

STYLE OF CAUSE: SAMIR KHALIL MOHAMED SALAMA ET AL v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: MARCH 14, 2022

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: SEPTEMBER 27, 2022

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