

Federal Court



Cour fédérale

Date: 20240612

Docket: IMM-5831-22

Citation: 2024 FC 898

Ottawa, Ontario, June 12, 2024

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

**MOHAMMED ABDALLA MOHAMMED
ABDULRAZEKH**

Applicant

And

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mohammed Abdulrazekh, fled Sudan, his country of citizenship, approximately eight years ago. He has remained in Indonesia with insecure, temporary status since that time. With the assistance of his sister-in-law in Canada, who organized a group of five Canadians and/or permanent residents to sponsor his application, Mr. Abdulrazekh applied for

permanent residence through the Convention Refugee Abroad Class or the Country of Asylum Class (“Refugee Abroad Class”). Following a video interview with Mr. Abdulrazekh, a Migration Officer in Singapore refused this application because of credibility concerns. Mr. Abdulrazekh challenges this refusal on judicial review.

[2] Mr. Abdulrazekh raises a number of arguments challenging the Officer’s credibility findings. He argues that the process was unfair because he was not able to meaningfully respond to the Officer’s credibility concerns. He also argues that the Officer relied on alleged inconsistencies in his evidence that were neither supported by the record nor material to his claim for protection.

[3] Overall, I find the Officer took an overzealous approach to finding inconsistencies in Mr. Abdulrazekh’s evidence. This overzealous search for contradiction is juxtaposed against a lack of inquiry into and analysis of the central elements of the claim, including those that did not appear to be impacted by the Officer’s credibility concerns. The result is a decision that is not transparent, intelligible or justified in relation to the claim for protection put forward by Mr. Abdulrazekh. The limited analysis and inquiry into his claim for protection have led me to conclude that the Officer’s determination is unreasonable.

[4] Based on the reasons below, I allow the application for judicial review.

II. Background to the Application

[5] Mr. Abdulrazekh is a citizen of Sudan and is a member of the Berti tribe, which he describes as a northern African tribe of dark-skinned farmers from the Darfur region. Mr. Abdulrazekh alleged that the Janjaweed, a Sudanese Arab militia group, and the Sudanese government have targeted dark-skinned farmers in Darfur because of their perceived loyalty to the Justice and Equality Movement, a rebel opposition group in Sudan.

[6] Mr. Abdulrazekh's village was attacked by the Janjaweed in February 2015. He described how in this attack his village was burned, men killed, and the livestock taken. He alleged that the Janjaweed killed two of his uncles and arrested his youngest brother, whose whereabouts remain unknown today.

[7] Mr. Abdulrazekh managed to escape the village and registered in a camp for displaced persons in the Darfur area. He alleged the camp was not safe and consequently he later moved to Khartoum. After he learned that the Janjaweed had tracked down those who had escaped from his village, Mr. Abdulrazekh fled Sudan in April 2016.

[8] In April 2016, Mr. Abdulrazekh arrived in Indonesia where he made a refugee claim with the Office of the United Nations High Commissioner for Refugees [UNHCR].

[9] Approximately five years ago, in September 2019, Mr. Abdulrazekh made an application for permanent residence as a member of the Refugee Abroad Class through the Group of Five

Sponsorship Application. This application includes a number of forms and a narrative statement about the reasons for which he is seeking Canada's protection.

[10] On April 27, 2022, Mr. Abdulrazekh attended a video interview with the Officer; Mr. Abdulrazekh was in Indonesia and the Officer in Singapore. He was not represented by counsel at the interview and responded to the Officer's questions through an interpreter.

[11] On April 28, 2022, the day after his interview, Mr. Abdulrazekh's application was refused.

III. Issues and Standard of Review

[12] Mr. Abdulrazekh raises two central issues: i) fairness concerns about the interview process; and 2) whether the Officer's credibility determinations are supported and material to the claim.

[13] On the fairness argument, the question I need to ask is whether the Officer's procedure was fair in all the circumstances (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

[14] The arguments about the Officer's credibility determinations go to the merits of the decision and therefore should be reviewed on a reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 16). In *Vavilov*, the

Supreme Court of Canada described the reasonableness standard as a deferential but nonetheless “robust form of review,” where the starting point of the analysis begins with the decision maker’s reasons (at para 13). A decision maker’s formal reasons are assessed “in light of the record and with due sensitivity to the administrative regime in which they were given” (*Vavilov* at para 103). The Court described a reasonable decision as “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). Administrative decision makers, in exercising public power, must ensure that their decisions are “justified, intelligible and transparent, not in the abstract, but to the individuals subject to it” (*Vavilov* at para 95).

IV. Analysis

A. *Officer’s Decision*

[15] Foreign nationals can be sponsored for permanent residence under a Refugee Abroad Class under two categories: the Convention Refugee Abroad Class, which involves a consideration of whether the person meets the definition of a Convention refugee under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]; and the Country of Asylum Class, which evaluates whether they “have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights” in their country of nationality and habitual residence (sections 139, 144-147 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]).

[16] The Officer found that Mr. Abdulrazekh had not established that he met the requirements under either class because “statements at the interview gave rise to concerns about [his]... overall credibility”. The Officer raised four discrepancies. Three of the four discrepancies related to the differences between the account in Mr. Abdulrazekh’s written statement provided years earlier and his interview with the Officer: i) details of the events that took place on the day of the Janjaweed’s attack on his village, including that he was taken by them and was shot in the leg while escaping later that day; ii) whether he went to the police and with whom; and iii) the number of times he was arrested. The Officer also drew a negative inference from Mr. Abdulrazekh’s failure to mention his brother’s disappearance at the outset of the interview when he was asked to provide details of why he left Sudan.

B. *Procedural Fairness*

[17] During the interview, the Officer raised the four discrepancies that they relied on to make a negative credibility determination. Each time a discrepancy was identified, the Officer asked Mr. Abdulrazekh to explain the alleged inconsistency in the evidence. At the close of the interview, the Officer reiterated that they had concerns with inconsistencies in the evidence, and asked Mr. Abdulrazekh if he had anything further he wanted to explain.

[18] Based on the interview notes and the Applicant’s affidavit filed on judicial review, I cannot find that there was a breach of procedural fairness in these circumstances. Mr. Abdulrazekh does not dispute the contents of the interview notes that indicate the Officer set out each discrepancy. He also does not dispute that he was asked to explain each discrepancy, and

given an opportunity at the end to provide any further explanations about the inconsistencies raised.

[19] Mr. Abdulrazekh argues that the opportunity to explain the identified inconsistencies was not a meaningful one because of the manner in which the Officer conducted the interview. In particular, Mr. Abdulrazekh points to instances in the notes that he argues demonstrate that he was interrupted when trying to give answers. The problem with this argument is that none of these instances involve Mr. Abdulrazekh trying to explain a discrepancy.

[20] I do not find that these interruptions impeded Mr. Abdulrazekh from meaningfully responding to the discrepancies that were clearly raised to him at the interview. However, as I explain below, these interruptions are relevant in supporting the view that the Officer's approach was overly focused on finding contradictions in the evidence, while failing to engage in the central task of grappling with key aspects of Mr. Abdulrazekh's claim for protection.

C. *Credibility Findings*

[21] Mr. Abdulrazekh argues the Officer's four credibility findings are either not supported by the evidence or immaterial to the claim. His core complaint is that the Officer overzealously sought to find contradictions in the evidence but failed to explain how the identified inconsistencies were material to whether he was in need of Canada's protection.

[22] First, I agree that the Officer's concern about Mr. Abdulrazekh not mentioning his brother's disappearance at the outset of the interview is immaterial, given that he raised his

brother's disappearance when directly asked about his brothers later in the interview and the disappearance is also set out in his written account.

[23] The Officer's question at the outset was a broad one: "Can you tell me in detail why you left your country?" In his answer, Mr. Abdulrazekh mentioned discrimination, the Janjaweed, and that his village was burned and most of the men were killed, including his two maternal uncles. The Officer then embarks on a new line of questioning, asking the name of the village, how many people lived there at the time, when the attack occurred, and so on. There is no basis to draw a negative credibility inference for not mentioning his brother's disappearance in response to the general question the Officer posed. In my view, this is an example of being overly zealous in searching for an inconsistency.

[24] The other three discrepancies or omissions (whether Mr. Abdulrazekh approached the police and when, whether he was taken by the Janjaweed before making it to the internally displaced camp, and the number of times he was arrested) may be relevant to the claim, but the Officer fails to examine the significance of the alleged discrepancies in relation to the nature of the claim Mr. Abdulrazekh made. The Officer does not explain why they determined these inconsistencies were so significant that they affected Mr. Abdulrazekh's "overall credibility" such that no other analysis of the claim was required. The relevance of an inconsistency cannot be assessed without considering it in relation to the totality of the circumstances of a particular claim. The Officer provides no analysis of the relevance of the identified inconsistencies in relation to Mr. Abdulrazekh's claim.

[25] For example, Mr. Abdulrazekh claimed that as a dark-skinned farmer from the Darfur region he would experience discrimination and violence from the Janjaweed. Did the Officer not accept this aspect of his identity? Does the Officer accept that he was a member of the Berti tribe whose village was burned by the Janjaweed in 2015? Did the Officer accept that there was discrimination against people who fit Mr. Abdulrazekh's alleged profile? None of these central issues are explored in the decision.

[26] Justice Azmudeh recently considered a similar problem also arising in the context of a credibility determination on a Refugee Abroad Class application, finding it unreasonable for the officer to fail to consider the totality of the circumstances, including the applicants' prospective risk based on their undisputed religious profile (*Ashiq v Canada (Citizenship and Immigration)*, 2024 FC 72 at paras 14, 17; see also *Isaac v Canada (Citizenship and Immigration)*, 2022 FC 940 at paras 27-28).

[27] The Officer's blanket determination that the identified inconsistencies negatively affect the "overall credibility" of the Applicant and therefore are determinative of his claim under both the Convention Refugee Abroad Class and the Country of Asylum Class is not transparent, intelligible, or justified. It is a blanket statement without justification in relation to the nature of the claim being advanced. As noted above, the Officer's lack of analysis leaves many central questions unanswered. This is unreasonable and a sufficient basis to require the application to be redetermined.

D. *General Approach to the Protection Claim*

[28] Based on the notes of the interview, the interview was not a lengthy one. Much of the interview is focused on identifying contradictions with Mr. Abdulrazekh's previous written account and his responses in the interview and then giving him an opportunity to explain the contradiction. I find the Officer's focus on identifying contradictions in the evidence impacted the nature of the interview itself.

[29] In general, new information disclosed by Mr. Abdulrazekh at the interview is not meaningfully explored except to establish that it contradicts a previous account. For example, Mr. Abdulrazekh told the Officer that he was arrested three times while his narrative stated he had been arrested once. In the midst of explaining what happened to him the second time and before he is able to speak about the third arrest, the Officer effectively ends the interview by stating: "We are going to stop soon". The Officer then immediately reiterated that there were numerous inconsistencies in Mr. Abdulrazekh's evidence, and asks whether Mr. Abdulrazekh would like to add anything to his statements before a decision is made.

[30] While I do not agree that the Applicant was foreclosed from addressing the discrepancies raised by the Officer in the interview, I find the Officer's focus on finding contradictions while not inquiring further into key aspects of the claim demonstrates a concerning disengagement with the central task of determining whether Mr. Abdulrazekh was in need of Canada's protection. This disengagement from the core task leaves me with little confidence in the reasonableness of the Officer's determination.

[31] Determining whether Mr. Abdulrazekh will be able to receive Canada's protection and resettle permanently in Canada is undoubtedly a decision of profound consequence to him. In these circumstances, there is a heightened obligation on an officer to provide responsive reasons that justify their decision to an applicant (*Vavilov* at para 133). The overarching problem is the Officer's failure to grapple with the central elements of the claim. The decision is unreasonable because it does not allow us to "understand the decision maker's reasoning on a critical point" and leaves unanswered questions that are central to determining the application (*Vavilov* at para 103).

[32] Neither party raised a question for certification and I agree none arises.

JUDGMENT in IMM-5831-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The matter is sent back to a different decision-maker for redetermination; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5831-22

STYLE OF CAUSE: MOHAMMED ABDALLA MOHAMMED
ABDULRAZEKH v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: DECEMBER 11, 2023

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: JUNE 12, 2024

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