

Federal Court



Cour fédérale

Date: 20241031

Docket: IMM-10494-23

Citation: 2024 FC 1732

Toronto, Ontario, October 31, 2024

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

SAMEH ABOUTALEB

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a July 31, 2023 decision [Decision] of the Refugee Appeal Division [RAD] that confirmed a decision of the Refugee Protection Division [RPD], rejecting the Applicant's claim for refugee protection that was made pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The Applicant argues that the RAD failed to consider his full risk profile in its analysis, that it erred by looking for evidence that did not exist, and that it made a finding that was procedurally unfair.

[3] However, for the reasons set out below, the Applicant has not satisfied me that the RAD has made the proposed errors or that there is a breach of procedural fairness. As such, the application will be dismissed.

I. **Background**

[4] The Applicant, Sameh Mohamed Kamal Aboutaleb, is a citizen of Egypt who alleges a fear of persecution and harm in Egypt due in part to a third generation blood feud involving another family from Egypt, referred to in the Decision as the “A family”.

[5] In 1999, at age 28, the Applicant alleges he fled to the United States [US] to escape harm arising from the blood feud. He stayed in the US for 18 years.

[6] In 2005, while in the US, the Applicant began a relationship with a divorced Egyptian woman, SH, who was previously married to a Christian man and the Applicant and SH had a child out of wedlock.

[7] In 2017, the Applicant and SH came to Canada with their child and sought refugee status. The Applicant claimed that he was at risk of persecution in Egypt from both the family of his common law partner SH, and from society at large, because of being a perceived apostate. He also alleged a fear of harm due to the blood feud.

[8] SH was granted refugee status based on her own claim, while the Applicant's claim was rejected by the RPD on March 9, 2023.

[9] In the Decision, the RAD dismissed the Applicant's appeal. Although the RAD found the RPD had erred, including in failing to consider the Applicant's proposed risk arising from his perceived apostasy, upon its own consideration of the evidence, it found there was insufficient evidence to support the asserted risks.

II. Issues and Standard of Review

[10] The Applicant raises the following issues on this application:

- A. Did the RAD err by failing to evaluate the Applicant's full profile when considering whether he was at risk as a perceived apostate?
- B. Did the RAD err in finding there was insufficient evidence to establish a forward facing risk of harm?
- C. Did the RAD make an erroneous credibility finding and breach procedural fairness by not giving the Applicant notice and an opportunity to respond to its concern regarding the Applicant's delay in bringing his claim in Canada?

[11] The standard of review of the merits of the Decision is reasonableness. None of the situations that would rebut the presumption that all administrative decisions are reviewable on a standard of reasonableness are present in this case: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 16-17 and 25. A reasonable decision is "based on an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker": *Vavilov* at paras 85-86; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at paras 2, 31. A decision will be reasonable

if when read as a whole and taking into account the administrative setting, it bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at paras 91-95, 99-100.

[12] For matters of procedural fairness, the standard of review is akin to correctness, whereby the Court determines whether the procedure was fair having regard to all of the circumstances. The ultimate question is whether the applicant knew the case they had to meet and had a full and fair chance to respond: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54-55.

III. Analysis

A. *Did the RAD err by failing to evaluate the Applicant's full profile when considering whether he was at risk as a perceived apostate?*

[13] The Applicant argues that the RAD ignored a part of his profile that exposed him to being persecuted as an apostate in Egypt. In particular, he asserts that the RAD erred by limiting its consideration of his profile to someone who had a child out of wedlock; rather than someone who was also continuing to live in a common law non-traditional relationship with a partner who was divorced and previously married to a Christian man and who had a child out of wedlock with that partner.

[14] The Applicant asserts that it was an error of law for the RAD to dissect his risk profile instead of considering the cumulative effect of his profile on the risk alleged: *Gorzsas v Canada (Citizenship and Immigration)*, 2009 FC 458 at paras 33-36; *Kundukhashvili v Canada (Minister of Citizenship and Immigration)*, 2022 FC 1081 and *Rodriguez Ramos v Canada (Minister of Citizenship and Immigration)*, 2022 FC 41.

[15] The Respondent does not disagree with the legal principle asserted by the Applicant and the importance of considering the Applicant's full profile, but takes issue with the Applicant's characterization of the RAD decision. It disputes the assertion that the RAD did not consider that the Applicant was in a common law relationship as part of his profile for risk assessment and that a further analysis was required.

[16] I agree that a fair reading of the Decision indicates that the RAD was alert and sensitive to the Applicant's full profile, but that the RAD did not find the Applicant's common law relationship with SH to increase his proposed risk.

[17] In the Decision, the RAD identified the arguments on appeal as including the issue of whether "the RPD erred in ignoring the [Applicant's] fear of persecution due to his relationship with his common law partner and as the father of their child born out of wedlock."

[18] In response to this issue, the RAD considered the arguments and evidence before it, which was limited to the objective evidence. The RAD reviewed the National Documentation Package [NDP] for Egypt, but found that it did not support the Applicant's claim. It refers to a report from the Australian Department of Foreign Affairs and Trade that states that while few couples live together out of wedlock in Egypt, there were "no consequences for couples who choose to do so, or who have children together".

[19] The RAD reviewed the RPD's decision relating to SH's refugee status and the fact that the RPD found SH to face a risk of persecution as a non-observant Muslim woman, who had a

prior marriage to a Christian man and a child out of wedlock. However, the RAD found that SH's claim was granted based on her own profile and circumstances, which were not the same as the individual circumstances relating to the Applicant.

[20] The RAD considered the documents in the NDP cited by the RPD in the decision regarding SH, but found that the Applicant had not established how that evidence supported his claim of persecution and upon its own review of the NDP found that it did not.

[21] As noted by the RAD, other than broadly referencing the NDP citations referred to by the RPD panel in the SH decision, the Applicant pointed to no other objective documentary evidence to support his claim.

[22] The fact that the Applicant was the father of SH's child, specifically, as well as the father of a child born out of wedlock was also not found to increase the likelihood of risk to the Applicant. As noted by the RAD, "the [Applicant's] evidence does not support that he faces a serious possibility of persecution because he had a child with SH."

[23] The Applicant argues that the RAD's analysis was limited to considering whether there were threats from SH's family, instead of considering the public at large. However, I do not agree that the Decision was so limited. As noted by the RAD, there was simply no evidence relating to how anyone else in Egypt would come to target the Applicant.

[24] The Applicant criticizes the RAD for relying on a lack of awareness by SH's family and others in Egypt as to his profile. The Applicant asserts that he should be able to live openly in Egypt (*Soos v Canada (Citizenship and Immigration)*, 2019 FC 455 at para 25) and should not be required to hide his relationship with SH and his identity as the father of an illegitimate child in order to be safe from risk. However, I do not read the RAD's reasons as suggesting this. Rather, the RAD is reasonably commenting on whether there is any evidence before it to suggest that the Applicant would be persecuted if he were returned to Egypt, but found there was none.

[25] While the RAD's analysis could have been more fulsome, I do not agree that it failed to consider the cumulative risk factors in its assessment.

[26] In my view, the Applicant has not identified a reviewable error as it relates to this first issue.

B. *Did the RAD err in finding there was insufficient evidence to establish a forward facing risk of harm?*

[27] The Applicant acknowledges that the second issue presents a higher burden as the Applicant must establish that it is more likely than not that the alleged risk of harm would occur.

[28] In its written submissions, the Applicant argued that the RAD erred in making a credibility finding and requiring the Applicant to provide corroborative evidence while not following the framework for corroborative evidence set out in *Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968 at paragraph 36. However, in oral submissions counsel for the Applicant conceded that the Decision could be read in a different way, and that

the RAD might simply be saying that there was insufficient evidence as to the well-foundedness of the Applicant's fear – *i.e.*, in other words, that the Applicant had not proven the facts necessary to establish that he would be at risk in the future. I agree that this latter interpretation is consistent with a fair reading of the Decision, particularly as highlighted in the heading used in the Decision "*Insufficient evidence to establish forward facing risk of harm, on a balance of probabilities*".

[29] In the Decision, the RAD states that there is "a paucity of evidence to support the [Applicant's] allegations that he faces risk at the hands of the A family" and that the failure of the Applicant to seek asylum sooner undermines the credibility of his claim that he fears harm in Egypt. The RAD agrees that there is credible evidence that a blood feud existed, but finds the evidence insufficient to establish a forward facing risk arising from the events that occurred three generations ago.

[30] The Applicant argues that the RAD was unreasonably looking for evidence that does not exist or that is irrelevant to his claim.

[31] In the Decision, the RAD highlights that there is no evidence that the Applicant was threatened or harmed before he left Egypt or after he left Egypt, that there is insufficient evidence that there were threats to the Applicant's grandfather or father, and no evidence of threats or harm to other family members, including the Applicant's mother, his ex-wife, his son, or stepbrothers, all of whom continued to reside in Egypt.

[32] The Applicant asserts that there would have been no reason for the A family to pursue the Applicant when he was in Egypt because his father was still alive, nor after he left Egypt as he was not in the country. He further argues that there would be no reason to threaten other family members as it was a paternal blood feud.

[33] While I agree that the RAD's comments may be unnecessarily extensive, the Applicant has not addressed the RAD's primary finding, that there was no evidence of threats or harm to the Applicant's grandfather, and insufficient evidence of any threats or harm to the Applicant's father. In my view, this was at the heart of the RAD's finding. Although the RAD goes on to comment on other family members, it explains that it does so because of the country condition evidence stating that vengeance claims may target other members of a family. I do not find the RAD's consideration of the full scope of evidence to accordingly be unreasonable.

[34] Similarly, I do not find it unreasonable for the RAD to be looking for evidence to establish that the A family had power or influence in Egypt as this was at the core of the Applicant's claim. I agree with the Respondent that this logically flows from the Applicant's claim and that the sufficiency of the evidence to establish this fact was relevant.

[35] In my view, the Applicant has not established that the RAD's analysis was unreasonable.

C. *Did the RAD make an erroneous credibility finding and breach procedural fairness by not giving the Applicant notice and opportunity to respond to its concern regarding the delay in bringing his claim in Canada?*

[36] I am also not persuaded that the RAD made a reviewable error in its credibility finding relating to the Applicant's delay in bringing his claim in Canada. As noted by the RAD, the issue of delay was not determinative, but merely supportive of the RAD's section 97 finding. As emphasized by the RAD, the "salient point" was that the Applicant "had not provided sufficient credible evidence to establish on a balance of probabilities that he ha[d] a forward facing risk of harm from the A family if he returned to Egypt."

[37] While the Applicant asserts that there is a breach of procedural fairness associated with this part of the Decision, I cannot agree.

[38] The RAD is entitled to make independent findings of credibility against an applicant where it does not ignore contradictory evidence on the record or make additional findings on issues unknown to the applicant: *Koffi v Canada (Citizenship and Immigration)*, 2016 FC 4 at para 38; *Collins v Canada (Citizenship and Immigration)*, 2024 FC 665 at para 21.

[39] In this case, the RPD raised concern with the Applicant's delay in leaving for Canada in its decision under its credibility analysis relating to the Applicant's failure to file for asylum in the US. Specifically, at paragraph 39 of its decision, the RPD stated that "[c]onsidering that the claimant did not make his way to Canada until such time as the American immigration authorities had caught up with him, I find his behaviour is inconsistent with that of someone who fears for their life". This is consistent with the RAD's observation in the Decision.

[40] The Applicant has not established that this is a new issue invoking a breach of procedural fairness.

[41] For all of these reasons, the application is dismissed.

[42] There was no question for certification proposed by the parties and I agree none arises in this case.

JUDGMENT IN IMM-10494-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

"Angela Furlanetto"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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