

Federal Court



Cour fédérale

Date: 20250414

Docket: IMM-1246-21

Citation: 2025 FC 690

Ottawa, Ontario, April 14, 2025

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

**AYA AHMED LOTFY ABDELWAHAB ELATTAR
MARIAM MOHAMED ABDELGHAFFAR FARID ABDELGHAFFAR
MALEEKA MOHAMED ABDELGHAFFAR FARID ABDELGHAFFAR**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of a decision of the Refugee Appeal Division (“RAD”) dated January 27, 2021, in which the RAD confirmed the decision of the Refugee Protection Division (“RPD”) that the Applicants are neither Convention refugees nor persons in

need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”).

[2] The Applicants submit the RAD’s decision is unreasonable and procedurally unfair. The Applicants assert that the RAD erred by dismissing their new evidence, declining to hold an oral hearing, and making unreasonable negative credibility determinations.

[3] For the following reasons, I disagree. This application for judicial review is dismissed.

II. **Background**

[4] The Applicants are citizens of Egypt. The Principal Applicant, Aya Ahmed Lotfy Abdelwahab Elattar, is the mother of the two Minor Applicants, Mariam Mohamed Abdelghaffar Farid Abdelghaffar and Maleeka Mohamed Abdelghaffar Farid Abdelghaffar.

[5] The Applicants allege that the Principal Applicant’s cousin, a national security agent in Egypt, accused the Principal Applicant and her husband of being supporters of the Muslim Brotherhood after the Principal Applicant refused to marry him.

[6] From approximately 2009 to 2018, the Applicants resided with the Principal Applicant’s husband in the United Arab Emirates. They visited Egypt each year for three or four weeks at a time.

[7] During these visits, the Principal Applicant and her husband were questioned at the airport by Egyptian authorities. The Applicants state that their parents' homes were searched by the police.

[8] While visiting Egypt in 2018, the Applicants report being accosted by the Principal Applicant's cousin. The Principal Applicant filed a police report against her cousin "for harassing, assaulting, and threatening to harm [her] and [her] daughters."

[9] The Applicants travelled to Canada in 2018 and submitted claims for refugee protection. The Principal Applicant's husband travelled to Canada shortly afterwards via the United States.

[10] The Applicants and the Principal Applicant's husband applied for refugee protection as a family. On November 21, 2019, the RPD refused their claims. The determinative issue was credibility.

[11] The Applicants appealed the decision to the RAD. Due to the Safe Third Country Agreement, the Principal Applicant's husband could not be a party to the appeal. Consequently, only the Principal Applicant's and two Minor Applicants' claims were considered by the RAD.

[12] During the appeal process, the Applicants retained new counsel who filed a supplementary record with new evidence that their former counsel had failed to provide to the RAD. This evidence included a new translation of the police report filed by the Principal Applicant against her cousin (the "New Translation"), an email and letter from the father of the Principal Applicant's husband (the "Father's Letter"), and a public prosecution record charging

the Principal Applicant's husband with joining the Muslim Brotherhood (the "Prosecution Record").

[13] On January 27, 2021, the RAD confirmed the decision of the RPD. The RAD declined to admit the Father's Letter and Prosecution Record, finding that this evidence was not credible and could have been provided to the RPD. Although the RAD admitted the New Translation, it determined that this evidence did not engage subsection 110(6) of the IRPA and therefore declined to hold an oral hearing. The RAD agreed with the RPD that the Applicants failed to establish risk upon removal to Egypt, impugning the Applicants' credibility with respect to their alleged membership in the Muslim Brotherhood, their detention by Egyptian authorities, and the incident with the Principal Applicant's cousin in 2018. This is the decision that is presently under review.

III. **Issues and Standard of Review**

[14] The two issues in this application for judicial review are whether the RAD's decision is reasonable and was rendered in a procedurally fair manner.

[15] The parties submit that the applicable standard of review for the merits of the Officer's decision is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 25, 86-87 ("Vavilov")). I agree.

[16] The issue of procedural fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada*

(*Attorney General*), 2018 FCA 69 at paras 37-56 (“*Canadian Pacific Railway Company*”); *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). I find that this conclusion accords with the Supreme Court of Canada’s decision in *Vavilov* (at paras 16-17).

[17] 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).

[18] For a decision to be unreasonable, the applicant must establish 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).

[19] Correctness, by contrast, is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and*

Immigration), 1999 CanLII 699 (SCC), [1999] 2 SCR 817 (at paras 21-28; see also *Canadian Pacific Railway Company* at para 54).

IV. Analysis

[20] The Applicants submit that the RAD infringed their procedural rights and rendered a decision that is unreasonable. According to the Applicants, the RAD erred by not accepting the Father's Letter and Prosecution Record and breached its duty of procedural fairness by failing to hold an oral hearing with respect to the New Translation. The Applicants further assert that the RAD's negative credibility determinations were unreasonable and not supported by the evidence.

[21] The Respondent submits that the RAD's decision is reasonable and procedurally fair. The Respondent asserts that the RAD reasonably refused to admit the Father's Letter and Prosecution Record and that the New Translation did not require an oral hearing pursuant to subsection 110(6) of the IRPA. The Respondent submits that the RAD reasonably impugned the Applicants' credibility, as the evidence for their allegations was inconsistent and contradictory.

[22] I agree with the Respondent.

[23] The RAD did not err by declining to admit the Father's Letter. I agree with the Respondent that the Applicants could "reasonably have been expected...to have presented" this document "at the time of the rejection" (IRPA, s 110(4)). The Father's Letter states that the public prosecution department was searching for the Principal Applicant's husband in June 2020, as he was "wanted in relation to a case." However, the letter also states that an incident of the

same “subject matter” had previously arisen in October 2019, that the Principal Applicant’s husband knew that his father was “humiliated” in the incident, and that “the issue has been going on for some time.” The Applicants submit that they became aware of the case against the Principal Applicant’s husband following the RPD decision. The evidence for this assertion is a sworn statement from the Principal Applicant’s husband stating that, after meeting with his former counsel in December 2019, he “learned that [his] father had been harassed, targeted and abused by Egyptian police inquiring about [his] whereabouts and [his] ties to the Muslim Brotherhood.” It is not clear that this statement concerns the October 2019 incident or the ongoing prosecution against the Principal Applicant’s husband. Consequently, the RAD reasonably determined that “there is no proof of when the Principal [Applicant]’s husband found out about the October 2019 allegations” or “why his father would wait more than a month to tell him about the visit.” No reviewable error arises from the RAD’s finding that the Applicants could “reasonably have been expected...to have presented” the Father’s Letter prior to the RPD Decision in November 2019 (IRPA, s 110(4)).

[24] As a result, I agree with the Respondent that the RAD reasonably refused to admit the Prosecution Record. The Father’s Letter indicates that the Applicants knew or reasonably could have known about the proceedings against the Principal Applicant’s husband in October 2019. The Applicants allege that they received the Prosecution Record several months later on June 27, 2020, shortly before submitting their supplementary record to the RAD. As held by my colleague Justice Rochester in *Malik v Canada (Citizenship and Immigration)*, 2022 FC 1097, “the RAD can reasonably regard...evidence as dubious” if “the timing of events” amounts to “an extraordinary coincidence that is suspiciously convenient” (at para 26; see also *Morales v*

Canada (Citizenship and Immigration), 2024 FC 133 at para 18). Given the timeline alleged by the Applicants, the RAD did not err by refusing to admit the Prosecution Record.

[25] The RAD similarly did not err by refusing to hold an oral hearing with respect to the New Translation. The Applicants provided this document to correct an error in the original translation provided to the RPD, which stated that the Principal Applicant undertook to follow up with the police after reporting the incident with her cousin. The New Translation indicates that the Principal Applicant simply said she will “take the necessary legal action so that [her cousin] will refrain from harassing [her], [her] husband and [her] daughters.” However, the RAD’s written reasons are clear that “the [Principal Applicant]’s failure to follow-up with police is not...particularly material to the credibility of whether or not she was threatened by her cousin... Unlike the RPD, [the RAD] ma[d]e no adverse finding from this fact alone.” Instead, the RAD disbelieved the Principal Applicant due to her failure to mention to the police that her cousin had attempted to strangle her daughter during the incident in 2018. Although the police report “raise[d] a serious issue with respect to the credibility” of the Applicants, the New Translation was not material to these findings (IRPA, s 110(6)(a)). As a result, subsection 110(6) of the IRPA was not engaged. The RAD’s refusal to hold an oral hearing did not constitute a breach of the Applicants’ procedural rights.

[26] Furthermore, I find the RAD’s negative credibility determinations concerning the Applicants’ suspected membership in the Muslim Brotherhood to be reasonable. The Applicants made lengthy trips to Egypt each year from 2009 to 2018. Although the Principal Applicant reports being questioned at the airport, she stated that she was released following each instance. The Applicants provided evidence from the Principal Applicant’s husband that airport officials

confiscated his documents in 2015 and interrogated him in 2016 and 2017. However, these incidents are not mentioned in his original Basis of Claim. There is also no mention of any detentions in his Schedule A form. The Principal Applicant's husband stated to the RPD that he simply misinterpreted the question in the Schedule A Form and did not understand that his experiences at the airport amounted to detention. The transcript of this exchange was before the RAD and was quoted verbatim in the refusal decision. The RAD also quoted from the Principal Applicant's testimony concerning the alleged searches at the Applicants' family's homes in Egypt. Based on this evidence, the RAD rightly observed that the Principal Applicant's own evidence was that these searches were related to her father, not herself. Given the inconsistencies in the Applicants' evidence, I do not find that the RAD's negative credibility determinations on this point were opaque, unintelligible, or not justified (*Vavilov* at para 85).

[27] The RAD's negative credibility determinations concerning the risk from the Principal Applicant's cousin are also free of reviewable error. The Principal Applicant failed to mention to the police that her cousin attempted to strangle her daughter during the incident in 2018. This was a significant omission. The RAD did not err by impugning the Applicants' credibility on this basis.

V. **Conclusion**

[28] This application for judicial review is dismissed. The RAD's decision is justified in light of the record and does not infringe the Applicants' procedural rights (*Vavilov* at para 126).

JUDGMENT in IMM-1246-21

THIS COURT’S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question to certify.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1246-21

STYLE OF CAUSE: AYA AHMED LOTFY ABDELWAHAB ELATTAR,
MARIAM MOHAMED ABDELGHAFFAR FARID
ABDELGHAFFAR AND MALEEKA MOHAMED
ABDELGHAFFAR FARID ABDELGHAFFAR v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: MARCH 19, 2025

JUDGMENT AND REASONS: AHMED J.

DATED: APRIL 14, 2025

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