

Immigration and
Refugee Board of Canada

Refugee Appeal Division



Commission de l'immigration
et du statut de réfugié du Canada

Section d'appel des réfugiés

N° de dossier de la SAR/RAD File No.: MB3-03199

Huis clos/Private Proceeding

Motifs et décision - Reasons and Decision

Appelant	XXXXX XXXXXXXXXXXXX	Appellant
Appel instruit à	Montréal, Québec	Appeal considered at
Date de la décision	January 6, 2014	Date of Decision
Tribunal	Stephen J. Gallagher	Panel
Conseil(s) de l'appelant	M ^e Keith Mcmillan	Counsel for the Appellant
Représentant(e)(s) désigné(e)(s)	N/A	Designated Representative(s)
Conseil du (de la) Ministre	N/A	Counsel for the Minister

2014 CanLII 19385 (CA IRB)

REASONS AND DECISION

[1] Mr. XXXXX XXXXX is appealing a decision of the Refugee Protection Division (RPD) rejecting his claim for refugee protection. The Appellant has presented new evidence and has requested an oral hearing.

I. DETERMINATION OF THE APPEAL

[2] Pursuant to ss. 111(1)(a) of IRPA, the RAD confirms the determination of the RPD, namely, that Mr. XXXXX is neither a “Convention Refugee” pursuant to s. 96 of IRPA nor a “person in need of protection” pursuant to s. 97 of IRPA.

II. BACKGROUND

[3] The Appellant, who is a citizen of Egypt and XXXX XXXXXXX XXXXX, arrived in Canada XXXXX XXXXX XXXXX on XXXXX, 2013. The Appellant “jumped ship” and later that day was detained by officers of the CBSA.

[4] The Appellant soon learned of his right to make a refugee claim. The Appellant alleges in his RPD claim that he had been assaulted by five individuals the identity of which he does not know although they are understood to be “gangsters”. The Appellant alleges that he was stabbed in XXXXX 2011 and required hospitalization. The Appellant alleges that these individuals now seek him out because he saw them without masks. These men have allegedly visited the residence of his family to find him.

[5] The RPD heard the Appellant’s refugee claim and in a decision dated August 14, 2013, denied the claim. Mr. XXXXX appealed the RPD decision in September 2013.

III. SUBMISSIONS

[6] The Appellant begins by stating that he accepts the judgment of the RPD with respect to his claim under Section 97 (Memorandum of Appeal, Paragraph 4). The Appellant goes on to argue that since this decision was rendered there has been a change of situation in Egypt such that

the Appellant is now at risk (*sur place* claim) given the imposition of martial law by the Egyptian military. The effect of this coup is that the existing regime structure has been suspended and the then existing government, led by President Mohamad Morsi, was ousted. President Morsi is himself now under arrest and the Appellant argues that there is an “inability of the government to protect civilians from the current chaos” (Memorandum of Appeal, Paragraph 11). In addition, given that the Appellant is a Muslim, he should be granted protection under Section 96 of the refugee convention because Egypt is “currently a country which is currently persecuting Muslims because of perceived association with the Muslim brotherhood” (Memorandum of Appeal, Paragraph 18).

[7] The Appellant argues that this appeal should be allowed, which would mean that the Appellant would be recognized as requiring Canada’s protection under Section 96 of IRPA. The Appellant argues that given the evidence provided, a hearing may be necessary to fully analyze the possibilities related to the fact that the Appellant is a Muslim and Muslims are currently at risk in Egypt.

IV. STANDARD OF REVIEW

[8] I conclude that an analysis of the RPD’s decision involves an analysis of issues of fact and mixed fact and law and I conclude that such issues attract a deferential standard of review, which is “reasonableness”. This is because, as noted below, this appeal does not qualify for a hearing and the RPD held a hearing and directly questioned Mr. XXXXX. The RPD also directly reviewed the evidence in a hearing setting to reach its conclusion. My objective is therefore to review the RPD decision for reasonableness which is defined in the jurisprudence as the “existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law”. This understanding flows from *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190.

V. ANALYSIS

Issue 1: Should the RAD accept the new evidence and/or grant an Oral Hearing in this appeal?

[9] The Appellant is suggesting that the “new” evidence it has included in its appeal is meant to show that the Appellant is at risk of persecution if he returns to Egypt because he is a Muslim male. These documents are identified by the Appellant as R1-R9 (Appellant’s Record, pp. 13-50). I conclude based on Section 110(4) that this evidence meets a first threshold in that it dates from after the time when the RPD rejected the claim. I conclude, however, that whether this evidence should be admitted must also be evaluated using the various tests found in *Raza*¹ which is a Federal Court of Appeal case assessing the admission of evidence in Pre-removal Risk Assessment (PRRA) claims. This is because being new the RAD is without judicial guidance in the area of accepting evidence and there are parallels in the legislative wording of the acceptance of evidence in a RAD appeal and to a PRRA claim.

[10] Using *Raza*, the admission of this evidence is dependent on whether it meets the criteria of credibility, newness, relevance and materiality. In this case, I must conclude that this evidence does not address the determinative issue. This is: if the Appellant were to return to Egypt, would the Appellant be viewed as an individual who would be perceived as a Morsi government supporter, or an Islamists/militant? Such a perception, if it were held by state authorities or those opposed to the Morsi government, could put the Appellant at risk of persecution if he were to return to Egypt.

[11] According to the Appellant, the documentation states that: “...Muslims are at risk of persecution in Egypt, due to rising anti-Islam sentiments” (Memorandum, Paragraph 7). I must conclude that the Appellant’s profile is that of a Muslim male and in the documentation provided by the Appellant, I can see little if anything which suggests that Muslim males in general are at risk because they are male and Muslim.

¹ *Raza, Syed Masood Raza v. Minister of Citizenship and Immigration and Minister of Public Safety and Preparedness* 2007 FCA 385.

[12] Specifically the documentation does not state or imply that all Muslims or all male Muslims are being targeted by state authorities. The specific content of the documentation relates to a crackdown on supporters of the government and militant Islam in general and the Muslim Brotherhood in particular. I would also note the fact that Islam is the state religion of Egypt and this status is not in question. I note that approximately 90 of the population of Egypt is Muslim and with respect to a general state of chaos, the thrust of the material available appears to be that the military has established order albeit at the price of the suspension of those allegedly democratically based legislative and executive authorities that were in place until July 3, 2013.

[13] With respect to any risk from the ‘chaos’ associated with the coup, my conclusion is that there is a generalized risk faced by all citizens of Egypt who might find themselves caught in the crossfire between the military and those opposed to the ouster of the Morsi government. Although the Appellant might be faced with such a risk to his safety should he return to Egypt, jurisprudence would suggest that such a risk does not engage Canada’s protection responsibility.²

[14] With respect to the Appellant’s alleged risk of being persecuted, it is certainly the case that there is currently a state of civil war in Egypt between the majority population, which appears to have supported the ouster of the Muslim Brotherhood by the military, and those associated with a militant Islam “alliance” and especially the Muslim Brotherhood. These militant Islamist forces and “government loyalists” are associated with and identified at various points in the Appellant’s Documentation (Exhibit R-1 to R-9, Appellant’s Record, pp. 15-50) as the Muslim Brotherhood, Islamist militias, Al-Qaeda, and the Tamarod movement (“rebels”). These groups and individuals are accused by the new Egyptian “acting” or “provisional” government of being “terrorists” and/or “criminals” (Appellant’s Record, pp. 15-16).

[15] I must conclude this evidence cannot be accepted because it is not “new” as understood in the legislation because, using the *Raza* criteria, because this evidence is not “relevant” and by extension is not material in the sense that it does not address the determinative issue noted above

² *Prophète, Ralph v. M.C.I.* (F.C.A., no. A-168-08), Létourneau, Blais, Trudel, February 4, 2009, FCA 31.

which is the perception of the Appellant by state authorities. I also conclude that the request for an oral hearing must be denied because new evidence is required to engage an oral hearing.³

Issue 2: Should the Appellant be granted protection under Section 96 because he is a Muslim male?

[16] Ultimately, the core logic of the appeal is that being male and a Muslim is sufficient to meet the burden of a serious possibility of persecution if the Appellant were to return to Egypt. I view this as pure speculation. I see no evidence in the provided documentation of the file that this risk profile as identified by the Appellant is in fact a legitimate or an objective risk profile. In fact, the profile of an individual who is at risk of persecution is someone with some connection with the former government of President Morsi or those who oppose his ouster especially those associated with militant Islam and the Muslim Brotherhood.

[17] The Appellant argues at one point that “a hearing should be convened so as to conduct a full s.96 analysis based on recent developments in his country of origin” (Memorandum of Appeal, Paragraph 19). I conclude that it is not the role of the RAD to undertake a hearing in order to explore the possibility that a risk to the Appellant might exist. I note that there is ample evidence provided in testimony and documentation examined by the RPD. This material is relevant to an analysis of the contemporary risk faced by the Appellant because it addresses the Appellant’s political activities and illuminates the Appellant’s values and beliefs.

[18] If there were some additional material that is relevant, the Appellant has a responsibility (Rule 3(3)iii) to specifically identify evidence that supports the arguments in the Memorandum of Appeal. In this case, there is nothing in the Memorandum of Appeal that identifies evidence or provides guidance to the RAD in support of the core allegation that a Muslim male is at risk of persecution in Egypt because that individual has a profile of being a male and Muslim. There is also nothing here which establishes or even implies that the Appellant might be viewed by Egyptian authorities as a government supporter or militant Islamist.

³ *Immigration and Refugee Protection Act*, Section 110(3) and 110(6).

[19] I must conclude, as noted above, this appeal stands or falls (determinative issue) on whether the Appellant can, in some way, be associated or be perceived as being associated with the Morsi government or militant Islam. This is because it is clear that militant Islamists are a target of the military and police in contemporary Egypt. Such a connection must be found somewhere in the existing record.

[20] After reviewing the record, I can find little if anything that is pertinent to this determinative issue. For example, there is no mention of the Appellant being involved in political activity or a member of any association in any of the Port of Entry Documentation (POE) or in the BOC. There is also no suggestion or implication that the Appellant might be perceived as a government supporter or a militant Islamist.

[21] In fact, in the notes taken at the border by a CBSA official, the Appellant states, “He has never been a part of any political group” (RPD Record, p. 249). Even the fact that the Appellant has chosen the period when President Morsi was in charge to come to Canada to escape the “political situation” implies that the Appellant has no stake or role in President Morsi’s efforts to move Egypt towards a more religious or sectarian political community. Such an interpretation is reinforced by the Appellant’s answer to Question 2(h) in the (March 13, 2013) BOC that asserts that, “The Government is not helping the Public/People”.

[22] Overall, in terms of the logic of the RPD decision coupled with the evidence surveyed, I conclude that the RPD’s logic and attendant decision “falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law”. In addition, I also find that the Appellant has not sustained an argument that there is a serious possibility of persecution or a risk to his safety as understood in Section 97 given the overthrow of the Morsi government and recent events in Egypt (*sur place* argument).

V. REMEDIES

[23] For all these reasons, I confirm the determination of the RPD, namely, that **Mr. XXXXX** XXXXX is neither a “Convention refugee” nor a “person in need of protection”. Therefore, the appeal is denied.

Stephen J. Gallagher

Stephen J. Gallagher

January 6, 2014

Date

/kp/or