Federal Court  Cour fédérale

Date: 20170320

Docket: IMM-5590-15

Citation: 2017 FC 292

Ottawa, Ontario, March 20, 2017

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

SAID ABDUKADIR FARAH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision by Citizenship and Immigration Canada [CIC], dated December 10, 2015, finding that the Applicant's claim for refugee protection is not eligible to be referred to the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada and making an Exclusion Order against him. This ineligibility determination was made pursuant to s. 101(1)(d) of the *Immigration and Refugee*

Protection Act, SC 2001, c 27 [IRPA], due to the Applicant's recognition as a Convention refugee in Uganda. The Applicant seeks an Order setting aside the Exclusion Order and determination of ineligibility, and sending his refugee claim back for redetermination.

[2] As explained in greater detail below, this application is dismissed, because I have found that CIC did not err in interpreting and applying s. 101(1)(d) of IRPA, determining that the Applicant is not eligible to be referred to the RPD notwithstanding his assertion that he fears persecution in the country which granted him refugee status.

II. Background

[3] The Applicant, Said Abdukadir Farah, is a 34 year old citizen of Somalia and a Sufi Muslim. Mr. Farah fled to Uganda with his wife in 2008 due to fear of Al Shabaab, and he and his wife were recognized as Convention refugees in Uganda in 2010.

[4] Mr. Farah claims that he spoke out against Al Shabaab in the Somali community in Uganda and that in 2014 he began to receive threatening phone calls. He approached the Ugandan police three times, but received no protection. He also claims that he made efforts to relocate to northern Uganda but was unable to rent accommodation due to discrimination against Somalis in Uganda. Mr. Farah felt unsafe in Uganda and left in May 2015, arriving in Canada in October 2015 and claiming refugee protection in November 2015.

[5] Mr. Farah presented a valid Ugandan refugee travel document with his refugee claim in Canada. His claim has not been determined by the RPD, because he was found to be ineligible

under s. 101(1)(d) of IRPA based on his status as a Convention refugee in Uganda. Mr. Farah submitted a Pre-Removal Risk Assessment [PRRA] application, but his application was rejected the week prior to the hearing of this judicial review application. At the hearing, Mr. Farah provided the Court with a copy of the negative PRRA decision.

III. Legislation

[6] The full text of s. 101(1) of IRPA, including s. 101(1)(d) to which this application relates, is as follows:

Ineligibility	**Irrecevabilité**
101 (1) A claim is ineligible to be referred to the Refugee Protection Division if	**101 (1)** La demande est irrecevable dans les cas suivants:
(a) refugee protection has been conferred on the claimant under this Act;	a) l'asile a été conféré au demandeur au titre de la présente loi;
(b) a claim for refugee protection by the claimant has been rejected by the Board;	b) rejet antérieur de la demande d'asile par la Commission;
(c) a prior claim by the claimant was determined to be ineligible to be referred to the Refugee Protection Division, or to have been withdrawn or abandoned;	c) décision prononçant l'irrecevabilité, le désistement ou le retrait d'une demande antérieure;
(d) the claimant has been recognized as	d) reconnaissance de la qualité de réfugié par

a Convention refugee by a country other than Canada and can be sent or returned to that country;	un pays vers lequel il peut être renvoyé;
(e) the claimant came directly or indirectly to Canada from a country designated by the regulations, other than a country of their nationality or their former habitual residence; or	e) arrivée, directement ou indirectement, d'un pays désigné par règlement autre que celui dont il a la nationalité ou dans lequel il avait sa résidence habituelle;
(f) the claimant has been determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, except for persons who are inadmissible solely on the grounds of paragraph 35(1)(c).	f) prononcé d'interdiction de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux — exception faite des personnes interdites de territoire au seul titre de l'alinéa 35(1)c) —, grande criminalité ou criminalité organisée.
(Emphasis added)	(Soulignement ajouté)

IV. Issue

[7] Mr. Farah submits that the sole issue to be decided by the Court is whether, as a matter of statutory interpretation, ineligibility under s. 101(1)(d) of IRPA applies to claimants who are making a refugee claim against the country that has recognized them as refugees.

V. Standard of Review

[8] Mr. Farah submits that, as the sole issue raised in this application is an issue of law, surrounding statutory interpretation, a standard of correctness applies. He relies on *Wangden v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1230 [*Wangden*], upheld 2009 FCA 344, and *Canada (Minister of Citizenship and Immigration) v Tobar Toledo*, 2013 FCA 226 [*Tobar Toledo*].

[9] The Respondent takes the position that the Court should apply the standard of reasonableness, because the determination being reviewed by the Court is either a question of fact or one of interpretation of the decision-maker's home statute (see *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*]; *Wangden*, at paras 14-17; *Gaspard v Canada (Minister of Citizenship and Immigration)*, 2010 FC 29, at para 14).

[10] The decision the Court is reviewing involves the interpretation of s. 101(1)(d) of IRPA. The authorities upon which Mr. Farah relies support his position on standard of review. In *Wangden*, at paragraph 18, Justice Mosley held that the interpretation of s. 101(1)(d) of IRPA ought to be reviewed on a standard of correctness. In *Tobar Toledo*, at paragraphs 45-48, the Federal Court of Appeal considered s. 101(1)(b) of IRPA, which makes a claim ineligible to be referred to the RPD if a claim for refugee protection by the claimant has been rejected by the Immigration and Refugee Board, and held that the findings of law reached by the border services officer in the context of that section were reviewable on the standard of correctness.

[11] On the other hand, *Dunsmuir*, at paragraphs 68-71, provides strong support for the application of the standard of reasonableness, as this is a matter of interpretation of CIC's enabling legislation. The Federal Court of Appeal in *Canada (Minister of Citizenship and Immigration) v Huruglica*, 2016 FCA 93, at paragraph 30, has recently reiterated the presumption that reasonableness applies to all questions of law arising from the interpretation of an administrative body's home statute. Mr. Farah's arguments in the present case relate to the effect of the Refugee Convention and the *Canadian Charter of Rights and Freedoms* [*Charter*] as tools of statutory interpretation. I am therefore also conscious of recent jurisprudence to the effect that the interpretation of the Refugee Convention does not fall into one of the categories of questions to which the correctness standard continues to apply (*Majebi v. Canada (Minister of Citizenship and Immigration)*, 2016 FCA 274, at para 5) and which favours the reasonableness standard in the application of the *Charter* other than in the context of an argument of constitutional invalidity (see *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12).

[12] Overall, I consider the direction of the recent jurisprudence to favour the application of the reasonableness standard to the issue in the present case. However, my conclusion on the issue of statutory interpretation in this case is not based on any particular deference to the impugned decision, as CIC's adoption and application of the interpretation challenged by Mr. Farah is implicit in the decision, without any express analysis of the issue. It is unnecessary for me to reach a definitive conclusion on the standard of review, as I would find in favour of the Respondent whether applying a standard of reasonableness or correctness in considering CIC's interpretation and application of s. 101(1)(d).

VI. Analysis

[13] Mr. Farah's arguments turn on the meaning of the term "can be sent or returned" in s. 101(1)(d) of IRPA, which term he argues is ambiguous. He submits that it could refer to whether he can be legally admitted to the country of refuge, Uganda. This is the interpretation upon which the impugned decision is implicitly based. However, he argues that this term could alternatively refer to whether Canada can legally send him to Uganda, taking into account Canada's obligations under the Refugee Convention and the *Charter*. This is the interpretation that Mr. Farah urges the Court to adopt.

[14] Mr. Farah submits that CIC erred in adopting the interpretation which considered whether he could physically and legally be re-admitted to Uganda. He acknowledges that this interpretation is consistent with the existing jurisprudence on this issue. In *Kaberuka v Canada (Minister of Employment and Immigration)*, [1995] 3 FC 252, [*Kaberuka*], the Federal Court considered s. 46.01(1)(a) of the *Immigration Act*, RSC 1985, c I-2 [*Immigration Act*], which was the predecessor provision to s. 101(1)(d) of IRPA and stated as follows :

46.01(1) A person who claims to be a Convention refugee is not eligible to have the claim determined by the Refugee Division if the person	**46.01(1)** La revendication de statut n'est pas recevable par la section du statut di l'intéressé se trouve dans l'une ou l'autre des situations suivantes :
(a) has been recognized as a Convention refugee by a country other than Canada, that is a country to which the person can be returned;	a) il s'est déjà vu reconnaître le statut de réfugié au sens de la Convention par un autre pays dans lequel il peut être renvoyé ;

[15] At pages 269-270 of *Kaberuka*, the Federal Court noted that *An Act to amend the Immigration Act and other Acts in consequence thereof,* S.C. 1992, c. 49, s. 36.(1) repealed the previous version of s. 46.01(2) of the *Immigration Act*, which had permitted those with Convention refugee status elsewhere to make Convention refugee claims against their countries of asylum. The Court concluded that this indicated Parliament had chosen to exclude persons recognized as Convention refugees by another country from claiming a well-founded fear of persecution by their country of asylum.

[16] Mr. Farah also notes that this analysis was followed in *Jekula v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 266 [*Jekula*] (affirmed by the Federal Court of Appeal, without reasons, at [2000] FCJ No. 1956). Again relying on the repeal of the previous s. 46.01(2) of the *Immigration Act*, the Court in *Jekula* held at paragraph 44 that the words "can be returned" in s. 46.01(1) did not require an immigration officer to determine whether the claimant had a well-founded fear of persecution in the country that has already granted asylum.

[17] However, Mr. Farah argues that this interpretation is outdated and that the meaning of the language "can be sent or returned", employed in s.101(1)(d) of IRPA, has not yet been considered by the courts. He submits that this language is ambiguous and must be interpreted so as to comply with the purpose of IRPA, *Charter* rights, and Canada's international human rights obligations. Mr. Farah relies on *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42, *R v Hape*, 2007 SCC 26, *Canadian Doctors for Refugee Care v Canada (Attorney General)*, 2014 FC 651, at para 444, and *Health Services and Support – Facilities Subsector Bargaining Association v British Columbia*, 2007 SCC 27 for these interpretive principles, which authorities

he notes post-date the decisions in *Kaberuka* and *Jekula*. He refers in particular to *Wangden*, in which the Court, in interpreting s.101(1)(d), relied on s. 3(2)(a) of IRPA, which provides that one of the statute's main objectives with respect to refugees is "to recognize that the refugee program is in the first instance about saving lives and offering protection to the displaced and persecuted". Mr. Farah also notes *Wangden*'s approval of the argument that the Refugee Convention and IRPA should be interpreted to prevent asylum shopping, but he argues that this concern does not arise in the present case where he asserts a genuine fear of return to his country of asylum.

[18] Having considered Mr. Farah's written and oral submissions, I find no basis for a conclusion that CIC erred in adopting the interpretation of s.101(1)(d) which conforms with the past jurisprudence and pursuant to which Mr. Farah was determined ineligible to have his claim referred to the RPD due to his refugee status in Uganda.

[19] I find no difference of substance in the language of s. 101(1)(d) of IRPA, "can be sent or returned to that country", when compared with the relevant language in the predecessor s. 46.01(1)(a) of *Immigration Act*, "a country to which the person can be returned", which would justify departure from the analysis and interpretation provided in *Kaberuka* and *Jekula*. Moreover, regardless of whether one might consider the word "can" to be ambiguous and capable of the two different interpretations identified by Mr. Farah, there is no more ambiguity in the use of that word in s. 101(1)(d) of IRPA than there was in s. 46.01(1)(a).

[20] I also disagree that current principles of statutory interpretation, applied to s. 101(1)(d), justify a departure from the interpretation provided in *Kaberuka* and *Jekula*. I accept Mr. Farah's

position that both Canada's obligations under the Refugee Convention and *Charter* values can have a role in interpretation of IRPA, and that the interpretation exercise must take into account the purpose of the legalisation as a whole. However, following consideration of the applicable jurisprudence, I do not find these principles to support the interpretation that Mr. Farah advocates.

[21] First, I note that Justice Heald's decision in *Kaberuka* demonstrates that, at least to some extent, these principles were taken into account in the course of the analysis in that case. In *Kaberuka*, the decision under judicial review was a determination by an immigration officer that the applicant's removal from Canada was not prohibited under s. 53(1) of the *Immigration Act*, because the applicant would not face a threat to his life or freedom if he were removed from Canada. That decision followed a determination, pursuant to s. 46.01(1)(a), that the applicant was ineligible to make a Convention refugee claim. The operative language in s. 53(1) is reproduced at paragraph 8 of the decision as follows:

53(1) Notwithstanding subsections 52(2) and (3), no person who is determined under this Act or the regulations to be a Convention refugee, nor any person who has been determined to be not eligible to have a claim to be a Convention refugee determined by the Refugee Division on the basis that the person is a person described in paragraph 46.01(1)(a), shall be removed from Canada to a country where the person's life or freedom would be threatened for reasons of race, religion, nationality,	**53(1)** Par dérogation aux paragraphes 52(2) et (3), la personne à qui le statut de réfugié au sens de la Convention a été reconnu aux termes de la présente loi ou des règlements, ou dont la revendication a été jugée irrecevable en application de l'alinéa 46.01(1)a), ne peut être renvoyée dans un pays où sa vie ou sa liberté seraient menacées du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques, sauf si elle appartient à l'une des

membership in a particular social group or political opinion unless…	catégories non admissibles visées…

[22] The Court's interpretation of s. 46.01(1)(a), as excluding persons recognized as Convention refugees by another country from claiming fear of persecution by their country of asylum, formed part of a broader analysis as to whether s. 46.01(1)(a) and s. 53(1), individually or in combination, were consistent with sections 7, 12 and 15 of the *Charter*. As such, *Charter* values were taken into account in the analysis of the operation of this legislative scheme.

[23] The Court's analysis also considered, at paragraphs 18 to 19, Canada's obligations under Article 33 of the Refugee Convention, which prohibits *refoulement*. Justice Heald noted that section 3 of the *Immigration Act* provided for Canadian immigration policy, rules and regulations to be designed and administered in recognition of the need to fulfil Canada's international legal obligations with respect to refugees. The Court then concluded that Canada's obligation under Article 33 is preserved by the operation of s. 53(1), constraining the removal of those who have been barred from having a Convention refugee claim determined where there is a threat to an individual's life or freedom on the basis of one or more of the grounds therein.

[24] I also cannot conclude that the Court's analysis in *Wangden* supports Mr. Farah's argument that current principles of statutory interpretation, including consideration of the Refugee Convention, warrant an interpretation of s.101(1)(d) different than that derived from *Kaberuka* and *Jekula*. In *Wangden*, the issue under consideration was whether the legal status of "withholding of removal" in the United States was equivalent to being recognized as a Convention refugee for purposes of s.101(1)(d). While taking into account the fact that one of

the main objectives of IRPA is to recognize that the refugee program is about saving lives and offering protection to the displaced and persecuted, Justice Mosley held that what was of concern in achieving Parliament's intention was not whether individuals have the full panoply of rights provided under the Convention, but rather whether they are protected from risk.

[25] In *Wangden*, IRPA's objective of protection against risk was achieved though the "withholding of removal" status conferred in the United States. This focus upon protection from risk, as opposed to Convention refugee status, is also evident in the *Charter* analysis in the more recent decision of the Federal Court of Appeal in *Canada (Public Safety and Emergency Preparedness) v. J.P.*, 2013 FCA 262 [*J.P.*], which considered the protection afforded by IRPA's processes surrounding removal from Canada. That case considered the interpretation of s. 37(1)(b) of the IRPA, which makes a foreign national inadmissible to Canada for engaging in activities of transnational crime such as people smuggling. At paragraphs 123 to 125, the Court relied on *Jekula* as support for its conclusion that it is not a finding of inadmissibility, but rather a subsequent stage in the immigration process at which removal is under consideration, which engages s. 7 of the *Charter*:

> [123] More than two decades ago, this Court determined in *Berrahma v. Canada (Minister of Employment and Immigration)* (1991), 132 N.R. 202 (F.C.A.) (leave to appeal to the S.C.C. dismissed: 136 N.R. 236) that an inadmissibility finding under the *IRPA* does not engage section 7 of the *Charter* since such a finding is not the equivalent of removal or *refoulement*. This principle has been consistently reiterated by this Court: *Rudolph v. Canada (Minister of Employment and Immigration)*, [1992] 2 F.C. 653 (F.C.A.), 91 D.L.R. (4th) 686; *Nguyen v. Canada (Minister of Employment and Immigration)*, [1993] 1 F.C. 696 (F.C.A.); *Jekula v. Canada (Minister of Citizenship and Immigration)*, [1999] 1 F.C. 266 aff'd by 266 N.R. 355 (F.C.A.); *Sandhu v. Canada (Minister of Citizenship and Immigration)* (2000), 258 N.R. 100;

Poshteh v. Canada (Minister of Citizenship and Immigration), 2005 FCA 85, [2005] 3 F.C.R. 487.

[124] The state of the law on this issue was aptly set out by Evans J. (as he then was) in *Jekula v. Canada (Minister of Citizenship and Immigration)*, above at paragraphs 31 to 33, and I can do no better than he in describing the applicable principles:

> [31] However, before the content of the principles of fundamental justice is considered in this context, the administrative action under review must deprive the applicant of the right to life, liberty and security of the person. The question is, therefore, whether a decision under paragraph 46.01(1)(a) has this effect. In my opinion it does not. First, while it is true that a finding of ineligibility deprives the claimant of access to an important right, namely the right to have a claim determined by the Refugee Division, this right is not included in "the right to life, liberty and security of the person": *Berrahma v. Minister of Employment and Immigration* (1991), 132 N.R. 202 (F.C.A.), at page 213; *Nguyen v. Canada (Minister of Employment and Immigration)*, [1993] 1 F.C. 696 (C.A.).
>
> [32] Second, it may well be a breach of the rights protected by section 7 for the government to return a non-citizen to a country where she fears that she is likely to be subjected to physical violence or imprisoned. However, a determination that a refugee claimant is not eligible to have access to the Refugee Division is merely one step in the administrative process that may lead eventually to removal from Canada. The procedure followed at the risk assessment to which the applicant will be entitled under section 53 before she is removed can be subject to constitutional scrutiny to ensure that it complies with the principles of fundamental justice, even though the procedure is not prescribed in the Act or regulations: *Kaberuka v. Canada (Minister of Employment and Immigration)*, [1995] 3 F.C 252 (T.D.), at page 271. Moreover, while holding that it was not inconsistent with section 7 for the *Immigration Act* to limit access to the Refugee Division, Marceau J.A. also said in *Nguyen v.*

> *Canada (Minister of Employment and Immigration)*, [1993] 1 F.C. 696 (C.A.), at pages 708-709:
>
> It would be my opinion, however, that the Minister would act in direct violation of the *Charter* if he purported to execute a deportation order by forcing the individual concerned back to a country where, on the evidence, torture and possibly death will be inflicted. It would be, it seems to me . . . at the very least, an outrage to public standards of decency, in violation of the principles of fundamental justice under section 7 of the *Charter*.
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> [33] In summary, section 7 rights are not engaged at the eligibility determination and exclusion order stages of the process. However, the applicant cannot be lawfully removed from Canada without an assessment of the risks that she may face if returned to Sierra Leone. And the manner in which that assessment is conducted must comply with the principles of fundamental justice.
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> [125] As a result, paragraph 37(1)(b) does not engage section 7 of the *Charter*. The issue of whether or not any of the respondents in these cases will be deported to a jurisdiction which could subject them personally to a danger of torture or to a risk to their life or to a risk of cruel and unusual punishment will, if necessary, be determined at a stage in the process under the *IRPA* which is subsequent to the inadmissibility finding. It is only at this subsequent stage that section 7 of the *Charter* may be engaged.

[26] While *J.P.* was overturned on other grounds on appeal (*B010 v Canada (Minister of Citizenship and Immigration)*, 2014 SCC 58 [*B010*]), the Supreme Court of Canada confirmed at paragraph 75 of *B010* that the inadmissibility provision did not engage s. 7 of the *Charter* because, even if excluded, the applicant could apply for a stay of removal. It is at the pre-removal risk assessment stage of IRPA's refugee protection process that s. 7 is typically engaged.

[27] Like s. 46.01(1)(a) of the *Immigration Act*, the former s. 53(1) has been replaced in IRPA. Section 115(1) now provides:

115(1) A protected person or a person who is recognized as a Convention refugee by another country to which the person may be returned shall not be removed from Canada to a country where they would be at risk of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion or at risk of torture or cruel and unusual treatment or punishment.	**115(1)** Ne peut être renvoyée dans un pays où elle risque la persécution du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques, la torture ou des traitements ou peines cruels et inusités, la personne protégée ou la personne dont il est statué que la qualité de réfugié lui a été reconnue par un autre pays vers lequel elle peut être renvoyée.

[28] I note that the parties' submissions at the hearing of this application raised questions surrounding the interaction of s. 115(1) with s. 112(1) of IRPA. Section s. 112(1) entitles a person in Canada, other than a person referred to in s. 115(1), to apply for protection if subject to a removal order. The negative PRRA decision which Mr. Farah has recently received is expressed as a determination that he is not person described in s. 115(1), and the Respondent's position is that it was under s. 115(1) that Mr. Farah's risk of return to Uganda was assessed. Mr. Farah argued at the hearing that only s. 112(1) prescribes a process for applying for protection and that s.115(1) sets out a principle but not a process, based on which he submits that his fear of returning to Uganda should be assessed as a refugee claimant, not under s. 115(1).

[29] Neither of the parties was in a position to provide detailed submissions on the interaction of s. 115(1) and s. 112(1), as this subject did not arise prior to the hearing. However, both ss. 112

and 115 are within Part 2, Division 3 of IRPA, relating to Pre-Removal Risk Assessment, which is clearly intended to address protection against the risk that may be occasioned by removal and which was the subject of analysis in *J.P.* and *B010*. For purposes of addressing the issue in the present application for judicial review, it is unnecessary for the Court to perform any detailed analysis of this Division of IRPA's statutory regime. It is sufficient to observe that it is the protection against risk of removal considered in this Division, not the determination of ineligibility to claim refugee status such as is the subject of the impugned decision in the present case, which attracts scrutiny under the Charter.

[30] I note that at the hearing of this application, the Applicant provided the Court with a copy of a publication of the United Nations High Commission for Refugees [UNHCR], entitled *UNHCR Note on the Interpretation of Article 1E of the 1951 Convention relating to the Status of Refugees* dated March 2009 [UNHCR Note]. The text of Article 1E is as follows:

> This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

[31] In the copy of the UNHCR Note provided to the Court, the Applicant highlighted the following paragraph 17:

> C. NON-REFOULEMENT CONSIDERATIONS ARISING FROM PERSONS EXCLUDED ON THE BASIS OF ARTICLE 1E IN A THIRD COUNTRY
>
> 17. Although the competent authorities of the country in which the individual has taken residence may consider that he or she has the rights and obligations attached to the possession of the nationality of that country, this does not exclude the possibility that

> when outside that country the individual may nevertheless have a well-founded fear of being persecuted if returned there. To apply Article 1E to such an individual, especially when a national of that country who is in the same circumstances, would not be excluded from being recognized as a refugee, would undermine the object and purpose of the 1951 Convention. Thus, before applying Article 1E to such an individual, if he or she claims a fear of persecution or of other serious harm in the country of residence, such claim should be assessed vis-à-vis that country.

[32] UNHCR publications of this sort can be useful guidance for interpreting Convention provisions, but they are not law and are not determinative of such interpretation (see *Fernandopulle v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 91, at para 17; *Hernandez Febles v. Canada (Minister of Citizenship and Immigration)*, 2012 FCA 324, at para 50). Moreover, other than the Applicant highlighting the above paragraph 17, neither party made any submissions related to the UNHCR Note. While this paragraph may support the interpretation of s. 101(1)(d) that Mr. Farah advocates, it may also be consistent with the considerations identified in this paragraph for Canada to address risk associated with removal to a person's country of asylum through IRPA's pre-removal risk assessment process. Therefore, particularly in the absence of specific submissions on the UNHCR Note, I do not consider it a basis to adopt Mr. Farah's proposed interpretation of s. 101(1)(d).

[33] Finally, I have considered Mr. Farah's argument that concern about asylum shopping does not arise in the present case, where he asserts a genuine fear of return to his country of asylum. I accept the logic of this argument and agree it could support the interpretation of s. 101(1)(d) that Mr. Farah advocates. However, like the Courts in *Kaberuka* and *Jekula*, I consider the legislative history of s. 101(1)(d) nevertheless to significantly favour the same interpretation as was adopted in the consideration of s. 46.01(1)(a) of *Immigration Act* in those decisions. The

Respondent has noted not only the repeal of the former s. 46.01(2), thereby eliminating the express entitlement of those with Convention refugee status elsewhere to make refugee claims against their countries of asylum, but has also referred the Court to the Official Report of the House of Commons Debates, Volume XI, 1992, pages 13806 to 13814. This Report demonstrates two initiatives (Motions 25 and 31) to reintroduce provisions similar in effect to s. 46.01(2) being defeated in the House in the course of the debate on the 1992 amendments.

[34] For these reasons, whether considering the reasonableness of the interpretation of s.101(1)(d) adopted in the impugned decision, or whether such interpretation is indeed correct, I find no basis to interfere with the decision.

VII. Certified Question

[35] Mr. Farah proposes the following question for certification for appeal:

> As a matter of statutory interpretation, does ineligibility under s.101(1)(d) of IRPA include those who are making a refugee claim against the country that has recognized them as refugees?

[36] Mr. Farah argues that this is a serious question of general importance, submitting that it satisfies the applicable test of being determinative of an appeal in this matter and having broad application beyond this particular matter. The Respondent opposes certification, arguing that there is no ambiguity in s. 101(1)(d) and that the issue surrounding the interpretation of the section therefore need not be taken any further.

[37] I agree that this question should be certified. A decision on this question would be determinative of an appeal in this matter, and such a decision would be of broad significance or general application extending beyond this particular matter. While there is existing authority on the question, and while I have found no basis to depart from that authority, I acknowledge the Applicant's argument that the authority is somewhat dated and involved consideration of predecessor legislation. I therefore do not consider the existence of this authority to detract from the conclusion that the Applicant's proposed question qualifies as a serious question of general importance.

[38] Following the hearing in this matter, I issued a Direction to the parties, informing them that the Court was considering the application of s. 20(1)(a) of the *Official Languages Act*, RSC 1985, c. 31 (4th Supp) [the Act] to the issuance of the decision in this matter. I directed that each of the parties serve and file any submissions the party may wish to make on the potential application of s. 20(2)(b) of the Act. The Respondent did not make any such submissions. The Applicant did make submissions, which are addressed below.

[39] Section 20(1)(a) of the Act provides that any final decision, order or judgment, including any reasons given therefor, issued by any federal court shall be made available simultaneously in both official languages where the decision, order or judgment determines a question of law of general public interest or importance. However, pursuant to s. 20(2)(b) of the Act, where the court is of the opinion that to make the decision, order or judgment, including any reasons given therefor, available simultaneously in both official languages would occasion a delay prejudicial to the public interest or resulting in injustice or hardship to any party to the proceedings leading

to its issuance, it shall be issued in the first instance in one of the official languages and thereafter, at the earliest possible time, in the other official language, each version to be effective from the time the first version is effective.

[40] While I consider the question certified in this matter to be a question of law of general public interest or importance, I am persuaded by the Applicant's submissions that he would suffer hardship or injustice if the issuance of this decision was delayed to allow for translation. Mr. Farah explains that he is now in the process of meeting with the Canada Border Services Agency to prepare for removal, that he is preparing his Application Record in an application for leave and judicial review of the negative PRRA decision, and that he may imminently be moving for a stay of his removal. He refers to stress and psychological hardship due to the uncertainty of his situation, which would be relieved somewhat by knowing the outcome of this matter. I find that it would represent an injustice and hardship to require Mr. Farah to pursue the remedies to which he refers, without knowing the result of the present application for judicial review, when the Court has made its decision in this matter. Therefore, this decision is being released in English, with the French translation to follow, in accordance with s. 20(2)(b) of the Act.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. The following question is certified for appeal:

   As a matter of statutory interpretation, does ineligibility under s.101(1)(d) of IRPA include those who are making a refugee claim against the country that has recognized them as refugees?

"Richard F. Southcott"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5590-15
STYLE OF CAUSE:	SAID ABDUKADIR FARAH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	FEBRUARY 13, 2017
JUDGMENT AND REASONS:	SOUTHCOTT, J.
DATED:	MARCH 20, 2017

APPEARANCES:

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Neeta Logsetty	FOR THE RESPONDENT

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