

Federal Court



Cour fédérale

**Date: 20170501**

**Docket: IMM-2543-16**

**Citation: 2017 FC 419**

**Toronto, Ontario, May 1, 2017**

**PRESENT: The Honourable Mr. Justice Campbell**

**BETWEEN:**

**AMINA MOHAMED RAGE  
HANAN OMAR IBRAHM**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The present Application concerns the May 28, 2016 rejection by the Refugee Appeal Division (RAD) of the Applicants' appeal instituted by Ms. Rage (Applicant) on behalf of herself and her minor daughter. The appeal challenged the May 16, 2016 rejection by the Refugee Protection Division (RPD) of the Applicants' claim for refugee protection as citizens of Somalia. The RPD described the basis of the claim as follows:

The claimants allege that they fear returning to Somalia as members of a minority clan, the Shekha. The PC [principal claimant] was married in 2010 to Omar Ibrahim Ahmed and together they had two children. The PC's husband worked for a Telecom agency in Somalia that was threatened by Al Shabab. In November 2013 the claimant's husband learned that Al Shabab was looking for him and his newborn son. The claimant's husband took their son and disappeared one day.

The PC and her daughter went into hiding and learned Al Shabab was looking for them. In January 2014 she and her daughter travelled to Kenya and eventually made their way to Canada.

They made an inland claim for refugee protection in September 2014.

(RPD Decision,, paras. 3 to 5; Certified Tribunal Record (CTR), p. 235)

[2] The RPD rejected the claim on a finding that the Applicant was not a credible witness and the personal and national identities of her and her daughter had not been established. A critical element of the RPD's brief decision was a finding that, because of an inconsistency in the Applicant's evidence, no weight could be placed on documents corroborating the Applicant's identity evidence. Under consideration by the RPD were copies of documents completed with respect to the Applicant's husband's refugee claim made in Uganda. The finding is as follows:

The PC testified that she is in contact with her husband. She was asked about her husband's travels from when he left Somalia. She testified that her husband went to Kenya first for 2 weeks until January 2014, then to Uganda where he has been in 2014 and 2015. However, according to his refugee forms he left Somalia on March 20, 2015, and arrived in Uganda on April 9, 2015. The PC testified that she was told he did not claim right away due to his son being ill. The Panel finds that this does not reasonably explain why the date of entry on the refugee forms indicates a different date than the PC's testimony, and the date of leaving Somalia is also different from the PC's testimony. The PC was also asked about nonsensical information on the refugee forms where an exclamation mark is repeated numerous times and a letter from the "Office of the Prime Minister". PC was unable to explain. The

Panel finds that the documents to support the PC's husband's claim are not consistent with the PC's testimony and finds that it does not establish, credibly, the relationship between the PC and her husband. Based upon the inconsistencies, the Panel places no weight on the letter of consent from the husband or any of the refugee documents from Uganda as evidence corroborating the PC's testimony.

[Emphasis added]

(RPD Decision, para. 13; CTR, p. 239)

[3] Before the RAD, Counsel for the Applicants argued that the documents provide critical evidence of identity and the RPD was in error in rejecting them simply because the Applicant's testimony was not believed. To support this argument, Counsel for the Applicants produced originals of the documents in question for scrutiny by the RAD in order to assess their validity. The RAD refused to admit the originals into evidence because copies had been previously admitted and the originals "do not provide 'new evidence', as they do not shed any further significant light on the circumstances than already known" (Decision, para. 13).

[4] With respect to the objection that it was an error for the RPD to dismiss the copies of the documents, in conducting its independent analysis, the RAD made parallel findings to that of the RPD. After agreeing with the RPD that the Applicant's evidence "does not reasonably explain the discrepancies between the dates leaving Somalia and entry into Uganda on the refugee forms and her testimony" (Decision, para. 32) and after acknowledging the RPD's finding that the Applicant was unable to provide a reasonable explanation for the irregularity found on the letter from the "Office of the Prime Minister" (Decision, para. 33), the RAD proceeded to examine the copy of that document and came to the following conclusions at paragraphs 35 and 36 of the decision:

The RAD is not persuaded by the Appellants' argument in this regard. The RAD notes that, on close examination of the document, it is clear that the area in which the exclamation marks are situated should bear the name of the individual agreeing to the terms of the certificate, in this case, the principal Appellant's husband. Furthermore, the RAD notes that the certificate has a place for the fingerprint or signature of the husband; however, that area of the form is blank.

The RAD finds that the concerns on the face of the document coupled with the principal Appellant's testimony undermines the credibility of the document and the principal Appellant's credibility. The RAD finds, on a balance of probabilities, that this document is not a genuine document. The RAD notes that all of the documents related to the husband's status in Uganda come from the same source and that, given the concerns identified, little weight can be given to those documents.

[Emphasis added]

[5] Thus, the RAD added a new component to the deliberation apparently without notice: the reliability of the source of all the documents was put in issue. Thus, not only was one document found not to be genuine on an implausibility finding made without the required evidence of what to expect from a genuine document issued by the government of Uganda (see: *Gjelaj v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 210; *Cao v. Canada (Minister of Citizenship and Immigration)*, 2012 FC 694), all the documents were casually determined to be fraudulent because they came from the same source. Whether that "same source" was the Applicant's husband or the government of Uganda is unclear. In any event, I find that there is no evidentiary basis for making the finding; it is obvious that the finding was based on suspicion alone. In my opinion, at the very least, in an attempt to allay the suspicion which was prevalent, the RAD was required to consider the original documents.

[6] A particularly serious example of the unfounded application of suspicion by the RAD is the rejection of the identity evidence supplied by the Applicant's father at paragraph 57 of the decision:

The RAD also finds that the affidavit from the principal Appellant's father can be given little weight in establishing the Appellants' allegations and identities. The RAD notes that the principal Appellant's father alleges he has also fled Somalia and is living in Kenya for the same reasons that the Appellants allege. He has a vested interest in the outcome of the Appellants' claim, and, as such, his affidavit cannot be relied upon as an independent account.

[Emphasis added]

[7] I find that, the operation of suspicion resulting in the exclusion of the Applicants' identity evidence corrupts the decision under review and renders it unreasonable.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the decision is set aside and the matter is referred back for redetermination by a differently constituted panel.

There is no question to certify.

“Douglas R. Campbell”

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2543-16

**STYLE OF CAUSE:** AMINA MOHAMED RAGE, HANAN OMAR IBRAHM  
v THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 20, 2017

**JUDGMENT AND REASONS:** CAMPBELL J.

**DATED:** MAY 1, 2017

**APPEARANCES:**

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