

Federal Court



Cour fédérale

Date: 20180123

Docket: IMM-2192-17

Citation: 2018 FC 61

Ottawa, Ontario, January 23, 2018

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

**ABDULKARIM AHMED
(A.K.A.: ABDULKARIM MOHAMED
AHMED)**

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

UPON hearing this application for judicial review at Toronto, Ontario on December 5,
2017;

AND UPON reviewing the materials filed and hearing counsel for the parties;

AND UPON reserving decision;

AND UPON determining that this application be dismissed for the following reasons:

[1] The Applicant, Abdulkarim Ahmed, is a citizen of Somalia who seeks to set aside a decision of the Refugee Appeal Division [RAD] where it was determined that he was neither a Convention refugee nor a person in need of protection.

[2] Mr. Ahmed contends that the RAD erred in its assessment of the evidence of both his personalized and generalized risk in Somalia. Regarding his asserted personal risk, he challenges the RAD's finding that he lacked credibility. Concerning the general risk he faced in Somalia, he argues that the RAD was unreasonably selective in the evidence it relied on.

[3] There is no merit to the criticism levelled at the RAD's credibility assessment. In finding Mr. Ahmed not to be a credible witness, the RAD relied upon several notable inconsistencies in his testimony, including the following:

- (a) A significant discrepancy in the date he was allegedly kidnapped. Although he blamed the problem on an interpretation error, the RAD did not accept this explanation, in part, because Mr. Ahmed made no attempt to correct his Basis of Claim narrative.
- (b) An evolving explanation under questioning about his whereabouts when his brother was allegedly killed. His initial answer was that he was present, then

close by, and, ultimately, in the country. The RAD was also sceptical about Mr. Ahmed's speculation about the motives for this alleged killing.

- (c) Inconsistent answers about whether and when he was married.
- (d) A failure to register his presence in Kenya and to produce corroborating documents of that residency. The RAD was also troubled by Mr. Ahmed's excuse that to do so would have been a waste of his time.

[4] All of the RAD's credibility findings were supported by evidence. Indeed, the impression left by Mr. Ahmed's testimony was that he was, at best, a careless witness. The most telling example of this appears in a lengthy exchange in the RPD hearing concerning the date he left Somalia and where he gave the following series of inconsistent answers:

Mr. Ahmed: I think maybe the interpreter made the mistake because I did say that I left the country and the end of 2010, not 2011.

...

Mr. Ahmed: When I left the country it was 2010. When I arrived in Kenya it was 2011. I don't think I made the mistake. I think the person who wrote it made the mistake.

...

Mr. Ahmed: I never said that I left the country in 2011. I just said Al Shabaab took me at the end of 2010. I don't think my explanation was hard and you can see it in a lot of different places — the timing and the events that happened.

...

Mr. Ahmed: I did explain the times that I left the country and the times I went to the other country. I did explain and I don't think I

made the mistake by telling you something else. If you have the paper in front of you, you can tell I left the country in 2011.

...

Mr. Ahmed: What I'm saying is I left the country at the end of 2010 and they kept us for 15 days...

Panel: Sir, stop (in response to Mr. Ahmed interrupting the interpreter to provide her with more information).

Mr. Ahmed: All I'm saying is I left the country in June 2011.

...

Panel: Sir you can't interrupt the interpreter. I don't know what you said before you interrupted her because I don't have the benefit of understanding Somali. We've talked about this before. You speak for a few seconds then you let the interpreter speak. Are you having problems with the interpretation?

Mr. Ahmed: Maybe sometimes it has been when I say 2010 she says something else or maybe she won't hear me.

Panel: If you're aware of a specific example I would welcome you to point it out for me.

Mr. Ahmed: At the time I was saying that Al Shabaab took me at the end of 2010. I never said I left the country in 2010. But she (interpreter) keeps on saying I left the country in 2010.

Panel: I don't understand. Are you saying the interpreter is saying something different from what you're saying?

Mr. Ahmed: Yes, it happened twice. When I didn't say I left the country in 2010, she said I did.

Panel: Tell me when you did leave the country, sir.

Mr. Ahmed: I left June 6, 2011.

[5] Mr. Ahmed's inability to provide a consistent answer about the year of his departure from Somalia raised a material and well-founded credibility concern for the RAD. This and the other

identified credibility concerns provide a reasonable foundation for the RAD's conclusion that he had failed to establish a personalized risk in Somalia.

[6] Mr. Ahmed's challenge to the RAD's assessment of the evidence of the generalized risk he faced in Somalia is similarly unfounded. This argument is no more than an invitation to the Court to reweigh the relevant evidence in a more favourable way. That, of course, is not the role of the Court on judicial review where deference to the decision-maker's reasonable evidentiary assessments is required.

[7] The RAD accepted Mr. Ahmed's asserted identity as a member of the Sheikal clan sub-clan known as Rer Aw Hassan. The RAD then appropriately considered the generalized risk faced by members of that group.

[8] Mr. Ahmed's primary criticism of the RAD's assessment of the generalized risk concerns its linkage of his sub-clan to the Hawiye clan. The Hawiye clan were known to have a larger and stronger presence in Somalia and were thus able to provide protection to members of any sub-clan within their protective sphere. Mr. Ahmed attributes to the RAD an erroneous finding that the Sheikal "belong to the Hawiye clan". The evidence on this point, he says, was far from clear and insufficient to support the RAD's finding.

[9] The fundamental problem with this argument is that the RAD did not make an unequivocal finding that the Sheikal clan universally fell under the protection of the Hawiye clan. The RAD simply observed that "majority sources consider Sheikal being associated to the

Hawiye, as a sub-clan of the Hawiye, or even as a separate clan-family”. Contrary to Mr. Ahmed’s argument, the RAD made nothing further of the point and it made no finding that Mr. Ahmed would be in a position to exploit these relationships if he returned to Somalia. After reviewing the groups typically targeted by Al Shabaab within its areas of influence, what the RAD did conclude was that, as a member of the Sheikal clan, Rer Aw Hassan sub-clan, Mr. Ahmed had failed to establish a risk linked to Al Shabaab.

[10] This finding that Mr. Ahmed had failed to establish that his clan was an unprotected target of Al Shabaab is contained in the following concluding passage:

[58] Based on the totality of the evidence in this case, the RAD finds that the Appellant has provided insufficient reliable and satisfactory probative evidence in support of his claim for refugee protection. The RAD also finds that there is no significant evidence in the country documents on the record showing that members of Sheikal clan, Rer Aw Hassan sub-clan are discriminated against, and/or targeted by Al-Shabaab such that the Appellant would face a serious possibility of persecution, or that he would, on a balance of probabilities, be personally subjected to a risk to life or to a risk of cruel and unusual treatment or punishment, or to a danger of torture upon return to Somalia.

[59] Based on the foregoing reasons, the RAD finds that, in the circumstances particular to this case, the Appellant has not established a serious possibility of persecution, or that he would, on a balance of probabilities, be personally subjected to a risk to life or to a risk of cruel and unusual treatment or punishment, or to a danger of torture upon return to Somalia.

[11] The above finding was reasonably made, based, as it was, on the very thin evidence of generalized risk presented by Mr. Ahmed. If Mr. Ahmed’s clan status placed him at heightened risk in Somalia, he was in the best position to prove it. Instead, he relied upon a rather muddled and inconclusive record about where he stood in the hierarchy of Somalian clans and in relation

to Al Shabaab. In the absence of clear evidence that Mr. Ahmed's clan status made him a potential target, the RAD's finding cannot be impeached on judicial review.

[12] Mr. Ahmed further complains that the RAD overlooked some evidence that the historical protective mechanisms afforded by stronger Somalian clans to minority groups within their midst are not as strong as they once were. While that may be the case, the argument misses the point. Mr. Ahmed simply failed to meet the burden of establishing a generalized risk based on his clan status.

[13] I note as well that this supposedly overlooked evidence was not mentioned in Mr. Ahmed's Memorandum of Argument to the RAD and he should not be too surprised that it was not noted in the decision.

[14] For the foregoing reasons, this application is dismissed.

[15] Neither party proposed a certified question and no issue of general importance arises on this record.

JUDGMENT IN IMM-2192-17

THIS COURT'S JUDGMENT is that this application be dismissed.

"R.L. Barnes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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