

Federal Court



Cour fédérale

Date: 20190426

Docket: IMM-4104-18

Citation: 2019 FC 531

Ottawa, Ontario, April 26, 2019

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

ABDI ALI HASSAN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Abdi Ali Hassan seeks judicial review of a decision of an immigration officer [Officer] with the High Commission of Canada in Pretoria, South Africa. The Officer refused Mr. Hassan's application for a permanent resident visa as a member of the Convention Refugee Abroad Class or the Humanitarian-Protected Persons Abroad (Country of Asylum) Class.

[2] For the reasons that follow, the Officer's finding that Mr. Hassan has a durable solution in South Africa was reasonable, and is sufficient to sustain the decision to refuse Mr. Hassan's visa application. The application for judicial review is dismissed.

I. Background

[3] Mr. Hassan is a citizen of Somalia. He claims to fear persecution by Al-Shabaab, a terrorist organization. He says that Al-Shabaab tried to recruit him in late 2007 and early 2008. He resisted. Al-Shabaab then came to his home and left a threatening message with his sisters. Mr. Hassan left Mogadishu shortly thereafter.

[4] Mr. Hassan arrived in South Africa in May 2008 and sought refugee protection. His claim was accepted, and Mr. Hassan now has refugee status in South Africa. This has enabled him to work, find housing and pursue his education. However, he says he has been the victim of seven or eight xenophobic assaults over the past 10 years.

[5] One of Mr. Hassan's brothers, Mohamed Ali Hassan, is a Canadian citizen and commenced a sponsorship application on his behalf. The Officer interviewed Mr. Hassan in South Africa on July 9, 2018. The Officer informed Mr. Hassan that his application was refused by letter dated July 17, 2018.

II. Decision under Review

[6] The Officer noted that Mr. Hassan had confirmed at the beginning of the interview that he understood the interpreter.

[7] The Officer found that Mr. Hassan had not answered questions truthfully, contrary to s 16(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. In particular, the Officer was dissatisfied with Mr. Hassan's explanation of the reasons why he left Somalia, and whether his family members had any involvement in the Somali government.

[8] The Global Case Management System notes of the interview provide further details of the Officer's concerns. Mr. Hassan said he left Somalia because Al-Shabaab was trying to recruit him in Mogadishu. However, there was no evidence that Al-Shabaab was active in Mogadishu at the relevant time (2007 and 2008). When asked to comment, Mr. Hassan said that Al-Shabaab was not engaged in fighting during that period, only recruitment.

[9] Mr. Hassan stated in his application form that none of his family members had worked for the Somali government. However, his brother Mohamed said in an interview that their father worked for the Somali government under the regime of Said Barre, which ended in 1991, and another brother had been in the Somali military. When asked to comment, Mr. Hassan said he had misunderstood the question.

[10] The Officer found that South Africa represents a durable solution for Mr. Hassan under s 139(1)(d) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. Mr. Hassan has refugee protection, employment and a path to permanent residence in South Africa. The Officer therefore concluded that Mr. Hassan was not eligible for a permanent resident visa.

III. Issue

[11] The sole issue raised by this application for judicial review is whether the Officer's refusal of Mr. Hassan's visa application was reasonable.

IV. Analysis

[12] The Officer's refusal of Mr. Hassan's application for a permanent resident visa, including his finding that South Africa represents a durable solution, is subject to review by this Court against the standard of reasonableness (*Mushimiyimana v Canada (Citizenship and Immigration)*, 2010 FC 1124 at para 21 [*Mushimiyimana*]). Reasonableness is a deferential standard, and is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. The Court will intervene only if the decision falls outside a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[13] Mr. Hassan takes issue with the Officer's adverse credibility findings, as well as the determination that South Africa provides him with a durable solution. He says the Officer's

reasons for refusing his visa application were cumulative, and if any of them is found to be unreasonable then the decision cannot stand.

[14] Mr. Hassan argues that the Officer misunderstood his account of the reasons why he left Mogadishu. He did not say that Al-Shabaab was engaged in fighting there in 2007 and 2008, only that fighting occurred. This was inter-tribal fighting unrelated to Al-Shabaab. Nevertheless, Al-Shabaab had begun its recruitment efforts by that time.

[15] Mr. Hassan's explanation is supported by the following excerpt from the Officer's notes of the interview:

[Q] I have concerns about your credibility. Al Shabaab were not active in Mogadishu at that time?

[A] These years were the worst for recruitment. They did not start fighting just yet.

[Q] You just told me [they] were fighting every day. And now you tell me they were just recruiting?

[A] In Mogadishu, the fighting [was] not always with Al Shabaab but with the tribes. At that time Ethiopian forces were there.

[16] I accept Mr. Hassan's assertion that the answers he gave to questions about the circumstances of his departure from Somalia were consistent, and possibly misconstrued by the Officer. I am less persuaded by his explanation for his failure to acknowledge his father's employment in the Somali government and his brother's involvement in the military. Mr. Hassan says it was unclear whether the initial question pertained to the current government or the previous Barre regime. The Officer's notes read as follows:

[Q] What was your brother's occupation in Somalia?

[A] Working for the govt.

[Q] Exactly what kind of work?

[A] I don't know exactly.

[Q] Why were you not truthful when I first asked you?

[A] I could not clarify.

[Q] But my question was have you or your family members?

[A] When you say govt, any govt in Somalia is not proper so I always think of the Siad Barre regime.

[Q] But you told me the opposite when I asked why you did not tell me your father was in the govt?

[A] the govt is a mix now.

[17] The Officer was in a better position than this Court to assess the credibility of this confusing exchange. Ultimately, however, nothing turns on the Officer's adverse credibility findings. The Officer appears to have accepted Mr. Hassan's claim to have been the victim of seven or eight violent attacks in South Africa over a 10 year period, but this was not sufficient to undermine the finding that South Africa offers a durable solution for Mr. Hassan.

[18] The onus was on Mr. Hassan to demonstrate that his acceptance as a refugee in South Africa did not provide him with a durable solution (*Karimzada v Canada (Citizenship and Immigration)*, 2012 FC 152 at para 25). Mr. Hassan says that he is unskilled, and can only obtain employment in high-risk occupations such as driving delivery trucks or working as a store clerk, both of which leave him vulnerable to robbery. He complains that the Officer did not properly

assess his personal circumstances (citing *Abdi v Canada (Citizenship and Immigration)*, 2016 FC 1050 at paras 27, 28 [*Abdi*]).

[19] A durable solution may exist in a country despite the existence of generalized risk (*Abdi* at para 28). The Officer found that the risk of violence Mr. Hassan faced in South Africa was one faced by the population as a whole, and was not sufficiently personal. This finding was reasonably open to the Officer.

[20] South Africa is a signatory to the UN *Convention relating to the Status of Refugees*, 189 UNTS 150 [Convention]. Having been accepted as a refugee in that country, Mr. Hassan has employment, housing and a path to permanent residence. This case is similar to *Abdi*, where Justice Susan Elliott upheld an immigration officer's finding that South Africa was a durable solution for two brothers from Somalia, even though one of them had been the victim of violent crime.

[21] The parties were given an opportunity to apprise the Court of any case in which a successful refugee claimant in South Africa was nevertheless found by a Canadian court or tribunal not to have a durable solution in that country. Counsel for Mr. Hassan drew the Court's attention to *Mushimiyimana*, where a finding of a durable solution in South Africa was overturned on procedural grounds. He also drew an analogy with *Saiffee v Canada (Citizenship and Immigration)*, 2010 FC 589 [*Saiffee*], where the applicants had allegedly fled to safety in Tajikistan, a signatory to the Convention, but the denial of their visa applications was nevertheless held to be unreasonable.

[22] Neither of these decisions is instructive here. *Mushimiyimana* was decided on procedural grounds. In *Saifee*, the status of the applicants in Tajikistan was not entirely clear (paras 21, 44). The application for judicial review was allowed because the immigration officer had failed to consider whether the applicants, who were citizens of Afghanistan, might qualify for membership in the Country of Asylum Class (paras 42, 43).

[23] By contrast, counsel for the Respondent identified five reported decisions where this Court upheld a visa officer's finding that a successful refugee claimant in South Africa had a durable solution in that country, despite allegations of xenophobic violence: *Uwamahoro v Canada (Citizenship and Immigration)*, 2016 FC 271; *Ntakirutimana v Canada (Citizenship and Immigration)*, 2016 FC 272; *Abdi; Barud v Canada (Citizenship and Immigration)*, 2013 FC 1152; and *Dusabimana v Canada (Citizenship and Immigration)*, 2011 FC 1238.

[24] I am satisfied the Officer's finding that Mr. Hassan has a durable solution in South Africa was reasonable, and is sufficient to sustain the decision to refuse his visa application. Mr. Hassan's argument that the Officer's reasons for rejecting his visa application were cumulative, and must all be found reasonable for the decision to stand, owes more to semantics than logic or law. Furthermore, the Officer's adverse credibility findings based upon Mr. Hassan's responses regarding his family's involvement in the Somali government were reasonably supported by the evidence.

V. Conclusion

[25] The application for judicial review is dismissed. Neither party proposed that a question be certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4104-18

STYLE OF CAUSE: ABDI ALI HASSAN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: WINNIPEG, MANITOBA

DATE OF HEARING: APRIL 15, 2019

JUDGMENT AND REASONS: FOTHERGILL J.

DATED: APRIL 26, 2019

APPEARANCES:

David Matas FOR THE APPLICANT

Brendan Friesen FOR THE RESPONDENT

SOLICITORS OF RECORD:

David Matas FOR THE APPLICANT
Barrister and Solicitor
Winnipeg, Manitoba

Deputy Attorney General of Canada FOR THE RESPONDENT
Winnipeg, Manitoba