

Federal Court



Cour fédérale

**Date: 20190712**

**Docket: IMM-4616-18**

**Citation: 2019 FC 920**

**Ottawa, Ontario, July 12, 2019**

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

**BETWEEN:**

**WARSAMIE ESSIE WARSAME**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Nature of the Matter

[1] This is an application for judicial review of a decision rendered by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada dated August 28, 2018. The RAD dismissed the Applicant's appeal of a decision rendered by the Refugee Protection Division [RPD] and confirmed the RPD's finding that the Applicant is neither a Convention

Refugee nor a person in need of protection within the meaning of section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The RAD upheld the RPD's decision, which found that the Applicant did not establish his identity on the balance of probabilities. For the reasons that follow, this Court finds that the RAD's decision is unreasonable and should therefore be set aside.

## II. Facts

[3] The Applicant claims that he is a Somali citizen and that he does not have status in any other country. According to his Basis of Claim [BOC] narrative, the Applicant was born in the town of Afmadow, Somalia in 1979.

[4] The Applicant's father worked as a Somali police officer. He met the Applicant's mother, an Ethiopian citizen, while stationed in Ethiopia. His father was a member of the Somalian Ogaden clan while his mother was a member of the Ethiopian Oromo clan. Though the intermarriage of the Applicant's parents was a source of tension in Somalia, his father was able to protect him while he was alive due to his position with the Somali police. After his father's death in 1995, the house where the Applicant was living was targeted by members of the Ogaden clan due to his "Oromo blood". His home was attacked by armed men who shot at them from outside.

[5] As a result of these risks, the Applicant claims that the family fled to Ethiopia and lived there from 1995 to 2010 without ever obtaining Ethiopian status. The Applicant was accused of

being a member of the Ogaden National Liberation Front (ONLF) because of his father's clan. He found various jobs despite not having any status. In 2004, the Applicant's mother passed away from natural causes.

[6] The Applicant lived in Kenya from January 2011 to October 2011. Thereafter, he returned to Afmadow and lived with his uncle, a goat and camel herder, from October 2011 to July 2012. The Applicant states that he tried to "keep a very low profile", but members of the Ogaden clan discovered that he was Oromo and threatened to kill him. The Applicant's uncle helped him flee Somalia by selling some of his camels. The Applicant used the proceeds to travel to Kenya. He travelled to Ethiopia and several other countries.

[7] In October 2012, the Applicant arrived in the United States and claimed asylum there, but was immediately detained until December 2012. He was released pending the determination of his asylum claim for which a hearing date was set for January 2015 and later postponed to October 2017. Due to the backlog of asylum claims in the United States, the Applicant did not expect his claim to be heard in time for his scheduled hearing date and says that he expected to be removed without being given the chance to have a full hearing due to the United States' immigration policies. For that reason, he travelled to Canada and claimed refugee protection on April 1, 2017, upon his arrival at a port of entry.

[8] On April 6, 2017, the Applicant's refugee claim was deemed to be referred to the RPD under subsection 100(3) of the IRPA.

[9] The Applicant claims protection because he fears persecution from members of the Ogaden clan and other clans who would target him because he has “mixed blood”. On July 18, 2017, the Applicant filed an amendment to his BOC narrative and additional evidence. He later amended his narrative and stated that he was diagnosed with HIV in the United States and also fears persecution if returned to Somalia because he would be perceived as homosexual.

[10] The RPD held a hearing on August 2, 2017, and the Applicant was represented by counsel and he was also assisted by a Somali interpreter. On August 11, 2017, the RPD dismissed the Applicant’s claim for refugee protection, and held that he is not a Convention refugee or a person in need of protection because he did not establish his identity on a balance of probabilities.

[11] On Appeal before the RAD, the Applicant requested that the RAD admit new evidence under subsection 110(4) of the IRPA and hold an oral hearing under subsection 110(6) of the IRPA. In a decision dated August 28, 2018, the RAD upheld the RPD’s decision and did not admit any of the Applicant’s new evidence and denied an oral hearing.

[12] The Applicant applied for leave and judicial review of the RAD’s decision under subsection 72(1) of the IRPA on September 12, 2018.

### III. RPD Decision

[13] In determining that the Applicant did not establish his identity, the RPD reviewed the following evidence:

- An affidavit drafted by Mr. Jama Ahmed Sahal, dated May 19, 2017. Mr. Sahal was granted refugee status in Canada in August 2015. Mr. Sahal affirms that he met the Applicant in July 2012 when he helped the Applicant's uncle sell his camels in the town of Hagar. He further affirms that he met the Applicant at a restaurant in Canada on May 1, 2017 and that "Warsamie has asked me to be a witness at his refugee hearing to establish his personal identity and his citizenship, and I would have agreed to attend but at that time I will be in Edmonton visiting friends";
- An affidavit drafted by the Applicant's cousin Mr. Maryan Nur Warsamie, who currently resides in Kenya, dated May 16, 2017, commissioned by a Kenyan notary public. He affirms that the Applicant's father and his father are brothers, that the Applicant is a Somali citizen, and a member of the Ogaden clan. He affirms that he fled to Kenya in July 2014 after Ogaden militants killed his father because he gave the Applicant money to flee Somalia;
- The Applicant's American Employment Authorization Card, valid from May 29, 2015 to May 28, 2016;
- A letter drafted by a settlement worker of the Somalia Immigrant Aid Organization [SIAO], dated May 23, 2017. The author states that he interviewed the Applicant and Mr. Sahal for 30 to 40 minutes and that he has "no hesitation in writing to confirm that [the Applicant] is a citizen of Somalia from Afmadow and he is from the Ogaden clan".

[14] The RPD first noted Mr. Sahal's affirmation that he was in Edmonton visiting friends and could not attend the hearing. During the hearing, the member asked the Applicant why Mr. Sahal was still unavailable and the Applicant testified that Mr. Sahal permanently moved to Edmonton to find work. After the Applicant told the member that he called Mr. Sahal two days before the hearing and Mr. Sahal offered to call him during the hearing, the member permitted the Applicant to call Mr. Sahal. However, the call went to voicemail and after the call ended, the Applicant's phone rang indicating that Mr. Sahal had called but immediately hung up.

[15] In the RPD's view, the Applicant should have asked for authorisation to present Mr. Sahal's testimony by phone before the hearing. Ultimately, the RPD drew a negative inference from the Applicant's failure to provide Mr. Sahal's testimony either by phone or in person since such testimony should have been easily accessible.

[16] The RPD gave Mr. Sahal's affidavit "no weight" in establishing the Applicant's identity and found it unreliable. In the RPD's view, this affidavit was inconsistent with the Applicant's BOC narrative and Schedule 12 to the BOC form filed at the port of entry (Additional Information – Refugee Claimants Inside Canada). According to the Applicant's testimony, Hagar and Afmadow are 40 kilometres apart. The BOC narrative, and Schedule 12 do not say that the Applicant and his uncle travelled 40 kilometres from Afmadow to Hagar to sell the camels, that the Applicant helped his uncle sell the camels, or that the Applicant stayed in Hagar for one week. Rather, the narrative states that the Applicant "was in hiding during that time, due to fear of ethnic clan violence." Moreover, Schedule 12 only states that he left Afmadow and travelled

directly to Kenya. In the RPD's view, it was reasonable to expect the Applicant's narrative to contain this information.

[17] The RPD also found that the cousin's affidavit has little probative value and gave it "no weight". In its view, this affidavit contained only a restatement of the Applicant's allegations confirming that he is Somali, a Sufi Muslim, and that his mother is Ethiopian. The RPD held that this affidavit did not provide details about the cousin's relationship with the Applicant or his family, information about whether they grew up together, or information about the other countries in which the Applicant lived and his status, or lack of status, in those countries.

[18] The RPD further noted that the Applicant did not provide any information or documents related to his American asylum application. The RPD gave his American employment card "no weight" in establishing his identity. The RPD further held that the Applicant did not provide a reasonable explanation for failing to provide this information. In the RPD's view, this information would have corroborated his travel history, demonstrated that he did not have status in another country, and would have been relevant to his national identity. The RPD drew a negative inference from the Applicant's failure to provide this information.

[19] With respect to the SIAO letter, the RPD held that knowledge of the Somali language and culture is not indicative of one's citizenship. Moreover, the author relied on the testimony of Mr. Sahal, a witness who should have been available at the hearing. In the RPD's view, the letter did not provide how it could be of use in establishing the Applicant's citizenship, and therefore it lacks probative value and has "no weight" in establishing the Applicant's identity.

[20] In dismissing the Applicant's refugee claim, the RPD concluded that he failed to establish his identity on the balance of probabilities due to the lack of live witness testimony, the unreliable affidavits, the supporting documents' lack of probative value, and the Applicant's failure to provide documents relating to his American asylum claim.

#### IV. Decision under Review

[21] Before the RAD, the Applicant filed the following documents as new evidence with his record:

- An affidavit drafted by a Canadian citizen, Mr. Adam Ally Abdi [Mr Adam], dated November 10, 2017. He affirms that he met the Applicant in Somalia in the 1980s and in 2012, and that his father was friends with the Applicant's father and uncle;
- The Applicant also filed Mr. Adam's Canadian passport and a letter from Mr. Adam's employer in Toronto stating that he travelled to Edmonton on a company truck from May 25, 2017 to June 14, 2017 and that Mr. Adam requested time off to visit family Europe, left for Europe on July 12, 2017, and returned to Toronto on October 6, 2017;
- A letter from an American immigration Court providing that the Applicant's asylum claim had been postponed to 2020, dated September 12, 2017, and an email from the legal assistant of the Applicant's American lawyer, dated October 27, 2017 transmitting the Court letter.



[22] The RAD first noted that according to Mr. Adam's affidavit, after the Applicant arrived in Canada they met at a restaurant in Toronto. The affidavit does not state when this meeting took place but does state that the Applicant never asked Mr. Adam to act as a witness at the RPD hearing. The RAD concluded that this implies that the meeting took place before the hearing and decision. The RAD then held that although the affidavit was sworn after the RPD decision, the only event it refers to that took place after the decision was Mr. Adam's trip to Europe. In rejecting Mr. Adam's affidavit and the related documents, the RAD held that Mr. Adam's trip to Europe is not relevant to "the central issue" of the Applicant's identity. The RAD then held that "there are no arguments made as to how else the proposed documentation meets the requirements of s. 110(4) of the IRPA...[t]he RAD can find no other obvious way that the proposed documents meet the s. 110(4) requirements."

[23] The RAD then refused to admit the letter from the American immigration authorities. While this letter is new, it only has value in confirming that the Applicant claimed protection in the United States. The RAD held that the information in the letter does nothing to address the central issue of the Applicant's identity and therefore is not relevant.

[24] With respect to the issue of identity, the RAD first responded to the Applicant's argument that the RPD erred by failing to take into account his Somali language abilities and his Somali ethnicity in its identity assessment. The Applicant referred to another RAD decision holding that Somali heritage is relevant to a determination of Somali citizenship. According to the RAD, it is not bound by the decision because it was decided by a single member panel and was not designated by the Jurisprudential Guides. Ultimately, the RAD upheld the RPD's decision for

substantially the same reasons, holding that the Applicant did not establish his identity on the balance of probabilities.

V. Issues

[25] This application raises two material issues:

- A. *Did the RAD commit a reviewable error by refusing to admit Mr. Adam's affidavit and the related documents as new evidence?*
- B. *Was the RAD's determination that the Applicant did not establish his identity on the balance of probabilities unreasonable?*

VI. Standard of Review

[26] The RAD's findings with respect to the Applicant's identity will be reviewed on a reasonableness standard as the question of identity is essentially a fact-driven analysis (*Denis v Canada (Citizenship and Immigration)*, 2018 FC 1182 [*Denis*]). The RAD's refusal to admit new evidence under subsection 110(4) of the IRPA will also be reviewed on a reasonableness standard (*Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at paras 22-30 [*Singh*]).

VII. Analysis

- A. *Did the RAD commit a reviewable error by refusing to admit Mr. Adam's affidavit and the related documents as new evidence?*

[27] The Applicant submits that before the RAD, his counsel argued that Mr. Adam's affidavit met one of the requirements of subsection 110(4) of the IRPA. This evidence was not reasonably

available at the time the RPD dismissed his claim because Mr. Adam had travelled to Edmonton and was in Europe when the RPD hearing was held on August 2, 2017. Moreover, while the Applicant did meet with Mr. Adam before the RPD hearing, he had also unsuccessfully attempted to contact Mr. Adam at his workplace at a later date that also preceded the hearing. The RAD did not consider these arguments in dismissing Mr. Adam's affidavit. In the Applicant's view, whether he asked Mr. Adam to provide evidence before the hearing is irrelevant as Mr. Adam was unavailable to provide the evidence when the hearing was held.

[28] The Respondent submits that the RAD reasonably found that Mr. Adam's affidavit is inadmissible because it did not comply with subsection 110(4) of the IRPA. The Respondent argues that, in his affidavit, Mr. Adam states that the Applicant did not ask him to testify at the hearing. In the Respondent's view, since Mr. Adam was never asked to provide evidence, his availability to do so is irrelevant; however, if he had been asked, the RAD could consider if he was reasonably available to provide the new evidence. The Respondent endorses the RAD's finding that there were no submissions about how the affidavit complies with subsection 110(4) of the IRPA; the Applicant's submissions to the RAD did not address whether the affidavit was not reasonably available because he never asked Mr. Adam to provide evidence to the RPD.

[29] Subsection 110(4) of the IRPA provides three disjunctive conditions for new evidence to be admitted on appeal to the RAD: 1) it must be evidence that arose after the rejection of the claim, 2) that was not reasonably available, or 3) that the claimant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.

[30] This Court does not determine whether the new evidence at issue should have been admitted by the RAD, but rather, whether the RAD's decision not to admit the new evidence is reasonable (*Bilbili v Canada (Citizenship and Immigration)*, 2017 FC 1188 at para 19; *Walite v Canada (Citizenship and Immigration)*, 2017 FC 49 at para 30). For the following reasons, the Court finds that the RAD's decision not to admit Mr. Adam's affidavit was unreasonable.

[31] Before the RAD, the Applicant filed an affidavit explaining why Mr. Adam's affidavit was not reasonably available at the time the RPD dismissed the claim:

I confirm that I did not ask ADAM ALLY ABDI to be a witness for my hearing when we met. I had been trying to meet him because I knew he was in Canada. I had been asking members of the community. He gave me his work number and I later tried to call him. Someone at his office told me that he was away for some time. He called me after I had received the decision of the Refugee Division. He said he could help prove my identity.

[32] On this point, Mr. Adam's affidavit states as follows:

I knew WARSAMIE ESSIE WARSAMIE [*sic*] was in Toronto when we met at a restaurant...I understand from him that he was looking for me but I had not heard that he was in Canada before we ran into each other. He was eating at the restaurant with some people when I came in with a friend. I gave him my work number because I am at work most of the time. He gave me his number. I called him when I returned from Europe to see how things were going and what happened with his case. He told me that his claim was denied because the Refugee Division did not believe his identity. I told him I was willing to help prove that he is a citizen of Somalia because I knew him in Somalia.

WARSAMIE ESSIE WARSAMIE [*sic*] did not ask me to be a witness for the Refugee Division hearing. But anyway, I was not available. I had to leave Toronto to be in Edmonton for a couple of weeks at the end of May and beginning of June...I was not in Edmonton for a time specified in advance. I would not have been available for his lawyer to do an affidavit or to testify by telephone.

I travelled to Europe from July 02 to October 06, 2017.

[33] The Applicant explained why the identity evidence presented through Mr. Adam's affidavit was not reasonably available when the RPD dismissed his claim. Essentially, the Applicant explained that after meeting Mr. Adam in Canada, but before the RPD dismissed the claim on August 11, 2017, the Applicant called Mr. Adam at his workplace, using the contact information that Mr. Adam gave him, but could not reach him. While the Applicant could have asked Mr. Adam to either prepare an affidavit or appear as a live witness before he left Canada, his submission was that he did not know that Mr. Adam would leave the country and that it would not be possible to reach him at his workplace and Mr. Adam only returned to Canada in October 2017, after the RPD dismissed the claim.

[34] Whether or not this explanation substantiates a finding that Mr. Adam's evidence was not reasonably available, or otherwise met the requirements of subsection 110(4) of the IRPA, it is apparent that the RAD did not address it in its reasons. Rather, apart from noting that the Applicant and Mr. Adam met before the RPD hearing and that Mr. Adam was not asked to prepare an affidavit, without drawing any conclusions from those particular findings, the RAD dismissed Mr. Adam's affidavit because it did not arise after the RPD dismissed the claim (i.e. it was not new evidence). As the Applicant points out, this is apparent from the RAD's statement that "other than stating that the letter [sic] was signed after the RPD determination date, there are no arguments made as to how else the proposed documentation meets the requirements of s. 110(4) of the IRPA...The RAD can find no other obvious way that the proposed documents meet the s. 110(4) requirements."

[35] This determination was not reasonable. When arguments are explicitly put to the RAD about how the new evidence meets one or more of the conditions set forth in subsection 110(4) of the IRPA, the RAD cannot content itself with assessing only one of those conditions, such as the document's newness, and dismiss the evidence without conducting an assessment of the other disjunctive statutory conditions (*Denis* at para 63; *Ajaj v Canada (Citizenship and Immigration)*, 2015 FC 928 at paras 53-58; *Galamb v Canada (Citizenship and Immigration)*, 2016 FC 1230 at para 17). Upon reading the RAD's reasons, there does not appear to be any reference to or assessment of the Applicant's affirmation that he unsuccessfully attempted to contact Mr. Adam after meeting him using the contact information that Mr. Adam gave him to substantiate his argument that the evidence was not reasonably available at the time the RPD dismissed his refugee claim.

[36] In this regard, the RAD's reasons lack justification, transparency and intelligibility as it is difficult to understand why the RAD decided not to admit the new evidence (*Agyemang v Canada (Citizenship and Immigration)*, 2016 FC 265 at paras 20-23; *Dunsmuir* [2008] 1 SCR 190 at para 47). This reviewable error alone merits reconsideration by a different panel of the RAD (*Ogundipe v Canada (Minister of Citizenship and Immigration)*, 2016 FC 771 at para 29; *Jeyakumar v Canada (Citizenship and Immigration)*, 2017 FC 241 at para 25).

B. *Was the RAD's determination that the Applicant did not establish his identity on the balance of probabilities unreasonable?*

[37] The Applicant argues that the RAD did not conduct a reasonable assessment of the affidavits of Mr. Sahal and his cousin. In the Applicant's view, the RAD's reasons were not

transparent or intelligible since it did not refer to the affidavits' contents. Before the RAD, the Applicant challenged the RPD's finding that Mr. Sahal's affidavit was inconsistent with the Applicant's narrative with respect to the trip to Hagar. The Applicant submits that the RAD did not address these arguments in its reasons aside from giving the affidavit "little weight".

Moreover, the Applicant submits that the RAD failed to address the Applicant's argument that the affidavits were entitled to heightened weight because they were sworn statements which corroborated his other evidence (*Husian v Canada (Citizenship and Immigration)*, 2016 FC 462 [*Husian*]).

[38] The Applicant further submits that the RAD's assessment of the SIAO letter was unreasonable because the RAD did not assess the letter together with the other evidence before it. The Applicant refers to *Ibrahim v Canada (Citizenship and Immigration)*, 2016 FC 11 at paras 14-15 [*Ibrahim*], in which this Court held that the RAD unreasonably discredited a letter drafted by the SIAO as identity evidence. In the Applicant's view, this decision shows that letters from established organizations are a legitimate form of evidence to prove the identity of Somali claimants.

[39] Lastly, the Applicant submits that the RAD failed to address the Applicant's submissions about Somali citizenship, notably that the Applicant is Somali because his father was Somali and the Applicant is ethnically and culturally Somali. According to the Applicant, this finding was made by this Court in a previous decision (*Husian* at paras 21-24) and he had referred to another RAD panel decision which followed *Husian*. The RAD did not follow this Court's previous decision and instead held that the other RAD panel's decision was non-binding.

[40] The Respondent submits that the RAD reasonably assessed the two affidavits and the SIAO letter because the Applicant did not present official documentation or a live identity witness. Moreover, apart from replacing the RPD's "no weight" finding with a "little weight" finding, the RAD upheld the RPD's analysis of the identity documents (i.e. it gave the documents little weight for the reasons provided by the RPD). These documents had apparent shortcomings the RPD noted and the RAD adopted.

[41] With respect to the Applicant's citizenship, the Respondent submits that *Husian* did not bind the RAD in this case. The RAD reasonably found that Somali ethnicity does not automatically prove Somali citizenship. Rather, ethnicity is only one part of establishing citizenship.

[42] While the RAD's refusal to admit the Applicant's new evidence is a reviewable error and is itself sufficient to return this matter to another panel for redetermination, some remarks about the RAD's treatment of the Applicant's identity evidence are in order.

[43] At the outset, it is well-established that the RAD is to conduct a *de novo* appeal in treating the evidence before it, that is, the RAD is to review the RPD's decision on a standard of correctness (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at paras 70, 103). Furthermore, this Court's assessment of the standard of review applied by the RAD upon review is itself conducted on a reasonableness standard. However, the RAD may defer to the RPD's factual findings where the RPD benefitted from an advantageous position, such as in assessing of the applicant's credibility where his oral testimony is not otherwise captured in the RAD record



*(Rozas Del Solar v Canada (Citizenship and Immigration)*, 2018 FC 1145 at paras 90-91, 105). That said, the RAD does not generally enjoy a meaningful advantage over the RPD in assessing documentary evidence, including identity documents, unless only the RPD had the benefit of assessing the original identity documents in question (*Jadallah v Canada (Citizenship and Immigration)*, 2016 FC 1240 at para 54; *Denis* at para 37).

[44] With these principles in mind, there was no reason for the RAD to defer to any of the RPD's factual findings in this case as it did not enjoy a meaningful advantage over the RAD. Both panels had the advantage of reviewing the same documents (original affidavits) and the RAD record contained a full recording of the RPD hearing.

[45] With this in mind, the Court finds that the RAD improperly deferred to the RPD's factual findings without independently assessing the evidence before it and did not perform its appellate role as required (*Khachatourian v Canada (Citizenship and Immigration)*, 2015 FC 182 at para 33; *Jeyaseelan v Canada (Citizenship and Immigration)*, 2017 FC 278 at paras 17-19).

[46] The RAD's decision essentially entails seven paragraphs addressing the Applicant's identity. The RAD made the following four findings (which the Court has summarized), which amounted to little more than an executive summary of the RPD's decision:

The Applicant's ability to speak Somali and his ethnicity may help to prove his Somali personal identity and citizenship but do not automatically prove those elements. The RAD concurred with the RPD that knowledge of Somalia and the Somali language do not necessarily indicate that a person is a Somali citizen (RAD decision at paras 31, 36;

In the absence of official government identity documents, a claimant must make all reasonable efforts to obtain all available

identity evidence. “The RPD was not satisfied that this was the case given the lack of effort in getting evidence from the Appellant’s original identity witness or his US documentation” (RAD decision at para 32);

The RPD noted the inconsistency in the Applicant’s evidence that he never mentioned meeting Mr. Sahal or staying with him in Hagar as this was not mentioned in the Applicant’s BOC or in Schedule 12 of the port of entry forms (RAD decision at para 33);

The RPD erred by giving the Applicant’s evidence “no weight”. The RAD “concur[s] with the reasons provided by the RPD in respect of these documents that they are of little value.” The RAD gives the documents “little weight” instead of “no weight” (RAD decision at paras 35-37).

[47] First, while the RAD was not incorrect in stating that proof of the Applicant’s Somali language ability and Somali ethnicity do not “automatically” prove his national or personal identity, it was not reasonable to dismiss the SIAO letter for that reason alone. As this Court has previously held “evidence as a whole is to be considered. No piece should be dismissed simply because it is a piece” (*Warsame v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 118 at paras 16-18; *Teganya v Canada (Citizenship and Immigration)*, 2012 FC 42 at para 25). The RAD’s analysis essentially treats this evidence in isolation, without considering the evidence purposively and contextually, in light of the other evidence before it. This was a reviewable error.

[48] As the Applicant remarked, letters or affidavits drafted by settlement workers for such organizations can, in appropriate circumstances, be relied on as identity evidence, even if they cannot independently establish identity and should therefore not be dismissed offhand. This is of particular note given that according to the Somali law of citizenship: “For the purpose of this law, any person who by origin, language or tradition belongs to the Somali Nation, shall be

considered a ‘Somali.’ (*Husian* at paras 20-21; *Ibrahim* at paras 14-15; *Nur v Canada (Minister of Citizenship and Immigration)*, 2005 FC 636 at para 30).

[49] Second, this finding is particularly problematic in this case as the RAD appeared to concur with the adverse inference drawn by the RPD from the evidence that the Applicant *did not provide* (a live identity witness, official government documents, or documents relating to the US asylum claim).

[50] It is notorious that “government documents” from Somalia are virtually unobtainable and a Somali refugee claimant must establish his or her identity through secondary sources (*Abdullahi v Canada (Citizenship and Immigration)*, 2015 FC 1164 at para 9; *Elmi v Canada (Minister of Citizenship and Immigration)*, 2008 FC 773 at para 22; *Anto v Canada (Citizenship and Immigration)*, 2017 FC 125 at para 22; *Ali v Canada (Citizenship and Immigration)*, 2018 FC 688 at para 6). Moreover, the RAD itself held that the US asylum documents were not relevant to the issue of identity in refusing to admit new evidence relating to the postponement of the Applicant’s asylum claim in the United States, and I agree that those documents would most likely be of little value in establishing the Applicant’s identity. In any case, the RAD could not reasonably rely on the absence of documents relating to the American asylum claim to uphold the RPD’s adverse finding after finding such documents to be irrelevant as new evidence. Finally, while the Applicant could have put forward better efforts to provide a live identity witness and one could argue that it was open to the RAD to draw an adverse inference from his failure to do so, the RAD was nevertheless required to conduct an independent assessment of the identity evidence in the record before it: the two affidavits and the SIAO letter.

[51] Third, the RAD did not provide independent, transparent or intelligible reasons for attributing “little weight” to the evidence that the Applicant *did* provide.

[52] With respect to Mr. Sahal’s affidavit, the RAD essentially endorsed the RPD’s finding that the omission of mentioning the trip to Hagar to sell the camels in his BOC or Schedule 12 suggested that this affidavit was inconsistent with the Applicant’s other evidence. The Court acknowledges that since the affidavit states that the Applicant and Mr. Sahal met in Somalia for the first time in July 2012, one could question the value of that affidavit in establishing the Applicant’s identity, although the affiant does state that he is good friends with the Applicant’s uncle. That said, the Court does not believe the information contained in this affidavit with respect to the Applicant’s travel history within Somalia is relevant to his identity and this appeared to be basis for which the RAD dismissed this document (*Cooper v Canada (Minister of Citizenship and Immigration)*, 2012 FC 118 at paras 3-8; *Koffi v Canada (Citizenship and Immigration)*, 2016 FC 4 at paras 42-47; *Kaur v Canada (Minister of Citizenship and Immigration)*, 2005 FC 103 at paras 13-18).

[53] Moreover, it was not reasonable for the RAD to dismiss the cousin’s affidavit by affording it “little weight” without providing independent reasons. While the affidavit is not detailed, the cousin affirms that his father and the Applicant’s father are brothers, that he and the Applicant are Somali and are members of the Ogaden clan. It is not apparent from the RAD’s reasons that this affidavit and its relevance to the Applicant’s identity as a Somali national and member of the Ogaden clan was assessed. Moreover, the Applicant made submissions before the

RAD that according to Somalia's law of citizenship, one is generally a Somali citizen when their father is a Somali citizen which were also not addressed (*Husian* at para 21).

VIII. Conclusion

[54] For these reasons, this Court finds the RAD's decision is unreasonable. The application for judicial review is granted and the RAD's decision is set aside and the matter is to be returned to another panel of the RAD for redetermination. There is no question of general importance for certification and none arises.

**JUDGMENT in IMM-4616-18**

**THIS COURT'S JUDGMENT is that** the application for judicial review is allowed and the matter is returned to a newly constituted panel of the RAD for re-determination. There is no question of general importance for certification. There is no order as to costs.

“Paul Favel”

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Judge

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

**DOCKET:** IMM-4616-18

**STYLE OF CAUSE:** WARSAMIE ESSIE WARSAME v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 4, 2019

**JUDGMENT AND REASONS:** FAVEL J.

**DATED:** JULY 12, 2019

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