

Federal Court



Cour fédérale

**Date: 20210507**

**Docket: IMM-1676-20**

**Citation: 2021 FC 411**

**Ottawa, Ontario, May 7, 2021**

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

**BETWEEN:**

**ABDIFATAH SHIRE UGAAS**

**Applicant**

**and**

**THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Mr. Abdifatah Shire Ugaas, reports that he is a Somali citizen who fears Al-Shabaab in Somalia. The Refugee Protection Division [RPD] refused his refugee claim, finding he did not credibly establish his identity. On February 13, 2020, the Refugee Appeal Division [RAD] upheld the RPD determination.

[2] Mr. Ugaas now applies, pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for judicial review of the RAD decision. He submits the RAD erred in its assessment of the evidence, including the evidence relating to his identity. He further submits the RAD erred by failing to consider his prospective risk upon return to Somalia.

[3] For reasons set out in more detail below, I am unable to conclude the RAD has committed an error that warrants the Court's intervention. The RAD's negative credibility findings and its conclusion relating to identity were reasonable. Having reasonably concluded that Mr. Ugaas did not establish his identity, the RAD was under no obligation to address prospective risk.

## II. Background

[4] Mr. Ugaas states that he was born in Somalia and that his family operated a farming business, supplying food to a hotel operator in Mogadishu. Al-Shabaab reportedly threatened the Applicant's family with consequences if they did not stop supplying the hotel operator. He reports that in May 2017 members of Al-Shabaab confronted the family in Mogadishu when meeting with the hotel operator. His father, both his brothers and the hotel operator were killed by Al-Shabaab. Mr. Ugaas escaped.

[5] Using funds he reports were obtained from the sale of his family's home, Mr. Ugaas and his mother fled to Kenya. Mr. Ugaas' mother remains in Kenya. Mr. Ugaas entered Canada with the assistance of a human smuggler in July 2017 and submitted a claim for protection on August 2, 2017.

III. Decision under Review

[6] In denying Mr. Ugaas' claim, the RPD made a series of negative credibility findings and accorded little weight to other evidence.

[7] Specifically, the RPD concluded Mr. Ugaas' evidence relating to clan membership was inconsistent and that his explanation for having not reported expressly requested information in his claim documentation was illogical. Similarly, the RPD found Mr. Ugaas failed to provide sufficient documentary evidence to establish his identity, failed to take reasonable steps to obtain evidence establishing his claim of Somali citizenship, and provided untrustworthy and evolving testimony. In addition, the RPD found Mr. Ugaas' unreasonably explained why he omitted information relating to Al-Shabaab imposed religious restrictions on practicing Sufis from his Basis of Claim form [BOC]. The RPD also found Mr. Ugaas' oral evidence relating to why he feared Al-Shabaab was inconsistent with the BOC narrative.

[8] Considering a photocopied letter from Mr. Ugaas' mother, the RPD noted: (1) inconsistencies between the reported date of receipt and the date on the letter itself; (2) the original letter was not produced; and (3) the email to which the letter had been reportedly attached was not produced. The RPD gave the letter little weight, rejecting the explanation that the date inconsistency was nothing more than a typographical error. The RPD also discounted the oral evidence of Mr. Ugaas' Canadian cousin, finding that the cousin had only general knowledge of the problems faced by the Applicant's family in Somalia and this was based exclusively on what Mr. Ugaas told her after they met in Canada. Finally, the RPD gave little

weight to a letter from a community resettlement organization after noting the generalized nature of its contents.

[9] In dismissing the appeal, the RAD also concluded that the inconsistent evidence of clan status, the omission of information from Mr. Ugaas' claim documentation, and the evidence surrounding the absence of identification documentation, including the absence of efforts to obtain evidence relating to identity, undermined Mr. Ugaas' credibility. The RAD found that the RPD correctly accorded little weight to the mother's letter, his cousin's testimony and the letter from the community settlement organization.

[10] The RAD then concluded, on the basis of a collective assessment of all the evidence, that Mr. Ugaas had not established his personal and national identity on a balance of probabilities and that the RAD therefore did not need to consider the remainder of the allegations.

[11] The RAD dismissed the appeal, confirming the decision of the RPD and finding Mr. Ugaas is neither a Convention refugee nor a person in need of protection, pursuant to section 111(1)(a) of the IRPA.

#### IV. Preliminary Issue: Improper Respondent

[12] The Application for Leave for Judicial Review names the Minister of Immigration, Refugees and Citizenship as the Respondent. The proper Respondent is the Minister of Citizenship and Immigration (IRPA, s 4(1); *Federal Courts Citizenship, Immigration and*

*Refugee Protection Rules*, r 5(2)). Accordingly, the Respondent in the style of cause is amended to the Minister of Citizenship and Immigration.

V. Issues and Standard of Review

[13] The Application raises two issues:

- A. Did the RAD reasonably evaluate the Applicant's credibility?
- B. Did the RAD unreasonably fail to conduct a section 97 analysis of the Applicant's prospective risk?

[14] The RAD's findings and conclusions are presumptively reviewable on the reasonableness standard. None of the circumstances warranting a departure from this presumption arise in this case (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 33 and 53 [*Vavilov*]).

[15] The RAD decision will be reviewed against the standard of reasonableness (*Keqaj v Canada (Minister of Citizenship and Immigration)*, 2020 FC 563 at paras 13-15). A decision will be reasonable if it is "based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law" (*Vavilov* at para 85).

VI. Analysis

A. *The RAD's credibility and identity determinations are reasonable*

[16] Mr. Ugaas relies on *Elmi v Canada (Minister of Citizenship and Immigration)*, 2008 FC 773 [*Elmi*] where the Federal Court cautioned against requiring Somali refugee claimants to provide the usual identity documentation (at paras 22-23). In this context, he argues that it was unreasonable for the RAD to give little weight to the letter from his mother, his cousin's evidence, and the letter of the community services organization.

[17] Mr. Ugaas also takes issue with the RAD's other credibility findings. He submits the RAD erred in considering the evidence relating to clan affiliation. He clearly explained why he testified to being both part of a major and minor clan, the RAD misapprehended the documentary evidence and the RAD "should have given the benefit of the doubt to the Applicant." Mr. Ugaas explained the omission of information in his claim documentation on the basis that he was not asked for the information and that fraudulent travel documents have little bearing on credibility. Mr. Ugaas also submits that, in the circumstances, it was unreasonable to impugn credibility over a lack of effort to obtain documentation to establish his identity. His uncle, who sold the Applicant's family home for him, was deceased and his female relatives in Somalia would be unable to obtain documents given their status in Somalian society.

[18] I take no issue with Mr. Ugaas' submissions that the RAD must afford claimants from countries with unstable civil administration other means of establishing identity (*Elmi* at para 23).

[19] In this instance, the RAD expressly accepts the challenges in obtaining national identity documentation in Somalia and notes that the absence of corroborating identity documentation was not RAD's main concern. The RAD's concerns instead related to Mr. Ugaas' explanation for the absence of documentation in the circumstances where he reported the sale of property in Somalia. The RAD found Mr. Ugaas was "continually evasive" when questioned on efforts to obtain documentation and cites an example from the transcript before the RPD in support of this conclusion. The RAD notes that it is not the absence of documentation but rather the "lack of reasonable effort to obtain" corroborative documentation that is of concern. These conclusions were not unreasonable.

[20] Similarly, the evidence advanced by Mr. Ugaas to establish identity, the two letters and the evidence of his cousin, was considered by the RAD. The RAD addressed the evidence, noted its concerns in each instance, and concluded little weight was to be afforded this evidence.

[21] In circumstances where national identity documentation is not available, other evidence may be relied on. However, that evidence must reasonably support a conclusion that identity has been established (*Elmi* at para 23). Although Mr. Ugaas understandably disagrees with the RAD, the conclusions reached were not unreasonable. As was noted by Justice Mary Gleason in *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319:

[48] The issue of identity is at the very core of the RPD's expertise, and here, of all places, the Court should be cautious about second-guessing the Board. In my view, provided that there is some evidence to support the Board's identity-related conclusions, provided the RPD offers some reasons for its conclusions (that are not clearly specious) and provided there is no glaring inconsistency between the Board's decision and the weight of the evidence in the record, the RPD's determination on identity

warrants deference and will fall within the purview of a reasonable decision. In other words, if these factors pertain, the determination cannot be said to have been made in a perverse or capricious manner or without regard to the evidence. [Emphasis added.]

[22] In this instance, Mr. Ugaas relied on three evidentiary sources to establish his identity. The first, a letter from Mr. Ugaas' mother stating he was born in Somalia and his father and brothers had died. The mother's letter was a copy of the original letter. Mr. Ugaas did not produce the original, nor the email by which the letter was reportedly transmitted. In the absence of original documents, the RAD noted it was not in a position to assess authenticity. The RAD's reasoning is consistent with the evidence and the conclusion reached logically follows.

[23] With respect to the evidence of Mr. Ugaas' cousin, again, the RAD identifies its concerns with the evidence and why it is not accorded weight—the cousin's lack of knowledge of the difficult circumstances Mr. Ugaas' family was experiencing at the time she met Mr. Ugaas in 2006. The RAD has again detailed its reasoning and it was open to the RAD to reach the conclusion it did.

[24] Finally, the community organization letter was considered, the RAD noting the information set out did not establish either identity or nationality. The RAD accepts Mr. Ugaas' knowledge of the Somali language and his familiarity with aspects of Somali geography, but absent more specific details it was not unreasonable for the RAD to accord the letter little weight.



[25] Mr. Ugaas also takes issue with a series of additional negative credibility findings the RAD reached on the basis of perceived inconsistencies between Mr. Ugaas' evidence and his narrative. I have not engaged in a detailed consideration of these findings as I am of the view that the RAD's conclusion that Mr. Ugaas had failed to establish his identity on a balance of probabilities is reasonable and determinative of the Application.

B. *The RAD was not required to consider prospective risk*

[26] Mr. Ugaas submits the National Documentation Package shows Al-Shabaab, which continues to operate in Mogadishu, would target him upon his return as he has spent extensive time in a western country, that his minority clan status affords him no protection from Al-Shabaab, and that he may be at risk of having to relocate to an internally displaced persons' camp as he has no family support in Mogadishu.

[27] A general negative credibility finding is often a sufficient ground for dispensing with both a section 96 and section 97 analyses (*Ali v Canada (Minister of Citizenship and Immigration)*, 2021 FC 77 at paras 28-29; *Canada (Minister of Citizenship and Immigration) v Sellan*, 2008 FCA 381 at para 3; *Ikeme v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 21 at paras 41-42). Exceptionally, a negative credibility finding that is conclusive of a refugee claim under section 96 of the IRPA, will not dispose of a section 97 analysis where the facts that form the basis of the Applicant's fear of persecution are not in issue (*Odetoyinbo v Canada (Minister of Citizenship and Immigration)*, 2009 FC 501 at para 6).

[28] In this matter, Mr. Ugaas has failed to establish his identity. This is sufficient to dispense with a section 97 analysis (*Elmi* at para 4; *Najam v Canada (Minister of Citizenship and Immigration)*, 2004 FC 425 at para 16). A claimant cannot establish any personalized risk without first establishing identity (*Dag v Canada (Minister of Citizenship and Immigration)*, 2017 FC 375 at para 18).

## VII. Conclusion

[29] The Application is dismissed. The parties have not identified a question of general importance for certification, and none arises.

**JUDGMENT IN IMM-1676-20**

**THIS COURT'S JUDGMENT is that:**

1. The Application is dismissed;
2. The Respondent in the style of cause is amended to the Minister of Citizenship and Immigration;
3. No question certified.

“Patrick Gleeson”

---

Judge

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

**DOCKET:** IMM-1676-20

**STYLE OF CAUSE:** ABDIFATAH SHIRE UGAAS v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** BY ZOOM VIDEOCONFERENCE FROM TORONTO,  
ONTARIO

**DATE OF HEARING:** APRIL 19, 2021

**JUDGMENT AND REASONS:** GLEESON J.

**DATED:** MAY 7, 2021

**APPEARANCES:**

Tina Hlimi FOR THE APPLICANT

Michael Butterfield FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Law Office of Tina Hlimi FOR THE APPLICANT  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario