

Federal Court



Cour fédérale

Date: 20220119

Docket: IMM-6104-20

Citation: 2022 FC 55

Ottawa, Ontario, January 19, 2022

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

DAHIR AHMED MOHAMED

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review pursuant to s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [“*IRPA*”] of a decision rendered on November 10, 2020 by the Refugee Appeal Division (“RAD”). The RAD confirmed the decision of the Refugee Protection Division (“RPD”), which determined that the Applicant was neither a *Convention* refugee nor a person in need of protection pursuant to sections 96 and 97 of the *IRPA*. Both the

RPD and the RAD found that the Applicant lacked credibility and that he had not established his identity on a balance of probabilities. For the reasons set out below, I dismiss the within application for judicial review.

II. Factual Overview

[2] Dahir Ahmed Mohamed (“Mr. Mohamed”) claims to be a citizen of Somalia. He claims that he was born in the city of Mogadishu, where he lived until 2006. He says he then relocated to Sudan to pursue post-secondary studies. Mr. Mohamed claims that he obtained a bachelor’s degree in Islamic studies from the International University of Africa. After his studies, he alleges that he obtained a fraudulent passport in Kenya in 2012 in order to obtain a work permit from South Soudan. He claims that he lived and worked in South Soudan under a false identity until 2015. He alleges that he then returned to his hometown of Mogadishu. There, he opened a school, where he also worked as a teacher. Members of the militant group, Al-Shabaab, apparently attacked his school because it was teaching secular subjects and promoting Western ideologies. Mr. Mohamed claims that two teachers were killed in the attack. He was able to escape, subsequently fleeing to another district of Mogadishu with his family.

[3] Mr. Mohamed claims he then travelled to Kenya where, using his fraudulent Kenyan passport, he obtained a visa for the United States. He alleges that he returned to Mogadishu to travel to the United States. He entered the United States on July 24, 2017, and subsequently entered Canada through an unofficial entry point on July 31, 2017. He claimed refugee protection on that same day.

[4] The RPD dismissed Mr. Mohamed's claim for refugee protection. It concluded that he failed to establish his identity on a balance of probabilities. It concluded that Mr. Mohamed generally lacked credibility and that his identity documents were either fraudulent or unreliable.

The RPD's factual findings include:

- In his BOC form and when he was asked to state his full name, Mr. Mohamed indicated that it was "Dahir Ahmed Mohamed". This name appears on documents from Somali while the documents from Sudan indicate that his name is "Dahir Ahmed Mohamed Kulmie". Mr. Mohamed testified that "Kulmie" was a name he was given at birth. The RPD drew a negative inference from the absence of the name "Kulmie" in his Somali documents and his Canadian refugee claim documents.
- Mr. Mohamed's evidence as to how he obtained his Kenyan passport lacked credibility. The RPD found that his many references to the Kenyan passport as "his" passport cast doubt on his real identity and nationality.
- Mr. Mohamed testified that when entering the United States, he did not reveal his true identity out of fear he would be sent back to Kenya where his false passport and identity could be discovered. However, he testified that he used the Kenyan passport to travel in and out of Kenya on many occasions over the years and never feared being apprehended. The RPD drew a negative inference from this inconsistency.
- Mr. Mohamed's testimony about the whereabouts of his Kenyan passport was inconsistent, raising doubts about whether he had truly disposed of it.
- Mr. Mohamed's admitted use of a false identity in South Sudan undermined his credibility as it shows a willingness to adopt an alternate identity for personal gain.
- On a balance of probabilities, the Somali documents provided by Mr. Mohamed were purchased on the black market.
- The 2010 Somali passport provided by Mr. Mohamed was unreliable. He only provided a copy of one page of the passport, testified that it was e-mailed to him and testified that he obtained it through a friend without providing any identification documents.
- The government stamps on the Somali documents provided by Mr. Mohamed refer to "Somali Democratic Republic", while the documentary evidence showed that Somalia ceased being referred to as the "Somali Democratic Republic" in 1991. The RPD found that these documents were fraudulent on a balance of probabilities.
- The affidavits from seven relatives of Mr. Mohamed in Somalia, submitted the day prior to his hearing, were unreliable.
- Mr. Mohamed stated in his refugee claim documents that he attended "Al-Hikma" high school in Somalia. When asked by the RPD, he replied that he attended "Usama Ben Zeid" high school, later saying that the name of the school had changed. He also provided a school certificate from "Usama Ben Zeid" high school. The RPD found

that on a balance of probabilities, the Applicant aligned his testimony to be consistent with the certificate.

- Mr. Mohamed provided a letter from “Midaynta Community Services” in Toronto, indicating that he speaks standard Somali fluently, his dialect is consistent with the standard Somali language, and he was able to talk about the city, people, customs culture and landmarks in Mogadishu. The RPD found there is insufficient detail and explanation in the letter to demonstrate how the author determined Mr. Mohamed is who he says he is and how the author verified his personal identity.

[5] A representative of the Minister of Immigration, Refugees and Citizenship intervened in Mr. Mohamed’s refugee claim because of concerns relating to his identity.

III. Decision under review

[6] Like the RPD, the RAD determined that Mr. Mohamed lacked credibility and that he failed to establish his identity. The RAD accepted the following documents as new evidence:

- The original expired passport of Mr. Mohamed’s purported wife;
- Canadian Border Services Agency Notice of Seizure of Travel and/or Identity Documents dated November 27, 2018;
- “Transferred Shipments” shipping declaration dated November 19, 2018;
- Certified Copy of a Somali identity card for Fadumo Ali Mohamud (Mr. Mohamed’s purported mother and one of the seven affiants);
- Certified Copy of an expired Somali passport for Fadumo Ali Mohamud;
- Shipping declaration of Maqdis Abdulle Roble (Mr. Mohamed’s purported wife) dated November 19, 2018, with attached copy of passport biographical page;
- Letter from Al-Hikma Secondary School dated November 18, 2018.

[7] On September 28, 2020, the RAD advised Mr. Mohamed that two new credibility issues, about which he was invited to make submissions, would be considered on appeal. It set those issues out as follows:

- i) *The Appellant has alleged that Maqdis Abdulle Roble is his wife, while the shipping authorization document signed by her on November 19, 2018 identifies her as the Appellant's cousin. Further, the passport of Maqdis Abdulle Roble indicates that Hawo Abdi Mohamed is her mother (RPD Record, p.139), while the affidavit signed by Hawo Abdi Mohamed identifies her as the Appellant's aunt;*
- ii) *The Appellant alleged in his narrative that he is a member of the Murusad clan and that "there is no protection available to me in Somalia because I am of a minority clan" (RPD Record, p.30-33). However, the letter provided by Midaynta Community Services (RPD Record, p. 102-103) indicates that the Appellant "identifies his clan as Hawiye, subclan Murusade, which he correctly asserted as a majority clan". Item 13.2 of the NDP for Somalia dated March 31, 2020 confirms that Murusade is a sub-clan of Hawiye, and item 1.10 of the NDP indicates that the Hawiye clan is dominant in Mogadishu and that the Somali national army mostly consists of members of the Hawiye clan.*

[8] Mr. Mohamed filed an affidavit in response. The RAD determined the affidavit to be lacking credibility and refused to admit it as new evidence.

[9] The RAD refused to hold an oral hearing, having determined that the legal requirements for an oral hearing were not met. The RAD noted that the new evidence admitted was relevant to the credibility of the affidavits of Mr. Mohamed's relatives, but did not raise a serious issue with respect to Mr. Mohamed's credibility, which is required by paragraph 110(6)(a) of the *IRPA*.

[10] The RAD agreed with the RPD that Mr. Mohamed failed to adequately explain the omission of the name "Kulmie" from his application and the appearance of the surname "Kulmie" on some of his documents provided to establish his identity. The RAD also agreed with the RPD that his Somali birth certificate, identity certificate and marriage certificate are

fraudulent. The RAD noted that the government stamps on these documents, in addition to improperly referring to the “Somali Democratic Republic”, contain spelling mistakes. “Foreign” is misspelled as “Forian” in “Minister of Forian Affairs” on the stamp on the identity certificate, and as “Foraing” on the stamp on the marriage certificate. The RAD also agreed with the RPD that Mr. Mohamed’s 2010 Somali passport is unreliable.

[11] The RAD proceeded to an independent review of Mr. Mohamed’s educational documents. It concluded the RPD was correct in not giving them any weight in establishing Mr. Mohamed’s identity. It found those documents to be fraudulent, based upon the following:

“The letter purported to be from the International University of Africa, Faculty of Sharia and Islamic Studies contains an error in the letterhead in which “Africa” is spelled “Afirca”. The next page in the record is a letter purported to be from the Dean of Students of the same institution. The letter contains an official stamp that misspells the word “University” as “Unversity”. The transcript and official diploma certificate from Al Neelain University, which purport to be the original documents issued by the university and not translated documents, both contain a spelling error in the title of the “Academic Secretary” who is listed as the “Academic Secretary”.”

While the RAD was mindful of the jurisprudence that cautions against imposing Western standards on documents issued in developing countries, it stated that it could not accept that these documents would contain such errors if they were issued by a university.

[12] The RAD found that the RPD did not err when drawing an adverse inference with respect to the discrepancy in the name of the high school Mr. Mohamed attended in Somalia. Regarding the letter from Al-Hikma high School that was admitted as new evidence, the RAD noted discrepancies which cast further doubt about Mr. Mohamed’s credibility. For example, the letter

referred to Osama Bin Zeyd high school while the school certificates provided by Mr. Mohamed refer to it as Usama Bin Zeid. The letter also contained many grammatical errors, one of which refers to the “principle” of the school, when clearly referring to the “principal”. The RAD concluded that the school certificate initially submitted to the RPD by Mr. Mohamed was fraudulent.

[13] The RAD agreed with the RPD that Mr. Mohamed’s willingness to adopt a fraudulent identity for personal gain undermined his credibility. The RAD also agreed with the RPD that inconsistencies regarding the timing and circumstances of the issuance of the Kenyan passport are not credibly explained.

[14] Regarding the supporting affidavits from purported relatives of Mr. Mohamed, the RAD observed that the new evidence alleviated some of the RPD’s concerns regarding identity but problems remained regarding the identity of his mother and his spouse. While acknowledging that one could be both a cousin and a spouse, the RAD expressed concern that Mr. Mohamed had heretofore identified Maqdis Abdulle Roble as his cousin and not his wife. When asked how he met his wife, he indicated that they met at school. He never mentioned she was his cousin and met her through family. The RAD also expressed doubts about the identity of Mr. Mohamed’s mother.

IV. Relevant Provisions

[15] The relevant provisions in the case at bar are ss. 96, 97, 106 and 110(6) of the *IRPA*, reproduced in the schedule below.

V. Issue

[16] The issues are the reasonableness of the ultimate decision and the reasonableness of the decision not to hold an oral hearing.

VI. Analysis

[17] All aspects of the RAD's decision are subject to review on the reasonableness standard (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, 441 DLR (4th) 1 ["Vavilov"] at para 25). None of the exceptions to the presumption of reasonableness review apply here (*Vavilov* at para 17).

[18] A claimant's failure to establish his identity on a balance of probabilities is fatal to a claim for refugee protection (*Edobor v Canada (Citizenship and Immigration)*, 2019 FC 1064 at para 8). I am of the opinion that the RAD reasonably determined that Mr. Mohamed failed to establish his identity as a national of Somalia.

[19] Mr. Mohamed asserts, among other things, that the RAD breached its duty of procedural fairness when it rejected his affidavit in response to the September 28, 2020 letter, without convening an oral hearing. The RAD's refusal to admit new evidence or to hold an oral hearing is subject to review on the reasonableness standard (*Awonusi v Canada (Citizenship and Immigration)*, 2021 FC 385 at para 10). I will therefore consider whether the RAD reasonably applied the statutory criteria found in subsections 110(4) and 110(6) of the *IRPA* (*Homauni v Canada (Citizenship and Immigration)*, 2021 FC 1403 at para 16)

[20] To accept new evidence on appeal, the RAD must be satisfied that the evidence meets the legal requirements set out in subsection 110(4) of the *IRPA* and the jurisprudential requirements of credibility, relevance and newness (*Khan v Canada (Citizenship and Immigration)*, 2020 FC 438 at paras 29-30). Pursuant to subsection 110(6) of the *IRPA*, an oral hearing may be held by the RAD if new evidence is accepted that raises a serious credibility issue with respect to an appellant, is central to the decision with respect to the refugee claim, and would justify allowing or rejecting the claim.

[21] I am of the view that the RAD reasonably concluded the affidavit lacked credibility. First, the RAD found that the affidavit was not credible as it relates to Mr. Mohamed's relationship with his purported wife. Contrary to Mr. Mohamed's assertions, the RAD accepted that it was possible for Mr. Mohamed and his purported wife to be cousins. The RAD's credibility finding has nothing to do with this fact. It has to do with the fact that Mr. Mohamed, never disclosed this information at the RPD hearing. Furthermore, until disclosed at the RAD hearing, neither Mr. Mohamed, nor his wife, ever referred to their relationship as cousins. I am of the view that it was reasonable for the RAD to expect that Mr. Mohamed, when asked "how did you meet your wife?", to respond, at least in part, that they were cousins. I am of the opinion that the RAD's adverse credibility finding is reasonable. On this issue, the RAD is accorded significant deference (*Koeh v Canada (Citizenship and Immigration)*, 2016 FC 752 at para 32).

[22] Second, the RAD found that the affidavit was not credible as it relates to Mr. Mohamed's clan membership. Mr. Mohamed contends that the RAD failed to consider that major clans can have minority sub-clans. He contends that the RAD's finding is unreasonable since Mr.

Mohamed states in his Basis of Claim (“BOC”) narrative that he belongs to a minor clan. His arguments are without merit. The RAD’s finding is based on the fact that Mr. Mohamed introduced a new sub-clan for the first time in his affidavit, while his BOC narrative, oral testimony and supporting documents never mention this sub-clan. It is well established that all important facts and details of a claim must be included in the initial BOC. The failure to include them may affect the claimant’s credibility (*Occilus v Canada (Citizenship and Immigration)*, 2020 FC 374 at para 20). Contrary to Mr. Mohamed’s assertion, the identity of a sub-clan affiliation would have been relevant to establishing his identity as a Somali. Considering that Mr. Mohamed alleged a risk factor from his clan affiliation, it was reasonable to expect him to disclose this sub-clan in his BOC narrative. I am of the view that the RAD’s credibility finding was reasonable. Given these observations, the RAD was under no duty to hold an oral hearing.

[23] Mr. Mohamed contends the RAD unreasonably discounted his identity documents because of the presence or absence of the name “Kulmie”. He asserts the RAD adopted a western approach by failing to consider Somali naming traditions. While I tend to favour the view adopted by Mr. Mohamed, the determination is not mine to make. The RAD relied upon the circumstances, nuances of use and failure to adequately explain the difference for the uses to make its negative finding.

[24] I turn now to the Somali government documents and educational documents. I am satisfied the issues raised surrounding those documents are sufficient, in and of themselves, to dismiss this application for judicial review. Continued use of the name “Somali Democratic Republic” in official documents, long after the country changed its name to “Federal Republic of

Somalia” constitutes an inconsistency impossible to overlook. I cannot say it was unreasonable for the RAD to take that factor into consideration. It was reasonably open for the RAD to find that the use of dated stamps cast doubt on the genuineness of these documents. (*Vavilov* at para 86). In any event, the documents also contain other major flaws, such as spelling mistakes on the government stamps. While the Applicant relies on *Oranye* to argue that the presence of spelling mistakes in a document is insufficient to justify a finding of fraud, that case is distinguishable. In *Oranye*, this Court was concerned about the RAD’s treatment of spelling errors in a personal affidavit. Here, the RAD addressed spelling mistakes on government stamps placed on allegedly official documents. In *Azenabor v. Canada (Citizenship and Immigration)*, 2020 FC 1160 [“*Azenabor*”], this Court stated:

[31] Again, I find the RAD’s reliance on these issues as one element of its assessment of the documents to be reasonable. The RAD raised a concern about one of the affidavits, consisting of two pages, having different fonts on the two different pages. It was not satisfied with the Azenabors’ response on this issue, which was limited to noting that the stamps and signatures on each page were the same, without further explanation for the notable difference in font between the pages. With respect to the typographical errors, there is a difference in my view between a clerical error in the body of a document and material errors in the printed portions of what is contended to be an official corporate identity card. One might, for example, distinguish between a typographical error appearing in this paragraph of this decision, and a misspelling of the words “Federal Court” in the letterhead of the Court: *Ali v Canada (Citizenship and Immigration)*, 2015 FC 814 at para 31. While either might be possible, the latter might reasonably raise greater concerns about the genuineness of a document purporting to be a judgment of this Court. [Underline added]

Considering the presence of spelling mistakes on the government stamps of these documents, and the other inconsistencies noted by the RAD, I am of the opinion that it was reasonable to find these documents to be fraudulent.

[25] Mr. Mohamed also relies on *Oranye* as the basis for his contention the RAD unreasonably found the educational documents were fraudulent. I find this submission incredulous. Those purportedly official documents contain spelling errors for which there can be no excuse. What academic institution misspells the words “Africa”, “university” and “academic” in pre-printed portions of its letterheads, official stamps and titles of the signees? This Court’s reasoning in *Azenabor* also applies here. The RAD reasonably, and correctly in my view, found these documents to be fraudulent.

[26] Essentially, Mr. Mohamed asks this court to reweigh the evidence. That it must not do (*Vavilov* at para 125).

VII. Conclusion

[27] I am of the opinion that the Applicant has not met the burden of establishing that the RAD’s decision is unreasonable. Considered as a whole, the RAD’s decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained it. (*Vavilov* at para 85). For the reasons set out above, I dismiss the within application for judicial review.

JUDGMENT in IMM-6104-20

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

No question is certified for consideration by the Federal Court of Appeal.

“B. Richard Bell”

Judge

SCHEDULE

Immigration and Refugee Protection Act, SC 2001, c 27

Loi sur l'immigration et la protection des réfugiés, LC 2001, c 27

Convention Refugee

Définition de réfugiée

96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

96 A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

97 (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au

of Article 1 of the Convention Against Torture; or

sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

Credibility

Crédibilité

106 The Refugee Protection Division must take into account, with respect to the credibility of a claimant,

106 La Section de la protection des réfugiés prend en compte, s'agissant de crédibilité, le fait que, n'étant

whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation.

pas muni de papiers d'identité acceptables, le demandeur ne peut raisonnablement en justifier la raison et n'a pas pris les mesures voulues pour s'en procurer.

Hearing

110(6) The Refugee Appeal Division may hold a hearing if, in its opinion, there is documentary evidence referred to in subsection (3)

(a) that raises a serious issue with respect to the credibility of the person who is the subject of the appeal;

(b) that is central to the decision with respect to the refugee protection claim; and

(c) that, if accepted, would justify allowing or rejecting the refugee protection claim.

Audience

110(6) La section peut tenir une audience si elle estime qu'il existe des éléments de preuve documentaire visés au paragraphe (3) qui, à la fois :

a) soulèvent une question importante en ce qui concerne la crédibilité de la personne en cause;

b) sont essentiels pour la prise de la décision relative à la demande d'asile;

c) à supposer qu'ils soient admis, justifieraient que la demande d'asile soit accordée ou refusée, selon le cas.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6104-20

STYLE OF CAUSE: DAHIR AHMED MOHAMED v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: DECEMBER 10, 2021

**REASONS FOR JUDGMENT
AND JUDGMENT:** BELL J.

DATED: JANUARY 19, 2022

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