Federal Court  Cour fédérale

Date: 20230728

Docket: IMM-9107-21

Citation: 2023 FC 1032

Ottawa, Ontario, July 28, 2023

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

ABDIRASHID CABDI YUSUF

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant asserts he is a citizen of Somalia and a Sufi Muslim. He alleges that Al Shabaab abducted and tortured him as a recruitment effort. After escaping, he hid with an uncle's friend until he could leave Somalia, first for Kenya and then Denmark where he claimed protection and was accepted as a Convention refugee. Three years later, however, Denmark found Somalia safe enough for the Applicant to return. Instead of doing so, the Applicant hid and

eventually made his way to Canada, on a fraudulent passport, where he made a claim for refugee protection.

[2] The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [IRB] rejected the Applicant's claim, finding that he had not established his identity. The Refugee Appeal Division [RAD] of the IRB confirmed the RPD Decision and dismissed the appeal [Decision].

[3] The Applicant seeks to have the Decision set aside, with its reasonableness as the sole issue for the Court's determination. In my view, there are no circumstances here that displace the presumptive reasonableness standard of review: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 17, 25.

[4] A decision may be unreasonable, that is lacking justification, transparency and intelligibility, if the decision maker misapprehended the evidence before it. The party challenging the decision has the onus of demonstrating that the decision is unreasonable: *Vavilov*, above at paras 99-100, 125-126.

[5] For the reasons below, I am not satisfied that the Applicant has met his onus. I thus dismiss this judicial review application.

II. Analysis

[6] It bears emphasizing that the Court's role on this judicial review is not to determine whether the Applicant has established his identity, but rather to consider whether the Decision is reasonable. In response to the Applicant's primary argument that he has established his Somali identity on a balance of probabilities, I am satisfied the Applicant has not demonstrated in this case that the Decision is unreasonable. I further note that the Applicant has not challenged the RAD's findings with respect to his religious and clan identity and the support letters from Midaynta Community Services and the Loyan Foundation.

[7] I am not persuaded that the RAD erred in declining to admit as new evidence the affidavit of the Applicant's friend, "Adem." The RAD explained that it declined to admit the affidavit for three reasons.

[8] First, the RAD found that the affidavit was too fortuitous to be credible, given that Adem was meant to be the Applicant's reception upon arrival in Canada but did not appear at the airport. Three years passed with no contact until, within weeks of the negative RPD decision, the Applicant ran into his friend by chance at an oil change business.

[9] I am not convinced the RAD erred in finding that the affidavit was too fortuitous to be credible: *Idugboe v Canada (Citizenship and Immigration)*, 2020 FC 334 at paras 21-25; *Elmi v Canada (Citizenship and Immigration)*, 2020 FC 296 at para 32-36; *Karakaya v Canada (Citizenship and Immigration)*, 2014 FC 777 at para 26, 31. The Applicant argued at the hearing

that these decisions are factually distinguishable from the case before the Court. While that may be, I find that nonetheless the principle still applies that it is not an error *per se* for the RAD to consider the convenient or coincidental timing of new evidence. It was open to the RAD here in my view to impugn the credibility of the affidavit not only on this basis, but also based on the finding that the Applicant and Adem barely know one another, as discussed further below.

[10] While the RAD accepted that it was not impossible that the Applicant and Adem could run into each other by chance, the RAD reasonably found, in my view, that it was extremely unlikely, so much so that it raised concerns regarding timing.

[11] Second, the RAD had concerns about how well Adem and the Applicant know one another because, although Adem stated they would play soccer together each Friday in Somalia for about a year, neither of them knew each other's correct surnames and the Applicant did not know Adem's age.

[12] Contrary to the Applicant's argument, I am not persuaded that the RAD ignored Item 3.2 of of the National Documentation Package [NDP], when the RAD explicitly relied on it later in the Decision. The RAD is presumed to have considered all the evidence before it, unless the contrary is established: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16; *Amadi v Canada (Citizenship and Immigration)*, 2019 FC 1166 at para 50.

[13] Although in some circumstances, a RAD decision can be impugned where it is silent on evidence contrary to its findings, especially when that evidence is found in the same sources on which the RAD relied (see for example *Pantoja v Canada (Citizenship and Immigration),* 2022 FC 1790 at para 35), I am not convinced that this occurred here.

[14] The passage in Item 3.2 on which the Applicant relies speaks to how factors such as nicknames and illiteracy sometimes create a lesser focus on formalities, and might often result in confusion about a person's correct name and identity. It further states that very few Somalis know their exact date of birth. I note, however, there is no evidence on record that the Applicant or Adem is illiterate, nor did the RAD fault the Applicant for not knowing Adem's exact date of birth. The RAD's focus was on basic details such as age and surnames.

[15] While the RAD must be careful not to review evidence unduly with a North American lens (see for example *Lubana v Canada (Minister of Citizenship and Immigration),* 2003 FCT 116 (CanLII), 228 FTR 43 at para 12), in my view this is not what happened here. I note, for example, that elsewhere in the Decision, the RAD found the RPD had erred by not considering the prevalence of nicknames in Somalia, and further, the RAD accepted the Applicant's explanation regarding why he gave his non-official name to Danish authorities. Looking at the Decision holistically, I find it demonstrates a careful consideration of all relevant surrounding circumstances.

[16] Third, the RAD also found the Applicant had provided inconsistent information regarding how he knew Adem.

[17] It was open to the RAD in my view to rely on the Applicant's interview at the port of entry upon his arrival to Canada: *Gong v Canada (Citizenship and Immigration),* 2022 FC 24 at para 30-31. There is no indication in the interview notes that there was an interpretation error that resulted in his inconsistent answers. Further, I find that the RAD did not place "undue reliance" on the Applicant's statements at the port of entry: *Wu v Canada (Citizenship and Immigration),* 2010 FC 1102 at para 16. The RAD only relied on them to note the Applicant's inconsistent statements on how he knew Adem and that Adem was meant to pick him up from the airport but they instead lost touch.

[18] I also am not persuaded that the RAD unreasonably declined to hold an oral hearing.

[19] There was no legal basis for a hearing in this case, and the RAD reasonably explained, in my view, why it did not convene one. Contrary to the Applicant's submission, the RAD had no obligation to hold a hearing to assess the Applicant's credibility or to hear from Adem for the reason that the new evidence that was admitted did not meet the requirements of subsection 110(6) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], reproduced in Annex "A" below: *Abdi v Canada (Citizenship and Immigration),* 2019 FC 54 at para 29; *AB v Canada (Citizenship and Immigration),* 2020 FC 61 at para 17. In other words, in the absence of new evidence that was admitted and that raised concerns about the Applicant's credibility, the *IRPA* ss 110(6) was not triggered: *Paranych v Canada (Citizenship and Immigration)*, 2022 FC 891 at para 31-32.

[20] Last, I find the Applicant has failed to demonstrate that the RAD erred in its analysis of the Applicant's Danish identity documents. The Applicant argues that the RAD should have accepted the Applicant's explanation for not having gone to the Danish authorities to rectify the incorrect name he gave them because the Applicant feared this could jeopardize his status in Denmark. The RAD noted, however, that while the Applicant was scared he would get in trouble and risk his asylum claim by attempting to rectify his name, the Applicant nonetheless gave an incorrect name to Canadian authorities when it would have been reasonable to expect him to provide his full correct name after being aware of the issue in Denmark. In my view, the RAD's explanation is not unreasonable in the circumstances and the Applicant's arguments on this point are tantamount to a request to reweigh evidence: *Vavilov,* above at para 125.

III. Conclusion

[21] While I recognize the difficulty Somalian nationals face in obtaining identity documents, the onus remains on the Applicant to establish his identity: *Edobor v Canada (Citizenship and Immigration),* 2019 FC 1064 at para 11. I find no reason to fault the RAD in light of the factual and legal constraints that bore on its Decision. I thus dismiss the Applicant's judicial review application.

[22] Neither party proposed a serious question of general importance for certification and I find that none arises in the circumstances.

JUDGMENT in IMM-9107-21

THIS COURT'S JUDGMENT is that:

1. The Applicant's judicial review application is dismissed.

2. There is no question for certification.

"Janet M. Fuhrer"
Judge

Annex "A": Relevant Provisions

***Immigration and Refugee Protection Act* (S.C. 2001, c. 27)**
***Loi sur l'immigration et la protection des réfugiés* (L.C. 2001, ch. 27)**

Appeal to Refugee Appeal Division	**Appel devant la Section d'appel des réfugiés**
Hearing	**Audience**
110(6) The Refugee Appeal Division may hold a hearing if, in its opinion, there is documentary evidence referred to in subsection (3)	**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) that raises a serious issue with respect to the credibility of the person who is the subject of the appeal;	**a)** soulèvent une question importante en ce qui concerne la crédibilité de la personne en cause;
(b) that is central to the decision with respect to the refugee protection claim; and	**b)** sont essentiels pour la prise de la décision relative à la demande d'asile;
(c) that, if accepted, would justify allowing or rejecting the refugee protection claim.	**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-9107-21
STYLE OF CAUSE:	ABDIRASHID CABDI YUSUF v THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA
PLACE OF HEARING:	HELD VIA VIDEOCONFERENCE
DATE OF HEARING:	FEBRUARY 23, 2023
JUDGMENT AND REASONS:	FUHRER J.
DATED:	JULY 28, 2023

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