

Federal Court



Cour fédérale

Date: 20231106

Docket: IMM-7482-22

Citation: 2023 FC 1330

Ottawa, Ontario, November 6, 2023

PRESENT: Mr. Justice O'Reilly

BETWEEN:

MOHAMED YOUSUF MOHAMED

Applicant

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP CANADA**

Respondent

AMENDED JUDGMENT AND REASONS

I. Overview

[1] Mr Mohamed Yousuf Mohamed, a citizen of Somalia, says he obtained refugee protection in the United States in 1992 based on a false identity (“Ahmed Mohamoud Ali”). Two years later, he arrived in Canada and made a refugee claim here. He told an officer of the Canadian Border Services Agency that he had not made a claim elsewhere; he said he had been in the US for only a week.

[2] In 1995, Mr Mohamed obtained refugee status in Canada. He then applied for permanent residence, but was turned down because he could not prove his identity. In 2017, his second application was also refused because he had already obtained permanent resident status in the US as a refugee. His US Permanent Resident card expired in 2010. He admitted that he had withheld information from Canadian officials about his false identity and immigration status in the US. The Minister asked the RCMP to obtain a fingerprint search from the FBI. The search confirmed that Mr Mohamed is the same person as Ahmed Mohamoud Ali.

[3] At various times, Mr Mohamed has lied about his identity, immigration status, residency, family connections, and marital status to both Canadian and US officials.

[4] In 2019, the Minister asked the Refugee Protection Division to vacate Mr Mohamed's refugee status under s 109(1) of the *Immigration and Refugee Protection Act*, [IRPA] SC 2001, c 27 (see Annex for provisions cited). In 2022, the RPD granted the Minister's application. It found that Mr Mohamed had achieved refugee status in Canada by misrepresenting material facts. It concluded that, if the true facts had been known to the panel that granted Mr Mohamed's refugee claim, the panel would have found him to be excluded from refugee protection because he already had permanent resident status in the US (based on s 98 of IRPA, and Article 1E of the *Refugee Convention*). The RPD did not consider it necessary to determine whether other available evidence might have been sufficient to grant Mr Mohamed refugee protection (under s 109(2) of IRPA). It found that Mr Mohamed had probably based his refugee claim on fictitious events.

[5] Mr Mohamed argues that the RPD erred by unreasonably refusing him access by videoconference to his hearing, failing to consider his post-hearing submissions, overlooking the most recent decision on the issue of vacating refugee status, finding that he had withheld material information, and concluding that he would have been excluded from refugee status.

[6] At the hearing before me, Mr Mohamed raised another issue. He argued that the Minister's application to vacate his refugee status is too late. The application was filed nine years after the alleged misrepresentation. In a recent case, Justice Lobat Sadrehashemi found that a long delay (10 years) prejudiced the refugee claimant's children and amounted to an abuse of process (*Ganeswaran v Canada*, 2022 FC 1797). I allowed Mr Mohamed and the Minister to file additional written submissions on this issue after the hearing.

[7] Mr Mohamed asks me to quash the RPD's decision and order another panel to reconsider the Minister's application.

[8] I agree with Mr Mohamed that the RPD's finding that he had misrepresented material facts was unreasonable. I will grant his application for judicial review on that basis; I need not consider the several other arguments he presented.

II. Background

[9] Mr Mohamed explained that he arrived at a refugee camp in Kenya in 1991 after experiencing persecution in Somalia. At the camp, he met a family that had been selected for resettlement in the United States. The family had room to take one more child, so Mr Mohamed,

then 15 years old, joined them and used a false identity to make it appear that he was a genuine member of the family. He used that identity in his application for asylum in the US in 1992.

Later, when he applied for and received refugee protection in Canada in 1995, he says he used his true identity.

[10] The RPD concluded that Mr Mohamed had misrepresented a material fact by not disclosing that he had obtained asylum in the US under a false identity – that lack of disclosure prevented the original panel from making inquiries into his status in the US. The panel might also have made adverse credibility findings about the genuineness of his claim of persecution. The RPD found that if Mr Mohamed had disclosed those facts to the original panel, the panel would have found him to be excluded from refugee protection as a person who enjoyed the rights and obligations of a US national.

[11] The RPD noted that, while DNA evidence was tendered by Mr Mohamed to prove that he applied for refugee status in Canada based on his true identity, there was also evidence showing that Mr Mohamed sometimes used his false US identity even after he obtained status in Canada. The RPD was unsure which was Mr Mohamed's genuine identity and made no finding on that issue.

[12] Finally, leaving aside the alleged misrepresented facts before the original panel, the RPD found that there was insufficient additional evidence of persecution to justify Mr Mohamed's refugee claim.

III. Was the RPD's finding that Mr Mohamed had misrepresented material facts unreasonable?

[13] The Minister submits that the RPD's decision was not unreasonable because Mr Mohamed had a history of using false identities and had, at various times, tried to mislead both Canadian and US authorities.

[14] I disagree with the Minister. Mr Mohamed's failure to disclose that he had obtained status in the US using a false identity was not a material representation. The RPD's decision to the contrary was unreasonable.

[15] On an application to vacate a person's refugee status, the RPD must first determine whether the original decision granting refugee protection was obtained as a result of a misrepresentation or a withholding of material facts relating to a relevant matter (s 109(1)). This inquiry involves a three-prong approach. First, the RPD must decide whether there was a misrepresentation or a withholding of material facts. Second, those facts must relate to a relevant matter. Third, there must be a causal connection between the misrepresentation or lack of disclosure and the favourable result (*Canada (Public Safety and Emergency Preparedness) v Gunasingam*, 2008 FC 181 at para 7; *Canada (Minister of Public Safety and Emergency Preparedness v Bafakih*, 2022 FCA 18 [*Bafakih*] at para 35; *Kingsley Ndi v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 656 at para 30.)

[16] The RPD failed to satisfy the first prong.

[17] In *Bafakih*, the Federal Court of Appeal has made clear how the RPD should approach the first prong. There, the Yemeni respondents had failed to disclose information about their ties to Kenya; as a result, the RPD vacated their refugee status. In the Federal Court, Justice James Russell concluded that the RPD had erred because the non-disclosed information would not have been material to the granting of refugee status. On appeal to the FCA, the Court confirmed that the RPD must first make a finding about whether there was a misrepresentation or withholding of material facts. The Court found that the RPD had failed to do so. It had “declined to engage on the issue of the materiality of the omissions attributed to the respondents regarding their connections to Kenya” (para 31). Rather, the RPD had simply determined whether the omissions had resulted in the respondents obtaining refugee status.

[18] According to the FCA, the RPD had to first consider whether the respondents’ omissions were “material”. Instead, the RPD found that there was some evidence that the respondents could have obtained Kenyan citizenship, but concluded that it did not have to make a definitive finding on that question. However, in the absence of that finding, the respondents’ failure to disclose ties to Kenya in their original refugee claim did not extend to material facts. Even though Kenyan laws relating to citizenship were before the RPD, it did not determine whether the respondents fell within them. Accordingly, the RPD should not have concluded that the respondents’ omissions were material.

[19] Here, the RPD's key findings were that Mr Mohamed had failed to disclose that he had obtained asylum in the US and that the original panel would, if made aware of that fact, have found Mr Mohamed excluded from refugee protection in Canada as a person who enjoyed the rights and obligations of a US national.

[20] What would have happened if Mr Mohamed had informed the original panel that he had made a successful claim for asylum in the US based on a false identity? The panel would have likely made inquiries to determine Mr Mohamed's true identity, but it could have found that Mr Mohamed was excluded from refugee protection in Canada only if he had a valid claim to status in the US. At the vacation hearing, the evidence before the RPD suggested that he had no such claim; rather, it showed that Mr Mohamed would be inadmissible and refused entry to the US. Still, the RPD declined to address the issue.

[21] Accordingly, in order to grant the Minister's application to vacate Mr Mohamed's refugee status, the RPD would have had to find that Mr Mohamed had a valid claim to permanent residency in the US. To reach that conclusion, it would have also had to find that the identity Mr Mohamed put forward in his Canadian refugee claim was false. The RPD made no such finding. In fact, it stated that it had no obligation to determine Mr Mohamed's true identity – it merely had to find a misrepresentation or lack of disclosure on his part. But the case law cited above tells us that it had to go further and determine whether Mr Mohamed had obtained refugee status as a result of a material misrepresentation.

[22] I find that the RPD's decision was unreasonable because it failed to address whether Mr Mohamed's lack of disclosure amounted to a material misrepresentation.

IV. Conclusion and Disposition

[23] The RPD's finding that Mr Mohamed's failure to disclose his status in the US at his original refugee hearing amounted to a material misrepresentation was unreasonable. The RPD failed to consider whether Mr Mohamed's lack of disclosure was actually material to a relevant fact. Accordingly, I must grant this application for judicial review and order another panel of the RPD to reconsider the Minister's application. While the applicant requested that I simply quash the RPD's decision (and not remit the matter to another panel) and order costs, I can find no circumstances that would justify either of those special remedies.

[24] The parties proposed questions for certification but not on the issue on which I have decided this application for judicial review. Accordingly, no question of general importance is stated.

JUDGMENT IN IMM-7482-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed and the matter is returned to another panel of the RPD for redetermination.
2. No question of general importance is stated.

"James W. O'Reilly"

Judge

Annex

**Immigration and Refugee Protection Act,
SC 2001, c 27**

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

Vacation of refugee protection

Demande d'annulation

109. (1) The Refugee Protection Division may, on application by the Minister, vacate a decision to allow a claim for refugee protection, if it finds that the decision was obtained as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter.

109. (1) La Section de la protection des réfugiés peut, sur demande du ministre, annuler la décision ayant accueilli la demande d'asile résultant, directement ou indirectement, de présentations erronées sur un fait important quant à un objet pertinent, ou de réticence sur ce fait.

Rejection of application

Rejet de la demande

(2) The Refugee Protection Division may reject the application if it is satisfied that other sufficient evidence was considered at the time of the first determination to justify refugee protection.

(2) Elle peut rejeter la demande si elle estime qu'il reste suffisamment d'éléments de preuve, parmi ceux pris en compte lors de la décision initiale, pour justifier l'asile.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7482-22
STYLE OF CAUSE: MOHAMED YOUSUF MOHAMED v. MIRCC
PLACE OF HEARING: TORONTO, ON
DATE OF HEARING: JULY 19, 2023
JUDGMENT AND REASONS: O'REILLY J
DATED: NOVEMBER 6, 2023

APPEARANCES:

Max Berger FOR THE APPLICANTS
Jocelyn Espejo-Clarke FOR THE RESPONDENT

SOLICITORS OF RECORD:

Max Berger Law Corporation FOR THE APPLICANTS
Toronto, ON
Attorney General of Canada FOR THE RESPONDENT
Toronto, ON