

Federal Court



Cour fédérale

**Date: 20240328**

**Docket: IMM-2156-23**

**Citation: 2024 FC 497**

**Ottawa, Ontario, March 28, 2024**

**PRESENT: The Honourable Madam Justice Tsimberis**

**BETWEEN:**

**KAIF ABDULLAHI IBRAHIM**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicant, Kaif Abdullahi Ibrahim, seeks judicial review of the decision dated January 19, 2023 of the Refugee Protection Division [RPD] of the Immigration and Refugee Board, to vacate her refugee status pursuant to section 109 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] because the Applicant misrepresented or withheld material facts relating to her identity [Decision].

[2] The Applicant submits that the RPD erred in finding that she made material misrepresentations, in making an improper plausibility finding, in making negative credibility findings, and improperly speculating. Additionally, the Applicant (improperly) made a motion in their submissions for the Court to order the RPD to produce a transcript of their hearing.

[3] For the reasons that follow, I find that the RPD's Decision is not unreasonable. Additionally, the Applicant's motion was improperly made and, at any rate, a full transcript of the RPD's hearing was included in the Certified Tribunal Record [CTR]. This application for judicial review is dismissed.

## II. **Facts**

[4] The Applicant alleged that she was born in Marka, Somalia, on October 20, 1998, and stated to the RPD that she had never used any other names or aliases and that she was a citizen of Somalia only. However, the Applicant did not produce any official identity documents before the RPD from Somalia. Instead, she stated that she entered Canada on January 10, 2017, at Toronto Pearson International Airport on a fraudulent passport from Kenya, when she sought refugee protection. The Applicant was found to be a Convention refugee by the RPD on May 3, 2017.

[5] On November 22, 2016, a Kenyan citizen named Hawa Abdi Adan Issac [Issac], born December 7, 1999, in Nairobi, Kenya, applied for a study permit at the Nairobi visa office. As required by this application process, this individual presented herself for a medical assessment on November 4, 2016, in Nairobi. Issac entered Canada on December 25, 2016, had her photo collected upon entry into Canada, and was subsequently issued a study permit to attend the

International College of Manitoba. Subsequent verification by the Canada Border Services Agency [CBSA] with the International College of Manitoba revealed that Issac did not attend the school.

[6] The Respondent alleges that the photos collected from the Applicant during her refugee intake process reveal that, when compared to the photos taken as part of Issac's student visa application process and taken upon Issac's entry, on a balance of probabilities, the photos of the Applicant and Issac are of the same person.

### III. **Decision Under Review**

[7] The RPD noted that they must consider two key issues under section 109 of the *IRPA*:

- 1) Whether the decision granting refugee protection was obtained as a result of a direct or indirect misrepresentation, or a withholding of material facts relating to a relevant matter; and,
- 2) Whether at the time of first determination, there was sufficient evidence to justify refugee protection notwithstanding the misrepresentation.

[8] Citing this Court's decision in *Canada (Public Safety and Emergency Preparedness) v Gunasingam*, 2008 FC 181 [*Gunasingam*] at paragraph 7, the RPD correctly identified the three elements to be considered within the first key issue before moving on to consider the second:

- a. There must be a misrepresentation or withholding of material facts;
- b. Those facts must relate to a relevant matter; and,

- c. There must be a causal connection between the misrepresenting or withholding on the one hand and the favourable result on the other.

[9] The RPD began their analysis by laying out that the Minister bears the onus to vacate refugee status by establishing on a balance of probabilities that the protected person directly or indirectly misrepresented themselves or withheld material facts relating to a relevant matter at their refugee protection hearing and that the claimant obtained a positive decision from the RPD as a result of this misrepresentation (citing *Begum v Canada (Minister of Public Safety and Emergency Preparedness)*, 2005 FC 1182 [*Begum*] at para 8, and *Nur v Canada (Minister of Citizenship and Immigration)*, 2005 FC 636 [*Nur*] at para 21).

[10] The RPD highlighted that proof of a claimant's identity is of central importance to their claim (citing *Najam v Canada (Minister of Citizenship and Immigration)*, 2004 FC 425 at paras 15-16, citing *Thamothampillai v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 1186 (TD) and *Husein v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 726 (TD)). If the claimant's identity is not proven, the claim must fail (citing *Elmi v Canada (Citizenship and Immigration)*, 2008 FC 773 at para 4). Therefore, a misrepresentation or withholding of material facts related to the Applicant's identity would be related to a relevant matter at their refugee protection hearing, and they obtained a positive decision as a result of this.

[11] After analyzing the Respondent's evidence, the RPD concluded that there is credible and trustworthy evidence to establish that the true identity of the Applicant is that of Hawa Abdi Adan Issac, and they were one and the same person. On a balance of probabilities, the RPD

found that the Applicant was granted refugee protection based on the material misrepresentation of her identity and citizenship in Somalia and, had the RPD been aware the Applicant held Kenyan citizenship, she would have been required to make her claim against Kenya and prove that she could not live there.

[12] The Applicant testified that she is not Issac, that she entered Canada on a fraudulent Kenyan passport bearing the name Hawa Abdi Adan Issac, and that she discarded this fraudulent passport at the airport in Toronto after she collected her belongings. When the Respondent put to the Applicant a chart comparing photos of the Applicant to those of Issac, she confirmed that she was the individual displayed in the photo of Issac, the Kenyan citizen. After the Applicant confirmed being the person in the photos, she also mentioned the passport was fraudulent. As the Respondent alleged, the Applicant acknowledged that she arrived in Canada using the discarded Kenyan passport on December 25, 2016.

[13] The Applicant's justification for her misrepresentation was that an immigration agent named Chadi Mohammed had allegedly threatened to harm her family if she disclosed the true provenance of her documents. The RPD conceded that the use of false documents is not to be held against a refugee's credibility, but that expectation changes the moment the refugee makes first contact with Canadian border officials. In referring to the Canadian refugee protection application, the form indicates that one must be truthful in their application. On this basis, the RPD found that, despite being represented by competent counsel, the Applicant concealed in her refugee protection application her true date of entry into Canada, her Canadian study permit, and her alternate Kenyan identity.

[14] Notwithstanding the Applicant's assertion that an agent obtained a fraudulent Kenyan passport to facilitate her travel, the RPD noted that this passport withstood scrutiny and appeared legitimate when she made her study permit application at the High Commission of Canada in Kenya, when she cleared immigration travelling from Nairobi, Kenya, to Canada, and upon inspection by the CBSA when entering Canada. As a result, despite the Applicant's assertion, the RPD found on a balance of probabilities that the Applicant's Kenyan passport was authentic, the Applicant presented no credible evidence that refutes the Respondent's evidence, and therefore the Applicant made a material misrepresentation to the RPD in her refugee protection application by failing to disclose her alternate identity and Kenyan citizenship.

[15] The RPD went on to address evidence given by the Applicant's two witnesses, her father and half-uncle, to which they assigned little weight.

[16] First, the Applicant's father has been estranged after having left when she was young, only getting back into contact in 2019, which incorporates the time when she was allegedly fleeing Somalia. While her father testified that the Applicant was born in Somalia, the RPD held his testimony was not sufficient to overcome the authentic passport indicating the Applicant holds Kenyan citizenship.

[17] Second, the Applicant's half-uncle, whom she has never met and was only introduced by her mother who had instructed her to contact him to pay the allegedly-threatening immigration agent. The Applicant's half-uncle testified that he sent a total of \$10,070 USD to the agent, and this transaction began with the Applicant reaching out to him unsolicited and asking for money

“to get out of Africa”. He did not however have any proof of these funds being withdrawn from his bank account. The half-uncle also testified that Issac was not the Applicant’s true name, and that she was only a Somali citizen. The RPD assigned little weight to this testimony given the previously non-existent relationship between him and the Applicant, as well as the implausibility and lack of evidence for how the funds were requested.

[18] When examining the Applicant’s narrative of alleged persecution, the RPD found the fact that the Applicant holds Kenyan citizenship seriously conflicts with the version of events alleged in her claim of persecution in Somalia. By misrepresenting her identity, the RPD found the Applicant has undermined all the statements she made in support of her refugee protection claim.

[19] Due to the pervasive nature of the Applicant’s misrepresentation, infecting her own credibility and evidence given in her refugee protection claim, the RPD found there cannot be any remaining evidence to justify refugee protection. As a result, the Respondent was permitted to vacate the Applicant’s refugee protection.

#### IV. **Issue and Standard of Review**

[20] The sole issue in this application for judicial review is whether the RPD’s Decision is not unreasonable.

[21] The parties agree that the appropriate standard of review of the RPD’s Decision is reasonableness. I agree (*Ede v Canada (Citizenship and Immigration)*, 2021 FC 804 at para 7;

*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 16-17).

[22] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[23] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100). While a decision-maker is not required to respond to every line of argument or mention every piece of evidence, a decision’s reasonableness may be called into question where the decision exhibits a “failure to meaningfully grapple with key issues or central arguments” (*Vavilov* at para 28).



## V. Analysis

### A. *Vacation of Refugee Protection*

[24] Section 109 of the *IRPA* sets out the framework under which the RPD may, on application by the Minister, vacate a positive refugee protection decision:

#### **Applications to Vacate**

##### **Vacation of refugee protection**

**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.

##### **Rejection of application**

[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.

##### **Allowance of application**

[3] If the application is allowed, the claim of the person is deemed to be rejected and the decision that led to the conferral of refugee protection is nullified.

#### **Annulation par la Section de la protection des réfugiés**

##### **Demande d'annulation**

**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.

##### **Rejet de la demande**

[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.

##### **Effet de la décision**

[3] La décision portant annulation est assimilée au rejet de la demande d'asile, la décision initiale étant dès lors nulle

[25] Pursuant to section 109 of the *IRPA*, the RPD has the discretion to vacate a positive refugee determination if it finds that:

- 1) The decision was obtained through the refugee claimant directly or indirectly misrepresenting or withholding material facts relevant to their claim; and,
- 2) Leaving the misrepresentation aside, the remaining evidence before the panel that decided the refugee claim was insufficient to justify refugee protection (*Canada (Public Safety and Emergency Preparedness) v Bafakih*, 2022 FCA 18 [Bafakih] at para 2).

[26] As the RPD correctly identified, subsections 109(1) and 109(2) of the *IRPA* essentially form a two-part test for vacation of refugee protection. The RPD also correctly identified that there are three elements within the consideration of subsection 109(1) that must be met before they can move on to consider 109(2):

- a. There must be a misrepresentation or withholding of material facts;
  - b. Those facts must relate to a relevant matter; and,
  - c. There must be a causal connection between the misrepresenting or withholding on the one hand and the favourable result on the other.
- (*Gunasingam* at para 7).

[27] The parties agree on the elements of the test but disagree on whether the outcome of the RPD's analysis is reasonable.

[28] For the reasons mentioned below, the Court finds that the Applicant was granted Convention refugee protection based on misrepresentation and withholding material facts relating to the decision. Furthermore, there was insufficient evidence to justify refugee protection

notwithstanding the misrepresentation, as the entire basis of the Applicant's claim was her alleged Somalian identity.

B. *Material Misrepresentation*

[29] The Respondent submits that the RPD applied the appropriate test and "reasonably concluded that the Applicant misrepresented her identity and citizenship". The Respondent submits that the RPD was reasonable in noting the three pieces of information, which the Applicant misrepresented to immigration officials: "(a) her true date of entry into Canada; (b) her Canadian study permit; (c) and her alternate Kenyan identity."

[30] The Applicant maintains that the omissions in this case are not material because she "did not acquire refugee status by withholding those facts" because she is not a Kenyan citizen named Hawa Abdi Adan Isaac, which is the name and citizenship on the false passport that she used to travel to Canada, and thus did not misrepresent herself. She argues that because they were fraudulent, it is not a misrepresentation to have omitted the name and citizenship on the passport she used to enter Canada on her refugee claim. The Applicant alleges that the information provided in her refugee claim was correct, and that she only omitted knowing the name on the false passport, and the correct date of her entry to Canada.

[31] The Applicant relies on Bafakih that endorsed the principle set out in *Canada (Minister of Citizenship and Immigration) v Wahab*, 2006 FC 1554 at para 39 [Wahab] that pursuant to ss 109(1), the RPD must "not only [i]dentify the nature of the misrepresentations or omissions put forth by the competent minister in his application, but also to determine the extent to which these

misrepresentations or omissions may have been material (*Wahab* at para 43).” This involves considering all of the evidence, including new evidence. In both *Bafakih* and *Wahab*, the claimants were found to have identity cards to a second country, while claiming to be a citizen of only one. In *Wahab*, the Court found that the RPD was required to make two distinct findings of fact: 1) whether the second foreign document was forged or genuine; and 2) “the legal effect of the grant of citizenship” at the time of their refugee claim was considered. The case at bar is distinct because the RPD has not found that the Applicant is a dual citizen, but rather her personal identity is distinct than from the one that was granted refugee protection. In other words, that the Applicant is Hawa Abdi Adan Isaac, not Kaif Abdullahi Ibrahim.

[32] In *Fadhili v Canada (Citizenship and Immigration)*, 2022 FC 1121 [*Fadhili*], the Applicants were granted refugee protection on the basis that they were Somalians who had met and married in Kenya, where they had no status or identity documents (*Fadhili* at para 5). However, the RPD vacated their refugee protection status pursuant to s 109 of IRPA because the Applicants misrepresented material facts about their identities, the date of their arrival in Canada and the date of departure from Kenya, and their use of an agent, which is quite similar to the misrepresentations made by the Applicant in the matter before me. In *Fadhili*, the RPD and the Court found that the Applicants are, in all likelihood, Kenyan nationals (as did the RPD in the matter before me). The Court found it reasonable for “the RPD to conclude that the motivation for the misrepresentation or withholding of material facts was not relevant to the determination under subsection 109(1) of the *IRPA*.” (*Fadhili* at para 29). This is because there is no *mens rea* element in subsection 109(1) of the *IRPA* (*Fadhili* at para 29, referring to *Abdulrahim v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 463 at para 21).

[33] Similarly, in the case before me, the Applicant cannot rely on her motivation for omitting material facts in this case. The Applicant is expected to speak truthfully to the immigration agents once inside Canada. Instead, once in Canada, the Applicant presented her Kenyan passport to apply for a study permit. She did not disclose her Somalian identity until she applied for refugee protection. At this point, the Applicant did not disclose traveling to Kenya for her medical appointment and the student visa application, nor the name she used to enter Canada, nor the correct date of entry. This is despite the fact that she was represented by counsel when making these claims. These are material facts and central to her refugee claim, as the RPD would have had to consider her claim with respect to Kenya, as well as Somalia.

[34] As the Applicant's Somalian identity was central to her claim, the Respondent submits that the RPD's findings were reasonable citing *Najam v Canada (Citizenship and Immigration)*, 2004 FC 425 at paras 15-16 [*Najam*]. The Respondent points to jurisprudence, including *George v Canada (Citizenship and Immigration)*, 2022 FC 1065 at paragraph 38 [*George*], which notes "failure to establish identity is fatal to the claim". I agree with the Respondent's submissions.

[35] There is no evidence that shows that the Applicant used the Kenyan passport to the extent the claimants did in *Fadhili*. However, there is a rebuttable presumption that a passport is legitimate (*Fadhili* at para 32, citing *Abrha v Canada (Citizenship and Immigration)*, 2020 FC 226 at para 17, citing *Adar v Canada (Citizenship and Immigration)*, 1997 CanLII 16800 (FC)). The Applicant seems to suggest the Minister bears the burden of proving that the Kenyan passport was not fake, and goes on to claim the Minister did not meet this burden because no biometric evidence was presented to confirm Issac and the Applicant are the same person. In this

respect, the Applicant is incorrect. This Court has previously found that the burden is on the claimant to rebut this presumption and therefore the Applicant had the onus of proving that she was a citizen of Somalia (see for example *Saeed v Canada (Citizenship and Immigration)*, 2023 FC 958 at para 37). The Court does not find that the Applicant refuted this presumption. In addition, it was open to the RPD to assess the evidence as it did and find the Kenyan passport authentic as it withheld scrutiny at multiple checkpoints (see related paragraphs below in the credibility). It was therefore reasonable for the RPD to find that the Applicant is the Kenyan citizen Hawa Abdi Adan Isaac.

[36] The Respondent refers to *Anto v Canada (Citizenship and Immigration)*, 2017 FC 125 at para 20 and *George* at paras 34-38 for the proposition that the failure to establish identity is fatal to the claim. While both of these cases differ from the case at bar as they concern the use of multiple fraudulent documents, the proposition itself stands. By failing to refute the presumption that the Kenyan passport was legitimate, the Applicant failed to establish her identity as a Somalian.

### C. *Credibility*

[37] The Applicant submits that the RPD erred in its credibility finding and therefore failed to consider her explanation for her omissions: that she was acting on instructions from the smuggler agent. She submits that her explanation was reasonable as he was “her only means of fleeing a dangerous situation and getting to safety.” The Applicant notes that when assessing credibility, the Courts have placed limited value on the fact that “a claimant travels on false documents, destroys travel documents or lies about them upon arrival following an agent's instructions”

citing *Fadhili* at para 21 that cited *Rasheed v Canada (Minister of Citizenship and Immigration)*, 2004 FC 587 at para 18 [*Rasheed*].

[38] The Respondent submits that the argument that the RPD ignored the Applicant's explanation for misrepresentation is without merit. The RPD "acknowledged that it was not to make a negative credibility finding on the grounds that she used false documents" but that this "expectation changes when the individual first makes contact with Canadian immigration officials."

[39] The Applicant relies on *Fadhili*, which quotes *Rasheed* at para 18 to state that, when assessing credibility, the fact that "a claimant travels on false documents, destroys travel documents or lies about them upon arrival following an agent's instructions" is of limited value. This is because claimants may be vulnerable and act on the instructions of their agents. However, the Applicant took this quote out of context.

[40] In *Rasheed*, the Applicant traveled on false documents but then provided several documents establishing her true identity, one of which was found to be probably authentic by Citizenship and Immigration Canada. The Court overturned the Board's decision because they unreasonably discarded some of the Applicant's evidence used to establish her identity, which were identification documents issued by a foreign government and therefore "must be accepted as evidence of their content unless the Board has some valid reason to doubt their authenticity." (*Rasheed*, at para 19). This is distinct from the case before me, because the Applicant's additional evidence is not official documentation from a foreign government, but rather

testimony from her estranged father and her uncle who she only “met” during her application process and only for the purpose of facilitating her application, and who could not have known whether she obtained Kenyan citizenship while they were without contact. In this case, it was reasonably within the realm of possible outcomes for the RPD to question the credibility and value of the additional evidence presented to establishing the Applicant’s identity. The Court in *Rasheed* noted at para 13 that:

A claimant bears the onus of establishing his or her identity. Parliament has placed particular emphasis on the importance of providing acceptable documents. If not available, the Board is nevertheless obliged to decide whether the claimant has provided a reasonable explanation for the lack of documentation, or has taken reasonable steps to obtain it. That being said, it is within the purview of the Board to consider the failure to establish identity in its assessment of the overall credibility of a claimant.

[41] The RPD’s finding regarding the credibility of the Applicant’s witnesses and the probative value of their testimony is therefore reasonable and warrants deference.

[42] The Respondent also notes the Applicant’s admissions to the effect that:

- a. she is the person in the photographs presented at the vacation panel, which made it reasonable for the RPD to find that Ibrahim and Isaac are one and the same, on a balance of probabilities; and,
- b. she entered Canada on December 25, 2016 on a Kenyan passport, as Isaac, which made it reasonable for the RPD to find that the Kenyan passport was authentic, on a balance of probabilities, and that the Applicant had not rebutted the presumption of Kenyan nationality. The RPD noted in its assessment that the Applicant had presented her Kenyan passport to immigration officials on three occasions, none



of whom challenged its authenticity, which led the RPD to question the Applicant's story that the passport was fraudulent.

[43] The Respondent submits that “[i]n light of the prevailing jurisprudence and the Applicant's concessions, it was open to the RPD panel to find that her misrepresentations fatally undermined her credibility.” The Court noted that the RPD's credibility findings warrant a high degree of deference (*Ruiz Lopez v Canada (Citizenship and Immigration)*, 2021 FC 390 at para 41) and agrees with the Respondent that this is indeed fatal to the credibility of her testimony regarding her original refugee claim.

D. *Plausibility*

[44] The Applicant also takes issue with the RPD's finding that her story and related evidence about her uncle's payments was implausible. They allege the RPD's finding was unreasonable because, while the uncle did not know the Applicant, he did know his half-sister, the Applicant's mother, and it was not implausible that she would reach out to him to help her daughter financially. The Respondent offered little on this point other than that it was open for the RPD to make these findings and that a high degree of deference is owed.

[45] With respect, the Applicant's position on this point is nothing more than a bald assertion without facts. They allege the RPD's implausibility finding is unreasonable because there could be facts that make the Applicant's alleged chain of events plausible, but they do so without any evidence to that effect. The Applicant tendered no corroborative evidence (e.g. receipts or withdrawals) that the funds her uncle paid the smuggler were withdrawn from his bank account.

The Decision indicates at paragraph 28 that the “lack of any proof that these funds being withdrawn from his bank account, combined with the almost implausible story of how the funds were requested, leads the panel to conclude, on a balance of probabilities, these funds were not provided to an agent as alleged.”

[46] What is more, their justification for the unreasonableness of this finding is based on additional alleged facts that only the Applicant had evidence of and which the Applicant bore the onus to adduce. It is not logical for the Applicant to allege the RPD erred in making a finding on the basis of facts, that were not substantiated with credible evidence, and certainly not when the Applicant was the only one who could have adduced that evidence and they merely failed to do so. It would be unjust for this Court to let the RPD bear responsibility for the Applicant’s failure to corroborate their own story.

E. *Speculation*

[47] Also related to the authenticity of the passport, the Applicant alleges the RPD made an unjustified and speculative finding that “the Kenyan passport must be genuine because it withstood scrutiny at three points: When the applicant made her study permit application at the Canadian High Commission in Kenya, when she cleared immigration upon departing Kenya and when she entered Canada.” The Applicant asserts that the speculation results from there being no evidence of the scrutiny employed at these three points to determine if the passport is genuine or false.

[48] Again, with respect, the Applicant has improperly framed or misunderstood what has happened here. The RPD did not determine the Kenyan passport must be genuine. Rather, the RPD found on a balance of probabilities that there was ample evidence *to indicate* that the Kenyan passport is genuine because it withstood scrutiny when she made her study permit application and the passport would have been inspected by a CBSA Border Services Officer when she entered Canada. Also the Applicant failed to present any credible evidence to corroborate her contention that the passport was merely fraudulent. This is not a speculative finding that the passport was genuine; it is a finding that the Applicant failed to corroborate that it was not genuine. This is not a reversal of the onus onto the Applicant, nor is it speculative; it is the proper operation of the law as outlined in *MalDonado v Minister of Employment and Immigration*, 1979 CanLII 4098 (FCA), [1980] 2 FC 302 (CA) [*MalDonado*] at 305. There is a presumption that sworn witnesses are telling the truth, but if the Court or decision-maker (as the case may be) has reason from the evidence to believe this presumption has been rebutted, it is reasonable to require some corroborating evidence as long as they are able to articulate why they are suspicious of the claim (*Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 at paras 25-26, citing *MalDonada* at 305, *Ndjavera v Canada (Citizenship and Immigration)*, 2013 FC 452 at paras 6-7, and *Kassim v Canada (Citizenship and Immigration)*, 2018 FC 621 at para 22).

[49] The RPD started from a position that the Applicant's testimony was true, clearly evidenced by the fact that her original refugee protection application was granted. Evidence arose that gave the RPD reason to believe her story that the passport was fraudulent was untrue and that she was, in fact, a Kenyan citizen. The RPD went on to require the Applicant to submit

credible evidence that corroborated her story that the passport was fraudulent. The Applicant failed to do so. That is not speculation; that is a lack of evidence.

VI. **Conclusion**

[50] This application for judicial review is dismissed. The RPD's Decision that the Applicant held an authentic Kenyan passport, on a balance of probabilities, was reasonable. Based on this finding, it was reasonable for the RPD to find that the Applicant had made a material misrepresentation central to her refugee claim. The Decision to vacate the decision granting refugee protection to the Applicant pursuant to s 109 of the *IRPA* was reasonable. No questions for certification were raised and I agree that none arise.

**JUDGMENT in IMM-2156-23**

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

1. The Applicant's application for judicial review is dismissed.
2. There is no question for certification.

"Ekaterina Tsimberis"

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Judge

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

**DOCKET:** IMM-2156-23

**STYLE OF CAUSE:** KAIF ABDULLAHI IBRAHIM v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** SEPTEMBER 19, 2023

**JUDGMENT AND REASONS:** TSIMBERIS J.

**DATED:** MARCH 28, 2024

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