

Date: 20081014

Docket: IMM-1610-08

Citation: 2008 FC 1160

Ottawa, Ontario, October 14, 2008

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

MAHAD MAHDI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under section 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of a negative decision rendered on February 29, 2008, by L. Krajcovic, a Pre-Removal Risk Assessment Officer (the PRRA Officer).

[2] The applicant, Mahad Mahdi, was born on June 6, 1964 in Mogadishu, Somalia and is a citizen of Somalia. On July 14, 1995, he arrived to Canada and claimed Convention Refugee status. He stated having a well-founded fear of persecution by reason of his clan membership and due to his perceived political opinion.

[3] On November 28, 1997, the Refugee Protection Division of the Immigration and Refugee Board (the Board) rejected the applicant's claim. The Board did not find the applicant to be a "credible or trustworthy witness on issues central to his claim". Moreover, the Board accepted that the applicant is a member of the Abgal clan. However, the Board found that there was no serious evidence that Abgals in Somalia face a serious risk of persecution by reason of clan membership.

[4] Some ten years later, that is on October 11, 2007, the applicant made a PRRA application in support of which he did not file any supplementary evidence. On February 29, 2008, the PRRA Officer rendered a negative decision and concluded that the applicant had failed to establish that he faces either a well-founded fear of persecution or a risk to his life or risk of cruel and unusual treatment or punishment.

[5] The overall conclusion of the PRRA Officer reads as follows:

[...]

I acknowledge that the country conditions in Somalia are not favourable. However, as the Supreme Court of Canada noted in *Ward*, the international community did not intend to offer a haven for all suffering individuals. Rather, international refugee law is limited and some pleas may be excluded from international protection despite seemingly deserving of such protection. The applicant's risk upon return to Somalia does not fall within the risks described in sections 96 or 97 of the *IRPA* and, as a result, the applicant is not a Convention refugee or a person in need of protection.

I find that there is no more than a mere possibility that the applicant will face persecution if returned to Somalia. I find that it is less likely than not that the applicant will face risk to life, danger of torture or risk of cruel and unusual treatment or punishment if returned to Somalia.

[6] The applicant now seeks to judicially review the PRRA Officer's findings, submitting that as a member of the Abgal clan and as a returnee to Somalia, he is a person in need of protection. Despite the fact that the Board has found that the applicant lacks credibility, although no new evidence was produced in support of his PRRA application, the applicant alleges that the PRRA Officer ignored other readily available documentary evidence. Applicant's counsel submits that this evidence demonstrates that there is currently a deliberate effort to target civilians because of their membership to the opposite clan as well as evidence indicating that there is intra-clan fighting even within the majority Abgal clan, and that people are being targeted on account of their clan membership. There is also evidence indicating that the authorities in Somalia often view returnees as terrorists, and that returnees are thus subject to death because they are seen as either rich or disloyal.

[7] I have determined based on past jurisprudence of this Court, that the standard of review of a PRRA Officer's findings, except where they concern pure questions of law, is reviewable on the standard of reasonableness: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] S.C.J. No. 9 (QL) (*Dunsmuir*). In *Dunsmuir*, at paragraph 47, the Court gave useful instruction on applying the reasonableness standard. Reasonableness is concerned with the existence of justification, transparency and intelligibility within the decision-making process. It is also concerned with "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law". This Court should refrain from intervening in the PRRA Officer's analysis of the evidence unless it can be conclusively shown that the latter has otherwise ignored or arbitrarily discarded highly relevant evidence of risk (*Da Mota v. Canada (Minister of Citizenship*

and Immigration), [2008] F.C.J. No. 509, 2008 FC 386, at paragraph 15). This is not the case in this instance.

[8] I entirely agree with the respondent that the burden of proof lies with the applicant (*Bayavuge v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 111 at paras. 42 to 49, 2007 FC 65). It is apparent that the applicant simply did not establish, on a balance of probabilities, that he will face the danger or risks described in sections 96 and 97 of the Act. The applicant did not file any supplementary documentation in support of his PRRA application. The conclusion of the PRRA Officer is based on the documentary evidence and is reasonable in the circumstances. Contrary to the applicant's submissions, in reviewing the documentary evidence of the Board's website as well as the documentary evidence to which the PRRA Officer refers, I conclude that the PRRA Officer did in fact consider the updated version of the documentary evidence on which the applicant is now seeking to rely. In assessing the applicant's risk, the PRRA Officer considered the UK Home Office Operational Guidance Note of November 2007 (United Kingdom (UK). 12 November 2007: Home Office. Border and Immigration Agency. *Operational Guidance Note: Somalia*). This document was in turn based on information contained in the updated November 2007 UK Home Office Country Report (United Kingdom (UK). 12 November 2007. IND-RDS COI Service. *Somalia Country of Origin Information Report*). Reference is made to the United Nations High Commissioner for Refugees' (UNHCR) position on the return of rejected asylum seekers. Their conclusion is that "[w]e do not therefore accept UNHCR's conclusion, based on their overview of the general situation that it is unsafe for all persons who have been found not to be in need of some form of international protection to return to Somalia".

[9] In the case at bar, the PRRA Officer's general conclusion was one of the available acceptable outcomes and the applicant has failed to show that it was unreasonable. According to the documentary evidence, there is "semi-conflicting information" regarding the security situation for ordinary Somalis (including members of certain clans) and returnees to Somalia. Neither the document now relied upon by the applicant, nor the updated version relied upon by the PRRA Officer, conclusively establishes that Abgal clan members or returnees are currently personally at risk, or targeted, in Somalia. It is understandable that the applicant may not want to return to Somalia because of the ongoing war and the general country conditions. However, the applicant has not made a case for the application of section 96 of the Act nor does he come within the ambit of section 97 of the Act (which requires that the risk be personal rather than generalized). There is no more than a mere possibility that the applicant will fear persecution if returned to Somalia and based on the facts submitted and the current country conditions, the applicant's fear does not amount to a personalized risk.

[10] The present application must fail. Counsel agree that this case has not raise a question of general importance and none shall be stated by the Court.

JUDGMENT

THIS COURT ORDERS that the application for judicial review be dismissed. No question is certified.

“Luc Martineau”

Judge

SOLICITORS OF RECORD

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

DATED: October 14, 2008

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