

Federal Court



Cour fédérale

Date: 20120720

Docket: IMM-6857-11

Citation: 2012 FC 909

Ottawa, Ontario, July 20, 2012

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**ABDULKADIR ALI
ALL SAINTS CHURCH WINNIPEG**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] In 1991, Mr Adulkadir Ali fled the fighting in Somalia with other family members. He and his half-brother Ahmed were captured by the militia and forced to work in a camp. After he escaped, the family made its way to a refugee camp in Ethiopia, where they lived for thirteen years. The family travelled to Uganda in 2005, and the following year applied for permanent residence in Canada as members of the Convention refugee abroad class or the country of asylum class. The family is sponsored by All Saints Church in Winnipeg.

[2] In 2011, a visa officer in Kampala, Uganda interviewed Mr Ali, as well as his stepmother, half-brother and half-sister. The officer denied their applications for a lack of credible evidence. All four applicants have sought judicial review. I have dealt with their applications separately (see IMM-6862-11 (*Quresh Osman*), IMM-6858-11 (*Ahmed Ali*) and IMM-6861-11 (*Naima Ali*)). This decision relates solely Mr Abdulkadir Ali.

[3] Mr Ali submits that the officer rendered an unreasonable decision because she did not consider Mr Ali's explanation for the inconsistencies in his application and wrongly concluded that Mr Ali could live safely in Ethiopia. He asks me to quash the officer's decision and order another officer to reconsider his application.

[4] I can find no basis for overturning the officer's decision. Mr Ali did not provide the officer with a valid explanation for his inconsistent evidence. Further, the officer reasonably found that Mr Ali could live safely with his wife in Ethiopia, where she was a citizen. I must, therefore, dismiss this application for judicial review.

[5] The sole issue is whether the officer's decision was unreasonable.

II. The Officer's Decision

[6] The officer had concerns about Mr Ali's credibility because of inconsistencies in his evidence. For example, he said in his application form that the militia detained him in a camp for a

year. He escaped with the help of some militia men, who then helped him cross the border to Ethiopia.

[7] However, in the interview, he said he had been detained for only 20 or 30 days. His stepmother arranged his release by paying a bribe. He was not assisted by militia men.

[8] In her notes, the officer also observed that Mr Ali had a safe alternative to acquiring permanent residence in Canada. Since his wife is a citizen of Ethiopia, he could live safely there.

[9] The officer concluded that Mr Ali did not meet the requirements for permanent residence, and dismissed his application.

III. Was the Officer's Decision Unreasonable?

[10] Mr Ali contends that he gave the officer a good explanation for the inconsistencies in his evidence. He said that a Somali man helped him fill out his application. The man knew little Somali and Mr Ali knew little English. Therefore, he could not verify the information on the form.

[11] Mr Ali also maintains that the officer's observations about his wife were not mentioned in the officer's letter of refusal. Therefore, they do not constitute a proper reason for refusing his application.

[12] As I review the record, Mr Ali did not cite communication difficulties as an explanation for the inconsistencies in his evidence. When the officer asked him who had helped him with the application, Mr Ali told the officer about the Somali man. However, he did not attribute the inconsistencies in his evidence to any problems of communication. When the officer gave Mr Ali an opportunity to explain the discrepancies, he simply “asked for mercy.” In my view, the officer’s credibility findings were not unreasonable on the evidence.

[13] The officer’s reasons are not limited to what is stated in the refusal letter. They include her notes, and in those notes the officer recorded her concern that Mr Ali had a safe alternative in Ethiopia because of his wife’s nationality. The officer raised this concern with Mr Ali, who stated that he had not applied for citizenship in Ethiopia was because his father-in-law opposed it. The officer’s suggestion that Mr Ali had a safe alternative was, therefore, not unreasonable.

IV. Conclusion and Disposition

[14] The officer’s reasons accorded with the evidence before her and her conclusion represented a defensible outcome based on the facts and the law. Accordingly, her decision was not unreasonable and I must, therefore, dismiss this application for judicial review.

[15] Counsel for Mr Ali proposed the following questions for certification:

1. In an application for permanent residence at a Canadian visa office abroad, does the visa office breach the duty of fairness owed the applicant by basing the decision in part on interviews with other, related applicants, but not disclosing the entirety of those other

interviews to the applicant with an opportunity for comment?

2. Is there a breach in the duty of fairness owed an application for immigration at a visa post abroad where

- (a) the visa office interviews a number of related applicants separately,
- (b) refuses the application of the applicant based on inconsistencies with the interviews of the other related applicants, and
- (c) the visa office does not disclose to the applicant the inconsistencies with an opportunity to respond?

[16] Neither question should be stated. Question 1 does not arise because the officer did not rely on evidence from other applicants. For the same reason, Question 2 does not arise.

JUDGMENT

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No serious question of general importance will be stated.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6857-11

STYLE OF CAUSE: ABDULKADID ALI, et al
v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: April 19, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: July 20, 2012

APPEARANCES:

David Matas FOR THE APPLICANTS

Aliyah Rahaman FOR THE RESPONDENT

SOLICITORS OF RECORD:

David Matas FOR THE APPLICANTS
Barrister and Solicitor
Winnipeg, Manitoba

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario