

Federal Court



Cour fédérale

Date: 20140812

Docket: IMM-8367-13

Citation: 2014 FC 795

Ottawa, Ontario, August 12, 2014

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

SIYAD MOHAMED SHIRE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision made by a senior immigration officer (Officer) of Citizenship and Immigration Canada (CIC) on October 10, 2013, wherein the Officer rejected the Applicant's pre-removal risk assessment (PRRA) application made pursuant to subsection 112(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

Background

[2] The Applicant is a citizen of Somalia and is of the Darod (Daarood) tribe, specifically from the Marehan (Marlehaan) subtribe or subclan. In 1991 he and his family fled to Kenya from Mogadishu. In 1999 the Applicant traveled to the United States where he made an unsuccessful asylum claim. In 2008 he came to Canada but was returned to the United States the following day as he was found to be ineligible for refugee protection. He returned to Canada in 2011 and was again found to be ineligible. He applied for a PRRA in July 2011 which was denied in November 2012. The Applicant brought an application for judicial review of the negative PRRA decision. That decision was set aside on consent, as it had failed to consider the Applicant's clan membership in assessing his risk in returning to Somalia, and the matter was returned to CIC for redetermination. On October 10, 2013 a second PRRA decision, also negative, was rendered. That decision is the subject of this application for judicial review. The Applicant claims that he fears returning to Somalia because of his clan membership and because he would now be viewed as a Westerner.

Decision under Review

[3] The Officer stated that he was aware that Somalia is a country subject to an administrative deferral of removals (ADR). However, that this did not relieve the Applicant from establishing the existence of a personalized, forward-looking risk in the event he returned to Somalia and that the onus was on him to provide evidence to support a risk of persecution or harm in Somalia.

[4] The Officer noted the documentary evidence which describes corruption, less than ideal conditions and human rights violations facing Somalia but found that the Applicant had not linked this evidence to his personal circumstances, established that he fit a profile or that he would be personally targeted by Al Shabaab. The Officer found that the country documents related to conditions faced by the general population, or, described specific events or conditions faced by individuals not similarly situated to the Applicant. The Officer noted that the Applicant did not provide evidence to support or indicate that he or his family, who may be considered similarly situated persons and are still residing in Somalia, face a personal risk of persecution or harm.

[5] The Officer also found that the Applicant did not sufficiently detail his fear due to clan affiliation and that there was no corroborating evidence that the Applicant is being sought by any individuals in Somalia. The Officer referred to documentary evidence which indicated that the clan based system has weakened, that clan protection in Mogadishu is no longer important as there are no clan based militias in that city, and, that persons returning from abroad are not at a particular risk because of their clan affiliation. He found that the recent documentary evidence indicated that the Applicant, returning from abroad, would not be at a particular risk due to his clan affiliation. His stated fear arising from his ethnic ties to the Darod tribe was found to be a generalized risk and there was no evidence of specific targeting of the Applicant or his family.

[6] While the Applicant submitted that the documentary evidence suggested that he may be targeted by Al Shabaab because he would be perceived as having earned money while abroad, the Officer found that if he were targeted because of his perceived wealth then he would be a

victim of generalized violence as would any such returnee. There was no evidence that the Applicant would be personally targeted for this reason.

[7] Based on the totality of the evidence, the Officer concluded that there was less than a mere possibility that the Applicant would face persecution in Somalia as described in section 96 of the IRPA. Further, that there were no substantial grounds to believe that the Applicant faces a risk of torture nor reasonable grounds to believe that he faces a risk to life or a risk of cruel and unusual treatment or punishment as described in section 97 of the IRPA.

Issues

[8] The Applicant describes the issues as follows:

1. Did the assumption, in error, by the Officer of the existence of an ADR to Somalia:
 - (a) breach the duty of fairness owed to the Applicant or
 - (b) make the decision unreasonable?
2. Did the Officer properly consider the risk the Applicant faced because of:
 - (a) the clan affiliation of the Applicant or
 - (b) the perception that he is Westernized?
3. Did the Officer err in failing to have regard to cumulative grounds of risk?

[9] In my view, the issues can be framed as follows:

1. Did the Officer make a reviewable error in stating that there is an ADR for Somalia?
2. Did the Officer err in the section 96 or section 97 analysis?

Standard of Review

Applicant's Submissions

[10] The Applicant submits that the standard of review for an error of law in a PRRA decision is correctness (*Qin v Canada (Minister of Citizenship and Immigration)*, 2013 FCA 263 [*Qin*]; *Covarrubias v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 365 [*Covarrubias*]) which includes issues of fairness. Further, that the duty to conduct sufficient research is an issue of fairness for which the standard of review is correctness and that the failure to consider the risks of harm cumulatively also amounts to an error of law for which the standard of review is correctness (*Salim v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1283 [*Salim*]; *Canada (Minister of Citizenship and Immigration) v Munderere*, 2008 FCA 84 [*Munderere*]; *Retnem v Canada (Minister of Employment and Immigration)* (1991), 132 NR 53 (FCA); UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, at para 53; *Bobrik v Canada (Minister of Citizenship and Immigration)* (1994), 85 FTR 12 (TD) at para 22).

Respondent's Submissions

[11] The Respondent does not make specific submissions addressing the applicable standard of review but its written and oral representations suggest that it views reasonableness as the applicable standard.

Analysis

[12] A standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 57; *Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at para 18).

[13] While it is true that pure errors of law are to be reviewed on the correctness standard (*Salim*, above), in my view that is not the nature of the issues which arise in the present case. I would also note that many of the cases cited and relied on by the Applicant in this regard are distinguished as they concern interpreting relevant legislation or different issues (for example, *Qin* and *Covarrubias*, above).

[14] When a PRRA officer is called on to decide whether a claimant faced a risk under sections 96 or 97, this has been held to be an issue to be evaluated on the reasonableness standard (*Nnabuike Ozomma v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1167 at para 19). Similarly, the appropriate standard of review of a PRRA officer's findings of fact, or mixed fact and law, such as the existence of risk of persecution, has been found to be reasonableness (*Hnatusko v Canada (Minister of Citizenship and Immigration)*, 2010 FC 18 at para 25; *Hassan v Canada (Minister of Citizenship and Immigration)*, 2011 FC 613 at para 9). Therefore, those issues in this case which concern a question of mixed fact and law are reviewed on a reasonableness standard.

ISSUE 1: Did the Officer make a reviewable error in stating that there is an administrative deferral of removal to Somalia?

Applicant's Submissions

[15] The Applicant submits that the Officer erred in stating that Somalia is subject to an ADR and this finding was prejudicial. He submits that the Officer may have been comforted, in error, by the thought that even with a negative decision the Applicant would not be removed. The Applicant was not provided with a chance to respond to this assumption and submits that this amounted to a breach of the duty of fairness. At the very least it was unreasonable and tainted the decision rendering it unreasonable.

Respondent's Submissions

[16] The Respondent acknowledges that the Officer was under a mistaken impression that at the time of the PRRA there was an ADR for Somalia, but submits that this factual error was immaterial to the decision. Further, that there is nothing to support the Applicant's assertions of a prejudicial effect. Rather, while he notes that the existence of an ADR might be used to bolster a claim for protection, the substance of the Officer's comments is to confirm that the existence of an ADR would not prejudice his decision. The Officer explicitly dismisses the possibility that it would prejudice his decision.

Analysis

[17] The Officer erred in stating that there was an ADR for Somalia, however, I agree with the Respondent that the error was immaterial and did not prejudice the decision.

[18] The Officer's comments are clearly aimed at confirming that, even if Somalia was subject to an ADR and the protection from removal it would afford the Applicant, he was still required to adduce evidence to support his risk of persecution or harm in Somalia. The relevant paragraph states:

I am aware that Somalia is a country subject to an administrative deferral of removals (ADR); however, it does not relieve the applicant from establishing the existence of a personalized, forward-looking risk in the event he returns to Somalia. Canadian jurisprudence has determined that the mere fact that the authorities in charge decide not to remove foreign nationals who are in Canada to their home country does not create a presumption of a personalized risk to the applicant (*Nkitabungi v Canada*, 2007); thus the onus is on the applicant to provide evidence to support his risk of persecution or harm in Somalia.

[19] This is the extent of the Officer's reference to an ADR and it does not suggest that the Officer was comforted by the thought that, even if he rendered a negative PRRA decision, the Applicant would not be removed. Further, nothing in the remainder of the decision or the evidence on record supports the Applicant's assertion that the mistaken belief had to have an impact on the Officer's mind about the significance of his decision and the risk the Applicant faced. Nor, does the error taint the decision rendering it unreasonable.

[20] Further, and in any event, as the error was not material to the ultimate outcome, the fact that the Applicant was not provided with an opportunity to correct it does not amount to a breach of the duty of fairness owed to him or render the decision unreasonable (*Mobil Oil Canada Ltd v Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 SCR 202).

ISSUE 2: Did the Officer err in the section 96 or section 97 analysis?

Applicant's Submissions

[21] The Applicant's submissions are numerous, lengthy and include a large number of case law references although no book of authorities was submitted. The submissions are summarized below.

[22] The Applicant submits that in his PRRA application he stated that he was from the Darod tribe, more specifically, from the Marehan tribe which is part of the larger Darod tribe. Further, that his counsel made submissions to the Officer concerning the risk that the Applicant faces as a member of the Marehan subclan. However, in his decision the Officer does not even mention the Marehan subclan. The very reason the Applicant's family fled Somalia was due to the attack on the Marehan. It was, therefore, essential for the Officer to consider the evidence about the risk the Applicant faced as a member of the Marehan subclan and the failure to do so suggests that the decision was made without regard to the evidence.

[23] As to his fear that he will be targeted because he will be viewed as a Westerner, the Applicant submits that the Officer erred by requiring evidence to support that he will be

personally targeted in order to establish risk. Personal targeting is not a requirement, it is sufficient if the claimant establishes that similarly situated persons are being targeted. Here the documentary evidence shows that returnees are targeted by Al Shabaab. Further, the Officer dismissed the Applicant's particularized elements of risk, being that he has been in the West for almost fifteen years and will be perceived to be a Westerner and to be wealthy, and turned it into a generalized one because others would be subject to the same risk. This is an error of law.

[24] Further, the concept of generalized risk does not apply to section 96. The Officer only considers that the Applicant was a Westerner under the 97 analysis but not under section 96. An individual facing a generalized risk can still be a Convention refugee if the risk has the requisite nexus. Here, it is established because of perceived Westernization and by reason of his perceived religious and political opinion.

[25] The Applicant submits that the Officer also erred in finding that if the Applicant was targeted upon return to Somalia because of his perceived wealth that he would be a victim of generalized violence meaning that any returnee from a Western country would be perceived to have wealth. This is flawed reasoning as the Applicant was not just a returnee from a Western country but someone who lived there for almost fifteen years. The Officer had a duty to look at the particular situation of the Applicant not just this and the broader groups enveloping his particular situation. Further, that it is sufficient to establish that similarly situated individuals are targeted. The documentary evidence supports that the Al Shabaab would target him as he fit the profile of the persons they attack and, therefore, he is similarly situated to those individuals at a risk. The Officer failed to refer to that evidence and explain why he rejected it.

[26] The Applicant submits that even if he said nothing about the Marehan, the Officer had a duty to consider the risk that flowed from his membership in that subclan and to conduct sufficient independent research to come to a proper determination. Cases have found a breach of this duty where there was a failure to consider relevant country condition evidence. This is a component of the duty of fairness.

[27] Further, that it is reasonable to conclude that a directly affected person has a legitimate expectation that respect for procedures, such as those set out on CIC's website requiring the consideration of the evidence, would be included in the duty of fairness afforded to each person.

[28] As to section 96, the Applicant states that the Officer does not find the Applicant to be not credible and, therefore, his account was presumably believed. Past persecution of the Marehan subclan creates an evidentiary presumption that members of the subclan would be persecuted in the future and was relevant evidence in determining whether the Applicant's fear was well-founded.

[29] The Applicant also submits that the Officer failed to cumulatively consider his grounds of persecution and risk being as a Westerner and as a Marehan which may be sufficient to meet the definition of a Convention refugee or a person in need of protection. The Officer has a duty to consider them cumulatively and his failure to do so was an error of law.

[30] Finally, the Applicant submits that the decision is also not supported by reasons which can withstand a probing examination.

Respondent's Submissions

[31] The Respondent submits that the Applicant neither claimed, nor provided any evidence, that the Marehan are targeted for being Marehan or that he would be targeted for that reason. Every allegation the Applicant made regarding clan based risk was related to him being a Darod. There was no evidence that members of the Marehan clan are currently targeted or at risk in any way. The onus is on the Applicant to prove his case and to provide sufficient evidence to support his PRRA application. In the absence of such allegation and evidence the Officer was not required to consider the risk of being a Marehan.

[32] To the extent that the Officer was required to conduct his own independent research, this cannot possibly extend to sources of risk not alleged. The Applicant also did not submit evidence of past persecution of the Marehan and, therefore, there could be no presumption of future risk. Even if the Applicant had presented evidence of being targeted simply for being Marehan, this would not create a presumption of future persecution as he was not personally a victim of persecution in the past.

[33] Further, the evidence concerning Darod membership does not state that Darods are actually being targeted for violence or any other forms of persecution in Mogadishu because they are Darod. The Officer is presumed to have taken all of the evidence into consideration, unless the contrary is shown (*Umana v Canada (Minister of Citizenship of Immigration)*, 2003 FCT 393 at para 25).

[34] The Officer considered all of the evidence and reasonably found that there was no evidence to support that the Applicant will be personally targeted even as a Westerner as he did not fit the profile and faced only a generalized risk. The Respondent submits that the Applicant has misconstrued the law. Based on the evidence before him, the Officer reasonably found that the risk that the Applicant might face is general in nature. He does not fit the profile of those who may be targeted as victims of Al Shabaab or that he will be personally targeted if he returns. Even if he faced a heightened risk because he would be perceived as wealthy or a Westerner, the jurisprudence supports the Officer's finding that a generalized risk can include risk to a group of persons, such as persons returning from abroad.

[35] The Applicant quotes the documentary evidence concerning returnees out of context, viewed in context it demonstrates that he faces only a generalized risk. The terms "new westernized middle class" appears to refer to a large segment of the general public, not a particular group who are specifically targeted or routinely persecuted. It is also unclear what "looking a bit westernized" might mean.

[36] The Respondent submits that the jurisprudence does not permit the cumulative analysis the Applicant proposes. The cases the Applicant cites stand for the proposition that when a person makes an allegation that they were persecuted, all past acts of violence and harassment must be viewed cumulatively to see whether, taken together, they constitute persecution. They describe patterns of ongoing past conduct that cumulatively constitutes persecution, not separate, unrelated potential sources of risks that can somehow be added together.

Analysis

Marehan Clan

[37] In the “Claim for Protection” the Applicant was asked why he was asking for Canada’s protection. His response was that he had been denied status in America and the only chance he has is in Canada. He states he cannot go back to Somalia because there is always fighting going on.

[38] In his PRRA application, in responding to the question of whether he was in possession of a Canadian immigrant visa when he arrived in Canada, he stated that he arrived here to pursue refugee status given the current circumstances in Somalia. He did not apply for temporary status in advance of arriving. When asked to set out all of the significant incidents that caused him to seek protection, making reference to any measures taken against him, his family members or any other individuals in a similar situation, the Applicant responded:

- I am from the Daarood tribe in Somalia. More specifically I am from the Marlehaan tribe which is a part of the larger Daarood tribe.
- When I left Somalia in 1991 with my family, Mogadishu was in complete chaos. Hawiye militaries were rampant and they would target Daaroods....
- The situation in Somalia has not improved even after the Transitional Government (TFG) was put in place and the United Nations intervened. The amount of people leaving Somalia this year has been astronomical even compared to last year. The economy, drought and religious beliefs have led to increased desperation and violence. In particular conflict between the government and the religious group “Alshabaab” has been an ongoing problem in Somalia.

- Besides being from the Darood tribe, I also believe that I will be target if I return to Somalia because I will be viewed as a westerner. I believe we also need a functioning government and that would put me at odds with the many Islamic groups who want a more religious form of government....

[39] The Applicant does not allege that he is at risk of persecution because of his Marehan subtribe or subclan membership as distinct from his Darod tribe membership.

[40] The Applicant's submissions of counsel dated September 23, 2013, made with respect to the redetermination of his PRRA application, refer to extracts from country conditions documentary evidence. The first is Kidist Mulugate in "The Role of Regional and International Organizations in Resolving the Somali Conflict: The case of IGAD [Inter Governmental Authority for Development] December, 2009. This notes that during the period 1969-1991, while Said Barre was in power, he introduced a clan based divide and rule policy and his own mechanism of appointing loyal political agents from his own clan, the Marehan clan of Darod, who benefited from the economic system. This caused suspicion and hatred among the clans. Substantively the same commentary was extracted from Amandine Gnanguenon in "Clans, the State and Society in Somalia: the Rise and Fall of the Islamist Movement" in a 2012 publication.

[41] A review of these document extracts shows that they contain little more than as described above, being merely a background view of the Marehan clan's connection to the former leader of Somalia, nothing more. They do not provide support for a view that the Marehan were, are or will be at risk of persecution.

[42] The Officer also found that the Applicant did not explain why he fears return to Somalia due to his affiliation with the Darod clan. The Applicant submits that his counsel's submission, which included the above documents, addressed this. In my view, they do not. The submissions provide no explanation as to why the Applicant fears return to Somalia based on his Marehan or Darod ethnicity other than referring to the above document extracts.

[43] The Officer referenced those extracts in his decision. He also referred to current documentary evidence describing the Somalia clan structure including "Security and protection in Mogadishu and South-Central Somalia. Joint report from the Danish Immigration Services and the Norwegian Landinfo's fact finding mission to Nairobi, Kenya and Mogadishu, Somalia, 16 April to 7 May 2012" (Landinfo Report). This document compiles information gathered from many sources. The vast majority of these sources report a significant improvement of security in Mogadishu. In the context of clan protection, those interviewed included:

- A UN agency which explained that there was less risk for anyone being attacked or violated only because of a clan affiliation and that it does not matter whether you belong to a strong or a weak clan or an ethnic minority clan. The clan has now become a social structure rather than a protective structure;
- An NGO that explained that this is much less of an issue than it was two or three years ago. Clan protection is no longer important as there are no clan based militias in Mogadishu. "Persons returning from abroad are not particular risk because of their clan affiliation";
- An international NGO that explained that the people of Mogadishu have less to fear than two or three months ago both in relation to security and clan issues. When asked if individuals who are having trouble with other persons, or if they fear something, would be able to seek assistance, the source responded that people can go to the police, contact their elders and/or contact an MP who is representing their clan. It was reiterated that the clan system is not very strong and as there are no militias people have less to fear when it comes to clan affiliation. There are no longer any clan related conflicts in Mogadishu and people can move everywhere in Mogadishu irrespective of their clan affiliation;

- A representative of the Elman Peace and Human Rights Centre stated that it is very positive that clan protection is no longer an issue, as Al Shabaab soldiers do not differentiate between clans, they kill indiscriminately. And people of the same clan do not trust each other anymore so it is not enough to be affiliated by clan to someone to gain their trust or protection. It was reiterated that it is a huge step forward that clan affiliation is no longer a concern. Even marginalized groups such IDP's and militia groups are no longer marginalized, harassed or intimidated only because of their clan affiliations. Thus, the security situation for their members has increased significantly during the last year. It is not important which clan you belong to;
- UNHCR – Somalia confirmed that someone in Mogadishu will not be at risk today solely because he or she is of a different clan, although clan dynamics in combination with other factors are an important element when considering risk;
- A representative of a Diaspora organization stated that people no longer rely on clan protection. Clan protection is no longer an issue in Mogadishu and if you feel you are exposed you will adapt by lying low;
- An NGO explained that generally speaking everyone relies on his or her clan;
- Hakan Bilgin, IMC, stated that it is probably too early to say that the clan issue is over but that the population perceives that security has improved and the clan issue is less important. He did not agree that clan protection is no longer an issue in Mogadishu. Clans still support and protect their members. The more influential you are the more at risk you might be and the more a clan will protect you. But members of minority clans and ethnic minority groups are not more at risk of being attacked than members of larger clans which is a positive step;
- Representatives of an international agency agreed that clans are no longer a main issue in Mogadishu. The need for clan protection is going down and no one will ask you about your clan affiliation any longer;
- Representatives of an international agency explained that with the exception of the Darod clans, members of all other clans do not have to be concerned with whether or not they have affiliates in Mogadishu. There is no more power of the gun and the nature of the clan has morphed from one based on clan blood letting to a more ideological (religious) one;
- Mohamend Farad Siad explained that clan affiliation is not important for the people of Mogadishu to feel safe and that “clan is zero today in Mogadishu...”.

[44] The Officer found that the current objective evidence was that the Applicant, returning from abroad, would not be at a particular risk due to his clan affiliation. This finding is supported by the preponderance of the documentary evidence contained in the record.

[45] The Applicant refers to the reference by one source in the Landinfo Report which stated that, with the exception of the Darod clans, members of all other clans do not have to be concerned as to whether or not they have affiliates in Mogadishu. In my view it should first be noted that this is one source of many within the report and that it is not consistent with view of the majority that clan affiliation is not important in Mogadishu today. Secondly, the source does not explain why the Darod clan members would have to be concerned as to whether they have affiliates in Mogadishu. And, finally, this does not establish that members of the Darod or Marehan subclan are at risk of persecution in Mogadishu.

[46] In my view, the Officer did not err in failing to mention or address the Marehan clan. The Applicant did not identify or claim his ethnic ties to that subclan, as distinct from his Darod clan membership, as being a source of his fear of persecution or harm upon return to Somalia.

[47] Further, the Officer reasonably found that the Applicant did not effectively detail his fear due to clan affiliation and that the documentary evidence did not support his claim that as a returnee he would be at particular risk due to clan affiliation. The onus was on the Applicant to prove his case and to provide sufficient evidence to support his PRRA application (*II v Canada (Minister of Citizenship and Immigration)*, 2012 FC 429 at para 22; *Ormankaya v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1089 at para 31) and he did not meet that onus.

[48] To succeed on his section 96 claim the Applicant had to demonstrate a well-founded fear of persecution with a nexus to one of the Convention grounds. As set out above, the Applicant

did not assert and the evidence did not support past persecution of the Marehan clan. And, even if it had, this would not have been sufficient to establish a fear of future persecution as the test is prospective, not retrospective. Past persecution is insufficient, on to itself, to establish a fear of future persecution (*Fernandopulle v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 91 at paras 17, 23).

Risk as Wealthy or Westernized Returnee

[49] The Officer noted that the Applicant relied on the Landinfo Report in support of his submission that he will be perceived by Al Shabaab as having money earned while abroad and targeted for that reason. The Officer found that if he were targeted because of his perceived wealth then he would be the victim of generalized violence as any such returnee would be targeted in that event. Further, that there was no evidence that the Applicant would be personally targeted by Al Shabaab or others for that reason. He found the assertion to be speculative and not supported by corroborating evidence.

[50] In my view, the Landinfo Report does not support the Applicant's position that returnees from the West are targeted because of their wealth or Westernization. The section of the report dealing with Diaspora returning from abroad contains information from various sources indicating that many people have returned. This includes a source referenced and relied upon by the Applicant:

- a report by an international NGO which states that many Somalis from the Diaspora are coming to Mogadishu to invest and seek opportunities for economic activity. These people are dependant on a reasonable level of security to pursue their activities. Al Shabaad's recent attacks on the Lido Beach and on a restaurant where new westernized

middle class of Mogadishu gather had the intention to create fear among these people. So far, Al Shabaab has not managed to scare people away from Mogadishu, but it is crucial that the SN quickly and convincingly demonstrate that it is able to prevent terrorist attacks in the city.

[51] Viewed in context, this source speaks to fear mongering by Al Shabaab which is also in keeping with the documentary evidence that Al Shabaab does not want Mogadishu to normalize. It is true that the source refers to an attack on a restaurant where “the new Westernized Middle Class” of Mogadishu gather. However, this speaks to ideology as represented by Westernization, not to attacks on returnees because they are Westernized or wealthy. A section of the same document dealing with returning refugees and IDPs does not report targeting of returnees based on wealth, Westernization or otherwise.

[52] The Applicant also refers to a section of the Landinfo Report that addresses freedom of movement, security and checkpoints. The information concerning freedom of movement in Somalia includes:

- the UNDSS statement that ordinary people are travelling to other locations from Mogadishu by bus and other vehicles but that there had been a few reports of travellers being executed by Al Shabaab when it suspected them of being a government affiliated person;
- representatives of an international agency explained that ordinary civilians, being people not working for SNG, are travelling between locations mostly by bus. There are fewer check points but no guarantee against Al Shabaab ambushes which may also be committed by ordinary criminals. Al Shabaab will kill anyone it suspects is working for SNC or the international community;
- a representative of Elman Peace and Human Rights Centre explained that she would never travel along the roads leading to Baidoa and to Kismayo from Mogadishu because of the Al Shabaab threat. “A well-known person or a person looking a bit westernized may be at severe risk if al-Shabaab stops the vehicle. However, ordinary people will travel by bus or other transportation along these roads as well as other locations...”

- as to the Magadishu-Afgoye-Baido road, an NGO explained that Al Shabaab operates all along the road but has no check points. However, there is reason to believe that it will be informed about government people who travel on the road. It will take them and others who it regards as enemies. Ordinary people with no issue with Al Shabaab go on with no problems and are usually not robbed.

[53] Again, viewed in context, this evidence does not provide support for the Applicant's position that Al Shabaab targets returnees. It merely indicates that when traveling within Somalia persons of certain profile may be at risk including government workers and anyone "looking a bit westernized". There is no evidence as to what this latter term may mean.

[54] The Applicant also submits that the Officer erred as the Applicant did not have to establish that he was personally targeted to establish risk. It is sufficient to establish that similarly situated persons are targeted and that he demonstrated this.

[55] The tests under sections 96 and 97 are distinct (*Li v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 1 at para 33). However, the Applicant's submission that section 97 does not require personal targeting, as he is similarly situated to a group being targeted, is not accurate. Section 97 requires the Applicant to demonstrate a personalized risk. As stated by the Federal Court of Appeal in *Prophète v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 31:

[7] the examination of a claim under subsection 97(1) of the Act necessitates an individualized inquiry, which is to be conducted on the basis of the evidence adduced by a claimant "in the context of a *present* or *prospective* risk" for him (*Sanchez v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 99 (CanLII), 2007 FCA 99 at paragraph 15)(emphasis in the original).

[56] The real question that must be asked is whether the alleged risk is personalized, in the sense that the risk or threat to life is suffered by specific individuals, regardless of whether others in a given state suffer the same personalized risk (*Loyo de Xicara v Canada (Minister of Citizenship and Immigration)*, 2013 FC 593 at para 16). The Officer reasonably found, based on the evidence, that the Applicant has not established a personalized risk.

[57] It is correct that under section 96, the Applicant can establish a risk of persecution by evidence of similarly situated individuals. In *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, Justice LaForest, writing for the Supreme Court of Canada recognized that evidence of similarly situated individuals and of past persecution can be used to establish the objective basis of persecution. On the same point, Justice Martineau stated the following in *Fi v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1125, [2007] 3 FCR 400:

[14] That being said, it is trite law that persecution under section 96 of IRPA can be established by examining the treatment of similarly situated individuals and that the claimant does not have to show that he has himself been persecuted in the past or would himself be persecuted in the future. In the context of claims derived from situations of generalized oppression, the issue is not whether the claimant is more at risk than anyone else in his country, but rather whether the broadly based harassment or abuse is sufficiently serious to substantiate a claim to refugee status. If persons like the applicant may face serious harm for which the state is accountable, and if that risk is grounded in their civil or political status, then he is properly considered to be a Convention refugee (*Salibian v. Canada (Minister of Employment and Immigration)*, [1990] 3 F.C. 250 at 259 (F.C.A.); *Ali v. Canada (Minister of Citizenship and Immigration)* (1999), 235 N.R. 316.

[...]

[16] Therefore, a refugee claim that arises in a context of widespread violence in a given country must meet the same conditions as any other claim. The content of those conditions is no different for such a claim, nor is the claim subject to extra requirements or disqualifications. Unlike section 97 of IRPA, there

is no requirement under section 96 of IRPA that the applicant show that his fear of persecution is "personalized" if he can otherwise demonstrate that it is "felt by a group with which he is associated, or even, by all citizens on account of a risk of persecution based on one of the reasons stated in the definition [of a Convention refugee]" (*Salibian*, above, at 258).

[58] However, as noted above, the documentary evidence relied upon by the Applicant does not support his assertion that returnees, as a group, are at risk due to perceived wealth or Westernization.

[59] In that regard, while at first glance the Officer's analysis of risk to returnees due to perceived wealth or Westernization appears to only assess that risk under section 97, the Officer's findings of fact deal with all of the risks raised by the Applicant, whether as a refugee under section 96 or as a person in need of protection under section 97, being that neither clan affiliation nor perceived wealth or Westernization place him at any greater risk of harm than any other individuals from Somalia and, as discussed below, that he will not be of particular risk in Somalia because of his profile. In these circumstances, he does not have a well-founded fear of persecution and is not in need of protection from section 97 risks. While the analysis could have been more clearly articulated, read as a whole, I cannot conclude that a section 96 analysis was omitted (*Kaur v Canada (Minister of Citizenship and Immigration)*, 2014 FC 505; *Jama v Canada (Minister of Citizenship and Immigration)*, 2009 FC 781 at paras 70-74).

Profile

[60] As note above, the Officer referred to the documentary evidence submitted by the Applicant. He stated that he had read the reports and that they describe the corruption, less than ideal country conditions, and, human rights violations currently facing Somalia. However, this was a description of the general country conditions and the Applicant had not linked this evidence to his personalized and forward-looking risk in Somalia. He had not provided objective documentary evidence to support that his profile is similar to those persons that would currently be at risk of persecution or harm in Somalia. Further, that the documents relate to conditions faced by the general population or describe specific events or conditions not faced by persons similarly situated to the Applicant.

[61] As to profile, the Officer referred to the Landinfo Report which he found indicated that targeted victims of Al Shabaab included journalists, members of parliament, NGO's human rights defenders and people in the public eye. Further, that if civilians are in the wrong place at the wrong time they may become victims and that Al Shabaab has been known to target ordinary people in order to show that they oppose signs of return to ordinary life for the people of Mogadishu. The Officer concluded that the Applicant's evidence did not support that he fits a described profile to the extent that he would be targeted by Al Shabaab upon his return to Somalia nor that he would be personally targeted.

[62] This is an accurate summary of the documentary evidence. The section of the Landinfo Report entitled targeted killings/attacks by Al Shabaab contains information from various sources concerning the profile of persons at risk including:

- an NGO explained that Al Shabaab pays young people to throw hand grenades at various targets in Mogadishu mostly being SNAF and police forces as well as government institutions. It was emphasized that Al Shabaab does not want to send a message that it deliberately kills civilians. It is fighting against normalization, for example, by targeting and killing students on their way to Turkey as part of a student program. But, in general, it does not deliberate target civilians and the risks involving living in Mogadishu are basically a question of being at the wrong place at the wrong time. Al Shabaab wants to send a message that Mogadishu is not safe;
- the Elman Peace and Human Rights Centre reported that Al Shabaab is in particular targeting government employees and affiliates. It also targeted NGO's, anyone who dared to speak out negatively about Al Shabaab as well as anyone who worked actively for a normalization of livelihood. Hand grenade attacks are directed against SNAF soldiers, government affiliates, police officers, hotels and tea shops frequented by politicians and government institutions;
- UNDSS explained that civilians with any known government affiliation could be at risk of targeting by Al Shabaab but there is also the risk of being in the wrong place at the wrong time. The two main targets are the SNG and AMISON, followed by internationals (including the UN, NGO's, diplomats etc);
- an NGO reported that individuals targeted by Al Shabaab mainly belong to six groups, former Al Shabaab members who have deserted, SNA soldiers, police, members of government, members of Parliament, people associated with government or AMISON, which could even include a nearby ship keeper.

[63] In his submissions the Applicant refers to this section of the Landinfo Report as providing reasons for the targeting of returnees, one such reason being that returnees are perceived to have money made abroad. He also submits that the fact that he has been abroad for fifteen years differentiates his situation. However, this portion of the report does not deal with returnees and nowhere does it state that returnees are targeted because of their perceived wealth. Nor does the documentary evidence suggest that the length of time a returnee has been away puts him at any different or particular risk.

[64] Viewed in whole, the documentary evidence supports the Officer's finding that the Applicant does not fall within the profile of persons at risk should he return to Somalia.

[65] The Applicant is correct that, because the Officer did not make a credibility finding, the Applicant was not required to provide corroborating evidence to support his claim. However, the Officer's finding as to a lack of corroborating evidence from his family who are, presumably, similarly situated persons as regards to being at risk due to ethnic ties to the Marehan clan, is of no consequence to the outcome of the decision.

[66] The Applicant also submits that the Officer dismissed the particularized elements of his risk and converts them into generalized risks. In support of this, he refers to paragraph 12 of *Surajnarain v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1165. However, that reference concerns section 96 of the IRPA and the concept of similarly situated individuals. The Applicant may actually be suggesting that the Officer committed an error similar to that identified in *Portillo v Canada (Minister of Citizenship and Immigration)*, 2012 FC 678 where Justice Gleason held that "[i]t is simply untenable for the two statements of the Board to coexist: if an individual is subject to a personal risk to his life or risks cruel and unusual treatment or punishment, then that risk is no longer general". It is true that even if an alleged risk has a generalized basis, it can become personalized through the specific circumstances of a claimant (*Barrios Pineda v Canada (Minister of Citizenship and Immigration)*, 2011 FC 403; *Neri v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1087 at para 35).

[67] However, in my view, the Officer did not make such a finding in the present case, but rather found that the risk described by the Applicant relates to conditions faced by the general population, or to describe specific events, such as the restaurant attack, or conditions faced by persons not similarly situated to the Applicant.

[68] The Applicant also submits that the Officer erred in failing to consider his grounds of persecution cumulatively. It is correct that where the evidence establishes a series of actions characterized to be discriminatory, and not persecutory, there is a requirement to consider the cumulative nature of the conduct (*Munderere*, above). However, what the Applicant proposes in this case is that the Officer failed to consider the grounds of persecution and risk of being perceived to be a Westerner and of being a Marehan together. This is not a series of discriminatory actions but rather two separate alleged grounds of risk, both of which were assessed by the Officer. The cases cited by the Applicant do not support his interpretation and the Officer did not err in failing to consider these separate risks cumulatively.

[69] The Applicant submits the following question for certification:

Does an a pre-removal risk assessment officer, when considering an application under *Immigration and Refugee Protection Act* section 112(1), have a duty to assess a risk not identified by the applicant but which arises out of the facts presented by the applicant?

[70] In my view, this question does not meet the test for certification. In *Liyanagamage v Canada (Minister of Citizenship and Immigration)* (1994), 176 NR 4, the Federal Court of Appeal held that, to be certified, the proposed question must transcend the interests of the parties

and contemplate issues of broad significance or general application. The question must also be determinative of the case.

[71] Here the proposed question would not be determinative of this application. The facts presented by the Applicant did not give rise to a risk related to his Marehan ethnic ties.

Therefore, I decline to certify the proposed question.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is denied; and
2. The question proposed by the Applicant is not certified.

"Cecily Y. Strickland"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8367-13

STYLE OF CAUSE: SIYAD MOHAMED SHIRE v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: WINNIPEG, MANITOBA

DATE OF HEARING: JULY 8, 2014

JUDGMENT AND REASONS: STRICKLAND J.

DATED: AUGUST 12, 2014

APPEARANCES:

David Matas FOR THE APPLICANT

Alexander Menticoglou FOR THE RESPONDENT

SOLICITORS OF RECORD:

David Matas FOR THE APPLICANT
Barrister and Solicitor
Winnipeg, Manitoba

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of
Canada
Winnipeg, Manitoba