

Federal Court



Cour fédérale

**Date: 20150910**

**Docket: IMM-7024-14**

**Citation: 2015 FC 1061**

**Fredericton, New Brunswick, September 10, 2015**

**PRESENT: The Honourable Mr. Justice Bell**

**BETWEEN:**

**KHADIJA AHMED ALI  
DEEMA ABDULLAHI MOHAMUD  
SARA ABDULLAHI MOHAMUD  
FATIMA ABDULLAH MOHAMUD  
(AKA FATIMA ABUDULLAHI MOHAMUD)  
DIKRA ABDULLAHI MOHAMUD**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction and Summary**

[1] This is an application for judicial review of a decision of the Immigration and Refugee Board, Refugee Protection Division (RPD) made on September 15<sup>th</sup>, 2014, dismissing the

refugee claims of Khadija Ahmed Ali (Ms. Ali) and her four daughters, Deema, Sara, Fatima and Dikra. The RPD found that Ms. Ali lacked credibility, did not have a subjective fear of persecution and, furthermore, did not have a well-founded fear of persecution in Somalia. For the reasons set out below, I am of the view the decision of the RPD with regard to Ms. Ali's claim meets the test of reasonableness and I would therefore dismiss her application for judicial review. However, for the reasons set out below, I allow the application for judicial review by Ms. Ali's four daughters.

## II. Summary of Ms. Ali's evidence

[1] Ms. Ali was born in Mogadishu, Somalia on April 20, 1961. She lived, studied and eventually worked as a laboratory technician in a hospital in Mogadishu until 1985. In 1985, she left her homeland to join her father who was a Somali national working for the British Embassy in the United Arab Emirates (UAE). Ms. Ali obtained work in the UAE as a laboratory technician. In 1992, she married a Somali national, who was also a foreign worker and employed as a laboratory technician in the UAE. Together, Ms. Ali and her husband have four daughters, now aged 20, 19, 16 and 13. Ms. Ali and her husband were both employed by the same employer. At the time of the hearing before the RPD her husband continued to work for that employer in the UAE.

[2] On July 6, 2012, Ms. Ali and her four daughters travelled to the United States of America (United States) on a visa. Her husband remained in the UAE for work purposes. While in the United States Ms. Ali did not make a refugee claim. On August 6, 2012, she traveled to Canada

where she immediately claimed refugee status on her own behalf and on behalf of her four daughters, all of whom were minors at the time.

[3] In her Personal Information Form, completed on August 8, 2012, Ms. Ali claimed her husband was 59 years of age and would not be permitted to remain in the UAE once he reached 60. At the RPD hearing, held approximately two years later on July 23, 2014, Ms. Ali acknowledged her husband's work permit had been extended and that he was still working in the UAE. He was 61 at the time. Nothing prevented Ms. Ali and her family from returning to the UAE as long as her husband was employed there. Even though she had been in Canada approximately two years by the time of the RPD hearing, and her husband worked for her former employer, she made no effort to obtain written confirmation of her employment history or status, including her alleged termination.

[4] Before the RPD, Ms. Ali alleged fear of persecution based upon clan affiliation and fear of sexual assault against her and her daughters should she be required to return to Somalia. She claimed she has no family or close friends left in Somalia and that she would have no place to stay in the event they were required to return to Somalia. Ms. Ali contended she and her daughters would likely be placed in a camp for internally displaced persons. She further alleged that her daughters would be at risk of being forced into marriage, raped or killed in such camps. She alleged these crimes were often committed by extremist groups such as Al-Shabaab and government forces.

III. Overview of the RPD Decision

[5] The RPD found that Ms. Ali was not credible with respect to her allegation that her husband would soon lose his status and be forced to leave the UAE. It based this conclusion, in part, upon the shifting timeline for his departure from the UAE. As already mentioned, Ms. Ali initially contended that once her husband turned 60 he would be required to leave the UAE. The RPD noted that Mr. Ali, who was close to 61 years of age at the time of the hearing, was still working in the UAE. Still on the issue of Ms. Ali's credibility, the RPD concluded it was reasonable to expect some form of documentation from the employer or the UAE concerning the rules regarding her husband's status. None was offered by Ms. Ali.

[6] The RPD also found it would be reasonable for Ms. Ali to provide some documentary proof of termination of her employment and confirmation of her lack of status in the UAE. Again, Ms. Ali provided no such documentation. While recognizing that corroborative evidence is not always required, the RPD observed that the presumption of credibility can be rebutted where there is a failure to obtain reasonably available documentary evidence. The RPD found that, in the circumstances of this case, Ms. Ali's failure to provide documentation related to her employment, and that of her husband, negatively impacted her credibility.

[7] The RPD referred to Ms. Ali's status in the UAE as a foreign worker and her visit to the United States as some evidence of 'asylum shopping'. While recognizing that the UAE is not a signatory to the *Convention Relating to the Status of Refugees*, the RPD noted that the United Nations High Commissioner for Refugees (UNHCR) has an office in Abu Dhabi and that the

UAE assists refugees. The RPD opined that Ms. Ali's failure to seek assistance while in the UAE and her failure to seek refugee protection while in the United States detracted from her claim of subjective fear of persecution.

[8] The RPD also assessed whether Ms. Ali had a well-founded fear of persecution in Somalia. It considered the UNHCR report titled *Security and protection in Mogadishu and South-Central Somalia: Joint report from the Danish Immigration Service's and the Norwegian Landinfo's fact finding mission to Nairobi, Kenya and Mogadishu, Somalia*, April – May 2013, Item 2.8 [Joint Danish-Norwegian Report] and other documentation regarding country conditions. The Joint Danish-Norwegian Report contained current information gathered from a variety of organizations doing front line work in Somalia. The RPD cited a passage of a UNHCR report entitled "International Protection Considerations with Regard to people fleeing Southern and Central Somalia" dated January 2014 [January 2014 UNHCR Report], which lists profiles of persons at risk if returned to Somalia.

[9] The RPD noted that none of the country condition information lists clans to which Ms. Ali identifies as clans who are at risk of persecution. Furthermore, Ms. Ali presented no documentary evidence to support her claim that members of those clans are persecuted. Even if those clans are at risk, Ms. Ali failed to provide any evidence, written or otherwise, to support her claim of clan membership. The RPD cited a passage from a United Kingdom Home Office report dated September 2013 to the effect that Somali minority groups are unlikely to be targeted on the basis of ethnic origin alone, but may encounter discrimination from other clans due to lower social status. Ms. Ali does not claim a lower social status. In fact, the evidence

demonstrates she is economically well-established, professional, skilled and knowledgeable. The RPD also concluded, based on the Joint Danish-Norwegian Report, that clans now play a merely social role, rather than a protective one. The RPD stated that although people in Mogadishu generally reside and operate businesses within their clan area, different clans may move freely between areas in Mogadishu. Still relying on the Joint Danish-Norwegian Report, the RPD concluded that Al-Shabaab is no longer strong in Mogadishu and tends to attack government forces rather than civilians.

[10] The RPD considered Ms. Ali's claim that she feared persecution as a "single female" in Somalia. The RPD rejected this claim given that Ms. Ali is not single. Furthermore, Ms. Ali stated her husband would eventually join the family. Noting that Ms. Ali had no past experience of persecution in Somalia, where she lived for 24 years, and that she was largely made aware of problems in Somalia through the news, the RPD found that her fears were not well-founded. In its view there was less than a mere possibility that she would be at risk due to clan violence or Al-Shabaab activities.

[11] The RPD concluded the four daughters had not raised separate issues relating to their claims and rejected those claims on that basis.

#### IV. Issues

[12] I would frame the issues as follows:

1. Was the RPD's conclusion regarding Ms. Ali's credibility and subjective fear of persecution reasonable?

2. Was the RPD's conclusion regarding Ms. Ali's objective fear of persecution reasonable?
3. Is the decision unreasonable with respect to the daughters' claims?

V. Standard of Review

[13] In my view, the issues raised must be assessed on the reasonableness standard of review. That is, this Court will not intervene if it finds the RPD's conclusions regarding credibility and subjective and objective fear of persecution fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paragraph 47 [*Dunsmuir*]. On the issue of credibility, see *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (QL), 160 NR 315 (FCA) at paragraph 4; *Sun v Canada (Minister of Citizenship and Immigration)*, 2015 FC 387, [2015] FCJ No 347 at paragraph 17; and, on the issue of the RPD's fact-finding generally, see, *Canada (Minister of Citizenship and Immigration) v Bari*, 2015 FC 656, [2015] FCJ No 649 at paragraph 6.

VI. Relevant Provisions

[14] Attached hereto as Appendix 'A' is the definition of Convention Refugee and person in need of protection found in ss. 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

VII. Analysis

A. *Credibility and subjective fear of persecution*

[15] The RPD impugned Ms. Ali's credibility for failure to claim refugee status in the United States, failure to seek assistance while in the UAE, and failure to provide documentation to support allegations regarding her loss, and her husband's potential loss, of status in the UAE. With respect to the latter point, this in circumstances where her husband was still working for the same employer in a well-governed society.

[16] In my view, the RPD's credibility finding regarding Ms. Ali's subjective fear of persecution meets the test for reasonableness. The RPD properly considered her failure to obtain any documentary proof of her loss of employment and lack of status in the UAE, her husband's potential loss of employment, her failure to approach the United Nations office while in the UAE and her failure to claim refugee status in the United States, in making its credibility finding. An applicant's failure to claim refugee status in signatory countries is, although not determinative, a relevant consideration for assessing subjective fear and credibility (*Ilie v Canada (Minister of Citizenship and Immigration)*, [1994] FCJ No 1758, 88 FTR 220).

[17] With respect to Ms. Ali's travels to the United States, I am aware that she is eligible to apply for refugee status by operation of s. 159.5 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 which provides an exception to the requirement to make a refugee claim at the first available opportunity when entering either the United States or Canada: the Canada-U.S. Safe Third Country Agreement found in the Act. However, the fact remains that



Ms. Ali has family in the United States, travelled through that country and remained lawfully in it for approximately one month before entering Canada to make a refugee claim. I am satisfied it was reasonable for the RPD to conclude that in the context of this case, Ms. Ali's claim of subjective fear lacked credibility.

B. *Objective fear of persecution*

[18] In order to succeed, a refugee claimant must demonstrate, on a balance of probabilities, that there is a reasonable chance that persecution would take place in the country of nationality (*Adjei v Canada (Minister of Employment and Immigration)*, [1989] 2 FC 680, [1989] FCJ No 67). In my view, the RPD's conclusions regarding clan-based persecution and persecution by Al-Shabaab are within the range of reasonableness.

[19] As the RPD observed, the documentary evidence is conflicting regarding the role of clan affiliation to incidents of violence in Mogadishu. For example, the January 2014 UNHCR Report lists "members of minority clans" as a potential risk profile. In the Joint Danish-Norwegian Report, some organizations expressed the view that persons returning from abroad are "not at particular risk because of their clan affiliation". The RPD explained why it gave particular weight to the Joint Danish-Norwegian Report, and in the face of conflicting evidence, concluded that the evidence was insufficient to support the Applicants' claim of persecution based on clan affiliation.

[20] I now turn to the RPD's conclusion that Al-Shabaab was no longer a threat in Mogadishu. There is no doubt that Al-Shabaab has reportedly perpetrated abuses, including killings,

disappearances, and restrictions on civil liberties against civilians within the areas under its control. However, since August 2011, Al-Shabaab has been pushed out of Mogadishu, which is now under the control of government forces supported by the African Union Mission in Somalia (AMISOM). The RPD concluded that the Applicants had not demonstrated more than a mere possibility of specific personal harm from Al-Shabaab. This conclusion is reasonable in light of the evidence and one that was open to the RPD to make.

[21] Ms. Ali contests the reasonableness of the RPD's decision regarding potential gender-based violence. Ms. Ali claimed she was a single woman, that she no longer has any connections or support in Mogadishu, and that she and her daughters may be required to reside in a camp for internally displaced persons. She claims she and her daughters would risk rape, other forms of sexual assault, and potential forced marriage in such camps.

[22] The RPD noted that the Applicants' fears emanate mainly from what they have seen in the news. Furthermore, Ms. Ali produced no evidence to demonstrate that she risked being placed in a camp for internally displaced persons. Ms. Ali is highly trained and earned income for nearly 30 years prior to making her refugee claim. Her husband continues to work. Ms. Ali testified that her husband plans to join her when he concludes his work in the UAE. Contrary to Ms. Ali's assertions, she is not a 'single' woman. Also, contrary to her assertions, she is not a person without support mechanisms – at the very least she has a husband who is supportive, and, she is clothed with the personal support mechanisms that flow from being well trained, having been employed for more than 30 years, and having lived in Somalia for 24 years.

[23] Ms. Ali points to several factors which, in her view, were not adequately considered by the RPD. The Court's role on judicial review is not to seek a treasure trove of error. In *Newfoundland and Labrador Nurses' Union v Newfoundland & Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 at para 16 [*Newfoundland Nurses*], the Court instructs that "if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met". In my view, the reasonableness standard was met with respect to Ms. Ali. The pathway by which the RPD arrived at its conclusion, based upon the sometimes conflicting evidence, is clear.

C. *The four daughters' applications*

[24] I now turn to the four daughters' claims and the reasons given by the RPD for rejecting those claims. I recognize that the RPD must join the claims of minors or secondary claimants to their mother or father's claim, as provided by Rule 55 of the *Refugee Protection Division Rules*, SOR/2012-256. As a result, the RPD is often required to consider multiple claimants in the same decision. The decision, however, must assess each claim individually (*Ramnauth v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 233, [2004] FCJ No 305 at para 9). The Member hearing this matter confirms this practice. At page 11 of the transcript the member stated: "[m]y job is to make a decision on all of your claims [...] each of your claims, even though I decide them together, I have to make the decision on each separate claim". In my view, a refugee claim cannot fail simply because it is joined to a claimant against whom negative credibility findings are made.

[25] The RPD provides very brief reasons why the daughters' claims must fail. Essentially, the RPD concludes their claims are joined to their mother's, their mother lacks credibility and they (the daughters) expressed no fear specific to their situation. However, there was considerable evidence which has a potential impact upon the daughters' claims and which is not addressed by the reasons. For example, the UNHCR Report listed single females as being at risk if returned. While Ms. Ali is not a single female, her four daughters are. This fact received no analysis from the RPD. Further, the four daughters were all of the age of minority when they entered the US. While Ms. Ali may be faulted for her failure to claim refugee status in the United States, the RPD could not, in my view, have reasonably asserted the children were "asylum shopping". One would not expect four minor children to have control over the issue of asylum shopping and its potential impact upon their mother's credibility. I would also note that, unlike their mother, the four daughters are not trained professionals and have never lived in Somalia. One of the daughters, Fatima, suffers from Down's syndrome. While it is not the Court's role to decide the merits of the daughters' refugee claims, I am of the view each is entitled to a separate and fulsome analysis of her claim by the RPD. The daughters' circumstances should have been assessed independently from those of Ms. Ali. See, *Manoharan v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 871, [2003] FCJ No 1125 at para 6, and *Kaniz v. Canada (Minister of Citizenship and Immigration)* 2013 FC 63, [2013] FCJ No 63. In my view, this did not occur.

[26] In addition to failing to address each claim independently, I am of the view the reasons provided by the RPD are not sufficient to explain why the daughters are neither Convention refugees nor persons in need of protection. While the adequacy of reasons is not a stand-alone

basis for quashing a decision (*Newfoundland Nurses*, above at para 14), I am of the opinion the RPD simply failed to take into account the four daughters' personal situations and did not provide a basis for its conclusion respecting their claims. In the face of such deficiencies, the Court may intervene (*Pour v. Canada (Minister of Employment and Immigration)* [1991] FCJ No 1282 (CA)).

#### VIII. Conclusion

[27] The RPD's conclusions regarding Ms. Ali's credibility and her purported fear of persecution were reasonable on the evidence. I would therefore dismiss her application for judicial review. However, I find the decision with respect to the four daughters to be unreasonable on at least two bases: first, each claim was not considered on its own merits and, second, the reasons are inadequate. As a reviewing court, I cannot determine how the RPD arrived at its decision regarding each of the daughters' claims. I would therefore allow the application for judicial review made by Deema Abdullahi Mohamud, Sara Abdullahi Mohamud, Fatima AbdullahMohamud (aka Fatima Abdullahi Mohamud) and Dikra Abdullahi Mohamud and remit the matter to another board member of the RPD for redetermination.

**JUDGMENT**

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

1. The application for judicial review made by Khadija Ahmed Ali is dismissed without costs.
2. The application for judicial review made by Deema Abdullahi Mohamud, Sara Abdullahi Mohamud, Fatima Abdullah Mohamud (aka Fatima Abdullahi Mohamud) and Dikra Abdullahi Mohamud is allowed, without costs, and the matter is remitted to another board member of the RPD for redetermination.
3. Neither party proposed a certified question and no issue of general importance arises on the record.

“B. Richard Bell”

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Judge

## APPENDIX A

### *Convention refugee*

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

### *Person in need of protection*

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention

### *Définition de « réfugié »*

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

### *Personne à protéger*

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la

Against Torture; or

Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

***Person in need of protection***

***Personne à protéger***

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualifié de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.



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

**DOCKET:** IMM-7024-14

**STYLE OF CAUSE:** KHADIJA AHMED ALI, DEEMA ABDUALLAHI MOHAMUD, SARA ABDULLAHI MOHAMUD, FATIMA ABDULLAH MOHAMUD, (AKA FATIMA ABUDULLAHI MOHAMUD), DIKRA ABDULLAHI MOHAMUD v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JULY 7, 2015

**JUDGMENT AND REASONS:** BELL J.

**DATED:** SEPTEMBER 10, 2015

**APPEARANCES:**

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