

Federal Court



Cour fédérale

Date: 20171204

Docket: IMM-2359-17

Citation: 2017 FC 1101

Toronto, Ontario, December 04, 2017

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

AMINA HAJI ABBAR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Delivered from the Bench at Toronto, Ontario, on December 4, 2017)

I. Overview

[1] The Court finds that the Refugee Appeal Division [RAD] erred by concluding that the Applicant lacked credibility on the basis that she was not able to provide significant details of her daily life in Kismayo during the Al-Shabaab rule from 2009 to 2012. Although the RAD has the expertise to determine questions of fact, particularly when evaluating the credibility and the

subjective fear of persecution of a claimant, the Court agrees with the Applicant's submissions and concludes that:

It would not be proper for the [Immigration Refugee Board] to base its findings on an extensive "microscopic" examination of issues irrelevant or peripheral to the claim. Furthermore, the claimant's credibility and the plausibility of her or his testimony should also be assessed in the context of her or his country's conditions and other documentary evidence available to the Board. Minor or peripheral inconsistencies in the claimant's evidence should not lead to a finding of general lack of credibility where documentary evidence supports the plausibility of the claimant's story.

(Mohacsi v Canada (Minister of Citizenship and Immigration), 2003 FCT 429 at para 20.)

The Court finds that there was sufficient evidence on the Applicant's medical conditions before the RAD to consider the Applicant as a vulnerable person trying to establish why she fears persecution if she returns to Somalia. The RAD failed to give weight to the objective evidence on country conditions before it, given the Applicant's personal circumstances which impeded her to give a clear, credible testimony. Where the claimant is mentally disturbed, "it may be necessary to place greater emphasis on the objective situation" (The Handbook). For this reason, the RAD erred by failing to examine why the objective evidence makes the Applicant's story plausible.

[2] Moreover, the objective evidence clearly indicates the difficulty that Somalis encounter to present civil identity documents. The RAD, and the Refugee Protection Division [RPD], acknowledged this information on the country conditions in its decision:

The RPD acknowledged that the country documentation shows that it would be difficult for an individual from Somalia to present civil

identity documents. However, the burden rests on the claimant to use other reliable, credible means to establish her identity.

(RAD's Reasons, para 40.)

[3] The Court also finds that the RAD erred by confirming the RPD's decision in its consideration of the evidence before it. By confirming the RPD's findings, the RAD ignored reliable documentary evidence corroborating the Applicant's story.

II. Nature of the Matter

[4] This is an application for judicial review filed pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act, SC 2001, c-27 [IRPA]* of a decision of the RAD of the Immigration and Refugee Board of Canada, dated May 8, 2017, in which the RAD confirmed the finding of the RPD that the Applicant is neither a Convention refugee nor a person in need of protection within the meaning of sections 96 and 97(1) of the IRPA.

III. Facts

[5] The Applicant, aged 80 years old, claims to be a citizen of Somalia from the city of Kismayo.

[6] The Applicant stated that she is a member of the Hussein sub-clan of the Ashraf clan.

[7] The Applicant fears persecution in Somalia because she is part of a minority clan and is an elderly, unaccompanied woman with disabilities (including Post-Traumatic Stress Disorder [PTSD]).

[8] In January 2015, the Applicant's husband, a private school teacher, owned a school with his son. They were allegedly killed by Al-Shabaab after the Applicant's husband refused to let Al-Shabaab recruit his Quranic students.

[9] The same day, the Applicant stayed with her daughter in Fanole District. When the Applicant returned home in Kismayo, she found that the door had been broken and the windows had been riddled with bullet holes.

[10] On February 2, 2015, the Applicant left Kismayo and fled to Nairobi, Kenya with her daughter and two grandchildren.

[11] On April 21, 2015, the Applicant arrived in Canada with no identity documents with the help of her daughter (still in Kenya) and a smuggler. The Applicant then filed for asylum in Canada on June 10, 2015.

[12] In a decision dated November 10, 2016, the RPD rejected the Applicant's refugee protection claim for lack of credibility. The RPD found that the Applicant was able to understand questions and provide appropriate responses, although it recognized that details may have been missing and the chronology of events may not have been accurate. Given letters from the

Applicant's psychotherapist and family physician, the RPD also noted that the Applicant was appointed a designated representative [DR] in accordance with subsection 167(2) of the IRPA to act on behalf of the Applicant.

[13] Given the objective evidence, the RPD nonetheless concluded that it is unlikely that the Applicant lived in Kismayo during the three years (2009-2012) of Al-Shabaab rule and not be aware of basic facts that would have affected the Applicant's daily life, such as the women having to wear veils outside of their homes and not being able to leave the house without a male escort. Therefore, the RPD concluded that it is unlikely that the Applicant was living in Kismayo in January 2015, as alleged, nor that she had been living there since 2009.

[14] The RPD also rejected the Applicant's refugee claim because it had insufficient credible and trustworthy evidence to establish when the Applicant left Somalia, where she was living, for how long, or when she arrived in Canada. The RPD concluded that the Applicant's allegations of risk from Al-Shabaab are likely untrue, given that the Applicant provided no corroborative evidence to prove her presence in Kenya or her travel to Canada, with the assistance of a smuggler.

[15] Although the RPD submitted that in general, identity documents are difficult to obtain in Somalia, it still did not accept the Applicant's efforts to establish neither her nationality nor her identity as a person who recently resided in Somalia due to a lack of identity/supporting documents, nor did it accept the witness' testimony in this regard. The RPD did, however, accept that the Applicant is likely a member of the Ashraf clan.

[16] The RPD also acknowledged that there may be risk factors returning to areas controlled by Al-Shabaab, but not in Kismayo. The RPD further noted that “the mere fact that the claimant is Ashraf does not place her at risk from a targeted Al Shabaab attack in Kismayo, should she return there” (RPD’s Reasons, para 29). Finally, the RPD found that the Applicant’s age, gender and health may be problematic if adequate family and community support were not available to her. However, the RPD concluded that it had insufficient credible and trustworthy evidence to assess specific risks.

IV. Decision

[17] On November 25, 2016, the Applicant appealed the RPD decision before the RAD. In that appeal, the Applicant did not submit any new evidence nor did she request that the RAD conduct an oral hearing.

[18] In a decision dated May 8, 2017, pursuant to paragraph 111(1)(a) of the IRPA, the RAD confirmed the decision of the RPD that the Applicant is neither a Convention refugee nor a person in need of protection. The appeal was therefore dismissed.

[19] On May 26, 2017, the Applicant filed for an application for leave and judicial review. On September 7, 2017, this Court allowed the application for leave and judicial review.

V. Issues

[20] This matter raises the following issue: Did the RAD err by upholding the RPD's decision in its credibility findings and in its consideration of the evidence before it?

[21] The RAD's factual findings and its assessment of the evidence are questions of mixed fact and law and the Court finds that the applicable standard of review is reasonableness (*Akuffo v Canada (Citizenship and Immigration)*, 2014 FC 1063 at para 27; *Siliya v Canada (Citizenship and Immigration)*, 2015 FC 120 at para 20). The Court must show deference to the RAD when the standard of review is that of reasonableness, given the RAD's specialization and the expertise of its members (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 53 [*Dunsmuir*]; *Djossou v Canada (Citizenship and Immigration)*, 2014 FC 1080 at para 33).

VI. Relevant Provisions

[22] Section 96 of the IRPA states:

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

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

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.

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.

[23] Subsection 97(1) of the IRPA states:

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 Against Torture; or

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

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

(ii) the risk would be faced by

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 Convention contre la torture;

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

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

(ii) elle y est exposée en tout

the person in every part of that country and is not faced generally by other individuals in or from that country,

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.

(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 qualité 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.

[24] Paragraph 111(1)a) of the IRPA states:

Decision

Décision

111 (1) After considering the appeal, the Refugee Appeal Division shall make one of the following decisions:

111 (1) La Section d'appel des réfugiés confirme la décision attaquée, casse la décision et y substitue la décision qui aurait dû être rendue ou renvoie, conformément à ses instructions, l'affaire à la Section de la protection des réfugiés.

(a) confirm the determination of the Refugee Protection

Division;

(b) set aside the determination and substitute a determination that, in its opinion, should have been made; or

(c) refer the matter to the Refugee Protection Division for re-determination, giving the directions to the Refugee Protection Division that it considers appropriate.

VII. Submissions of the Parties

A. *Submissions of the Applicant*

[25] According to the Applicant, the RAD erred by upholding the RPD's decision. It is submitted that the RAD failed to conduct its own independent analysis of the evidence to decide whether the RPD's reasons were correct in regard to the Applicant's credibility and profile (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 78).

[26] Firstly, the Applicant argues that the RAD erred by determining that the Applicant did not make sufficient efforts to present identity documents because its findings are contradictory. In fact, the RAD acknowledged the Applicant's diminished cognitive abilities and the fact that documents are difficult to obtain from Somalia, as supported by the objective evidence on country conditions; however, the RAD concluded that the Applicant did make reasonable efforts to establish her identity. The Applicant submits that she is a vulnerable individual, was appointed a DR to act on her behalf and was thus limited in her ability to undertake such efforts. The

evidence that was before the RAD and the RPD illustrates that the Applicant suffers from impaired cognitive functioning and PTSD:

Additionally, I believe that there are aspects of Ms. Abbar's current cognitive and emotional functioning that could significantly impede her ability to provide a complete and detailed history or clear testimony at her upcoming hearing.

(Applicant's Record, Letter from Applicant's psychotherapist, dated July 29, 2015, p 60.)

[27] Secondly, it is submitted that the RAD erred in a reviewable manner in basing its negative inference on an erroneous assumption. In fact, when concluding that the Applicant was not able to provide identity documents, the RAD failed to explain why it was the responsibility of the Applicant's daughter, who arranged a smuggler for her mother, to provide the Applicant with a Somali identity document. The Applicant's daughter did not have access to her mother's identity documents because she also fled to Kenya in a hurry. Moreover, the Applicant testified that she had lost contact with her daughter and is unaware of her whereabouts in order to ask her to provide an affidavit. Given the Applicant's particular circumstances in the case at bar, it was reasonable for her to be unable to provide identity documents from Somalia.

[28] Thirdly, the Applicant argues that the RAD erred by concluding that she will not be at risk in Somalia based on her membership in the minority Ashraf clan. "The RAD concurs with the RPD that there was insufficient evidence to persuade it that a woman who is Ashraf would be at risk in Kismayo" (RAD's Reasons, para 35). According to the Applicant, the RAD failed to assess the objective evidence before it. For instance, research on country conditions clearly indicated that members of the Ashraf clan are vulnerable to persecution throughout Somalia:

2.2.2 UNHCR Somalia reported to a Danish Immigration Service fact finding mission (DIS FFM) delegation of 30 January to 19 February 2012 that ‘... today there is no guarantee of clan protection in Somalia, in particular members of minority clans and ethnic minority groups are vulnerable [...]’

2.5.4 [...] Minority groups, often lacking armed militias, continued to be disproportionately subjected to killings, torture, rape, kidnapping for ransom, and looting of land and property with impunity by faction militias and majority clan members. Many minority communities continued to live in deep poverty and to suffer from numerous forms of discrimination and exclusion.

2.5.5 The NOAS 2014 report stated

‘Minority groups in Somalia are marginalized and face a difficult humanitarian situation, according to sources. The minority groups lie outside the clan system, and the clan structures pose particular difficulties for them. They have no political power, and have been especially exposed during upsurges of conflict.

‘Several sources stated that particularly vulnerable minorities in Somalia include Midgan/Gaboye, Bantu, Tumul, Reer Hama, Ashraf and Yibir.

[Emphasis added.]

(Certified Tribunal Record, in the National Documentation Package [NDP] for Somalia (17 July 2015), United Kingdom Home Office’s Report dated March 2015, Item 1.18, *Country Information and Guidance: South and central Somalia: Majority clans and minority groups*, pp 332 and 342.)

[29] Furthermore, it is submitted that the RAD erred in its decision that there was insufficient evidence as to whether the Applicant has community or family support in Somalia. In fact, the Applicant as well as her niece both testified that the Applicant would not have any support in Somalia. “When [a claimant] swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there be reason to doubt their truthfulness” (*Maldonado v*

Canada (Minister of Employment and Immigration), [1980] 2 F.C. 302 (QL) at para 5 [Maldonado]).

[30] Finally, the Applicant submits that the RAD's analysis was microscopic in nature. In fact, it drew a negative inference on one statement of the Applicant's witness, who testified in her affidavit that the Applicant called her from Somalia to tell her about the murder of her husband and son. However, the witness later testified at the hearing that it was the Applicant's neighbors who called to tell her what happened and that the Applicant, herself, told her niece about the murders only after she came to Canada. "It is well settled that while the Board's task is a difficult one, it should not be over-vigilant in searching out inconsistencies or be microscopic in its examinations of the evidence, particularly where persons testify through an interpreter. [...]" (*Elmi v Canada (Minister of Citizenship and Immigration)*, 2008 FC 773 at para 24).

B. Submissions of the Respondent

[31] The Respondent, on the other hand, argues that the RAD did not err in confirming the RPD's findings on identity and credibility. The Respondent submits that the RAD made an assessment of all the evidence before it. The fact that the Applicant was appointed a DR to act on behalf of her does not automatically lead the RPD to accept the alleged facts of the Applicant's claim.

[32] Firstly, the Respondent submits that it was reasonable for the RAD to agree with the RPD and conclude it was unlikely that the Applicant lived in Kismayo during the three years Al-Shabaab ruled the city.

[33] Secondly, it was reasonable for the RAD, as well as for the RPD, to consider the lack of corroborative evidence in order to establish the Applicant's departure from Somalia, her presence in Kenya as well as her travel to Canada with the help of a smuggler. The Respondent argues that the onus is on a refugee claimant to establish his or her claim.

[34] Thirdly, it was reasonable for the RAD to uphold the RPD's conclusion with regards to the Applicant's profile as an 80 year old Somali Muslim woman with medical issues. According to the Respondent, the Applicant failed to establish that she would be at risk in Somalia as a vulnerable elderly woman with disabilities, given that there was insufficient evidence on the Applicant's whereabouts.

[35] Finally, it was reasonable for the RAD to conclude that the Applicant did not make reasonable efforts to present evidence establishing her personal and national identity. The Respondent argues that the onus is on the Applicant to produce identity documentation (*Liu v Canada (Citizenship and Immigration)*, 2007 FC 831 at para 18).

VIII. Analysis

[36] For the following reasons, the application for judicial review is granted.

A. *Did the RAD err by upholding the RPD's decision in its credibility findings and in its consideration of the evidence before it?*

38. To the element of fear – a state of mind and a subjective condition – is added the qualification “well-founded”. This implies that it is not only the frame of mind of the person concerned that determines his refugee status, but that this frame of mind must be supported by an objective situation. The term “well-founded fear”

therefore contains a subjective and an objective element, and in determining whether well-founded fear exists, both elements must be taken into consideration.

42. As regards the objective element, it is necessary to evaluate the statements made by the applicant. The competent authorities that are called upon to determine refugee status are not required to pass judgement on conditions in the applicant's country of origin. The applicant's statements cannot, however, be considered in the abstract, and must be viewed in the context of the relevant background situation. A knowledge of conditions in the applicant's country of origin –while not a primary objective – is an important element in assessing the applicant's credibility. In general, the applicant's fear should be considered well-founded if he can establish, to a reasonable degree, that his continued stay in his country of origin has become intolerable to him for the reasons stated in the definition, or would for the same reasons be intolerable if he returned there.

45. Apart from the situations of the type referred to in the preceding paragraph, an applicant for refugee status must normally show good reason why he individually fears persecution. It may be assumed that a person has well-founded fear of being persecuted if he has already been the victim of persecution for one of the reasons enumerated in the 1951 Convention. However, the word "fear" refers not only to persons who have actually been persecuted, but also to those who wish to avoid a situation entailing the risk of persecution.

[Emphasis added.]

(Handbook and Guidelines on Procedures and Criteria for determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, UNHCR 1979 [The Handbook].)

[37] The Court finds that the RAD's decision is not reasonable because it neither considered the Applicant's particular circumstances with the objective evidence before it nor did it assess the Applicant's claim with different techniques of examination in order to decide whether she is a refugee or not. Thus, the RAD erred by upholding the RPD's decision in its credibility findings.

[38] Firstly, it is important to mention that the RAD was well aware of the Applicant's health conditions. In fact, the RAD confirmed the RPD's findings on the matter, determining that the Applicant's mental state "could significantly impede her ability to provide a complete and detailed history or clear testimony at her upcoming hearing", according to a letter dated July 29, 2015, from the Applicant's psychotherapist. It was also noted by the RAD, and the RPD, that the Applicant suffers from poor concentration and memory impairment, according to a letter dated September 29, 2016, from the Applicant's family physician. Given the Applicant's medical issues, the RAD noted in its decision that the Applicant was appointed a DR to act on her behalf during the hearings in front of the RPD. According to the Applicant, a claimant is presumed to tell the truth unless there is reason to doubt the truthfulness of certain allegations (*Maldonado*, at para 5). To the best of her ability, the Applicant testified and told her story with the assistance of the DR.

206. It has been seen that in determining refugee status the subjective element of fear and the objective element of its well-foundedness need to be established.

207. It frequently happens that an examiner is confronted with an applicant having mental or emotional disturbances that impede a normal examination of his case. A mentally disturbed person may, however, be a refugee, and while his claim cannot therefore be disregarded, it will call for different techniques of examination.

208. The examiner should, in such cases, whenever possible, obtain expert medical advice. The medical report should provide information on the nature and degree of mental illness and should assess the applicant's ability to fulfil the requirements normally expected of an applicant in presenting his case (see paragraph 205 (a) above). The conclusions of the medical report will determine the examiner's further approach.

209. [...] Where there are indications that the fear expressed by the applicant may not be based on actual experience or may be an exaggerated fear, it may be necessary, in arriving at a decision, to lay greater emphasis on the objective circumstances, rather than on the statements made by the applicant.

211. In examining his application, therefore, it may not be possible to attach the same importance as is normally attached to the subjective element of “fear”, which may be less reliable, and it may be necessary to place greater emphasis on the objective situation.

212. In view of the above considerations, investigation into the refugee status of a mentally disturbed person will, as a rule, have to be more searching than in a “normal” case and will call for a close examination of the applicant’s past history and background, using whatever outside sources of information may be available.

(The Handbook.)

[39] The Court finds that the RAD erred by concluding that the Applicant lacked credibility on the basis that she was not able to provide significant details of her daily life in Kismayo during the Al-Shabaab rule from 2009 to 2012. Although the RAD has the expertise to determine questions of fact, particularly when evaluating the credibility and the subjective fear of persecution of a claimant, the Court agrees with the Applicant’s submissions and concludes that:

It would not be proper for the [Immigration Refugee Board] to base its findings on an extensive "microscopic" examination of issues irrelevant or peripheral to the claim. Furthermore, the claimant's credibility and the plausibility of her or his testimony should also be assessed in the context of her or his country's conditions and other documentary evidence available to the Board. Minor or peripheral inconsistencies in the claimant's evidence should not lead to a finding of general lack of credibility where documentary evidence supports the plausibility of the claimant's story.

(Mohacsi v Canada (Minister of Citizenship and Immigration), 2003 FCT 429 at para 20.)

The Court finds that there was sufficient evidence on the Applicant’s medical conditions before the RAD to consider the Applicant as a vulnerable person trying to establish why she fears persecution if she returns to Somalia. The RAD failed to give weight to the objective

evidence on country conditions before it, given the Applicant's personal circumstances which impeded her to give a clear, credible testimony. Where the claimant is mentally disturbed, "it may be necessary to place greater emphasis on the objective situation" (The Handbook). For this reason, the RAD erred by failing to examine why the objective evidence make the Applicant's story plausible.

[40] Secondly, the RAD erred by concluding that the Applicant did not make reasonable efforts to present evidence of her personal and national identity, given that the "onus is on the claimant to produce acceptable documentation" (RAD's Reasons, paras 38 and 40). In fact, even with the Applicant's medical situation, she still was able to bring her niece as a witness to testify on her membership as an Ashraf as well as on her nationality. The Applicant also submitted a letter from Dixon Community services in which it was concluded that the Applicant is a Somali citizen and belongs to no other citizenship (Applicant's Record, Letter from Dixon Community services, p 63). The letter further indicated that the Applicant knows the Somali language. The RAD gave no weight to the letter. The Court finds that it is contradictory for the RAD to conclude that the Applicant cannot be a Somali citizen, given the lack of evidence. The witness's identity (a citizen of Canada and a citizen of Somalia) and relation with the Applicant is confirmed in the witness' affidavit, and in her driver's license, provided by the Applicant and available in front of the RAD and the RPD. The witness' identity as a Somalian national was not questioned nor was her relationship with the Applicant:

It is argued that the RPD found the testimony of the Appellant and witness to be consistent, for the most part, and accepted their relationship to each other and the Appellant's personal, national and clan identity.

(RAD's Reasons, paras 26-27.)

[41] Moreover, the objective evidence clearly indicates the difficulty that Somalis encounter to present civil identity documents. The RAD, and the RPD, acknowledged this information on the county conditions in its decision:

The RPD acknowledged that the country documentation shows that it would be difficult for an individual from Somalia to present civil identity documents. However, the burden rests on the claimant to use other reliable, credible means to establish her identity.

(RAD's Reasons, para 40.)

[42] The Court also finds that the RAD erred by confirming the RPD's decision in its consideration of the evidence before it. By confirming the RPD's findings, the RAD ignored reliable documentary evidence corroborating the Applicant's story.

[43] Firstly, the RAD concurred with the RPD that "the mere fact that [the Applicant] is Ashraf does not place her at risk from a targeted Al Shabaab attack in Kismayo" (RAD's Reasons, para 31). However, the reliable objective evidence that was before the RAD clearly indicates the contrary.

2.3.12 Al-Shabaab is the principal threat to peace and security in Somalia.

2.3.14 [...] Through regular attacks in Mogadishu, Kismayo and other cities in Somalia, as well as attacks in Kenya and Uganda, it has demonstrated that it is still a regional security threat.

2.4.1 Though serious concerns remain about the security situation as a result, for example, of clan infighting in Kismayo and Jubaland, there are clear signs of hope in the air.

2.2.5 UNHCR Somalia explained to the April 2012 Danish Immigration Service (DIS) fact finding mission that: ...there is no guarantee of clan protection in Somalia, in particular members of minority clans and ethnic minority groups are vulnerable.

6.2.11 In July 2012 that Al-Shabaab was harassing Somalis returning from Kenya by instituting a campaign of intimidation... roughing up the men and burning families' belongings.

[Emphasis added.]

(CTR, in the NDP for Somalia (17 July 2015), United Kingdom Home Office's Report dated December 2014, Item 1.12, Country Information and Guidance: Security and humanitarian situation in South and Central Somalia.)

[44] The RAD did not doubt the Applicant's membership as an Ashraf and thus failed to assess the objective evidence which mentions that minority groups such as the Ashraf clan are a disadvantage if they return to Somalia. Clan identity is still very important in Somalia.

2.2.6 In its January 2014 paper, the UNHCR identified 'Members of minority groups such as members of the Christian religious minority and members of minority clans' as a risk profile in Somalia. [Emphasis added.]

(CTR, in the NDP for Somalia (17 July 2015), United Kingdom Home Office's Report dated March 2015, Item 1.18, *Country and Information and Guidance: South and central Somalia: Majority clans and minority groups.*)

[45] Secondly, because the RAD also determined that the Applicant is not a person of interest to Al-Shabaab, it concluded that there was insufficient evidence regarding the Applicant's whereabouts between 2009 and 2012. Consequently, neither the RAD nor the RPD made an assessment of specific risks related to the Applicant such as her age, gender, health and family support in Somalia.

As stated above, and the RAD concurs, the RPD found that there was insufficient credible evidence upon which to assess the Appellant's risk as a result of her vulnerability. In the absence of evidence with respect to details about family or community support, the RPD was not in a position to provide an adequate factual basis for this assessment. Moreover, the RAD concurs with

the RPD that there was insufficient evidence to persuade it that a woman who is Ashraf would be at risk in Kismayo.

(RAD's Reasons, para 35.)

[46] According to the Handbook, the Court concludes that it is important to consider the circumstances of each case, as each person has a story; each person has a background and baggage that are unique. Furthermore, the Applicant herself might not know why it is that she fears persecution if she returns to Somalia. Given the particular circumstances in the case at bar, it was the duty of the RAD to make an assessment of the Applicant's residual profile. The fact that the RAD did not believe the Applicant's story cannot justify its reasons to avoid making a complete evaluation of the Applicant's profile with regard to the current country conditions available in the objective documentary evidence:

Mental health care

14.15 The World Health Organisation's Biennial Report on Somalia 2010-2011, published in September 2012, noted that:

'Prolonged conflict and instability have largely impacted on the mental and psychological well-being of the Somali people. [...] Many Somalis have experienced beating, torture, rape or have been injured for life. Others witnessed horrific violence against family or friends.

(CTR, in the NDP for Somalia (17 July 2015), United Kingdom Home Office's Report dated 5 August 2013, Item 2.3, *Somalia: Country of origin information report*.)

Women

3.1.5 Not only do female returnees in particular face threats against the person in IDP camps, especially those belonging to minority clans, but women travelling without male friends or relatives are in general likely to face a real risk of sexual violence. [...] For single women and female single heads of households with no male protection, especially those originating from minority clans, internal relocation will not be available in the absence of

meaningful nuclear and/or extended family support and functioning clan protection.

3.1.6 Women who have a well-founded fear of persecution as a result of their gender are members of a particular social group. This is because they are discriminated against in matters of fundamental human rights and the state is unable to provide effective protection. [Emphasis added.]

(CTR, in the NDP for Somalia (17 July 2015), United Kingdom Home Office's Report, Item 1.13, *Country Information and Guidance: Somalia*.)

[47] A person's life is valuable and the Court concludes that the RAD failed to give a complete assessment of the Applicant's fear of persecution in Somalia, including her profile as an elderly woman with disabilities and as an unaccompanied woman with no family support in Somalia, by considering the country conditions and the risk factors associated with the possibility of returning to areas controlled by Al-Shabaab.

52. Whether other prejudicial actions or threats would amount to persecution will depend on the circumstances of each case, including the subjective element to which reference has been made in the preceding paragraphs. The subjective character of fear of persecution requires an evaluation of the opinions and feelings of the person concerned. It is also in the light of such opinions and feelings that any actual or anticipated measures against him must necessarily be viewed. Due to variations in the psychological make-up of individuals and in the circumstances of each case, interpretations of what amounts to persecution are bound to vary.

53. In addition, an applicant may have been subjected to various measures not in themselves amounting to persecution (e.g. discrimination in different forms), in some cases combined with other adverse factors (e.g. general atmosphere of insecurity in the country of origin). In such situations, the various elements involved may, if taken together, produce an effect on the mind of the applicant that can reasonably justify a claim to well-founded fear of persecution on "cumulative grounds". Needless to say, it is not possible to lay down a general rule as to what cumulative reasons can give rise to a valid claim to refugee status. This will

necessarily depend on all the circumstances, including the particular geographical, historical and ethnological context.

66. In order to be considered a refugee, a person must show well-founded fear of persecution for one of the reasons stated above [for reasons of race, religion, nationality, membership of a particular social group or political opinion]. It is immaterial whether the persecution arises from any single one of these reasons or from a combination of two or more of them. Often the applicant himself may not be aware of the reasons for the persecution feared. It is not, however, his duty to analyze his case to such an extent as to identify the reasons in detail.

67. It is for the examiner, when investigating the facts of the case, to ascertain the reason or reasons for the persecution feared and to decide whether the definition in the 1951 Convention is met with in this respect. It is evident that the reasons for persecution under these various headings will frequently overlap. Usually there will be more than one element combined in one person, e.g. a political opponent who belongs to a religious or national group, or both, and the combination of such reasons in his person may be relevant in evaluating his well-founded fear.

(The Handbook.)

[48] For these reasons, the Court concludes that the RAD's decision does not fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir*, at para 47).

IX. Conclusion

[49] The application for judicial review is granted.

JUDGMENT in IMM-2359-17

THIS COURT'S JUDGMENT is that the application for judicial review be granted and the file be remitted to the RAD for assessment anew by a different panel. There is no serious question of general importance to be certified. The style of cause is hereby amended to reflect the correct respondent, the Minister of Citizenship and Immigration.

"Michel M.J. Shore"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2359-17

STYLE OF CAUSE: AMINA HAJI ABBAR v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 4, 2017

JUDGMENT AND REASONS: SHORE J.

DATED: DECEMBER 4, 2017

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