Federal Court  Cour fédérale

Date: 20180130

Docket: IMM-2581-17

Citation: 2018 FC 93

Ottawa, Ontario, January 30, 2018

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

SALMAN HERSI ABDI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

> Institutional memory and rapidly-changing information, inherent to the knowledge of a specialized tribunal, is the very reason for the existence of such a tribunal. An assessment of credibility, specified in each case as based on respective country-condition information packages and accumulated knowledge, stems from hundreds of pages in each respective binder, public document information-requests, continuously scheduled professional training to build and enhance an understanding of country-specific history, ethnic groups, religion or religions, customs, traditions, geography, politics, economics -- re the standard of living, hierarchy of government structures, official and unofficial government

> associations or groupings, as well as any other associations, military or paramilitary groups and rival factions, if any.
>
> Thus, a specialized knowledge of an encyclopedia of references, a dictionary of terms and a gallery of portraits, (in addition to an assessment of reliability of reports, originating from the country, itself, as well as other countries, in addition to that of non-governmental and governmental organizations), is one of gathered experience to which jurisdiction is given for that very reason.
>
> This Court does not pretend, nor purport, to possess such knowledge. […] Specialized tribunals are established for cogent practical reasons to ensure that members of an administrative tribunal entity become a professional cadre of specialists. Such specialization or expertise is no different than that of a trained cadre of technical safety experts for any specialized industry for which expert tribunals exist (more often understood in such a context than the present one but nevertheless no different). Specialization in such areas does not lend itself to general knowledge but rather to institutional memory, information and training in which context such specialized tribunals are established and mandated by legislation. Judges are not trained, nor jurisdictionally equipped for that intricate specialized, mandated purpose for which reliance on the specialized tribunal itself is legislated.
>
> Therefore, all this Court can do, is consider a judicial review and, when appropriate, dissect the matter into a certified question from proceedings in that regard, but the whole, if requiring reassessment, can only be returned to the expertise of the specialized tribunal from whence it originated; thus, a judicial review consideration must, of course, not transform itself into a specialized appeal nor render a judgment as if it was.
>
> (*Zheng v Canada (Minister of Citizenship and Immigration)*, 2007 FC 673 at para 1 [*Zheng*].)

[1] The reason the Court returns this case to the RPD for its consideration anew is due to, out of context, erroneously considered evidence, as discussed below in the judgment.

II. Nature of the Matter

[2] 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 Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada [Board], dated May 18, 2017, in which the RPD dismissed the refugee claim by concluding 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

[3] The Applicant, aged 20 years old, claims to be a citizen of Somalia from the city of Mogadishu.

[4] The Applicant claims to be a part of the Hawiye sub-clan of the Murusade clan.

[5] The Applicant lived in Mogadishu until June 5, 2009, and then fled to Kenya with his family (parents and two siblings) due to the civil war in Somalia. They lived in Dhadaab refugee camp in Kenya. The Applicant then moved to Nairobi to live with his cousin.

[6] The Applicant fears persecution in Somalia because of the Al-Shabaab. He claims to have experienced discrimination by certain groups and the police in Kenya both of whom disliked Somalis due to Al-Shabaab. In June 2014, the Applicant allegedly was stabbed in the thigh by an individual, during a Kenyan anti-Somali refugee demonstration.

[7] On November 19, 2015, the Applicant decided to move back to Mogadishu. His family had already returned to Mogadishu in March 2015, following his father's passing away on February 2, 2015. The Applicant allegedly told his friends in Mogadishu about the incidents in Kenya due to Al-Shabaab attacks. The next day, he claims to have received a telephone call from an unknown person who threatened him if he continued to speak disparagingly about the Al-Shabaab.

[8] On November 25, 2015, the Applicant returned to Kenya. Due to the Kenyan government's plans to return refugees to Somalia, he felt he was now unsafe in Kenya, and, therefore obtained a false passport and successfully arrived in the U.S.A., on November 17, 2016.

[9] On February 28, 2017, the Applicant applied for refugee protection at the Canada-U.S. border, claiming that he fears President Trump's ban on refugees. The Applicant has been residing in Canada ever since.

IV. Decision

[10] On May 18, 2017, the RPD rejected the Applicant's refugee claim. It was not satisfied that a serious possibility existed for the Applicant to be persecuted, or that he would be personally subjected to a risk to his life or to a risk of cruel and unusual treatment or punishment if he were to return to Somalia.

[11] Specifically, the panel made determinations on the following issues: credibility, identity and internal flight alternative [IFA]. The RPD accepted that the Applicant is ethnically Somalian, but did not find that the Applicant had established that he had not obtained another nationality, such as Kenyan. The RPD noted in its reasons the Applicant had the duty to provide acceptable documents in order to establish his identity. Although the RPD accepted that the Applicant lived in Kenya prior to his entry into the United States, it was not convinced that the Applicant had not received another nationality in Kenya.

[12] The panel made a negative inference on the Applicant's credibility, as he had testified during the hearing that he had no knowledge of his status in Kenya. The Board indicated in its reasons that the Applicant could have asked his mother about his status in Kenya, or asked the Kenyan authorities but did not. The panel also found that the Applicant lacked credibility and plausibility as to the incident in 2015, when an individual allegedly contacted him by telephone and threatened him for acting as a spy for the Somali or Kenyan government. The panel found that the Applicant embellished the information so that his claim would have merit.

[13] Finally, in assessing whether a viable IFA exists, the panel considered the claimant's membership in a majority clan, the Hawiye clan, and did not find that he would be persecuted in Mogadishu. The panel then noted that the Applicant has family living in Mogadishu and there was no mention that his family members had been targeted by the Al-Shabaab in Mogadishu. The panel did take into account that the Applicant might be perceived as westernized upon his return to Somalia; however, the panel concluded that the Applicant would not be a target for Al-Shabaab as a "government spy" or a youth, because it indicated that the Al-Shabaab did not

control areas such as Mogadishu; furthermore, given the fact that the claimant's family resides in Mogadishu, the panel did not find that he would have difficulty in finding employment or housing in Mogadishu.

V. Issues

[14] This matter raises the following issues:

1. Did the RPD breach its duty of natural justice by failing to provide notice to the Applicant before considering the issue of IFA?
2. Did the RPD render a reasonable decision, in its identity, credibility and IFA findings?

[15] The Court finds that the applicable standard of review with regard to the first issue is that of correctness. The right to notice is an issue of procedural fairness in order for the Board to identify for the applicant what it considers to be the potentially determinative issues in a refugee hearing (*Turton v Canada (Citizenship and Immigration)*, 2011 FC 1244 at para 25; *Gomes v Canada (Minister of Citizenship and Immigration)*, 2006 FC 419 at para 7).

[16] As for the second issue, whether the Applicant has established a well-founded fear of persecution is a question of mixed fact and law reviewable on a standard of reasonableness. The standard of reasonableness also applies to the RPD's identity, credibility, as well as available state protection findings (*Csonka v Canada (Citizenship and Immigration)*, 2012 FC 1056 at para 56 [*Csonka*]; *Bazelais v Canada (Citizenship and Immigration)*, 2013 FC 316 at para 36). Therefore, the Court may only intervene if the RPD's reasons are not justified, transparent or

intelligible. To satisfy this standard, a decision must fall in the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 CSC 9 at para 47 [*Dunsmuir*]).

VI. Relevant Provisions

[17] Section 96 and subsection 97(1) of the IRPA state:

Convention refugee	**Définition de « réfugié »**
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,	**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) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	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) 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.	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.
Person in need of protection	**Personne à protéger**
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,	**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

their country of former habitual residence, would subject them personally

pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

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

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) 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 themself 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.

(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.

VII. Submissions of the Parties

A. *Submissions of the Applicant*

[18] According to the Applicant, the RPD breached its duty of natural justice by failing to provide notice to the Applicant that an IFA would be considered. The Applicant did not have the opportunity to address the issue of IFA during the course of the hearing. At the outset of the hearing, the Applicant submits that the RPD did not identify the issue of IFA, and the Applicant was neither asked any questions throughout the hearing regarding IFA, nor was he asked questions about Mogadishu as a potential safe location (Certified Tribunal Record [CTR], Transcript, pp 256-257). It is also noted that before oral submissions, counsel was not notified either by the RPD on the issue of state protection.

[19] It is further submitted that the RPD erred by stating that Mogadishu could be an IFA location for the Applicant. In fact, the RPD ignored documentary evidence of unsafe conditions in that city. The RPD erred by indicating in its reasons that "Al-Shabaab in Mogadishu does not generally target the general population but targets politicians, journalists, police and security forces" (RPD's Reasons and Decision, para 43). The Applicant submits that documentary evidence emanating from the RPD that contradicted this finding does in fact, exist.

[20] The Applicant also argues that the RPD's analysis was microscopic in nature. For example, the RPD did not give weight to a letter from the Applicant's school in Kenya because it did not have a school identification number. Not only is this finding called into question, but the RPD focused on minor details in finding errors. "This Court has held that the Board should not

focus on a few points of error: *Attakora*, supra" (*Dong v Canada (Minister of Citizenship and Immigration)*, 2010 FC 55 at para 27 [*Dong*]), but rather view a case in its entirety. "The result is an impermissible microscopic analysis of the evidence" (*Dong*, above, at para 27).

[21] It is further submitted that the RPD's identity finding on expectations and assumptions regarding the Applicant's lack of documentation in Kenya are inconsistent with the documentary evidence, suggesting that the Board ignored the objective evidence. The documentary evidence clearly indicates that many Somalis in Kenya are unregistered or undocumented, and not all refugees had access to identity documents due to distribution problems. For these reasons, it is submitted that the Board erred by imposing an unreasonable burden of proof on the Applicant, based on the objective evidence, in order to determine his refugee status, not recognizing the challenges in obtaining bona fide documents in Somalia as clearly specified in the country conditions.

[22] Finally, on the issue of credibility, the Applicant argues that the Board must consider all aspects of the claim, even if some aspects are not credible. The Board must also not reach a conclusion that is inconsistent with the preponderance of relevant evidence (*Salamat v Canada (Immigration Appeal Board)*, [1989] FCJ No 213 (QL); *Xu v Canada (Minister of Employment and Immigration)*, [1992] FCJ No 810 (QL); *Djama v Canada (Minister of Employment and Immigration*), [1992] FCJ No 531 (QL)).

B. *Submissions of the Respondent*

[23] The Respondent, on the other hand, argues that the RPD did not breach the duty of natural justice, as notice was not required. The onus rests on the Applicant to provide all relevant evidence to demonstrate that an IFA would not be available, especially when the availability of an IFA is inherent in the definition of Convention refugee or person in need of protection. As for the reasonableness of the IFA finding, the Respondent submits that the onus rests with the Applicant to show that he did not have an IFA. The documentary evidence, to which reference is made by the Applicant in his Memorandum of Argument, does not support that Al-Shabaab targeted a specific individual with the Applicant's profile. Therefore, the Board did not err by finding that there was no evidence indicating that it would be unreasonable for the Applicant to reside in Mogadishu, given his profile (age, majority clan).

[24] The Respondent also submits that the RPD did not err in its credibility and identity findings. According to the IRPA and its Regulations, the Respondent argues that a lack of acceptable documents without a reasonable explanation for their absence, or the failure to take reasonable steps to obtain them, is a significant factor in assessing the credibility of a claimant.

[25] It was also reasonable for the RPD not to give weight to the letter from the Applicant's school to establish his identity. According to the Respondent, the letter simply stated that the Applicant attended the school in Kenya.

[26] Finally, it was reasonable for the RPD to find that the Applicant's failure to claim asylum in the United States and his delay in coming to Canada undermined his subjective fear. The Applicant's explanations in this regard were also implausible.

C. *Reply*

[27] The Applicant reiterates that it is a requirement to give a notice for IFA.

> [T]here is an onus on the Minister and the Board to warn the claimant if an IFA is going to be raised. […] Therefore, neither the Minister nor the Refugee Division may spring the allegation of an IFA upon a complainant without notice that an IFA will be in issue at the hearing.
>
> (*Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (QL) at para 10 [*Thirunavukkarasu*].)
>
> [A] claimant is not to be expected to raise the question of an IFA nor is an allegation that none exists simply to be inferred from the claim itself. **The question must be expressly raised at the hearing by the refugee hearing officer or the Board and the claimant afforded the opportunity to address it with evidence and argument.** [Emphasis added by the Applicant.]
>
> (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706 (QL) at para 9 [*Rasaratnam*].)

[28] The Applicant also states that the Respondent misrepresented the Applicant's submission by claiming that the documentary evidence did not indicate that Al-Shabaab targeted specific individuals with the Applicant's profile. The Applicant replies that it was simply incorrect for the RPD, a specialized tribunal, to assert that Al-Shabaab does not target the general population in Mogadishu, but only politicians, journalists and security forces. If, but for this reason, by ignoring objective evidence, it clearly contradicted the documentary evidence.

VIII. Analysis

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

A. *Did the RPD breach its duty of natural justice by failing to provide notice to the Applicant before considering the issue of IFA?*

[30] The Court finds that the RPD breached its duty of natural justice by failing to give the Applicant an opportunity to provide evidence regarding the issue of IFA. The Federal Court of Appeal has held that "[a] refugee claimant enjoys the benefit of the principles of natural justice in hearings before the Refugee Division" (*Thirunavukkarasu*, above, at para 10). The Court agrees with the Applicant's submissions in his Reply indicating that:

> [The] right to notice of the case against the claimant is acutely important where the claimant may be called upon to provide evidence to show that no valid IFA exists in response to an allegation by the Minister. Therefore, neither the Minister nor the Refugee Division may spring the allegation of an IFA upon a complainant without notice that an IFA will be in issue at the hearing.
>
> (*Thirunavukkarasu*, above, at para 10.)

[31] Given that the RPD found that the Applicant would not risk persecution if he returned to Somalia, the RPD neither provided notice to the Applicant before the hearing nor did it mention the question of an IFA during the hearing in order to give the Applicant the opportunity to provide evidence for his refugee claim. While the onus rests on the Applicant, "a claimant is not to be expected to raise the question of an IFA nor is an allegation that none exists simply to be inferred from the claim itself. The question must be expressly raised at the hearing by the refugee

hearing officer or the Board and the claimant afforded the opportunity to address it with evidence and argument." (*Rasaratnam*, above, at para 9.) [Emphasis added.]

B. *Did the RPD render a reasonable decision, in its identity, credibility and IFA findings?*

> Institutional memory and rapidly-changing information, inherent to the knowledge of a specialized tribunal, is the very reason for the existence of such a tribunal. An assessment of credibility, specified in each case as based on respective country-condition information packages and accumulated knowledge, stems from hundreds of pages in each respective binder, public document information-requests, continuously scheduled professional training to build and enhance an understanding of country-specific history, ethnic groups, religion or religions, customs, traditions, geography, politics, economics -- re the standard of living, hierarchy of government structures, official and unofficial government associations or groupings, as well as any other associations, military or paramilitary groups and rival factions, if any.
>
> Thus, a specialized knowledge of an encyclopedia of references, a dictionary of terms and a gallery of portraits, (in addition to an assessment of reliability of reports, originating from the country, itself, as well as other countries, in addition to that of non-governmental and governmental organizations), is one of gathered experience to which jurisdiction is given for that very reason.
>
> This Court does not pretend, nor purport, to possess such knowledge. […] Specialized tribunals are established for cogent practical reasons to ensure that members of an administrative tribunal entity become a professional cadre of specialists. Such specialization or expertise is no different than that of a trained cadre of technical safety experts for any specialized industry for which expert tribunals exist (more often understood in such a context than the present one but nevertheless no different). Specialization in such areas does not lend itself to general knowledge but rather to institutional memory, information and training in which context such specialized tribunals are established and mandated by legislation. Judges are not trained, nor jurisdictionally equipped for that intricate specialized, mandated purpose for which reliance on the specialized tribunal itself is legislated.
>
> Therefore, all this Court can do, is consider a judicial review and, when appropriate, dissect the matter into a certified question from proceedings in that regard, but the whole, if requiring

> reassessment, can only be returned to the expertise of the specialized tribunal from whence it originated; thus, a judicial review consideration must, of course, not transform itself into a specialized appeal nor render a judgment as if it was.
>
> (*Zheng*, above, at para 1.)

[32] The Court finds that the RPD's decision is unreasonable on its credibility, identity and IFA findings because the panel ignored the objective evidence and did not assess the evidence correctly. In order to establish if a well-founded fear of persecution exists, the RPD must consider the subjective and objective elements. "Both subjective fear and objective fear are components in respect of a valid claim for refugee status" (*Csonka*, above, at para 3). Although the decision may very well be the same if it is remitted for redetermination, the RPD, a specialized and knowledgeable tribunal, had to make an appropriate assessment of the objective evidence and evaluate the evidence before it as a whole and in depth. The RPD gave a poor assessment of the country condition evidence that was before the panel and thus failed to view the Applicant's story in the context of the relevant background situation.

> 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.
>
> (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 [Handbook].) [Emphasis added.]

[33] The RPD gave an incomplete assessment of the country condition evidence that was before the panel, and therefore, failed to view the Applicant's narrative in the context of the relevant background situation as per the documentary evidence when read in its entirety for nuances which states the opposite of that which was stated by the RPD, in its decision, wherein it cannot be said that the Al-Shabaab are non-existent in Mogadishu:

> 1.2.8 These operations have caused hundreds of civilian casualties, including women and children and foreigners.
>
> 1.2.11 Al-Shabaab also reportedly continues to commit grave abuses against civilians such as killings of prominent peace activists, community leaders, clan elders, and their family members for their role in peace-building, and beheadings of people accused of-spying for" and collaborating with Somali national forces and affiliated militias.
>
> 1.2.40 […] However, killings take place from time to time in Mogadishu, and the overall context in Somalia is still fragile, in spite of the security improvements and progresses that have been made since August 2011.
>
> (CTR, in the NDP for Somalia (31 March 2017), item 1.3, United Kingdom. Home Office, Country Information and Guidance: Somalia, April 2014, pp 122-123 and 133.)

[34] The RPD erred by finding that "Al Shabaab in Mogadishu does not generally target the general population but targets politicians, journalists, police and security forces" (RPD's

Reasons and Decision, para 43). This finding is erroneous to the objective evidence on country conditions on file:

> Al-Shabaab carried out indiscriminate and lethal attacks in heavily guarded areas of Mogadishu and other towns, killing or injuring hundreds of civilians. High-profile targets remained vulnerable to such attacks.
>
> […]
>
> **Targeting of civilians**
>
> Civilians were also directly targeted in attacks, especially by al-Shabaab fighters and clan militias. On 15 June, al-Shabaab fighters fired mortars into densely populated areas of Mogadishu;
>
> […]
>
> In addition, al-Shabaab continued to torture and extrajudicially kill people they accused of spying or not conforming to its interpretation of Islamic law. The group killed people in public, including beheading and stoning, and carried out amputations and floggings, especially in areas from which AMISOM had withdrawn.
>
> (CTR, in the National Documentation Package for Somalia [NDP] (31 March 2017), Amnesty International Report 2016/17 on Somalia, p 239.)
>
> Al-Shabaab continued to kill civilians. The killings included al-Shabaab's execution of persons it accused of spying for and collaborating with the FGS, Somali national forces, and affiliated militias.
>
> (CTR, in the NDP for Somalia (31 March 2017), item 2.1, United States. Department of State, Somalia. Country Reports on Human Rights Practices for 2016, 3 March 2017, p 168.)

[35] The RPD also made a negative inference on the Applicant's identity:

> Identity was identified at the outset as a critical issue in the hearing. Identity is a determinative issue. The onus is on a claimant to prove his identity. This claimant has failed to establish his identity and failed to produce his passport. The panel finds, on a balance of probabilities, that it does not establish his personal

> identity, nor his identity as a citizen of Somalia. The panel finds that the claimant has not established, on a balance of probabilities, that he is not a citizen of Kenya.
>
> (RPD's Reasons and Decision, para 37.)

[36] The objective evidence mentions that Somali refugees staying in Dadaab camp in Kenya feared to return to Somalia after the Kenyan government announced a repatriation program. The Applicant claimed not to know his status in Kenya because Somalis faced involuntary return to Somalia:

> Kenya's repatriation program for Somali refugees, fueled by fear and misinformation, does not meet international standards for voluntary refugee return. Many refugees living in Kenya's sprawling Dadaab camp, home to at least 263,000 Somalis, say they have agreed to return home because they fear Kenya will force them out if they stay.
>
> […]
>
> Some Somalis who agreed to return to Somalia after spending years as refugees in Dadaab have fled back to Kenya a second time because of ongoing violence and lack of basic services in Somalia. Human Rights Watch found that newly arrived Somali asylum seekers and refugees who were not able to re-establish themselves in Somalia are being denied access to refugee registration or asylum procedures in Dadaab. This leaves them without legal status and food rations.
>
> […]
>
> "The Kenyan authorities are not giving Somali refugees a real choice between staying and leaving, and the UN refugee agency isn't giving people accurate information about security conditions in Somalia", said Bill Frelick, refugee rights director at Human Rights Watch. "There is no way these returns can be considered voluntary".
>
> […]
>
> **Intimidation by Kenyan Government Officials**

> Refugees and asylum seekers consistently told Human Rights Watch that the Kenyan government officials are putting direct and indirect pressure on them to return to Somalia.
>
> (CTR, in the NDP for Somalia (31 March 2017), Kenya: Involuntary Refugee Returns to Somalia, April 17, 2017, pp 242-243, 247.)

[37] The RPD did not find it would be objectively unreasonable or unduly harsh to expect the claimant to return to Mogadishu because Al Shabaab did not control Mogadishu. The documentary evidence, however, indicates the following:

> 1.2.23 […] Regardless of the recent gains of the government, al-Shabab remains in control of large parts of rural areas, and of much of south and central Somalia.
>
> 1.2.28 In a June 2013 bulletin, UNOCHA reported that the security situation in southern and central Somalia remained volatile and unpredictable.
>
> 1.2.42 Amnesty considered in a September 2013 briefing that:
>
> Security improvements in Mogadishu have been extremely limited in scope. The security situation is volatile with varying intensity between areas and times of day, and has deteriorated during the course of 2013 … In Mogadishu there is ongoing violence through both indiscriminate and targeted attacks. Civilians continue to face extreme insecurity, characterized by physical violence, killings, rape and extortion.
>
> (CTR, in the NDP for Somalia (31 March 2017), item 1.3, United Kingdom. Home Office, Country Information and Guidance: Somalia, April 2014, pp 127-128 and 134.)
>
> 6.2.12 The UNHCR further considered in its position paper of January 2014 with regards to Southern and Central Somalia that
>
> […]
>
> 'In relation to consideration of IFA/IRA for Somalis fleeing persecution or serious harm by Al-Shabaab, protection from the State is generally not available in Mogadishu even though the city is under control of government forces supported by AMISOM

> troops. This applies in particular to Somalis who can be presumed to be on Al-Shabaab‘s hit list‘
>
> (Supplementary Tribunal Record, in the NDP for Somalia (31 March 2017), item 1.3, United Kingdom. Home Office, Country Information and Guidance: Somalia, April 2014, pp 81-82.)

[38] The Court concludes that the RPD failed to give a complete assessment of the Applicant’s fear of persecution in Somalia, given the country condition binder before the Board, which, in fact emanates from the Board.

> 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. <u>This will necessarily depend on all the circumstances, including the particular geographical, historical and ethnological context.</u> [Emphasis added.]
>
> (Handbook.)

[39] Finally, in the alternative, even if the RPD did not find that the claimant would be at risk if he were to return to Somalia, it also considered whether a viable IFA exists in order to relocate the Applicant to Mogadishu. The RPD indicated the following in its reasons:

> Thus, the only thing is that the claimant lived outside of Somalia could be perceived as westernized. Again, the documents indicate that in Al Shabaab controlled areas this would be a problem, however this is not the issue in Mogadishu. Thus, the panel finds the claim would not be targeted either by Al Shabaab as a “government spy” as he alleged or for other reasons, such as being “westernized” or a youth.

(RPD's Reasons and Decision, para 43.)

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

IX. Conclusion

[41] The Application for judicial review is granted.

JUDGMENT in IMM-2581-17

THIS COURT'S JUDGMENT is that the application for judicial review be granted and the file be remitted to the Board for assessment anew by a different panel. There is no serious question of general importance to be certified.

"Michel M.J. Shore"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2581-17
STYLE OF CAUSE:	SALMAN HERSI ABDI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	OTTAWA, ONTARIO (BY VIDEOCONFERENCE)
DATE OF HEARING:	JANUARY 24, 2018
JUDGMENT AND REASONS:	SHORE J.
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APPEARANCES:

Alp Debreli	FOR THE APPLICANT
Margherita Braccio	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Alp Debreli, Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT