

Federal Court



Cour fédérale

**Date: 20181009**

**Docket: IMM-4623-17**

**Citation: 2018 FC 1005**

**Ottawa, Ontario, October 9, 2018**

**PRESENT: The Honourable Madam Justice McDonald**

**BETWEEN:**

**MUHAMED DRAMMEH**

**Applicant**

**and**

**THE MINISTER OF IMMIGRATION,  
REFUGEES & CITIZENSHIP**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant is a minor from The Gambia who claims refugee protection in Canada. He claims to be at risk of persecution because his father worked with the former Gambian regime. The Refugee Protection Division (RPD) disagreed and found that he was not a Convention refugee and not a person in need of protection pursuant to ss. 96 and 97(1) of the *Immigration and Refugee Protection Act* [IRPA]. The RPD went further and found that there was no credible basis to his claim pursuant to s. 107(2) of IRPA.

[2] For the reasons that follow, this judicial review is dismissed as the findings of the RPD that include the “no credible basis” finding are reasonable.

### **Background**

[3] The foundation of the Applicant’s refugee claim was his father’s work with the former Gambian government. In his Basis of Claim he states that his father was employed in a mid-level position with the National Intelligence Agency (NIA) under the former regime of Yahya Jammeh.

[4] However, in an Affidavit provided by his father for the RPD hearing, his father states that he was a driver for the NIA and had witnessed some of the atrocities of the Yahya Jammeh regime that refused to give up power after Adama Barrow was elected in December 2016. The father was allegedly warned to remain faithful to the Jammeh regime.

[5] When Jammeh finally ceded power in January 2017, the Applicant’s father decided that the family was no longer safe in The Gambia and they relocated to neighbouring Senegal in February 2017.

[6] The Applicant says he was sent to Canada because his father was concerned for his safety in The Gambia and in Senegal. Using false documents, the Applicant travelled to Canada in May 2017 and made a refugee claim.

[7] A friend of the Applicant's father is acting as his guardian while he is in Canada.

[8] As the Applicant is a minor, a designated representative was appointed to him for his RPD hearing.

### **RPD Decision**

[9] The Applicant testified that his family had to leave The Gambia because people in the new government were seizing property and money from people who worked for the former president. Even in Senegal it was allegedly not safe for them because the Senegalese government was sending people who worked for the former regime back to The Gambia. If this was happening, the RPD found it questionable that his father would remain in Senegal.

[10] On the day of the RPD hearing the Applicant produced an Affidavit from his father. The RPD noted that the evidence in the Affidavit differed from the Applicant's prior evidence on why his father was wanted by the present regime in The Gambia. Previously, the Applicant claimed that it was because his father worked in a mid-level position with the NIA, but the father's Affidavit states that the father had witnessed, and may also have been complicit in, the atrocities committed by the former regime.

[11] The RPD noted the lack of evidence to corroborate the nature of the father's work. The Panel noted that the Applicant himself did not have any first-hand knowledge of his father's work. The RPD found that the father's Affidavit on its own was insufficient to determine that the

father worked as a driver of the NIA. Accordingly, the RPD determined that the father was not employed in that role and, as a result, there was no risk to his life.

[12] The RPD also noted that if the father was a former employee of the NIA he would be of interest to the current regime in The Gambia. However, there was no evidence to indicate that was the case and, as such, there was no evidence that the government had any interest in the Applicant, or that he was at risk in returning to The Gambia or to Senegal.

[13] Overall, the RPD found material aspects of the claim were not credible and, therefore, there was no credible basis to the claim.

### **Issue and Standard of Review**

[14] The single issue raised by the Applicant is that it was unreasonable for the RPD to make a “no credible basis” finding.

[15] The parties agree that the applicable standard of review is reasonableness.

### **Analysis**

[16] While the Applicant concedes that the evidence before the RPD may have been contradictory, he argues that it was an overreach for the RPD to make a finding of no credible

basis. The “no credible basis” finding is serious as it bars the Applicant from appealing to the Refugee Appeal Division.

[17] The threshold for such a finding is high as explained in *Rahaman v Canada (Minister of Citizenship & Immigration)*, 2002 FCA 89 at paragraph 51:

[T]he Board should not routinely state that a claim has “no credible basis” whenever it concludes that the claimant is not a credible witness... [T]he Board [is] to examine all the evidence and to conclude that the claim has no credible basis only when there is no trustworthy or credible evidence that could support a recognition of the claim.

[18] In this case the evidence before the RPD was: (i) the Applicant’s affidavit and testimony, (ii) the guardian’s testimony, and (iii) the father’s Affidavit.

[19] There were several inconsistencies in the Applicant’s affidavit and testimony when considered against the other evidence before the RPD. However, the RPD acknowledged that the Applicant was a minor whose claim was entirely dependent on his father’s activities and circumstances, and not his own personal circumstances. The RPD therefore considered the other evidence in support of the claim.

[20] With respect to the guardian’s evidence, the RPD concluded that the evidence was inconsistent and did not corroborate the Applicant’s claim. In particular, the RPD noted that the guardian did not have any direct knowledge of the father’s employment with the NIA.

[21] The only evidence to support the Applicant's claim and address any credibility concerns was his father's evidence. The RPD considered the information in the father's Affidavit and compared it against the Applicant's claim. With respect to this Affidavit, the RPD made a negative credibility finding because of the lack of any documentary evidence to confirm that he had indeed worked with the NIA. Although it was argued that the information was not available because of the secretive nature of the NIA's work and the fear of retribution, the RPD simply did not accept that there was no corroborative evidence to support the father's assertion that he worked for the NIA.

[22] The conclusion of the RPD on this critical and core part of the Applicant's claim is reasonable. Regardless of the circumstances of the Applicant's father for leaving The Gambia, the RPD insisting on some corroborating proof of his employment with the NIA (e.g., a pay stub, paperwork, photos in uniform) was not unreasonable.

[23] The RPD also made a negative credibility finding in relation to the Applicant's claim that there had been direct threats made against his family. The father's evidence did not reference any such threats. The RPD acknowledged that many Gambians fled due to political tensions and that those associated with the previous regime could be at risk of persecution if they were to return. However, there was no persuasive evidence before the Panel to indicate that the Applicant himself would be personally at risk of persecution.

[24] The RPD's position on this is outlined in paragraph 56 of the decision as follows:

Further, the panel finds that the credibility of the allegation that the claimant is at risk of harm is undermined by the fact that the

claimant's father is the one with the problems yet he chose to send his son to Canada while he remains in Senegal, where that government is allegedly arresting and sending employees of the former government to be punished in The Gambia. If accurate, the claimant's father is at risk of being deported to the very country where he faces serious problems. While the claimant explained that his father's wish was to get all the family out of Senegal, which he was unable to do, the panel sees no reason why he would not have sought safety for himself, then made arrangements for the claimant and the rest of the family subsequently. The panel finds that the failure to do so undermines the credibility of the allegation that the father, and hence the minor claimant, faces a risk of harm in The Gambia.

[25] Overall, the RPD concluded that if anyone was of interest to the authorities in The Gambia it was the Applicant's father. The fact that the Applicant was the eldest son, had the same surname and physically resembled his father was not enough to put him at risk. There was simply no evidence that anyone in The Gambia had any interest in the Applicant.

[26] The RPD found the claim had no credible basis. The RPD considered the evidence, such as it was, but determined that the evidence was not credible or trustworthy. The RPD's decision is within the range of reasonable outcomes and is entitled to deference. As credibility was the determinative issue, and as the Applicant cannot point to an error by the RPD, this Court has no basis to intervene.

**JUDGMENT in IMM-4623-17**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review of the October 10, 2017 decision of the Refugee Protection Division is dismissed.
2. No serious question is certified.

"Ann Marie McDonald"

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Judge



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

**DOCKET:** IMM-4623-17

**STYLE OF CAUSE:** MUHAMED DRAMMEH v THE MINISTER OF  
IMMIGRATION, REFUGEES & CITIZENSHIP

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** AUGUST 29, 2018

**JUDGMENT AND REASONS:** MCDONALD J.

**DATED:** OCTOBER 9, 2018

**APPEARANCES:**

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