

Federal Court



Cour fédérale

Date: 20191115

Docket: IMM-1456-19

Citation: 2019 FC 1440

Ottawa, Ontario, November 15, 2019

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

SULUB ADAN DOOL

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Sulub Adan Dool is a Somali national living in South Africa. He applied for permanent residence in Canada as a member of the Convention refugee abroad and the humanitarian protected persons class. His application was denied, essentially because the Officer found him to be not credible because of various inconsistencies in his narrative. He seeks judicial review of this decision.

[2] The Applicant was sponsored to come to Canada under a private sponsorship. During his interview with a visa officer, he made a number of statements which gave rise to concerns on the

part of the officer, and he was asked questions about these aspects of his narrative. In the officer's notes from the interview, a number of discrepancies are noted as the foundation for the finding that the Applicant was lacking in credibility:

- He said that his claim was based on a fear of the fighting and violence caused by Al Shabab in Somalia; however, his written application does not mention Al Shabab;
- He said that he feared being forcibly recruited by Al Shabab; he initially said he did not know anyone who had personally been taken, but then said that he did know people who were affected by the fighting, and later he said that friends of his in the same town had been affected, but when pressed to provide names he simply referred to the "small shop guy"; this was also not declared on his application forms;
- He claimed that he could not stay in Somalia because his uncles had been killed, but stated that this occurred in 1990; he said he could not leave the country then because he did not have financial support to leave, yet the officer noted that he had many family members who had left Somalia for Ethiopia long before the Applicant decided to leave;
- He said he decided to leave because of the increasing violence and that he feared being forcibly recruited; he also said that he had an uncle in South Africa who was working and he went there to meet that uncle; the officer found this to reflect his true motivation for leaving Somalia.

[3] The Applicant argues that this decision is unreasonable because the officer finds a number of inconsistencies in his narrative which the evidence does not support, and the officer did not analyze all of the elements of his claim but rather focused only on whether he was personally affected by the violence under section 147 of the *Immigration and Refugee Protection*

Regulations, SOR/2002-227 [IRPR]. The Applicant further submits that the officer breached procedural fairness by relying on extrinsic evidence about the Applicant's family who fled for Ethiopia, without disclosing to him the source or any pertinent details of this information.

[4] The standard of review for the decision itself is reasonableness, while the procedural fairness issue requires the Court to assess whether, having regard to the interests at stake and all of the circumstances, the procedure was fair (*Sivakumaran v Canada (Citizenship and Immigration)*, 2011 FC 590 at para 19; *Tesfamichael v Canada (Citizenship and Immigration)*, 2017 FC 337 at para 8; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54; *Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14).

[5] The Applicant argues that the officer's conclusion that the Applicant was not credible because he provided inconsistent answers to the reasons for his flight from Somalia is unreasonable. He submits that the only inconsistency in the evidence related to the date he arrived in South Africa. During the interview, he said he arrived in 2011, but his forms say it was 2008. Otherwise, the alleged inconsistencies were either simple omissions or a misreading of the evidence by the officer.

[6] I am not persuaded. The main discrepancies in the evidence are noted above. The only mis-statement by the officer is the statement in the GCMS notes that the Applicant "did mention that his uncle wanted him to work in [South Africa] and that is why he came." I agree with the Applicant that this is not consistent with what the Applicant actually stated to the officer during the interview. I do not find, however, that this is a fatal flaw in the decision because so many of

the other discrepancies and inconsistencies in the Applicant's narrative are borne out by the evidence.

[7] It is important to recall that the officer's decision is being reviewed under a reasonableness standard. The key question in a judicial review on the standard of reasonableness is summarized in *Canada (Attorney General) v Igloo Vikski Inc*, 2016 SCC 38, [2016] 2 SCR 80:

[18] Reasonableness review is concerned with the reasonableness of the substantive outcome of the decision, and with the process of articulating that outcome. The reasoning must exhibit "justification, transparency and intelligibility within the decision-making process": *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 47. The substantive outcome and the reasons, considered together, must serve the purpose of showing whether the result falls within a range of possible outcomes: *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708, at para. 14. While the adequacy of a tribunal's reasons is not on its own a discrete basis for judicial review, the reasons should "adequately explain the bases of [the] decision": *Newfoundland Nurses*, at para. 18, quoting from *Canada Post Corp. v. Public Service Alliance of Canada*, 2011 FCA 56, [2011] 2 F.C.R. 221, at para. 163 (per Evans J.A., dissenting), rev'd 2011 SCC 57, [2011] 3 S.C.R. 572.

[8] To put it another way, on judicial review on the deferential standard of reasonableness, a key concern is whether the process and decision indicate that the decision-maker truly "engaged" with the evidence, applying the appropriate legal test. The standard is not perfection. It must be recalled that Parliament assigned the task of conducting the initial inquiry into the facts to the officer. Deference is due to a decision-maker in particular in a context where the inquiry is primarily factual, and it is within the decision-maker's area of expertise, in a situation where greater exposure to the nuances of evidence or a greater awareness of the policy context may provide an advantage: *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319. If the chain

of reasoning of the decision-maker can be understood, and if it shows that this type of engagement occurred, the decision will generally be found to be reasonable: see *Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431.

[9] In this case, the officer's concerns were based in the evidence, and the Applicant was provided an opportunity to address them during the interview. The concerns do not relate to peripheral or minute details in the Applicant's narrative, but rather go to the core of his claims. The failure to mention Al Shabab in his written application is striking, in light of the fact that it formed the core of his claim during the interview. The Applicant submitted at the hearing that there was simply not enough room on the written form to include this detail. Even if this explanation were to be accepted, it does not provide a basis to find the officer's decision to be unreasonable, because it was never put forward to the officer. Furthermore, this contradicts what the Applicant said during the interview. Rather, when asked why this was not mentioned he stated that he told this to the person who filled out his form, but it was not included. The Applicant acknowledged that he signed the forms.

[10] Similarly, the notes of the interview reveal a number of ways in which the Applicant's narrative evolved under questioning. While the Applicant now claims that these do not amount to inconsistencies, I find that this argument involves the type of "puzzling over every possible inconsistency, ambiguity or infelicity of expression" that the jurisprudence counsels against: see *Ragupathy v Canada (Citizenship and Immigration)*, 2006 FCA 151 at para 15. There were clear differences in the core details of his story that changed during the course of the interview or that diverged from what was stated in the Applicant's written forms.

[11] I agree with the Applicant that the essence of his claim as to why he fled Somalia is a simple story, but I am unable to find that the officer's conclusion that the narrative evolved during the interview to be unreasonable. It is amply grounded in the evidence, as revealed by a review of the documentation he submitted and the notes of the interview. The assessment of credibility by a visa officer deserves great deference, and I find the officer's findings on this point to be reasonable.

[12] In light of this, I do not accept the Applicant's argument that the decision is unreasonable because the officer focuses only on section 147 of the *IRPR*, to the exclusion of the other bases of his claim. The officer was not required to analyze each element of the claim once the Applicant was found to be lacking in credibility: see *Gebrewldi v Canada (Citizenship and Immigration)*, 2017 FC 621 at para 25.

[13] The Applicant further contends that the officer breached procedural fairness, by asking during the interview why he did not flee Somalia when his relatives left, without revealing either the source or any details of this extrinsic information. The Applicant submits that without knowing more about these relatives, for example how close they were to the Applicant or their financial circumstances at that time, it is unfair for the officer to draw any conclusions from this evidence. None of this was disclosed to the Applicant and that makes the procedure unfair.

[14] I am not persuaded. The duty of fairness may sometimes require an officer to disclose extrinsic information to an applicant so that they can respond to it, but in this case the information was of a more general nature and it related to the Applicant's own family. The information the officer relied on was disclosed to the Applicant during the interview and he was

given an opportunity to address it. The Applicant did not deny that his relatives fled Somalia for Ethiopia, but he did explain that at that time none of them provided financial support to him. Looking at the entirety of the circumstances, and considering the context and the interests of the Applicant at stake in this process, I find that the procedure was fair. This was not novel information which the Applicant could not reasonably be expected to be aware of, and he was able to respond to it during the interview: *Ahmed v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 471 at para 27; *Joseph v Canada (Citizenship and Immigration)*, 2015 FC 904.

[15] In summary, I find that the officer's assessment of the Applicant's credibility to be reasonable, and to be well supported in the evidence. I also find that the Applicant was not denied procedural fairness because he was given the opportunity to know about and to respond to the officer's questions regarding why he did not leave Somalia when his other relatives fled the country.

[16] For all of these reasons, I am dismissing this application for judicial review. No question of general importance was proposed for certification, and none arises in this case.

JUDGMENT in IMM-1456-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question of general importance to be certified.

“William F. Pentney”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1456-19

STYLE OF CAUSE: SULUB ADAN DOOL V MCI

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JUDGMENT AND REASONS: PENTNEY J.

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