

Federal Court



Cour fédérale

Date: 20191219

Docket: IMM-6496-18

Citation: 2019 FC 1644

Ottawa, Ontario, December 19, 2019

PRESENT: Madam Justice Simpson

BETWEEN:

FUAD MUSE JAMA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Proceeding

[1] This application is for judicial review of a decision of Immigration, Refugees and Citizenship Canada [IRCC] dated October 18, 2018 [the Decision], in which the Minister's Delegate [the Delegate], who had earlier prepared his danger opinion, considered the Applicant's request to re-open the opinion and decided not to do so. This application was brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

[2] The Applicant is a 24-year-old male citizen of Somalia. Together with his mother and his sister he arrived in Canada in 1999. They were all found to be Convention refugees in January 2002 and later became permanent residents. The Applicant has lived in Canada since then. He has a 5-year-old Canadian son with his partner, Demaris Tesfay.

[3] The Applicant says he began drinking and using drugs when he was about 13 years old. He was convicted of robbery three times before he turned eighteen.

[4] On October 30, 2012, at age seventeen the Applicant was shot in the face [the Shooting]. He does not believe that he was personally targeted. He was simply in the wrong place at the wrong time. He was taken to Sunnybrook Hospital, where he underwent surgery and he remained in post-operative care for about one month.

[5] Three months later in January 2013, the Applicant was assessed by Dr. Neal Westreich at Sunnybrook Health Sciences Centre. In his report [the 2013 Sunnybrook Letter], Dr. Westreich described the Applicant's mild traumatic brain injury [TBI] and some of the associated symptoms as follows:

Fuad is a 17 year old lucky young man who sustained a mild TBI with complications secondary to the two gunshot wounds of October 30, 2012...he does endorse some symptoms including headaches, middle and end insomnia, hyperacusis, photophobia, and difficulty with balance. In addition, Fuad is also describing some blurred vision and diplopia in his right eye.

[6] On July 23, 2013, the Applicant fought another man and stabbed him ten times. He was convicted and sentenced to 3 years imprisonment with three years of probation, and a lifetime weapons ban.

[7] On September 16, 2015, the Applicant was found inadmissible for serious criminality under section 36(1)(a) of the IRPA.

[8] In December 2016, the Applicant was convicted of assault following his involvement in a fight that occurred while he was in prison. On his release from prison he was placed in immigration detention where he remained until August of 2018.

[9] The Delegate made the decision in which he found that the Applicant is a danger to the public on January 24, 2017 [the Danger Opinion].

[10] A request to reopen the Danger Opinion was refused on December 6, 2017, but IRCC set aside this decision. However, the Danger Opinion itself was not set aside.

[11] It is noteworthy that the Applicant described himself as “healthy” when he completed his background and personal information form in July of 2015. It is also noteworthy that in his submissions to the Delegate who wrote the Danger Opinion in January 2017, no evidence was presented about any medical problems. In particular, the Delegate was not given the Sunnybrook Letter. For these reasons the Danger Opinion described the Applicant as “an able bodied young man.”

[12] Nevertheless, on September 20, 2018, after interviewing the Applicant for one hour, psychiatrist Dr. Barker wrote a report about the Applicant in which she found that he suffered from PTSD. She stated as follows:

Mr. Jama exhibits symptoms meeting DSM-5 criteria for the diagnosis of posttraumatic stress disorder (PTSD). These symptoms are consistent with his report of traumatic events that occurred when he was shot in 2012. He was likely already

predisposed to PTSD due to his childhood experience of war in Somalia. He has symptoms in all subsections of PTSD criteria. His intrusive symptoms of PTSD include recurrent memories, nightmares, and dissociative reactions (where he feels like he is being shot). His avoidance symptoms include avoidance of crowded places and social events. He has marked alteration in arousal and reactivity including anger and physical aggression (although this has improved recently), hypervigilance, an exaggerated startle response, problems with concentration, and sleep disturbances. Of note, the noises and illusions Mr. Jama describes are in keeping with PTSD, and based on today's assessment he does not have a psychotic disorder.

The symptoms of PTSD have had a significant negative impact on Mr. Jama's life, including difficulty engaging in social settings, and possible contributions to difficulty with anger and aggression which have had serious consequences for him. The dissociation he experiences when he "blacks out" is likely related to his difficulties with arousal; if he gets emotionally and physiologically overwhelmed this often results in either a panic attack or shutting down to a dissociative state. As well, mistrust (which stem likely both from the shooting and from growing up in a country at war) has likely contributed to his lack of willingness to seek psychiatric care in jail, and therefor his symptoms have prevented him from the opportunity to get better.

[13] On October 11, 2018, the Applicant submitted a second request to re-open the Danger Opinion [the Second Request].

[14] The Second Request was considered by the Delegate who wrote the Danger Opinion.

[15] The Delegate quoted Enforcement Manual 28, Chapter 7.16 "Reconsideration of danger opinion" [the Guideline]. It states in part:

7.16 Reconsideration of danger opinion

A decision maker will review the request and determine whether to reopen the original danger decision based on whether the request

(along with any accompanying submissions) demonstrates one of the following:

- **New evidence has been submitted that meets all of the following criteria:**
 - a) **Reliable:** Is the evidence reliable, considering its source and the circumstances in which it came into existence?
 - b) **Relevance:** Is the evidence relevant to the decision type, in the sense that it is capable of proving or disproving a fact that is relevant to the proceeding?
 - c) **Materiality:** Is the evidence material, in the sense that the decision maker may have come to a different conclusion if it had been known?
 - d) **Newness:** Is the evidence new in the sense that it is capable of
 - i. proving the current state of affairs in the country of removal;
 - ii. proving a fact that was unknown at the time of the original decision;
 - iii. contradicting a finding of fact made by the original decision maker?

[16] The Delegate's Decision not to re-open the Danger Opinion concludes as follows:

Neither Mr. Jama's personal circumstances nor the country conditions in Somalia have markedly changed since January 2017. In January 2017 instability and insecurity from recurring drought, clan disputes, Al Shabaab and a weak central government propped up by AMISOM were the key challenges and they continue to be so. In terms of Mr. Jama's personal life, in January 2017 he had his mother, step-father, sister, wife and child in Canada and he was still in jail. At this point in time, Mr. Jama's family configuration remains the same and he was only just released from detention two months ago. There were no reports submitted from professionals suggesting that Mr. Jama is rehabilitated. It should be recalled that

his two most recent offences were extremely violent: stabbing a man 10 times in July 2013 and ganging up two-against-one while in jail to beat up a fellow inmate (including punching and kicks to the head) in April 2015.

For the aforementioned reasons, I find the new information presented is either not new, not material or not relevant and does not therefore justify reopening the danger opinion. I therefore decline to reconsider the danger opinion decision of January 2017 which will continue to remain in effect.

[17] The issues are:

- a) Did the Delegate incorrectly fetter his or her discretion by relying on the Guideline?
- b) Did the Delegate unreasonably disregard the evidence about the Applicant's medical ailments?
- c) Did the Delegate unreasonably dismiss relevant country evidence about Somalia when he or she referenced the UK Home Office report?
- d) Did the Delegate go beyond what is permitted at the first step of the two-step reopening/reconsideration approach, and improperly weigh country evidence about Somalia?

[18] In view of my conclusion that the second issue is dispositive, I will limit these reasons to that issue.

II. Issue b) Medical Ailments

[19] The Sunnybrook Letter spoke about the following symptoms in 2013:

- asthma
- sensitivity to sound (hyperacusis)
- minor difficulties with blurred and double vision
- some significant difficulty with dizziness and balance
- some significant headaches
- some middle and end insomnia
- vomiting
- frustration

- restlessness
- sensitivity to light.

[20] Dr. Barber relied on items 1, 2, 5, 6 and 8 in reaching her diagnosis of PTSD.

[21] The Applicant now asserts that he suffers from the following conditions:

- Panic attacks
- He hears gunshots and a voice that isn't real
- He is hyper-vigilant and jumpy
- Nightmares
- Insomnia
- Mood swings between happiness and frustration and prone to anger
- Blackouts
- Rotator cuff problems
- Problems with memory and planning
- A tight jaw
- Sore feet requiring orthopedics
- Hip problems
- Teeth and gum problems
- Sensitivity to light
- Sensitivity to sound
- A feeling that his left leg is asleep
- Bladder problems
- Asthma since childhood.

[22] The Applicant reported all the above symptoms to Dr. Barker, except sensitivity to light, a feeling that his leg was asleep and bladder problems, which were mentioned by the Applicant and his partner in their affidavits dated October 11, 2018 and October 10, 2018.

[23] Although the Applicant had suffered from many of the symptoms associated with PTSD for a long time he had no diagnosis until Dr. Barker prepared her report in 2018.

[24] It is also clear that, while the symptoms experienced by the Applicant were not new, it was also Dr. Barker's opinion that they prevented him from seeking treatment. She said:

As well, mistrust (which stems likely both from the shooting and from growing up in a country at war) has likely contributed to his lack of willingness to seek psychiatric care in jail, and therefore his symptoms have prevented him from the opportunity to get better.

[25] The Delegate disregarded the PTSD Diagnosis in his conclusions because he found that the symptoms were self-reported in a one hour session and f were uncorroborated.

[26] I have concluded that the Delegate's Decision not to re-open was unreasonable because although many of the symptoms were not new, the Applicant had a new diagnosis of PTSD. The diagnosis was new in that it was unknown at the time of the Danger Opinion. The diagnosis was also reliable because the symptoms were corroborated by the Sunnybrook Letter and by the Applicant's partner's affidavit. The diagnosis was material in the sense that the Delegate might have come to a different conclusion had he appreciated that the Applicant had a treatable mental illness. As well, the diagnosis of PTSD explained the Applicant's earlier failures to address his health issues. Lastly, it is now manifestly clear that the Applicant is not an able bodied man.

III. Conclusion

[27] For these reasons, I have found that the Decision was unreasonable.

IV. Certified Question

[28] No question was posed for certification for appeal.

JUDGMENT IN IMM-6496-18

THIS COURT'S JUDGMENT is that the application is allowed and the request to re-open is to be reconsidered by another Minister's Delegate.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6496-18

STYLE OF CAUSE: FUAD MUSE JAMA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 10, 2019

JUDGMENT AND REASONS: SIMPSON J.

DATED: DECEMBER 19, 2019

APPEARANCES:

Lorne Waldman FOR THE APPLICANT

Kristina Dragaitis FOR THE RESPONDENT

SOLICITORS OF RECORD:

Waldman & Associates FOR THE APPLICANT
Barrister and Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario