Federal Court  Cour fédérale

Date: 20200903

Docket: IMM-2633-19
IMM-2634-19

Citation: 2020 FC 880

Ottawa, Ontario, September 3, 2020

PRESENT: Mr. Justice McHaffie

BETWEEN:

ZAKARIA SALAD ABDINUR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In these applications for judicial review, Zakaria Abdinur challenges credibility findings that led to the refusal of his application for a restricted Pre-removal Risk Assessment (PRRA) and his application for relief on humanitarian and compassionate (H&C) grounds. The Minister's delegate who made these credibility findings concluded Mr. Abdinur could rely on family and

clan support if he were removed to his native Somalia. This led her to conclude that Mr. Abdinur was not a person in need of protection and to decline his application for permanent residence on H&C grounds.

[2] I agree with Mr. Abdinur that the Minister's delegate made credibility findings regarding his evidence about his family, and in particular his family in Somalia, that were unreasonable and unfair. The credibility findings were based on an identified contradiction that was not put to Mr. Abdinur, on asserted discrepancies on non-central issues that were not supported by the record, and on unexplained conclusions about Mr. Abdinur's demeanour.

[3] These findings led the Minister's delegate to reach inferences about the support Mr. Abdinur could turn to in Mogadishu that were central to the refusal of his PRRA and H&C applications. Those inferences were in turn made without reference to relevant evidence that corroborated Mr. Abdinur's evidence and contradicted the Minister's delegate's conclusions. In light of the dispositive nature of these material errors, I need not address Mr. Abdinur's submissions regarding other errors made by the Minister's delegate. Both decisions must be set aside.

[4] The applications for judicial review are therefore granted.

II. Issue and Standard of Review

[5] Mr. Abdinur's applications for judicial review challenge the Minister's delegate's PRRA decision (Court File IMM-2633-19) and her H&C decision (Court File IMM-2634-19). In the

applications, he raises a number of challenges to the Minister's delegate's credibility findings and conclusions. These include allegations that the Minister's delegate made unreasonable credibility findings regarding his clan affiliation, failed to consider objective evidence relevant to his risk profile, and ignored or misapprehended facts and arguments relevant to his H&C application.

[6] In my view, however, the following issue is determinative of these applications:

> Were the Minister's delegate's credibility findings regarding Mr. Abdinur's family fair and reasonable?

[7] In assessing issues of procedural fairness, the Court asks whether the procedure was fair in all the circumstances. Strictly speaking, this exercise does not involve the application of a standard of review, although it is "best reflected" in the correctness standard: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43.

[8] On the merits of the credibility findings, the parties agree that the reasonableness standard of review applies. This case was argued shortly before the Supreme Court of Canada issued its judgment in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65. In the wake of that decision, Mr. Abdinur sought leave to make submissions on the impact of *Vavilov*. I granted that request and each party filed submissions on the application of *Vavilov*.

[9] The parties agree that *Vavilov* does not alter the applicable standard of review, but simply confirms that the reasonableness standard applies to the substantive review of the merits: *Vavilov*

at paras 16–17, 23–25. I will consider the parties' submissions on *Vavilov*'s discussion of how to apply that standard in my assessment of the issues. There is no question that, as was the case before *Vavilov*, the burden remains on the applicant to show that the administrative decision is unreasonable: *Vavilov* at para 100.

III. Analysis

A. *Preliminary Issue: Joint Consideration and Missing Documents*

[10] Mr. Abdinur's PRRA and H&C applications were considered by the same person, a Senior Decision Maker at Immigration, Refugees and Citizenship Canada, acting as a delegate of the Minister of Citizenship and Immigration pursuant to subsection 6(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[11] The Minister's delegate convened a hearing pursuant to subsection 113(*b*) of the *IRPA* and section 167 of the *Immigration and Refugee Protection Rules*, SOR/2002-227 [*IRPR*]. At the outset of the hearing, the Minister's delegate advised Mr. Abdinur she would be deciding both the PRRA and H&C applications, and would be using the information in each file to determine both:

> At the same time, I want to let you know that I also have in front of me your application for permanent residence on humanitarian and compassionate grounds, we call it an H&C application and so that application is also before me and I'll be making a decision on both of those applications. So because I'm a single decision maker, making a decision on both of those applications I'll be using info you've provided in your pre removal risk assessment application with respect to your H&C and vice versa. So all of the info that you've provided and all of the info that we've given to you so that we've disclosed to you, um, I'll be able to use all of that.

[Emphasis added.]

[12] At the time of the hearing, Mr. Abdinur was represented by different counsel for his PRRA application and his H&C application. Mr. Abdinur had first filed a PRRA application on his own behalf in 2016, which was rejected as being unsupported by any evidence. The H&C application was filed by the Legally Canadian law firm in April 2017, and that firm subsequently filed the second PRRA application at issue in this proceeding in November 2017. Prior to the hearing before the Minister's delegate, a new firm, Refugee Law Office, became Mr. Abdinur's counsel for the PRRA, but not the H&C application. Refugee Law Office then represented Mr. Abdinur in both of the applications for judicial review before this Court.

[13] Only Mr. Abdinur's counsel from Refugee Law Office was present at his PRRA hearing on December 10, 2018. That counsel did not object to the Minister's delegate's statement that she would be referring to the records of the PRRA application and the H&C application jointly, effectively merging them for the purposes of both applications. Indeed, this Court has recognized that where the same officer considers PRRA and H&C applications in quick succession, they must have full knowledge of all the evidence tendered on each, and findings must be based on knowledge of the complete record: *Denis v Canada (Citizenship and Immigration)*, 2015 FC 65 at paras 38–47, discussing *Sosi v Canada (Citizenship and Immigration)*, 2008 FC 1300 at para 12 and *Giron v Canada (Citizenship and Immigration)*, 2013 FC 114.

[14] The apparent merger of the PRRA application and H&C application records may have been what led to issues with the Certified Tribunal Record (CTR) for the H&C decision sent to this Court pursuant to Rule 17 of the *Federal Courts Citizenship, Immigration and Refugee*

Protection Rules, SOR/93-22. That CTR did not include a number of documents filed in support of the H&C application, including submissions, supporting documents, and the application forms themselves. However, it did include a copy of documents related to the PRRA, including the original PRRA application, as well as some correspondence with Refugee Law Office.

[15] Mr. Abdinur argues that the missing documents in the CTR show the H&C decision was made without regard to his complete application. He helpfully and appropriately included in his application record copies of those documents that were missing from the CTR to allow the Court to assess the issue. The Minister acknowledged documents were missing from the CTR, but provided a chart showing where the H&C reasons refer to the documents, some of which are also referred to in the PRRA reasons.

[16] The fact that the CTR is missing documents is regrettable. However, I am satisfied that the record as a whole shows the missing documents were before the delegate, and their absence from the CTR does not justify setting the decision aside. In *Togtokh*, Justice Boswell described three scenarios raised by a deficient CTR: (1) where it is unknown whether a document not appearing in the CTR was submitted by an applicant; (2) where a document not appearing in the CTR is known to have been submitted, but it is not clear whether the document was before the decision maker; and (3) where a document is known to have been before the tribunal but is not before the Court to be reviewed: *Togtokh v Canada (Citizenship and Immigration)*, 2018 FC 581 at para 16. In the third scenario, unless the document is otherwise available to the Court, such as in the applicant's record, the Court will be unable to determine the legality of the decision: *Togtokh* at para 16(3).

[17] The situation at hand falls within the third type of situation described by Justice Boswell in *Togtokh*. The documents are known to have been put before the tribunal but were not contained in the CTR. However, they were available to the Court through the applicant's record, and the decisions indicate that the Minister's delegate did indeed have the documents before her. The Court is able to determine the legality of the decision as a result: *Togtokh* at para 16(3); *Torales Bolanos v Canada (Citizenship and Immigration)*, 2011 FC 388 at paras 41–52.

B. *The Role of Family in Mr. Abdinur's Applications*

[18] Mr. Abdinur's PRRA application was restricted to consideration of the factors set out in section 97 of the *IRPA*, because he was inadmissible to Canada on grounds of serious criminality: *IRPA*, ss 112(3)(*b*), 113(*d*). He therefore had the onus to establish on a balance of probabilities that he would more likely than not be personally subjected to a danger of torture or a risk to life or cruel and unusual treatment or punishment: *IRPA*, s 97; *Li v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 1 at paras 29, 36. Mr. Abdinur raised the dangerous country conditions in Somalia, and asserted that he faced heightened risk of such dangers because he had no family or clan support, limited knowledge of the language and culture, and would be perceived as a returning Westernized man.

[19] Mr. Abdinur fled civil war in Somalia at the age of four. His parents had divorced shortly after his birth, and he had lived with his mother in Somalia, while his two siblings lived with his father. As fighting reached their city, his mother sent Mr. Abdinur to Kenya to be with his siblings and his father's parents. He lived in Kenya for about a year, and then traveled to Canada to be with his father at the age of five. He is now over 30.

[20] When Mr. Abdinur was 22, his father died. Shortly thereafter, Mr. Abdinur's brother was removed to Somalia, after he lost his permanent resident status owing to a criminal conviction. Mr. Abdinur says that while he was in touch with his brother in Somalia for a month or two, he then "disappeared" and has not heard from him since. Mr. Abdinur's sister lives in Canada, as does his grandmother and other relatives on his father's side.

[21] Mr. Abdinur's submissions that he has no known family in Somalia was of central importance to his PRRA application, given country condition evidence that spoke to the importance of family in obtaining clan support, and the importance of the clan system and the nuclear family as mechanisms of protection in Mogadishu. Mr. Abdinur's H&C application similarly raised the hardship and danger he would face if removed to Somalia. In addition to the general conditions in the country, he noted that he had no contact with any relatives remaining in Somalia, and that his only family was living in Canada or the United States.

C. *The Adverse Credibility Findings*

[22] The Minister's delegate made adverse credibility findings about Mr. Abdinur's description of his family, and used these findings to conclude that he did have family support available in Somalia. The adverse credibility findings were based on four aspects of Mr. Abdinur's evidence: (1) differences in the names of Mr. Abdinur's mother and step-mother in different parts of the evidence; (2) the fact that Mr. Abdinur was unable to provide the name of the person who accompanied him from Kenya to Canada; (3) an assertion that "[f]amily members appeared and disappeared at will" from Mr. Abdinur's narratives over the years; and (4) concerns about Mr. Abdinur's "vagueness" and "demeanour" during the hearing.

[23] I conclude that these findings are unreasonable, and that the first was also unfair. In reviewing these aspects of the Minister's delegate's credibility findings, I am cognizant of the importance of deference to factual findings, including credibility findings. Assessments of credibility are central to a decision maker's role as trier of fact: *Lin v Canada (Citizenship and Immigration)*, 2008 FC 1052 at para 13. That role is conferred upon the Minister's delegate as a legislative choice. Respect for that institutional design choice requires this Court to adopt a "posture of restraint" on review: *Vavilov* at para 24. As the Minister points out, *Vavilov* instructs that a reviewing court must refrain from reweighing or reassessing evidence, and should not interfere with factual findings "absent exceptional circumstances": *Vavilov* at para 125.

[24] At the same time, *Vavilov* also underscores that a decision must be reasonable in light of the evidentiary record and the general factual matrix that bears on the decision: *Vavilov* at para 126. As with other factual findings, credibility findings that are not based in the evidence cannot be sustained.

[25] It is important to underscore in assessing these credibility findings that the relevant issue in question was Mr. Abdinur's statement that he had no known family in Somalia who he could rely upon if removed there. Mr. Abdinur's evidence on this issue was that (a) his mother was in Somalia, since she had remained there when he left, but he had no contact with her; and (b) his brother had been removed to Somalia, but had disappeared after a couple of months of contact. As the Minister's delegate recognized, there was no "clear evidence to contradict his statements about this issue in particular." Nevertheless, the Minister's delegate found that Mr. Abdinur's

credibility with respect to other aspects of his family was such that "his statements about other matters are equally in doubt."

(1) Differences relating to the name of Mr. Abdinur's mother and step-mother

[26] In his PRRA application form and in his supporting affidavit on the PRRA application, Mr. Abdinur identified his mother as "Hadia Salad." He repeated that name at the outset of his testimony at the hearing.

[27] The Minister's delegate at the hearing referred Mr. Abdinur to information contained in the Immigrant Visa and Record of Landing (IMM1000) document issued in early 1994 when he arrived in Canada. That document lists, as an accompanying family member, a name that appears to be entered on the form as "Hawa Dahir Adawa" (although the copy of the form in the CTR is far from clear), and is written in a handwritten note on the copy of the document as "Hawa Dahir Adawe." The form lists this person as Mr. Abdinur's mother. Mr. Abdinur did not have the document in question in front of him at the time of the hearing, as he was in detention in Lindsay, and the hearing took place by videoconference.

[28] When this name and information was put to Mr. Abdinur at the hearing, he responded that he did not know who that was, but that he remembered coming to Canada with his cousins' aunt. He confirmed that he left his mother in Somalia. Later in the hearing, in referring to one of his step-mothers, he said "her name is I believe it's, I could be wrong, I think it's Maryam Dahir or something like that." In an affidavit filed after the hearing, Mr. Abdinur stated that now that he had seen a copy of the document, he could see that the name on the IMM1000 form was that

of his step-mother, referred to during the hearing as "Mariam," but whose real name was Hawa Dahir.

[29] In the PRRA decision, the Minister's delegate noted that in Mr. Abdinur's H&C application, his mother's name is listed as "Hawo Dehyeh" in two places. In his affidavit in support of the H&C application, sworn seven months prior to his PRRA affidavit but largely identical, Mr. Abdinur had crossed out the name "Hadia" in the statement "[m]y mother's name is Hadia Salad," and handwritten "Hawo Dehyeh." As noted above, the same statement appears in his later PRRA affidavit, but without the handwritten annotation.

[30] In her decision on the PRRA application, the Minister's delegate noted this difference between the name indicated in the H&C forms and the name on the PRRA forms. The Minister's delegate found that the name Hawo Dehyeh "sounds similar to Hawa Dahir and could be a transliteration difference of the same name." The Minister's delegate did not seek information from Mr. Abdinur on this hypothesis, or on the differences between the H&C documents and the PRRA documents, since she had not yet reviewed the H&C documents in detail:

> I had not reviewed the H&C APR forms in detail at the time of the hearing in December 2018 to bring this further inconsistency regarding his mother's name to him at the time, however I do not believe that it changes my concerns in any sort of a way – the fact of the matter remains that he has provided different information regarding the name of his mother over the years to immigration officials. While it is entirely believable that, as a child, he did not provide the information that was included in the IMM1000, it is not credible that he does not know who Hawa Dahir Adawe is when he provided her name – or a name that is very similar to hers (but altogether different to Hadiya [*sic*] Salad) – as his mother in a form he had completed in 2017.
>
> [Emphasis added.]

[31] In my view, this conclusion is both unfair and unreasonable.

[32] The duty of fairness requires that an applicant be given an opportunity to address any material contradictions identified before they are relied on as a basis for an adverse credibility finding: see, *e.g.*, *Ananda Kumara v Canada (Citizenship and Immigration)*, 2010 FC 1172 at paras 3–5; *Shaiq v Canada (Citizenship and Immigration)*, 2009 FC 149 at para 77. Here, the Minister's delegate relied on the difference between the mother's name as it appeared in the H&C forms and affidavit, and in Mr. Abdinur's PRRA forms and evidence, without having put this to Mr. Abdinur. In my view, the Minister's delegate cannot avoid the obligations of fairness by stating her belief that it would not change her concerns, based on the unexplained "fact" that there is different information. The very reason behind the fairness requirement is to recognize that an opportunity should be given to provide an explanation for the identified discrepancy that may well change the decision maker's concerns.

[33] The unfairness is magnified in the present case by the identified contradiction being drawn from Mr. Abdinur's H&C application. As noted above, it was appropriate to consider the two applications together based on the combined record. However, as the Minister's delegate knew, Mr. Abdinur was represented by different counsel on the PRRA application. Counsel may therefore not have been aware of the discrepancy in the combined record, or the need to address it, particularly when it had not been raised by the Minister's delegate. In such circumstances, it was particularly unfair not to put the information from the H&C application to Mr. Abdinur during the PRRA hearing before relying on it.

[34] The Minister points out that the notice sent prior to the PRRA hearing indicated that "[d]etails about your paternal and maternal clan families" and "[c]urrent whereabouts of your immediate family members and other close relatives" would be issues raised at the hearing. Be this as it may, I do not believe that such a notice either removes or satisfies the fairness obligation to put alleged inconsistencies to the applicant.

[35] I also conclude that it was unreasonable for the Minister's delegate to conclude that the name of Mr. Abdinur's step-mother, Hawa Dahir Adawe, "sounds similar" and "could be a transliteration difference" of Hawo Dehyeh, while it was "altogether different" to Hadiya Salad. The Minister's delegate professed no knowledge of Somali names or the Somali language. Without such knowledge, conclusions about what "sounds similar" or could be a "transliteration difference" could be unknowingly culturally or linguistically influenced. Notably, in the hand-corrected affidavit, Mr. Abdinur only replaced "Hadia" (not "Hadia Salad") with "Hawo Dehyeh," while the full name on the IMM1000 form was "Hawa Dahir Adawe." Nevertheless, the Minister's delegate appears to have compared "Hawo Dehyeh" with the partial name "Hawa Dahir" in concluding there is similarity, while comparing it with the full "Hadia Salad" for the purposes of concluding that the two are "altogether different." In my view, it was unreasonable to speculate as to what might be a "transliteration difference" based on these comparisons without evidence, and without putting that to Mr. Abdinur.

[36] This is particularly so as Mr. Abdinur explained in an affidavit filed after the hearing that Hawa Dahir Adawe (who he had referred to as Mariam) was his step-mother. His father had married her after Mr. Abdinur was born, she lived in Europe when Mr. Abdinur was in Kenya,

and she now lives in the United States. He stated she never resided in Canada and only "came to Canada to visit us a few times and to see my father." Such circumstances would certainly explain why Mr. Abdinur did not immediately recognize the name read from a form that he did not complete and did not have in front of him. The suggestion that this demonstrated a lack of credibility because he had put a name that the Minister's delegate viewed as being "very similar" to hers on his H&C application is unreasonable for the reasons given above.

[37] Despite this explanation, the Minister's delegate gave "little weight" to the statements in Mr. Abdinur's post-hearing affidavit "[g]iven the general lack of credibility in many of his statement[s] regarding his family structure." The Minister's delegate expanded on what she meant by this reference to "many of his statement[s] regarding his family structure" in the following passage:

> During the hearing on 10 December 2018, Mr. Abdinur was unable to provide me with satisfactory details about his family relationships. Basic information, including the name of the person who accompanied him on a many-hours-long journey to Canada from Kenya, eluded Mr. Abdinur during the hearing. Family members appeared and disappeared at will in his narratives over the years, including several step-mothers, half-siblings, aunts and cousins, their presence or absence designed to suit the purposes of his situation. While I accept that the parole officer's family history might have contained some errors, the sheer amount of inaccuracies, taken into consideration with the other statements that Mr. Abdinur has made to CSC, CBSA and immigration officers over the years, including his own vagueness during the hearing in December lead me to conclude that Mr. Abdinur is deliberately attempting to mislead me about the whereabouts of his family members, and even about who his family members are.

[38] These assertions appear to be the basis for dismissing Mr. Abdinur's explanation, as well as being given as separate reasons for questioning his credibility. For the reasons that follow, I conclude that they are also unreasonable.

(2) Mr. Abdinur's inability to provide the name of the person who accompanied him from Kenya to Canada

[39] Mr. Abdinur was five when he came to Canada, over 25 years prior to his hearing. It is unreasonable, in my view, to conclude that his inability to recall the name of the aunt who accompanied him on that flight undermines his credibility, regardless of how many hours the flight was. It is not reasonable to assume that a 30 year old would necessarily remember this detail of an event that took place when they were five, even if other details are remembered.

[40] It is also important to recall the relevant issue: whether Mr. Abdinur has family that he can rely on in Somalia. The relevance of the name of the cousin's aunt who accompanied him from Kenya to Canada in 1994 is not immediately apparent, and the Minister's delegate does not indicate why she considered it "basic information." As this Court has held, credibility determinations should not be based on a "memory test," nor on a granular analysis of issues irrelevant or peripheral to the claim: *Shabab v Canada (Citizenship and Immigration)*, 2016 FC 872 at para 39; *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 23.

[41] I also note that it was not accurate for the Minister's delegate to say that this information simply "eluded Mr. Abdinur during the hearing." His affidavit filed after the hearing confirmed that Mr. Abdinur simply does not know the name of the woman, who was an aunt of his cousin.

(3) Appearance and disappearance of family members from Mr. Abdinur's narratives

[42] The assertion that "[f]amily members appeared and disappeared at will" from Mr. Abdinur's narratives over the years, and that "their presence or absence [was] designed to suit the purposes of his situation" is a strong one. If justified, and if relevant to the question of whether Mr. Abdinur had family that could support him in Somalia, it would certainly be something that went to Mr. Abdinur's credibility.

[43] However, as Mr. Abdinur outlined with reference to his statements given in various contexts, there is no evidentiary basis for this assertion. The only detail given by the Minister's delegate to support this statement is that it includes "several step-mothers, half-siblings, aunts and cousins." However, other than the concern raised about the names of Mr. Abdinur's mother and his first step-mother, the Minister's delegate points to no appearing or disappearing "step-mothers, half-siblings, aunts and cousins." Rather, as Mr. Abdinur points out, this appears to be an unfounded generalization of the type condemned at paragraph 104 of *Vavilov*.

[44] On this application, the Minister conceded that they could point to no other evidence of appearing or disappearing family members. However, the Minister argued that this was simply a "turn of phrase" and did not suggest that the decision was unreasonable. It is not the phraseology of the finding that is of concern. It is the conclusion, without evidentiary support, that Mr. Abdinur had altered the membership of his family over the course of time to suit his purposes.

[45] Nor does the Minister's delegate explain how the asserted presence or absence of these individuals suited the purpose of any particular situation. It is unclear why the Minister's delegate considers the existence or absence of a half-brother, an aunt or a cousin would have helped Mr. Abdinur. If such a motivation is to be imputed to an applicant, the basic reasoning for such a conclusion must be set out. Given the importance of the finding to Mr. Abdinur, a basic explanation for the evidentiary and logical basis of such a strong adverse statement should be given: *Vavilov* at paras 133–135.

[46] Without knowing what evidence the assertion that Mr. Abdinur's family members "appeared and disappeared at will" is referring to, or why such changes are said to have helped Mr. Abdinur, the conclusion lacks intelligibility, transparency, and justification.

(4) Mr. Abdinur's "vagueness" and "demeanour" during the hearing

[47] In the passage reproduced in paragraph [37] above, the Minister's delegate referred to Mr. Abdinur's "vagueness" during the hearing. In her conclusion on the issue, she also referred to his "demeanour":

> It is my assessment, based on the information before me, and having observed Mr. Abdinur's demeanour during the hearing on 10th December 2018, and having put these concerns to him during the hearing, that Mr. Abdinur is not being forthcoming with details about the whereabouts of his family.
>
> [Emphasis added]

[48] Beyond the issues that have already been addressed above as unreasonable, the Minister's delegate does not indicate what "vagueness" she found in Mr. Abdinur's answers. It is also unclear to me on review of the transcript of the hearing.

[49] Still less does the Minister's delegate identify what in Mr. Abdinur's "demeanour" undermined his credibility. The ability to view a witness in person is recognized as one of the advantages that a trier of fact has in assessing their credibility, despite the concerns that have been raised about the shortcomings of relying on demeanour: *Rozas del Solar v Canada (Citizenship and Immigration)*, 2018 FC 1145 at paras 97–104. However, in my view it is insufficient to simply refer to a witness's "demeanour" without any indication as to what aspects of their demeanour undermined their credibility. It does not allow this Court to reach a conclusion as to whether the assessment of demeanour, or the reliance on it, was reasonable. While I appreciate that defining a non-credible "demeanour" may be difficult (one of the identified problems with relying on it), a mere statement that a finding of credibility is based on "demeanour," without more, is of little value.

[50] In my view, given the unfairness and unreasonableness described above, the credibility findings of the Minister's delegate cannot be sustained.

D. *The Adverse Inferences Drawn from the Credibility Findings*

[51] The Minister's delegate drew an important adverse inference based on her findings that Mr. Abdinur's evidence about his family was not credible:

> It is unclear why Mr. Abdinur is being so deceptive about the identity and the whereabouts of his mother, and I draw an inference from his obfuscation that he is unwilling to reveal the truth because she is in Somalia, and is able to provide him assistance in his country of citizenship in the event that he is removed to that country.
>
> [Emphasis added.]

[52] The "deception" about the identity and whereabouts of Mr. Abdinur's mother that the Minister's delegate is referring to appears to be (i) the correction to the name of his mother that was not put to Mr. Abdinur; and (ii) the fact that reports from Correctional Services Canada and the Canada Border Services Agency appear to refer to his step-mother as his mother. The other findings about Mr. Abdinur's credibility relate to other family members.

[53] In any event, it is difficult to understand why, based on an asserted lack of credibility, the Minister's delegate would draw a primary inference that is in fact consistent with Mr. Abdinur's testimony, namely that his mother is in Somalia. Indeed, as Mr. Abdinur submitted, if he were seeking to deceive the Minister's delegate about the whereabouts of his mother in order to improve his PRRA application, it would not make sense for him to underscore repeatedly as he did that his mother remained in Somalia.

[54] That said, as Mr. Abdinur points out, the Minister's delegate also drew the further inference that not only is his mother in Somalia, which was not disputed, but that she is alive and well and would be in a position to help Mr. Abdinur if he is removed. I agree with Mr. Abdinur that in addition to being based on unfair and unreasonable credibility findings, this goes beyond a reasoned adverse inference and enters the realm of impermissible speculation.

[55] There can be no doubt that a decision maker may draw reasoned inferences from the facts and evidence. As Justice Gleeson put it at paragraph 19 of *Ayalogu v Canada (Citizenship and Immigration)*, 2017 FC 1055:

> Inferences may be drawn by a decision-maker where the primary facts underpinning the inference have been established and the inference can be reasonably and logically drawn from those established primary facts. Where the primary facts have not been established or the inference cannot logically and reasonably be drawn from the primary facts any attempt to draw an inference will be nothing more than impermissible speculation.
>
> [Emphasis added; citation omitted.]

[56] The Minister's delegate drew an adverse factual inference based on her negative credibility finding, concluding that Mr. Abdinur was lying and that the reason he was doing so was because the truth was contrary to his interests. A similar adverse factual inference may be drawn when a party has failed to produce relevant evidence or call a relevant witness, the assumption being that the evidence would be unfavourable: *Jele v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 24. However, a negative credibility finding does not give a decision maker absolute freedom to make factual inferences that find no support in the evidence and are in fact contrary to the evidence that is filed. Rather, "[a]dverse findings of fact and conclusions or inferences with respect to credibility must find their justification in the evidence": *Kreishan v Canada (Citizenship and Immigration)*, 2019 FCA 223 at para 46.

[57] There was no evidence filed in the PRRA or in the H&C application that indicated either that Mr. Abdinur had been in contact with his mother since he left Somalia, or that she was in a position to assist him if he returned. To the contrary, the evidence indicated the opposite. In support of his H&C application, Mr. Abdinur filed a number of letters from relatives. A letter

from a cousin confirmed his information that Mr. Abdinur has "no relatives in Somalia, at least none he is able to contact." A letter from his aunt, confirmed that "[a]ll of Zackaria's family lives here in Canada or the United States. He knows no one in Somalia." These statements were consistent with positions taken by the Minister during various detention reviews, at which time it was underscored that Mr. Abdinur "knows no one in Somalia" and has "no one back there."

[58] The Minister's delegate did not engage with this evidence at all either in reaching her determinations on credibility or in reaching the inference that Mr. Abdinur's mother could provide him with assistance if he is removed to Somalia. While this evidence was filed in the H&C application rather than on the PRRA, the Minister's delegate herself confirmed that she would be relying on both records, and used information from the H&C application to impugn Mr. Abdinur's credibility. I agree that it was unreasonable for the Minister's delegate to make negative credibility findings and resulting adverse inferences regarding Mr. Abdinur's statements that he had no family support in Somalia without making reference to the evidence to the contrary: *Vavilov* at para 126.

[59] A similar concern arises with respect to the Minister's delegate's conclusions about Mr. Abdinur's brother. As indicated, Mr. Abdinur's evidence was that after his brother's removal to Somalia, he had been in contact for a couple of months, and then had disappeared. The Minister's delegate did not accept this evidence:

> Mr. Abdinur's lack of credibility renders it difficult to assess the truth of his situation. He has said that he has no family back in Somalia, however the true whereabouts of his mother and brother, and the extent of his relationship with his mother, are unclear, and his statements concerning his mother and brother are clouded with misinformation about his family generally.

> […]
>
> I am not satisfied, based on the evidence that he has provided to me, that he is no longer in contact with his mother and his brother […]

[60] Again, these findings were made without reference to the letters filed from family members. Mr. Abdinur's sister, cousin, and aunt all made statements confirming that the family had not heard from Mr. Abdinur's brother. The Minister's delegate made no mention of this corroborating evidence before disbelieving Mr. Abdinur's statements and inferring that Mr. Abdinur would have family support in Somalia. Given the importance of the issue of family members in Somalia to Mr. Abdinur's PRRA and H&C applications, it was unreasonable not to consider this corroborative evidence in assessing Mr. Abdinur's credibility on the issue, or in making contrary factual inferences.

[61] In the PRRA decision, the Minister's delegate made other credibility findings pertaining to Mr. Abdinur's clan affiliation and ability to rely on support from clan members in Somalia. Mr. Abdinur challenges these findings as well. I conclude that I do not need to decide these arguments or the other arguments raised by Mr. Abdinur. The significance of the credibility findings in respect of Mr. Abdinur's evidence about his family was sufficiently material to the Minister's delegate's decision that the unfairness and unreasonableness of those findings means that the decision cannot stand. In other words, the flawed credibility findings, and the inferences drawn from them, are not just a "minor misstep" in the reasoning; they are sufficiently central or significant to render the decision unreasonable: *Vavilov* at para 100.

E. *Incorporation of PRRA Credibility Findings into the H&C Application*

[62] At the outset of the H&C decision, the Minister's delegate expressly incorporated her findings from her PRRA decision:

> It is important that this decision be read in conjunction with my decision concerning Mr. Abdinur's Pre-Removal Risk Assessment application, as that decision contains a great deal of information and analysis with respect to Mr. Abdinur's credibility on points of significance to both the PRRA and H&C APR [application for permanent residence]. I will not repeat the same analysis here, as it would be simply copying and pasting, but would refer the reader to my PRRA decision as my assessment with respect to Mr. Abdinur's credibility is applicable to both decisions.
>
> [Emphasis added.]

[63] As in the PRRA application, the Minister's delegate relied on these credibility findings in the H&C application in assessing the important question of whether Mr. Abdinur would have family support if removed to Somalia:

> Of great import to the assessment of his H&C APR is the situation that awaits him in Somalia. He has stated that he does not have any family in Somalia, and knows no-one in that country. However, because I have found him not credible, I am unable to give any weight to his statements about the whereabouts of other family members.

[64] Again, in reaching this conclusion, the Minister's delegate made no reference to the corroborative evidence from Mr. Abdinur's family members filed in the H&C application. The Minister's delegate did refer to these letters in discussing the impact of Mr. Abdinur's departure on his family, so they were clearly before her. However, the Minister's delegate unreasonably gave no consideration to this evidence in reaching contrary conclusions of "great import."

[65] Since the Minister's delegate incorporated and relied on unfair and unreasonable credibility findings from the PRRA decision into the H&C decision, the H&C decision is similarly unfair and unreasonable. I need not decide the other issues raised by Mr. Abdinur in respect of the H&C decision, as I conclude that the decision cannot stand regardless of the determination of those issues.

IV. Conclusion

[66] The two applications for judicial review are therefore allowed, and Mr. Abdinur's PRRA application and his H&C application are remitted for redetermination by a different delegate of the Minister.

[67] The parties agreed, as do I, that there is no question appropriate for certification in this matter.

JUDGMENT IN IMM-2633-19 AND IMM-2634-19

THIS COURT'S JUDGMENT is that

1. The applications for judicial review are allowed and Mr. Abdinur's application for a Pre-removal Risk Assessment and his application for relief on humanitarian and compassionate grounds, are remitted for determination by a different Minister's delegate.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2633-19
STYLE OF CAUSE:	ZAKARIA SALAD ABDINUR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
DOCKET:	IMM-2634-19
STYLE OF CAUSE:	ZAKARIA SALAD ABDINUR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	DECEMBER 12, 2019
JUDGMENT AND REASONS:	MCHAFFIE J.
DATED:	SEPTEMBER 3, 2020

APPEARANCES:

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