

Date: 19980527

Docket: IMM-2044-97

BETWEEN:

**ANAB ALI HUSEIN
FADUMO OSMAN MAHAMED
LIBAN ABDIQADIR MAHAMED
ASAD AHMED ABDISALAN
MANDEQ HASAN BANI**

Applicants

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

JOYAL, J.

[1] This is an application for judicial review of a decision by the Immigration and Refugee Board, dated April 24, 1997, which determined that the applicants were not a Convention refugees under s.2(2) of the *Immigration Act*, R.S.C. 1985, c. I-2.

The Facts:

[2] The principal applicant (the "applicant"), her mother and her three children are citizens of

Somalia. Before the war started, she was married three times and had four children, all of different fathers. Her youngest child died in Mogadishu in 1991.

[3] In 1990, after the Siad Barre government was overthrown, the applicant and her family started fearing for their lives since they were of the Darod clan. Members of that clan were being targeted and killed by the new regime.

[4] In January 1991, the applicant moved with her children to her parents' home. Her third husband, upset with her decision to move, divorced her at the end of January. Later, the house was attacked by members of the United Somali Congress (the "USC") and her uncle and youngest child were killed. After the incident, the applicant left with her mother and remaining children for another area of the city, Medina, where a small concentration of Darod clan members had taken refuge. Her father stayed behind to bury the dead.

[5] The family stayed in Medina only overnight and from there walked to Afgoye. When they got there, the applicant was told that her father had been killed. From Afgoye, they took a truck that brought them to Kismayo, where they lived in an abandoned schoolhouse until April 1991, when they escaped an attack by USC rebels. The family then took a boat to Mombassa, Kenya, where they lived until the end of 1993. They stayed with relatives in Nairobi from 1993 to 1995. In March 1995, they left Africa and arrived in Canada the same month.

The Board Decision:

[6] The Board did not find the principal claimant to be credible on the issue of identity. The only documents produced were the children's birth certificates, which the Board did not believe to be authentic. After noting further discrepancies between the principal claimant's testimony, her Personal Information Form and her sister's testimony, the Board determined that it could not rely on her testimony with respect to vital aspects of the refugee claim and concluded that the claimants were not Convention refugees.

[7] The applicants submitted three issues to be argued, which may be summarized in one question: did the Board err in law in its finding of lack of credibility of the principal applicant's testimony on grounds that this finding was based upon speculation and a lack of regard for the totality of the evidence?

Analysis:***(a) Credibility***

[8] In refugee claims, the determination of credibility is a question of fact¹ which is within the Board's jurisdiction. Although in the area of plausibility, the unreasonableness of a decision may be more obvious, the Board is still in the best position to gauge the credibility of a claimant². Contradictions or discrepancies in the evidence are accepted bases for a finding of lack of

¹

White v. R., [1947] R.C.S. 268.

²

Agueborv. M.E.I. (1993), 160 N.R. 315 (F.C.A.).

credibility³. The Court should not interfere in the Board's conclusion unless it be patently unreasonable⁴.

[9] The Board, in rendering its decision, must respect certain conditions in order to "shield" itself from judicial review. A negative finding of credibility must be addressed in "clear and unmistakable terms"⁵, in regards to the totality of the evidence. A claimant must be given an opportunity to explain the contradictions⁶ and, in assessing the evidence, the Board must be wary of applying western standards of rationality upon a claimant's particular situation⁷. Nevertheless, it is upon the applicant that rests the burden of demonstrating that the inferences drawn by the Board were unreasonable in regards to the material before it.

[10] As I have already mentioned, the applicant argues that the Board erred when it found that her testimony lacked credibility because this finding is based on speculation and a lack of regard for the totality of the evidence. The applicant submits that the Board should have accepted her explanations as to the authenticity of birth certificates, claiming that she was confused and afraid of the Board's continuous questioning.

³ *Rajarathan v. Canada* (1991), 135 N.R. 300 (F.C.A.).

⁴ *Aguebor v. M.E.I., supra.*

⁵ *Hio v. Canada* (1992), 15 Imm.L.R. (2d) 201 (F.C.A.).

⁶ *Rajarathan v. Canada, supra.*

⁷ *Ye v. Canada* (1992), 17 Imm.L.R. (2d) 77 (F.C.A.).

[11] In a situation of this nature, I suggest that a proper test on judicial review is to read the transcript of the evidence. In the case at bar, if the record is left vague because of many "inaudibles" in the transcript, the text is remarkably clear on the issue of the birth certificates. The principal applicant stated that she had only once attended at the Municipal Office to get her children's birth certificate. The Board was concerned that the certificates bore different dates. It was also curious as to why, in such a strongly patriarchal society as Somalia, none of the fathers' names appeared on the certificates. And finally, the Board was troubled by the fact that these certificates were the only objective evidence as to the identity of the people involved.

[12] A reading of the transcript of the Board's decision, with respect to the issues of the birth certificates and contradictions in the main applicant's testimony, leave little doubt that the Board gave the main applicant every opportunity to provide full clarification on the Board's misgivings. It is clear, also, that the Board was simply not satisfied with the applicant's answers.

(b) Totality of the evidence

[13] There remains the issue of a failure by the Board to have regard to the totality of the evidence as to the main applicant's well-founded fear of persecution in Somalia. In my respectful view, once the Board had concluded that identity had not been established or that the main applicant had not proven who she allegedly is, it was not necessary for the Board to analyze the evidence any further. Identity was central to the case. The main applicant's failure to prove that she belonged to a persecuted clan effectively undermined any claim of a well-founded fear of persecution.

Conclusion

[14] In the event, and with due respect to counsel's efforts on the applicants' behalf, I find no grounds justifying my intervention. The application for judicial review is therefore dismissed.

L-Marcel Joyal

JUDGE

O T T A W A, Ontario
May 27, 1998.

FEDERAL COURT OF CANADA
TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT FILE NO.: IMM-2044-97

STYLE OF CAUSE: Anab Ali Husein et al. v. M.C.I.

PLACE OF HEARING: Toronto

DATE OF HEARING: May 20, 1998

REASONS FOR ORDER BY: The Honourable Mr. Justice Joyal

DATED: May 27, 1998

APPEARANCES:

Ms. Sian E. Williams for the Applicants

Mr. David Tyndale for the Respondent

SOLICITORS OF RECORD:

Ms. Sian E. Williams for the Applicants
Toronto, Ontario

Mr. George Thomson for the Respondent
Deputy Attorney General of Canada