

Federal Court



Cour fédérale

Date: 20211021

Docket: IMM-3446-20

Citation: 2021 FC 1113

Fredericton, New Brunswick, October 21, 2021

PRESENT: Madam Justice McDonald

BETWEEN:

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Applicant

and

SAADIA ABSHIR MAHAMED

Respondent

JUDGMENT AND REASONS

[1] The Applicant Minister seeks judicial review of a decision of the Refugee Appeal Division (RAD), dated July 27, 2020, allowing the Respondent's appeal from the Refugee Protection Division (RPD) and granting her refugee protection. The Minister argues that the RAD failed to conduct an independent assessment of the evidence, and reached an unreasonable conclusion with respect to the Respondent's identity.

[2] For the reasons that follow, this judicial review is dismissed as the decision of the RAD is reasonable.

Relevant Background

[3] The Respondent is a citizen of Somalia. She married her first husband in 2001, and divorced in 2009 after her husband forced their six-year old daughter to undergo genital mutilation, which led to the child's death.

[4] In Somalia, the Respondent worked at Madina Hospital as a nurse, a position funded by the International Red Cross.

[5] In 2007, the Respondent claims to have received a threatening phone call from Al-Shabaab, who told her to leave her job immediately or they would kill her. Fearing for her safety, she left her job, and only returned in 2008 to distribute polio medicine after the hospital said she could perform the work "underground" without wearing a uniform.

[6] In September 2008, Al-Shabaab kidnapped the Respondent by forcing her into a car. She was imprisoned and tortured for two months. It was only after the group became engaged in a gun battle with the Ethiopian army that the Respondent was able to escape, with the help of her maternal uncle.

[7] The Respondent escaped to South Africa where she was granted temporary status as a refugee for two years. During her time in South Africa the Respondent was robbed twice and

fearing for her safety, in May 2015 she left South Africa and travelled to the United States (US) with the assistance of smugglers. When she arrived in the US in August 2015, she was eight months pregnant and gave birth to her son in Texas. The Respondent says that she did not make a refugee claim in the US and came to Canada on March 20, 2017.

[8] She claimed refugee protection for herself and her son pursuant to ss. 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. She fears returning to Somalia as she is a target of Al-Shabaab.

RPD Decision

[9] On September 5, 2018, the RPD held that neither the Respondent nor her son were Convention refugees or persons in need of protection. The RPD was satisfied that the Respondent's son was a citizen of the US. However, the RPD was not satisfied that the Respondent had established her identity as a national of Somalia.

[10] The RPD made a number of negative credibility findings with respect to the Respondent. The RPD found the Respondent was "evasive, vague, at times she did not provide straightforward or detailed answers, and at times she evolved her testimony." In addition, the RPD found that the Respondent had provided a fraudulent birth certificate and a fraudulent letter from Madina Hospital. These findings were based on spelling errors on the birth certificate, and the fact that the letter appeared to have been produced by an inkjet printer. Finally, the RPD found that the claimant had failed to make efforts to obtain corroborative evidence, including a letter from her maternal uncle to confirm what he had done to help her, a letter from the Red

Cross indicating that she worked for them, asylum claim documents from South Africa, documents about her marriage or the births of her children, or her immigration status in South Africa.

[11] The RPD also had concerns with the Respondent's identity witness, who offered different testimony from the Respondent's, and who indicated he could not account for her whereabouts for a significant period of time.

[12] Finally, the RPD found the Respondent had not established her child would be at risk in the US because there would be no one to take care of him.

[13] As summarized at paragraph 80 of the decision, the RPD held:

Having considered the totality of the evidence before it and given the panel's concerns regarding the claimant's identity and credibility, assessed under both sections 96 and 97 of the *IRPA*, the panel therefore finds, on a balance of probabilities, that the claimant has not established her identity as a Somali national, that the central allegations of this case are not true, and that there is insufficient credible or trustworthy evidence upon which to reach a positive determination under section 96 of subsection 97(1) of the *IRPA*.

[14] The RPD concluded that neither the Respondent nor her son were Convention refugees or persons in need of protection.

RAD Decision

[15] The Respondent appealed to the RAD. She did not submit additional evidence and did not request an oral hearing. The RAD dismissed the appeal of the Respondent's son and found that he was not a Convention refugee or person in need of protection. However, the RAD allowed the appeal with respect to the Respondent, finding she was a Convention refugee.

[16] The RAD held that the RPD made national identity assessment errors when it decided there were irregularities in her birth certificate and hospital letter, and that the documents were therefore fraudulent. The RAD found it was "not clearly implausible that an English translation of a genuine Somalian birth certificate would contain spellings errors, nor is it clearly implausible for a Somalian hospital to print a genuine letter using an inkjet or colour printer." Further, while the RAD acknowledged there were some contradictions between the Respondent's testimony on her witness's testimony, the RAD held "the totality of their overall testimony was more consistent in terms of what they know about each other than it was not." The RAD therefore declined to draw any negative inferences about the Applicant's Somalian citizenship, and held that her documents were genuine.

[17] Finally, the RAD declined to draw any negative inferences about the Respondent's failure to produce documents from South Africa, finding that this would not have been directly probative of her citizenship, and that the failure to produce the documents would not affect the overall assessment of the evidence.

[18] In conclusion, the RAD wrote at paragraph 14:

The documentary evidence on country conditions indicates that Al-Shabaab continues to perpetrate serious human rights abuses against persons in Somalia whom it perceives to be allied to foreign powers and/or opposed to its views of Islam, that violence against women is also a serious problem, that Somalia does not have a sufficiently functioning government to provide adequate protection, and that viable internal flight alternatives within Somalia are probably not available to victims. The RAD is therefore satisfied, on a balance of probabilities, that her claim is well-founded and that adequate state protection and viable IFAs are not available to her in Somalia.

Issues

[19] The Minister challenges the reasonableness of the RAD decision on the following issues:

- A. The reliability of the Respondent's birth certificate
- B. Evidence on identity
- C. Failing to consider Article 1E.

Standard of Review

[20] The parties agree that the standard of review on these issues is reasonableness. In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99, the Court states: "A reviewing court must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness - justification, transparency and intelligibility - and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" [Citations omitted].

Analysis

A. *The Reliability of the Respondent's Birth Certificate*

[21] The Minister argues the RAD did not properly defer to the RPD who had a meaningful advantage when assessing the Respondent's birth certificate. The Minister argues there is no indication that the RAD inspected the birth certificate, and that the RAD failed to consider the RPD finding that the document appeared to have original pen ink while the Respondent testified it was a copy.

[22] The Respondent's explanation that her birth certificate was lost during the civil war, and that she later received a "copy" or second re-issued birth certificate in order to get a job with the Red Cross was accepted by the RAD.

[23] With respect to the appearance of the document itself, the Court in *Ali v Canada (Citizenship and Immigration)*, 2015 FC 814, held that "minor typographical errors of this nature, whether found in a Pakistani medical report, a judgment of the Federal Court, or indeed reasons of a Member of the RPD, cannot be reasonably used to suggest that the document may be fraudulent, as was done in this case" (para 31). Similarly, in *Mohamud v Canada (Citizenship and Immigration)*, 2018 FC 170, the Court held it was unreasonable to find that a typographical error in a statement meant that the document was fraudulent, and further, that it was unreasonable to expect the applicant to explain the error when he did not author it (paras 6,8).

[24] Further, while the RPD noted the prevalence of fraudulent documents in Somalia, this Court has held that this line of reasoning “is prejudicial and should not be tolerated in our jurisprudence” (*Oranye v Canada (Citizenship and Immigration)*, 2018 FC 390 at paras 26, 28).

[25] The RAD considered the issues with respect to the birth certificate and the hospital letter and determined there was no basis to infer that the documents were fraudulent. The RAD noted “the RPD itself acknowledged that English is not a Somalian official language and that documents do not have to be perfect” and there was nothing in the country documentary evidence to indicate the hospital would not have issued the letter on an inkjet printer.

[26] On appeal, the RAD is to conduct its own analysis of the record. The RAD may defer to the RPD’s factual findings where the RPD was in an advantageous position to make such findings, such as where “oral testimony is critical or determinative” (*Canada (Citizenship and Immigration v Huruglica*, 2016 FCA 93 at paras 69, 70). Here, however, the findings on the birth certificate were based upon an examination of the document itself, and not based upon oral evidence. The document was before the RAD (and the RPD) therefore, the RPD was not advantaged over the RAD with respect to the assessment of this evidence.

[27] The finding of the RAD on this issue is reasonable.

B. Did the RAD Reasonably Consider Identity Evidence?

[28] The Minister argues the conclusion of the RAD that the Respondent established her identity is unreasonable as she failed to produce documents from South Africa or the Red Cross, and there were inconsistencies in her evidence and the evidence of her witness.

[29] However, as the RAD concluded that the birth certificate and hospital letter were credible, it was not necessary for the RAD to require additional proof to establish her identity. In any event, the RAD explained that the South African documents were not probative and would not have impacted the overall assessment. Further, the letter from the Red Cross would only have been needed to establish the Respondent's employment if the RAD had not found the hospital letter credible, which it did.

[30] The approach of the RAD on this issue is reasonable.

C. Did the RAD Err in Failing to Consider Article 1E?

[31] The Minister argues that the RAD erred by failing to consider Article 1E which states:

This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

[32] The Respondent argues that the only concern with the South African documents for the RPD was with respect to identity only. This was acknowledged by the Minister. As well, there

was no issue raised with respect to the Respondent's claim that she had only temporary refugee status in South Africa.

[33] The record clearly demonstrates that Article 1E was not in issue before the RPD. In any event, it would have been an error for the RAD to raise this as a new issue without giving appropriate notice (*Kwakwa v Canada (Citizenship and Immigration)*, 2016 FC 600 at para 25; *Aghedo v Canada (Citizenship and Immigration)*, 2021 FC 450 at para 18).

[34] The Minister's submissions on this issue are without merit.

Conclusion

[35] Overall, the decision of the RAD is reasonable and there is no basis for this Court to intervene. This judicial review is dismissed.

JUDGMENT IN IMM-3446-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review of the RAD decision is dismissed; and
2. There are no questions for certification.

“Ann Marie McDonald”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3446-20

STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP AND
IMMIGRATION v SAADIA ABSHIR MAHAMED

PLACE OF HEARING: HELD VIA VIDEOCONFERENCE

DATE OF HEARING: AUGUST 16, 2021

JUDGMENT AND REASONS: MCDONALD J.

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