

Federal Court



Cour fédérale

**Date: 20211124**

**Docket: IMM-4312-20**

**Citation: 2021 FC 1290**

**Toronto, Ontario, November 24, 2021**

**PRESENT: The Honourable Madam Justice Furlanetto**

**BETWEEN:**

**ABUKAR ABDULLAH TAKOW**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is a judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada, confirming a decision of the Refugee Protection Division [RPD] that denied the Applicant's claim as a Convention refugee or person in need of protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The RAD found that the Applicant had not established his identity with acceptable evidence and that he was not credible.

[2] For the reasons that follow, I find that the RAD's decision was reasonable. The application is therefore dismissed.

I. Background

[3] The Applicant states he is a citizen of Somalia. He asserts that he became a target for Al-Shabaab because he worked as a youth soccer coach for Somalia's Transitional Federal Government. The Applicant claims that Al-Shabaab contacted his mother and threatened his life, causing him to flee to Uganda in November 2011.

[4] The Applicant remained in Uganda and attended university. He returned to Somalia for three months in 2015 to be with his mother who was ill. He later travelled to the United States [US] to marry the daughter of a family friend who was a US citizen. The marriage was not recognized as a genuine marriage and the Applicant was unable to regularize his status in the US based on the relationship. He then came to Canada and brought a claim for refugee status.

[5] The RPD found the claimant to be "neither a credible nor a reliable witness" and refused the Applicant's claim for failing to establish his personal and national identity and for failing to establish that he was a person in need of protection.

[6] On appeal, the RAD confirmed the decision of the RPD. The RAD held that the Applicant had failed to establish his identity with acceptable evidence and that there were cumulative negative credibility findings.

[7] The RAD concluded that the Applicant's passport and national identity card were not adequate to support his identity as they were not issued in accordance with the process set out in the Response to Information Request [RIR] found in the National Documentation Package [NDP] for Somalia. With respect to the other secondary documents submitted, the RAD found that the RPD had erred in some of its credibility findings, but found that these documents were not sufficient to establish the Applicant's national identity as they either were related to the Applicant's residency outside of Somalia, were documents of unclear provenance, or provided insufficient or unsupported information.

[8] The RAD further found that a negative credibility inference was appropriately drawn from the Applicant's attempt to deceive US authorities with a marriage that was not genuine and that the Applicant's three-month sojourn back to Somalia constituted a reavilment that undermined the credibility of his subjective fear of persecution.

[9] The RAD concluded that the Applicant's failure to establish his identity with acceptable evidence was determinative of his claim. However, even if his identity were established the RAD found that the Applicant would not be able to overcome the cumulative negative impact of the credibility findings made.

## II. Issues and Standard of Review

[10] The following issues are raised by this application:

- a) Did the RAD err in failing to accept the documents put forward by the Applicant to support his identity?

b) If so, did the RAD also err in its overall credibility finding?

[11] The applicable standard of review for the Decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 25). In exercising this standard, the Court must determine whether the decision is “based on an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at paras 85-86; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [Canada Post] at paras 2, 31).

[12] Reasonableness review does not permit the Court to simply reassess or reweigh evidence and reach its own conclusions (*Vavilov* at para 125). Rather, the Court must defer to the RAD’s assessment and determine only whether the RAD’s decision is reasonable in light of the evidentiary record and the factual matrix. A decision may be unreasonable where it fundamentally misapprehends evidence, fails to take evidence into account, or shows incoherent reasoning in the assessment of evidence (*Vavilov* at paras 102-107, 125-126). A reasonable decision when read as a whole and taking into account the administrative setting, bears the hallmarks of justification, transparency, and intelligibility (*Vavilov* at paras 85, 91-95, 99-100).

### III. Analysis

A. *Did the RAD err in failing to accept the documents put forward by the Applicant to support his identity?*

[13] Identity is a core preliminary and fundamental issue for establishing a claim to refugee protection (*Canada (Citizenship and Immigration) v Kabunda*, 2015 FC 1213 at para 18; *Hassan v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 459 [Hassan] at para 27).

Section 106 of the IRPA provides that as part of its credibility assessment, the RPD must determine whether a claimant possesses acceptable documentation to establish identity, or, if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation (see also Rule 11 of the *Refugee Protection Division Rules*, SOR/2012-256).

[14] In this case, I find that the RAD provided transparent and intelligible reasons, and sufficient justification for why the Applicant's documents were insufficient to establish his national identity.

[15] The Applicant argues that his primary documents (passport and national identity card) are government issued and should be presumed valid unless shown otherwise. He asserts that the RAD's decision invokes an implausibility finding without sufficient evidence or transparency.

[16] The Respondent asserts that these documents were carefully considered but as they were issued contrary to the RIR it was appropriate for the RAD to find them inadequate and that the RAD provided sufficient reasons on this basis. I agree. It was reasonable to consider the country condition evidence (*Myle v Canada (Citizenship and Immigration)*, 2007 FC 1073 at para 12) and to conclude as the RAD did.

[17] Both the Applicant's passport and his national identity card were issued in Uganda on the same date. As noted by the RAD, the RIR indicates that a national identity card is required for a government of Somalia biometric passport issued after December 2013. The Applicant testified

that he submitted his birth certificate and a regional identity card in support of his passport, but that he did not obtain a national identity card until the same date that his passport was issued. In view of this evidence, it was reasonable for the RAD to conclude that this was contrary to the process set out in the RIR. Further, it was reasonable to question how the passport could refer to the national identity card when they were issued on the same date.

[18] Similarly, the RAD considered the Applicant's argument that the RIR did not contain information on the requirements for obtaining a Somali passport in Uganda, but reasonably found that this was not sufficient to overcome the statements made in the RIR. As noted by the RAD, the RIR indicates that a Somali passport and national identity card may only be applied for in person within Somalia. It does not identify other means for obtaining a passport.

[19] While the Applicant argues that the RIR is only directed to obtaining a passport in Somalia, I do not read the RIR as being so limiting. The RIR title states that it refers to "Identification documents, including national identity cards, passports, driver's licenses and any other document required to access government services; information on the issuing agencies and the requirements to obtain documents (2013-July 2015)."

[20] In light of the discrepancies with the RIR, and similar to the findings made in *Hassan* at paragraph 28, it is my view that it was reasonable for the RAD to conclude that the Applicant's passport was inadequate to establish identity.

[21] Further, while the Applicant argues that the RAD took an overly critical approach with the remainder of his documents (relying on *Abdullahi v (Citizenship and Immigration)*, 2015 FC 1164 at paras 9-10; *Husian v Canada (Citizenship and Immigration)* 2016 FC 462 at para 25), I find that the RAD reasonably reviewed each of the documents, conceded errors when they were made by the RPD, and provided transparent and intelligible reasons as to why the further documents could not support the Applicant's identity. Indeed, the RAD notes that the same argument was made by the Applicant with respect to the RPD's reasons – i.e., that the RPD was “intent to find fault with whatever was presented rather than to take a fair and reasonable view of the material provided”. The RAD reviewed the RPD's reasons with this argument in mind.

[22] The RAD concluded that the RPD erred in finding defects with the Applicant's student identity card and driver's license and that both documents were authentic. However, it reasonably found that neither document addressed the Applicant's national identity because both were issued in Uganda and could only show that the Applicant was a resident of that country.

[23] The RAD carefully reviewed the Applicant's testimony on his school leaving certificate but reasonably found based on the testimony of the Applicant and the fact that the document was not an original that the provenance of the document was not established with sufficient clarity to ground an overall finding that an original copy existed. Therefore, it could not support the Applicant's national identity.

[24] Further, I consider it reasonable for the RAD to have questioned why originals were provided for some documents but not others and to note that the Applicant appeared to be able to

obtain original documents through his uncle. While the Applicant argues that the RAD unreasonably drew an adverse inference from the Applicant not enclosing a birth certificate with his application, I do not read the RAD's comments on the birth certificate in this manner. The RAD comments on the birth certificate only in the context of providing examples of the types of documents that the Applicant was able to obtain as originals from his uncle in Somalia. This comment is made following the RAD's conclusion on the school leaving certificate and its inability to accept this document as it could not be confident that an original existed. I do not consider these comments to be prejudicial to the Applicant as they flow from consideration of the testimony that was given and from consideration of section 106 of the IRPA.

[25] I also find there to be sufficient justification given as to why the RAD did not give significant weight to the affidavit of the Applicant's uncle and the sworn statements from his father-in-law and mother. While the comments of the RAD are provided under two separate headings of the decision, when read together, the comments justify why the documents were not considered.

[26] As reasonably held by the RAD, the Applicant's uncle was willing to assist the Applicant in obtaining status from the US government based on a marriage that was not genuine. He was therefore not a credible witness and his evidence was reasonably found to be neither reliable nor trustworthy.

[27] The RAD agreed that the father-in-law's and mother's evidence should not be set aside because of credibility, but must be individually considered. However, it found these statements



to be of little assistance. While I agree that there is no requirement to attach an identification document to a sworn statement (*Ouya v Canada (Citizenship and Immigration)*, 2017 FC 55 at para 17) and that a sworn statement bears the presumption of truth (*Dirieh v Canada (Citizenship and Immigration)*, 2018 FC 939 at para 28; *Maldonado v Canada (Employment and Immigration)*, [1980] 2 FC 302 (FCA) at para 5), it was open for the RAD to assess the weight of the evidence. In my view, it was not unreasonable for the RAD to take the view that the information in the affidavits was insufficient and that some photographs or further narrative would be necessary to establish the Applicant's familial roots and his national identity. I find no error in the RAD's overall justification that neither of these statements provide sufficient information on their own to establish national identity and do not serve to corroborate the other documents submitted.

[28] As noted by the RAD, the determination of identity is dispositive of the application. Accordingly, I need not consider the other arguments relating to credibility. As the Applicant has not established that there was an error in the RAD's consideration of the Applicant's identity, the application is dismissed.

#### IV. Conclusion

[29] The application is accordingly dismissed.

[30] No question for certification was proposed by the parties and none arises in this case.

**JUDGMENT IN IMM-4312-20**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

"Angela Furlanetto"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4312-20

**STYLE OF CAUSE:** ABUKAR ABDULLAH TAKOW v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** SEPTEMBER 15, 2021

**JUDGMENT AND REASONS:** FURLANETTO J.

**DATED:** NOVEMBER 24, 2021

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