

Federal Court



Cour fédérale

**Date: 20220318**

**Docket: IMM-421-21**

**Citation: 2022 FC 364**

**Ottawa, Ontario, March 18, 2022**

**PRESENT: The Associate Chief Justice Gagné**

**BETWEEN:**

**FATHIA SAID ALI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Ms. Fathia Said Ali, a national of Djibouti, is seeking judicial review of a decision made by the Refugee Appeal Division [RAD], who denied her appeal of the negative decision made by the Refugee Protection Division [RPD]. Both tribunals found that the Applicant's account lacked credibility.

[2] The Applicant states that at the age of 18, she was forced to marry her husband who abused her. When she was pregnant with her son, her husband seriously injured the Applicant, forcing her to find refuge at her parents' house. Her father promised her husband that the Applicant would return to him after the birth of her son but instead she resolved not to return to the marriage and sought a divorce.

[3] The Applicant describes the divorce process in her affidavit at paragraph 5:

With the help of my mother. I sought a divorce through the Islamic Court. I initially went to the Islamic Court to make an appointment. I then returned to the Islamic Court on the appointment date, at which time the Judge said that I have to follow the rules of the Islamic Court, which included making a deposit of 10,000 Djiboutian francs, bringing two witnesses and bringing a parent. When I returned, I brought my father's ID card, two witnesses, my mother and I told the Court that my father was away on business. The Islamic Court then granted me the divorce in January 2005.

[4] After the divorce, the Applicant was awarded full custody of her son. Her ex-husband continued to threaten her and he physically attacked her in 2007. Around this time, the Applicant met a new partner and together they made the decision to flee Djibouti City for Holhol. The Applicant re-married in 2008 and had three children with her new husband.

[5] In 2012, the Applicant's mother informed her that her first husband had discovered the Applicant's new location in Holhol. The Applicant and her new husband then decided to relocate to Ali Sabieh but in 2016, the Applicant was again informed that her first husband had discovered her whereabouts. Her new husband lost his job because of her former husband's interference and the couple made the decision to leave Djibouti.

[6] They arrived in the United States in December 2016 and, unable to secure assistance in applying for asylum in that country, they crossed to Canada in January 2017 and applied for refugee protection.

[7] The RPD found that the Applicant was not credible and dismissed her claim.

[8] On appeal, the RAD accepted 17 new documents into evidence. Some of these documents had been requested by the RPD between the hearing date and the decision date, but the RPD did not respond to the Applicant's counsel's request for an extension of the deadline. The RAD admitted the new documents as it found that the RPD was not procedurally fair by issuing its decision before receiving the documents.

[9] The Applicant submitted to the RAD that the RPD did not offer the accommodations recommended under the *Gender Guidelines* for sexual and gender-based claims. The RAD disagreed; it found that the RPD had offered breaks to the Applicant and that the hearing was conducted in a sensitive manner.

[10] The RAD agreed with the RPD member that the Applicant's evidence about her divorce was inconsistent, and therefore not credible. The Applicant stated that her father was not present at her divorce, but the divorce decree indicates he was there. The Applicant explained that she and her mother presented her father's ID card and told the Sharia Court he was away and could not attend. The RAD did not accept this explanation.

[11] The RAD also agreed with the RPD's finding that considering the Applicant would benefit from the protection of her current husband if she were to return to Djibouti, it was unlikely she would experience gender-based persecution.

II. Issues and standard of review

[12] This Application raises the following issues:

A. *Did the RAD err in its assessment of the Applicant's credibility?*

B. *Did the RAD err in its assessment of the corroborative evidence filed by the Applicant?*

[13] There is no dispute that the proper standard of review for both issues is that of reasonableness. In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, the Supreme Court of Canada identified two types of fundamental flaws that usually embody an unreasonable decision: The lack of rationality internal to the reasoning process, and decisions that, in some respects, are untenable in light of the relevant factual and legal constraints that bear on it.

III. Analysis

A. *Did the RAD err in its assessment of the Applicant's credibility?*

[14] The Applicant submits that the RAD unreasonably assessed that the account of her divorce was determinative to her credibility. For the Applicant, it was an error to assess her credibility based primarily on the law and process to obtain a divorce in Djibouti. It was also an

error to find implausible for the Sharia Court to grant a divorce without the consent of the Applicant's husband, or for the divorce document to state that her father was present when in fact he was not. The RAD failed to consider cultural differences and it failed to consider that her claim for protection stem from the abuse she suffered at the hands of her ex-husband, which began during their marriage, as well as disagreement over custody of their son.

[15] I respectfully disagree with the Applicant. In my view, it was open to the RAD to focus on the Applicant's account of her divorce granted in 2005. In her refugee claim, the Applicant alleges that neither her husband nor her father knew about the divorce. Yet, the register of the act of divorce she produced in support of her claim states that the divorce was granted in the presence of her father who acted as her representative. When confronted with this inconsistency, the Applicant testified that her father was not there but that she had brought his father ID card and informed the Court that he was away on business. In my view, it was reasonable for the RAD not to accept the Applicant's explanation and to rely on the objective evidence stating that it is difficult for a woman to request an *ex parte* divorce in Djibouti. In doing so, the RAD was sensitive to social and cultural norms.

[16] The expert evidence states that pursuant to the Family code, a divorce in Djibouti is either pronounced by the Ma'doun, if on consent, or by the Tribunal, at the request of one of the spouses. In the latter case, the Family code states that the divorce can only be granted after an unsuccessful attempt at reconciliation. Nothing in the objective evidence refers to the possibility to obtain an *ex parte* divorce, especially not at the request of the wife. The Applicant states that

the Family code is applied inconsistently in Djibouti but none of the examples she gives indicated that these inconsistencies would favour the wife.

[17] The Applicant suggests that even if she has obtained a divorce with the consent of her ex-husband, it does not make the abuse she suffered during and after the marriage disappear, as his continued abuse and threats toward her were regarding the custody of her son. I disagree. If the divorce was on consent, it has a significant impact on the rest of the Applicant's account.

[18] And it was reasonable for the RAD to find that the Applicant's lack of credibility with respect to her divorce had a significant negative impact on her claim. It undermined her allegations that her father forced her to marry, and go back to her violent husband, just as it undermined her allegation that her father helped her former husband finding her in Djibouti, between 2008 and 2016.

[19] Finally, and as noted by the RAD, this was not the only concern the RPD had over the Applicant's credibility. The RPD had also raised concerns about her omission to mention, in her narrative, facts related to her ex-husband's ability and motivation to harm her and related to events that occurred between 2008 and 2016.

[20] I therefore see no reason to interfere with the RAD's credibility findings.

B. *Did the RAD err in its assessment of the corroborative evidence filed by the Applicant?*

[21] The Applicant states that the RAD unreasonably ignored the documentary evidence she filed in support of her claim, mainly a letter from her mother and from her mother's neighbour recounting the threats received from her ex-husband in 2019. She states that the RAD does not mention that evidence until paragraph 42 of the decision, where it is summarily dismissed.

[22] First, the RAD did review all the new evidence presented by the Applicant for determining whether it should be accepted or not. The two letters were accepted as new evidence.

[23] Second, the RAD did state at paragraph 42 that since the alleged divorce was at the center of the Applicant's narrative and testimony before the RPD, this negative credibility finding outweigh the other elements of her claim; that includes the two letters that were accepted as new evidence.

[24] On judicial review, the Court must refrain from reweighing and reassessing evidence. A high degree of deference is required when the impugned findings relate to the credibility of a refugee claimant's story, given the RPD and the RAD's expertise in that regard and their role as the trier of fact. The RAD is a specialized decision-maker, warranting deference.

[25] In my view, the RAD did not ignore persuasive evidence and overall, its decision is reasonable. I see no reason to interfere.

IV. Conclusion

[26] The Applicant has not convinced me that the RAD findings did not fall within the realm of reasonable outcomes, in light of the facts of this case, nor that its reasons were unintelligible. For these reasons, the Applicant's application is dismissed.

[27] The parties have proposed no question of general importance for certification and none arises from the facts of this case.



**JUDGMENT in IMM-421-21**

**THIS COURT’S JUDGMENT is that:**

1. The Application for judicial review is dismissed;
2. No question of general importance is certified;
3. No costs are granted.

“Jocelyne Gagné”  
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Associate Chief Justice

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

**DOCKET:** IMM-421-21

**STYLE OF CAUSE:** FATHIA SAID ALI v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** NOVEMBER 10, 2021

**JUDGMENT AND REASONS:** GAGNÉ A.C.J.

**DATED:** MARCH 18, 2022

**APPEARANCES:**

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