

Federal Court



Cour fédérale

**Date: 20220718**

**Docket: IMM-6224-21**

**Citation: 2022 FC 1051**

**Ottawa, Ontario, July 18, 2022**

**PRESENT: Madam Justice Walker**

**BETWEEN:**

**CHAMIS ABDILLAHI IBRAHIM and  
KADRA MAHAMOUD ADAN**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Background**

[1] Ms. Chamis Ibrahim is a citizen of Djibouti and a permanent resident of Canada as a protected person. She and her biological daughter fled Djibouti in 2016 and were granted refugee status in Canada in January 2018.

[2] In late 2019, Ms. Kadra Adan, an 18-year-old citizen of Djibouti, applied for permanent residence in Canada as a member of the family class (dependent adopted child of Ms. Ibrahim). Ms. Ibrahim claimed that she had adopted Ms. Adan in 2006.

[3] In February 2020, Immigration, Refugees and Citizenship Canada (IRCC) requested Ms. Adan's adoption papers. Following review of the documents submitted, a procedural fairness letter was sent on April 8, 2021 stating that Ms. Adan may not meet the requirements for permanent residence in Canada pursuant to sections 176(1), 1(3) and 2 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the IRPRs). The letter explained the IRCC's concern that a legal adoption had not taken place and that the court adoption order submitted was not genuine. Ms. Adan was provided with an opportunity to comment.

[4] On July 6, 2021, the Applicants responded to the procedural fairness letter with the assistance of counsel. They admitted that the adoption papers were not genuine but explained that Ms. Ibrahim had raised Ms. Adan as her daughter. The Applicants requested permanent residence for Ms. Adan as Ms. Ibrahim's *de facto* dependant on humanitarian and compassionate (H&C) grounds pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the IRPA), and included extensive supporting documents and submissions in their request.

## II. The Decision

[5] An officer in the Canadian High Commission in Nairobi, Kenya refused Ms. Adan's application for permanent residence on August 16, 2021. The officer's decision is comprised of a decision letter and Global Case Management System (GCMS) notes.

[6] As Ms. Ibrahim had acknowledged that she was not Ms. Adan's biological or legally adoptive mother, the officer determined that Ms. Adan was not a "dependent child" or "family member" of Ms. Ibrahim as defined in the IRPRs for purposes of the permanent residence application. The officer then acknowledged Ms. Adan's request for an H&C review of her application but concluded that the considerations she put forth did not justify an exemption from the requirements of the IRPA.

[7] The GCMS notes explain the officer's reasons for refusing H&C relief:

- In addition to the fraudulent adoption order, Ms. Ibrahim had submitted a birth certificate that identifies her as Ms. Adan's biological mother when she is not, and acknowledged paying an official to obtain the birth certificate. As a result, she submitted two fraudulent documents in support of the application for permanent residence and the fact she may be illiterate does not remove her accountability for the documents. Further, a reasonable person similarly situated and having knowledge of the relevant facts would have understood that these documents were not legitimate.
- The submission of improperly obtained and fraudulent documents diminished the credibility of Ms. Ibrahim's account of her relationship with Ms. Adan. In addition, there was no proof that the biological mother had consented to a permanent separation from her daughter, and Ms. Adan's living situation with Ms. Ibrahim had never been assessed.
- Ms. Ibrahim chose to leave Ms. Adan in Djibouti when she left with her biological daughter. Her statement that this choice was made due to money considerations was inconsistent with her evidence that she had taken in Ms. Adan because she was doing well financially.

- There was little evidence of an actual mother-daughter relationship before the officer beyond a small number of WhatsApp messages. There were no photos of Ms. Ibrahim and Ms. Adan together and Ms. Ibrahim had not physically visited Ms. Adan since 2016 even though she acquired refugee status in Canada in 2017 [the correct reference is 2018].
- While Ms. Adan was more likely to experience poverty and risk of gender-based violence living in Somaliland, the officer was not satisfied that it was in her best interests to be removed from her home country, culture and extended family without the consent or knowledge of her biological mother and without an adoption process in which her best interests could be independently confirmed.

[8] The Applicants now seek judicial review of the decision on the basis that the officer breached their right to procedural fairness by failing to provide them an opportunity to address the officer's credibility concerns regarding their parent-child relationship.

### III. Analysis

[9] Allegations of breach of procedural fairness do not necessarily lend themselves to a standard of review analysis, although the Court's approach to such allegations resembles that of correctness (*Canadian Pacific Railway v Canada (Attorney General)*, 2018 FCA 69 (*Canadian Pacific*)). My role in addressing the Applicants' arguments in this matter is to determine whether the procedure for review of the application for permanent residence was fair and equitable in all the circumstances (*Canadian Pacific* at paras 54–56; *Tshibangile v Canada (Citizenship and Immigration)*, 2021 FC 451 at para 11 (*Tshibangile*)).

[10] The Applicants acknowledge that Ms. Ibrahim provided a fraudulent adoption order and that Ms. Adan is not her adopted daughter but submit that the officer made a further and new adverse credibility finding in the decision regarding their *de facto* parent-child relationship. They argue that the officer was required to provide them an opportunity to address any new credibility

concerns stemming from their response to the April 2021 procedural fairness letter prior to issuing the decision (*Abasher v Canada (Citizenship and Immigration)*, 2019 FC 1591 at para 19; *Tshibangile* at para 29). The Applicants also argue that their right to such opportunity is heightened because Ms. Ibrahim is illiterate and has no formal education, coupled with the fact that they did not have legal representation in April 2021.

[11] I have carefully considered the Applicants' submissions and the relevant jurisprudence but find no breach of procedural fairness in this matter for the following reasons.

[12] First, the procedural fairness letter issued by the officer addressed only the question of the fraudulent adoption order because that was the sole question before the officer at the time. The officer concluded that the order was fraudulent and the Applicants do not contest the conclusion. They have accepted that the adoption order was not authentic.

[13] Second, the Applicants substantively broadened the scope of the officer's review of Ms. Adan's application for permanent residence by requesting in their response to the procedural fairness letter that the officer consider the application on H&C grounds in accordance with subsection 25(1) of the IRPA. The Applicants were fully entitled to do so and placed before the officer extensive supporting documents and submissions in furtherance of their request. In turn, the officer was required to assess the Applicants' request and the content of the evidence. The officer was not required to return to the Applicants and request that they address concerns or deficiencies that derived from their own evidence and submissions. The Applicants' argument that they could have explained the parent-child relationship between Ms. Ibrahim and Ms. Adan

given a further opportunity to do so is not persuasive. I agree with the Respondent that the Applicants were required to 'put their best foot forward' in the initial request for H&C consideration.

[14] Third, the Applicants argue that the officer made a number of findings based on the premise that Ms. Adan is not Ms. Ibrahim's *de facto* dependant but in fact, the officer's reasoning is the reverse. The officer first referred to Ms. Ibrahim's compromised credibility based on her submission of the fraudulent adoption order and her payment to obtain and submit a fraudulent birth certificate. The officer then identified deficiencies in the evidence. These two findings resulted in the officer's refusal to extend H&C relief. The officer was not satisfied that it was in Ms. Adan's best interest to be removed from her home country, culture and extended family:

This is particularly so where the sponsor in Canada has submitted improperly acquired and fraudulent documentation that diminishes her credibility, where there is little evidence of a mother-daughter relationship beyond the statements of the sponsor who lacks credibility, and where the sponsor made an active choice to take her biological daughter with her to the United [S]tates while leaving behind her cousin's child.

[15] The officer made no new credibility finding in the reasons provided in the decision. The officer's adverse credibility finding stems from the Applicants' response to the procedural fairness letter: the submission of fraudulent documents by Ms. Ibrahim. The adverse finding affected the H&C analysis but no new negative finding was made. The remainder of the evidence put forth by the Applicants was insufficient to persuade the officer of a close parent-child relationship. The Applicants' arguments of vulnerability and a heightened right to procedural fairness focus on Ms. Ibrahim's actions in submitting the fraudulent adoption order at a time

when she was not represented by legal counsel. However, the decision at issue and the officer's refusal of H&C relief, respond to the Applicants' request for H&C relief that was made with the assistance of counsel.

[16] It is helpful to distinguish the Court's findings in *Abasher* to explain my conclusion in this matter. In *Abasher*, the decision at issue highlighted five credibility concerns that arose from inconsistencies between the applicant's response to a procedural fairness letter, their interview, and their prior submissions. The credibility concerns extended beyond the question raised in the procedural fairness letter and my colleague, Justice Diner, found that the focus of the credibility findings in the decision changed from those canvassed in the procedural fairness letter (*Abasher* at paras 17-18). In contrast, the officer in this case made one adverse credibility finding that addressed the issue raised in the procedural fairness letter.

[17] The Applicants also submit that the officer breached their right to procedural fairness by failing to address their request for an oral hearing, citing *Nugent v Canada (Citizenship and Immigration)*, 2019 FC 1380 at para 9 (*Nugent*) and *Plata Vasquez v Canada (Citizenship and Immigration)*, 2019 FC 279 at para 12 (*Plata Vasquez*). I do not agree. In *Nugent* and *Plata Vasquez*, both pre-removal risk assessment (PRRA) cases, the Court stated that an officer's failure to respond to a request for an oral hearing could on its own justify allowing an application for judicial review. After review of the PRRA decision at issue in each case, the Court concluded that the officer in question should have held an oral hearing due to credibility concerns that had not been put to the applicants. In this case, I find no breach of procedural fairness because the only negative credibility finding was raised with Ms. Ibrahim in the April 2021 procedural

fairness letter. While it would have been preferable for the officer to address the request for an oral hearing, their failure to do so does not render the process unfair in all the circumstances.

IV. Conclusion

[18] For the foregoing reasons, I will dismiss the application.

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



**JUDGMENT IN IMM-6224-21**

**THIS COURT'S JUDGMENT is that:**

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

"Elizabeth Walker"

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Judge

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

**DOCKET:** IMM-6224-21

**STYLE OF CAUSE:** CHAMIS ABDILLAHI IBRAHIM and KADRA  
MAHAMOUD ADAN v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HEARD BY VIDEOCONFERENCE

**DATE OF HEARING:** JULY 11, 2022

**JUDGMENT AND REASONS:** WALKER J.

**DATED:** JULY 18, 2022

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