

Federal Court



Cour fédérale

Date: 20220922

Docket: IMM-420-21

Citation: 2022 FC 1312

Ottawa, Ontario, September 22, 2022

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

MUSTAFA IBRAHIM MAGAN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION CANADA**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision of a Senior Immigration Officer of the Human Migration and Integrity Division of Immigration, Refugees, and Citizenship Canada (the “Officer”), dated January 8, 2021. The Officer refused the Applicant’s application for permanent residence from within Canada on humanitarian and compassionate (H&C) grounds

(the “Decision”) pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

II. Background

[2] The Applicant, Mustafa Ibrahim Magan, is a 35-year-old male citizen of Somalia. He is a Sufi Muslim.

[3] The Applicant arrived in Canada in February 2016 and claimed refugee status. The Refugee Protection Division of the Immigration and Refugee Board of Canada (the “RPD”) rejected his refugee claim in a decision dated May 16, 2017. His appeal to the Refugee Appeal Division and application for leave and judicial review to this Court were both dismissed.

[4] In its refusal of the Applicant’s refugee claim, the RPD highlighted concerns with the Applicant’s identity:

- A. Although not uncommon for someone from Somalia, the Applicant did not have any primary identification documentation.
- B. Most without primary documentation rely on a witness to establish identity. The Applicant did bring a witness, but did not notify the RPD in advance. The RPD dismissed the late application for the witness as it found that there was no reasonable explanation for this.

C. Despite alleging he had previously been granted temporary refugee status in Italy, the Applicant was unable to present any documents to support this.

D. Similarly, the Applicant claimed that he was in Norway in 2010, and presented some documentation to support this. However, the RPD was so unconvinced of this that they found this claim seriously undermined the Applicant's credibility.

[5] The Applicant then filed an H&C application seeking an exemption from the requirements of *IRPA* so that he could apply for permanent residence from within Canada. The Applicant sought H&C relief based on two grounds:

A. His establishment in Canada;

B. Hardship he would face if returned to Somalia.

[6] The Officer refused the Applicant's H&C application in a Decision dated and communicated on January 8, 2021. If successful on this judicial review, the Applicant seeks that the Decision be quashed and returned to a different immigration officer for redetermination.

III. Decision Under Review

[7] The Officer gave positive weight to the Applicant's establishment in Canada. The Applicant submitted evidence that he has maintained employment since August 2018 and that in September 2020 he was offered a full-time job with Amazon Fulfillment Services. The Applicant

also provided proof that he had volunteered in his community health centre and taken English classes and letters from community members attesting to his positive character and level of integration.

[8] However, the Officer shared the RPD's concerns about the Applicant's identity and credibility. The Officer quoted at length from the RPD decision and, despite acknowledging that an H&C application and a refugee claim differ, endorsed the RPD's reasoning, emphasising that the RPD had the advantage of receiving *viva voce* evidence. The Officer points out that while the Applicant submitted letters from two friends, this evidence did not assuage the concerns the Officer shared with the RPD about the Applicant's time in Italy and Norway. The Officer commented on the fact that the Applicant failed to present corroborative documentation about this period of his life given that it had been three years since the RPD hearing. The Officer discounted the identity evidence provided by the Applicant's friends because they may have a vested interest in the outcome of the H&C application.

[9] Further, the Officer assigned minimal weight to the hardship the Applicant would face returning to Somalia. In coming to this conclusion, the Officer reviewed an article that outlined the dangers that Sufi Muslims in Somalia faced from Al-Shabaab. However, the Officer reasoned that the Applicant would not face significant hardship, because the Applicant is from an area where there is little evidence that Al-Shabaab has control.

IV. Issue

[10] Was the Decision reasonable?

V. Standard of Review

[11] The presumptive standard of review of this Decision is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*] at paragraph 25). Nothing in this case warrants a departure from this standard.

VI. Analysis

A. *The Applicant's Identity*

[12] Under subsection 11(1) of the *IRPA*, a foreign national must apply for a visa before entering Canada. Subsection 25(1) of the *IRPA* provides the Minister of Immigration, Refugees, and Citizenship (the “Minister”) with the discretion to exempt foreign nationals from this requirement on H&C grounds, allowing them to apply from within Canada.

[13] The Applicant bears the onus of establishing that H&C relief is warranted and that their personal circumstances are such that having to go outside of Canada to apply for a visa would cause a degree of hardship that “would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another” (*Kanthasamy v. Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*] at paragraph 21).

[14] The Applicant argues that the Officer’s treatment of the identity evidence was unreasonable. He contends that the Officer did not consider the fresh evidence that he submitted

and instead simply deferred to the findings of the RPD and was unduly dismissive of the Applicant's evidence.

[15] The Respondent disagrees. They argue that the Officer is entitled to rely on the credibility findings of the RPD and to reject evidence that those bodies have not found credible. The Officer simply found that the Applicant's evidence did not overcome the significant credibility concerns raised by the RPD with respect to his identity, despite the three years he has had to gather evidence.

[16] In determining the reasonableness of a decision, a reviewing court must assess a decision in light of the legal and factual context in which it was made (*Vavilov* at paragraphs 105 to 124). An officer is entitled to defer to the findings of the RPD, and this is particularly the case where an applicant presents new evidence to double down on the same story that the RPD has already found not to be credible (*Miyir v. Canada (Citizenship and Immigration)*, 2018 FC 73 at paragraph 25).

[17] In the H&C application, the Applicant included proof of his identity: affidavits from two individuals and a letter from a Somali organization in Ottawa. One of the affidavits is from an individual who claims that his brother is married to the Applicant's sister and the other is from an individual who claims to know the Applicant for over 20 years and be from the same Somali town as the Applicant. The letter is from the Somali Centre for Family Services in Ottawa, and they claim to know that the Applicant is Somali because they have clients that are related to him. The Officer placed little weight on the affidavits because he believed that the Applicant should

have submitted corroborative documentation instead of “solely relying on supporting sworn declarations from friends who may have an interest in the outcome” and did not engage with the Somali organization’s letter at all [the Decision at page 5].

[18] This Court has held that it is unprincipled for a decision-maker to dismiss evidence simply because a relative or friend provided it (*Varon v. Canada (Citizenship and Immigration)*, 2015 FC 356 at paragraph 56; *Tabatadze v. Canada (Citizenship and Immigration)*, 2016 FC 24 at paragraphs 4 to 6). This error is perhaps even more apparent when the evidence relates to identity. Often, those who know an applicant well enough and are willing enough to provide evidence about an applicant’s identity will inevitably be friends or family members.

[19] While such an error may not in all cases merit judicial review, here it led the Officer to disregard the only evidence the Officer considered about the Applicant’s identity, and having focussed on what was not provided as opposed to what was actually before the Officer resulted in an unreasonable Decision.

B. *Hardship in Somalia*

[20] The Applicant argues that the Officer’s decision about the hardship the Applicant would face if returned to Somalia is unreasonable because the Officer was too narrowly focussed on whether the Applicant’s hometown, Beledweyne, was in an area controlled by Al-Shabaab. The Applicant maintains that in order to return to Beledweyne or another area of Somalia not controlled by Al-Shabaab, the Applicant would have to travel through areas that are, and in any event, Al-Shabaab does operate in his hometown area and would be at check points he would

have to travel through. Further, the Applicant argues that the Officer limited his assessment to the persecution of Sufis by Al-Shabaab and did not consider the more general hardship Sufis face in Somalia. Similarly, the Officer did not consider the hardship that the Applicant would face for reasons other than his Sufi faith, including his profile as a returnee from the West.

[21] The Respondent maintains that the Officer performed a global analysis as required under *Kanthisamy* and exercised their discretion in a manner consistent with their obligations and the jurisprudence of this Court.

[22] The Officer's focus was overly narrow, and did not adequately address the Applicant's concerns about the hardships he would face in Somalia. In his Application, the Applicant indicates that he would suffer hardships beyond those potentially inflicted by Al-Shabaab due to his Sufi faith. His application includes claims about hardship resulting from various sources, including:

- A. Country conditions in Somalia;
- B. His estrangement from his family in Somalia;
- C. Mistreatment of minority groups such as Sufis by Somali society at large;
- D. Al-Shabaab targeting of returnees from the West.

[23] In the Decision, the Officer points out that they reviewed evidence of the general country conditions and acknowledges that conditions in Somalia are problematic. However, the Officer assigns little weight to the hardship factor because he is not satisfied that the Applicant would live in an area controlled by Al-Shabaab. There is a clear disconnect in the Officer's reasoning since many of the Applicant's submissions about hardship had little to do with Al-Shabaab. Some of these submissions went beyond general country conditions in Somalia and focussed on

problems more specific to the Applicant, such as the societal mistreatment of Sufis and his estrangement from his family.

[24] Officers making an H&C determination must substantively consider all the relevant facts and factors (*Kanhasamy* at paragraph 25, citing *Baker v Canada (Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraphs 74 to 75). Here, the Officer failed to do so and was unreasonable.

VII. Conclusion

[25] The application is allowed.

JUDGMENT in IMM-420-21

THIS COURT'S JUDGMENT is that:

1. The application is allowed and the matter is referred to a different Officer for reconsideration.
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-420-21

STYLE OF CAUSE: MUSTAFA IBRAHIM MAGAN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION CANADA

PLACE OF HEARING: HELD BY VIDEO CONFERENCE

DATE OF HEARING: SEPTEMBER 20, 2022

JUDGMENT AND REASONS: MANSON J.

DATED: SEPTEMBER 22, 2022

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