

Federal Court



Cour fédérale

**Date: 20221021**

**Docket: IMM-6610-21**

**Citation: 2022 FC 1442**

**Ottawa, Ontario, October 21, 2022**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**SAHRA AHMED HASSAN**

**Applicant**

**and**

**THE MINISTER OF IMMIGRATION,  
REFUGEES AND CITIZENSHIP**

**Respondent**

**JUDGMENT AND REASONS**

[1] This application for judicial review of a decision of an Officer at the High Commission in Nairobi, Kenya, dismissing the Applicant's application for permanent residence in Canada cannot succeed. The Applicant does not suggest that it is unreasonable. I find that her application was processed in a fair and transparent manner.

[2] The Applicant is a Somali citizen residing in Kenya. She was included as a family member in her husband's application for permanent residence that he obtained on November 13, 2018.

[3] On March 28, 2019, during the processing of the Applicant's application for permanent residence, she was requested to obtain a police clearance certificate from the Kenyan Police.

[4] On June 24, 2019, the Applicant provided a sworn affidavit stating that she was unable to acquire a police clearance certificate signed by a notary public, together with a letter from the Ministry of Foreign Affairs, and a letter from the High Court of Kenya.

[5] On July 4, 2019, the documents were sent for verification.

[6] On August 5, 2019, the office of the notary public confirmed that the signature affixed on the sworn affidavit was not the signature of the notary public.

[7] In response to this, a procedural fairness letter was sent out to the Applicant on September 4, 2019, which provides in relevant part, as follows:

I have reasonable grounds to believe that you have not fulfilled the requirement put upon you by section 16(1) of the **Immigration and Refugee Protection Act**, which states:

*16(1) A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.*

**Specifically, I am concerned with the authenticity of the Affidavit document and Ministry of Foreign Affairs letter which you have provided in support of your application as explanation for lack of a Kenyan Police certificate.**

Please note that if it is found that you have engaged in misrepresentation in submitting your application for a permanent resident visa, you may be found to be inadmissible under section 40(1)(a) of the **Immigration and Refugee Protection Act**. A finding of such inadmissibility would render you inadmissible to Canada for a period of five years according to section 40(2)(a)...

[bolding in original]

[8] On October 5, 2019, the Applicant responded to the procedural fairness letter via her husband:

In response to your email, my wife went back to the Attorney in Nairobi and the subsequent authorities including, The Kenyan High court and Kenyan Ministry of Foreign Affairs to legalize the document 3rd time and I forwarded all the documents to you on October 1, 2019 to your office. In fact it took all these authorities and the lawyer by surprise the hint that it was not legitimate, but indeed, it is and was 100% legal and authentic, and I bear responsibility for it. [emphasis added]

[9] On September 29, 2020, the Officer communicated the refusal of the application for permanent residence to the Applicant stating:

You were requested to provide a Kenyan Police Certificate. You did not provide a Kenyan Police Certificate, but instead provided an affidavit supported by letters from the Ministry of Foreign Affairs Kenya and the High Court of Kenya, stating that you cannot acquire a Kenyan police certificate. We have verified the authenticity of the affidavit document and the Ministry of Foreign Affairs letter. These documents were confirmed to not be authentic documents.

Because you have submitted non-authentic documents that are directly related to your admissibility to Canada, I am not satisfied that you have answered all questions truthfully and that you have

produced all relevant evidence and documents that the officer reasonably requires.

Subsection 11(1) of the Immigration and Refugee Protection Act states that a foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of the Act. Subsection 2(2) of the Immigration and Refugee Protection Act states that references to “this Act” include regulations made under it. I am not satisfied that you meet the requirements of the Act, and your application is therefore refused.

[10] The Applicant’s counsel filed a request to reconsider the decision stating that the Applicant hired a consultant to get the documents, and that these documents were fraudulent without the knowledge of the Applicant:

Mr. Moge has explained to us that his wife who is a Somali, was in Kenya without status and was afraid to go to the Police to request a Police Certificate as she feared the Police would deport her. Friends recommended that she go see a Kenyan Lawyer and directed her to go to the Office of Alice Jonathan Gulenywa. His wife explained her problem to Mr. Gulenywa who she thought was a lawyer and he said he would charge her \$250.00 USD to provide the documents that she required to satisfy the Canadian High Commission. Ms. Hassan thought that everything was legitimate and agreed to pay the \$250 USD. Ms. Hassan returned to Mr. Gulenywa’s Office 4 days later, paid the \$250.00 USD in cash and then delivered the documents by mail to the Canadian High Commission. Approximately 3 months later Ms. Hassan received another communication from the Canadian High Commission requesting the required Police Certificate. She was confused and returned to Mr. Gulenywa’s Office and he said that the documents must have been lost in the mail. He said he would produce a further set of documents and that she should email and send by registered mail this time.

Ms. Hassan was required to pay another \$250.00 USD cash and sent the documents to the High Commission of Canada by registered mail and email. She thought throughout that she was doing everything correctly and that she was being assisted by a lawyer.

[11] The Officer refused to reconsider the decision, stating:

The applicant could have simply applied for a local police clearance certificate for a fee of about \$10. The fact that such documents involved two charges of \$250 would alert a reasonable person in the applicant's position that such documents were not legally or legitimately acquired. The Applicant is ultimately responsible for the documents that she submits.

[12] The Respondent observes that the Applicant does not challenge the reasonableness of the decision made under subsections 11(1) and 16(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. Rather, she challenges what was described as the "transparency and fairness" of the process leading to that decision.

[13] The Applicant complains that the fairness letter did not include information received by the Officer, in particular, that the notary's signature on the document presented was fraudulent. She also asserts that this application for review was necessary because the Respondent never advised her that they will not be relying on section 40.

[14] I will deal with the second concern first. The refusal letters clearly state that her application is dismissed due to her failure to comply with subsection 16(1). While paragraphs 40(1)(a) and 40(2)(a) are referred to in the procedural fairness letter – it is a form letter. There being no further reference to section 40, the suggested concern simply has no foundation.

[15] I also reject the submission that the Respondent's fairness letter was deficient because it failed to specifically mention that the Officer had information from the notary that the signature on the document was forged.

[16] The fairness letter was sufficiently precise, transparent, and fair when it said:

“Specifically, I am concerned with the authenticity of the Affidavit document and Ministry of Foreign Affairs letter which you have provided in support of your application as explanation for lack of a Kenyan Police certificate.” [emphasis added].

[17] If the Applicant did not understand what was meant, then she ought to have engaged counsel or her husband in Canada ought to have made enquiries.

[18] The decision under review is reasonable and cannot be set aside. Moreover, the process employed in reaching it was reasonable, fair, and transparent.

[19] No question was proposed for certification.

**JUDGMENT in IMM-6610-21**

**THIS COURT'S JUDGMENT is that** this application is dismissed and no question is certified.

"Russel W. Zinn"

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Judge

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

**DOCKET:** IMM-6610-21

**STYLE OF CAUSE:** SAHRA AHMED HASSAN v THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** OCTOBER 19, 2022

**JUDGMENT AND REASONS:** ZINN J.

**DATED:** OCTOBER 21, 2022

**APPEARANCES:**

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