

Federal Court



Cour fédérale

Date: 20221115

Docket: IMM-43-20

Citation: 2022 FC 1560

Ottawa, Ontario, November 15, 2022

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

MOHAMED AMIN ABDIRAHMAN ELMI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a citizen of Somalia who seeks judicial review of a refusal of his application for permanent residence [Decision] as a member of the Convention refugee abroad class or as a member of the Humanitarian-protected persons abroad designated class pursuant to the Private Sponsorship of Refugees (PSR) program.

[2] The Decision was made November 29, 2019 by a Migration Officer [Officer] at the High Commission of Canada, in Nairobi, Kenya.

[3] For the reasons that follow, this application is granted. The Officer relied upon an unsigned Schedule 2 form in the Certified Tribunal Record (CTR) but did not refer to the signed Schedule 2 form in the CTR, which contained additional information that was contrary to the Officer's findings.

II. **Background**

[4] The Applicant alleged that he faced persecution in Somalia as a member of the Butiya Awlayd minority clan.

[5] The Applicant stated that Hussein Jirde, a member of the Somali military and the majority Hawiye clan, attempted to take his family home by force. The Applicant's father was killed by people sent by Hussein Jirde in 2012 and the Applicant's mother was threatened that more members of her family would be dead if she did not give up the house.

[6] The Applicant stated the family home was attacked again in April 2013 when a group of men entered the home and started breaking things in the presence of the Applicant, the Applicant's oldest sister and her two children, the Applicant's mother and the Applicant's grandmother.

[7] The Applicant ran from the home with his grandmother, who was wounded in the stomach. They hid in the home of a friend of the Applicant's late father.

[8] The Applicant was not able to take his grandmother to the hospital to avoid detection from Hussein Jirde and his men. Two days later, his grandmother died from her injuries.

[9] The Applicant then fled to Jigjiga, Ethiopia where he remained from 2013 to 2018. He subsequently got in touch with his maternal aunt in Canada and his cousin, who is now acting as the sponsor of his PSR program application.

III. **Decision**

[10] The Decision was set out in a two-page letter to the Applicant. The reasons for the Decision are found in the accompanying Global Case Management System [GCMS] notes.

[11] The letter indicates the Officer interviewed the Applicant on November 5, 2019 with the assistance of a translator and the Applicant did not indicate any difficulty in understanding the translator or having the translator understand the Applicant.

[12] The GCMS Notes indicate the Officer concluded that the Applicant's evidence was not credible based on the following inconsistent or conflicting statements made during the interview:

1. Whether or not the Applicant's grandmother was killed or still alive;
2. Who was with the Applicant in the house when they were attacked;
3. Whether the Applicant fled alone or with other people after the attack; and,

4. The amount of time that passed between the attack and when the Applicant decided to run away.

[13] Given these inconsistencies and conflicting statements, the Officer was not satisfied the Applicant was a member of any of the prescribed classes nor did he have a well-founded fear of persecution, or meet the requirements of the asylum class.

[14] The Officer was therefore not satisfied, as required by subsection 11(1) of the *Immigration and Refugee Protection Act, SC 2001 c27 [IRPA]*, that the Applicant was not inadmissible. The application was refused, as the Officer found the Applicant did not meet the requirements of the *IRPA*.

IV. **Issue**

[15] The parties agree, as do I, that the issue in this application is whether the Decision is reasonable.

[16] The Applicant submits the credibility findings made by the Officer were unreasonable as they were made without regard to the substance of the relevant evidence before the Officer.

[17] Each of the four statements listed above will be considered in the analysis portion of this judgment and reasons.

V. Standard of Review

[18] The Supreme Court of Canada has established that when conducting judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness:

Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 [*Vavilov*] at para 23.

While this presumption is rebuttable, no exception to the presumption is present here.

[19] A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker. The reasonableness standard requires that a reviewing court defer to such a decision: *Vavilov* at para 85.

[20] To set a decision aside, a reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision: *Vavilov* at para 100.

VI. Analysis

A. *The CTR contains two different Schedule 2's*

[21] The following chart summarizes the differences between the two Schedule 2's in the CTR:

Schedule 2 (CTR at 20-24)	Schedule 2 (CTR at 39-46)
No signature, schedule dated 2018-06-12	Signature and schedule dated 2018-06-12

Schedule 2 (CTR at 20-24)	Schedule 2 (CTR at 39-46)
Answer to question 2A: “My mother sister and nephew fled after our home was attacked and I don’t know how or where they went.”	Answer to question 2A: “My mother, sister and two nephews fled after our home was attacked and I don’t know how or where they went.”
No additional narrative attached.	Additional narrative to question 1 attached.
No addendum regarding siblings’ names.	Addendum of sibling names in Somali for question 10.

[22] The only other difference between the two Schedules is the date of death of the Applicant’s father. The unsigned Schedule 2 says he died 1993-01-01; the signed Schedule 2 says he died 2012-12-01. The GCMS notes show that when questioned by the Officer, the Applicant said his father was killed in December 2012.

B. *The Applicant’s grandmother*

[23] The Officer raised with the Applicant the question of whether or not the Applicant’s grandmother was killed or still alive because at one point the Applicant said he didn’t know if she was alive or not.

[24] The GCMS notes state “Said: hasn’t spoken to grandma since attack, no word on what happened, don’t know if she is alive, later stated that she died, Sched 2 says she died due to lack of treatment afterwards.”

[25] The Applicant’s additional narrative, which is attached only to the signed Schedule 2, provides full details concerning the group of men entering the house and the Applicant’s decision to flee with his grandmother.

[26] The Applicant clearly stated in his narrative, and in his interview, that his Grandmother died of her injuries two days after they hid in the house of their father's friend.

[27] Had the Officer consulted the signed Schedule 2 they would have found no inconsistency between the answer given by the Applicant during the interview and the text of the Applicant's Schedule 2.

C. *Who was with the Applicant in the house when they were attacked*

[28] The Officer queried who was living in the house at the time of the attack. The GCMS notes show the Applicant stated "me, mom, grandmother, sister, her two children. They are boys."

[29] The Officer zeroed in on whether there was 1 nephew or 2 living in the house.

[30] The GCMS notes indicate the Applicant said there were "two nephews in house and neighbours" while the Officer noted "Sched 2 says 1 nephew and no neighbors (sic)."

[31] The signed Schedule 2 states there were two nephews.

[32] The unsigned Schedule 2 states the Applicant his mother, sister and nephew fled after the house was attacked.

[33] It is clear from the foregoing that the Officer reached the conclusion that the Applicant's answers were inconsistent on this issue because only the unsigned Schedule 2 was considered. Had the signed Schedule 2 been considered, there was no inconsistency as to how many people were in the house.

[34] The Officer's conclusion that there was an inconsistency in the Applicant's evidence of who was in the house was unreasonable as it is not based on the evidence in the record.

D. *Whether the Applicant fled alone or with other people after the attack*

[35] The GCMS notes state the Applicant said "everyone fled alone, later said fled with grandmother". The Applicant's response was "I meant apart from mother and sister."

[36] The Applicant submits that upon a proper reading of the entire interview notes and the Applicant's Schedule 2 the Applicant's answers are substantially consistent.

[37] The Respondent submits that the Applicant's explanation for the inconsistency is possible but it is not the only reasonable explanation.

[38] The Applicant's additional narrative in signed Schedule 2 states "Each one of us ran to one direction, I took my grandmother and tried running as fast out of the house as we could."

[39] As I have already found, it is clear that the Applicant's narrative states he and his grandmother left the house together.

[40] Regarding the other family members, the GCMS notes record the Applicant said “We lost our father, we separated and ran away individually. Then I fled Somalia.”

[41] From a review of the underlying record, I am able to conclude the evidence supports the finding that the Applicant and his grandmother fled the house together. I am unable to conclude whether the others fled together with the Applicant or individually. Therefore, I defer to the Officer’s finding that the Applicant was not credible regarding how the others fled the house.

E. *The amount of time that passed between the attack and when the Applicant decided to run away.*

[42] The GCMS notes show the following interaction between the Officer and the Applicant:

Said: 4 days passed between attack and flight, later said one week.

Response: The four days, it was the time I fled from Somalia to Ethiopia.

[43] The Applicant’s narrative in both the unsigned and signed Schedule 2 states: “Yusuf Osman facilitated for me to travel, he took (sic) in his small bus that he was hired to go to Beledweyne. He took me there and than (sic) connected me to another driver and that driver charged me \$150 to get to Jigjiga. It took us all together (sic) 4 days to get from Mogadisho to JigJiga.”

[44] The Officer did not refer to this narrative. It is consistent with the interview response the Applicant gave and there is no explanation by the Officer as to why an inconsistency was found.

[45] I find the Officer's conclusion that there was an inconsistency with respect to this evidence is unreasonable as it lacks justification, transparency and intelligibility when the underlying record is taken into account.

VII. **Conclusion**

[46] The Officer made four negative credibility findings against the Applicant. I have found three of those four to be unreasonable, as they are not supported by the underlying record. As a result, the Decision is flawed. The one negative credibility finding that is not clearly contradicted is not sufficient, on its own, to support the outcome.

[47] I find the Applicant has met his burden to show the Decision is unreasonable. The shortcomings in the Decision are more than merely superficial or peripheral to the merits of the decision. They are more than a minor misstep. They are the reasons provided by the Officer for denying the Applicant's application based on his lack of credibility. By not considering the signed Schedule 2, the reasons for the Officer's credibility findings are not justified, transparent or intelligible.

[48] For the foregoing reasons, I find the Decision is unreasonable.

[49] This application is granted.

[50] The Decision is set aside and this matter is returned for redetermination by another Officer.

[51] There is no question for certification on these facts.

JUDGMENT IN IMM-43-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and the Decision is set aside.
This matter is remitted for redetermination by another Officer.
2. There is no serious question of general importance for consideration.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-43-20

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MINISTER OF CITIZENSHIP AND IMMIGRATION

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