

Federal Court



Cour fédérale

**Date: 20230531**

**Docket: IMM-3808-22**

**Citation: 2023 FC 760**

**Ottawa, Ontario, May 31, 2023**

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

**BETWEEN:**

**FAHMO AHMAD FARAH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION CANADA**

**Respondent**

**JUDGMENT AND REASONS**

[1] Under review is a decision of the Refugee Appeal Division [RAD] affirming the finding of the Refugee Protection Division [RPD] that the Applicant failed to establish her identity on the balance of probabilities. As a result, her application for protection was dismissed.

[2] I find the RAD unreasonably assessed the evidence of identity that was submitted. Its decision must be set aside. This is not to suggest that there are not questions concerning her

account of her arrival in Canada; however, those questions ought not to have been so much the focus of the decision on identity.

## **Background**

[3] The Applicant's narrative is that she faces a well-founded fear of persecution in Somalia. She claims that her father was killed by members of Al Shabaab in May 2018, as he was perceived to be supporting the government through his work as a mechanic. The Applicant later learned that her partner's brother was responsible for killing her father.

[4] With the help of a friend, she says that she obtained a passport and National ID card (both issued on July 26, 2018) and travelled to Kenya in November 2018. In Kenya, the Applicant hired an agent who helped her travel to Canada with a fraudulent Danish passport which she reported on her Basis of Claim was in the name Khadija Abdalla Said. She travelled with the agent to Canada posing as his 14-year-old daughter. She arrived in Toronto on February 16, 2020, and made a refugee claim on February 26, 2020.

[5] The Minister intervened in the Applicant's refugee claim based on credibility and identity. The Minister provided evidence based on an Integrated Customs Enforcement System [ICES] search. No one by the name Khadija Abdalla Said or under the Applicant's name in her claim had entered Canada between January 1, 2018 and August 17, 2020.

[6] The RPD rejected her claim, finding that she had not established her claimed identity.

The RAD characterized the RPD's findings, with which it agreed, as follows:

... the RPD found that the Somali passport and National ID card she provided were unreliable, as the objective country condition evidence provides that the Somali passport is not a reliable identity document; she provided little detail regarding how she obtained these documents or how she had them sent to Canada; she had no identity documentation to support her application as the objective country condition evidence suggests is required; and because there were irregularities in the Kenyan visa in the passport. Further, she claimed that she travelled to Canada under a false Danish passport. The Minister intervened in her claim by providing evidence that there was no record of anyone entering Canada under the name she provided to authorities. The RPD also found that her other identity evidence was insufficient to establish her claimed identity and nationality.

### **Issue**

[7] The only issue before this Court is whether the RAD's decision to dismiss the Applicant's appeal regarding her identity is reasonable.

### **Analysis**

[8] As noted above, the RAD's conclusion that the Applicant had failed to establish her identity is based on credibility issues arising from evidence relating to the Applicant's claimed travel to Canada, and her passport and National ID card not being reliable documents.

[9] As evidence of identity the Applicant provided the following:

- A purported original Somali passport;
- A purported original Somali ID card;
- A notarized letter from the man who assisted her to obtain the Somali passport and ID card, together with a copy of his Somali passport and ID card;

- A letter of identity from Loyan Foundation, a Somali community organization in Toronto, stating that the Applicant is a citizen of Somalia and a member of the minor Tumaal clan; and
- *Viva voce* testimony of her identity witness.

[10] The RAD begins its analysis of identity by noting that the Applicant “claims that she entered Canada on February 16, 2020, under a false Danish passport in the name of Khadija Abdalla Said, but there is no record of her entry, and she provides no documentation to corroborate her claimed travel to Canada such as boarding passes.”

[11] The RAD then considers the passport and ID card and states: “[T]hese documents should be given limited weight, as the objective country condition evidence indicates that Somali passports are not viewed as reliable identity documents by Canadian and other authorities.” Moreover, the RAD find that the Applicant provided no reliable identity documentation in support of her Somali passport application, and provided little detail regarding how these documents were originally obtained or sent to her in Canada.

[12] Lastly, the RAD concludes “that her other identity evidence is insufficiently reliable to establish her claimed identity.”

*Evidence of Arrival in Canada*

[13] The RAD finds that the Applicant's "account of how she travelled to Canada was not credible and that this diminished her credibility, as it placed doubt on where she has been and where she originates from."

[14] I accept that a finding that she lacks credibility in this regard may have an impact on her personal evidence that she is a citizen of Somalia. But it is not conclusive. If that were the only evidence she presented, then her application for protection could reasonably be rejected on the basis that she had failed to establish her identity on the balance of probabilities. However, that was not the only evidence before the RAD.

[15] In this application for review, the Applicant submits that the evidence relating to her arrival in Canada is peripheral to the issue of identity and ought not to have been given the significance it was by the RAD. In this regard, she points to the decision of Justice Martineau in *Rasheed v Canada (Minister of Citizenship and Immigration)*, 2004 FC 587 [*Rasheed*].

[16] The applicant in *Rasheed* entered Canada with a false British passport under another name. Upon his arrival in Canada on January 19, 2001, the authorities identified his passport as being false. When confronted with this on arrival, he told an immigration officer that he was Mohammad Khalid. He subsequently completed his Personal Information Form under the name Sohail Rasheed. At the hearing, the applicant indicated that Sohail Rasheed is his correct name. He provided the RPD with identification papers, including a birth certificate and school

certificate under the name Sohail Rasheed. He also submitted a four page photocopy of a Pakistani passport showing a picture of him under the name Sohail Rasheed, explaining that he was unable to contact his friend, who had his passport, and all he could find was the photocopy. He stated that he could not find his original National Identity Card [NIC], but did provide a duplicate copy that was found to be probably authentic by Citizenship and Immigration Canada.

[17] The RPD found that he had failed to establish his identity. It held that there was no reasonable explanation for him misleading the authorities upon his arrival in Canada; he had only obtained a duplicate of the NIC approximately two months before his refugee hearing, leading the Board to question how the card was obtained, since the documentary evidence shows NICs are delivered only in person to male applicants; and the genuineness of the birth certificate and school certificate were questionable because false or forged documents are easily obtained upon payment of money.

[18] In setting aside the finding of the RPD, this Court noted at para 18 that “whether a person has told the truth about his or her travel documents has little direct bearing on whether the person is indeed a refugee (*Attakora v. Canada (Minister of Employment and Immigration)*, [1989] F.C.J. No. 444 (C.A) (QL); and *Takhar v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 240 at para. 14 (T.D.) (QL).”

[19] In this case, the finding that the Applicant’s evidence regarding how she made her way to Canada raised credibility concerns may well go to the merits of her claim and to her statement as

to her identity but here she presented identity documents that, if accepted, support her claim to Somalian identity.

### *Identity Documents*

[20] In *Rasheed*, Justice Martineau also observed at para 19 that the applicant had provided documents that did establish his identity as Sohail Rasheed and, absent evidence to the contrary, they ought to have been accepted because “the basic rule in Canadian law is that foreign documents (whether they establish the identity or not of a claimant) purporting to be issued by a competent foreign public officer should be accepted as evidence of their content unless the Board has some valid reason to doubt of their authenticity.” In this regard, he relies on the following at para 20:

In *Ramalingam v. Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 7241 (FC), [1998] F.C.J. No.10 (T.D.) (QL), Dubé J. notes at paragraphs 5 and 6:

(...) Moreover, identity documents issued by a foreign government are presumed to be valid unless evidence is produced to prove otherwise: see Gur, Jorge P. (1971), 1 I.A.C. 384 (I.A.B.)<sup>1</sup>. In that Immigration Appeal Board decision, the Chairman asked the following question at page 391:

The question here is, who can question the validity of an act of state and who, having questioned it, has the burden of proof as to its validity, and what proof is required?

He provided the right answer at page 392, as follows:

Although there is almost no jurisprudence to be found bearing directly on the point, it must be held that an act of state - a passport or a certificate of identity - is *prima facie* valid. The recognition of the sovereignty of a foreign state over its citizens or

nationals and the comity of nations make any other finding untenable. The maxim *omnia praesumuntur rite et solemniter esse acta* applies with particular force here, establishing a rebuttable presumption of validity.

[21] Applying this principle, one asks what other evidence was before the RAD that proved that the Applicant's identity documents were not valid.

[22] The RAD, like the RPD, observed that false and fraudulent documents are known to be plentiful in Somalia and stated that these documents cannot be used in Canada to establish identity, saying the following:

Based on the country condition evidence, I agree with the RPD's finding that Somali passports are not generally viewed as reliable identity documents. As cited by the RPD, evidence from the National Documentation Package (NDP) for Somalia states that:

The US Country Reports 2014 indicates that "[i]n view of widespread passport fraud, many foreign governments did not recognize Somali passports as valid travel documents" (US 25 June 2015, 22). According to the US Reciprocity Schedule for Somalia, "Somali passports are not valid for visa-issuance purposes" (ibid. n.d.). With regard to the eligibility of Somalis to enter Canada as tourists, Citizenship and Immigration Canada notes on their website that "passports supposedly issued by Somalia" are "not considered reliable" and therefore cannot be utilized for entry into Canada (Canada n.d.). In correspondence with the Research Directorate, an official at Global Affairs Canada similarly reported that the Government of Canada "does not recognize [Somali passports] as there are no credible or verifiable registrars for issuance of primary or seed documents (birth or citizenship records)" (ibid. 5 Aug. 2015). The lawyer indicated that is still uncertain whether or not the Somali passport will be accepted internationally "due to questions of security, transparency, monitoring, and



evaluation of the documents' issuance" (24 July 2015). [emphasis added]

[23] This reasoning raises a number of concerns. The most obvious is that the passages cited refer to these being unacceptable as "travel documents" not as identity documents. More importantly, the RAD did not consider these documents as *prima facie* evidence of nationality. Rather, the RAD appears to place the burden on the Applicant to establish that they are genuine.

[24] The Applicant notes that the National Documentation Package describes the characteristics of a valid ID card, as including the following features, which match the ID card the Applicant produced:

- Yellow background with a blue seal of the Somali Republic, and pale green/pink ribbons which appear at the top and bottom of the card.
- It is made of plastic and has dimensions similar to those of a credit card;
- Information on the surface of the card includes:
  - *L. Qaranka* (National Identification Number)
  - *Magaca* (Full Name)
  - *Taarlikhda Dhalashada* (Date and Place of Birth)
  - *Taariikhda La Bixiyay* (Date and Place of Issuance)
  - *Taariikhda uu Dhacayo* (Date of Expiration)
  - *Lab Dheddig* (Gender);
- There is a 14-digit national identity number: the first number is random, the next two numbers are the individual's year of birth (1991), the next four numbers are the individual's month (07) and day of birth (01), and the remaining seven numbers are randomly assigned (ibid.).

[25] The RAD should have, but did not, grapple with this evidence. The features of the Applicant's ID card are consistent with a genuine ID card and there is no evidence on the face of the document to suggest that it is fraudulent or improperly obtained.

[26] The Applicant notes:

The same is true of the Somali passport. There is nothing on the face of the Somali passport found at page 104 of the Applicant's record to suggest that it is fraudulent or improperly obtained.

[27] The Applicant cites and relies on the observation of Justice Strickland in *Jele v Canada (Minister of Immigration, Refugees and Citizenship)*, 2017 FC 24, at para 45:

The RPD cannot reject the authenticity of a document in the absence of some evidence that indicates that the document is not genuine, such as irregularities on the face of the document itself (*Jacques v Canada (Citizenship and Immigration)*, 2010 FC 423 at para 16), or the document differs from what an authentic example should look like (*Liu* at paras 22-24). [emphasis added]

[28] In this case, it appears to the Court that the RAD gave little weight to these documents because it found that the Applicant did not provide a birth certificate in order to obtain the passport and ID card whereas "the objective country condition evidence indicates that a birth certificate is required to apply for a Somali passport." It rejected her evidence that an elder or guarantor can vouch for an applicant's identity as the evidence cited "discusses historical practices where this might have taken place."

[29] In stating these as facts, the RAD fails to grapple with the evidence in the National Documentation Package that birth certificates are "rarely issued" in Somalia, and "in principle, it

is only issued if the child is born in a hospital.” There is no evidence that the Applicant had a birth certificate and she testified that she never had one. Moreover, the RAD again fails meaningfully to address the contrary evidence as to how these identity documents can be obtained. There is evidence in the record that a guarantor may be able to secure identity documents as so few citizens have birth certificates. While not conclusive of that fact, it had to be addressed by the RAD.

*Other Evidence*

[30] The finding of the RAD is that “her other identity evidence is insufficiently reliable to establish her claimed identity.” This includes a notarized statement from a Somali national who attests as follows:

2) That I am a family friend of Fahmo Ahmed Farah, and that I know her very well, and that she belongs to a Tumaal clan and hence a Somali citizen. I confirm that Tumaal clan is a minority clan.

3) I was once an employee of the Ministry of Energy and Water Resource, and I knew Fahmo's father, Ahmed Farah Muse. He was a contractor who fixed and maintained vehicles operated by the Ministry.

4) I knew her father in person, and I met Fahmo when her father invited me to their house.

5) That I confirm that AI-Shabab targeted people who worked with the government, and he was targeted. I too was once targeted but survived.

6) That when Fahmo's father was killed, she came to me and asked for help. She needed for Somali passport. I contacted a friend who helped Fahmo secure a Somali passport. [emphasis added]

[31] The RAD discounts this evidence stating that “it provides little detail such as when he met the Appellant and how he assisted her to obtain her Somali passport.” To the contrary, the affiant states that he met the Applicant’s father when they both worked at the Ministry. While a date is not specified, it clearly was at a time when the Applicant’s father was alive. He also attests that he contacted a friend who helped secure her identity documents. Regardless, he specifically attests that she is a Somali citizen and that he met and knew her in Somalia. While the RAD is entitled to assign weight to the evidence, it is unreasonable to assign little weight to an affiant who attests that he met the Applicant in Somalia and knows her to be Somali.

### **Conclusion**

[32] The Board failed to address the evidence that did not support its conclusion. The decision respecting identity is critical to an applicant and the RAD must examine and weigh all of the evidence that directly goes to that issue. It did not do so here and the decision will be set aside.

[33] The parties proposed no question to be certified.

**JUDGMENT in IMM-3808-22**

**THIS COURT'S JUDGMENT is that** this application is granted; the decision under review is set aside; the Applicant's appeal of the decision of the Refugee Protection Division is to be determined by a differently constituted panel of the Refugee Appeal Division; and no question is certified.

"Russel W. Zinn"

---

Judge

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

**DOCKET:** IMM-3808-22

**STYLE OF CAUSE:** FAHMO AHMAD FARAH v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION CANADA

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** MAY 25, 2023

**JUDGMENT AND REASONS:** ZINN J.

**DATED:** MAY 31, 2023

**APPEARANCES:**

Tina Hlimi FOR THE APPLICANT

Brad Gotkin FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Tina Hlimi FOR THE APPLICANT  
Barrister and Solicitor  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario