

Federal Court



Cour fédérale

Date: 20240827

Docket: IMM-12899-22

Citation: 2024 FC 1332

Ottawa, Ontario, August 27, 2024

PRESENT: Mr. Justice Norris

BETWEEN:

**ABDALLAH UMAR ALBATES
(AKA ABDALLAH OMAR SALIM
ABDALLA)**

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant claims to be Abdallah Umar Albates, a citizen of Somalia. After entering Canada on what he contends was a fraudulently obtained passport, the applicant submitted a claim for refugee protection in January 2017. The Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada allowed the claim in May 2017.

[2] In October 2020, the Minister of Public Safety and Emergency Preparedness applied to the RPD for an order under section 109 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*) vacating the decision allowing the applicant's claim for refugee protection. The Minister contended that in fact the applicant is Abdalla Omar Salim Abdalla, a citizen of Kenya, and not Abdallah Umar Albates, a citizen of Somalia. In a decision dated November 24, 2022, the RPD allowed the Minister's application and vacated the decision granting the applicant refugee protection.

[3] The applicant now applies for judicial review of the RPD's decision under subsection 72(1) of the *IRPA*. He contends that the decision was rendered in breach of the requirements of procedural fairness and that it is unreasonable. As I will explain in the reasons that follow, I do not agree that the decision is flawed in either of these respects. This application will, therefore be dismissed.

[4] The applicable standards of review are not in dispute. With respect to the grounds for review relating to procedural fairness, strictly speaking, no standard of review is implicated. Rather, I must determine whether the applicant knew the case he had to meet before the RPD and had a full and fair opportunity to do so (*Canadian Pacific Railway Co v Canada (Attorney General)*, 2018 FCA 69 at para 56). On the other hand, the substance of the RPD's decision is reviewed on a reasonableness standard. 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" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). To establish that the decision should be set aside because it is

unreasonable, the applicant must demonstrate 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” (*Vavilov*, at para 100).

[5] When he sought refugee protection, the applicant claimed that he was born in Somalia in January 1996. He stated that he and his mother had fled to Kenya in late 1998 after his father was killed by robbers in the family home. The applicant’s mother was pregnant at the time. The applicant’s brother was born in May 1999. The family lived in Kenya without legal status.

[6] As a result of deteriorating conditions in Kenya, the applicant’s mother paid for an agent to assist the applicant to leave Kenya for Canada. The applicant claimed to have entered Canada on January 6, 2017, using a fraudulent passport that had been supplied by the agent. The applicant stated in the narrative he provided in support of his refugee claim that he did not know what country had issued the passport. The applicant also stated that the agent had assisted him at border control, answering all the questions while the applicant just kept quiet. The applicant then submitted his claim for protection a few weeks later. In that claim, the applicant denied ever having applied for a visa to come to Canada.

[7] In support of the application to vacate the applicant’s refugee protection, the Minister produced the following evidence:

- A copy of a Kenyan passport naming the holder as Abdalla Omar Salim Abdalla, born July 28, 1994, in Mombasa, Kenya (“the Abdalla passport”). This passport was issued on June 28, 2013, and was valid until June 28, 2023.

- Global Case Management System (GCMS) records showing that the Abdalla passport was used in September 2013 to apply for a study permit to attend Centennial College. The study permit application was refused.
- GCMS records showing that this passport was used again in 2016 to apply for a study permit to attend the University of New Brunswick. The study permit application was approved.
- A medical examination form completed in Nairobi, Kenya, on December 2, 2016 (with accompanying photograph of the party who was examined) in connection with the study permit application.
- A Canada Border Services Agency record confirming that Kenyan national Abdalla Omar Salim Abdalla (DOB 1994/07/28) had entered Canada at Pearson International Airport on December 21, 2016.
- Confirmation from the University of New Brunswick that this individual was a “no show” despite the issuance of the study permit.

[8] At the proceeding to vacate his refugee protection, the applicant admitted that the study permit applications had been submitted on his behalf; that he attended the medical assessment in Nairobi on December 2, 2016; that his photograph was taken at this time; that he entered Canada on December 21, 2016; that he was questioned by a Border Services Officer; and that he was allowed to enter Canada on a study permit. The applicant also admitted that the Abdalla passport had been used in connection with all of the foregoing. The applicant contended, however, that

that passport was fraudulent and that it does not represent his true identity. Rather, his true identity is what he stated in his refugee claim: Abdallah Umar Albates, a citizen of Somalia.

[9] In addition to his own testimony, the applicant relied on the evidence of his mother, Jameela Binhariz. The applicant's mother testified that both she and the applicant were born on the island of Chula, Somalia; that the applicant's name is Abdallah Umar Albates; that they are members of the Bajuni ethnic group; that they fled Somalia for Mombasa in 1998 after her husband was killed; that neither she nor her two sons ever obtained legal status in Kenya; and that she paid an agent to help the applicant leave Kenya for Canada. The applicant also relied on a letter dated June 1, 2021, from Bakari Abdi Bakari, an individual who works with the Somali refugee community in Mombasa. In material part, the letter states (in translation from Bajuni to English):

I would like to inform you that I know Abdallah Albates very well, him, his late father Umar Ali Bates and mother Jameela Binhariz, all of them are residence [*sic*] of Chula Island, located near Kismayo town, Somalia. His father had a business of selling food in a store at Chula Island, then robbers from Kismayo came and grabbed everything away and finally killed him in 1998, and his mother is still alive in Mombasa, Kenya.

Therefore, whoever receives this letter, then this is absolute proof of this family of the people we have mentioned, that they are natives of Chula Island in Somalia.

[10] On the application to vacate the applicant's refugee protection, the Minister alleged that the applicant had misrepresented his identity (including his nationality) when he sought refugee protection in 2017. The RPD concluded that the Minister's allegation was established. The RPD found that the applicant and Abdalla Omar Salim Abdalla "are one and the same person," that on

the whole of the evidence it was satisfied that the Abdalla passport is genuine, and that the applicant had therefore misrepresented his identity when he sought refugee protection.

[11] The applicant contends that the RPD's decision is unreasonable and that it was reached contrary to the requirements of procedural fairness. As I have already stated, the applicant has not persuaded me that the decision is flawed in either of these ways.

[12] The central issue before the RPD was whether the Abdalla passport is genuine. The RPD found that there were several indicia pointing to the genuineness of the passport, including that it had been accepted as genuine by the Canadian visa office (twice), by the office that conducted the December 2016 medical assessment, and by Canadian border control when the applicant was issued a study permit and admitted to Canada on December 21, 2016. While he admitted to having used the Abdalla passport all these times, the applicant maintained that it was obtained by the agent and that it was fraudulent. The RPD rejected the applicant's evidence, finding that he "has demonstrated his word is not reliable and the presumption of truthfulness has been rebutted." The applicant does not contest this finding on review.

[13] The RPD also considered the other evidence on which the applicant relied in seeking to establish that he is Abdallah Umar Albates, a citizen of Somalia, and not Abdalla Omar Salim Abdalla, a citizen of Kenya. The RPD concluded that the applicant had not presented any "credible opposing evidence to refute the Minister's evidence." As a result, the applicant failed to rebut the presumption of Kenyan nationality arising from his possession and use of the Abdalla passport.

[14] The applicant contends that it was unfair of the RPD to give little weight to the letter from Bakari Abdi Bakari because his father's name is misspelled without first giving him notice that this was a concern and an opportunity to respond. I do not agree. The Bakari letter identifies the applicant's father as Umar Ali Bates but elsewhere in the record (including in documents completed by the applicant) his name is Umar Albates. This discrepancy was raised by the Minister in post-hearing written submissions. The applicant filed responding written submissions but did not address the discrepancy. He cannot complain now that he did not know this might be an issue.

[15] In any event, the RPD also gave the letter little weight because it found that it had little probative value on the issue of the applicant's identity. As the RPD put it: "The panel does not find that this letter goes directly to the Respondent's identity and actual place of birth." The applicant contends that the RPD's assessment is unreasonable but I am unable to agree. The material parts of the letter are set out fully in paragraph 9, above. They are nothing but bald assertions. There is no indication of whether these are matters of first-hand knowledge on the part of the author of the letter or something else. Contrary to the applicant's submission, the RPD's assessment of the weight the letter deserved is altogether reasonable.

[16] The applicant also submits that it was both unfair and unreasonable for the RPD to observe that he "has had several years to produce and obtain reliable evidence from the Kenyan authorities" to demonstrate that the Abdalla passport is not genuine and that he is not a citizen of Kenya yet he has failed to do so. I do not agree.

[17] The applicant had known from the outset of the application to vacate his refugee protection that the Minister was contending that the Abdalla passport is genuine. The issue of the genuineness of the passport and what this entailed was underscored in the Minister's post-hearing written submissions. The Minister noted that in certain circumstances it may be possible to rebut the presumption of nationality arising from possession and use of a passport by obtaining information from the authority that issued the passport confirming that the party named in it is not a national of that country; however, the applicant had not done this. The applicant did not suggest in his responding written submissions that he had been taken by surprise by the Minister's argument or that, as a result, he had been denied the opportunity to present evidence to address the point. It is too late to allege a breach of procedural fairness now. In any event, in commenting on this absence of evidence, the RPD was simply observing that, in attempting to respond to the Minister's case, the applicant had chosen not to seek out evidence from Kenyan authorities that could have assisted him. Instead, he had relied on other evidence to establish his identity. The RPD reasonably found this other evidence wanting in its own right.

[18] Among this other evidence was the testimony of the applicant's mother that the applicant was born in Somalia, not Kenya. The RPD gave this evidence little weight for two reasons: first, the applicant's mother testified the applicant had never been to Nairobi despite the fact that he went there for a medical assessment shortly before leaving for Canada; and second, she is "not an unbiased source as the parent of the respondent and, as such, has an incentive to be supportive and helpful rather than impartial." A witness's interest in the outcome of a matter can be a relevant consideration when weighing that witness's evidence (*Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 at para 27). Nevertheless, I agree with the applicant that it is

unreasonable to think that the evidence of a parent is inherently unreliable simply because of the parental relationship. Here, however, this was not the only reason the RPD discounted the testimony of the applicant's mother. As well, the applicant submits that in fact his mother only testified that she did not know whether he had gone to Nairobi in connection with applying for the study permit or not. The RPD could certainly have explained more fully why it did not find the applicant's mother's testimony persuasive. However, when this evidence is considered in the context of the evidence as a whole, the RPD's overall conclusion that it added little support to the applicant's case concerning his identity is not unreasonable.

[19] Finally, the applicant has not established any basis to interfere with the RPD's conclusion under subsection 109(2) of the *IRPA* that, notwithstanding the applicant's misrepresentation of his identity, other evidence considered at the time of the first determination was insufficient to justify refugee protection. To have reached subsection 109(2), the RPD had to be satisfied that the applicant had misrepresented his identity (including his nationality). The RPD stated: "The panel finds that the material facts which the Respondent [now, the applicant] has misrepresented and withheld are so fundamental as to call into question his identity and citizenship, and the credibility of the Respondent's entire account for fearing persecution in Somalia, such that there cannot be any remaining evidence to justify refugee protection." Given that identity is at "the very core of every refugee claim" (*Hassan v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 459 at para 27) and that failure to establish identity is fatal to a claim for refugee protection (*Edobor v Canada (Citizenship and Immigration)*, 2019 FC 1064 at para 8), the RPD reasonably concluded that nothing of the applicant's claim remained that could justify refugee protection.

[20] For these reasons, the application for judicial review will be dismissed.

[21] The parties did not propose any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-12899-22

THIS COURT'S JUDGMENT is that

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

“John Norris”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-12899-22

STYLE OF CAUSE: ABDALLAH UMAR ALBATES (AKA ABDALLAH OMAR SALIM ABDALLA) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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JUDGMENT AND REASONS: NORRIS J.

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