

Federal Court



Cour fédérale

Date: 20161230

Docket: IMM-1545-16

Citation: 2016 FC 1419

Ottawa, Ontario, December 30, 2016

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

**HUBI MOHAMED
HAMZE YUSUF
KHALID MAHBUUB
HUDAYFI AHMED
AHLAM AHMED**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Hubi Mohammed, the principal applicant, is the mother of four minor children, the other applicants named in this application. Ms. Mohamed claims she is a member of the Mahdiban clan and that she is a citizen of Somalia who has fled as she fears the terrorist group *Al Shabaab*.

[2] The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada denied the applicants' claim for protection on the basis that they had failed to establish their personal and national identities. They appealed the negative decision to the Refugee Appeal Division [RAD] and sought to place new evidence before the RAD to support the identity claim. The RAD determined that the proposed new evidence did not satisfy the requirements of section 110(4) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, [IRPA] and was therefore inadmissible. The RAD also denied a request for an oral hearing and dismissed the appeal.

[3] The applicants seek to set aside the RAD's decision and ask this Court to return the matter for redetermination by a differently constituted panel. In written submissions the applicants argued that the RAD erred: (1) by failing to consider and address the errors the applicants alleged the RPD had made in considering their claim contrary to its obligation to conduct a fresh assessment of the claim; (2) by deferring to the RPD's credibility findings; and (3) by refusing to admit the applicants' new evidence.

[4] This application raises the following issues:

- A. Was the RAD decision not to admit new evidence unreasonable?
- B. Was it unreasonable for the RAD to defer to the RPD's credibility findings and not address each of the points raised on appeal?

[5] I am of the view that the RAD's decision was reasonable. The application is dismissed for the reasons that follow.

II. Standard of Review

[6] The applicants rely on *Chamberlain v Canada (Attorney General)*, 2012 FC 1027 [*Chamberlain*] to argue that the RAD is owed no deference in respect of its failure to address the alleged errors raised on appeal. I disagree. *Chamberlain* involves the review of an adjudicator's decision under the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2), where it was alleged the adjudicator had failed to address an issue raised in a grievance. The applicant in that case advanced the position that a correctness standard of review applied. After undertaking a detailed review of the applicable statutory framework and the relevant jurisprudence, Justice Mary Gleason concluded that a reasonableness standard of review applied (*Chamberlain* at paras 45 and 46).

[7] The statutory framework applicable in *Chamberlain* is not applicable here. However, the conclusion that the reasonableness standard of review applies is consistent with the jurisprudence relevant to the review of decisions of the RAD. The RAD's determination of questions relating to the admission of new evidence, findings relating to identity and credibility and the application of a legal test or standard are to be reviewed on a reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Singh*, 2016 FCA 96 [*Singh FCA*] at para 29; *Dunsmuir v New Brunswick*, [2008] 1 SCR 190 at para 47 [*Dunsmuir*]).

III. Analysis

A. *Was the RAD decision not to admit new evidence unreasonable?*

[8] The applicants argue that in considering the new evidence the RAD failed to address Ms. Mohamed's explanation for the new evidence – that she thought she had placed sufficient identity evidence before the RPD. Instead the applicants argue the RAD focused on the availability of the evidence thereby rendering the decision unreasonable. I disagree.

[9] The RAD undertook a review of section 110(4) of the IRPA and the jurisprudence in considering the new evidence. The RAD noted that section 110(4) provides that new evidence will only be admitted where that evidence: (1) arose after the rejection of the claim; (2) was not reasonably available to the applicant; or (3) was reasonably available to the applicant but he/she could not reasonably have been expected in the circumstances to have presented the evidence. The RAD also noted that to be admissible, new evidence must also be credible, material and relevant. While the RAD did not have the benefit of the recent Federal Court of Appeal decision in *Singh*, the principles that guided its analysis in this case accord with that decision (*Singh FCA* at paras 54 and 65).

[10] The RAD then considered each piece of new evidence. Contrary to the applicants' submissions, the RAD acknowledged the explanation that the applicants felt one identity witness would be sufficient before the RPD, but rejected this as simply unreasonable.

[11] It is trite to note that a claimant has the onus of establishing identity on the balance of probabilities (*Keita v Canada (Citizenship and Immigration)*, 2001 FCT 187 at para 3). The RAD noted that the applicants were represented by experienced counsel and also noted that at least some of the new evidence, was readily available to the applicants. The RAD also identified concerns about the materiality and the relevance of the new evidence provided by Ms. Mohamed's mother.

[12] New evidence is not to be admitted "... to complete a deficient record submitted before the RPD" (*Singh FCA* at para 54). It must meet the newness requirements of section 110(4) of the IRPA. In this case, the RAD did not fail to "come to grips with the explanation provided" rather the RAD determined that the new evidence simply did not meet the requirement of the IRPA and was therefore inadmissible. This conclusion was based on a detailed assessment of the evidence and clearly articulated reasons. The decision was reasonably available to the RAD.

B. *Was it unreasonable for the RAD to defer to the RPD's credibility findings and not address each of the points raised on appeal?*

[13] The applicants rely on *Chamberlain* to argue that the RAD erred in failing to address the arguments raised by them. Again, I disagree.

[14] The RAD's denial is based on the failure of Ms. Mohamed to establish who she is and where she is from. As noted above, the claimant has the onus of establishing identity. The RPD and the RAD both recognized this burden. The RPD and the RAD were alive to the challenges of obtaining identity documents from Somalia and assessed the identity evidence the applicants

placed before the RPD. The RAD in turn recognized that its role was to conduct its own assessment of the evidence but that it was in a position to recognize and respect the credibility findings of the RPD where it had a particular advantage in reaching these conclusions. This approach accords with the manner in which the RAD is to conduct an appeal as set out by the Federal Court of Appeal in *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 9.

[15] The RAD did not err in concluding that the RPD's credibility findings were supported by the evidence and affording deference to those findings.

[16] With respect to the issues advanced on appeal, it is evident that the RAD reviewed the identity evidence and the credibility concerns that the RPD identified. The RAD was not required to address every argument or issue raised on appeal (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

[17] In addressing the evidence of the identity witness, the applicants submit that the RAD mischaracterized or misunderstood the evidence when describing it as "inconsistent" with the evidence of Ms. Mohamed. Ms. Mohamed's evidence was that the witness had recognized her. This however, was not the witness's evidence. The witness instead testified that he did not recognize her when he saw her in Ethiopia. The evidence was not consistent and it was reasonable for the RAD to describe it as it did in the decision.

[18] Having independently considered the identity evidence placed before the RPD, the RAD reached the conclusion that the applicants had failed to establish their identity on a balance of

probabilities. Having reached this conclusion, the RAD was not required to consider arguments unrelated to the identity evidence (*Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319 at para 47 and *Singh v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 184 at para 7).

[19] The RAD addressed the applicants' arguments as they related to the identity evidence and reasonably demonstrated deference to the RPD's credibility findings.

IV. Conclusion

[20] I am of the opinion that the RAD's decision demonstrates the attributes of justifiability, transparency and intelligibility. It falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir* at para 47).

[21] The parties have not identified a question of general importance, and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1545-16

STYLE OF CAUSE: HUBI MOHAMED HAMZE YUSUF KHALID
MAHBUUB HUDAYFI AHMED AHLAM AHMED v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 27, 2016

JUDGMENT AND REASONS: GLEESON J.

DATED: DECEMBER 30, 2016

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