

Federal Court



Cour fédérale

Date: 20170412

Docket: IMM-4314-16

Citation: 2017 FC 360

Ottawa, Ontario, April 12, 2017

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

HASHIM FARAH ADAM

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision of the Refugee Appeal Division [RAD] dated September 22, 2016 [the Decision]. It confirmed a decision of the Refugee Protection Division [RPD] which said that the applicant is neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. This application is brought pursuant to subsection 72(1) of the IRPA.

I. Background

[2] The applicant is a citizen of Somalia. He alleges that between 2003 and 2007 he owned a computer shop with his brother in his home town of Bulo Burte. The customers of the business included members of the public as well as the regional government.

[3] The applicant said that he was assaulted and threatened by Al Shabaab in 2007. It demanded that he stop working for the government.

[4] The applicant's computer shop was attacked by Al Shabaab in October of 2007. The applicant alleges that he was shot and thereafter fled to Mogadishu. In November of 2007, he left Somalia and went to South Africa, where he applied for and was denied asylum. However, he was given work permits which allowed him to remain in that country.

[5] The applicant left South Africa in 2015 and travelled to the Brownsville, Texas border crossing. There he applied for asylum. He was interviewed by US authorities at the Port of Entry [POE] and a Credible Fear Interview was held [the CF Interview]. His claim was ultimately rejected and he then travelled to Canada where he made a refugee claim in March of 2016.

II. The RPD Decision

[6] The RPD concluded that the applicant had not owned a computer shop, had not worked for the government and had not been shot by Al Shabaab. The RPD found that the applicant was not credible for three reasons. First, and most importantly, he had no documentation and no

witnesses to show that he had ever owned and operated a computer business. The RPD rejected the applicant's explanation that he had no records because his business was conducted on a cash basis. The RPD relied on the National Documentation Package [NDP] for Somalia, which shows that mobile money transfer technology was commonly used. Second, there was a substantial inconsistency between his Basis of Claim [BOC] Form in which he said that he was treated in hospital after the shooting in 2007 and the notes of his CF Interview in which he said he did not go to the hospital. Third, the RPD did not find it plausible that Al Shabaab would threaten his mother with death and then not harm her when she refused to reveal his whereabouts.

[7] In his BOC Form and at the RPD hearing, the applicant stated that he feared Al Shabaab in part because he is Sufi and is therefore considered an infidel. However, he also testified that he had not experienced any past problems with Al Shabaab due to his religion. The RPD did not question or consider whether or not he is Sufi and did not address the possibility of future persecution on that ground. The RPD simply noted that there was no evidence that he had been targeted by Al Shabaab because of his religion. In my view, this treatment of the issue shows that the RPD accepted the applicant's identity as Sufi.

III. The RAD Decision

[8] The RAD concluded that it was reasonable to expect that the applicant would be able to provide documents to corroborate the ownership and operation of his computer business. The RAD acknowledged that the RPD's reliance on mobile money transfer technology was misplaced in that there was no evidence that it was available when the applicant was in business. Nevertheless, the RAD did not accept that the applicant dealt only in cash and concluded that he

would have used the Hawala Remittance System, particularly when dealing with the government. The RAD relied on documentary evidence to show that recipients of payments in the Hawala system would have had some form of identity documentation. However, I accept the applicant's submission that the RAD misunderstood Response to Information Request SOM10593.E and source document U4. Both state that once an identity code for the transaction is used and a payment is received, there is no ongoing record keeping. However, this error is not material because the problem was not that the applicant had no record of the payments his business received, the problem was that he had no evidence of any kind to show that his business existed.

[9] The RAD also identified inconsistencies in the evidence which had not been noted by the RPD and concluded that they further undermined the applicant's credibility. One of the inconsistencies related to the applicant's evidence about whether he is Sufi. At the POE he was asked "What is your religion? If Muslim, what area of Islam?" He answered, "Muslim, Sunni". In his CF Interview he was asked "What is your religion, if any" He replied "Muslim". However, in his BOC Form and oral evidence before the RPD he said that he is "Muslim, Sunni, Sufi". The RAD found these responses to be inconsistent and said that his failure to mention his Sufism in the US undermined his credibility.

[10] The RAD agreed with the RPD that the evidence that the applicant's mother had been threatened by Al Shabaab and unharmed was not credible.

[11] The applicant said that the RPD erred when it failed to assess his risk of future persecution as a Sufi. In dealing with this issue, the RAD concluded that the applicant was not

Sufi because he produced no corroborating documents and because he had not described himself as Sufi in his interviews with US authorities.

IV. The Issues

[12] The determinative issue is whether the RAD was required to give the applicant an opportunity to make submissions before it concluded that he is not Sufi.

V. Discussion and Conclusions

[13] In my view, there was no reason why the applicant would expect the RAD to question his identity as Sufi. His ground of appeal was predicated on his profile as a Sufi and his complaint was that the RPD had failed to assess his future risk of persecution as a Sufi at the hands of Al Shabaab.

[14] Since his identity as a Sufi was a new issue before the RAD, I have concluded that the RAD was required to give him notice that it had concerns about his Sufism.

VI. Certified Question for Appeal

[15] The applicant suggested a question in his memorandum of argument but it was withdrawn during the hearing. The Respondent did not pose a question.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is allowed. Paragraphs 50 to and including 56 of the Decision are set aside and only the issues of whether the applicant is Sufi and, if so, whether he faces future persecution by Al Shabaab for that reason are referred back to the RAD for reconsideration by another member.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4314-16

STYLE OF CAUSE: HASHIM FARAH ADAM v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 4, 2017

JUDGMENT AND REASONS: SIMPSON J.

DATED: APRIL 12, 2017

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