

Federal Court



Cour fédérale

**Date: 20180214**

**Docket: IMM-2705-17**

**Citation: 2018 FC 170**

**Toronto, Ontario, February 14, 2018**

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

**BETWEEN:**

**ABDIRAHMAN ISSE MOHAMUD**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicant, Abdirahman Isse Mohamud, alleges that he faces persecution in Somalia as a minority clan member. The Refugee Protection Division [RPD] rejected his refugee claim, finding that Mr. Mohamud had not established he was a Somalian citizen. It also found that Mr. Mohamud's claim had "no credible basis" under subsection 107(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. As a result of that finding, Mr. Mohamud is deprived of the right to appeal the RPD's decision to the Refugee Appeal Division.

[2] Mr. Mohamud now seeks judicial review by this Court. He submits that the RPD made erroneous findings of fact, as a result of which neither its identity conclusion nor finding of “no credible basis” can stand. These arguments trigger review on a reasonableness standard (*Mohamud v Canada (Citizenship and Immigration)*, 2017 FC 598 at para 22; *Boztas v Canada (Citizenship and Immigration)*, 2016 FC 139 at para 5).

[3] Although Mr. Mohamud raises several issues, one is determinative of the outcome of this application: the RPD found a key piece of affidavit evidence to be fraudulent solely because it contained a typographical error. I agree with Mr. Mohamud that this finding was unreasonable and that the RPD’s decision must, on that basis, be remitted for redetermination.

[4] Given conditions in Somalia, Mr. Mohamud was not able to tender government-issued documents before the RPD in support of his identity. Instead, he relied on the affidavit evidence of his mother and a family friend. The affidavit sworn by Safiya Adow Alasow, Mr. Mohamud’s mother, contained the following error:

I, Safiya Adow Alasow confirm that I am the mother Abdirahman Ise Mohamud. My Son Abidrahman was born on April 30, 1995 In Mogadishu, Somalia. My son is married to my son and I we are Somali citizen, we belong to Madi ban clan and we are Muslim, Sino and we follow Sufi rites.

[Emphasis added.]

[5] In the RPD’s view, this was a “glaring” mistake that would have been caught and corrected by either the notary public or the Somali interpreter alleged to have been involved in the document’s preparation. The RPD asked Mr. Mohamud to explain this error, and was not satisfied with his response that it must have been a computer mistake that arose during

transcription. As a result, the RPD concluded that Ms. Alasow's affidavit was fraudulent and assigned it no weight. It also drew an adverse inference against Mr. Mohamud's general credibility because he had submitted a fraudulent affidavit without explanation.

[6] Mr. Mohamud argues that a minor typographical error in Ms. Alasow's statement cannot, on its own, reasonably ground a finding that the document is fraudulent. I agree. The RPD cannot find a document to be inauthentic on the basis of speculation: it must do so on the evidence (*Jacques v Canada (Citizenship and Immigration)*, 2010 FC 423 at para 16 [*Jacques*]). In some cases, sufficient evidence will be on the face of the document itself (*Jacques* at para 16). In this case, however, the RPD's conclusion that Ms. Alasow's affidavit was fraudulent was unreasonable (*Jacques* at para 17; *Ali v Canada (Citizenship and Immigration)*, 2015 FC 814 at para 31 [*Ali*]).

[7] In the RPD's view, it was implausible that a document prepared by professionals would contain such an error. But clerical errors are not necessarily determinative of authenticity (see *Arubi v Canada (Citizenship and Immigration)*, 2012 FC 36 at para 35). They occur even in decisions of this Court (*Ali* at para 31). The RPD also failed to refer to those aspects of Ms. Alasow's statement which enhance its trustworthiness (*Jacques* at para 18): the document identifies the Somali interpreter who assisted in its preparation and it contains the stamp of the notary public who commissioned it. In these ways, the document conformed to what is reasonably expected of a sworn statement (see *XY v Canada (Citizenship and Immigration)*, 2016 FC 1325 at para 13).

[8] Implausibility findings should only be made in the clearest cases, and must be sensitive to the realities of a claimant's cultural context (*Valtchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776 at para 7; *Duroshola v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 518 at paras 24-26). I agree with Mr. Mohamud that the RPD failed to account for Ms. Alasow's lack of sophistication and reliance upon third parties for assistance. Further, it was not reasonable for the RPD to expect Mr. Mohamud to explain the error in Ms. Alasow's affidavit, since he did not prepare that document (*Sitoo v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1513 at para 13).

[9] Lastly, a finding that a false or irregular document detracts from a claimant's overall credibility must be "cautiously approached" (*Guo v Canada (Citizenship and Immigration)*, 2013 FC 400 at para 7). Such implications are serious (*Agyemang v Canada (Citizenship and Immigration)*, 2016 FC 265 at paras 13-14). The RPD's unreasonable conclusion was thus compounded by the negative inference it then drew against Mr. Mohamud's general credibility for tendering a fraudulent document.

[10] The decision must be sent back for redetermination, as I cannot tell if the RPD's decision on the central issue of Mr. Mohamud's identity would have been different absent these errors (*Li v Canada (Citizenship and Immigration)*, 2017 FC 823 at para 28). I need not address the other issues Mr. Mohamud raises.

[11] The application for judicial review is granted. No questions for certification were argued and none arise.

**JUDGMENT in IMM-2705-17**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is granted and the matter is sent back for redetermination by a differently constituted panel of the Refugee Protection Division;
2. No question is certified.

"Sébastien Grammond"

Judge

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

**DOCKET:** IMM-2705-17

**STYLE OF CAUSE:** ABDIRAHMAN ISSE MOHAMUD v MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 13, 2018

**JUDGMENT AND REASONS:** GRAMMOND J.

**DATED:** FEBRUARY 14, 2018

**APPEARANCES:**

Lina Anani FOR THE APPLICANT

John Loncar FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Lina Anani FOR THE APPLICANT  
Barrister and Solicitor  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario