

Federal Court



Cour fédérale

Date: 20190425

Docket: IMM-4719-18

Citation: 2019 FC 522

Ottawa, Ontario, April 25, 2019

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

WARSAME FAISAL MOHAMED

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Warsame Faisal Mohamed seeks judicial review of a Pre-Removal Risk Assessment [PRRA] by a Senior Immigration Officer [Officer] with Citizenship and Immigration Canada.

The Officer concluded that Mr. Mohamed could be safely returned to Somalia.

[2] For the reasons that follow, the Officer's decision was procedurally fair and reasonable. The application for judicial review is dismissed.

II. Background

[3] Mr. Mohammed is 36 years old and a citizen of Somalia. He entered the United States of America with his family in 1996 when he was still a child. The family was granted asylum, but Mr. Mohamed lost his refugee status in 2011 due to serious criminality. He continued to live in the US until the summer of 2017, when he entered Canada without authorization.

[4] On August 14, 2017, Mr. Mohamed was found to be inadmissible to Canada due to serious criminality. A deportation order was issued against him. Mr. Mohammed requested a PRRA. The Officer issued an adverse decision on December 18, 2017.

III. Decision under Review

[5] Mr. Mohamed claimed to fear persecution in Somalia by Al-Shabaab, a terrorist organization, and also because of his membership in a minority clan. The Officer considered country condition reports, and concluded that Mr. Mohamed would not face more than a mere possibility of persecution if he returned to Somalia.

[6] The Officer relied on a report published by the United Kingdom Home Office in July 2017 [Home Office Report]. According to the Home Office Report, Al-Shabaab's military

capacities have been severely reduced. It has lost control of its urban stronghold, and has retreated to the countryside. Al-Shabaab still controls large sections of rural areas, as well as supply routes between towns.

[7] The Home Office Report described the profiles of people whom Al-Shabaab considers to be “legitimate targets”, and observed that “[a]lthough some people are regarded as ‘legitimate targets’, the majority of civilians are not.” Because Mr. Mohamed did not have one of the identified profiles, the Officer concluded he was unlikely to be targeted by Al-Shabaab.

[8] The Officer noted that Somalian society is characterized by a myriad of clan-families, clans and sub-clans. Inter-clan fighting is widespread. The Officer concluded that any clan-based risk Mr. Mohamed may face in Somalia is no greater than that faced by other members of the clan.

[9] The Officer acknowledged that the past two decades of indiscriminate warfare have wrought devastation throughout many regions of Somalia. The Officer also accepted that security in that country is precarious at best. The Officer nevertheless concluded that “[e]vidence of general conditions within a country is not in itself sufficient to show that the applicant is personally at risk of harm.”

IV. Issues

[10] This application for judicial review raises the following issues:

A. Was the Officer's decision procedurally fair?

B. Was the Officer's decision reasonable?

V. Analysis

A. *Was the Officer's decision procedurally fair?*

[11] Procedural fairness is a matter for the Court to determine. The standard for determining whether the decision-maker complied with the duty of procedural fairness is correctness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 34, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79).

[12] Mr. Mohamed alleges that the Officer's decision gives rise to a reasonable apprehension of bias. He says the Officer excerpted only parts of the Home Office Report that confirmed he would not be targeted by Al-Shabaab. He notes that elsewhere in the Home Office Report, Al-Shabaab is described as suppressing non-Islamic behaviour in the regions it controls, and as having the capacity to carry out attacks in Mogadishu.

[13] The test for bias was established by Justice Louis-Philippe de Grandpré, dissenting, in *Committee for Justice and Liberty v National Energy Board*, [1978] 1 SCR 369 at 394:

[...] the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information [...]
[T]hat test is "what would an informed person, viewing the matter

realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.

[14] The threshold for a finding of real or perceived bias is high. An allegation of reasonable apprehension of bias calls into question not only the personal integrity of the decision-maker, but the integrity of the administration of justice generally. Allegations of bias are serious, and should not be made lightly (*R v S (RD)*, [1997] 3 SCR 484 at para 113). A reasonable apprehension of bias requires more than an allegation based on a passing comment in the decision. The allegation must be accompanied by cogent evidence (*Poczodi v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 956 at para 51).

[15] I am not persuaded that the Officer's allegedly selective reliance on parts of the Home Office Report would cause an informed person, viewing the matter realistically and practically, and having thought the matter through, to conclude that the Officer was biased. Some of the excerpts reproduced in the Officer's decision favoured Mr. Mohamed's position, *e.g.*, Al-Shabaab's ongoing control over certain areas, and the general deterioration in security wrought by years of warfare. Further, as I explain below, the Officer's decision was reasonable.

B. *Was the Officer's decision reasonable?*

[16] The Officer's assessment of questions of fact or mixed fact and law are subject to review by this Court against the standard of reasonableness (*Wang v Canada (Citizenship and Immigration)*, 2010 FC 799 at para 11). Reasonableness is a deferential standard, and is

concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. The Court will intervene only if the decision falls outside a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[17] Mr. Mohamed says the Officer's conclusion that he is not at risk of persecution by Al-Shabaab was unreasonable. The Home Office Report cited by the Officer states that "[p]ersons living in an area controlled by Al Shabaab who are not regarded as 'legitimate targets' are unlikely to be at risk unless they do not conform to Al Shabaab's strict interpretation of Islamic behaviour." Mr. Mohamed has lived in North America for most of his life, and he is thoroughly westernized. He says that he cannot be expected to conform to strict Islamic customs.

[18] I am satisfied the Officer reasonably concluded that Mr. Mohamed would not be at risk of persecution by Al-Shabaab if he returns to Somalia. The Home Office Report states that westernized returnees are targeted by Al-Shabaab only in the regions it controls, which are typically rural. Mogadishu is not controlled by Al-Shabaab, and there is no reason to think that Mr. Mohamed would face persecution there. Mr. Mohamed was born in Mogadishu and left the city when he was still a child. There is nothing to suggest he would relocate to a rural area if he returns to Somalia.

[19] Mr. Mohamed suggests that he may be at risk of persecution by Al-Shabaab in Mogadishu, because the organization has the capacity to carry out bombings or other attacks in the city. According to the Home Office Report, attacks of this nature are usually directed towards

government officials or international hotels where representatives of non-governmental organizations may be staying. Mr. Mohamed does not fall within these categories.

[20] Finally, I am satisfied the Officer reasonably concluded that Mr. Mohamed would not be at risk of persecution due to his membership in the minority Bantu clan. Country condition reports confirm that Bantu clan members may experience discrimination, but not usually in Mogadishu. Insofar as Mr. Mohamed may face discrimination, this is a risk he shares with many others in Somalia. A generalized risk may be experienced by a subset of a nation's population, and membership in that category is not sufficient to personalize the risk (*Perez v Canada (Citizenship and Immigration)*, 2010 FC 345 at para 39; *Marcelin Gabriel v Canada (Citizenship and Immigration)*, 2009 FC 1170 at para 20).

VI. Conclusion

[21] The application for judicial review is dismissed. Neither party proposed that a question be certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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