

Federal Court



Cour fédérale

Date: 20190813

Docket: IMM-3368-18

Citation: 2019 FC 1071

Ottawa, Ontario, August 13, 2019

PRESENT: The Honourable Madam Justice Walker

BETWEEN:

ABDULLAHI MAKARAN MOHAMED

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mr. Abdullahi Makaran Mohamed, seeks judicial review of a decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada. The RAD dismissed the Applicant's appeal of a decision of the Refugee Protection Division (RPD) and confirmed the RPD's decision that he was neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC

2001, c 27 (IRPA). The application for judicial review is brought pursuant to subsection 72(1) of the IRPA.

[2] With the consent of the parties, the style of cause in this matter is hereby amended to reflect “The Minister of Citizenship and Immigration” as the Respondent.

[3] For the reasons that follow, the application is dismissed.

I. Background

[4] The Applicant is a citizen of Somalia from Mogadishu. He is a member of the Hawiye clan in Somalia and states that he belongs to a minority sub-clan within the Hawiye called the Haskul. The Applicant arrived in Canada on May 29, 2016 from the United States and made a refugee claim.

[5] The determinative issue before the RAD was the Applicant’s credibility in key aspects of his claim. Bearing this in mind, his narrative of the events that led to his flight from Somalia is as follows.

[6] In December 2014, while working at his father’s store, the Applicant witnessed members of the Habargadir, another Hawiye sub-clan, kill his father due to an argument over payment. Following this incident, he began working at his uncle’s clothing store.

[7] On February 8, 2015, the Applicant and his co-worker, Ibrahim, witnessed two members of Al-Shabab murder a police officer in front of the uncle's store. The Applicant recognized one of the Al-Shabab men as a former school mate and gave the police his name (Madey) and location in the city. Later that afternoon, the Applicant received a phone call from Madey who stated that he knew the Applicant had identified him to the police and that he would be killed for supporting the government and opposing Al-Shabab. The Applicant states that he went directly and immediately to a friend's home to hide following the call.

[8] The following day, the Applicant was informed that Ibrahim had been shot and killed by Al-Shabab. The same evening, the Applicant returned to his home to pack in order to leave Mogadishu. He alleges that three Al-Shabab men came to his house while he was there. When his sister answered the door and refused the men entry, they shot and killed her. The Applicant's evidence as to whether or not he saw the men is in question. The Applicant fled from the back door and returned to his friend's house.

[9] The Applicant's uncle gave him money to flee from Somalia. He left Mogadishu on February 10, 2015 and drove to Addis Ababa, Ethiopia. On February 20, 2015, he flew to Sao Paulo, Brazil. From there, the Applicant travelled through South and Central America and reached the United States (Brownsville, Texas) on May 3, 2015 where he claimed asylum. The Applicant was immediately detained. His asylum claim was denied on November 2, 2015 and he was ordered removed to Somalia.

[10] Upon his release from detention, the Applicant travelled to St. Cloud, Minnesota, where he was told he should go to Canada to claim asylum. The Applicant entered Canada on May 29, 2016, arriving in Emerson, Manitoba, and made a refugee claim.

[11] The Applicant states that he is at risk in Somalia at the hands of Al-Shabab for having reported one of their members to the police. He also states that he would be perceived as a spy and a supporter of the international community after having lived in Christian (Western) countries and would be targeted for forced recruitment by Al-Shabab.

[12] The RPD rejected the Applicant's refugee claim on June 13, 2017, finding that he was neither a Convention refugee nor a person in need of protection pursuant to sections 96 and 97 of the IRPA. The determinative issues before the RPD were identity and credibility, which the panel found were intertwined in this case. The RPD undertook a lengthy review of the Applicant's identity evidence and concluded that he failed to provide credible and trustworthy evidence to establish his personal or national identity. As part of its identity analysis, the RPD panel highlighted significant omissions and inconsistencies among the Applicant's application for asylum in the United States, his Canadian Basis of Claim (BOC) form and his testimony.

[13] Having concluded that the Applicant failed to establish his identity, the RPD acknowledged that it was not required to proceed with an exhaustive analysis of the evidence relating to other elements of his claim. However, the panel stated that its credibility findings regarding identity were confirmed by negative credibility findings in other areas of the evidence. The RPD then set out its negative findings with respect to the alleged call from Al-Shabab

threatening to kill the Applicant after he had witnessed the murder of the police officer, stating that his testimony was neither clear nor consistent. The panel concluded that “the multiple discrepancies and successive changes” in the Applicant’s evidence on this subject reinforced its conclusion that he was not credible. The RPD also addressed the Applicant’s changing account of the alleged shooting of his sister and whether he actually saw the perpetrators.

[14] The Applicant appealed the RPD decision to the RAD. The RAD dismissed the appeal and confirmed the RPD’s decision. The Applicant seeks judicial review of the RAD’s Decision in this application.

II. Decision under review

[15] The Decision is dated June 25, 2018. The RAD found that the RPD had erred in its identity findings and concluded that the Applicant’s identity was established. Conversely, the RAD found no error in the RPD’s credibility findings and concluded that the Applicant had not established with sufficient credible evidence that he would be harmed as a member of a minority clan or harmed by Al-Shabab if he returned to Somalia.

[16] Before the RAD, the Applicant argued that the RPD had breached his right to procedural fairness, erred in its identity and credibility assessments, and erred by rejecting the risk posed to him by Al-Shabab in Somalia.

[17] On appeal, the Applicant submitted new documentary evidence, consisting of identity and country condition documents, the majority of which were admitted by the RAD. After reviewing the record, including the audio recording of the RPD hearings and the new evidence, the RAD panel found that the Applicant had provided credible and trustworthy evidence to establish his personal, national and clan identity on a balance of probabilities. As a result of this finding, the Applicant's procedural fairness argument was moot as it related to the RPD's identity assessment.

[18] The RAD then turned to the RPD's credibility findings and the Applicant's argument that the RPD erred by impeaching his credibility on the basis of minor discrepancies and omissions in his evidence and the minutiae of his testimony during three sittings before the RPD. The RAD rejected the arguments. The panel stated that the Applicant's arguments were vague and made no reference to the facts in the case or to the RPD's specific credibility findings. Nevertheless, the RAD engaged in a detailed assessment of the Applicant's credibility, focussing on three key elements of his refugee claim:

[25] Nonetheless, it appears that the Appellant is challenging the RPD's credibility findings about: the omission in his application for asylum in the U.S. about the Habargadir killing his father; the credibility of his account that Al-Shabab shot and killed his sister; and, the credibility regarding the alleged threatening phone call from Al-Shabab. In the absence of the Appellant's compliance with Rule 3(3)(g)(i)-(ii), and any submission detailing how the RPD's credibility findings are microscopic based on the facts in this case, I have conducted an independent assessment of the record. In that assessment of the record, I conclude the RPD was not microscopic and that the Appellant is not credible about his central allegations.

[19] The RAD first considered the Applicant's omission of his father's death from his U.S. asylum documents against its inclusion in his BOC. The panel stated that the omission was significant as his father's murder by the Habargadir related to his fear of returning to Somalia as he stated that he would not receive protection from his Hawiye clan against the Habargadir because he is a member of the minority Haskul. The RAD would have expected the Applicant to speak to his fear of the Habargadir as part of his explanation to U.S. authorities for why he was claiming asylum.

[20] Second, the RAD found that the RPD's analysis of the Applicant's evidence regarding Al-Shabab's alleged murder of his sister was not microscopic. The panel stated that it was not a minor inconsistency for the Applicant to have written in his BOC that he saw men from Al-Shabab at the door of his home but to then testify that he did not see the men. His ability to recognize the perpetrators was important corroboration of his allegation that Al-Shabab was responsible for killing his sister.

[21] Third, the RAD found that the RPD did not err in concluding that the Applicant's inability to consistently recall when and where he was when Al-Shabab allegedly called him on the afternoon of the police officer's murder undermined the credibility of his allegation that he was threatened by the group. The panel detailed the various discrepancies in the Applicant's story between his BOC and the questions put to him by the RPD and concluded:

[37] Considering the Appellant does not contest the substance of the inconsistencies identified, I find the RPD's credibility finding is correct and based on the evidence in the record. The Appellant's testimony about when and where he was when he received the threatening phone call, as well as his BOC omission that he went to the police after the call, undermines his credibility that the

incident occurred as alleged. Based on the credibility concerns about the phone call and his sister being shot by Al-Shabab, I find on a balance of probabilities that the Appellant was not threatened and sought by Al-Shabab as alleged.

[22] Finally, the RAD found that the Applicant was not at risk from Al-Shabab if he returned to Somalia. The RAD noted its finding that the Applicant's assertion that Al-Shabab had threatened to kill him lacked credibility. Further, the RAD concluded that he did not fit the profile of a Somali who has lived a long period of time in a Western country. The Applicant provided no evidence about how his time in the US and Canada since 2015 had changed him or given rise to any habits, behaviours or cultural cues that would lead to a perception that he was from a Western country or was of financial means. Therefore, on a forward-looking assessment, the RAD concluded that there was no serious possibility of persecution on a Convention ground under section 96 of the IRPA, nor was the Applicant in need of protection pursuant to section 97 of the IRPA.

III. Issues

[23] The issue before me is whether the Decision was reasonable. The Applicant raises two specific issues:

1. Did the RAD err in failing to address the Applicant's argument that it was an error of law for the RPD to continue to assess the merits of his claim after concluding that he had failed to establish his identity?
2. Did the RAD err in finding that the Applicant failed to provide specific examples of the RPD's alleged microscopic analysis of his credibility?

IV. Standard of review

[24] The standard of review for this Court of a decision of the RAD is reasonableness (*Canada (Citizenship and Immigration) v Huruglica*), 2016 FCA 93 at para 35 (*Huruglica*); *Gebremichael v Canada (Citizenship and Immigration)*, 2016 FC 646 at para 8). In practical terms, this means that I am required to assess whether the RAD's credibility findings and its conclusions regarding the Applicant's profile were reasonable (*Gbemudu v Canada (Citizenship, Refugees and Immigration)*, 2018 FC 451 at para 23).

[25] The reasonableness standard is concerned with ensuring that the decision of a tribunal is justified, transparent and intelligible, and that the decision falls within a range of possible and acceptable outcomes which are defensible in respect of the facts and law applicable in the particular case (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 (*Dunsmuir*)). In other words, the reviewing court must look at both the outcome and the reasons that are given for that outcome (*Delta Air Lines Inc v Lukács*, 2018 SCC 2 at para 27). The *Dunsmuir* criteria are met if the reasons provided by the tribunal "allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

V. Analysis

[26] I will address the specific issues raised by the Applicant in the following sections of this judgment. However, I first find that the Decision was reasonable. The RAD addressed each of the Applicant's grounds of appeal in detail and clearly conducted an independent analysis of his evidence and testimony. The panel not only made specific findings but also explained why those findings substantively affected the Applicant's narrative and, ultimately, his credibility and his alleged fear of Al-Shabab. In my view, if the standard of review of reasonableness and the premise of judicial deference is to have meaningful application, then the RAD's Decision must be respected.

1. *Did the RAD err in failing to address the Applicant's argument that it was an error of law for the RPD to continue to assess the merits of his claim after concluding that he had failed to establish his identity?*

Parties' Submissions

[27] The Applicant acknowledges that the RPD did not err in law in making adverse credibility findings after concluding that he had not established his personal or national identity. Justice Snider in *Yang v Canada (Citizenship and Immigration)*, 2009 FC 681 at paragraph 6, (*Yang*) stated only that it was unnecessary to do so. He submits that, in this case, the RPD should not have done so in light of its very negative identity findings. The Applicant states that the RPD's questioning and analysis of his credibility unduly coloured the RAD's analysis on appeal.

[28] The Respondent emphasizes that the decision in *Yang* does not suggest that the RPD may never delve into the merits of a claimant's story after finding the claimant has failed to prove identity. The Respondent submits that, in the present case, it was necessary for the RPD panel to address certain aspects of the merits of the Applicant's claim as the issues of identity and credibility were intertwined. The Respondent also submits that the argument that the RAD erred in failing to address this issue in the Decision is moot.

Analysis

[29] I find that the RAD made no reviewable error in failing to address the Applicant's argument that the RPD erred in conducting a credibility assessment after its negative identity findings. As the Applicant now acknowledges, Justice Snider's decision in *Yang* does not stand for the proposition that the RPD is precluded from assessing credibility after an adverse identity finding. In this case, the RPD explained that it made certain credibility findings because the Applicant's identity and credibility were intertwined. The RPD stated:

[37] In light of the above-noted comments of the Court, having determined that the claimant failed to establish his identity, the panel concludes that it is not required to proceed with an exhaustive analysis of the evidence relating to other elements of his claim. However, the panel found that its credibility finding relating to his evidence on the issue of identity was confirmed by negative credibility findings with regards to other areas of his evidence, only a couple of examples of which are set out below.

[30] Further, I agree with the Respondent that this argument is moot. The RAD exhaustively considered the issue of identity against the evidence before the RPD and the Applicant's new evidence. The RAD panel concluded that the RPD had erred and that the Applicant's personal and national identity had been established. The RAD then independently assessed his credibility.

The Applicant's argument that the RAD's assessment was unduly coloured by the nature of the RPD's questioning and credibility conclusions is not persuasive.

2. *Did the RAD err in finding that the Applicant failed to provide specific examples of the RPD's alleged microscopic analysis of his credibility?*

Parties' Submissions

[31] Although the Applicant presented this issue as an error by the RAD in stating that he had failed to provide specific examples of the RPD's alleged microscopic analysis, his submissions centre on the substance of the RAD's credibility findings. He argues that the RAD should have given more credibility to both his explanation of the omission from his U.S. asylum document of his father's murder and his explanation of trauma as the reason for his inability to remember details of his sister's shooting.

[32] The Respondent submits that the RAD made no error in its credibility assessments. The Respondent emphasizes that this Court must focus on the RAD's Decision and not that of the RPD. The Respondent also emphasizes the fact that the Applicant has not taken issue with key elements of the Decision, including the RAD's findings that Al-Shabab likely did not kill either the police officer or the Applicant's sister, nor did it likely threaten the Applicant in a phone call. These events were central to the Applicant's flight narrative and his fear of death at the hands of Al-Shabab. Finally, the Respondent states that the Applicant has not contested the RAD's finding of the lack of an objective threat to the Applicant from Al-Shabab. Without evidence of an ongoing threat from Al-Shabab or forward-looking objective risk, the Respondent argues that the Decision must stand as not unreasonable.

Analysis

[33] I agree with the Respondent and find that the RAD made no error either in its individual negative credibility findings or in its ultimate conclusion that the Applicant is not at risk from Al-Shabab if he returns to Somalia. The Applicant's argument that the RAD should have accorded his explanations more credibility is effectively a request that this Court re-weigh the evidence.

[34] The RAD stated that the form of U.S. asylum document completed by the Applicant was similar to the BOC form and not equivalent to Point of Entry notes. The panel found that the omission from the U.S. form of his father's murder by members of the Habargadir was not minor. The RAD did not accept the Applicant's explanation that he only included in the U.S. form the events that led directly to his flight from Somalia.

[35] In his testimony at the RPD hearing, the Applicant stated that he was a member of the Haskul sub-clan of the Hawiye and that he feared the Habargadir and would not receive protection from the Hawiye. His father's murder was an important factor in this fear. The RAD reasonably concluded that the inconsistency between the Applicant's U.S. asylum form, his BOC and his testimony at the RPD was not minor as it called into question his fear of the Habargadir:

[29] ... If the Appellant genuinely feared Habargadir because they killed his father for being a minority clan member, one would expect this to be included in his explanation to U.S. authorities for why he was claiming asylum and feared returning to Somalia. Such information then, should be the same in both his U.S. asylum claim and his Canada refugee protection claim, if his fear is genuine.

[36] The RAD did not accept the Applicant's explanation that someone else in detention had completed the U.S. form on his behalf. He signed the form, agreeing that it had been read to him in his native language and that it was true and correct.

[37] The RAD found that the RPD's analysis of the murder of the Applicant's sister was not microscopic and that the RPD's focus on what he actually saw at the door of his home was critical to corroborate his allegation that Al-Shabab committed the murder. The panel reviewed in detail the Applicant's testimony before the RPD and concluded that the discrepancies between his testimony and his BOC, and the evolving nature of his testimony, undermined his credibility. The RAD addressed the Applicant's arguments of poor memory and alleged trauma but noted that he had provided no evidence in this regard. In my opinion, the RAD did not err in stating that it was reasonable to expect him to provide testimony that was consistent with his BOC.

[38] Finally, the RAD's analysis of the issues surrounding the alleged threatening phone call from Al-Shabab after the police officer's murder was detailed and reasonable. The panel emphasized that the Applicant's recollection of the call was inconsistent and evolving and that he could not consistently recall when and where he was when he received the call. The RAD reviewed the statement in his BOC regarding the call against the questions posed by the RPD. I find no error in the RAD's analysis of the evidence.

[39] In summary, the RAD conducted its own analysis of the Applicant's credibility and made detailed and reasonable findings. The RAD provided reasons for why each allegedly microscopic RPD finding was reasonable and explained the importance of the various credibility findings to

the Applicant's alleged fear of Al-Shabab and his prospective risk in Somalia. As the Respondent stated, the Applicant has not contested certain of the RAD's central findings regarding the risks posed by Al-Shabab and his lack of any profile which would put him at risk upon return to Somalia. I find that the RAD's negative credibility findings and dismissal of the appeal were within the range of acceptable outcomes for the Applicant's case.

VI. Conclusion

[40] The application will be dismissed.

[41] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT in IMM-3368-18

THIS COURT'S JUDGMENT is that:

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

"Elizabeth Walker"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3368-18

STYLE OF CAUSE: ABDULLAHI MAKARAN MOHAMED v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 3, 2019

JUDGMENT AND REASONS: WALKER J.

DATED: AUGUST 13, 2019

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