

Federal Court



Cour fédérale

Date: 20210607

Docket: IMM-4763-20

Citation: 2021 FC 540

[ENGLISH TRANSLATION]

Ottawa, Ontario, June 7, 2021

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

ISSA HASSAN IDRIS

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Issa Hassan Idriss is seeking judicial review of the September 10, 2020 decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada, dismissing his appeal of the June 26, 2019 decision of the Refugee Protection Division [RPD].

[2] The RAD confirmed the RPD's determination that Mr. Idriss is not a Convention refugee under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] or a person in need of protection under subsection 97(1) of the Act.

[3] For the reasons set out below, the application for judicial review is dismissed.

II. Background

[4] Mr. Idriss is a citizen of the Republic of Djibouti [Djibouti]. On November 29, 2016, he received a multiple-entry visitor visa, valid for one year, from United States authorities. On June 8, 2017, Mr. Idriss left Djibouti to travel to Ethiopia. The border and immigration police at Djibouti International Airport stamped his passport upon exit. On June 11, 2017, Mr. Idriss was admitted to the United States.

[5] On July 27, 2017, Mr. Idriss entered Canada and claimed refugee protection. He then alleged that he feared the authorities in his country because of his involvement, since 2013, as a member of the opposition political party Rassemblement pour l'Action, la Démocratie, le Développement Écologique [RADDE].

[6] On May 21, 2019, the RPD heard Mr. Idriss's claim for refugee protection and, following the hearing, took the matter under advisement.

[7] On May 28, 2019, the RPD adjourned the hearing of another claimant, represented by the same attorney as Mr. Idriss, since the member had asked the Minister to intervene

[TRANSLATION] “for integrity to the system” (Certified Tribunal Record [CTR] at page 30), alleging that the case was similar to another case.

[8] On May 31, 2019, a letter was sent to Mr. Idriss requesting permission, pursuant to rule 21 of the *Refugee Protection Division Rules* (SOR/2012-256 [the Rules]), to place information from his file into the file of another claim.

[9] On June 19, 2019, Mr. Idriss’s attorney wrote to the RPD’s coordinating member and requested that he order a *de novo* hearing before a new member, alleging a reasonable apprehension of bias on the part of the member.

[10] On June 26, 2019, the RPD determined, considering his lack of credibility, that Mr. Idriss is not a “Convention refugee” or a “person in need of protection” and rejected his refugee protection claim (paragraph 22 of the decision, at page 7 of the CTR).

[11] The RPD concluded that Mr. Idriss provided testimony that lacked credibility on key elements of his refugee protection claim and raised several contradictions, omissions, and inconsistencies in his testimony related to (1) his departure from Djibouti; (2) his membership in RADDE and the Alliance des mouvements pour l’alternance et la Nation (AMAN); and (3) the arrests of February 21 and December 21, 2015, and related medical documentation.

[12] As for his political involvement since his arrival in Canada, given that Mr. Idriss is not considered credible, the RPD concluded that it could not establish, on a balance of probabilities,

that his photographs submitted in evidence were published on social networks, that they were brought to the attention of the Djibouti authorities, or that the Djibouti authorities would have the ability or interest to identify him as a political opponent given his apolitical profile in Djibouti.

[13] On July 2, 2019, the attorney's request for a *de novo* hearing was forwarded to the coordinating member's office.

[14] On July 22, 2019, the RPD clerk issued an *Notice of Decision Concerning an Application* under rule 50 of the Rules, and denied Mr. Idriss's attorney's request for a *de novo* hearing. The RPD confirmed that the attorney's request, forwarded to the RPD on June 19, was addressed to the coordinating member and was therefore not made known to the member assigned to the case. The RPD added that as of June 26, the decision on the claim was rendered and signed by the member and that since that date, the member is *functus officio* and therefore cannot render a decision on the matter (page 25 of the CTR).

[15] On August 6, 2019, Mr. Idriss appealed the RPD's decision to the RAD. Before the Immigration Appeal Division, Mr. Idriss raised the member's apprehension of bias as a preliminary matter and also submitted that he was not given a fair hearing.

[16] With respect to his credibility, Mr. Idriss submitted that the errors are not determinative, that the RPD ignored his oral testimony and other evidence regarding his political involvement, that the inconsistencies and errors in relation to the medical certificates are not sufficient, and that the RPD failed to analyze his activities in Canada.

[17] On July 28, 2020, Mr. Idriss filed additional documents with the RAD regarding his political activities in Canada, including (1) photographs; (2) a March 12, 2020 letter from the president of the RADDE in Djibouti attesting that the Djibouti regime's political police systematically record and prosecute any opposition activist who has fled the country and filed a refugee claim abroad; (3) a news article; and (4) an affidavit confirming his participation in a meeting on February 9, 2020 and a demonstration on June 27, 2020. He also filed an RAD decision and a 2019 report.

III. RAD decision

[18] On September 10, 2020, the RAD confirmed the RPD's decision and dismissed Mr. Idriss's appeal.

[19] The RAD first considered the admissibility of the new evidence filed by Mr. Idriss in July 2020, and found that the documents are not admissible as evidence, pursuant to subsection 110(4) of the Act.

[20] The RAD relied on the Federal Court of Appeal decisions *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 [*Singh*] and *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 [*Raza*], which hold that the requirements of subsection 110(4) of the Act must be met, leaving no room for RAD discretion, and added that the three implied criteria for eligibility referred to in *Raza*, namely credibility, relevance and newness, are required.

[21] The RAD noted that the documents are from after the decision and the perfection of the record, and that rule 29(4) of the Rules is [TRANSLATION] “met” (paragraph 11 of the decision at page 5 of the CTR). The RAD stated that it must analyze the documents through the lens of subsection 110(4) of the Act.

[22] Therefore, regarding Mr. Idriss’s affidavit, the RAD pointed out that Mr. Idriss argued that he continued his political activities within the RADDE and that he participated in meetings and political demonstrations in Canada. The RAD noted that this affidavit essentially repeats elements known at the hearing before the RPD.

[23] Regarding the photographs showing that Mr. Idriss participated in meetings and demonstrations, the RAD noted that Mr. Idriss previously submitted similar photographs to the RPD and that, in fact, there is nothing new in the photographs submitted.

[24] In relation to the March 12, 2020 certification, the RAD noted the different characteristics regarding the document itself, which had already been raised by the RPD in connection with another letter from the same organization, and also noted that the letterhead is different from that of the letter submitted to the RPD and that the document does not have a reference number, unlike the one submitted to the RPD. The RAD also commented on the contents and concluded that the certification is not credible.

[25] Regarding the news article, the RAD concluded that it could not judge the content of this article as it did not know the source and origin. It also noted that the article is not relevant because it does not mention Mr. Idriss's name.

[26] Regarding Mr. Idriss's allegation of breach of procedural fairness and apprehension of bias, the RAD cited the Supreme Court decision in *Committee for Justice and Liberty v National Energy Board*, [1978] 1 SCR 369. It rejected Mr. Idriss's procedural fairness arguments and concluded that there was no reasonable apprehension of bias on the part of the member in the process and decision making and that there was no breach of procedural fairness.

[27] Like the RPD, the RAD concluded that Mr. Idriss is not credible and considered the elements raised by Mr. Idriss in his memorandum, namely (1) the error about the time he decided to leave the country; (2) his exit from the country and the omission to report in his form that a police officer had helped him to leave the country; (3) his political affiliation in Djibouti; (4) the events dating from 2014 and 2015 and the injuries sustained on those occasions; and (5) his political involvement in Canada.

[28] The RAD examined Mr. Idriss's political involvement in Canada. The RAD noted Mr. Idriss's allegation that his participation on social networks may be an indication that Djibouti authorities are aware of his activities outside the country. The RAD emphasized that the RPD was of the view that Mr. Idriss is not a credible witness, did not believe in his political involvement in his home country, and did not give weight to the photographs taken in Montréal.

The RAD noted Mr. Idriss's testimony regarding his political involvement in Canada, considering that he has proclaimed himself an activist since 2013.

[29] The RAD added comments regarding the behaviour of Mr. Idriss, who (1) left Djibouti approximately 7 months after receiving his United States visa; (2) stayed for a few days in a neighboring country before traveling to the United States; and (3) did not seek protection from United States authorities, despite having family and community members there. These behaviours may show that he does not fear for his life.

[30] The RAD therefore confirmed the RPD's decision as correct.

IV. Parties' arguments and decision

[31] The Court agrees with the parties that it is appropriate to review the RAD's decision on a standard of reasonableness. Indeed, under *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the standard of review that is presumed to apply is reasonableness, and there is nothing to rebut the presumption in this case.

[32] Mr. Idriss argues that his fear of persecution has not been reasonably analyzed, which would require the Court's intervention, since the RAD's decision is the result of (1) an unreasonable analysis of the *sur place* fear and the risks he faces as a result of his association with the Djiboutian political opposition in Canada; (2) the unreasonable analysis of the admissibility of the new evidence filed on appeal; and (3) certain unreasonable analyses of the evidence Mr. Idriss provided in support of his refugee protection claim.

[33] Mr. Idriss did not file an affidavit with the Court.

A. *Sur place fear analysis*

(1) Parties' arguments

[34] First, Mr. Idriss submitted that the RAD unreasonably assessed his political involvement in Canada with a Djiboutian opposition party, as well as the risk of persecution associated with his political involvement in Canada should he return to his home country.

[35] Mr. Idriss submitted that the RAD made a summary and unreasonable analysis of this involvement and *sur place* fear, thus tainting its decision, while Mr. Idriss had, rather, made a clear and unambiguous demonstration of his participation and engagement within the political opposition against the regime in Djibouti from Canada.

[36] The RPD allegedly limited itself to a summary review in paragraphs 51 and 52 of its decision, whereas, according to Mr. Idriss, the evidence on file is unmistakable that he is an active member of the Djiboutian opposition in Montréal. Mr. Idriss cites as examples (1) the April 28, 2019 letter provided to the RPD that mentioned four activities between February 23 and December 22, 2018; (2) a significant number of photographs; (3) a statement signed on July 27, 2020 and accompanying photographs; and (4) his testimony before the RPD.

[37] Mr. Idriss submitted that the credibility findings regarding the events in Djibouti did not reasonably allow the RAD to dismiss the political involvement in Canada and the dangers

associated with it out of hand. The RAD had to evaluate and consider the applicant's evidence of political involvement, which it did not do. There was no reason for the RAD to doubt that Mr. Idriss is an active member of the Djibouti political opposition.

[38] Mr. Idriss relied on the Court's decision in *Mohajery v Canada (Citizenship and Immigration)*, 2007 FC 185 [*Mohajery*] for the proposition that the Court should essentially ignore credibility findings affecting the evidence of Mr. Idriss's political involvement abroad as part of its analysis of his *sur place* fear, and cited paragraph 32 of the decision where the Court states: "It should be mentioned that this analysis must be done even if the applicant's narrative on the whole or in the part concerning his activities in his country of origin was not believed, insofar as trustworthy evidence establishes activities in Canada in support of the *sur place* refugee claim". It is worth mentioning at the outset that no *sur place* fear analysis was done in this case.

[39] Mr. Idriss submitted that, in its decision, the RPD admitted that the Djibouti authorities control or monitor the diaspora abroad, and that this admission is evidence of the risks of his return; he cited paragraph 16 of the RPD decision in this regard.

[40] According to Mr. Idriss, the RAD unreasonably failed to adequately consider the documentary evidence and his arguments regarding *sur place* fear. Moreover, the RAD could not rely on the general findings on his credibility, as its findings relate to his involvement in Djibouti (and not in Canada) (*Mohajery* at para 32; *X (Re)*, 2015 CanLII 69229 (CA IRB) [*X (Re)*]).

[41] Mr. Idriss further noted that the RPD's finding that Djibouti authorities are monitoring certain nationals abroad on social media has not been challenged, and is the subject of a steady stream of RAD decisions (including *X (Re)*) that should inform the Court.

[42] In sum, Mr. Idriss pointed out that the *sur place* fear has been established since, on the one hand, documentary evidence established that the Djiboutian state can monitor opposition activists abroad and, on the other hand, Mr. Idriss is involved in activist activities in Canada. He argued that the RAD's decision is therefore unreasonable.

[43] The Minister responded that Mr. Idriss erroneously attempted to separate the credibility analysis from the *sur place* fear analysis, whereas the RPD can consider its credibility findings in its *sur place* fear analysis. The Minister added that the RPD concluded that Mr. Idriss has not been able to establish, on a balance of probabilities, that his photographs submitted in evidence were published on social networks, that they have been brought to the attention of the Djiboutian authorities, or that the Djiboutian authorities would have the ability or interest to identify the applicant as a political opponent given his apolitical profile in Djibouti.

[44] The Minister pointed out that Mr. Idriss's arguments when he characterized the evidence he filed are significantly at odds with his terse testimony. It was therefore reasonable for RAD to draw a negative inference as to his credibility.

[45] The Minister further responded that the RAD could reasonably conclude that the evidence was insufficient to establish a fear of being monitored by Djibouti authorities.

(2) Decision on *sur place* fear analysis

[46] When the standard of reasonableness is applied, the burden of proof “is on the party challenging the decision to show that it is unreasonable” (*Vavilov* at para 100). The Court’s “review must be on the decision actually made by the decision maker, including both the decision maker’s reasoning process and the outcome” (*Vavilov* at para 83) to determine whether the decision is “based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85). It is not for the Court to substitute the outcome that it believes is preferable to the one chosen (*Vavilov* at para 99).

[47] Mr. Idriss has not persuaded me that the RAD erred and that its analysis is unreasonable.

[48] First, the evidence submitted by Mr. Idriss cannot reasonably be characterized as unmistakable, clear and unambiguous that he is an active member of the Djiboutian opposition in Montréal, and it does not show that he has deep and substantiated political convictions. Indeed, Mr. Idriss’s argument, consisting of four paragraphs and totaling barely one page, cannot reasonably be characterized as a statement in which political opinions and denunciations are accurately substantiated.

[49] Further, the RAD noted that Mr. Idriss’s testimony was limited to stating that he [TRANSLATION] “continues to participate and advocate in a legal manner . . . we do whatever is

necessary” and could reasonably be characterized as tenuous. This is consistent with the evidence in the record.

[50] Second, Mr. Idriss relied on *Mohajery*, which does not require the RAD to ignore credibility findings made by the RAD in relation to political activities in Djibouti as part of the *sur place* fear analysis. The RAD must consider the *sur place* fear, even if it is of the opinion that the claimant is not credible, but this does not preclude it from considering the credibility findings (*Lakatos v Canada (Citizenship and Immigration)*, 2019 FC 1174). In this case, the RAD considered the allegations of *sur place* fear.

[51] In any event, and as the Minister points out, the RAD also found insufficient evidence. The RAD could reasonably conclude that there was insufficient evidence to establish a *sur place* fear, even recognizing that the Djibouti authorities may be conducting monitoring, particularly since Mr. Idriss did not establish that (1) his photographs were posted on social networks; (2) his photographs had been brought to the attention of the Djibouti authorities; and (3) the Djibouti authorities would have the ability or interest to identify him as a political opponent.

[52] Mr. Idriss has not presented any evidence to argue that it is sufficient to demonstrate a *sur place* fear to establish (1) that the authorities can conduct monitoring; and (2) that he was involved from Canada.

[53] Therefore, Mr. Idriss has not satisfied me that the *sur place* fear analysis is unreasonable. The RAD's decision is supported by the evidence and is based on an internally coherent and rational analysis.

B. *New evidence before RAD (subsection 110(4) of Act)*

(1) Parties' arguments

[54] Second, Mr. Idriss argued that the RAD's decision to reject certain new pieces of evidence is unreasonable. He noted that the RAD refused to admit four exhibits: (1) an affidavit from Mr. Idriss dated July 27, 2020; (2) photographs; (3) a letter from the president of the RADDE party in Djibouti dated March 12, 2020; and (4) a news article from HCH24.com describing an assassination attempt on a Djiboutian political opponent in Canada.

[55] He correctly cited the *Raza* and *Singh* decisions in which the Federal Court of Appeal confirmed that, in addition to falling into one of the three categories specifically described in subsection 110(4) of the Act, new evidence must meet the implied criteria of credibility, relevance and newness. Mr. Idriss emphasized the newness sub-criterion.

[56] As for the news article, from the website HCH24.com, Mr. Idriss submitted that, contrary to the RAD's conclusion, the article is relevant even though it does not mention his name. It is intended to demonstrate the interest of the Djibouti authorities in monitoring the activities of political opponents, which is very relevant. He added that the full citation makes it possible to identify the source.

[57] As for the affidavit and photographs, he submitted that they relate to his political activities subsequent to the RPD hearing on February 9 and June 27, 2020. He added that the RAD should have accepted the exhibits since they relate to later facts, tend to rebut RPD findings and meet the criteria set out in *Raza* and especially in *Singh*. Mr. Idriss submitted that the RAD should have ordered a hearing if it doubted the truthfulness or credibility of the evidence.

[58] As for the letter in which the president of the RADDE confirmed that Mr. Idriss is a member of his party, the RAD concluded that the letter contained numerous irregularities, including that the stamp does not match the written text, that the address given differs from that of another similar document (written by the same person) and that the name of the political party is incorrect.

[59] The Minister responded that the RAD's findings rejecting the new evidence because the jurisprudential criteria had not been met, were reasonable.

[60] The Minister submitted that the RAD did not ignore the citation to the site on which the newspaper article appeared, but rather stated that it was not aware of that source and that the article was not relevant since the applicant was not named.

[61] The Minister submitted that the RAD's conclusion on the affidavit and photographs is reasonable, since Mr. Idriss's political involvement was already in play and similar photographs had already been submitted.

[62] The Minister submitted that the problematic characteristics are the same as those raised by the RPD, in addition to other problematic characteristics.

(2) Decision on new evidence before RAD

[63] The parties agree on the explicit criteria in subsection 110(4) and the implicit criteria developed by the case law, which are those cited and applied by the RAD.

[64] I agree with the Minister's submissions. First, there is nothing to contradict the RAD's conclusion that the source is not known and that Mr. Idriss is not named. Considering that it was acknowledged that the Djibouti authorities could conduct monitoring and that this article did not provide any information about the Djibouti authorities possibly having knowledge of Mr. Idriss's activities, it is reasonable to conclude that the article is not relevant.

[65] It is true that the affidavit and photographs refer to events that took place after the RPD decision and would, in that sense, be new. However, they are intended to establish Mr. Idriss's political involvement in Canada, which was already before the RPD, and that is why the RAD concluded that there was no newness there. This conclusion cannot be characterized as arbitrary.

[66] As for the rejection of certain documents, the Court must assess whether the RAD's decision is intelligible and supported (*Mavangou v Canada (Citizenship and Immigration)*, 2019 FC 177 at paras 22 and 27; *Singh; Raza*). It is. The RAD set out the jurisprudential criteria and explained its decision on each piece of evidence. Its conclusions are supported by the evidence. The RAD's decision is therefore reasonable.

C. *Refugee protection claim*

(1) Parties' arguments

[67] Third, Mr. Idriss accepted the reasonableness of some of the negative credibility inferences drawn by the RAD, but otherwise submitted that none of them cast doubt on his credibility as to his *sur place* fear.

[68] Mr. Idriss did not dispute all of the RAD's findings but raised some concerns about the RAD's analysis.

[69] He noted that a general finding of lack of credibility is a serious matter and must be supported (*Peter v Canada (Citizenship and Immigration)*, 2015 FC 619).

[70] He raised two unreasonable findings: (1) the mistake in the date he decided to leave the country, and (2) the assistance he received upon leaving Djibouti.

[71] He added that the RAD held against him a mistake as to the date he left Djibouti, when it was obvious that it was a mistake. The RAD also allegedly confused stress and fatigue as a potential explanation for his error. He noted that he later corrected himself. He also criticized a contradiction raised by the RAD regarding his exit from Djibouti, to the effect that he claimed to have gone undetected with the help of a police officer friend, whereas a stamp appears in his passport.

[72] In response, the Minister noted the multiple contradictions raised by the RPD. Mr. Idriss allegedly contradicted himself as to the date of his departure from Djibouti and the circumstances surrounding his border crossing, waited to leave the country while claiming that his safety was threatened, submitted documents related to the RADDE and his medical treatment that contained numerous anomalies and inconsistencies, and gave vague testimony as to his injuries and their treatment, despite his health training. As a result of this general finding as to his credibility, the RPD gave low probative value to the remaining documentary evidence. It also determined that some of the documents submitted were fraudulent. Regarding *sur place* fear, the RPD determined that Mr. Idriss had not established that his photographs were posted on social media or brought to the attention of Djibouti authorities, who would have no ability or interest in identifying him as a political opponent, as the RAD did not believe in his political involvement in Djibouti.

(2) Refugee protection claim determination

[73] Mr. Idriss invited the Court to reconsider the evidence, which is beyond its role on judicial review. Again, the RAD's findings are supported by the evidence. The RAD's decision, like that of the RPD, raises multiple issues regarding Mr. Idriss' credibility. These findings are reasonable and grounded in the evidence. They are the result of an independent review by each of the two panels.

V. Conclusion

[74] For the reasons above, the application for judicial review is dismissed.

JUDGMENT in IMM-4763-20

THIS COURT'S JUDGMENT is as follows:

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

“Martine St-Louis”

Judge

Certified true translation
Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

Guillaume Cliche-Rivard FOR THE APPLICANT

Sean Doyle FOR THE RESPONDENT

SOLICITORS OF RECORD:

Cliche-Rivard Avocats Inc. FOR THE APPLICANT
Montréal, Quebec

Attorney General of Canada FOR THE RESPONDENT
Montréal, Quebec