

Federal Court



Cour fédérale

Date: 20220517

Docket: IMM-5007-20

Citation: 2022 FC 735

Ottawa, Ontario, May 17, 2022

PRESENT: Mr Justice James W. O'Reilly

BETWEEN:

SAID ALI GABANE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In 2017, Mr Said Ali Gabane fled his home in Somalia and claimed refugee protection in Canada because of his fear of persecution by Al-Shabaab, a terrorist group. He maintains that members of the group threatened him and his family, and then attempted to kill him.

[2] Mr Gabane presented his claim to the Refugee Protection Division, which dismissed it because of a lack of both credible evidence and proof of his identity. Mr Gabane appealed the RPD's decision to the Refugee Appeal Division; the RAD confirmed the RPD's conclusions and dismissed the appeal.

[3] Mr Gabane submits that the RAD erred by rejecting new evidence he wished to file, treated him unfairly by not alerting him to its credibility concerns, and failed to take proper account of his corroborating evidence. He asks me to quash the RAD's decision and order a different panel to reconsider his claim.

[4] I can find no basis for overturning the RAD's decision and must, therefore, dismiss this application for judicial review. The RAD reasonably excluded the new evidence, treated Mr Gabane fairly, and properly weighed the corroborating evidence.

[5] There are three issues:

1. Did the RAD err in rejecting new evidence?
2. Did the RAD treat Mr Gabane unfairly by failing to alert him to its credibility concerns?
3. Did the RAD properly consider the corroborating evidence?

II. The RAD's Decision

[6] Before the RAD, Mr Gabane wished to file documentary evidence explaining the requirements for swearing an affidavit in Kenya. This evidence was meant to address the RPD's concern that Mr Gabane had not filed supporting statements from his family members who resided in Kenya. The RPD member, relying on his specialized knowledge, found that it was possible for undocumented persons to obtain notarized statements and affidavits.

[7] The document in question stated that, generally, affiants must have some form of identification in order to swear an affidavit; Mr Gabane's family members had none.

[8] The RAD considered the document and noted that it merely stated some form of identification was "normally" required to swear an affidavit. In any case, the document could not be considered new evidence because it could have been presented to the RPD. It was dated August 10, 2016; the RPD hearing took place nearly two years later.

[9] The RAD also dismissed Mr Gabane's concerns about the RPD's reliance on specialized knowledge, and its credibility findings. The RAD noted Mr Gabane was given notice of both issues, and had an opportunity to address them by way of testimony or post-hearing submissions.

[10] The RAD went on to address Mr Gabane's lack of proof of his identity. While the RAD accepted that it would not be possible to obtain government-issued identity documents from Somalia, it noted that Mr Gabane had not provided any other available documentation, such as

travel documents. Mr Gabane claimed to have traveled on a New Zealand passport, but the RAD found his evidence about the passport and his other travel arrangements vague and evasive. Similarly, the RAD found Mr Gabane's explanation for the absence of any corroborating documents from his family unsatisfactory. He simply failed to ask them to provide any.

[11] The RAD expressed concerns about other evidence Mr Gabane had provided to the RPD. He provided inconsistent dates of his marriage. He provided vague testimony about his clan affiliation. He presented a witness to corroborate his identity, but the witness gave inconsistent evidence and knew little about Mr Gabane's life or family. Mr Gabane provided a school certificate, but was unable to give a persuasive explanation of how he had obtained it. He also provided a document from a Somali support group called Midaynta Community Services, which purported to corroborate his identity, but the RAD found the document contained little in the way of independent or reliable proof.

[12] In conclusion, the RAD found Mr Gabane had failed to present credible evidence supporting his claim or to prove his identity. It dismissed the appeal.

III. Issue One – Did the RAD Err in Rejecting New Evidence?

[13] Mr Gabane submits that the RAD should have admitted as fresh evidence the document explaining the requirements for swearing an affidavit in Kenya. The RPD member stated at the hearing that he was relying on his specialized knowledge on this issue, allowing Mr Gabane little opportunity to respond. Indeed, there was little chance to make post-hearing submissions on the point because the RPD issued its decision the day after the hearing. Accordingly, says Mr

Gabane, on the appeal from the RPD, the RAD should have allowed him to present fresh evidence on the issue.

[14] I disagree with Mr Gabane's position.

[15] In the circumstances, Mr Gabane had presented no evidence or information from his family members about his identity. He conceded that he never asked them to supply letters or other documentation to support his claim. Therefore, even if the fresh evidence confirmed his submission that his family members could not have sworn formal affidavits (which is not at all clear), there was nothing preventing them from providing other corroborating information.

[16] In addition, while Mr Gabane did not have much time at the hearing to respond to the panel's revelation that it was going to rely on specialized knowledge, he was given some notice and an opportunity to respond (in keeping with Rule 22 of the *Refugee Protection Division Rules*, SOR/2012-256– see Annex). Further, there was nothing preventing him from requesting an opportunity to provide post-hearing submissions. He did not do so.

[17] Therefore, in the circumstances, there was nothing unreasonable or unfair about the RAD's decision not to admit new evidence.

IV. Issue Two – Did the RAD Treat Mr Gabane Unfairly by Failing to Alert Him to its Credibility Concerns?

[18] Mr Gabane argues the RPD failed to alert him to its concerns about discrepancies between his testimony and that of an identity witness. In fact, he says, the inconsistencies were minor and related to events that took place long ago. Further, Mr Gabane argues the RAD failed to address this issue even though it was among the grounds of appeal from the RPD.

[19] Again, I disagree with Mr Gabane.

[20] In fact, the RPD member did question Mr Gabane about inconsistencies in his testimony. Further, the RAD reviewed the evidence independently in response to Mr Gabane's submissions and found his testimony and that of his identity witness to be "brief, vague and inconsistent." It went on to explain its findings with reference to the witnesses' testimony.

[21] I can find nothing unfair about the RAD's treatment of this evidence.

V. Issue Three – Did the RAD Properly Consider the Corroborating Evidence?

[22] Mr Gabane argues that the RAD unreasonably dismissed the probative value of the letter from the Midaynta group. He also submits the RAD similarly erred in giving no weight to his school certificate. Finally, Mr Gabane contends the RAD drew an unreasonable inference from a minor error in the date of his marriage.

[23] I disagree. The RAD properly addressed the corroborating evidence.

[24] With regard to the Midaynta letter, both the RPD and the RAD considered its contents. The RPD noted that it was not clear whether the author of the letter had any particular expertise in determining an individual's personal or national identity. Nor was there any explanation of the basis for the opinion expressed in the letter. The RAD reviewed the letter and agreed with the RPD's conclusions, noting that the letter essentially repeated what Mr Gabane and his identity witness had put forward.

[25] Mr Gabane was unable to explain adequately how he had obtained the school certificate. While he stated that his father had emailed it to him, he was unable to produce the email. He was able to show the RPD member a copy of the certificate on his phone. However, he did not provide the RAD with any further information about the origin of the certificate. The RAD confirmed the RPD's treatment of the school certificate.

[26] Before the RPD, Mr Gabane made a mistake about the date of his marriage as between March 4, 2016 (in his oral testimony) and May 4, 2016 (in his basis of claim form). Another document recorded the date as May 4, 2017. The panel drew a negative inference from the inconsistencies. Mr Gabane urged the RAD to consider that dates are insignificant in Somali culture and argued that the RPD applied a Canadian paradigm when it made a negative credibility finding. Mr Gabane also points to documentary evidence indicating that marriage certificates are rarely issued, so dates of marriage have to be remembered, not recorded.

[27] The RAD noted that the dates were inconsistent both in respect of the month and the year of the wedding, which took place only two or three years before the hearing; therefore, the RAD concluded that the RPD was entitled to draw an adverse inference from the inconsistencies.

[28] In respect of each of these findings, the panel reviewed the evidence and arrived at conclusions that were supported by it. I can find nothing unreasonable about the RAD's treatment of the evidence.

VI. Conclusion and Disposition

[29] The RAD reasonably rejected the new evidence, treated Mr Gabane fairly in respect of its credibility findings, and properly considered the other evidence. I must, therefore, dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT IN IMM-5007-20

THIS COURT'S JUDGMENT is that

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

"James W. O'Reilly"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

LINA ANANI FOR THE APPLICANT

STEPHEN JARVIS FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lina Anani FOR THE APPLICANT
Barristers & Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario