

Federal Court



Cour fédérale

Date: 20230704

Docket: IMM-9166-22

Citation: 2023 FC 921

Ottawa, Ontario, July 4, 2023

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

HAYAT ADAM SHARIIF

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of the Refugee Appeal Division [RAD], dated August 30, 2022 [the Decision]. In the Decision, the RAD upheld the decision of the Refugee Protection Division [RPD], which found that the Applicant is neither a Convention refugee nor a person in need of protection under sections 96 and 97(1) of the *Immigration and*

Refugee Protection Act, SC 2001, c 27. The Applicant's identity was the determinative issue before both the RPD and the RAD.

[2] As explained in greater detail below, this application is dismissed, because the Applicant's arguments do not undermine the reasonableness of the Decision.

II. Background

[3] The Applicant claims to be a Somali citizen. She sought protection in Canada based on fear of persecution at the hands of Al Shabab due to her profile as a woman and her minority status as a member of the Ashraf tribe.

[4] The Applicant claims to have been born in Mogadishu, Somalia on December 30, 1982. She claims that, after the civil war began in Somalia, her mother took her and her siblings to flee the country. However, she became lost in a crowd and returned home to her father. After her father passed away, the Applicant claims that her neighbour took her into her home. She stayed there until she was an adult, when she moved back to her family's home and lived there by herself.

[5] The Applicant says that she married her first husband in 2010 and moved into his home. After that marriage ended, she tried to return to her family home, but she found that it was occupied by a family from a more powerful tribe. She was allowed to live in a room in the house. In 2016, the Applicant re-married. The couple lived in the Applicant's home in Mogadishu, but again the marriage did not last.

[6] Sometime after the Applicant's second husband left, she was sexually assaulted. This incident prompted her departure from Somalia. After spending some time in Addis Ababa, the Applicant realized that she could not survive there on her own. After returning to Somalia, she was introduced to a smuggler who provided her with a fraudulent European passport. On December 2, 2018, the Applicant and her smuggler flew to Toronto. Within a couple of months of her arrival in Canada, she initiated her claim for refugee protection. Her claim was denied by the RPD, and she appealed to the RAD, the Decision of which is the subject of this application for judicial review.

III. Decision under Review

[7] The determinative issue before both the RPD and the RAD was whether the Applicant had failed to establish her identity.

[8] The RAD began its analysis of this issue by noting the RPD's acknowledgement that it was common for Somali refugee claimants to be without Somali government-issued identity documents. The RAD based this conclusion on the documentary evidence, which indicated that most records in Somalia were destroyed during the civil war and that many parts of the country still lack competent authorities for issuing identity documents.

[9] Given this situation, the Applicant submitted that: (a) the RPD should have accepted her explanation for her lack of identity documents, (b) the RPD did not adequately explain why she should have had supporting documents to establish her identity, and (c) the RPD was wrong to expect corroboration from her family members.

[10] The RAD was not persuaded by any of these arguments. It found that the RPD had not expected the Applicant to provide any Somali government-issued identity documents and that the RPD was correct in finding that the Applicant would have to establish her identity through alternative means. In the RAD's view, the most obvious method available to the Applicant was to provide evidence from her immediate family and others who knew her well enough in Somalia to speak to her national and personal identity. The RAD found that she had made little effort to do so.

[11] While the Applicant argued that it would have been nonsensical to expect her to ask her family members for supporting evidence when her RPD hearing had not yet been scheduled, the RAD disagreed. It found that the Applicant was represented by competent counsel and that she should have been aware of the need to establish her identity. As such, the RAD agreed with the RPD that it would have been reasonable to expect the Applicant to request evidence from her mother when, as the evidence indicated, she had connected with her in April 2021.

[12] Given that the Applicant had the ability to reach her family in Somalia and she had more than three years to gather evidence and witnesses in support of her refugee claim, the RAD found it unusual that the strongest identity evidence she tendered were statements from two people she had met by coincidence in Toronto, whom she did not know when she lived in Somalia. With respect to these two statements, the RAD agreed with the RPD that the affidavits containing the statements were not reliable evidence of the Applicant's identity.

[13] The RAD also found that a letter from Dixon Community Services [Dixon Letter], a settlement organization that serves refugees and newcomers from Somalia, had no probative value in establishing the Applicant's personal identity and limited probative value in establishing her national identity. The RAD concluded that the person who interviewed the Applicant was in no position to reach any conclusion about the Applicant's personal identity and that, while the letter was capable of verifying her Somali ethnicity, it did not establish her Somali nationality because there are significant populations of ethnic Somalis in other countries.

[14] The RAD stated that, after weighing the entirety of the evidence, it found the Applicant had not provided sufficient credible and reliable evidence of her personal and national identity.

[15] The Applicant also argued that the RPD erred in treating the Applicant's failure to establish her identity as dispositive of her whole claim. However, the RAD noted binding case law confirming that there is no obligation for the RPD to further assess the merits of a claim if the claimant's identity has not been established (see *Elmi v Canada (Citizenship and Immigration)*, 2008 FC 773 at para 4; *Jin v Canada (Minister of Citizenship and Immigration)*, 2006 FC 126 at paras 13 and 26; *Liu v Canada (Citizenship and Immigration)*, 2007 FC 831 at para 18). As such, given the lack of sufficient evidence of the Applicant's true country of nationality, the RAD found the RPD was correct to end its analysis once it concluded that it was not satisfied of the Applicant's identity.

[16] In the result, the RAD ultimately agreed with the RPD that, as the Applicant had failed to establish her identity, she had not shown that she was a Convention refugee or a person in need of protection.

IV. Issue

[17] The sole issue that arises in this application for judicial review is whether the Decision is reasonable. As reflected by the articulation of the issue, the parties agree (and I concur) that the applicable standard of review is reasonableness (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]).

V. Analysis

[18] The Applicant's arguments challenging the reasonableness of the Decision relate to the RAD's treatment of the Dixon Letter, which expressed the conclusion that she is a citizen of Somalia, and the affidavits provided by the two people whom the Applicant met in Toronto. As explained in the Decision, these affidavits were provided by: (a) a man the Applicant met in a restaurant in Scarborough, who claims to have known the Applicant's late father when the man was living in Mogadishu prior to his departure from Somalia in 1989; and (b) another man, whom the Applicant also met in a restaurant, who claims to have known the Applicant's father prior to the man's arrival in Canada in the late 1980s.

[19] The Applicant argues that the RAD erred in its treatment of one of these two affidavits, by failing to analyse the details therein, and erred by failing to consider the cumulative effect of the two affidavits and the Dixon Letter in establishing her national and personal identity.

[20] In the more detailed of the two affidavits, the affiant states that he grew up in Mogadishu, where his father owned businesses including a spare parts shop. The affiant worked in the shop and regularly saw a customer named Adam Shariif, who would bring sometimes bring his children with him. The affiant and his family left Somalia in 1989. He states that he met the Applicant in a Somali restaurant in Scarborough, Ontario in March 2019 and states that he was able to confirm that her father was the man he knew because of where Mr. Shariif had lived in Medina, the fact that he used to call his daughter “Hayat”, and (following discussion about his appearance) the fact that he was tall and had gold teeth.

[21] In finding that this affidavit was not reliable evidence of the Applicant’s identity, the RAD explained that the Applicant did not know the affiant and that she would have been very young when he was living in Somalia. The RAD concluded that the affidavit was incapable of reliably establishing the Applicant’s identity and family relationship with the man whom the affiant knew in Somalia in the 1980s.

[22] The Applicant is correct that this analysis does not canvass the details of this affidavit. However, I find no reviewable error in the RAD’s reasoning. As *Vavilov* explains, reasonableness review is concerned with the justification, transparency and intelligibility of an administrative decision (at para 99). As I understand the RAD’s reasoning, the Applicant would

have been a young girl when the affiant last encountered Adam Shariif's children. The affiant is therefore not in a position to reliably confirm that the Applicant, who is now in her 40s, is one of those children. The fact that the RAD did not expressly reference the details in the affidavit, including Mr. Shariif's physical appearance, does not detract from that reasoning.

[23] As noted above, the Applicant also argued that the RAD erred by failing to consider the evidence cumulatively. She relies heavily on a recent decision in *Adan v Canada (Citizenship and Immigration)*, 2022 FC 1383 [*Adan*], in which Justice Norris found that the RAD had erred in considering some key pieces of evidence in isolation from one another and, as a result, failed to consider the cumulative effect of certain evidence of the applicant's identity (at para 59).

[24] The Applicant notes that, in addressing the two affidavits, the RAD concluded that they were "incapable" of reliably establishing her identity. She submits that this language is comparable to that with which Justice Norris took issue in *Adan*, where the RAD concluded that a particular piece of evidence was not "determinative" of the applicant's identity (at para 64). The Applicant argues that that, even if the affidavits on their own were incapable of reliably establishing her identity, the RAD was required to consider whether the probative value of the affidavits, considered in combination with the probative value of the Dixon Letter, were sufficient to establish her identity.

[25] I accept the principles upon which the decision in *Adan* turns, including the possibility that the particular language employed by a decision-maker in reviewing the evidence before it may demonstrate to the Court that the decision-maker has failed to consider the evidence

cumulatively. However, I am not convinced that the Decision at hand demonstrates an analysis which falls afoul of those principles.

[26] Following its analysis of the affidavits, the RAD considered the Dixon Letter, concluding that it had no probative value in establishing the Applicant's personal identity and limited probative value in establishing her national identity. The RAD then identified certain of the RPD's findings with which it disagreed but explained that these findings did not alter the outcome of the appeal. Rather, the RAD explained that, after weighing the entirety of the evidence, it found that the Applicant had not provided sufficient credible and reliable evidence of her personal and national identity.

[27] The Applicant submits that considering the entirety of the evidence is not the same as considering that evidence cumulatively, as it is possible to consider all the evidence while still considering each piece of evidence only in isolation from other pieces. I find no basis to infer that the RAD was describing a segmented review of this nature when it referred to considering all the evidence.

[28] I also recognize that the fact a decision-maker says that it has considered all the evidence should not be treated as definitive, and I accept that there could be circumstances where, following a review of a decision-maker's reasons and the evidence before it, the Court might struggle to understand the justification for a decision and therefore infer that the decision-maker had failed to conduct the required cumulative consideration of the evidence. However, this is not such a case. After finding it unusual that the strongest identity evidence that the Applicant could

provide was from two people she met by coincidence in Toronto, the RAD identified the shortcomings in that evidence, as well as the limited probative value of the Dixon Letter, and concluded after weighing all the evidence that the Applicant had not established her identity. As this analysis demonstrates justification, transparency and intelligibility as required by *Vavilov*, I find that the Applicant's arguments do not undermine the reasonableness of the Decision.

[29] Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT in IMM-9166-22

THIS COURT'S JUDGMENT is that this application is dismissed. No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9166-22
STYLE OF CAUSE: HAYAT ADAM SHARIIF v. MCI
PLACE OF HEARING: TORONTO, ON
DATE OF HEARING: JUNE 15, 2023
JUDGMENT AND REASONS: SOUTHCOTT J.
DATED: JULY 4, 2023

APPEARANCES:

Ronald Poulton FOR THE APPLICANT

Rishma Bhimji FOR THE RESPONDENT

SOLICITORS OF RECORD:

Poulton Law FOR THE APPLICANT
Toronto, ON

Attorney General of Canada FOR THE RESPONDENT
Toronto, ON