

Federal Court



Cour fédérale

Date: 20120720

Docket: IMM-6861-11

Citation: 2012 FC 907

Ottawa, Ontario, July 20, 2012

PRESENT: The Honourable Mr. Justice O'Reilly

AND BETWEEN:

**NAIMA ALI
ALL SAINTS CHURCH WINNIPEG**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] In 1991, Ms Naima Ali fled Somalia after the death of her stepmother, father and brothers. She travelled with her half-brother Abdulkadir, her brother Ahmed, and her mother, Ms Quresh Osman. Along the way, Abdulkadir and Ahmed were captured by the militia and forced to work in a camp. After they escaped, the family made its way to a refugee camp in Ethiopia, where they lived for thirteen years. The family then travelled to Uganda in 2005, and the following year applied for

permanent residence in Canada as members of the Convention refugee abroad class or the country of asylum class. The family is sponsored by All Saints Church in Winnipeg.

[2] In 2011, a visa officer in Kampala, Uganda interviewed Ms Ali, as well as her mother, brother, and half-brother. The officer denied their applications for a lack of credible evidence. All four applicants have sought judicial review. I have dealt with their applications separately (see IMM-6862-11 (*Quresh Osman*), IMM-6857-11 (*Abdulkadir Ali*) and IMM-6858-11 (*Ahmed Ali*)). This decision relates solely Ms. Naima Ali.

[3] Mr Ali submits that the officer treated her unfairly by not giving her a chance to address the officer's concerns about her credibility and lack of identity documents. She also contends that the officer rendered an unreasonable decision because her reasons do not identify the basis for her doubts about Ms Ali's credibility. Further, the officer's concerns related merely to peripheral aspects of Ms Ali's evidence, not the core issues. She asks me to quash the officer's decision and order another officer to reconsider her application.

[4] I can find no basis for overturning the officer's decision. Ms Ali was given an adequate opportunity to submit supporting evidence and to address the officer's credibility concerns. Further, the officer's findings were not unreasonable; they arose from the evidence before her and Ms Ali's inability to explain discrepancies in it. I must, therefore, dismiss this application for judicial review.

[5] The issues are:

1. Did the officer treat Ms Ali unfairly?

2. Was the officer's decision unreasonable?

II. The Officer's Decision

[6] The officer had concerns about Ms Ali's identity because she was unable to produce satisfactory documentation. Ms Ali produced a letter dated July 3, 2007 from the Office of the Prime Minister of Uganda confirming that she was seeking asylum. The letter had been renewed once, but had expired by the time of the interview. She also possessed a UNHCR document dated 2005. She had lost her copy of a document attesting to her status as a refugee. She claimed to have a ration card from the Nakivale refugee camp, but did not bring it to the interview.

[7] The officer also had concerns about Ms Ali's credibility and the composition of the family, arising from the following evidence:

- Ms Ali stated that a person named Idil Omar Ali was a relative and friend living in Kampala who used to be married to her brother, Ahmed. Idil Omar and Ahmed had a son together, but divorced in 2005. However, Ms Ali later stated that Idil Omar was not a family member and had not been married to her brother;
- Ms Ali did not have any documents from Ethiopia. The officer asked about her time at the refugee camp. Ms Ali stated that she attended a school called "El Haj" which was near the Galule block where the family lived. In her application form, Ms Ali said that she had attended the Kabridafian Primary School.

[8] The officer gave Ms Ali a chance to respond to her concerns about this evidence. Ms Ali said that she had made up a story about Idil Omar, but did not explain why she did so. She also conceded that she might have been wrong about where they had lived in the camp. Based on this evidence, the officer was not satisfied that Ms Ali was a member of the Convention refugee abroad class or the country of asylum class, and refused her application for permanent residence.

III. Issue One – Did the officer treat Ms Ali unfairly?

[9] Ms Ali submits that the officer did not give her an adequate opportunity to address her concerns. In particular, the officer did not give her a chance to retrieve further documentation from the refugee camp. Ms Ali also suggests that the officer should have recognized that she was a refugee since her half-brother, Abdulkadir, had produced proof of his status. Further, the officer identified the areas of her evidence that caused the officer to doubt her credibility. It was unfair, therefore, for the officer to reach a conclusion on her application without further input from Ms Ali.

[10] In my view, the officer treated Ms Ali fairly. Citizenship and Immigration Canada [CIC] sent Ms Ali a letter dated March 2, 2011 listing the documents that were required to support her application. Ms Ali did not respond to that letter and brought only two stale-dated documents to the interview.

[11] The officer reasonably expected that Ms Ali should have been able to produce better evidence of her identity. She had been given notice and an adequate opportunity to submit the

required documents. In addition, rather than pointing out a flaw in the officer's treatment of her, her reference to Abdulkadir's evidence of his refugee status simply underscores the fact that she could equally have produced satisfactory documentation.

[12] Regarding Ms Ali's credibility, the officer told Ms Ali, after the officer had spoken to other family members, that there were inconsistencies in the evidence about the identity of Idil Omar and about the family's experiences in Ethiopia. The officer pointed out that she could confirm the name of Ms Ali's school by contacting the UNHCR. In response, Ms Ali changed her evidence about Idil Omar, without explanation. She also conceded she may have made a mistake about the name of the block where the family lived, but she said nothing further about the school.

[13] In my view, the officer gave Ms Ali a fair chance to present adequate evidence of her identity and to address the officer's concerns about her credibility. The officer did not treat Ms Ali unfairly.

IV. Issue Two – Was the officer's decision unreasonable?

[14] Ms Ali argues that the officer unreasonably concluded that she had been unable to produce documents confirming that she had lived in Uganda. Further, she maintains that the officer unreasonably concluded that her evidence about the composition of the family and her time in Ethiopia cast doubt on the core of her claim about the risk she faces in Somalia.

[15] In my view, the officer's conclusions were supported by the evidence and, therefore, were reasonable.

[16] The officer's notes state that Ms Ali was "not able to produce documents despite being in Uganda for stated 6 years." This was not strictly correct as Ms Ali had actually produced two documents. In the circumstances, however, I take it that the officer meant that Ms Ali had not produced sufficient documentation, not that she had provided none. As a resident of Uganda for six years, Ms Ali had an opportunity to obtain better documentary evidence.

[17] The officer stated on cross-examination that she believed Ms Ali may have returned to Somalia at some point, given the absence of good documentary evidence of her residence in Uganda. However, the officer did not record that concern in her notes and did not raise it at the interview. Still, the officer's overarching concern was the lack of supporting documentation. In the circumstances, the officer's concern was valid, and her conclusion that Ms Ali had failed to provide sufficient evidence was not unreasonable.

[18] Ms Ali clearly provided inconsistent evidence about the identity of Idil Omar, and about her time in an Ethiopian refugee camp. While this evidence did not go to the core basis of her application – risk of mistreatment in Somalia – it did affect her overall credibility, particularly given the absence of supporting documentation. In my view, the officer's conclusion that Ms Ali had failed to discharge the burden of proving that she was a member of the Convention refugee abroad class or the country of asylum class was not unreasonable on the evidence before her.

V. Conclusion and Disposition

[19] The officer did not treat Ms Ali unfairly. She was given notice and an adequate opportunity to present documentation to support her claim. The officer told Ms Ali why she was concerned about her evidence and gave her a chance to respond. Further, the officer's conclusion that Ms Ali had failed to produce sufficient, credible evidence to support her application was not unreasonable, given the absence of documentary evidence and the contradictions in her oral testimony. I must, therefore, dismiss this application for judicial review.

[20] Counsel for Mr Ali proposed the following questions for certification:

1. In an application for permanent residence at a Canadian visa office abroad, does the visa office breach the duty of fairness owed the applicant by basing the decision in part on interviews with other, related applicants, but not disclosing the entirety of those other interviews to the applicant with an opportunity for comment?
2. Is there a breach in the duty of fairness owed an application for immigration at a visa post abroad where
 - (a) the visa office interviews a number of related applicants separately,
 - (b) refuses the application of the applicant based on inconsistencies with the interviews of the other related applicants, and

(c) the visa office does not disclose to the applicant the inconsistencies with an opportunity to respond?

[21] No questions should be certified. Question 1 does not arise because the officer based her decision mainly on the lack of supporting documents and the contradictions in Ms Ali's evidence, not on the evidence of related applicants. Question 2 does not arise because the officer did, in fact, disclose the inconsistencies and gave Ms Ali a chance to respond.

JUDGMENT

THIS COURT'S JUDGMENT is that:

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

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6861-11

STYLE OF CAUSE: NAIMA ALI, et al
v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: April 19, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: July 20, 2012

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