

Federal Court



Cour fédérale

Date: 20120720

Docket: IMM-6862-11

Citation: 2012 FC 906

Ottawa, Ontario, July 20, 2012

PRESENT: The Honourable Mr. Justice O'Reilly

AND BETWEEN:

**QURESH OSMAN
ALL SAINTS CHURCH WINNIPEG**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] In 1991, Ms Quresh Osman fled the fighting in Somalia after the death of her husband, his other wife, and the other wife's children. She travelled with her step-son, Abdulkadir, her son, Ahmed, and her daughter, Naima. 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 Osman and the other family members. 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-6857-11 (*Abdulkadir Ali*), IMM-6858-11 (*Ahmed Ali*) and IMM-6861-11 (*Naima Ali*). This decision relates solely to Ms Quresh Osman.

[3] Ms Osman submits that the officer treated her unfairly by relying on extrinsic evidence, and by failing to give her a chance to address the officer's concerns about her credibility. She also contends that the officer rendered an unreasonable decision because her reasons do not identify the basis for her doubts about Ms Osman's credibility. Further, her concerns related merely to peripheral aspects of Ms Osman'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 Osman 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 Osman'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 Osman unfairly?
2. Was the officer's decision unreasonable?

II. The Officer's Decision

[6] The officer was concerned about the lack of documentary evidence supporting Ms Osman's application. Ms Osman produced a photocopy of an expired transportation document from the refugee camp, nothing more.

[7] The officer also harbored concerns about Ms Osman's credibility based on contradictions between her application and her evidence at the interview. The officer also noted discrepancies between Ms Osman's evidence and that of other family members. She also drew an adverse inference from Ms Osman's statement that the family had traveled to Uganda not as refugees, but to be sponsored.

[8] In her application, Ms Osman stated that Abdulkadir and Ahmed had been detained by the militia for two months. In the interview, she said it was almost a month.

[9] At the interview, Ms Osman was asked about the identity of a person named Idil Omar Ali. Ms Osman's daughter Naima had told the officer that Idil Omar was Ahmed's former wife. Ms Osman said she did not know who Idil Omar was but, without prompting, she offered the name of Ahmed's current wife. Asked about where the family had lived in the refugee camp, Ms Osman said

they lived on the Kamamhara block. Her daughter gave a different name. Ms Osman also gave a different version from Naima and Ahmed about how rations were distributed in the camp.

[10] The officer found that Ms Osman had failed to supply adequate documentary evidence to support her application, and that her evidence contained a number of inconsistencies. She concluded that Ms Osman had failed to establish that she met the requirements for permanent residence in Canada as a member of the Convention refugee abroad class or the country of asylum class.

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

[11] Ms Osman argues that the officer should have given her a chance to obtain further documentary evidence in support of her application. Ms Osman also suggests that the officer should have recognized that she was a refugee since her step-son, Abdulkadir, had produced proof of his status. In addition, she maintains that the officer relied on evidence of which she was unaware, namely, the evidence provided by other family members in their interviews. The officer did not explain what the others had said and, accordingly, gave her no meaningful opportunity to address the officer's concerns.

[12] In my view, the officer did not treat Ms Osman unfairly.

[13] In 2007, and again in 2011, Citizenship and Immigration Canada [CIC] provided Ms Osman with a list of documents needed to support her application – identification documents, birth certificate, UNHCR documents, etc. Ms Osman did not respond to those letters and only brought a

single, outdated, largely irrelevant document to the interview.

[14] In my view, the officer reasonably expected that Ms Osman 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. 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.

[15] The officer noted discrepancies between Ms Osman's application and her evidence at the interview. For example, Ms Osman had given different answers when asked about the duration of Abdulkadir's and Ahmed's detention. The officer also put to Ms Osman questions arising from the evidence of other family members. In at least three areas, the evidence differed significantly. While Ms Osman argues that the officer should not have doubted her credibility simply because others had given different answers, in my view, the officer gave her a fair chance to present her version of events.

[16] Ms Osman had ample opportunity to present documentary evidence supporting her claim, and was given a fair chance to respond to the officer's concerns about her evidence. The officer did not treat her unfairly.

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

[17] Ms Osman 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, her time in Ethiopia, and the reason the family travelled to Uganda cast doubt on the core of her claim about the risk she faces in Somalia.

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

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

[20] Ms Osman clearly provided inconsistent evidence about the detention of Abdulkadir and Ahmed, as well as the identity of Idil Omar, and 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 addition, the question of Idil Omar's connection to the family was relevant to the question whether the applicants might have status in Ethiopia, or elsewhere.

[21] Finally, Ms Osman's statement that the family travelled to Uganda for purposes of sponsorship did not figure prominently in the officer's reasons. The officer decided Ms Osman's application mainly on grounds of credibility and a lack of documentary evidence. Had Ms Osman's statement been a more significant factor, the officer's reliance on it would have been more troubling. There is certainly nothing inherently wrong with the family making itself available for sponsorship by travelling to Uganda.

[22] In my view, in the circumstances, the officer's conclusion that Ms Osman 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

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

[24] Counsel for Mr Osman 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?

[25] Neither question should be stated. Question 1 is based on the proposition that fairness requires disclosure of the entirety of other interviews, rather than the parts that contradict a particular applicant's evidence. There is no foundation for that proposition. Further, the officer's main concerns in this case arose from the lack of documentation and inconsistencies in Ms Osman's own evidence. Question 2 does not arise because the officer did disclose the inconsistencies and gave Ms Osman an opportunity 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-6862-11

STYLE OF CAUSE: QURESH OSMAN, 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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