

Federal Court



Cour fédérale

Date: 20120713

**Docket: IMM-5752-11
IMM-5758-11
IMM-5757-11
IMM-5759-11**

Citation: 2012 FC 883

Ottawa, Ontario, July 13, 2012

PRESENT: The Honourable Mr. Justice O'Reilly

Docket: IMM-5752-11

BETWEEN:

NURO GAS MUSSE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

Docket: IMM-5758-11

AND BETWEEN:

ABDIRAHMAN ABDI GAS

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

Docket: IMM-5757-11

AND BETWEEN:

AHMED ABDI GAS

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

Docket: IMM-5759-11

AND BETWEEN:

NAJMA OSMAN AWID

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] In 2008, Ms Nuro Gas Musse, along with her nephews, Ahmed and Adbiraham, and her niece, Najma, applied for permanent residence in Canada at the Canadian consulate in Addis Ababa, Ethiopia. The family fled Somalia in 2007. Their applications were sponsored by Hospitality House Refugee Ministry in Winnipeg.

[2] A visa officer dismissed all four applications because of concerns about the applicants' credibility and a lack of evidence of their identities. The applicants argue that the officer treated them unfairly and rendered an unreasonable decision. In particular, they maintain that the officer relied on extrinsic evidence, and failed to render a separate decision for each applicant. They also question the basis for the officer's conclusion that their account of events was implausible. They ask me to quash the officer's decision and order another officer to reconsider their applications.

[3] I can find no basis for overturning the officer's decision and must, therefore, dismiss this application for judicial review. The officer did not rely on evidence of which the applicants were unaware. Further, because the basis for the officer's conclusion was common to all four applicants, the officer did not treat them unfairly by rendering an identical decision for each of them. Finally, the officer's decision was based on the evidence before her and fell within the range of defensible outcomes based on the facts and the law. It was reasonable.

[4] The issues are:

1. Did the officer treat the applicants unfairly?
2. Was the officer's decision unreasonable?

II. The Officer's Decision

[5] In 2011, the officer interviewed each applicant separately, and then brought them together to respond to her concerns. The applicants gave the following accounts:

(a) *Ms Nuro Gas Musse*

[6] Ms Musse explained that she belonged to the Bah Hamer tribe in Somalia. During the war, her two sons disappeared. Her husband died of natural causes.

[7] Ms Musse lived with her sister, her nephews and her niece in Mogadishu. She ran a shop, but a group of men burned it down. Her sister died in the fire. Friends collected money so that she and the other applicants could flee Somalia by air. They flew to Hargeisa, where they stayed only for ten days because there was no refugee camp there. Again, friends collected money so that the family could fly to Addis Ababa.

[8] In Addis Ababa, the applicants found accommodation, but not in a refugee camp. Nor did they register with the UNHCR. Because their bags were stolen, they did not have identification papers and could not leave their home. Therefore, they were unfamiliar with the surrounding neighbourhood, even though they lived there for four years. While the rest of the family went to the mosque, she did not because her hearing and eyesight were poor.

[9] Ms Musse stated that she was afraid of returning to Somalia because she was a member of a minority clan and was at risk of persecution from other clans.

(b) *Ahmed Abdi Gas*

[10] Ahmed, age 22, explained that he did not know if his parents were alive. He had lived with his aunt, Ms Musse, since he was a child. The other applicants, Abdirahman and Najma, were cousins. The family left Somalia in 2007 after Ms Musse's shop burned down.

[11] Ahmed stated that he rarely went to the mosque in Addis Ababa. The officer asked him about the neighbourhood. He said there were no shops or restaurants around. He did not know the name of the nearby shopping centre. He did not register with the UNHCR because he did not know the location of the office. He did not ask anyone where it was.

[12] Ahmed confirmed that they travelled to Addis Ababa by air, and that their belongings were stolen after they arrived. They did not report the theft.

(c) *Abdirahman Abdi Gas*

[13] Abdirahman, age 19, told the officer that his parents disappeared during the war in Somalia, and that he had lived with his aunt, Ms Musse, since he was three years' old.

[14] He explained that the family left Somalia in 2007 because of the war. They flew to Ethiopia by plane, on funds raised in the mosque.

[15] The family lived in the Lafta area of Addis Ababa, but he did not know the name of the street. They could not leave the house because they had no identification papers. He attended the mosque on Fridays, but he did not know the name of the imam. Members of the Somali community helped them. Sometimes Ahmed shopped for them.

[16] He did not register with the UNHCR and did not know its location. He possessed a Somali community identification card that he obtained three days before the interview.

[17] Abdirahman stated that he feared returning to Somalia because he might be killed in the fighting or forced to take part in it.

(d) *Najma Osman Awid*

[18] Najma, age 20, believed her parents were alive but she did not know where they were. She had lived with her aunt, Ms Musse, since she was ten. Ms Musse's sons disappeared before 2007.

[19] The family fled Somalia because of a series of problems. Her aunt's sister was killed, and Ms Musse feared the same fate.

[20] Najma confirmed that the family had travelled to Hargeisa and then to Addis Ababa by air. They possessed passports, but these and their other belongings were stolen on arrival.

[21] She knew that the family lived in the Lafta district but did not know the name of the street. She stayed in the house all day because she had no identification and did not speak the local language. She did not know where the UNHCR was. None of applicants attended the mosque. The oldest male in the family did the shopping.

[22] After completing these interviews, the officer called all four applicants together to discuss her concerns, including:

- considering they had lived there for four years, they had little knowledge of Addis Ababa;
- they had no documentation from Somalia or Ethiopia;
- their stories were not entirely consistent;
- they had not registered with the UNHCR; and
- aspects of their story were not plausible: for example, their assertion that the Somali community in Hargeisa would raise money to fly four strangers to Ethiopia, but no one in Addis Ababa would help them find the UNHCR.

[23] Only Abdirahman spoke in the group interview. He explained that Ms Musse believed they might be arrested if they left the house without identification. Therefore, they were not familiar with the neighbourhood. The officer pointed out that Ms Musse did not provide that explanation in her interview. Further, other Somalis living in Addis Ababa did not fear arrest.

[24] Regarding the UNHCR, Abdirahman stated that anyone who gave them directions to the office would charge a fee. Somalis in Addis Ababa were not as generous as those in Hargeisa.

[25] The officer asked about the inconsistencies in their accounts of events. Abdirahman stated that “[w]hat we remembered is that we lived in the same area and that we lost our parents during the war and she left the country that her sister was killed in the market that she lived in.”

[26] The officer concluded that the applicants’ evidence was not credible and was inconsistent with the documentary evidence about conditions in Addis Ababa. Further, the officer was not satisfied of the applicants’ identities, the only evidence being a document obtained from a community office a few days before the interview.

III. Issue One – Did the officer treat the applicants unfairly?

[27] The applicants argue that the officer should not have relied on what was said in the interviews by the others. None of the applicants knew what the others had said. Therefore, this was extrinsic evidence. Further, the officer did not tell them how their evidence was inconsistent.

[28] I agree with the applicants that the officer did not make clear what the inconsistencies were. It would have been better if she had. However, this was only one of a series of concerns about the applicants’ evidence. All the others, described above, were common to all of the applicants. They all knew what they had said in their interviews and the officer gave them a chance to allay her concerns.

[29] The applicants also contend that the officer had a duty to render separate decisions for each of them. Instead, she issued four identical decisions. It does not appear, they claim, that she gave individual consideration to each applicant, as she was bound to do. In particular, the officer did not

consider the Gender Guidelines in respect of the two female applicants. They did not speak at the group interview, letting their male relative answer for them. Nor did the officer consider Ms Musse's poor eyesight and hearing. These factors might have helped explain why she was unfamiliar with her neighbourhood.

[30] The officer had four separate applications before her; however, Ms Musse's application listed the other family members as dependants. Still, the officer did render four separate decisions, albeit all on the same grounds, based on separate interviews. The collective interview at the end gave the applicants a chance to respond to concerns that were common to all four applications. I believe the officer gave the applicants a fair chance to present their evidence.

[31] Further, the female applicants have not provided evidence that they felt inhibited at the group interview or that they could have addressed the officer's concerns if given an additional opportunity. Those concerns arose out of the individual interviews in which the applicants would not have felt constrained by the presence of their male relatives.

[32] Regarding Ms Musse's disabilities, the officer was clearly aware of them and informed Ms Musse that she should indicate if she was having any trouble during the interview. She did not express any difficulties. Further, she did not contend that her unfamiliarity with the neighbourhood was a consequence of her physical limitations.

[33] In the circumstances, therefore, I cannot see any unfairness in the officer's treatment of the applicants. Each of them was given an opportunity to present his or her evidence and to respond to

the officer's concerns (see *Ali v Canada (Minister of Citizenship and Immigration)*, 2012 FC 710, at para 41-45).

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

[34] The applicants suggest that the officer's conclusions were unreasonable and inadequately explained. In particular, they argue that the officer should not have based her decision on the implausibility of their evidence. Such a finding should only be made in the clearest of cases.

[35] I find that the officer's conclusions were reasonable. She found it unlikely that all of the applicants would be unfamiliar with a neighbourhood they had occupied for four years; that they were seeking refugee protection but did not make any reasonable effort to contact the UNHCR; that no one would tell them the location of the UNHCR office (without a fee), while relative strangers were prepared to pay their airfare; and that they did not possess, and could not obtain, any reliable identification evidence. In my view, the officer reasonably concluded that this evidence fell outside the realm of what could be reasonably expected in the circumstances (*Valchev v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 776, at para 9). Further, in setting out the basis for her conclusions, she made sufficiently clear why she dismissed the applications (*NLNU v Newfoundland & Labrador (Treasury Board)*, 2011 SCC 62, at para 16).

V. Conclusion and Disposition

[36] The officer treated the applicants fairly by giving each of them an opportunity to provide their individual accounts, and then gave them a chance to respond to her concerns. She rendered

individual decisions for each applicant, albeit all on the same grounds. Moreover, the officer's conclusions were reasonable given that they represented defensible outcomes based on the facts and the law. Her reasons were sufficiently clear. I must, therefore, dismiss this application for judicial review.

[37] The applicants proposed the following questions for certification:

- i. 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?
- ii. Is there a breach in the duty of fairness owed an application for immigration at a visa post abroad where
 1. the visa office interviews a number of related applicants separately,
 2. refuses the application of the applicant based on inconsistencies with the interviews of the other related applicants, and
 3. the visa office does not disclose to the applicant the inconsistencies with an opportunity to respond?
- iii. Where a person makes an individual application to a Canadian visa office abroad for permanent residence along with other related applicants and that application is refused, is the applicant entitled to separate reasons for the refusal which relate specifically to the

case of the applicant?

4. When deciding on an application for immigration at a visa post abroad based on membership in the Convention refugee abroad or humanitarian protected persons abroad designated class, does gender equality require the visa office to assess the need to conduct an interview of an individual female refugee applicant who comes from a male dominated society separately from her male relatives?
5. Can reasons for refusal of an immigration application by a visa post be considered reasonable when they are collective, refusing several applicants with the same language, and not linked to the individual case of the applicant?

[38] In my view, Question 1 does not arise here because the officer gave the applicants a reasonable opportunity to respond to concerns arising from individual interviews. For the same reason, Question 2 should not be stated. Question 3 should not be stated because each applicant received a separate decision. Question 4 need not be stated because the female applicants were interviewed separately and there is no evidence that they refrained from putting forward relevant information. In my view, Question 5 should not be stated because the applications here were based on the same grounds and rejected on the same basis. No further particularity was required in the circumstances.

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;
3. A copy of these reasons for judgment and judgment shall also be placed in file IMM-5758-11 (*Abdirahman Abdi Gas*); IMM-5757-11 (*Ahmed Abdi Gas*) and IMM-5759-11 (*Najma Osman Awid*).

“James W. O’Reilly”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-5752-11
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STYLE OF CAUSE: NURO GAS MUSSE, et al
v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: April 17, 2012

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

DATED: July 13, 2012

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