

Federal Court



Cour fédérale

Date: 20141121

Docket: IMM-5451-13

Citation: 2014 FC 1116

Ottawa, Ontario, November 21, 2014

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

MOHAMED ALI AWED

Applicant

And

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Refugee Protection Division of the Immigration and Refugee Board dismissed Mohamed Ali Awed's claim for refugee protection on the basis that he had not provided satisfactory evidence of his identity. I have concluded that the Board's analysis of Mr. Awed's evidence was selective to the point of unfairness with the result that the decision lacks the justification, transparency and intelligibility required of a reasonable decision.

I. Background

[2] Mr. Awed says he is a citizen of Somalia, born to the minority Madiban clan in Balad on May 10, 1959. He asserts that he left Somalia for Kenya in March of 1991, during the civil war in Somalia. Mr. Awed says that he travelled on a false Kenyan passport from Nairobi to the United States in 1999, where he was subsequently granted asylum.

[3] According to Mr. Awed, in 2005, the American Citizenship & Immigration Services gave him permission to leave the United States for one year so as to allow him to visit his sick mother in Kenya. This fact was confirmed by a biometric report obtained from the United States' Department of Homeland Security. Mr. Awed says he went to Kenya in April of 2004. His mother's condition then worsened, and he remained in Kenya until she died in October, 2005.

[4] Mr. Awed says that he could not return to the United States after his mother's death because he had lost his immigration documents while he was in Kenya, and had spent all of his money on his mother's medical care. Accordingly, Mr. Awed remained in Kenya for the next six years.

[5] In the meantime, Mr. Awed's application for permanent residence in the United States was cancelled because he had remained out of the country for more than one year. Mr. Awed says that he lived in Kenya until 2011, when he came to Canada and made his claim for refugee protection.

II. Analysis

[6] The Board's finding that Mr. Awed had not established his identity is a finding of fact reviewable on the reasonableness standard: *Rahal v. Canada (Citizenship and Immigration)*, 2012 FC 319, [2012] F.C.J. No. 369.

[7] The Board based its decision on what it characterized as misrepresentations made by Mr. Awed in his original Claim for Refugee Protection form. The overall tenor of the Board's decision is that Mr. Awed had attempted to conceal his stay in the United States, with the result that his evidence as to his identity could not be trusted. However, a review of the evidence simply does not support the suggestion that Mr. Awed had attempted to conceal the fact that he had spent time in the United States.

[8] The Board stated that Mr. Awed had failed to disclose his use of any name other than Mohamed Ali Awed in his Claim for Refugee Protection form. There are several difficulties with this finding. The first is that Mr. Awed did not fail to disclose his use of any name other than Mohamed Ali Awed in his Claim form. While it is true that he answered "n/a" to the question "Other names previously or currently used (nicknames, maiden name, etc.)", he later indicated in the same form that he had travelled to Canada on a passport bearing the name "Ahmed Yusuf".

[9] It is true that Mr. Awed did not mention that he had used the name "Mohamed Yusuf Abdi" during his earlier sojourn in the United States in his Claim for Refugee Protection form. He said that this was an oversight on his part. The Board rejected Mr. Awed's explanation because of its finding that Mr. Awed's Claim for Refugee Protection form contained a second misrepresentation.

[10] That is, Mr. Awed had declared in his Claim form that he had been unemployed in Balad, Somalia between 2001 and 2004, an assertion that was also not true. Referring to the biometric report received from the United States' Department of Homeland Security, the Board noted that Mr. Awed had in fact been living and working in the United States during that period.

[11] The Board's reasons thus suggest that Mr. Awed had lied about his whereabouts between 2001 and 2004, and that his deceit had only been uncovered through the biometric report. The clear implication of the Board's reasoning is that if Mr. Awed had lied about his whereabouts during the 2001-2004 period, he was probably also lying about his identity.

[12] Once again, there are several problems with this reasoning. The first is that Mr. Awed had in fact disclosed that he was in the United States in the period between 2001 and 2004 in his Claim for Refugee Protection form. It is true that his answer to question 24 regarding his employment history says that he was unemployed in Balad, Somalia during this period. However in that same answer, Mr. Awed goes on to state that he was living and working in Seattle during the period in question. While Mr. Awed's answer to question 24 may have been confusing and internally inconsistent, it was unfair for the Board to imply that he had wilfully concealed his presence in the United States until it was discovered as a result of the biometric report.

[13] The second problem with the Board's analysis is that just one month after completing his Claim for Refugee Protection form, Mr. Awed disclosed his use of the name Mohamed Yusuf Abdi in his Personal Information Form. Mr. Awed clearly corrected the error on his own initiative, as the PIF was completed months before the biometric form was received from the United States.

[14] The Board's treatment of the testimony of Mr. Awed's corroborative witness is equally problematic. The witness testified that he had known Mr. Awed in Somalia, primarily as a friend of the witness' brother, and that he had last seen Mr. Awed in Somalia in 1986. The witness testified that when Mr. Awed first approached him in Canada in 2011, he did not immediately know who he was. The Board accepted that it would be quite natural for someone not to immediately recognize a person that he had not seen for some 25 years. However, it went on to discount the witness' testimony on the basis that Mr. Awed had "persuaded" the witness of his identity. Once again, this is simply not a fair representation of the evidence.

[15] The witness acknowledged that when Mr. Awed first approached him, he did not immediately recognize him, but the witness went on to state that when Mr. Awed identified himself, the witness quickly realized who he was. It was the Board member who subsequently suggested to the witness that Mr. Awed had had to "persuade him" of his identity, a suggestion that the witness expressly rejected.

III. Conclusion

[16] For these reasons, I have concluded that the Board's assessment of the evidence was unfair and that the decision lacks the justification, transparency and intelligibility required of a reasonable decision. The application is therefore granted. I agree with the parties that the case does not raise a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is allowed, and the matter is remitted to a differently constituted panel for re-determination.

“Anne L. Mactavish”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5451-13

STYLE OF CAUSE: MOHAMED ALI AWED v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 20, 2014

JUDGMENT AND REASONS: MACTAVISH J.

DATED: NOVEMBER 21, 2014

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