

Federal Court



Cour fédérale

Date: 20151023

Docket: IMM-2008-15

Citation: 2015 FC 1202

Vancouver, British Columbia, October 23, 2015

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

SALAH AWIL ABDILLAHI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Abdillahi seeks to set aside a negative pre-removal risk assessment [PRRA] decision.

For the reasons that follow, this application is allowed.

[2] Mr. Abdillahi is 26 years old and a citizen of the Federal Republic of Somalia. He entered Canada 10 years ago as a permanent resident, sponsored by his mother, but has since

been found inadmissible on grounds of serious criminality. He is thus subject to removal to Somalia.

[3] The PRRA officer notes that Mr. Abdillahi “has twenty-two convictions in Canada and two outstanding charges.” He “has had over 135 separate encounters with the police since he became a permanent resident.” While interesting background to explain the inadmissibility finding, his criminal record is irrelevant when doing a PRRA analysis. An appeal of the removal order to the Immigration Appeal Division [IAD] on humanitarian and compassionate grounds was unsuccessful.

[4] Mr. Abdillahi started drinking soon after arriving in Canada; he is an alcoholic. The IAD decision indicates that he drinks every day if he has the money and notes that he says that his convictions are related to his drinking; he is not arrested when he is not.

[5] Mr. Abdillahi is cognitively impaired. He was hit by a bus on September 20, 2013, and sustained multiple injuries, including a severe traumatic brain injury. The brain injury has caused deficits in memory, language, and insight.

[6] Mr. Abdillahi has limited family connections in Somalia. His father lives in Somalia but he has had no contact with him since 2007, and does not know where he lives. Similarly, he also has aunts and uncles in Somalia, but does not know where they live.

[7] Mr. Abdillahi has a number of tattoos. He submitted to the PRRA officer that he has tattoos of a lion's head; the word "Outlaw"; a heart; the acronym "SOG," which means "Somalia Original Gangster"; the word "love"; a dollar sign; and a heartagram, which is a cross between a pentagram and a heart symbol. He says that most of his tattoos are on his forearms and are clearly visible. He says that these would identify him as being westernized and not a Muslim.

[8] Mr. Abdillahi does not know which clan he belongs to and submits that he will be at risk in Somalia without the social and protective support of a clan.

[9] The PRRA officer concluded that Mr. Abdillahi was not at risk if returned to Somalia. I agree with the submissions of counsel that the officer did not expressly find that Mr. Abdillahi would be at risk in areas of the country under the control of Al-Shabaab, but I have concluded that the officer must have done so. The officer relies heavily on the UK Home Office December 2014 report *Somalia: Security and humanitarian situation in South and Central Somalia*. That report states that returning a person such as Mr. Abdillahi to territory held by Al-Shabaab would be to put him at risk:

In general return to an area under the control of Al Shabaab is not feasible for a person who has no history of living under Al Shabaab in that area and is in general unlikely to be a reasonable proposition for someone who has a history. Such persons will be at real risk of persecution by Al Shabaab because of actual or imputed religious or political opinion.

The officer appears to find that Mr. Abdillahi is at risk from Al-Shabaab because he writes that "I find that the applicant's risks from Al-Shabaab are significantly diminished in Mogadishu."

The officer then continues his PRRA analysis by examining whether there is an internal flight alternative [IFA] available in Mogadishu.

[10] The officer's analysis of Mogadishu as an IFA is unreasonable and unacceptable because the officer focuses his assessment only on selected passages from the documentary evidence, ignoring and failing to address significant and material statements that run counter to his ultimate finding. While he is entitled to prefer evidence that Mogadishu is an IFA, he must address the contrary evidence and state why it is given little or no weight or does not apply to Mr. Abdillahi. The officer cannot ignore it, especially where it appears to strongly support the conclusion that Mogadishu is not an IFA for Mr. Abdillahi.

[11] The issue of whether Mogadishu is a viable IFA is explicitly addressed in two reports and two cases that were before the officer. All suggest that Mogadishu is not a viable IFA for someone with the characteristics and history of Mr. Abdillahi.

[12] Amnesty International in its report *Mogadishu cannot qualify as an Internal Flight Alternative* (September 2013), concludes that:

[i]t is unlikely that those who return to Somalia will be able to establish an acceptable standard of living unless they have access to economic resources and powerful individuals or networks within the city. Without this, it is highly likely that any returnee would face extreme difficulty in accessing a job or be able to enjoy an adequate standard of living in a city whose infrastructure remains broken, in a country that has some of the lowest development and humanitarian indicators globally. [emphasis added]

[13] The United Kingdom Home Office's report entitled *Country Information and Guidance: Somalia: Security and humanitarian situation in South and Central Somalia* (December 2014) states that, although Mogadishu may be an acceptable IFA for some people, it would not likely

be a realistic option for a person “of a minority clan with no former links to the city, no access to funds and no other form of clan, family or social support.” The report states that:

in the absence of means to establish a home and some form of ongoing financial support there will be a real risk of having no alternative but to live in makeshift accommodation within an IDP [internally displaced persons] camp where there is a real possibility of having to live in conditions that will fall below acceptable humanitarian standards. [emphasis added]

[14] The jurisprudence that was before the officer contains similar statements. In *AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG*, [2011] UKUT 00445, the Upper Tribunal (Immigration and Asylum Chamber) held that Mogadishu could not, in general, be an internal relocation alternative. It acknowledged a limited exception for:

middle class or professional persons in Mogadishu who can live to a reasonable standard, in circumstances where the Article 15(c) risk, which exists for the great majority of the population, does not apply.

However, it also emphasized that:

[t]he significance of the category we have identified should not, however, be overstated. For most people in Mogadishu the Article 15(c) risk persists, at the present time. In the case of a claimant for international protection, a fact-finder would need to be satisfied that there were cogent grounds for finding that the claimant fell within such a category.

[15] Similarly, in *MOJ & Ors (Return to Mogadishu) Somalia CG*, [2014] UKUT 00442, the Upper Tribunal (Immigration and Asylum Chamber) held that:

The evidence indicates clearly that it is not simply those who originate from Mogadishu that may now generally return to live in the city without being subjected to an Article 15(c) risk or facing a real risk of destitution. Large numbers of Somali citizens have moved to Mogadishu where, as we have seen there is now freedom of movement and no clan based discrimination. Such a person

seeking to settle in Mogadishu but who has not previously lived there would be able to do so provided he had either some form of social support network, which might be in the form of membership of a majority clan or having relatives living in the city, or having access to funds such as would be required to establish accommodation and a means of on-going support. That might be in terms of continuing remittances or securing a livelihood, based on employment or self employment.

On the other hand, relocation in Mogadishu for a person of a minority clan with no former links to the city, no access to funds and no other form of clan, family or social support is unlikely to be realistic as, in the absence of means to establish a home and some form of ongoing financial support there will be a real risk of having no alternative but to live in makeshift accommodation within an IDP camp where there is a real possibility of having to live in conditions that will fall below acceptable humanitarian standards. [emphasis added]

[16] The evidence is that Mr. Abdillahi has no known family, friends, or clan connections within Mogadishu. Moreover, he has little or no access to resources. Indeed, the only time the officer considered his capacity to make a living in Mogadishu was during his conclusion, where he stated that:

I do not find the hardship associated with relocation to be considered unreasonable, considering the applicant's knowledge of the Somali language and his past work experiences as a forklift driver in Edmonton and Vancouver.

[17] The officer's reliance on this employment history is perverse considering that Mr. Abdillahi worked as a fork lift driver for a total of four months between his arrival in Canada in 2005 and his removal hearing in 2014. Aside from these four months, he did not work at all while in Canada. Needless to say, and notwithstanding the contrary conclusion of the officer, this work experience does not bode well for Mr. Abdillahi's economic prospects in Mogadishu.

[18] Additionally, the officer fails to adequately address the risks to Mr. Abdillahi created by his mental health issues. The EASO Country of Origin Information Report *South and Central Somalia Country Overview* informs that in Somalia “[m]ental patients are often chained to trees or left to die.”

[19] A location is only an IFA if the person in question can reasonably and without undue hardship locate there. That requires an assessment of the location within the framework of the person’s situation and characteristics. That assessment must consider the person’s ability to be supported in the location in terms of employment and physical and mental health.

[20] Mr. Abdillahi is a cognitively-disabled recidivist offender alcoholic with minimal work experience, access to resources, or social supports. He falls squarely within the category of persons identified in the documentary evidence that are unlikely to be able to get by in Mogadishu without experiencing undue hardship. Living in an IDP camp can hardly be said to be an IFA.

[21] In light of the volume of evidence that contradicts the officer’s conclusion and his failure to address it, the decision is unreasonable and cannot be permitted to stand.

[22] Neither party proposed a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is allowed, the applicant's PRRA application is to be determined by a different officer, and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: SALAH AWIL ABDILLAHI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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