

Federal Court



Cour fédérale

Date: 20160217

Docket: IMM-2664-15

Citation: 2016 FC 218

Ottawa, Ontario, February 17, 2016

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**HIBIL HASSAN MAHDI
(a.k.a.: MAHDI HIBIL HASSAN)**

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is the judicial review of a rejected refugee protection claim where the Applicant was said to have failed to establish his identity. The Refugee Protection Division [RPD] made a “no credible basis” finding, the effect of which is to preclude the Applicant from an appeal to the

Refugee Appeal Division [RAD] where the rights to review, to submit evidence and to receive a new decision offer more relief to an appellant than judicial review in this Court.

[2] In view of the remedy being granted - an opportunity to appeal to the RAD - the Court will not canvass in detail either the claim or the issue of the reasonableness of the decision on its merits.

II. Background

[3] The Applicant alleged that he was born in Somalia to Ethiopian parents who held Ethiopian citizenship. He claimed Somali ethnicity. His citizenship is an open issue.

[4] The risk alleged is that he would be considered a spy and a target for Al Shabaab. He claimed that he was detained and arrested on account of his ethnicity and because he was suspected of being associated with a rebel group.

[5] The Applicant's story of his travels and travails to get to Canada is long and complicated. It involved detention in the U.S. To establish identity, he submitted to the RPD the same documents submitted to U.S. authorities.

[6] The U.S. authorities were able, on the strength of those documents, to establish the Applicant's identity.

[7] The RPD found that on a balance of probabilities, the Applicant failed to produce sufficient credible evidence to establish his personal identity as either a Somali or Ethiopian – the first step in a refugee claim without which there was no need to assess the remainder of the claim.

[8] Therefore, the RPD found at paragraph 28 that the Applicant failed to produce sufficient credible evidence of identity. It then went further in paragraph 30 to hold that there was no credible basis for the claim. However, the RPD held at paragraph 28 that it did not have to assess either persecution or need of protection.

III. Analysis

[9] The standard of review of a “no credible basis” finding is reasonableness (*Hernandez v Canada (Citizenship and Immigration)*, 2016 FC 144 at para 3). However, such finding must be based on the absence of any credible evidence to support the claim. In the present case, the only aspect of the claim that the RPD examined was identity.

[10] The finding of “no credible basis” is one of great significance because it precludes the usual right of an appeal to the RAD. It has been held to set a high threshold (see *Ramón Levaria v Canada (Citizenship and Immigration)*, 2012 FC 314, 214 ACWS (3d) 562 [*Levaria*]). It is a finding that cannot be either a catch-all, a throwaway line or a summary of insufficiency and weighing of evidence pros and cons.

[11] A finding of “no credible basis” is a finding that the evidence is devoid of any basis upon which to support a positive finding (*Levaria* at para 19).

[12] The RPD is not required to adopt the U.S.’s finding on identity. However, unless it finds that the U.S. decision is so devoid of merit that it is incapable of sustaining even its own finding, the U.S. decision is at least some credible basis for a finding in favour of the Applicant.

[13] It was unreasonable to conclude that there was no credible basis for the claim. I say nothing about the reasonableness of other credibility conclusions which involved a weighing of evidence.

IV. Conclusion

[14] The Applicant has been wrongfully deprived of a right of appeal by an unreasonable no credible basis finding.

[15] In order to preserve the Applicant’s appeal rights, I will order that the operation of the decision be suspended to allow the Applicant to commence an appeal to the RAD within 30 days of this decision.

[16] In the event that there is no appeal filed, suspension shall expire. In the event that an appeal is filed, the Court will dismiss this judicial review as moot without prejudice to any rights to seek judicial review of the RAD’s decision.

JUDGMENT

THIS COURT'S JUDGMENT is that the operation of the decision is suspended to allow the Applicant to commence an appeal to the Refugee Appeal Division within 30 days of this decision. In the event that no appeal is filed, suspension shall expire. In the event that an appeal is filed, the application for judicial review will be dismissed as moot without prejudice to any rights to seek judicial review of the Refugee Appeal Division's decision.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2664-15

STYLE OF CAUSE: HIBIL HASSAN MAHDI (a.k.a.: MAHDI HIBIL HASSAN) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 10, 2016

JUDGMENT AND REASONS: PHELAN J.

DATED: FEBRUARY 17, 2016

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