

Federal Court



Cour fédérale

**Date: 20180925**

**Docket: IMM-401-18**

**Citation: 2018 FC 945**

**Ottawa, Ontario, September 25, 2018**

**PRESENT: The Honourable Mr. Justice Ahmed**

**BETWEEN:**

**ABDULKADIR HASHI JAMA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Abdulkadir Hashi Jama (the “Applicant”) is a 35 year old citizen of Somalia who lived in the United States (“US”) since 1996. Upon being included on a US deportation list, he came to Canada. On August 22, 2017 he made a Pre-Removal Risk Assessment (“PRRA”) application stating that, should he be returned to Somalia, he will be at risk of harm because he is a westerner, does not speak the Somali language, has no family in the country and he has not lived

there since childhood. He says that his clan will not protect him because his father (who is from a majority clan) married a woman from a minority clan.

[2] On January 5, 2018, a senior immigration officer (“the Officer”) rejected the PRRA application for reasons including a finding that the Applicant (who derives his clan identity from his father) can rely on his father’s clan for protection.

[3] On January 26, 2018, the Applicant applied for judicial review of that decision. I find the decision is unreasonable and will set it aside for the reasons that follow.

## II. Facts

[4] The Applicant is a 35 year old citizen of Somalia. His father is from a majority clan (the Marehan, a sub-clan of the Darood) and his mother is from a minority clan (the Madiban). His father was disowned for marrying a woman from a minority clan, and the Applicant grew up knowing only his mother’s side of the family.

[5] After the outset of the Somali civil war in 1991, the Applicant and his family fled to Kenya, where they lived as refugees for a number of years. His aunt sponsored the family to move to the United States, which they did in February 1996. All of his immediate family members eventually obtained American citizenship and presently reside in the United States.

[6] While in the United States on a “Green Card,” the Applicant was arrested and convicted of being in possession of stolen goods. One day when he was returning home from a Somali

shopping centre, he saw a friend and asked for a ride home. Although he did not know it at the time, his friend was driving a stolen car. The Applicant claims that he had nothing to do with the theft – in fact, he knew the owner of the stolen car, who testified in court on the Applicant’s behalf – but he was nevertheless convicted and sentenced to a year plus one day in jail. He served 4 months in a county jail and the remainder on probation. As a result of the conviction, he lost his Green Card and was placed on a deportation list.

[7] The Applicant entered Canada on July 27, 2017 and made a claim for refugee protection. Due to his conviction in the United States, he was deemed inadmissible on grounds of serious criminality pursuant to section 36(1)(b) of the *Immigration and Refugee Protection Act, SC* 2001, c 27 and found ineligible to make a claim for refugee protection.

[8] On August 22, 2017 the Applicant made a Pre-Removal Risk Assessment (“PRRA”) application which was dismissed by a Senior Immigration Officer (the “Officer”) by way of a decision dated January 5, 2018. In the decision the Officer summarizes the Applicant’s fear of returning to Somalia as follows: he has not lived there since he was a child, he has no family or home there, he cannot speak Somali very well, he will be discriminated against and his human rights will be violated. Specifically, the Officer notes the Applicant’s contention that he will be targeted because he is identifiable as a westerner, and he will not receive any protection from his father’s clan because the Applicant is of mixed heritage. The Officer then reviews the country condition reports about the clan system, including the fact that it is patrilineal and the fact that it plays an important role in providing protection (often better than the protection offered by the state or police).

[9] The Officer finds that there is no evidence of the Applicant's parents' clan affiliations but notes that, even if he is to accept them as true, there is insufficient objective evidence that the Marehan would target, harm or deny him protection. The Officer recalls that the Applicant takes his clan position from his father because the system is patrilineal, and says that the Applicant will therefore be able to rely upon protection from the Marehan clan.

[10] The Officer acknowledges that there is a threat of terrorist attacks in Somalia, but characterizes that threat as a form of generalized risk experienced by the entire population; as such, it is not within the scope of a PRRA application. Relatedly, the Officer acknowledges the humanitarian and compassionate considerations that would be applicable in the Applicant's case (long absence from the country of origin, lack of language abilities) but notes that these factors are not to be considered on a PRRA application. For these reasons, the Officer dismisses the application.

### III. Issues

[11] The Applicant has put forth three issues for consideration on judicial review:

- Was a decision made without regard to the facts?
- Did the Officer fail to have due regard to the country condition documents?
- Did the Officer make a veiled credibility finding?

IV. Standard of Review

[12] As the Supreme Court of Canada explained in *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 62, where the appropriate standard of review is established in jurisprudence, a full analysis of the standard is unnecessary. This Court has found that the decision of a PRRA officer is reviewable on a standard of reasonableness: *Korkmaz v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 1124 at para 9. I shall adopt this standard in the case at bar.

V. Analysis

[13] The Applicant argues that the Officer failed to appreciate the link between the discrimination the Applicant would face from his mother's clan and absence of protection he would receive from his father's clan. He claims that the Officer fails to squarely address the notion that the Marehan would deny him protection because of his father's marriage to a Madiban woman. To the Applicant, the Officer's simple assertion that clan affiliation is patrilineal demonstrates a misunderstanding of the relevant concern; that is, that the Applicant will not be protected due to his father's intermarriage with another clan. The Applicant further argues that, if the Officer concluded that patrilineal protection would continue, he was bound to give some reasoning for that conclusion.

[14] The Respondent submits that the Officer set out the Applicant's specific concern, appreciating and considering the proposed risk. In support of this position, it cites the portion of the decision which states:

although he is from the majority clan, the Marehan, he will face discrimination because his mother is a Madiban. The applicant believes that he will not get protection from his clan.

[PRRA Decision, p 4]

The Respondent notes that the reasonableness of the Officer's determination is a separate question, but that it is untenable to say that the Officer did not appreciate the facts.

[15] I agree with the Applicant. The Officer concluded – as he or she was entitled to do, based on the objective evidence – that the Applicant would be considered to be Marehan due to the patrilineal system of heritage. The error arises by the fact that the Officer took this to be synonymous with clan protection, when in fact there was evidence to suggest that the contrary could be true. The Officer nowhere confronts the possibility that the Applicant may not benefit from clan protection as a result of his father's ostracization, not to mention the fact that the Applicant has been absent from Somalia for the majority of his life. In practical terms, one might ask what incentives his clan would have to protect the Applicant: at best, he is a stranger to them; at worst, he is the son of an outcast. The Officer did not go through the effort of grappling with those important facts, and thus made the decision without regard to them.

[16] In light of my finding that the decision was made without regard to important facts, it is unnecessary to consider the other two issues advanced by the Applicant.

VI. Certification

[17] Counsel for both parties was asked if there were questions requiring certification. They each stated that there were no questions arising for certification and I concur.

VII. Conclusion

[18] This application for judicial review is granted. The Officer ignored important facts which contradict his or her conclusion that the Applicant would obtain clan protection from the Marehan should he return to Somalia. The Officer used the simple fact of the Applicant's membership in the Marehan clan as the basis for finding that he would be protected, without regard to the fact that the Applicant's father's family had disowned them, and the fact that the Applicant has not lived in Somalia since childhood. A comprehensive analysis of the facts along with fulsome reasons on the issue of clan protection should guide the new decision-maker upon redetermination.

**JUDGMENT in IMM-401-18**

**THIS COURT'S JUDGMENT is that:**

1. The decision is set aside and the matter referred back for redetermination by a different decision-maker in conformity with these reasons.
2. There is no question to certify.

"Shirzad A."

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-401-18

**STYLE OF CAUSE:** ABDULKADIR HASHI JAMA v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** WINNIPEG, MANITOBA

**DATE OF HEARING:** JULY 26, 2018

**JUDGMENT AND REASONS:** AHMED J.

**DATED:** SEPTEMBER 25, 2018

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