Federal Court Cour fédérale

Date: 20190024

Docket: IMM-1893-18
IMM-1894-18

Citation: 2019 FC 101

Ottawa, Ontario, January 24, 2019

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

Docket: IMM-1893-18

BETWEEN:

NASTEHO OMAR RIRACHE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-1894-18

AND BETWEEN:

ROBLEH RIRACHE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] These are applications for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act,* SC 2001, c 27 [the IRPA] of decisions of Immigration, Refugees and Citizenship Canada [IRCC] refusing the application of Nasteho Omar Rirache [the female Applicant] and Robleh Rirache [the male Applicant] for permanent residence from within Canada on humanitarian and compassionate grounds [H&C], dated April 9, 2018 [the Decisions]. I have heard these applications together and the reasons that follow pertain to them both as described in the style of cause.

[2] In these decisions, the Senior Immigration Officer [the Officer] refused the applications on the grounds that the Applicants had not established their identity or citizenship, making it impossible to draw conclusions about potential hardships that they would encounter if returned to their country of origin, as the Officer could not determine to which country they would be returned. In addition, the Officer concluded that they were not satisfied that the humanitarian and compassionate grounds presented by the Applicants justified granting an exemption under subsection 25(1) of the IRPA, in particular because the identity of the Applicants remained a key problem.

[3] For the reasons that follow, I reject both applications on the same grounds.

II. Background

[4] The female and male Applicants, who are siblings, claim they were both born in Gabiley, Somalia, in 1984 and 1986 respectively.

[5] They allege that in 1990 their father was assassinated in Somalia by the Issak warlords because of his political views. Following this tragedy, their mother placed them in the care of their maternal aunt Amina Elmi Ibrahim and uncle Abdullahi Megan Guelleh. In 1991 the four of them fled to Ethiopia as a family, with the Applicants' mother, where they sought refuge in Ethiopia for nine years without any status. Shortly thereafter, the Applicants' mother fled to Yemen. They have not seen or heard from their mother since.

[6] The Applicants arrived in Canada on October 9, 2000, accompanied by their uncle and aunt who they claim are the only members of the Applicants' family.

[7] On September 17, 2001, the Applicants' application for refugee status was denied on the basis that they and their family members had failed to establish their identity.

[8] On December 20, 2001, the Applicants filed applications for permanent residence based on humanitarian and compassionate grounds where they described their past and why they were unable to obtain proper records to confirm their identities. The Applicants' aunt and uncle also filed similar applications.

[9] On June 28, 2013 the Applicants' H&C applications were denied. Their aunt and uncle's applications were granted on the same day. In July 2013, the Applicants asked that their application for permanent residence on the basis of H&C considerations be reopened, which was granted. On September 1, 2014, the reopened H&C application was denied. No judicial review is sought of either decision.

[10] The Applicants then made a second set of H&C applications, including as evidence the results of a DNA test of the female Applicant which demonstrated that there was a 99% chance that the Applicants were related and over a 95% chance that the female Applicant and her aunt were related.

[11] On April 9, 2018, the Applicants' second H&C applications were denied on the same basis as their first, particularly that they had not demonstrated their identity or citizenship, and that the H&C grounds did not justify granting an exemption under s 25(1) of the IRPA. The Applicants now seek judicial review of these decisions.

[12] During the hearing, the parties concurred that the only significant issue was whether the Officer's assessment of the Applicants' identity was reasonable and that a deferential standard of reasonableness should apply to the Officer's decision: (*Okoloubu v Canada (Citizenship and Immigration),* 2008 FCA 326 at para 30, *Kaur v Canada (Citizenship and Immigration)*, 2017 FC 757 at paras 54-55*; Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61).

[13] Section 106 of IRPA incorporates a specific requirement for the RPD to consider a claimant's lack of documentation to establish identity in assessing a claim for refugee protection. It reads as follows:

Claimant Without Identification	**Étrangers sans papier**
Credibility	**Crédibilité**
106 The Refugee Protection Division must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation.	106 La Section de la protection des réfugiés prend en compte, s'agissant de crédibilité, le fait que, n'étant pas muni de papiers d'identité acceptables, le demandeur ne peut raisonnablement en justifier la raison et n'a pas pris les mesures voulues pour s'en procurer.

[14] The claimants have the fundamental obligation to establish their identity on a balance of probabilities (*Yip v Canada (Employment and Immigration)*, at paragraph 7, *Ntsongo v Canada (Citizenship and Immigration)*, 2016 FC 788). However, the panel should take into account in its decision any explanation given by the claimant for not providing documents or other corroborative evidence and the efforts made to obtain such evidence, and provide reasons for not accepting the explanations offered by the claimant to be reasonable (*Thurairajah v Canada (Employment & Immigration)*, [1994] FCJ No 322, 46 ACWS (3d) 710, at paras 11-12). What constitutes taking "reasonable steps" or providing a "reasonable explanation" depends on the circumstances of the case.

[15] The Applicants submit that in the present case, the preponderance of evidence demonstrates that they took reasonable steps to obtain identity documents and that they presented reasonable explanations for the lack of documentation, namely that they arrived in Canada as children, without identity papers. Because of the ongoing civil war, the majority of official Somali records have been destroyed and cannot be recovered.

[16] In particular, the Applicants point out that the Minister made a finding of fact that the Applicants' aunt and uncle were Somali in their H&C applications in the June 28, 2013 decision and that it is inconsistent with this finding for their application to be denied. Additionally, the Applicants have demonstrated that their aunt has a familial relationship with them which had been established by reliable DNA evidence. On the balance of probabilities therefore, the Applicants argue that they have provided an explanation for not providing documents, while providing corroborative evidence of their identity by demonstrating their relation to their maternal aunt.

[17] The Officer was not prepared to apply the officer's conclusions in the H&C application where the identity and ethnicity of the aunt and uncle was accepted, but not that of the Applicants. It was noted that the application was accepted without a passport or substitution document, only a simple solemn declaration. It would also appear that the fact that the uncle was elderly, being 80 years of age, and that he was able to obtain a Somali national ID card, which was not provided on any other occasion, were both factors in determining that he was a Somali national.

[18] With respect to the DNA evidence, the Officer noted that the family relationship between brother and sister was not in question. The problem was that the DNA test could not confirm the identity of the Applicants any more than it could confirm their country of origin.

[19] The Officer also noted that there was no reliable corroborative documentary evidence to support the applications. This included a comment that given the years spent in Canada, the Applicants did not appear to be honest in revealing all aspects of their history. As such, a great deal of information was missing that should have been available. In particular, the Officer noted that there were no documents regarding the refugee status, photographs, testimony or any other relevant document that might attest to the Applicants having lived in a Somali refugee camp, or even travel documents that might suggest that they came from Somalia.

[20] The Applicants contend that as children they should not have been required to provide the requested document relevant to their identification. I am not sure that I would accept this argument given their years in Canada and their ability to seek the assistance of others. In particular, considering that they were accompanied by their aunt and uncle, this submission loses most of its impact. Moreover, the requirement to explain why no identity documentation is available requires that the Applicants provide evidence regarding the efforts they have made to obtain this documentation. Although they were present in Canada for over 17 years and were aware that their identity had been an issue on other occasions, the Applicants did not present such evidence.

[21] The Applicants also relied upon the decisions of *Abdullahi v. Canada (Citizenship and Immigration),* 2015 FC 1164 [*Abdullahi],* and *Mohammed v Canada (Citizenship and Immigration)* [*Mohammed*], 2017 FC 598. However, I do not find these decisions to be particularly relevant inasmuch as *Abdullahi* concerns a "No Credible Basis Finding" pursuant to section 107(2) of the Act, while *Mohammed* relates to the Refugee Appeal Division unreasonably refusing to admit evidence put forward by the Applicant.

[22] The Officer also gave little weight to documents provided by the president of the Ottawa Somaliland Community Service, and that of another witness and his sister attesting to the fact that the Applicants were born in Somalia. I agree that a low probative value should be attributed to these documents, as they contain very brief statements, without any explanation of the basis upon which the statements are made, or any corroborative evidence. The Officer also noted that they contained inconsistencies with the letters from these witnesses filed in the H&C application. I similarly conclude that the Officer's decision to attribute little weight to two other affidavits of affiants stating that they had met the Applicants in Somalia was reasonable, as these documents contained no indication as to the context or exact location where the affiants met the Applicant, and they were overall too vague to serve much purpose.

[23] Ultimately, I conclude that the Officer considered all the information put forward by the Applicants and found that they failed to establish their identity and nationality. The Officer's decision was reasonable, justified, transparent and intelligible. Accordingly the applications must be dismissed. No questions are certified for appeal.

<u>JUDGMENT in IMM-1893-18 and IMM-1894-18</u>

THIS COURT'S JUDGMENT is that the applications for judicial review are dismissed and no question is certified for appeal.

"Peter Annis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1893-18
STYLE OF CAUSE:	NASTEHO OMAR RIRACHE v MCI
AND DOCKET:	IMM-1894-18
STYLE OF CAUSE:	ROBLEH RIRACHE v MCI
PLACE OF HEARING:	OTTAWA, ONTARIO
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DATED:	JANUARY 24, 2019

APPEARANCES:

Gordon Campbell	FOR THE APPLICANTS
Adrian Johnston	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Gordon Campbell	FOR THE APPLICANTS
Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT