

Federal Court



Cour fédérale

**Date: 20190412**

**Docket: IMM-4182-18**

**Citation: 2019 FC 459**

**Ottawa, Ontario, April 12, 2019**

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

**BETWEEN:**

**NUURADIN JAMAL HASSAN**

**Applicant**

**and**

**THE MINISTER OF IMMIGRATION  
REFUGEES AND CITIZENSHIP**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Nuuradin Jamal Hassan seeks judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [IRB]. The RAD confirmed a decision of the Refugee Protection Division [RPD] of the IRB that Mr. Hassan is neither a Convention refugee nor a person in need of protection under ss 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The RAD reasonably refused the new evidence offered by Mr. Hassan on appeal because he did not provide a sufficient explanation for why he had not provided this evidence to the RPD. The RAD's conclusion that Mr. Hassan failed to establish his identity was reasonably supported by the evidence. The application for judicial review is dismissed.

## II. Background

[3] Mr. Hassan claims to be a citizen of Somalia and a member of the minority Tunni clan. He says that he fears persecution by a warlord of the Hawiye clan and by Al-Shabaab, a terrorist organization in Somalia. His refugee claim is based on the following assertions.

[4] In 1993, Mr. Hassan's farm was taken by a Hawiye warlord named Warsame. Warsame killed Mr. Hassan's father and forced him to work on the farm for the next six years.

[5] In 1999, Warsame allowed Mr. Hassan to leave in exchange for signing over the deed to the farm. He gave Mr. Hassan approximately \$4,500 USD, and helped him to travel to the United States of America.

[6] Mr. Hassan arrived in the US in June 1999 and made a refugee claim. His claim was rejected, but he remained in the country pursuant to an order staying his removal. Mr. Hassan married a US citizen, and they had three children together. He applied to be sponsored by his wife, but this was refused. When Donald Trump was elected President, Mr. Hassan feared he would be deported from the US. He entered Canada on foot on April 28, 2017, and made a refugee claim on May 11, 2017.

[7] The RPD heard Mr. Hassan's refugee claim on July 13 and September 7, 2017, and rejected it on September 18, 2017. The RAD dismissed his appeal on July 31, 2018.

III. Decision under Review

[8] Mr. Hassan submitted four documents as new evidence before the RAD. These included two affidavits sworn in Kenya on October 4, 2017: one by his mother, and one by a family friend. The other two documents were letters from Canadian Somali associations affirming Mr. Hassan's identity as a Somali. Both letters were dated after the RPD issued its decision.

[9] The RAD rejected the new evidence under s 110(4) of the IRPA, which provides as follows:

the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.	la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.
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[10] Mr. Hassan argued that the affidavits were difficult to obtain because his family was in Kenya without immigration status. The RAD held that he had failed to provide sufficient evidence that the affidavits were not reasonably available at the time the RPD rejected his claim. The RAD noted that Mr. Hassan had five months in which to obtain the affidavits. He could have requested an adjournment, or informed the RPD that he was trying to obtain additional information.

[11] The RAD also refused the letters from the Canadian Somali associations. Mr. Hassan argued that he had not anticipated the RPD would reject an initial letter from a Canadian Somali association that he provided to support his claim. The RAD held that Mr. Hassan should have known that he must put his best foot forward when advancing his claim before the RPD, particularly as he was represented by counsel.

[12] The RAD found that Mr. Hassan had failed to establish his identity as a Somali and a member of the minority Tunni clan. The RAD based this conclusion on its consideration of (a) his passport, (b) his birth certificate, (c) the testimony of a witness offered to confirm his identity, and (d) a letter from Dixon Community Services in Etobicoke.

[13] The RAD agreed with the RPD that Mr. Hassan's passport was not genuine. The RAD relied on Response to Information Request [RIR] SOM104445.E, which states that "... any passport claiming to have been issued by Somalia is considered unreliable and is 'not acceptable' for entry into Canada...". The RAD reasoned that if a Somali passport cannot be used for entry into Canada, then logically it cannot be used to prove one's identity in a refugee claim.

[14] The RAD also confirmed the RPD's assessment of Mr. Hassan's birth certificate. Mr. Hassan argued that the RPD had found the birth certificate to be false. The RAD disagreed, and held that the RPD reasonably found the birth certificate to have little probative value because it lacked security features.

[15] The RAD also confirmed the RPD's adverse credibility finding respecting the identity witness. The RAD acknowledged that much of the witness' testimony was consistent with Mr. Hassan's narrative. However, there were significant discrepancies, particularly with respect to

the descriptions of neighbouring farms. The witness suggested that any inconsistencies could be explained by the fact that he was young at the relevant time (1990), and had to listen to his parents. But the witness was 31 years old at the time. The witness and Mr. Hassan also differed about the cultural importance of clan identity in Somali culture. The RAD therefore agreed with the RPD's conclusion that the witness and Mr. Hassan did not know each other in Somalia.

[16] Finally, the RAD confirmed the RPD's finding that the letter from Dixon Community Services had little probative value. The RAD also agreed with the RPD that a psychological report tendered on behalf of Mr. Hassan could not cure the defects in the evidence.

[17] The RAD concluded that Mr. Hassan had failed to establish his identity, and dismissed his appeal.

#### IV. Issue

[18] This application for judicial review raises the following issues:

- A. Was the RAD's refusal of the new evidence reasonable?
- B. Was the RAD's conclusion that Mr. Hassan failed to establish his identity reasonable?

#### V. Analysis

[19] The RAD's decision whether to accept new evidence, and its assessment of the evidence pertaining to Mr. Hassan's identity, are both subject to review by this Court against the standard of reasonableness. Reasonableness is a deferential standard, and is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process.

The Court will intervene only if the decision falls outside a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Marin v Canada (Citizenship and Immigration)*, 2016 FC 847; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

A. *Was the RAD's refusal of the new evidence reasonable?*

[20] Mr. Hassan says the RAD should be flexible in deciding whether to admit new evidence (citing *Singh v Canada (Citizenship and Immigration)*, 2014 FC 1022 at para 55). He notes that the new evidence concerned his identity, and was at the centre of his claim. He argues that the affidavits were not reasonably available to him before the RPD rendered its decision due to the challenges of communicating with his family in Kenya. He maintains that he could not have anticipated the RPD would reject the letter from Dixon Community Services, which is why he obtained the additional letters from other Canadian Somali associations.

[21] As I held in *Majebi v Canada (Citizenship and Immigration)*, 2016 FC 14<sup>1</sup> at paragraph 19:

[...] The flexible approach described in *Singh* concerns the admissibility of evidence only after the threshold requirements of s 110(4) of the IRPA have been met (*Fida v Canada (Minister of Citizenship and Immigration)*, 2015 FC 784 at paras 6-8; *Deri v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1042 at paras 55-56). Justice Gagné in *Singh* acknowledged that the central issue regarding the admissibility of new evidence is whether “the evidence was not reasonably available, or that the person could not reasonably ... have been expected in the circumstances to have presented” the evidence before the RPD (*Singh* at para 58). [...]

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<sup>1</sup> Aff'd, 2016 FCA 274, leave to appeal to SCC ref'd, 2017 CanLII 32939 (SCC).

[22] The Federal Court of Appeal held in *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 that s 110(4) of the IRPA must be “narrowly interpreted” (at para 35), and “[t]he role of the RAD is not to provide the opportunity to complete a deficient record submitted before the RPD” (at para 54).

[23] The affidavits that Mr. Hassan submitted to the RAD did not contain any information that arose after the RPD’s decision. It was reasonable for the RAD to conclude that Mr. Hassan had not provided a sufficient explanation for why the evidence could not have been presented before the RPD rendered its decision. The RAD said the following at paragraph 14 of its decision:

[...] The RAD notes after reviewing the RPD record from both sittings that not once did the Appellant ever apply for an adjournment or advise the RPD that he was attempting to get the affidavits from anyone in Kenya. This further undermines any argument that the reason for not getting these affidavits ahead of the RPD rejection was due to difficulties in contacting family and friends in Kenya.

[24] The RAD’s refusal to admit the additional letters from Canadian Somali associations was also reasonable. Subsection 110(4) of the IRPA is not intended to provide an opportunity to complete a deficient record submitted to the RPD. Mr. Hassan was represented by counsel, and ought to have known that he was obliged to put his best foot forward at the hearing before the RPD.

B. *Was the RAD’s conclusion that Mr. Hassan failed to establish his identity reasonable?*

[25] Mr. Hassan says that the RAD did not conduct an independent analysis of the evidence pertaining to his identity, contrary to the decision of the Federal Court of Appeal in *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at paragraph 78. He argues that it was

unreasonable for the RAD to reject his passport and birth certificate as fraudulent (citing *Moin v Canada (Citizenship and Immigration)*, 2007 FC 473 at paras 42, 46). While Somali passports may be insufficient for international travel, this does not mean that they cannot be used to prove one's identity in informal evidentiary proceedings before administrative tribunals. Mr. Hassan complains that the RAD did not specify which security features were missing from his birth certificate, and had no examples of genuine Somali birth certificates against which to compare it.

[26] Mr. Hassan also challenges the RAD's rejection of the testimony provided by the identity witness. He says the discrepancies were minor, and the RAD was overly vigilant in its search for inconsistencies (citing *Elmi v Canada (Citizenship and Immigration)*, 2008 FC 773 at para 24). Mr. Hassan complains that the RAD dismissed the psychological report because it did not address its concerns regarding his narrative and inconsistencies with the testimony of the witness. Instead, the psychological report was intended to explain the effects of Mr. Hassan's persecution, trauma and psychological condition on his cognitive functioning. This likely affected his recollection of certain details, which admittedly varied from the witness' recollection.

[27] The identity of a claimant is at the very core of every refugee claim (*Canada (Citizenship and Immigration) v Kabunda*, 2015 FC 1213 at para 18). As Justice Mary Gleason held in *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319 at para 48:

[...] provided that there is some evidence to support the Board's identity-related conclusions, provided the RPD offers some reasons for its conclusions (that are not clearly specious) and provided there is no glaring inconsistency between the Board's decision and the weight of the evidence in the record, the RPD's determination on identity warrants deference and will fall within the purview of a reasonable decision. In other words, if these factors pertain, the



determination cannot be said to have been made in a perverse or capricious manner or without regard to the evidence.

[28] It was reasonable for the RAD to rely on RIR SOM104445.E to conclude that Mr. Hassan's passport was unreliable. The RIR states that Somalia has not had a functioning government capable of issuing passports since 1991. Furthermore, a Somali passport cannot be obtained without personal attendance at the passport office in Mogadishu. Mr. Hassan claims to have obtained the passport in 2008, when he was living in the US. There is no suggestion that he travelled to Mogadishu to obtain the passport in person.

[29] The RAD reasonably concluded, as did the RPD, that the birth certificate should be afforded little evidentiary weight because it lacked security features of any kind. Neither tribunal held that it was false, although the RPD remarked that it could have been generated by anyone with a computer and printer.

[30] The RAD provided transparent and intelligible reasons for placing little reliance on the letter from Dixon Community Services. Mr. Hassan had been interviewed for only 30 minutes. The RAD held that a person's ability to speak Somali and demonstrate a knowledge of the country does not mean that the person is a citizen of that country or has ever lived there.

[31] Finally, the RAD reasonably found that the psychological report could not cure the defects in the evidence. Not all of the problems surrounding the identity witness' credibility could be said to result from gaps in Mr. Hassan's memory. Some inconsistencies were internal to the witness' testimony. The difference of opinion between Mr. Hassan and the witness regarding the importance of clan membership in Somali culture was not a matter of recollection.

VI. Conclusion

[32] The application for judicial review is dismissed. Neither party proposed that a question be certified for appeal.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

"Simon Fothergill"

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Judge

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

**DOCKET:** IMM-4182-18

**STYLE OF CAUSE:** NUURADIN JAMAL HASSAN v THE MINISTER OF  
IMMIGRATION REFUGEES AND CITIZENSHIP

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 4, 2019

**JUDGMENT AND REASONS:** FOTHERGILL J.

**DATED:** APRIL 12, 2019

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