

Federal Court



Cour fédérale

**Date: 20191119**

**Docket: IMM-1447-19**

**Citation: 2019 FC 1459**

**Toronto, Ontario, November 19, 2019**

**PRESENT: Mr. Justice Diner**

**BETWEEN:**

**ABDULKEDIR AHMED JAMA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION AND  
THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Respondent**

**JUDGMENT AND REASONS**

[1] This application judicially reviews a negative Pre-Removal Risk Assessment [PRRA] dated February 14, 2019 by a Senior Immigration Officer [Officer], which determined that the Applicant would not be subject to risk of persecution, torture, risk to life or risk of cruel and unusual treatment or punishment if returned to Somalia, his country of nationality. For the following reasons, I am dismissing the application for judicial review.

[2] The Applicant is a 37-year-old citizen of Somalia. He fled the civil war in Somalia in 1991 with his family. During the flight, his mother and sister fell overboard from the boat that was transporting the family to Kenya. They have never been heard from again and are presumed to be dead. The Applicant and his father were recognized as refugees by the United Nations High Commissioner for Refugees [UNHCR] and resettled to the United States in 1996. The Applicant claims that he has had no contact with anyone in Somalia since departing at the age of eight years old.

[3] In February 2014, the Applicant lost his permanent residence status in the United States as a result of several criminal convictions. In September 2017, he crossed the border into Canada and made a claim for refugee protection. However, due to a 2005 conviction for trafficking scheduled drugs in the United States, he was deemed inadmissible to Canada for serious criminality. A deportation order was issued against him in January 2018.

[4] The Applicant then applied for a PRRA, raising several concerns about returning to Somalia. These included his lack of family connections in the country, his membership in a small Darod sub-clan which he has been told is despised in Somalia, the current humanitarian crisis faced by Somalia, the threats made by Al-Shabaab against diaspora returnees, and the risk that he will not be accepted by the Somali National Government.

I. Decision under Review

[5] The Officer refused the Applicant's PRRA on the basis of insufficient evidence to demonstrate why he could not live in his native Mogadishu and access support from the Darod

clan. First, regarding family, the Officer acknowledged the Applicant's lack of immediate family in Somalia, but pointed to evidence in the record that Somalis will assist even very distant relatives coming from a different area as long as there is a clan connection and they have the capacity to do so. The Officer also found insufficient evidence verifying the Applicant's lack of connections in Somalia, noting the support letter from his father made no mention, one way or the other, of any family or clan in Somalia.

[6] Second, in terms of his clan, the Officer found that the Applicant failed to advance sufficient evidence supporting his fear that the Darod clan is despised in Somalia. The Officer noted that the Darod clan is one of the majority clans in Somalia and cited evidence that a person belonging to one of the majority clans or associated sub-clans is unlikely to demonstrate a well-founded fear of persecution.

[7] Regarding the country conditions and threat of terrorism from Al-Shabaab, the Officer concluded that simply because the Applicant would be returning from the West does not necessarily mean he will be targeted. The Officer acknowledged a general risk of violence in Mogadishu, but noted that Al-Shabaab's typical targets are politicians, aid workers, clan leaders and members of the United Nations or nongovernmental organizations, not civilians such as the Applicant.

[8] The Officer further conceded that Somalia is in the midst of a serious humanitarian crisis, but found that the purpose of a PRRA is to protect against personalized risks, rather than

generalized risks faced by the population at large. The Officer characterized the humanitarian crisis as a generalized risk, rather than a risk specific to the Applicant.

[9] Finally, the Officer considered the Applicant's concern that the Somali National Government would not accept his return, but concluded that he had not established how he would be at risk in Somalia if he were not accepted by the government.

## II. Analysis

[10] The Applicant argues that the Officer erred in several respects in denying his PRRA application, by (A) making veiled credibility findings; (B) misapprehending and ignoring relevant evidence; (C) undertaking a flawed state protection analysis; and (D) failing to consult other documents. The standard of review applicable to PRRA decisions, and these particular issues, is reasonableness (*Chen v Canada (Citizenship and Immigration)*, 2016 FC 702 at para 13).

### A. *Veiled Credibility Findings*

[11] The Officer found that the Applicant did not provide sufficient objective evidence to establish that he has no extended family or clan connections in Somalia. The Applicant argues that the Officer's findings of insufficient evidence regarding support from his clan or extended family were veiled credibility findings.

[12] I find that the Officer reasonably labelled his issue with the evidence as one of sufficiency and not credibility in this case. The Applicant was responsible for establishing, on a balance of probabilities, that he is in need of protection. Therefore, it was open to the Officer to expect crucial aspects of the application would be supported by evidence other than solely his claims – at least where such supporting evidence exists or is reasonably available (*Nhengu v Canada (Citizenship and Immigration)*, 2018 FC 913 at paras 6-9).

[13] Here, the Applicant provided no sworn statement attesting to the situation for him in Somalia. His father provided a notarized letter, but the Officer reasonably pointed out its inadequacies, in that he never addressed the extended family, nor the clan situation in Somalia. This observation finds support in the law, in that sworn statements need not be presumed sufficient to establish the facts in the statement (*Zdraviak v Canada (Citizenship and Immigration)*, 2017 FC 305 at para 17 [*Zdraviak*]). Similarly, failure to provide details or corroborating materials can reasonably ground a finding of insufficient evidence (*Haji v Canada (Citizenship and Immigration)*, 2018 FC 474 at para 20).

[14] Only counsel's PRRA submissions claimed that the Applicant has no known family members in Somalia, has had no contact with anyone in Somalia since his 1991 departure, nor any clan he can turn to for help with basic needs or employment. No other corroborating evidence or statements were given from the family members abroad, including the father, who gave a statement. On the other hand, the Officer referred to country evidence stating that Somalis will assist even very distant relatives, subject to a clan connection and the capacity to do so

(UK Home Office, Country Policy and Information Note – *Somalia: Majority clans and minority groups in south and central Somalia* (January 2019)).

[15] Similarly, counsel in his PRRA submission stated that the Applicant “has been told that the Darod Clan is a much despised clan in Somalia, but the truth is that he knows very little about clans.” Neither the Applicant nor any family members submitted evidence to support the point. Once again, the same Home Office report indicates the contrary, namely that a person belonging to one of the majority clan families (such as the Darod) is unlikely to demonstrate a well-founded fear of persecution on the sole basis of clan affiliation.

[16] Recently, in *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14, Justice Grammond explained that when determining whether a finding of insufficient evidence is a credibility finding in disguise, it is useful to ask what other evidence could reasonably have been brought (at para 58). Here, given the complete absence of details and corroborating evidence, I cannot agree that the Officer’s insufficiency findings were disguised credibility findings, or that an oral hearing was required.

B. *Misapprehending or Ignoring Key Evidence*

[17] PRRA officers are presumed to have considered the evidence before them (*Thornton v Canada (Citizenship and Immigration)*, 2019 FC 792 at para 32), and while commenting on every piece of evidence is unnecessary, they must address material contradictory evidence (*Ocampo v Canada (Citizenship and Immigration)*, 2015 FC 1290 at para 5 [*Ocampo*]). I cannot

agree with the Applicant's contention that the Officer misapprehended or overlooked key evidence and in doing so failed to comment.

[18] Specifically, he argues the Officer should have considered the Administrative Deferral of Removal [ADR] currently in place for Mogadishu. However, the ADR specifically states that individuals inadmissible on grounds of criminality "can still be removed despite the ADR." Thus, the ADR does not undermine the Officer's analysis. Furthermore, even though the reasons do not expressly refer to the ADR, the Officer commented on the humanitarian crisis in Somalia.

[19] Second, the Applicant contends that the Officer ignored a research document from the Immigration and Refugee Board of Canada, which cites a 2014 report from the Danish Immigration Service quoting an Al-Shabaab commander who warns that "returnees 'will be killed and fought against in the same manner' that Al Shabaab fights against the Somali government." The Officer, however, addressed evidence regarding Al-Shabaab and the threat they pose to the Applicant based on his profile, which relied on more recent documentation.

[20] Third, the Applicant argues that the Officer ignored the position on returns in a May 2016 UNHCR paper that likens returnees without a meaningful support network to internally displaced persons, and describes the general security situation in Mogadishu as volatile. However, the Officer explicitly acknowledged having considered this document and, as mentioned above, addressed his potential support network.

C. *State Protection Analysis*

[21] The Applicant submits that the Officer determined that he would be safe in Mogadishu, and erroneously premised this conclusion on the notion that he would receive protection from the clan system rather than from the state. However, the Officer never made any finding on state protection, but rather whether the Applicant had established a claim under section 96 or 97 of the Act. Because the Officer found that this threshold was not met, no state protection analysis was required (*Gaspar v Canada (Citizenship and Immigration)*, 2018 FC 320 at para 29).

D. *Failure to Consult Other Documents*

[22] Finally, the Applicant submits that the Officer should have consulted other key documents in Somalia's National Document Package, i.e. documents that were not included in his PRRA submissions.

[23] The general rule is that new evidence is not permitted on judicial review, and exceptions are made only in very narrow circumstances (*Storozhuk v Canada (Citizenship and Immigration)*, 2017 FC 74 at para 13). This is consistent with the PRRA applicant's burden to establish his or her claim, and to put their "best foot forward" (*Ikeji v Canada (Citizenship and Immigration)*, 2016 FC 1422 at para 47). The circumstances in this case do not weigh in favour of allowing an exception to the general rule.

[24] In addition, I note that this Court has recently upheld at least four negative PRRA decisions of Somali citizens who lost their asylum status in the United States on the basis of



serious criminality, were perceived as westernized, and came to Canada seeking protection (*Mohamed v Canada (Citizenship and Immigration)*, 2019 FC 522; *Farah v Canada (Citizenship and Immigration)*, 2018 FC 1162; *Ahmed v Canada (Citizenship and Immigration)*, 2019 FC 80; *Mohamed v Canada (Citizenship and Immigration)*, 2019 FC 139). In these cases, the Court also found the underlying decisions reasonable, with the same or similar arguments having been made regarding country conditions, threats to perceived westerners, lack of family, and length of time away from Somalia.

[25] Ms. Anani, the Applicant's counsel for this judicial review, made every effort to advocate for her client despite not representing him in the proceedings below. After turning over every possible stone, there ended up being little that she could do in light of the reasonableness of the Decision given the deference the Court owes the Officer, and in light of the thin evidence presented with the PRRA.

### III. Conclusion

[26] Based on the lack of details and corroborating evidence, including from the claimant himself, it was open to the Officer to conclude that the Applicant did not establish his claim on a balance of probabilities. The Officer's transparent and justifiable decision falls within the range of acceptable outcomes, and I therefore cannot intervene.

**JUDGMENT in IMM-1447-19**

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

1. This application for judicial review is dismissed.
2. No questions for certification were argued, and I agree none arise.
3. There is no award as to costs.

"Alan S. Diner"

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Judge

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

**DOCKET:** IMM-1447-19

**STYLE OF CAUSE:** ABDULKEDIR AHMED JAMA V THE MINISTER OF  
PUBLIC SAFETY AND EMERGENCY  
PREPAREDNESS

**PLACE OF HEARING:** TORONTO, ONTARIO

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