

Federal Court



Cour fédérale

**Date: 20191121**

**Docket: IMM-424-19**

**Citation: 2019 FC 1483**

**Ottawa, Ontario, November 21, 2019**

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

**BETWEEN:**

**BADRI MOHAMED GOD,  
BOUHO AHMED HOUSSEIN,  
MOHAMED-AMIN BADRI MAHAMOUD,  
ABDOURAHMAN BADRI MAHAMOUD,  
ISRA BADRI MAHAMOUD**

**Applicants**

**and**

**THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicants seek judicial review of the decision of the Refugee Appeal Division [RAD] dated January 2, 2019 confirming the decision of the Refugee Protection Division [RPD] that the Applicants are neither Convention refugees nor persons in need of protection in Canada

under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] On November 13, 2019, I gave oral reasons for granting the present application for judicial review. With minor changes that do not affect the substance of what I said in my oral ruling, and after adding some background facts to provide context, here are my written reasons.

I. Background

[3] The Applicants, Badri Mohamed God [Mr. God], Bouho Ahmed Houssein [Mrs. Houssein], and their children, Mohamed-Amin Badri Mahamoud, Abdourahman Badri Mahamoud and Isra Badri Mahamoud, are citizens of Djibouti.

[4] All five Applicants arrived in Canada in February 2017. They presented claims for refugee protection in Canada based on separate allegations put forward by Mr. God and Mrs. Houssein.

[5] In his Basis of Claim [BOC] form, Mr. God alleges that in January 2013 he became a member of the *Mouvement pour le Renouveau Démocratique* [MRD], which is part of the *Union pour le Salut National* [USN], an opposition coalition. Mr. God supported the USN in the Djiboutian election of February 2013. After the election, members of the MRD began a campaign of civil disobedience. Mr. God alleges his role was to mobilize the community to express their desire to have transparent elections.

[6] Mr. God claims he saw the authorities use deadly force against civilians at a festival he organized and attended in December 2015. After the festival, Mr. God was arrested and imprisoned for one month. He describes the prison as crowded and hot with limited food. He alleges he was tortured daily with electric shocks and cold water. Mr. God further alleges he suffered psychological harm. After his release from prison, Mr. God was put under house arrest. The police would come to the house late at night and check on the Applicants. He fears returning to Djibouti because the government that persecuted him is still in office.

[7] In a separate BOC form, Mrs. Houssein repeats many of her husband's allegations. She claims that her cousin was also injured at the festival in December 2015. She also adds that she was in the second month of pregnancy when Mr. God was arrested, and she was always in need of help. Mrs. Houssein fears her life will be in danger if she returns to Djibouti because the authorities know her husband escaped. She also fears for the safety of her children.

## II. RPD Decision

[8] The RPD found that the "claimant" was not a credible witness based on discrepancies between his BOC form and his testimony at the hearing. The RPD focussed on a doctor's letter submitted by Mr. God, which stated that Mr. God was detained for two weeks while he testified it was four weeks. The RPD found Mr. God could not explain why the doctor's letter made no mention of his torture or why the doctor's letter focussed on the length of his detention rather than the conditions he confronted in prison. The RPD found Mr. God improvised his testimony at the hearing and concluded that his explanations for the discrepancies were not credible.

[9] The RPD gave low weight to Mr. God's evidence. It noted the doctor's diagnosis did not appear consistent with someone who was tortured and undernourished for a month. The RPD doubted the authenticity of the documents submitted by Mr. God, noting that one of them had hand-written dates that were struck out and re-added, and that another one in French referred to an individual with the title "Mr." rather than "M." and appeared to be a copy that was cut-off at the bottom of the second page.

[10] The RPD concluded "the claimant was not a credible witness and as a result finds that the claimants have not provided sufficient credible or trustworthy evidence [...]" to make out their claims.

[11] The RPD does not discuss Mrs. Houssein's claim separately, nor does it say anything about her credibility.

### III. RAD Decision

[12] The determinative issue in the appeal before the RAD was whether the RPD erred in its credibility assessment. The RAD found that the RPD had not erred, stating as follows at paragraph 32:

[32] In its decision, the RPD outlines several material credibility concerns with respect to both the oral evidence and the documents submitted in support of the claim. The concerns of the RPD were put to the Principal Appellant and to the associate Appellant. The responses of the witnesses were found not to be satisfactory and these are clearly pointed out by the RPD. I agree with the RPD's findings.

[13] The problem with this conclusion is that in assessing the credibility of Mr. God, both the RPD and the RAD failed to acknowledge that there were two independent claims. The RAD and RPD failed to separately consider the evidence of Mrs. Houssein, presumed to be credible in the absence of an express finding to the contrary.

[14] The Respondent submits that Mrs. Houssein's claim and testimony were not ignored, pointing to the allegations in her BOC form that are virtually identical to those of her husband. The Respondent argues Mrs. Houssein did not relate an independent story that required separate analysis.

[15] The Respondent maintains that it was open to the RAD to find that none of the Applicants are Convention refugees or persons in need of protection if Mr. God's narrative is found not credible. The Respondent directed the Court to the decision of Mr. Justice Roger Hughes in *Botello v Canada (Citizenship and Immigration)*, 2008 FC 1245 [*Botello*]. In that case, the principal applicant's claim was found not credible, and accordingly, the claims of all the applicants (including the minors) were dismissed. The Court found that this was not an error as the minors made no independent claims.

[16] The circumstances here are quite different from those set out in *Botello*. In the present case, Mrs. Houssein made a separate claim. While her narrative may be similar in many respects to her husband's, it is not identical. Several of the events to which she testified she experienced personally.

[17] As submitted by the Applicants, if Mr. God were making the claim by himself, one could understand how his claim was rejected by the RPD and RAD once he was found not credible. However, it is unclear whether that adverse credibility determination would have necessarily been made had his wife's testimony been accepted as credible.

[18] Upon carefully reviewing the decisions of the RPD and RAD, I conclude that there is no negative finding expressed in clear and unmistakable terms about Mrs. Houssein's credibility. The decision is fatally flawed in this respect and must be set aside.

A. *Whether the RAD erred in refusing to admit new documents*

[19] The RAD refused to admit six new documents into evidence under subsection 110(4) of the IRPA. The Applicants submit that all the documents they sought to file with their appeal record are relevant, material and had probative value and they should therefore have been admitted by the RAD. This argument is wholly without merit.

[20] Questions regarding the admission of new evidence before the RAD under subsection 110(4) are reviewable by this Court against the standard of reasonableness: *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 29. It is now firmly established that an appellant's memorandum on appeal to the RAD must include full and detailed submissions regarding how any documentary evidence on which the appellant wishes to rely on not only meets the requirements of subsection 110(4), but also how that evidence relates to the appellant.

[21] In the present case, the only explanation offered by the Applicants to the RAD for why they were unable to provide the documents earlier was that “the new evidence was not available to the appellant when the appellant’s claim for refugee protection was rejected”. The RAD concluded that the bald assertion was not an adequate explanation. This a full and reasonable answer to the Applicants’ request given that they made no substantive submissions.

[22] The RAD nonetheless reviewed the documents and found that two of them were before the RPD and were already part of the record. As for the balance of the documents, the RAD concluded that they were not new evidence in that they could have been provided prior to the rejection of the claim. In the circumstances, I am not satisfied that the RAD erred in refusing to accept the documents into evidence.

#### IV. Conclusion

[23] For the above reasons, I conclude that the application for judicial review should be allowed. The matter shall be referred back to the RAD for reconsideration solely to reassess the Applicants’ claims on the basis of the record as presently constituted.

[24] The parties have not proposed any questions for certification.

**JUDGMENT IN IMM-424-19**

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

1. The application for judicial review is allowed.
2. The matter is remitted to a different panel of the Refugee Appeal Division for reconsideration, other than the issue of admission of new evidence.

"Roger R. Lafrenière"

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Judge



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

**DOCKET:** IMM-424-19

**STYLE OF CAUSE:** BADRI MOHAMED GOD, BOUHO AHMED  
HOUSSEIN, MOHAMED-AMIN BADRI MAHAMOUD,  
ABDOURAHMAN BADRI MAHAMOUD, ISRA BADRI  
MAHAMOUD v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** WINNIPEG, MANITOBA

**DATE OF HEARING:** NOVEMBER 13, 2019

**JUDGMENT AND REASONS:** LAFRENIÈRE J.

**DATED:** NOVEMBER 21, 2019

**APPEARANCES:**

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