

Federal Court



Cour fédérale

Date: 20210205

Docket: IMM-4895-19

Citation: 2021 FC 116

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 5, 2021

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

FILSSAN MOHAMED FARAH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada, dated July 16, 2019, confirming that the applicant's claim for refugee protection was rejected as she is neither a Convention refugee nor a person in need of protection under the *Immigration and Refugee Protection Act*, SC 2001, c 27, ss 96–97(1).

[2] The applicant is a citizen of Djibouti, and she is claiming refugee status because she fears threats and harm at the hands of her father in relation to a forced marriage. She left Djibouti and arrived in Canada in July 2017, transiting through the United States.

[3] The Refugee Protection Division (RPD) rejected the claim for refugee protection on the basis that the applicant lacked credibility. The RAD confirmed that decision.

[4] This judicial review concerns the RAD's findings regarding the applicant's credibility and its compliance with procedural fairness. Except with respect to the latter issue, the standard of review applicable by this Court is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 77).

[5] The applicant argues, similarly to the submissions made before the RAD, that the evidence—with regard to the first contact with her boyfriend, the circumstances of their outing to the restaurant, and the marriage proposal—was misinterpreted and that the applicant's account or explanations should have been accepted or considered by the panel. In the alternative, the applicant submits that she should have been given the benefit of the doubt.

[6] The applicant further argues that the RAD should have commented on the documentary evidence that objectively demonstrates her fear, and refers to the Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution.

[7] These arguments amount to a reweighing of the evidence, an exercise that this Court cannot undertake on judicial review (*Vavilov*, above, at para 83).

[8] Moreover, the RAD is presumed to have considered all of the evidence. It is not required to accept a claimant's explanations (*Karakaya v Canada (Citizenship and Immigration)*, 2014 FC 777 at para 18) or to point to a rationale or particular piece of evidence. In this regard, the applicant does not allege that the documentary evidence is determinative such that it clearly contradicts the findings made by the RAD (see *Basanti v Canada (Citizenship and Immigration)*, 2019 FC 1068 at para 24).

[9] The RAD is also recognized as having considered Guideline 4, which does not affect the onus on the applicant to establish her claim (*Correa Juarez v Canada (Citizenship and Immigration)*, 2010 FC 890 at paras 17–18).

[10] Finally, the benefit of the doubt principle does not apply in this case, as this principle is limited to cases where the entirety of the evidence has been considered and the panel is generally satisfied as to the applicant's credibility (see *Noga v Canada (Citizenship and Immigration)*, 2003 FCT 454 at paras 10–12).

[11] For these reasons, the Court cannot interfere with the RAD's findings as to the applicant's credibility.

[12] With respect to the issue of procedural fairness, the applicant argues that she ought to have been forewarned and given an opportunity to make submissions on the grounds accepted by the RAD that were not addressed by the RPD, namely, the delay in leaving Djibouti and the failure to claim refugee protection in the first country visited.

[13] Procedural fairness requires parties to be given an opportunity to make submissions to an appeal tribunal when that tribunal considers making new substantive findings.

[14] In this case, the RAD added to its analysis that the applicant's long delay in leaving Djibouti—even though she had a passport and a visa for the United States prior to the alleged persecution—is an indication of her lack of fear. While this information does not appear in the decision under appeal, these are, in the RAD's view, findings that emerged from the hearing. The RAD nonetheless recognizes that few questions were asked with respect to how and why the residence permits were obtained.

[15] The case law is clear that findings based on evidence or information known by the applicant are not new issues that violate procedural fairness (*Azali v Canada (Citizenship and Immigration)*, 2008 FC 517 at paras 26-28).

[16] Moreover, it is well established that where credibility is already in issue, an additional basis with respect to that credibility does not constitute a new issue giving rise to a right to be given notice and an opportunity to respond (*Yimer v Canada (Citizenship and Immigration)*),

2019 FC 1335 at para 17 [*Yimer*]; *Corvil v Canada (Citizenship and Immigration)*, 2019 FC 300 at para 13).

[17] While the findings on the applicant's long delay in leaving Djibouti cast doubt as to whether the applicant had the opportunity to respond, the same is not true for the reasoning on the applicant's failure to claim refugee protection in the first country visited. That said, and despite these findings, the decision remains reasonable (see *Yimer*, above, at para 18). Moreover, as underlined by the rule of law, there is no breach of procedural fairness when credibility is determinative of an appeal, as is the case here.

[18] For these reasons, the application for judicial review is dismissed.

JUDGMENT in IMM-4895-19

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

There is no question of importance to be certified.

“Michel M.J. Shore”

Judge

Certified true translation
Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4895-19

STYLE OF CAUSE: FILSSAN MOHAMED FARAH v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MATTER HEARD BY VIDEOCONFERENCE IN
MONTRÉAL, QUEBEC

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JUDGMENT AND REASONS: SHORE J.

DATED: FEBRUARY 5, 2021

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