

Federal Court



Cour fédérale

Date: 20220614

Docket: IMM-6207-21

Citation: 2022 FC 881

Ottawa, Ontario, June 14, 2022

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

**SABAH ABDI OMAR AKA SABAH OMAR
ABDI AKA IKRAM MOHMAED AHMED**

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision made by the Refugee Appeal Division (the RAD) on July 22, 2021, (the Decision) in which the RAD dismissed the Applicant's appeal of a negative decision made by the Refugee Protection Division (the RPD) on November 3, 2020.

[2] The Applicant is a citizen of Norway who was born in Somalia. She stated that she entered Canada on November 22, 2019 at Vancouver, using a fraudulent or improperly obtained passport that contained a photograph of someone who looked like her.

[3] Upon entry, the Applicant made a refugee claim based on the false allegation that she had recently fled Somalia after an attack from Al-Shabaab several weeks earlier.

[4] The RPD conducted a hearing on October 27, 2020. The Minister intervened in writing, submitting documentary materials concerning the credibility of the Applicant on the basis that she had two identities and initially failed to disclose her status in Norway as a citizen.

[5] The Applicant based her refugee claim on a fear of losing her Norwegian citizenship and of being forced to return to Somalia, where she would be forced into marriage with her cousin, the son of her aunt.

[6] For the reasons that follow, this application is dismissed as I find the Decision is reasonable.

II. **Background facts**

[7] The RPD found that the identity of the Applicant was a central issue. Her refugee claim was made under the name Ikram Mohamed Ahmed, a Somali citizen born on December 25, 1997.

[8] The evidence established that the Applicant entered Canada on October 23, 2019, at Toronto Pearson Airport using a Norwegian passport under the identity of “Sabah Abdi Omar”, born on January 20, 1986. Although the Applicant initially denied she was the person in the passport, her photograph and biometrics were sent to a liaison officer who confirmed her identity with Norwegian authorities.

[9] The Applicant then submitted an amended Basis of Claim (BOC) admitting that she was the person in the Norwegian passport. She alleged that she used the two names interchangeably and that she was in fact born in 1997. She alleged that she was sent to Norway in 2010 by her aunt to work and send money back to Somalia. To do so, her aunt made her claim to be an adult in her asylum claim when she was, in fact, only 13 years old.

[10] The Applicant claimed before the RPD that she feared mistreatment from the aunt who threatened to expose her to the Norwegian authorities if she did not agree to marry her son for immigration purposes.

[11] The Applicant explained before the RPD that she was given the name Ikram Mohamed Ahmed at birth. When her mother remarried the Applicant was given the name of her mother’s new husband. She was known by each of these identities while growing up in Mogadishu.

[12] The RPD found the Applicant’s overall testimony to be credible and accepted the Applicant’s amended BOC as the truth. The Panel found it credible that the Applicant’s aunt sent her to Norway to send money back since the age of 13 and threatened to force her to return to

Somalia to marry her son so that the son could move to Norway and benefit from the Applicant's status there.

[13] However, the claim failed on establishing a well-founded fear of persecution in Norway. The RPD reviewed the Norwegian Nationality Act contained in the NDP and held that although misrepresentation under the Act can lead to fines or, less likely, imprisonment, there is "insufficient information to establish, on a balance of probabilities, that the claimant would lose her citizenship in Norway due to the fact that she gave her second name and an alternate birth date to authorities when she made her claim in 2010."

[14] The RPD denied the Applicant's refugee claim and determined that she was not a Convention Refugee nor a person in need of protection. In the course of doing so, the RPD noted that the evidence before the panel was limited due to the Applicant's self-representation.

[15] The Applicant, with the assistance of counsel, appealed to the RAD, which upheld the decision of the RPD but on different grounds.

III. The RAD decision

[16] By way of letter dated March 29, 2021, the RAD requested further submissions on the following issues to be considered on appeal:

- Whether the RPD reached the correct determination with respect to the Appellant's identity, including her name and date of birth;

- Whether the RPD correctly concluded that the Appellant had misrepresented her identity in Norway through the influence of an aunt;
- Whether the Appellant's evidence is credible, in light of the information contained in the Minister's intervention.

[17] The Applicant provided further submissions on these issues and submitted the following new evidence:

- A legal opinion from Felix Olivier Helle, an asylum lawyer in Norway;
- A letter of support from the Applicant's family friend, who lives in the US;
- A letter of support from the Applicant's maternal uncle, who lives in Ethiopia;
- A copy of the Applicant's Norwegian travel document; and,
- Various untranslated documents from the Applicant's Norwegian asylum file.

[18] The RAD admitted all the evidence except the untranslated documents, which did not comply with Rule 28 of the *Refugee Appeal Division Rules*.

[19] Although an oral hearing was requested, the RAD found one was not necessary because, although the Applicant's credibility was at issue, there were no discrepancies in the new evidence that the Applicant was not already aware of, nor any contradictions that needed to be put to the Applicant for an explanation. As such, the RAD found that their task was to conduct an independent assessment and weigh the evidence.

[20] The RAD conducted an independent analysis using the correctness standard as required by the Federal Court of Appeal in *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93.

[21] With respect to identity, the RAD considered the record and the audio recording. The RAD determined that the Applicant is Sabah Abdi Omar, born on January 20, 1986, as indicated in her Norwegian travel document. Although the Applicant claimed to have misrepresented her name and age to the Norwegian authorities, the RAD determined she was an untrustworthy witness and placed no weight on her unsupported statements.

[22] The RAD questioned the RPD's acceptance of the Applicant's testimony in the face of the serious credibility concerns and false statements made to immigration officials. There was no evidence of remittances sent to the Applicant's aunt, nor of any communications between them or any other credible evidence about the influence on the Applicant of her aunt, from a continent away.

[23] The RAD noted that the Applicant's explanations about her aunt and the misrepresentations of her identity in Norway only arose after her misrepresentations to Canadian immigration officers were caught. The RAD concluded that the Applicant's testimony, affidavit and the new letters of support submitted were insufficient to overcome the credibility issues and did not accept that she misrepresented her identity in Norway.

[24] With respect to the Applicant's risk of persecution in Norway, the RAD addressed the Applicant's claim that she would lose her citizenship in Norway and would likely be deported to Somalia. The RAD emphasized its conclusion that the Applicant's identity in Norway was not based on misrepresentations.

[25] The RAD considered the Applicant's argument that her citizenship remains susceptible to revocation because Norwegian authorities will believe that her asylum claim was fraudulent. The Applicant argued that this is part of a pattern of targeting of Somalis who successfully sought asylum in Norway around the same time as the Applicant's arrival.

[26] The RAD independently assessed the Norwegian Nationality Act and found that the RPD had erred in its conclusion that revocation was not likely on a balance of probabilities. Section 26 of the Norwegian Nationality Act states that a revocation of citizenship can occur for material representations. This was confirmed by the legal opinion of Mr. Helle, who stated that a person who has fraudulently acquired Norwegian citizenship may subsequently have it revoked. Mr. Helle further stated that based on his experience as a practicing immigration and refugee lawyer in Norway, Norwegian immigration authorities are increasingly working on revocation, cessation and expulsion cases, particularly for Somalis who arrived in Norway between 2008 to 2011.

[27] Mr. Helle opined that the Applicant's case may be at a heightened risk of reassessment for the following reasons:

- The information in the Appellant's file about her reasons for seeking asylum contains very few details;

- Her allegations are not consistent with information about the situation in Mogadishu in 2009, such as whether Al-Shabaab members would have given women a warning before kidnapping them;
- She had little knowledge of her family and clan, which is considered unusual for Somalis, especially from the Hawiye clan;
- The size of the Appellant's family on her mother's side seems small given the average number of children per woman in Somalia;
- There were discrepancies in the Appellant's description of how she paid for her flight; and,
- She gave inconsistent information to authorities about whether she had any siblings.

[28] However, the RAD determined that Norway's enforcement of its citizenship and immigration laws does not constitute persecution on a Convention ground.

[29] Referencing Mr. Helle's letter that both the revocation and deportation proceedings involved proportionality assessments, the RAD found that the possibility of deportation to Somalia remains speculative and the revocation of citizenship does not automatically result in deportation.

[30] Additionally, the RAD found that only 17% of Somali cases resulted in revocation and affected individuals may still acquire a resident permit on the basis of correct information.

[31] Finally, the RAD noted that all foreigners in Norway are protected by the principle of *non-refoulement* regardless of their legal status. Therefore, the prospect of the Applicant's removal to Somalia, in violation of this principle, remains speculative.

[32] Overall, the RAD disagreed with the RPD's conclusion on the Applicant's identity and possibility of citizenship revocation in Norway and concluded that she failed to establish a well-founded fear of persecution on a Convention ground in Norway or a danger of torture, risk to life or cruel and unusual treatment or punishment in Norway. As such, the RPD's negative decision was confirmed and the appeal was dismissed.

IV. Issue

[33] The only issue in this application is whether the Decision is reasonable.

[34] The Applicant relies on five sub-issues to show the Decision is unreasonable. These are:

1. the RAD failed to show deference to the RPD's credibility findings;
2. the Applicant failed to benefit from the presumption of truth;
3. the RAD improperly afforded little weight to the Applicant's psychological report;
4. the RAD refused to hold an oral hearing;
5. the RAD speculated regarding the Applicant's risk of losing her citizenship in Norway and being removed from Norway to Somalia.

V. **Standard of Review**

[35] The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] extensively reviewed the law of judicial review of administrative decisions. It confirmed that judicial review of an administrative decision is presumed to be on the standard of reasonableness, subject to certain exceptions which do not apply on these facts, and the burden is on the party challenging the decision to show it is unreasonable: *Vavilov* at paras 23 and 100; *Canada (Minister of Citizenship and Immigration) v Huruglica* 2016 FCA 93 at para 35 [*Huruglica*].

[36] A reasonable decision is one that displays justification, transparency and intelligibility with a focus on the decision actually made, including the reasons offered for it. To set a decision aside, a reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency: *Vavilov* at para 100.

[37] Overall, a reasonable decision is one that is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at paras 15 and 85.

VI. Analysis

[38] The role of the RAD is to intervene when the RPD is wrong in law, in fact, or in fact and law. The RAD is required to review the decision of the RPD by applying the correctness standard *Huruglica* at para 78.

A. *Deference*

[39] The Applicant submitted to the RAD that it owed deference to the RPD's credibility findings because the RPD had the benefit of testing the Applicant's credibility in person. The RAD reviewed the jurisprudence and found that "[d]eference is owed to the RPD only where the RPD held a meaningful advantage in assessing the evidence."

[40] It was established by Mr. Justice Diner in *Rozas del Solar v Canada (Citizenship and Immigration)*, 2018 FC 1145 [*Rozas del Solar*] at paragraph 134 that the degree of deference owed to the RPD "ought to be addressed on a case-by-case basis. In each case, the RAD ought to determine whether the RPD truly benefited from an advantageous position, and if so, whether the RAD can nevertheless make a final decision in respect of the refugee claim".

[41] Here, the RAD reviewed the RPD's written record and the full audio recording of the RPD hearing. The RAD noted that "there is no indication that the contents of the audio recording do not capture what occurred at the hearing." The RAD concluded that there was no reason to show deference to any of the RPD findings and a correctness standard would be applied by the RAD to the RPD findings.

[42] Where audio recordings of testimony are available and reviewed by the RAD in addition to the written record and the RPD's conclusions, it is reasonable for the RAD to find no meaningful advantage in the assessment of credibility, and to make its own determination: *Rozas del Solar* at paras 89-90.

[43] For these reasons, I am satisfied the RAD was not required to show deference to the RPD's credibility findings.

B. *Presumption of Truthfulness*

[44] The Applicant states that the RAD did not provide her with the benefit of the presumption of truthfulness. She says, for example, that it was not rebutted because her evidence provided reasonable explanations for not declaring her Norwegian identity when she first landed in Canada. She states that she was scared and traumatized by her aunt, but notes that she eventually declared the truth in the amended basis of claim.

[45] The RAD acknowledged the existence of the presumption and noted that it may be rebutted when a valid reason to doubt the truthfulness of the testimony is identified. Examples given of such valid reasons were "a contradiction, omission, or implausibility that is not reasonably explained."

[46] After reviewing several serious credibility concerns that were highlighted in the Minister's intervention package, the RAD was of the view that those concerns were not adequately addressed by the RPD.

[47] The RAD noted there were inconsistent and evolving statements about the Applicant's identity, which were highly concerning. The story told in her original BOC was fictitious as she had fabricated her story. The Applicant had omitted entirely the fact that she relocated to Norway in 2010 although she claimed to have fled Somalia in 2019. As recently as January, 2020, the Applicant denied being fingerprinted in the past and continued to claim that she had only ever lived in Somalia and in Kenya. When confronted with the name in the Norwegian passport the Applicant first denied it was her name suggesting it perhaps was the name on the false passport she had used.

[48] I find it is not necessary to review the many other contradictions and false statements made by the Applicant to immigration officers.

[49] The RAD found that the RPD should have been quite concerned about the Applicant's willingness to deceive and mislead immigration officers as to her identity. The Board noted that the RPD gave very few reasons to justify why, in the absence of any corroborative evidence, it suddenly believed the Applicant's testimony.

[50] The RAD reasonably found the false statements made by the Applicant badly tainted her credibility and wholly rebutted the presumption of the truthfulness of her testimony: *Luo v Canada (Citizenship and Immigration)*, 2019 FC 823 at paras 18-22.

C. *Psychological evaluation*

[51] To support the proposition that the RAD improperly afforded little weight to the Applicant's psychological report the Applicant refers to cases finding that it is unreasonable to afford little weight to a psychological report solely on the basis that the events it described were not based on firsthand knowledge of the psychologist and it is an error to reject expert psychological evidence without any basis.

[52] It is unclear why the Applicant raises this argument. The RAD did not place little weight on the psychological evaluation. The RAD acknowledged the Applicant's diagnoses of post-traumatic stress disorder and major depressive disorder, as well as the recommended treatment plan. The RAD found however that the Applicant's diagnoses had little bearing on her forward-looking risk in Norway such that it would entitle her to refugee protection.

[53] I find that there is no reviewable error in the RAD's treatment of the psychological evaluation. The Applicant's argument appears merely to be a disagreement with the weight assigned to this evidence by the RAD. It is well known that this is an exercise from which the Court must refrain on judicial review: *Vavilov* at para 125.

D. *The request for an oral hearing*

[54] The RAD found there was little reason to hold an oral hearing pursuant to subsection 110(6) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 as the new evidence does not meet any of the criteria found in subsection 110(6).

[55] The new evidence did not raise a serious issue with respect to the credibility of the Applicant. Nor would it be central to the decision with respect to the Applicant's refugee protection claim. In particular, the RAD found that accepting the new evidence would not justify allowing or rejecting the Applicant's claim as it lacks probative value.

[56] After reviewing the RPD record and the audio recording, the RAD determined that the new evidence did not raise any contradictions or discrepancies that had not already been put to the Applicant. The only remaining step was to weigh the evidence.

[57] The Applicant was provided with an opportunity to respond to the RAD's concerns as expressed in the letter dated March 29, 2021. Those concerns were largely based on the Minister's intervention at the RPD. The RAD found that the Applicant should have been well aware of those existing credibility concerns. I do not find any error with this reasoning.

[58] I find the RAD met its onus to carefully consider the Applicant's request for an oral hearing and it demonstrated, through its reasons, an analysis of the subsection 110(6) criteria. This was not an instance where the authenticity of documents was in question as in *Tchangoue v Canada (Citizenship and Immigration)*, 2016 FC 334 at paragraph 17, nor were the RAD's adverse credibility findings based on new evidence that directly contradicted the RPD's findings as in *Hundal v Canada ((Citizenship and Immigration)*, 2021 FC 72 at paragraph 20.

[59] As the Applicant states in her memoranda, the psychological report submitted before the RAD was new evidence that enhanced the credibility of the Applicant. While this may have been

true, it does not constitute a new issue or raise new contradictions/discrepancies that would necessitate an oral hearing.

[60] The RAD's independent assessment of the RPD record and its own conclusions on the Applicant's credibility and identity overturned the findings of the RPD. These concerns were not unknown to the Applicant. The Applicant had the opportunity to address the existing concerns of identity and credibility orally at the RPD hearing and again through written submissions upon notice from the RAD.

[61] On review of the record, I am satisfied that the RAD did not err in refusing to hold an oral hearing.

E. *Speculation about the Applicant's risk of losing her citizenship in Norway*

[62] The Applicant's argument here is based on a legal opinion from a lawyer in Norway, Felix Olivier Helle (Mr. Helle), which confirmed the procedures for revocation of citizenship. The legal opinion was that a proportionality assessment would not go in the Applicant's favour, and that a reassessment of the Applicant's case would result in removal from Norway.

[63] The Applicant submits that the letter confirms she will lose her citizenship. The Applicant adds that the various procedures following revocation were explored by Mr. Helle and therefore they are not "speculative".

[64] The Respondent submits that the RAD did not ignore Mr. Helle's legal opinion. The RAD reasonably determined that it would not be persecutory for Norway to enforce its own citizenship and immigration legislation and properly noted that revocation was not an automatic process. Any deportation proceedings would involve proportionality assessments. The evidence also showed that Norway was committed to the principle of *non-refoulement* and persons who had lost status were sometimes able to get a residence permit on another ground.

[65] As a citizen of Norway, the Applicant must establish that her risk of persecution is against Norway.

[66] The RAD considered the Applicant's claim that the prospect of removal to Somalia constitutes persecution. The RAD concluded that this prospect remained speculative in the sense that the revocation of citizenship does not automatically result in deportation. The RAD determined that Norway's enforcement of citizenship and immigration laws does not constitute persecution on a Convention ground.

[67] I do not read the RAD's analysis on this point to mean that there is no possibility of deportation to Somalia, but that, much like Canada's immigration system, there are a number of checkpoints the Applicant can access between any loss of status and removal. The RAD notes there is an opportunity to appeal a decision of the Norwegian Directorate of Immigration and both the revocation and deportation proceedings involve proportionality assessments if it is found that false information was originally provided by the Applicant.

[68] The RAD also found, according to a report from the Norwegian Institute for Social Research, that from March 2017 to December 2018, only 17% of Somali cases resulted in the revocation of status and a great majority of the revocation cases were dismissed. Further, even after revocation of status, affected individuals are eligible to acquire a resident permit based on the correct information.

[69] Finally the RAD noted that Norway, much like Canada, is committed to the principle of *non-refoulement* and Mr. Helle's legal opinion failed to explain why there is a high likelihood that the Applicant would be deported, even in violation of this principle.

[70] Overall, I find that the RAD thoroughly considered Mr. Helle's legal opinion as well as the evidence gathered from its own independent analysis, to conclude that removal is not automatic following citizenship revocation.

[71] Based on the above, it seems to me that while removal from Norway to Somalia may be possible, it remains too remote for consideration as a Convention ground for refugee protection in Canada. I can find no reason to disturb the RAD's analysis on this point.

VII. **Conclusion**

[72] For all the foregoing reasons, this application is dismissed.

[73] There is no serious question of general importance for certification.

JUDGMENT in IMM-6207-21

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. There is no question for certification.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6207-21

STYLE OF CAUSE: SABAH ABDI OMAR AKA SABAH OMAR ABDI
AKA IKRAM MOHMAED AHMED v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

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