

Federal Court



Cour fédérale

Date: 20220615

Docket: IMM-3135-21

Citation: 2022 FC 901

Ottawa, Ontario, June 15, 2022

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

FAADUMA NUUR ABDI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision dated April 19, 2021 [the Decision] by a senior immigration officer [the Officer] of Immigration, Refugee, and Citizenship Canada [IRCC], refusing the Applicant's application for permanent residence on humanitarian and compassionate [H&C] grounds, pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act* SC 2001, c 27 [IRPA].

[2] The Applicant submits that the Officer failed to address or assess important evidence regarding her identity, hardship and establishment.

[3] Given that I agree with the Applicant that the issue of identity was not properly assessed by the Officer and that the Decision should be set aside for this reason alone, it is not necessary to consider the other arguments raised by the Applicant or express my opinion on their merits.

[4] The relevant facts are succinctly set out below.

[5] The Applicant claims to be Faaduma Nuur Abdi, a citizen of Somalia and a member of the minority clan, the Ashraf. She is a failed refugee claimant.

[6] The Applicant's claim for refugee protection was refused in December 2015 by the Refugee Protection Division [RPD] primarily on the basis that she had not established her identity and was not a citizen of Somalia. The Minister of Citizenship and Immigration [Minister] intervened in the Applicant's refugee claim and submitted evidence indicating that the Applicant's fingerprints and photograph matched those of a Djiboutian woman named Filsan Moussa Farah. The Minister also pointed out several discrepancies and inconsistencies in the Applicant's evidence.

[7] The Applicant conceded before the RPD that she had not disclosed the fact that she had attended at the U.S. Embassy in Djibouti in December 2008 to apply for a US visa. She testified that a Djiboutian woman named Filsan Moussa Farah had agreed to allow the Applicant to use

her identity for the visa application. The Applicant admitted that she provided her fingerprints and her photograph to the U.S. Embassy, along with Ms. Farah's passport; however, she insisted before the RPD that she was not that person.

[8] On December 22, 2015, the RPD determined that the Applicant was not a Convention refugee nor a person in need of protection and declared her claim to be manifestly unfounded. The RPD member concluded that the Applicant's true identity was Filsan Moussa Farah and not Faaduma Nuur Abdi.

[9] In 2017, the Applicant submitted an application for permanent residence on H&C grounds, which included new documentation supporting her identity as Faaduma Nuur Abdi. The IRCC officer who assessed the 2017 H&C application concluded that the Applicant had established her identity as Faaduma Nuur Abdi, a citizen of Somalia; however, the application was refused in 2019 on other grounds.

[10] On May 5, 2020, the Applicant submitted a second H&C application using essentially the same documentary evidence submitted in support of her 2017 H&C application. Attached to her application were two affidavits with a number of exhibits, including a letter from a person identifying herself as Filsan Moussa Farah who explained that she agreed to provide her passport to the Applicant out of humanitarian concern for her situation.

[11] The Officer found that the information provided by the Applicant was essentially the same as provided at her refugee hearing. The Officer went on to state:

While I am not bound by the findings, the Refugee Protection Division (RPD) is a decision making body who are experts in the determination of refugee claims. I note the RPD refused the applicant's claim as a result of identity and credibility issues. I therefore give considerable weight to the findings of the Board.

[12] The Officer found that the Applicant had not provided sufficient objective evidence to overcome the RPD's findings. They set out methods in place that the Applicant could have taken to obtain a variety of identification documents, some of which were in place prior to the Applicant's alleged departure from Somalia. The Officer found that the Applicant had failed to demonstrate her efforts in obtaining such identity documents from Somalian authorities. Based on the totality of all of the documents, the Officer concluded that the information provided by the Applicant does not establish her identity.

[13] The Applicant submits that the Officer unreasonably discounted or ignored most of her evidence regarding her identity as a citizen of Somalia.

[14] The parties agree that the applicable standard of review is reasonableness.

[15] The Respondent submits that the Officer was entitled to assess the evidence before them and conclude that the Applicant had failed to provide sufficient evidence proving her identity. Moreover, the Officer was not required to discuss every single piece of evidence or line of argument provided by the Applicant.

[16] The Officer need not have referred in their Decision to each and every piece of evidence before it and is presumed to have considered all the evidence. It was certainly open to them to

refer to the RPD's factual determinations and confer them considerable weight in coming to their conclusion. It remains that there was information provided by the Applicant that was not before the RPD that went to the heart of her claim that she was who she claimed to be. Yet, other than explaining briefly why one document is insufficient, the Officer does not mention additional information which on its face appears to corroborate the Applicant's story, let alone assess it.

[17] A reasonable decision must be justified in light of the facts, which in turn are defined by the applicable legal framework. As stated in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 100, the burden on a party challenging a decision is to satisfy a reviewing court 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. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the decision. [...] Instead, the court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central to or significant to render the decision unreasonable.

[18] I conclude that the Decision is unreasonable because the Officer failed to make an independent assessment of the Applicant's evidence regarding her identity, more particularly the evidence produced after the Applicant's refugee claim was denied, or explain why they did not consider it to be reliable and/or sufficient. It is not clear to me that the Officer's negative finding on this question did not affect the exercise of the discretion afforded under ss. 25(1) of the IRPA.

[19] The application for judicial review is therefore granted.

JUDGMENT IN IMM-3135-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The matter is referred back to Immigration, Refugee, and Citizenship Canada for reconsideration of the Applicant's application for permanent residence on humanitarian and compassionate grounds by a different officer.
3. No question is certified.

“Roger R. Lafrenière”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3135-21

STYLE OF CAUSE: FAADUMA NUUR ABDI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: JUNE 8, 2022

JUDGMENT AND REASONS: LAFRENIÈRE J.

DATED: JUNE 15, 2022

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