Federal Court  Cour fédérale

Date: 20220728

Docket: IMM-4037-21

Citation: 2022 FC 1134

Ottawa, Ontario, July 28, 2022

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

ABDI MOHAMED JIRROW

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Abdi Mohamed Jirrow, is a citizen of Somalia. His application for permanent residence in Canada on the basis humanitarian and compassionate [H&C] grounds was not granted [Decision]. In this judicial review application, the Applicant seeks to have the Decision set aside and the matter referred back for redetermination.

[2] In my view, the Applicant has met his onus of demonstrating that the H&C decision is unreasonable for lack of coherence and rationality: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 25, 85, 100. For the reasons that follow, I therefore grant this judicial review application.

II. Analysis

[3] I find that the judicial review application raises the following three subsidiary issues that, as I explain below, must be answered affirmatively:

(1) Did the Senior Immigration Officer [Officer] who assessed the Applicant's H&C application err by imposing a section 97 requirement (under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]) on the applicable section 25 analysis, or by unreasonably applying the lens of "unusual and undeserved or disproportionate hardship"?

(2) Did the Officer err by failing to consider the added risks that the Applicant would face, if he were returned to Somalia, as a perceived foreigner or as a returnee, and the applicable evidence?

(3) Was the Officer's determination that the Applicant would be able to support his family financially if he returned to Somalia perverse, made without regard to the evidence, or lacking in coherence or rationality?

[4] These reasons address each issue in turn.

(1) Officer erred regarding unreasonable hardship analysis

[5] I am persuaded that the Officer here erred with respect to the analysis under the *IRPA* s 25 and the threshold applied to the hardship that an H&C applicant must show to receive an exemption on H&C grounds.

[6] This Court has recognized that an H&C applicant must face a personalized risk. Further, taking that risk into account, with all other factors alleged as humanitarian and compassionate grounds, the officer must be satisfied that applying for a visa from outside Canada would result in unusual, undeserved or disproportionate hardship for the applicant: *Lalane v Canada (Citizenship and Immigration)*, 2009 FC 6 at para 44.

[7] In my view, the Officer here unreasonably assessed the evidence on file. For example, the Officer notes that the extremist group Al-Shabaab targeted the Applicant's father, but concludes that, "there is no objective evidence before me that would indicate the applicant has any profile to garner attention in Somalia form [sic] the Al-Shabaab." Having considered the certified tribunal record and Applicant's record, I am not convinced that this finding is reasonable.

[8] While the records contain country conditions evidence on Al-Shabaab's activities in Somalia generally, there also is evidence regarding the Applicant's specific circumstances that support his forward-looking risk, including affidavit evidence, which describes his immediate family's violent and fatal experiences, as well as his own experience of being threatened and targeted. Coupled with the country conditions evidence that a returnee, especially a returnee from a Western country is more likely to be targeted by Al-Shabaab, evidence which the Officer seems to accept (i.e. "some individuals may be targets of Al-Shabaab"), flies in the face of the

Officer's conclusion that the Applicant is not personally at risk. In my view, such a contrary finding without explanation goes against the standard of reasonableness in this context: *Vavilov,* above at para 85.

[9] I further find that it is not sufficient for the Officer to point to the earlier Refugee Protection Division [RPD] and Refugee Appeal Division [RAD] decisions rejecting the Applicant's refugee protection claim on the determinate issues of identity and credibility, and then conclude, in the context of the H&C application, that "supporting information has not been provided to substantiate the applicant's claims" when, as noted above, that is not the case. The logical inference in my view is that the Officer doubts the Applicant's credibility and that of his supporting evidence, but unreasonably that is not stated nor explained. In my view, this aspect of the Decision has the unacceptable hallmark of a veiled credibility finding, as discussed further below in connection with the second subsidiary issue.

[10] In addition, I agree with the Applicant that the Officer's conclusion that "insufficient evidence has been provided to satisfy [the Officer] that the applicants fundamental rights will be denied," should he return to Somalia, demonstrates an error by the Officer. Contrary to the Respondent's arguments, the Applicant himself does not use the language of "fundamental rights." In my view, this conclusion indicates that the Officer set an unreasonably high hardship bar and discounted evidence that did not meet this bar, evidence that includes the Government of Canada travel advisory for Somalia that states in big, bold letters **SOMALIA – AVOID ALL TRAVEL**. This same advisory also describes that the "security situation in Somalia is extremely

volatile and the threat of domestic terrorism is high…" and that if one is "currently in Somalia despite this advisory, [they] should leave immediately."

(2) Officer erred regarding added risks as perceived foreigner or returnee

[11] As stated above, in my view, the Decision is unreasonable regarding the added risks the Applicant would face as a perceived foreigner or returnee to Somalia. Further, contrary to the Respondent's argument, I find it is unclear on what the Officer relied concerning the conclusions of the RPD and RAD. While the Officer states that the RPD did not find the Applicant to be credible with respect to his identity, the Officer does not explain, for example, what, if any, weight is being assigned to these earlier administrative decisions nor how they factor into the H&C analysis. In my view, the Respondent draws a link between the RPD and RAD findings and the Officer's reasoning which is not evident from the Decision, and thus, the argument represents an improper attempt by the Respondent to embellish the Decision. This Court has held that, where the Respondent's proposed reason for discounting an applicant's evidence was not offered by the officer, the Respondent cannot supplement the officer's reasons in arguments before the Court: *Kim v Canada (Citizenship and Immigration)*, 2020 FC 581 at para 62.

[12] In addition, this Court has maintained that credibility findings must be clear and explicit. Here, the Officer did not make any findings as to credibility, whether relying on the findings of the RPD and the RAD, or otherwise. The Respondent now cannot supplement the Decision by claiming the Officer relied on the RPD's and the RAD's credibility findings, as a way of filling in the gaps in the Decision. It is not open to the Respondent to try to guess what the Officer was thinking and explain gaps in the Decision to the Court: *Monteiro v Canada (Citizenship and*

Immigration), 2006 FC 1322 (CanLII) at para 12; *Hilo v Canada (Minister of Employment and Immigration)*, [1991] FCJ No 228. I add that neither party provided the Court with the RPD and RAD decisions, thus making it difficult for the Court to review the overall reasonableness of the Decision.

(3) Officer erred regarding Applicant's ability to support family financially

[13] I also find that the Decision is unreasonable regarding the Applicant's ability to support his family in Somalia. The Officer does not engage meaningfully, in my view, with the Applicant's evidence demonstrating the financial support he provides to his family members because of his employment in Canada. For example, his mother describes in her letter of support for his H&C application that the family used to depend on food aid from local, sometimes unreliable agencies, until the Applicant started working and sending money, enough to sustain them to a point they no longer depend on the food aids. According to his mother, the Applicant is the family's main breadwinner.

[14] I find further that the Decision does not demonstrate the Officer considered the Applicant's claim that diminished income would cause serious hardship to his family, for whom he has been the primary breadwinner since arriving and working in Canada. Instead, the Officer takes the Applicant's history of employment in Canada as an indication that he has gained transferrable skills and that he is a "resourceful and enterprising individual by resettling himself in Kenya and Canada." This conclusion is, in my view, unreasonable. As Justice Ahmed held in *Singh*, this Court has admonished officers who have held the fact that an individual is "resourceful" and "enterprising" against them: *Singh v Canada (Citizenship and Immigration)*,

2019 FC 1142 at para 37. Following the Officer's reasoning here, "the more successful, enterprising and civic minded an applicant is while in Canada, the less likely it is that an application under section 25 [of the IRPA] will succeed": *Lauture v Canada (Citizenship and Immigration)*, 2015 FC 336 at para 26; *Marshall v Canada (Citizenship and Immigration)*, 2017 FC 72 at para 35; *Jeong v Canada (Citizenship and Immigration)*, 2019 FC 582 at para 53; *Aguirre Renteria v Canada (Citizenship and Immigration)*, 2019 FC 134 at para 8.

[15] Despite the evidence of the Applicant's financial support, the family's stated dire financial situation, and country conditions evidence regarding unemployment in Somalia, especially youth unemployment at more than 60 per cent and employment discrimination against the clan to which the Applicant belongs, the Officer concludes that "insufficient evidence has been provided to indicate he would not be able to return to Somalia and provide for his family" and that he would not be precluded from "all job opportunities." In my view, the financial support of family members lies at the heart of the Applicant's claim for H&C relief, and therefore, the Officer's failure to explain how the Applicant's concerns and evidence were considered and weighed renders the decision unreasonable: *Vavilov*, above at paras 126-128.

[16] In addition, I find that the Respondent's argument the Applicant could return to Kenya rather than Somalia is speculative and does not form a part of the Decision. The Applicant's evidence is that the uncle with whom he stayed while the Applicant studied in Kenya and earned a diploma in banking and finance, recently moved to Ethiopia; he has no other family in Kenya; and there would be nothing for him there. This evidence does not accord with the Respondent's submissions that the Applicant seems to acknowledge in his affidavit that he could be returned to

Kenya, instead of Somalia. More to the point, the Officer's reasons do not address this possibility. At best, it is again an impermissible effort to create a link between the Decision and the apparent finding of the RPD and the RAD that the Applicant holds Kenyan citizenship because he used a Kenyan passport to travel to Canada (via the United States of America). I underscore that the RPD and RAD decisions, however, are not before the Court on this judicial review, thus necessitating a greater degree of clarity in the Officer's reasons, in my view, to support the reasonableness of the Decision which I have found lacking in this case.

III. Conclusion

[17] For the above reasons, this application for judicial review is granted. I find that the cumulative errors take the Decision outside the realm of justification, transparency and intelligibility required by *Vavilov*. In other words, the Officer's unreasonable findings have produced a flawed Decision that warrants this Court's intervention. The Decision is set aside and the matter will be remitted to a different officer for reconsideration.

[18] Neither party proposed a serious question of general importance for certification. I find that none arises in the circumstances.

JUDGMENT in IMM-4037-21

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is granted.

2. The June 1, 2021 Decision of the Senior Immigration Officer is set aside. The matter will be remitted to a different officer for reconsideration.

3. There is no question for certification.

"Janet M. Fuhrer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4037-21
STYLE OF CAUSE:	ABDI MOHAMED JIRROW v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD VIA VIDEOCONFERENCE
DATE OF HEARING:	JULY 7, 2022
JUDGMENT AND REASONS:	FUHRER J.
DATED:	JULY 28, 2022

APPEARANCES:

David Orman	FOR THE APPLICANTS
Prathima Prashad	FOR THE RESPONDENT

SOLICITORS OF RECORD:

David Orman Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT