

Federal Court



Cour fédérale

Date: 20220722

Docket: IMM-4797-20

Citation: 2022 FC 1092

Toronto, Ontario, July 22, 2022

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

FARHIA MOHAMED OSMAN

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a September 15, 2020 decision of a Senior Immigration Officer [Officer] of Immigration, Refugees and Citizenship Canada [IRCC] denying the Applicant's application for permanent residence from within Canada based on humanitarian and compassionate [H&C] grounds under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The determinative issue on the Officer's hardship analysis

was that the Applicant had not overcome credibility concerns associated with her identity and nationality as a citizen of Somalia.

[2] For the reasons set out below, I find that the Officer's Decision was unreasonable as it relied on overturned findings of the Refugee Protection Division [RPD] and did not follow a consistent or reasonable chain of analysis. Accordingly, the application is allowed and the matter will be referred back to another officer for redetermination.

I. Background

[3] The Applicant is 25 years old and claims to be a citizen of Somalia. On or around September 29, 2014, she and her family members fled to Kenya after her two brothers were allegedly killed by Al-Shabaab. In December 2014, the Applicant left Kenya and came to Canada without her family. She entered using a fraudulent passport.

[4] Soon after, she made a refugee claim. The RPD denied her claim on April 14, 2015 on the basis that she had not credibly established her identity or nationality as a citizen of Somalia. On appeal, the Refugee Appeal Division [RAD] found that the RPD had erred in certain of their credibility findings, but maintained that the Applicant had not provided sufficient credible and trustworthy evidence to establish her identity and nationality as a citizen of Somalia. The RAD dismissed her appeal on July 22, 2015, and this Court dismissed her subsequent application for leave and judicial review of the RAD decision.

[5] In January 2016, the Applicant began working and volunteering in various positions and in June 2016, she completed her high school studies. In August 2016, she submitted a first H&C application, which was refused on March 22, 2017. She then submitted a second H&C application (the subject of this application for judicial review), which the Officer refused on September 15, 2020.

[6] In rejecting the Applicant's claim, the Officer found that the Applicant had not overcome the credibility findings made by the RPD related to her identity and nationality as a citizen of Somalia and that this was determinative of the issue of hardship. The Officer gave little weight to the affidavit evidence provided by the Applicant, noting that she should have sought evidence from family and friends remaining in Somalia and had not displayed reasonable efforts to obtain documentation from government sources. With respect to establishment, the Officer considered the Applicant's work, education, and financial history along with support letters from friends in Canada, but found the Applicant's establishment did not exceed what would be expected during her residency.

II. Issues and Standard of Review

[7] There were two issues raised by the Applicant:

- (a) Did the Officer err in assessing the Applicant's identity?
- (b) Did the Officer err in assessing the Applicant's establishment in Canada?

[8] The parties assert and I agree that the standard of review of the Officer's decision is that of reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65

[*Vavilov*]. None of the situations that would rebut the presumption of reasonableness review for administrative decisions is present: *Vavilov* at paras 16-17.

[9] In conducting reasonableness review, the Court must determine whether the decision 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 85-86; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at paras 2, 31. A reasonable decision, when read as a whole and taking into account the administrative setting, bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at paras 91-95, 99-100.

III. Analysis

A. *Did the Officer err in assessing the Applicant’s identity?*

[10] The Applicant asserts that the Officer made two key errors in their analysis of her identity. First, she asserts that it was unreasonable for the Officer to rely on statements and findings made by the RPD member to highlight concerns with the Applicant’s credibility where certain of those findings were overturned by the RAD. Second, she argues that the Officer placed too high an evidentiary burden on the Applicant and applied inconsistent reasoning as it related to their consideration of the affidavit evidence provided. I agree with each of these arguments.

[11] In the Decision, the Officer quotes liberally from the RPD’s reasons regarding the credibility concerns raised by the RPD member relating to the Applicant’s identity. The Officer uses these findings as a framework for their credibility assessment. Included in the passages quoted are adverse credibility findings made by the RPD relating to the Applicant’s perceived

knowledge of the English language and the facts surrounding her travel to Canada, each of which was found to be in error by the RAD. The Officer does not note these errors nor does the Officer review the RAD decision. They state only that “the RAD also concluded that the applicant failed to provide sufficient credible documentation pertaining to her identity and nationality as a citizen of Somalia.” The Officer goes on to conclude that “the applicant has provided insufficient documentation to overcome the RPD’s credibility finding.”

[12] The Respondent asserts that the reference to the RPD decision is nothing more than a historical review of the Applicant’s refugee application. However, I do not accept this explanation. In my view, the Officer’s incorporation of six full paragraphs from the RPD’s decision in their reasons demonstrates an intention to rely on the RPD member’s credibility assessment to frame their review of the Applicant’s evidence relating to identity. I agree with the Applicant that the Officer’s express reliance on overturned findings of the RPD is not reasonable and indicates that the Officer did not sufficiently grapple with the prior credibility assessment. It results in a chain of analysis that is neither rational nor reasonable.

[13] I further find that the Officer’s analysis of the Applicant’s evidence provided in support of her identity was unreasonable in certain respects.

[14] First, I find it inconsistent for the Officer to fault the Applicant for not providing affidavit evidence from parents and siblings that currently reside in Somali, while ignoring that this very type of evidence (a letter from the Applicant’s father) was previously rejected when submitted with the Applicant’s materials before the RPD. This was in part because of the non-arm’s length

relationship between the Applicant and her father, who as asserted by the RPD “set out what a loving father would say.” The RPD also noted that the father did not provide anything to identify himself. In view of these findings, it cannot be expected that the Applicant would have sought to resubmit similar evidence in support of her H&C application.

[15] Further, by focussing on the evidence that was not submitted, the Officer was unreasonably critical of evidence that was provided by the Applicant. This included, *inter alia*, evidence from the Applicant’s aunt and a family friend who now resides in Canada, but states that he knew the Applicant while she lived in Somalia, including during the time-period highlighted by the RPD.

[16] The Applicant’s aunt stated that she has known the Applicant for her whole life and provided background as to the Applicant’s upbringing in Somalia. The Officer discounted this evidence, stating that the aunt had not “objectively demonstrated that she has known the applicant from birth” and that there was “insufficient evidence demonstrating the familial relationship”.

[17] Similarly, the Officer disregarded the sworn evidence from the Applicant’s family friend on the basis that he did not himself provide sufficient documentation to establish his own identity as a Somalian national nor provide corroborating evidence of his friendship with the Applicant’s brother.

[18] I find these criticisms to be unreasonable. I do not agree, as the Respondent contends, that there were apparent gaps in the evidence that would justify a request for such elaborate corroboration. In my view, the approach taken by the Officer to the evidence was to hold these individuals to a higher standard of proof. As was the case in *Abdullahi v Canada*, 2015 FC 1164 at paragraph 14, this “reeks of a concerted effort to reject or minimize evidence as opposed to giving it a fair and reasonable interpretation.”

[19] Second, I agree that it was unreasonable for the Officer to focus on the efforts made by the Applicant to obtain primary documents from Somalia given the recognized difficulties in obtaining Somalian identity documents and the Applicant’s requested waiver to provide a passport. As noted in *Warsame v Canada*, 2019 FC 920 at paragraph 50, “[i]t is notorious that “government documents” from Somalia are virtually unobtainable and a Somali refugee claimant must establish his or her identity through secondary sources.” While the Officer relied on Immigration Refugee Board [IRB] evidence indicating that some identity evidence may be obtained through larger cities like Mogadishu, or other major cities, the Officer did not consider that the Applicant is alleged to be from a rural village located far away from these cities, has been outside of Somalia since she was 18, and that there is currently no Somalian embassy in Canada. It is unclear how the Officer expected the Applicant to attempt to obtain primary Somali identity documents nor does the Decision demonstrate consideration of the Applicant’s circumstances.

[20] In my view, these findings are sufficient to allow the application and submit the matter back to another officer for redetermination where the officer can review all of the evidence anew. I therefore do not find it necessary to comment on the Officer's analysis of establishment.

IV. Conclusion

[21] The application is allowed.

[22] No question for certification was proposed by the parties and none arises in this case.

JUDGMENT IN IMM-4797-20

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed and the matter is remitted back to another officer for redetermination.
2. No question of general importance is certified.

"Angela Furlanetto"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4797-20

STYLE OF CAUSE: FARHIA MOHAMED OSMAN v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE

DATE OF HEARING: MARCH 30, 2022

JUDGMENT AND REASONS: FURLANETTO J.

DATED: JULY 22, 2022

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