

Federal Court



Cour fédérale

**Date: 20221011**

**Docket: IMM-6494-20**

**Citation: 2022 FC 1393**

**Ottawa, Ontario, October 11, 2022**

**PRESENT: The Honourable Madam Justice Elliott**

**BETWEEN:**

**FATUMA MOHAMMED MAHAMUD  
ANISA MOHAMMED MAHAMUD**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicants seek judicial review of a decision made by the Refugee Appeal Division [RAD] on November 27, 2020 [the Decision] upholding a decision by the Refugee Protection Division [RPD] that they were not Convention refugees nor persons in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001 c-27 [IRPA].

[2] For the reasons set out below, the Decision will be set aside and the matter returned for redetermination by a different member of the RAD.

## II. **Background**

[3] The Applicants are sisters who filed claims for refugee protection on March 13, 2018, after arriving in Canada from the United States. They entered the United States on Zambian passports, which they subsequently destroyed.

[4] After arriving in Canada, the Applicants admitted they had provided false birth certificates from Somalia in order to bolster their refugee claims. While their identity and travel documents from Zambia were authentic, they admitted they were obtained under false pretences.

[5] The Applicants' evidence before the RAD and the RPD consisted of:

1. UNHCR documents for the Applicants' parents showing Somalia as the place of birth of both parents;
2. civil registration documents from Zambia for Applicant Fatuma, being: student ID cards, driver's license, a national registration card, and a voting registration card;
3. for Applicant Anisa, a voter registration card and a national registration card;
4. two affidavits from the Applicants' mother, Zahra Farah Hassan, dated April 18, 2018 stating that each Applicant is her biological daughter;

5. two additional affidavits from the Applicants' mother, dated September 6, 2019, one stating that Applicant Anisa was born in Somalia in 1991 when the mother fled there from Kenya to visit her family and, stating that after a relative killed a Zambian national, the family illegally obtained travel documents for the Applicants for their safety, concluding that it was not safe for them to return because the relatives of the deceased were seeking financial compensation;
6. the other affidavit stated that Applicant Fatuma was born in Kenya but was not granted Kenyan citizenship because her parents were refugees in Kenya, and it reiterated that the Applicants could not safely return to Zambia;
7. two affidavits from the Applicants' brother, Faisal Muhammed, dated April 18, 2018, confirming that each Applicant is his biological sister;
8. a support letter from the Somali Community Outreach Centre in Winnipeg confirming, based on the experience of elders charged with confirming identity which they did by interviewing Applicant Fatuma and others who lived in the same refugee camp where she was born, and concluding that she is a Tuni who grew up in Zambia.

[6] The Applicants claimed to be citizens of Somalia. They made a claim for refugee protection against Somalia, Zambia and Kenya. They admitted to fraudulently obtaining Zambian citizenship as a result of which they were issued Zambian identity cards, including student cards, a driver's licence, voting cards and national registration cards.

[7] The Minister intervened before the RPD by filing 87 pages of written materials to support the position that the Applicants were citizens of Zambia.

[8] The RPD found there was insufficient documentary evidence to prove the nationality of the Applicants from either Somalia or Zambia. It found the Applicants' explanations for their misrepresentations were not credible.

[9] The RPD dismissed the claims based on failure to establish identity under section 106 of the *IRPA*.

[10] The RAD confirmed these findings on appeal.

### III. **The Decision**

[11] The Applicants did not put forward new evidence on appeal.

[12] Before the RAD, the Applicants claimed they were citizens of Somalia and that they had entered the United States on false Zambian passports.

[13] The RAD understood the Applicants to be claiming to be citizens of Somalia who were residing in Zambia and claimed a risk of persecution in both Somalia and Zambia.

[14] The RAD identified the only issue on appeal to be whether the Applicants had established their identities.

[15] The RAD noted that the primary identification documents are passports as possession of a national passport creates a presumption of nationality. The RAD found that the Applicants failed to put any passports in evidence because they destroyed the legitimate Zambian passports that were obtained through false pretences.

[16] The RAD noted that the Applicants stated they are citizens of Somalia according to the law of that country as their father was born in Somalia.

[17] The Applicants claimed their Somalian citizenship was acquired by operation of law under Articles 2(a) and (b) of Somali Law No. 28 of 22 December 1962 – Somali Citizenship which states:

Article 2 – Any person:

- a) whose father is a Somali citizen;
- b) who is a Somali residing in the territory of the Somali Republic or abroad and declares to be willing to renounce any status as citizen or subject of a foreign country

shall be a Somali Citizen by operation of law.

[18] After noting the law, the RAD found there was no evidence that the Applicants sought to renounce their “status as a citizen or subject of a foreign country” in order to claim their Somali citizenship by operation of law. The RAD noted the Appellants made no submissions with respect to this law other than only quoting part of the law and made no comment as to whether they have status as a “citizen or subject of a foreign country.”

[19] The RAD then found that the Appellants had not established that this law necessarily grants them Somali citizenship.

#### IV. **The Issue**

[20] Although the Applicants raised several issues for consideration, the determinative issue is whether the RAD erred when it found the Applicants had failed to establish their Somalian citizenship.

[21] This issue is intricately connected to the question of whether the RAD erred in finding that the onus was on the Applicants to prove they were not citizens of Zambia.

#### V. **Standard of Review**

[22] In *Canada (Minister of Citizenship and Immigration) v Huruglica*, 2016 FCA 93, the Federal Court of Appeal set out in some detail the nature of the role of the RAD when reviewing a decision of the RPD. The conclusion was that the RAD reviews the RPD decision on a standard of correctness.

[23] The Supreme Court of Canada has established that when conducting judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 23. While this presumption is rebuttable, no exception to the presumption is present here.

[24] The focus of reasonableness review must be on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome. The role of courts in these circumstances is to review, and at least as a general rule, to refrain from deciding the issue themselves: *Vavilov* at para 83.

[25] A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker. The reasonableness standard requires that a reviewing court defer to such a decision: *Vavilov* at para 85.

## VI. Analysis

[26] The RAD upheld the finding by the RPD that the Applicants lacked credibility with respect to their identities.

[27] The RAD found that the Applicants failed to provide acceptable documentation to establish their identities as Somali nationals thereby failing to discharge their onus under section 106 of the *IRPA*.

[28] As set out in the foregoing section, the Applicants submitted that they are Somali by operation of law.

[29] The RAD framed it this way:

[24] The thrust of the Appellants' submissions is that they resided in Zambia and that, as they state in their BOC, because their parents were born in Somalia, they are "technically" citizens of Somalia.

[30] Regardless of what the Applicants may have said, it is not just a technicality that their father was Somalian, it is a fact.

[31] The Certified Tribunal Record contains copies of the two UNHCR documents attesting to the mother and father of the Applicants being born in Somalia and having refugee status in Zambia.

[32] The Respondent submits it was reasonable for the RAD to find the Applicants failed to establish that Somali law would necessarily grant them Somali citizenship.

[33] I disagree.

[34] The RAD footnoted as a source the National Documentation Package for Somalia (October 30, 2020), Item 3.1, Somalia, "Law No. 28 of 22 December 1962, Somali Citizenship", 1963, Article 2 which is the document referred to by the Applicants to establish their Somalian citizenship by operation of law.

[35] The introduction to the document, reproduced by refworld at <https://www.refworld.org/docid/3ae6b50630.html>, states as follows:

*As far we are aware, Somalia did not pass any new citizenship law since 1991, but all the provisions of this 1962 Law and the 1963 Regulations in respect of loss of Somali citizenship on acquisition of a foreign citizenship were amended in Somalia by Article 10(4) of the 2004 Somalian Transitional Federal Charter which stated that “Every Citizen of the Somali Republic shall be entitled to retain their citizenship notwithstanding the acquisition of the citizenship of any other country”. This has since been repeated in Article 8(3) of the 2012 Somalian Provisional Constitution - “**a person who is a Somali citizen cannot be deprived of Somali citizenship, even if they become a citizen of another country**”. The texts of the 1962 Law (and the 1963 Regulations) should therefore be read with this amendment.*

[Italics and underlining in the original; my bolding]

[36] The RAD erred in finding that the Applicants had failed to prove/document their identities as Somalian nationals. The governing legislation clearly states that even if the Applicants had become citizens of another country, it had no effect on their status as citizens of Somalia arising from their father’s birth in Somalia, as documented by the UNHCR.

[37] While I view the foregoing as determinative, I will also address an argument made by the Respondent to which the Applicants have taken strong objection.

[38] The Respondent argued that in order to have Somalian citizenship the Applicants would have to produce evidence that they had renounced their Zambian citizenship. The Applicants responded that the RAD made no finding that the Applicants were citizens of Zambia or any other country. Therefore, there was no citizenship to renounce.

[39] The Applicants also noted that while they obtained valid Zambian passports they were obtained through false pretenses, as found by the RPD and the RAD. Therefore, the passports

having been improperly obtained, they are not proof of citizenship and there is nothing to renounce.

VII. **Conclusion**

[40] For the foregoing reasons, I find the Decision is unreasonable. The RAD failed to conduct a rational chain of analysis justified in relation to the facts and law that constrained it.

[41] The application is granted and this matter will be returned for redetermination by a different member of the RAD.

[42] On these facts there is no serious question of law for certification.

**JUDGMENT in IMM-6494-20**

**THIS COURT'S JUDGMENT is that:**

1. The application is granted and the matter is to be returned for redetermination by a different member of the RAD.
2. There is no serious question of law for certification.

"E. Susan Elliott"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-6494-20

**STYLE OF CAUSE:** FATUMA MOHAMMED MAHAMUD, ANISA  
MOHAMMED MAHAMUD v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY WAY OF VIDEOCONFERENCE

**DATE OF HEARING:** DECEMBER 14, 2021

**JUDGMENT AND REASONS:** ELLIOTT J.

**DATED:** OCTOBER 11, 2022

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