

Federal Court



Cour fédérale

Date: 20240711

Docket: IMM-11559-22

Citation: 2024 FC 1093

Ottawa, Ontario, July 11, 2024

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

MUHUDIIN MAHAMED OMAR

Applicant

and

**MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Muhudiin Mahamed Omar is a citizen of Somalia. He seeks judicial review of a decision by a senior immigration officer [Officer] to refuse his request to apply for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds.

[2] Mr. Omar did not offer any submissions or evidence to the Officer respecting the possibility of reuniting with his family in Kenya, where his wife and children have attained refugee status. He provided very limited submissions and evidence regarding country conditions in Somalia. He said that individuals who return from the West are targeted by members of Al-Shabaab, and young people are forcibly recruited. But he provided no objective evidence to substantiate these assertions.

[3] The Officer acknowledged the ongoing drought and adverse economic circumstances in Somalia, but reasonably found that Mr. Omar had presented insufficient evidence or submissions regarding how these would affect him and his family personally. The application for judicial review is dismissed.

II. Background

[4] Mr. Omar departed Somalia in 2014 and travelled to Kenya. He left his wife and children in Somalia. He passed through Venezuela, Panama, Colombia, Costa Rica, Nicaragua, Honduras, Guatemala and Mexico before arriving in the United States of America in 2015.

[5] Mr. Omar sought asylum in the US, but this was denied. He entered Canada at Emerson, Manitoba on June 7, 2016 and claimed refugee status on June 10, 2016. His claim was dismissed by the Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB] as having no credible basis.

[6] Mr. Omar appealed the RPD's decision to the Refugee Appeal Division [RAD] of the IRB, but this was refused. An application for leave and judicial review of the RAD's decision was dismissed by this Court on January 11, 2017.

[7] Mr. Omar applied for permanent residence on H&C grounds in June 2019. This was refused in February 2021. In the intervening time period, Mr. Omar's wife and children fled to Kenya and were granted refugee status in that country. Mr. Omar's wife claimed that a member of Al-Shabab had attempted to force her to marry him.

[8] Mr. Omar neglected to inform Canadian immigration authorities of the change in his family's circumstances before his first H&C request was refused. He submitted a second H&C request on October 7, 2021. The second request was refused on July 26, 2022.

III. Decision under Review

[9] The Officer ascribed limited weight to Mr. Omar's establishment. The Officer noted that Mr. Omar was employed, had a clean civil record, and was able to support himself in Canada. Mr. Omar took an active role in his community by volunteering with community organizations, building connections and friendships. He furthered his education by enrolling in English and Math classes. The Officer nevertheless concluded that Mr. Omar's level of establishment was not unusual, and what would be expected of someone who had lived in Canada for six years.

[10] The Officer gave little weight to the best interests of Mr. Omar's children. The Officer observed that it is generally in the best interests of children to be in the presence and care of both

of their parents. The Officer accepted that Mr. Omar's wife and children had attained refugee status in Kenya, but noted that Mr. Omar had not addressed whether he could be reunited with his family in that country.

[11] The Officer found that Mr. Omar had not demonstrated he would be unable to find work and support his family if he returned to Somalia. The Officer noted that Mr. Omar was able to travel internationally before arriving in Canada, and reasoned that his further education and development of language skills in Canada might assist him in finding work in Somalia or elsewhere.

[12] The Officer rejected Mr. Omar's argument that his children were at risk of forcible recruitment by Al-Shabab if the family returned to Somalia. There was no objective evidence to demonstrate a risk to his children or to Mr. Omar personally.

[13] The Officer gave some positive weight to country conditions in Somalia, but found that Mr. Omar had failed to provide sufficient objective evidence to support his allegations that people who return to Somalia from the West are subject to torture and persecution.

[14] Finally, the Officer acknowledged that Canada has implemented an Administrative Deferral of Removals [ADR] to certain regions of Somalia, including Mogadishu where Mr. Omar last resided. The Officer nevertheless found that Mr. Omar had adduced insufficient evidence of personalized risk in that country.

IV. Issue

[15] The sole issue raised by this application for judicial review is whether the Officer's decision was reasonable.

V. Analysis

[16] The Officer's decision is subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 10). The Court will intervene only where "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).

[17] The criteria of "justification, intelligibility and transparency" are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[18] Mr. Omar argues that the Officer unreasonably assumed he could join his family in Kenya, or find suitable employment in Somalia. He says that both of these findings were speculative.

[19] Mr. Omar relies on *Ahmadzai v Canada (Citizenship and Immigration)*, 2018 FC 725, in which Justice Keith Boswell held that it was inconsistent for the immigration officer to recognize a country was subject to a temporary suspension of removal, but then conclude the applicant could return there. He also relies on *Aboubacar v Canada (Citizenship and Immigration)*, 2014 FC 714, in which Justice Donald Rennie held that “there are circumstances where the conditions in the country of origin are such that they support a reasoned inference as to the challenges a particular applicant would face on return” (at para 12).

[20] In *Milad v Canada (Citizenship and Immigration)*, 2019 FC 1409, Justice Catherine Kane observed that “the preponderance of the jurisprudence of this Court has found that a moratorium on removals does not preclude the refusal of an H&C application” (at para 34). Mr. Omar offered little in the way of evidence or argument respecting country conditions in Somalia, or how these would affect him personally.

[21] In *Alagaratnam v Canada (Citizenship and Immigration)*, 2017 FC 381, Justice Boswell found that it was unreasonable for the immigration officer to assume the applicant could continue to support his family if he returned to his country of origin, given the evidence of poor employment prospects. By contrast, Mr. Omar’s submissions to the Officer did not address his employment prospects in Somalia. The evidence was limited to a human rights report, a newspaper article, and the existence of the ADR.

[22] The Respondent notes that “[t]here is one line in a 40-page report that speaks vaguely about the general employment situation in Somalia. There is no objective evidence corroborating testimony that the Applicant’s wife and children suffered hardship in Somalia”. The Officer

reasonably found that he had failed to demonstrate he would be unable to support himself and his family if he returned to Somalia.

[23] While it may not always be necessary for applicants to submit direct evidence of how they will be personally affected by adverse country conditions, they must draw a link between the general evidence and personalized risk (*Harder v Canada (Citizenship and Immigration)*, 2022 FC 1260 at para 28). The Officer acknowledged the ongoing drought and adverse economic circumstances in Somalia, but reasonably concluded that Mr. Omar had provided insufficient evidence of how these would affect him and his family personally.

[24] It is well established that applicants bear the burden of proving the claims in their H&C applications (*Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at para 35). Where the evidence is insufficient, an immigration officer may find that the claims are not supported (*Clarke v Canada (Citizenship and Immigration)*, 2023 FC 680 at para 21; *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at para 8).

[25] Mr. Omar did not offer any submissions or evidence to the Officer respecting the possibility of reuniting with his family in Kenya, where his wife and children have attained refugee status. He provided very limited submissions and evidence regarding country conditions in Somalia. He said that individuals who return from the West are targeted by members of Al-Shabaab, and young people are forcibly recruited. But he provided no objective evidence to substantiate these assertions.

[26] As counsel for the Respondent states in her written submissions:

[...] The H&C decision in this case was to the effect that permanent resident status was not granted on H&C grounds. This decision does not take away the possibility for the Applicant to apply for permanent resident status, or even to reapply for such status on H&C grounds once again with more comprehensive evidence addressing the Officer's concerns. The decision in the instant case only means that the Applicant will have to comply with the usual requirements of the IRPA in applying for permanent residence status from outside of Canada. [...]

[27] The Officer's conclusion that Mr. Omar had offered insufficient evidence and submissions to warrant exceptional and discretionary H&C relief was reasonable.

VI. Conclusion

[28] The application for judicial review is dismissed. Neither party proposed that a question be certified for appeal.

VII. Conduct of this Proceeding

[29] This application for judicial review was heard by videoconference on April 16, 2024 before a judge who retired from the Court on June 1, 2024. By Order of the Chief Justice dated June 25, 2024, the application was reassigned to a different judge. By letter dated June 28, 2024, the parties agreed that the application would be determined based on the written record and audio recording of the hearing.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

“Simon Fothergill”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-11559-22

STYLE OF CAUSE: MUHUDIIN MAHAMED OMAR v MINISTER OF
IMMIGRATION, REFUGEES AND CITIZENSHIP

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: APRIL 16, 2024

JUDGMENT AND REASONS: FOTHERGILL J.

DATED: JULY 11, 2024

APPEARANCES:

Johnathan Hidalgo Pinargote FOR THE APPLICANT

Joseph Granton FOR THE RESPONDENT

SOLICITORS OF RECORD:

Chapnick & Associates FOR THE APPLICANT
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario