

Federal Court



Cour fédérale

**Date: 20131203**

**Docket: IMM-10860-12**

**Citation: 2013 FC 1207**

**Ottawa, Ontario, December 3, 2013**

**PRESENT: The Honourable Mr. Justice Mosley**

**BETWEEN:**

**MOHAMED ABUBAKAR YAHYA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The applicant, Mr. Mohamed Abubakar Yahya, is a 24 year old man. He is a member of the Bajuni people, a minority ethnic group in East Africa. While he believes he was born in Chula, Somalia, he grew up and spent most of his life in Kenya. His claim that he is a Convention Refugee or a person in need of protection was denied by the Refugee Protection Division of the Immigration and Refugee Board.

[2] Mr. Yahya seeks judicial review of that decision pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. For the reasons that follow, his application is granted.

[3] The Bajuni people of Somalia live mainly in the coastal area of southern Somalia. The Bajuni speak Kibajuni, as well as Somali, and are different in appearance from other Somalis. After the collapse of the Somali government in 1991, conditions became very dangerous in Kismayo, where Mr. Yahya lived with his parents. Mr. Yahya's parents decided to leave Somalia, as it was no longer safe, for Mombasa, Kenya in September 1992, when Mr. Yahya was three years old. The Yahya family has lived there ever since. Mr. Yahya worked in the market selling fish and other items. Neither he nor his parents are literate. Without status in Kenya, and fearing the religious extremists and clans in Somalia, Mr. Yahya decided to seek refuge in Canada.

[4] Following his arrival in Canada in November 2011, Mr. Yahya suffered an acute psychotic episode which required hospitalization from February 21-April 24, 2012. He was diagnosed with paranoid schizophrenia and has been under the care of the Centre for Addiction and Mental Health (the CAMH) since April 18, 2012. Mr. Yahya requires follow up to prevent relapse. As of July 14, 2012, he was meeting with a case manager weekly, and a psychiatrist biweekly.

[5] The Board Member held that the applicant had not satisfied the burden of establishing a serious possibility of persecution on a Convention ground, or that, on a balance of probabilities,

he would be subjected to a risk of torture, a risk to his life, or a risk of cruel and unusual treatment or punishment. The determinative issue was credibility.

[6] The Member held that the applicant's testimony lacked detail, was confusing, and included a number of inconsistencies. She found that it was unreasonable that the applicant was not able to provide some confirmation from his parents or others who had known him in Kenya with respect to his identity as a Somali citizen. The Member held that the claimant lacked credibility and had failed to establish, on a balance of probabilities, that he is a citizen of Somalia.

[7] The issues raised on this application are whether the Board's credibility and identity findings were justified. These findings are subject to the reasonableness standard of review: *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319 at paras 22, 41-46, [2012] FCJ no 369.

[8] In my view, the Board failed to take into consideration the impact that the applicant's mental illness had on his ability to provide detailed evidence. In assessing the evidence, the Member was dealing with a man who is illiterate and had recently suffered an acute psychotic episode requiring hospitalization for months. He was under medication when he testified. While the Board purported to take the applicant's mental health issues into consideration, that is not apparent from the transcript of the hearing or the decision.

[9] The Member chose, for example, to rely on the absence of any explicit reference to memory problems in the CAMH letter to support her finding that the applicant was not credible as a result of

his inability to provide detailed evidence on certain matters. The letter was written to confirm the applicant's ongoing treatment regime. It was not intended to provide a complete list of symptoms associated with his schizophrenia diagnosis. In the circumstances and applying the *Chairperson's Guideline 8: Procedures With Respect to Vulnerable Persons Appearing Before the IRB*, it was reasonable to expect that the Member would inform herself as to how that diagnosis might affect the applicant's memory.

[10] The Board found that the applicant's testimony lacked detail and was confusing. While the transcript indicates that the testimony did lack detail, it was not, from my reading, confusing.

[11] The Board noted that the applicant stated he was born in Chula, a small island in Somalia, but made a negative credibility finding on the basis that he did not know where the island is located in Somalia. In light of the fact that the applicant had fled Somalia with his parents when he was three years old, and that both he and his parents are illiterate, it is not altogether surprising that the applicant would not know the geography of Somalia.

[12] The Member considered that the applicant lacked credibility because he was not clear where the Bajuni lived in Kenya. However, in his testimony, the applicant stated that Bajuni live in Somalia, that some live in Mombasa and Nairobi in Kenya, and that some Bajuni living in Kenya were born there while others had come from other countries. The applicant also confirmed that some Bajuni living in Kenya are citizens of Kenya.

[13] The Board made a negative credibility finding on the basis that the applicant did not know if other Bajuni lived in Old Town Mombasa. This was not a contradictory statement with respect to his testimony that some Bajuni live in Mombasa. Old Town is but one area of Mombasa. It was unreasonable for the Member to expect that the applicant could have obtained this type of information from his former customers at the market stall. It demonstrates a fundamental lack of understanding of the local conditions.

[14] The applicant's responses to questions about his parents' attempt to obtain Kenyan citizenship were not inconsistent, as the Board found. When his answers are read as a whole, he was clear in explaining that they had applied for citizenship but their application had been rejected. Similarly, there was no inconsistency in the explanations provided with respect to why his parents could not provide corroborating evidence to confirm his identity. He was clear that it was due to the fact that they did not know how to do this.

[15] Considering the record as a whole, the decision was not justified. For that reason, it will be overturned and the matter sent back to the Board for a fresh determination by a differently constituted panel. No serious questions of general importance were proposed and none will be certified.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is granted. The decision is quashed and the matter is remitted to the Board for a fresh determination by a differently constituted panel.

No questions are certified.

“Richard G. Mosley”

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Judge

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

**DOCKET:** IMM-10860-12

**STYLE OF CAUSE:** MOHAMED ABUBAKAR YAHYA

and

THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 8, 2013

**REASONS FOR JUDGMENT  
AND JUDGMENT:** MOSLEY J.

**DATED:** DECEMBER 3, 2013

**APPEARANCES:**

Andrew Brouwer FOR THE APPLICANT

Suranjana Bhattacharya FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

ANDREW BROUWER FOR THE APPLICANT  
Barrister & Solicitor  
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Toronto, Ontario