

Federal Court



Cour fédérale

Date: 20150515

Docket: IMM-6436-14

Citation: 2015 FC 637

Ottawa, Ontario, May 15, 2015

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

SAID OMAR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is the judicial review by an Immigration Officer [Officer] in which the Applicant's Pre-Removal Risk Assessment [PRRA] application was rejected. The relevant country is Somalia. An interlocutory injunction against removal was issued by Justice Manson.

II. Background

[2] The Applicant, a citizen of Somalia, left that country in 1992 at age 6. Thereafter, he has spent his life firstly in Kenya, then in the United States for 10 years until 2013 and now in Canada. He has no legal status in either Kenya or the United States. He does not fluently speak nor read or write the language of Somalia. His first language is English and his second is Swahili.

[3] Mr. Omar is a member of the Tunni clan, a small minority group in Somalia. In 1992, following a series of attacks on his family home, the Applicant and an aunt left for the Kenyan border and eventually to Nairobi where he spent 10 years.

[4] In September 2003, at age 17, the Applicant entered the United States and secured an annual work permit. Eventually, his US asylum claim was denied on the basis that no one would recognize or know him if he was returned to Somalia. However, he was not removed due to the US's policy of non removal to Somalia because of dangerous country conditions.

[5] Mr. Omar then came to Canada; however, he was returned to the United States under the Safe Third Country Agreement. He re-entered Canada illegally and was able to make a PRRA application.

[6] The Officer concluded that the Applicant had an IFA in Mogadishu, Somalia, because it was reasonable for Omar to seek refuge in that part of the country as he would not be at risk there.

[7] More particularly, the Officer discounted the threat of recruitment by Al-Shabaab of a young, unaccompanied, westernized, English speaking, minority Somali. Any risk the Applicant would face was part of the generalized risk faced by all Somalis. Finally, the Officer concluded that a Federal Court decision (*Yahya v Canada (Citizenship and Immigration)* 2013 FC 1207, 235 ACWS (3d) 776 [*Yahya*]) plus country condition documents referring to violence did not constitute sufficient evidence to rebut the presumption of a viable IFA in Mogadishu.

III. Analysis

[8] The applicable standard of review for this discretionary decision is reasonableness (*Serrano Lemus v Canada (Citizenship and Immigration)*, 2012 FC 1274, 221 ACWS (3d) 966).

[9] This PRRA decision is strikingly unreasonable. This decision rises (or falls) to the level of the now defunct standard of “patently unreasonable”.

[10] There are several recent Federal Court cases that call into question the reasonableness of an IFA where a person: comes from a minority clan or cannot establish clan membership, and would be conspicuous thereby; has never lived at the IFA nor have family there; does not speak the language; has not lived in Somalia for years and has no adult experience there; has no prospects for residence or employment and has lived for 10 years in North America (see *Abdulla*

Farah v Canada (Citizenship and Immigration), 2012 FC 1149, 223 ACWS (3d) 183; *Abubakar v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 887, 67 FTR 313; *Yahya, supra*). The Officer largely ignores these factors.

[11] The Officer's reasons also fail to reasonably address that the Applicant is not comparable to the general population of Somalia or specifically, Mogadishu, and therefore the finding of generalized risk is not properly considered. The Applicant's unique circumstances had to be fully considered.

[12] Given the evidence of country conditions, the history of Al-Shabaab, and the general circumstances affecting this Applicant, it is hard to conceive of a circumstance more qualifying as a refugee/a person at risk and in need of protection.

IV. Conclusion

[13] Therefore, this judicial review will be granted, the decision quashed and the matter sent back to be considered by a different immigration officer.

[14] There is no question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted, the decision is quashed and the matter is sent back to be considered by a different immigration officer.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6436-14

STYLE OF CAUSE: SAID OMAR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

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JUDGMENT AND REASONS: PHELAN J.

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