

Federal Court



Cour fédérale

**Date: 20151014**

**Docket: IMM-851-15**

**Citation: 2015 FC 1164**

**Toronto, Ontario, October 14, 2015**

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

**BETWEEN:**

**IBRAHIM ADEN ABDULLAHI  
(A.K.A. IBRAHIM ADAN ABDULLAHI)**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is a judicial review of a decision of the Refugee Appeal Division (“RAD”) dated January 28, 2015 confirming the determination of the Refugee Protection Division (“RPD”) that the Applicant is not a Convention refugee or a person in need of protection.

[2] The Applicant is an adult male person. He claims to be a citizen of Somalia and therein lies the problem. Neither the RPD nor the RAD found that the Applicant had established his identity as Somali and therefore, his claim for refugee protection was denied.

[3] The Applicant's saga in endeavouring to put forward evidence to prove his claim to be Somali is set out in the Respondent's Further Memorandum. I repeat some paragraphs from that Memorandum:

8. *The RPD acknowledged that the Applicant may have had difficulty in accessing documents from the Somali government. Therefore, the RPD permitted the Applicant to submit alternative identity evidence.*

*RPR Reasons, para 12, Tribunal Record at 38.*

9. *Specifically, the Applicant provided the following evidence intended to establish his identity:*

- (a) *Cabdinasir, the sole witness, was allegedly a close friend of the Applicant's since 2004. However, his testimony was vague, lacking details, and inconsistent with Applicant's testimony in some respects;*
- (b) *A letter from the Applicant's Canadian roommate, Nimco, which was un-notarized, very brief and contained general information only. The letter was only submitted after the RPD asked the Applicant why Nimco did not testify or provide an affidavit or letter;*
- (c) *US documentation regarding the Applicant's failed asylum claim;*
- (d) *A letter from the Somali Aid Agency, stating that some unnamed community members know the Applicant's family. The writer did not claim to know the Applicant.*

*RPD Reasons, paras 15-22, Tribunal Record at 39-43*

10. *Based on concerns outlined above, the RPD found that there was insufficient trustworthy and credible evidence to establish the Applicant's identity.*

11. *The RPD also pointed out that the Applicant could have submitted evidence from Ahmed Jamal, his relative residing in Calgary, with whom he initially stayed with when he arrived in Canada.*

*RPD Reasons, para 14, Tribunal Record at 39  
Transcript of RPD hearing, Further Affidavit of Monique Vettraino at 19.*

12. *Finally, the RPD noted that the Applicant did not submit evidence relating to his four-year stay in South Africa. He ought to have been able to obtain evidence to corroborate his status, his residence, his employment, and his business there.*

*RPD Reasons, para 19, Tribunal Record at 41.*

13. *The Applicant then appealed to the Refugee Appeal Division ('RAD'). On appeal, the Applicant sought to present the following "new evidence":*

- (a) A letter from the Somalia Association of South Africa;*
- (b) A notarized letter from the Applicant's cousin, Ahmed Jamal, in Calgary;*
- (c) US immigration documents, which the Applicant's previous lawyer inadvertently did not send to the RPD;*
- (d) An affidavit from the Applicant's roommate, Nimco;*
- (e) An affidavit from Mohamed Omar, a translator, who claims that three translation errors made during the course of the RPD hearing.*

*RAD Reasons, para 14, Tribunal Record at 7-8.*

14. *The RAD refused to admit the affidavits and the letter from the Somalia Association of South Africa, as they did not meet the test for new evidence. The RAD found that these documents could and ought to have been submitted to the RPD. However, the RAD did allow the admission of the US documents.*

*RAD Reasons, paras 10-26, Tribunal Record at 6-10.*

15. *The RAD then analyzed and confirmed the RPD's finding on credibility and identity:*

- (a) *The RAD agreed that an adverse inference was warranted from the Applicant's failure to submit evidence from his cousin from Calgary, Ahmed Jamal;*
- (b) *The RAD assigned little weight to the letter from Nimco, because the Applicant provided inconsistent evidence about whether she was his neighbour, and the Applicant did not know her age (or even if she was younger or older than him);*
- (c) *The RAD agreed that the testimony from the Applicant's friend, Cabdinasir, lacked basic details and was vague. The Applicant's testimony also conflicted with Cabdinasir's in some respects;*
- (d) *The RAD drew a negative inference from the lack of supporting documents from South Africa and the Applicant's failure to attempt to acquire them; and*
- (e) *The RAD assigned little weight to the letter from Somali Immigrant Aid Organization, as the writer of the letter did not know the Applicant and the community members who allegedly knew him were not named or made available as witnesses.*

*RAD Reasons, paras 27-61, Tribunal Record at 10-21.*

*16. The RAD agreed with the Applicant that a negative inference should not have been drawn from his failure to provide US immigration papers with his photo. However, these documents did not establish his identity. They merely indicated that the Applicant provided US immigration officials similar information that he provided to the Canadian authorities.*

*RAD Reasons, paras 56-59, Tribunal Record at 19-20.*

[4] This is a judicial review of the decision of the RAD in respect of which two questions are to be considered:

- Was the RAD right in rejecting the evidence that it did?
- Was the RAD right in its determination on the evidence that it accepted that the Applicant had failed to establish Somalian identity?

[5] On both the two questions, the standard of review is reasonableness. In reviewing this file, the Court is reminded of the book “The Trial” by Franz Kafka. Two quotes come to mind:

*“No,” said the priest, “you don’t need to accept everything as true, you only have to accept it as necessary.” “Depressing view,” said K. “The lie made into the rule of the world.”*

and:

*“I see, these books are probably law books, and it is an essential part of the justice dispensed here that you should be condemned not only in innocence but also in ignorance.”*

[6] As to accepting new evidence at the RAD level, section 110(4) of the Immigration Refugee Protection Act, SC 2001, c. 27 (“IRPA”) states:

<i>110(4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.</i>	<i>(4) Dans le cadre de l’appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n’étaient alors pas normalement accessibles ou, s’ils l’étaient, qu’elle n’aurait pas normalement présentés, dans les circonstances, au moment du rejet.</i>
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[7] In this case, the emphasis is upon evidence that a person could not reasonably have been expected in the circumstances to be presented.

[8] The Applicant claims that he was born and raised in Somalia, that he fled Somalia, and spent three to four years under a renewable refugee programme in South Africa. Then by a circuitous route he went to the United States where he made a claim for asylum which failed whereupon he came to Canada and claimed refugee protection here.

[9] It is notorious that government documents from Somalia are virtually unobtainable (see *Elmi v Canada* (MCI), 2008 FC 773 at para 22). The Applicant could not get documents from Somalia to prove his identity so he relied on secondary sources as noted in the passages from the Respondent's Further Memorandum, as previously recited.

[10] In this Court's view, the RPD was overly critical of the identity evidence presented by the Applicant. The RPD was seemingly intent to find fault with whatever was presented rather than to take a fair and reasonable view of the material provided.

[11] Nonetheless, the Applicant, who justifiably was surprised that the evidence he presented to the RPD was not sufficient, endeavoured to provide further evidence to the RAD. I find that the further evidence falls under the category of evidence that could not reasonably be expected as set out in section 110(4) of IRPA.

[12] By way of example, the Applicant provided to the RPD a letter from his roommate in Calgary, Nimco, because the Member requested an affidavit or letter. It was unreasonable to criticize the Applicant for not providing an affidavit as he was given an option of providing a letter. Further, the criticism of the Applicant's evidence as to whether he knew whether Nimco was older or younger than him was wholly unreasonable. A review of the transcript shows that the Applicant gave wholly reasonable answers to the question put to him.

[13] As to evidence from South Africa, the Applicant provided his permission to Canadian authorities to obtain whatever was needed from South African authorities. It appears that the

Canadian government could not get anything. Further, a letter from the Somali Association of South Africa was provided to the RAD. The rejection of that evidence was unreasonable. The Applicant could not have expected that South African evidence was needed in the first place. Further, since the RAD accepted evidence from the United States, there is no reasonable basis for rejecting South African evidence. The RAD is expected to provide some leeway in respect of evidence provided to respond to deficiencies (see *Singh v Canada (MCI)*, 2014 FC 1022 at para 55).

[14] The whole saga of the Applicant's endeavours to prove his Somalian identity reeks of a concerted effort to reject or minimize evidence as opposed to giving it a fair and reasonable interpretation.

[15] The matter must be sent back for reconsideration by a different member and acceptance of all evidence as proffered previously to the RAD.

[16] No party requested a certified question.

**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES that:**

1. The application is allowed;
2. The matter is to be re-determined by a different member of the RAD upon acceptance of all evidence previously offered by the Applicant;
3. No question is certified; and
4. No Order as to costs.

"Roger T. Hughes"

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Judge



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

**DOCKET:** IMM-851-15

**STYLE OF CAUSE:** IBRAHIM ADEN ABDULLAHI (A.K.A. IBRAHIM ADAN ABDULLAHI) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 14, 2015

**JUDGMENT AND REASONS:** HUGHES J.

**DATED:** OCTOBER 14, 2015

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