

Federal Court



Cour fédérale

**Date: 20161221**

**Docket: IMM-5160-16**

**Citation: 2016 FC 1406**

**Ottawa, Ontario, December 21, 2016**

**PRESENT: The Honourable Madam Justice McDonald**

**BETWEEN:**

**MAKADOR ALI**

**Applicant**

**and**

**THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] Mr. Ali has been in immigration detention since March 2015. As required by the provisions of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], he has a detention review every 30 days by the Immigration Division of the Immigration and Refugee Board (the Board). This is a judicial review of the December 1, 2016 Board decision that Mr. Ali should remain in detention on the grounds that he represents a flight risk and that he is a danger

to society. Mr. Ali argues that his detention has become indefinite and that it is wrong for the Board to state that he has failed to cooperate. He argues that he has no legal obligation to cooperate with efforts to deport him to Somalia and that his continued detention is a violation of his Charter rights.

[2] For the reasons that follow, I conclude that the Board properly balanced the factors for and against Mr. Ali's release. I have concluded that the Board's decision to continue Mr. Ali's detention is reasonable. This application for judicial review is therefore dismissed.

## II. Background

[3] Mr. Ali was born in Somalia and arrived in Canada as a refugee in 1996. He became a permanent resident in 2001.

[4] Between 2001 and 2014, Mr. Ali was convicted of a number of offences including: possession of a controlled substance; theft and assault; resisting arrest; failure to comply with an undertaking; mischief and assault; and obstructing a police officer.

[5] An inadmissibility report was issued by the Canada Border Services Agency (CBSA) in December 2009 on the grounds of serious criminality. In September 2011, CBSA issued a second inadmissibility report on the belief that he was part of the street gang known as the "Bloods".

[6] On November 27, 2013, while on immigration bail, Mr. Ali was charged with attempted murder, aggravated assault, and forcible confinement. On November 29, 2013, CBSA issued an arrest warrant for Mr. Ali on the grounds that he had breached the conditions of his release.

[7] In March 2015, he was again detained by CBSA on the grounds that he was a danger to the public and a flight risk. Although the criminal charges of attempted murder, aggravated assault, and forcible confinement charges were dropped, Mr. Ali remains in immigration detention.

[8] In December 2015, the Minister issued an opinion pursuant to section 115(2)(a) of the *IRPA* that Mr. Ali was a danger to the public (Danger opinion).

[9] Although deportation orders have been issued for Mr. Ali's removal back to Somalia, his deportation has been delayed because the airline which travels to that region requires that Mr. Ali sign a document before agreeing to transport him. Mr. Ali refuses to sign this document.

[10] Leave for judicial review of the December 1, 2016 decision was granted on an expedited basis.

### III. December 1, 2016 Decision

[11] In the December 1, 2016 decision, in reviewing Mr. Ali's detention, the Board considered the factors outlined in section 248 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 namely: the reasons for the detention, the length of time in detention, the

elements to determine the length of detention, unexplained delays or lack of diligence in deportation, and, the alternatives to detention.

[12] The Board notes that no new documents were produced. The Board considered Mr. Ali's history of past criminal convictions for drugs and violence. The fact that he is also suspected to be a member of a street gang is considered, as is the fact that he has not respected release conditions in the past.

[13] The Board states that Mr. Ali is refusing to cooperate by refusing to sign the airline declaration and by refusing to meet with the removal officers. With respect to a release plan, the Board notes that Mr. Ali relies upon a previously submitted plan. However, upon questioning Mr. Ali about this plan, the Board learned that he had never met with anyone about this release plan. Furthermore, no assessments have been completed to address his addiction problems.

[14] Although the Board acknowledged that Mr. Ali has been in detention for a lengthy period of time, it concluded that in the absence of an appropriate plan, his release is not warranted, as the protection of the public is still a concern, as is the fact that he is a flight risk. The Board considered the Charter issues raised by Mr. Ali, but determined that there had been no violations.

#### IV. Issue

[15] The parties agree that the applicable standard of review is reasonableness (see: *Canada (Public Safety and Emergency Preparedness) v Lunnyamila*, 2016 FC 1199[Lunnyamila] at paras

20-21). Therefore, the only issue is whether the Board's decision to continue Mr. Ali's detention is reasonable.

V. Analysis

[16] Mr. Ali argues that it is unreasonable for the Board to characterize his behavior as a failure to cooperate. He argues that this characterization has resulted in his indefinite detention. He argues that his refusal to sign the airline statutory declaration has been mischaracterized as a failure to cooperate, because he states he is under no legal obligation to sign this document. Further, he argues that signing the document may put his life at risk in Somalia, as the document requires him to identify his tribe. He relies upon the decision in *Warssama v Canada (Citizenship and Immigration)*, 2015 FC 1311 [*Warssama*].

[17] The *Warssama* case is different from the facts of this case. Most importantly, in *Warssama*, there was no danger to the public issue to justify the ongoing detention. Furthermore, the period of detention in *Warssama*, which was of 57 months, was much longer than the case here.

[18] On the refusal to sign the airline form to allow his removal, the Chief Justice recently addressed this situation in *Lunyamila*, where at para 85 he states:

That said, it bears emphasizing that where the detainee is a danger to the public, the scheme of the IRPA and the Regulations contemplates that substantial weight should be given to maintaining the detainee in detention. This is even more so when it appears that conditions of release that would virtually eliminate the danger to the public posed by the detainee on a day-to-day basis have not been identified. In such circumstances, and where the

detainee is also largely responsible for the length of this detention, by virtue of his failure to fully cooperate with the Minister's efforts to remove him from Canada, there would be three factors under s.248 that strongly weigh in favour of continued detention.

[19] However, in this case, Mr. Ali's refusal to cooperate goes beyond just refusing to sign the airline document. Mr. Ali refuses to cooperate with CBSA at all. Mr. Ali refuses to meet with the removal officers and in the last review period, had refused to meet with them on two separate occasions. These are appropriate factors for the Board to consider in ordering his continued detention.

[20] Mr. Ali argues that his continued detention is unconstitutional, however this alone is not enough to warrant intervention. The potential danger to the public is the overriding factor. (See: *Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9 at paras 108-110; *Ahmed v Canada (Citizenship and Immigration)*, 2015 FC 876 at paras 25-26).

[21] Medical conditions raised by Mr. Ali were considered by the Board, but they did not rise to the level of warranting intervention. As well, the Board concluded that they did not rise to the level of cruel and unusual treatment.

[22] Although Mr. Ali argues that he presented a "strong and viable" release plan, the Board did not agree. The Board found that the plan was insufficient and that it was the same plan previously relied upon. For example, part of the plan assumes that Mr. Ali will attend school; however, no arrangements for schooling are in place. Mr. Ali says he has addiction issues, but details of treatment and counselling are not outlined in the plan. The Board was also concerned

that Mr. Ali had not met with Pastor Markel or anyone from the Ottawa Freedom House, both of whom are key parts of his release plan. Finally, the release plan does not indicate what type of supervision Mr. Ali will require on release and who will be responsible for his supervision. The Board reasonably considered the plan, but raised legitimate concerns.

[23] It is not the role of this Court to reweigh the evidence before the Board (see *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 61). The issue of whether Mr. Ali poses a danger to the public or is unlikely to appear for removal are issues that fall within the expertise of the Board and deserve deference from this Court.

[24] The decision of the Board to continue Mr. Ali's detention is justifiable and falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law. (See *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47.). The decision is therefore reasonable.

## VI. Conclusion

[25] For the reasons outlined above, the application for judicial review is dismissed. The parties did not propose a question for certification, and none arise on the facts of the case.

**JUDGMENT**

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

No question is certified.

"Ann Marie McDonald"

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Judge



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

**DOCKET:** IMM-5160-16

**STYLE OF CAUSE:** MAKADOR ALI v THE MINISTER OF PUBLIC  
SAFETY AND EMERGENCY PREPAREDNESS

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** DECEMBER 20, 2016

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**APPEARANCES:**

Ms. Arghavan Gerami FOR THE APPLICANT

Mr. Thomas Finlay FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Arghavan Gerami FOR THE APPLICANT  
Barrister and Solicitor  
Ottawa, Ontario

Department of Justice FOR THE RESPONDENT  
Civil Litigation Section  
Ottawa, Ontario