

Federal Court



Cour fédérale

Date: 20170125

Docket: IMM-2650-16

Citation: 2017 FC 99

Toronto, Ontario, January 25, 2017

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

IDRISS HAGI ABDULLAHI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Judgment delivered from the Bench in Toronto, Ontario)

[1] The Applicant has applied for judicial review of a decision of the Refugee Appeal Division of the Immigration and Refugee Board [the RAD], dated May 31, 2016 [the Decision] granting the Minister's appeal from a decision of the Refugee Protection Division [the RPD]. The RPD had granted refugee protection to the Applicant. The RAD allowed the Minister's appeal and sent the matter back to the RPD for redetermination.

[2] The Applicant is a 38-year-old citizen of Somalia who ran a coffee shop in a part of the country where power shifted between Al-Shabaab and African Union Troops. He alleges that in 2015 Al-Shabaab threatened to “burn him alive in his shop” if he served African Union Troops. The threat was described in these words in the narrative in the Applicant’s Basis of Claim form and was the reason the Applicant fled Somalia. However, in the RPD hearing the Applicant could not describe the threat in these words.

[3] Nevertheless the RPD refused to make a negative credibility finding against the Applicant because it understood that as a matter of law, a single credibility concern, even on a central issue, could not justify the rejection of a refugee claim.

[4] The RAD said that the RPD had erred in law and suggested that the Applicant had failed to establish a central element of his claim because, although he testified that Al-Shabaab threatened kill him, he was unable to state that the specific threat was to burn him alive in his shop. The RAD described this as a “significant failure”.

[5] The RAD also based its decision on issues not raised in the Minister’s appeal. The new issues included questions about the Applicant’s Somali citizenship, possible bias at the RPD, and the RPD’s hurried approach to the hearing. The RAD gave the Applicant no notice that it was concerned about these issues, so the Applicant had no opportunity to address them.

I. Issues

- 1) Was it reasonable of the RAD to suggest that the Applicant had failed to state a central element of his claim?
- 2) Was the Applicant denied procedural fairness because the RAD raised new issues that were not part of the Minister's appeal?

II. Standard of Review

[6] Issue 1 will be considered using reasonableness as the standard of review and correctness will be the standard for issue 2.

III. Discussion and Conclusions

Issue I

[7] The case law shows that if an Applicant fails to give any evidence about a fact that is central to his claim, that one omission will justify a negative decision at the RPD. The question is whether that law applies in this case because here there was some evidence. The Applicant said that he would be killed. It was the means [being burned alive in his shop] of killing him that he omitted. In my view, the evidence of the means can reasonably be considered part of the gist of the evidence that is central to his claim. Accordingly, its omission would justify a negative refugee decision.

Issue II

[8] The RAD is not entitled to raise new issues on appeal of its own motion, without notice to an applicant. Fairness requires such notice and an opportunity to respond, even if it can be said that the result on the reconsideration might well be the same.

[9] Accordingly, the judicial review will be allowed and the appeal is to be reconsidered by a different member of the RAD.

IV. Certification

[10] No question was posed for certification for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the judicial review is allowed and the appeal is to be reconsidered by another member of the RAD.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2650-16

STYLE OF CAUSE: IDRIS HAGI ABDULLAHI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 25, 2017

JUDGMENT AND REASONS: SIMPSON J.

DATED: JANUARY 25, 2017

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