

Federal Court



Cour fédérale

**Date: 20170328**

**Docket: IMM-3638-16**

**Citation: 2017 FC 325**

**Ottawa, Ontario, March 28, 2017**

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

**BETWEEN:**

**MONA OSMAN MOHSIN AHMED  
(A.K.A. MONA OSMAN MUHSIN AHMED)**

**Applicant**

**And**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] This is an application for judicial review of a Refugee Protection Division [RPD] decision dated July 28, 2016, in which the RPD determined that the Applicant is not a convention refugee pursuant to section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], or a person in need of protection pursuant to section 97 of IRPA.

[2] As explained in greater detail below, this application is dismissed, because the Applicant has not demonstrated any reviewable errors by the RPD, in its assessment of her identity and credibility, to support a conclusion that the RPD's decision is unreasonable.

## II. Background

[3] According to the Applicant, Mona Osman Mohsin Ahmed, she was born in Marka, Somalia on September 1, 1989. She moved with her family to Saudi Arabia in 1991, where they remained until November 2012. At that time, Ms. Ahmed and her family were deported from Saudi Arabia to Somalia because her father had become too ill to continue working for his employer and sponsor.

[4] Ms. Ahmed says that her father died on November 21, 2012 in Marka. Following this, she alleges that members of Al-Shabaab came to Marka and threatened her cousin, Ali Sherif, who told Ms. Ahmed that they would be forced to marry Al-Shabaab fighters and would be killed if they did not comply. Ms. Ahmed and her sister fled Somalia, with the help of her cousin. They traveled to the United States, where they made an unsuccessful claim for asylum.

[5] Ms. Ahmed met her current husband, Ahmad Abbany, online, and the couple were married in a religious ceremony in Brooklyn, New York on May 19, 2015, as well as in a civil ceremony on March 11, 2016 in Detroit, Michigan. Mr. Abbany is a Canadian citizen, and on March 17, 2016 Ms. Ahmed traveled with him to Canada and made a refugee claim.

[6] Ms. Ahmed appeared before the RPD on May 19, 2016 and June 23, 2016 to give oral testimony, with the assistance of an interpreter, and presented documentary evidence in support of her claim of persecution in Somalia. On July 28, 2016, the RPD issued the decision which is the subject of this application for judicial review, denying Ms. Ahmed's claim for refugee protection based on the determinative issues of identity and credibility.

### III. Issues and Standard of Review

[7] Ms. Ahmed's written submissions do not expressly articulate issues for the Court's consideration, but her submissions indicate that she takes issue with the RPD's conclusion, that she had not established her personal and national identity, and its resulting finding that this undermined her credibility.

[8] The assessment of evidence of identity is a question of fact, reviewable on the standard of reasonableness (see *Toure v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 1189, at para 29).

### IV. Analysis

[9] The RPD acknowledged that the Somali government has not issued identity documents since the outset of the war in 1991, and that large parts of Somalia do not have access to any official government-issued documents such as passports, birth certificates, or national identity cards. However, the RPD stated that, while the lack of Somali government issued identification is not in itself grounds for a negative inference or a negative finding on identity, a claimant must

use other reliable documents or credible testimony to establish identification. Against this backdrop, the RPD considered the evidence that Ms. Ahmed submitted in support of her identity.

A. *Birth Certificate*

[10] The principal identity document submitted by Ms. Ahmed was a document bearing the name “Birth Certificate”, which purports to be an English translation of a document in the Somali language that was also submitted. Both documents are dated in 1989. At the hearing, Ms. Ahmed described the birth certificate as an original, but the RPD concluded that it was a photocopy. The RPD also considered Ms. Ahmed’s testimony that she obtained this document with the help of neighbours in Saudi Arabia, who were also from Marka and still had connections in Somalia. She testified that they emailed her this document and that she did not know the steps they had taken to obtain it. The RPD did not believe Ms. Ahmed’s explanation and found it unlikely that her Saudi neighbours would have been able to obtain Ms. Ahmed’s birth certificate from Somalia given her absence from the country. Ms. Ahmed also had not kept the email communication by which she said the birth certificate had been sent to her, which the RPD found to raise serious concerns about the reliability, authenticity and trustworthiness of the document.

[11] The RPD also considered anomalies in the document itself that the claimant was unable to explain. It was issued in Mogadishu by the mayor of the local government, and not by the local government in Marka. The RPD also found that, as Ms. Ahmed testified that she was born at home with the assistance of a mid-wife, it was unlikely that her birth would have been

registered at any local government office, such that it would have become a matter of public record. For all of these reasons, the RPD gave the birth certificate no weight.

[12] Ms. Ahmed argues that the RPD erred in its assessment of the birth certificate. She submits that the RPD placed too much weight on her description of the document as an original, when it was not clear from her testimony what she understood from the use of that term. I have reviewed the portion of the hearing transcript to which Ms. Ahmed refers and can identify no error by the RPD in its treatment of this aspect of her evidence. The RPD accurately described Ms. Ahmed's characterization of the document as an original and then considered her evidence as to how it was obtained. I do not read the RPD's concerns about the provenance of the document to be based on Ms. Ahmed's inaccurate description of it as an original but, but rather to be based on the lack of a credible explanation as to how it was obtained.

[13] Ms. Ahmed takes issue with the RPD referring to email communications not being secure. While the RPD makes this statement, without any particular evidentiary support, I do not find this to be material to its analysis of how she received the birth certificate, which was based principally on Ms. Ahmed's failure to provide a copy of the email which was allegedly sent to her by her Saudi neighbours with the birth certificate as an attachment.

[14] Ms. Ahmed also argues that it is misleading to refer to the document as a "birth certificate", even though the English translation bears that name, as the document reads as a certification of her birth based on the author having seen an applicable family record. She submits that the RPD refers to no evidence to contradict the existence of a family record as a

means to confirm one's date and place of birth or any evidence regarding birth certificates issued in 1989. The Respondent submits that there is no merit to these arguments, as the field in the document apparently intended for insertion of a family record number has been left blank.

[15] I do not find this component of the document a basis to conclude that the RPD's assessment of the document is unreasonable. The RPD noted in its decision that the documentary evidence indicated a family file would be created by the municipal administration as part of the process of obtaining a birth certificate. However, the fact that the document, or at least its template, refers to a family record, does not undermine the RPD's concerns about the document, including the fact that it purports to have been issued by the administration of the wrong municipality. Ms. Ahmed argued at the hearing of this application that the issuance of such certificates may have been centralized. However, she referred to no evidence to this effect. The documentary evidence referenced by the RPD states that prior to 1991 birth certificates were obtained from the municipal administration.

[16] Ms. Ahmed also argues that the RPD failed to analyse the fact that the birth certificate was also signed by the Somali Director General of Consular Affairs, certifying that the document was a true copy of the original. She submits that this represents verification by the Department of Foreign Affairs that the document presented to them was an original after examining family records. The Respondent notes that the certification appears only on the English translation, not on the Somali language version of the document, that there is no certification of the accuracy of the English translation, and that the signature by the Director General of Consular Affairs therefore raises more questions than it answers. I do not find this argument by Ms. Ahmed to

raise a reviewable error. Taken at its best, the document before the RPD was a photocopy of a certified copy of an original, and it was the provenance of the original about which the RPD had concerns.

B. *US Asylum Documents*

[17] The RPD considered documents generated in the course of Ms. Ahmed's asylum claim in the US and found them to be of little probative value, as there was no indication what efforts, if any, were made by US immigration authorities to verify her identity. Ms. Ahmed argues this to be an error, noting that the documents in the Certified Tribunal Record include a January 30, 2015 Order of an Immigration Judge directing that Ms. Ahmed may not be removed to Somalia. Ms. Ahmed also refers to what appears to be an attachment to a Notice of Appeal filed on her behalf in the US proceedings, which refers to the Immigration Judge granting withholding of removal based on undisputed evidence that Ms. Ahmed had been subjected to female genital mutilation [FGM]. She submits that, as FGM is practised in Somalia, the reference to this evidence in the US proceeding supports her identity claim.

[18] I find nothing unreasonable in the RPD's treatment of the US asylum documents. Ms. Ahmed has referred to no evidence before the RPD indicating any steps taken by US authorities to verify her identity, either before issuing the referenced Order or otherwise. Nor has she referred to evidence surrounding the practice of FGM which would support a conclusion that the RPD acted unreasonably in failing to consider the reference to her being subjected to FGM as evidence of her national identity.

C. *Marriage License*

[19] The RPD considered Ms. Ahmed's marriage license but found it had no probative value in establishing her personal and national identity, as it only confirmed that she married Mr. Abbany in the state of Michigan. She submits that this was an unreasonable conclusion, because the marriage license contained the name of her mother which matched the name on her birth certificate. This argument amounts to a request that the Court re-weigh the evidence before the RPD, which is not the Court's role in judicial review. I find no error in the RPD's treatment of the marriage license.

D. *Death Certificate*

[20] Ms. Ahmed also submitted a translated version of her father's death certificate, but the RPD found it to be of no probative value in establishing her personal and national identity. She argues this to be an error, because the death certificate contains the name of the person she stated was her father and shows that he died in Marka, the same place she said she was born. Ms. Ahmed also argues it is unlikely she would have this document in her possession if the deceased was not a close family member. Again, these arguments represent a request that the Court re-weigh the evidence. I find no error in the RPD's treatment of this document.

E. *Parents' Dates of Birth*

[21] The RPD considered Ms. Ahmed's inability to identify her parents' dates of birth, despite the fact that she had included a date of birth for her mother in her Basis of Claim [BOC] form, as



a factor undermining her credibility. She submits that the RPD's finding failed to recognize that her BOC's inclusion of a precise birthdate for her mother (01/01/1966) was a result of the electronic version of that form populating the month and day fields by default with "01/01" when only the year of birth is inserted.

[22] The Respondent acknowledges that the electronic BOC form operates in this manner when the form is saved but argues that this is not material to the RPD's decision.

[23] The transcript of the hearing before the RPD demonstrates that Ms. Ahmed's counsel submitted that the "01/01" entries may have been a default, and she testified that the inclusion of that date was an error. The RPD then questioned her about the fact she signed the BOC form. In its decision, the RPD again notes that Ms. Ahmed said the inclusion of the January 1, 1966 may have been a mistake, but also that she confirmed that all the information in the BOC she signed had been translated for her. The RPD therefore did not accept her explanation. The RPD was obliged to consider Ms. Ahmed's explanation. However, it did so, and the failure to accept her explanation cannot be characterized as a reviewable error. Ms. Ahmed also submits that the RPD erred in referring to the BOC as indicating that her mother was born on January 1, when it actually includes only the numerical reference "01/01". I find no merit to this submission, as "01/01" clearly means January 1.

[24] I also note from the next component of the RPD's decision that its adverse credibility finding, surrounding Ms. Ahmed's parents' birthdates, is based significantly on the fact that she could not provide those dates and could give only rough estimates. She argues that this finding is

unreasonable, because not all cultures place an emphasis on the celebration of birthdays. However, she refers to no evidence to support such a conclusion in relation to Somali culture. Again, there is no basis for the Court to interfere with this aspect of the RPD's analysis.

F. *Language and Culture*

[25] The RPD considered Ms. Ahmed's ability to speak the Somali language but found that this on its own did not prove that she actually lived in Somalia or is a citizen of that country. The RPD also found that, while her testimony about her clan genealogy and lineage, its culture, history, customs, and traditions was generally consistent with the objective country documentation, her knowledge was limited and superficial.

[26] Ms. Ahmed notes that she speaks a particular Somali dialect and argues that the RPD offered no explanation for how she could have learned this dialect unless it was spoken to her by her parents. With respect to her statements about her clan and culture, she submits that the RPD did not conclude she was wrong, only that her knowledge was limited. These submissions take issue with the RPD's weighing of the evidence, with which it is not the Court's role to interfere.

[27] Ms. Ahmed also argues that the RPD failed to take into account the fact that her appearance is consistent with the ethnic group in Somalia of which he claims to be a member. I cannot conclude that failure to make observations of physical appearance, and to draw conclusions of ethnicity based thereon, constitute a reviewable error in the consideration of a claimant's national identity.

G. *Documents from Saudi Arabia*

[28] Finally, the RPD noted that, despite claiming to have lived in Saudi Arabia for 20 to 21 years, Ms. Ahmed did not have any documentation in her possession to establish this or evidence to show that she and her family were deported to Somalia in 2012. She argues this represents an error, because her father had the deportation documents, and it was not her responsibility to obtain possession of them.

[29] I find nothing unreasonable in the RPD's analysis of this aspect of the evidence. Ms. Ahmed has argued that citizens of Somalia face a particular challenge in establishing their identity, because of the lack of government issued identification documentation since the commencement of the war in 1991. She submits that it is therefore incumbent upon the RPD to show flexibility and look at the cumulative effect of evidence submitted in support of the identification of Somali claimants. However, the RPD's reasons expressly refer to this challenge, and its consideration of the fact that Ms. Ahmed spent over 20 years in Saudi Arabia demonstrates the RPD's willingness to consider alternative sources of identity evidence. I read the RPD's decision as influenced significantly by Ms. Ahmed's failure to produce not only evidence of her family's recent deportation to Somalia but any documentation that would show she had lived and gone to school in Saudi Arabia over the last 20 years.

[30] Ms. Ahmed submits that, taken together, the evidence she was able to provide to the RPD was sufficient for the member to reach a positive determination of her identity. However, the issue the Court must consider on judicial review is not whether the evidence may have been

sufficient for the RPD to reach a positive conclusion, but rather whether it was unreasonable for the RPD to have reached the conclusion that it did. Having considered all Ms. Ahmed's arguments and the totality of the evidence available, I find the RPD's decision to be within the range of possible, acceptable outcomes, and therefore reasonable.

[31] This application for judicial review must therefore be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

**JUDGMENT**

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

No question is certified for appeal.

“Richard F. Southcott”

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Judge

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

**DOCKET:** IMM-3638-16

**STYLE OF CAUSE:** MONA OSMAN MOHSIN AHMED (A.K.A. MONA OSMIN MUHSIN AHMED) V THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 1, 2017

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