

Federal Court



Cour fédérale

**Date: 20180531**

**Docket: IMM-4706-17**

**Citation: 2018 FC 567**

**Ottawa, Ontario, May 31, 2018**

**PRESENT: The Honourable Madam Justice Roussel**

**BETWEEN:**

**ABDIRAHMAN MOHAMUD ANSHUR**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Mr. Abdirahman Mohamud Anshur, seeks judicial review of a decision dated October 23, 2017 by a Senior Immigration Officer [Officer], rejecting his application for an exemption based on humanitarian and compassionate [H&C] considerations permitting him to apply for permanent residence from within Canada.

[2] The Applicant claims to be a citizen of Ethiopia and an ethnic Somali belonging to the Ogaden clan. He alleges that he fled Ethiopia in December 2007, after being arrested and detained for two (2) months by the Ethiopian Secret Police on suspicion of supporting or being a member of the Ogaden National Liberation Front [ONLF], a movement fighting to free the Ogaden from Ethiopia. He went to Kenya where he remained without status until October 2009. After travelling through several countries in Central America and Mexico, he reached the United States in November 2009, where he claimed asylum. In July 2013, the United States rejected the Applicant's claim and ordered him removed to Ethiopia. Still fearing for his life, he entered Canada on July 31, 2013 and sought refugee protection the next day.

[3] The Refugee Protection Division [RPD] found that the Applicant was neither a Convention refugee nor a person in need of protection and therefore rejected the Applicant's claim in December 2014. The RPD found that the Applicant provided insufficient credible and trustworthy evidence to establish his personal or national identity on a balance of probabilities. The RPD also found the Applicant not to be a credible witness with respect to a number of issues. In April 2015, the Refugee Appeal Division [RAD] concurred with the RPD's findings on identity and credibility and dismissed the Applicant's appeal.

[4] In November 2016, the Applicant applied under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], for an exemption based on H&C considerations allowing him to submit his application for permanent residence from within Canada. In support of his application, the Applicant cited his establishment in Canada, the hardship he would suffer if returned to Ethiopia and the best interests of the children affected.

[5] On October 23, 2017, the Officer rejected the Applicant's request for an exemption. Like the RPD and the RAD, the Officer was not satisfied that the Applicant had established his identity as an Ethiopian national of Somali ethnicity and therefore, she considered moot the assessment of adverse country conditions relating to the Applicant's return to Ethiopia. Furthermore, the Officer placed minimal weight on the Applicant's health considerations and establishment in Canada. The Officer found that although the Applicant had made efforts to establish and integrate himself in Canada, his relationships did not exhibit a level of interdependency that would negatively impact him. Finally, the Officer determined there was insufficient evidence to establish that the Applicant's removal from Canada would compromise the best interests of the children affected.

[6] The Applicant challenges the decision of the Officer and submits that the Officer erred in assessing the Applicant's identity and hardship, his establishment and relationship ties in Canada as well as the best interests of the children.

## II. Analysis

[7] An H&C exemption under subsection 25(1) of the IRPA is an exceptional and discretionary remedy (*Canada (Minister of Citizenship and Immigration) v Legault*, 2002 FCA 125 at para 15 [*Legault*]; *Williams v Canada (Citizenship and Immigration)*, 2016 FC 1303 at para 4). The onus of establishing the facts upon which the H&C claim rests lies with the Applicant (*Kisana v Canada (Citizenship and Immigration)*, 2009 FCA 189 at para 45 [*Kisana*]; *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at paras 5, 8).

[8] The decision to grant or refuse an exemption on H&C considerations is reviewable on a standard of reasonableness (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 10, 44; *Kisana* at para 18). In reviewing a decision against the reasonableness standard, the Court must consider the justification, transparency and intelligibility of the decision-making process, and whether the decision falls within a range of possible, acceptable outcomes which are defensible in light of the facts and law (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]).

[9] While the decision is to be reviewed as a whole and it is not the role of this Court to reweigh the evidence, I agree with the Applicant that the Officer's decision is unreasonable and must be set aside. Some of the Officer's findings are either unsupported by the record, based on irrelevant considerations or contradictory.

[10] The first finding relates to the Officer's assessment of the Applicant's establishment in Canada and the best interests of the children affected. In discussing the Applicant's ties to Canada, the Officer acknowledges that the Applicant is in a relationship with the mother of his Canadian-born daughter. The Officer finds, however, that there is no objective evidence of her immigration status in Canada and as a result gives this factor minimal weight.

[11] Then, in considering the Applicant's relationship with the other three (3) children of the mother of his child, the Officer notes that she does not have the children's birth dates and their immigration status in Canada. The Officer finds there is insufficient evidence that the Applicant's relationship with the three (3) children is characterized by a degree of

interdependency and reliance such that the Applicant's separation from the children would have a significant impact on their best interests.

[12] The Officer's finding on the lack of evidence regarding the immigration status of the mother of the Applicant's child and her other children was made without regard to the evidence before the Officer (*Cepeda-Gutierrez v Canada (Minister of Citizenship & Immigration)* (1998), 157 FTR 35 at paras 15-17 (TD)). Copies of their permanent residence cards were in fact submitted as part of the Applicant's application and are found in the certified tribunal record. The Applicant also indicated their status in Canada in his affidavit that formed part of the H&C application. Finally, their immigration status is also indicated in the letter written by the mother of the Applicant's child in support of the Applicant's application.

[13] The Respondent acknowledges that the Officer erred with respect to the immigration status of these four (4) individuals. The Respondent argues, however, that it is merely one aspect that the Officer considered in reaching her decision.

[14] While that may be so, it is unclear from my review of the decision the extent to which this finding had a direct bearing on the Officer's overall assessment. The Officer mentions that their immigration status in Canada is unknown three (3) times. If the Officer considered it possible that their stay in Canada was uncertain, it could have caused her to minimize the Applicant's establishment and ties to Canada as well as the best interests of the children affected by the decision.

[15] The second finding of concern relates to the Officer's treatment of the affidavit sworn by Mr. Kadar Hassen Ahmed, adduced by the Applicant to support his identity as an Ethiopian national of Somali ethnicity. The Officer assigns it minimal weight because the affiant provided "vague general statements in identifying the applicant from the Ogaden Somali ethnic community" and because he "does not provide the name of the restaurant and the number of times he has seen and talked to the applicant at the restaurant".

[16] In his affidavit, Mr. Ahmed states he is a citizen of Ethiopia, born in the city of Kebri Dahar, Ethiopia, and that he is awaiting a decision on his application for permanent residence in Canada. He is of Somali ethnicity and belongs to the Ogaden clan, Mohamed Zuber sub-clan, Reer Abdille sub-clan, and Ali Yusuf sub-clan.

[17] Mr. Ahmed indicates he first met the Applicant in 2003 at the restaurant where the Applicant worked in Kebri Dahar. They were introduced by the Applicant's brother and sister with whom Mr. Ahmed attended Koranic school in Ethiopia between 2002 and 2008. At the end of the day, when school ended, they would sometimes go to the restaurant where the Applicant worked. Mr. Ahmed saw the Applicant at the restaurant from about 2003 to 2007.

[18] Mr. Ahmed also indicates that at the end of 2007, the Applicant's brother informed him that the Applicant was arrested by the Ethiopian government because they suspected him of working for the ONLF and that the Applicant escaped Ethiopia after that. The Applicant's brother also provided Mr. Ahmed with information regarding the Applicant's father and other brother and sister. He did not see the Applicant's brother and sister after 2008 and he is not

aware of what happened to them. He came to Canada in 2014 and re-established contact with the Applicant through a friend in the United States in October 2015.

[19] Finally, Mr. Ahmed attests that the Applicant belongs to the Ogaden clan, Mohamed Zuber sub-clan, Reer Abdille sub-clan, Warfa sub-clan, and Balag Madowe sub-clan.

[20] While it was open to the Officer to assess the evidence adduced by the Applicant and to determine its weight, the Officer's finding that Mr. Ahmed provided vague general statements in identifying the Applicant from the Ogaden Somali ethnic community is unsupported by the record. Mr. Ahmed's statements regarding the Applicant's precise clan identity are neither vague nor general. Moreover, his affidavit contains detailed information regarding the Applicant's family members, as well as information placing the Applicant in Kebri Dahar, Ethiopia between 2003 and 2007.

[21] I also note the Officer's criticism regarding Mr. Ahmed's failure to mention the name of the restaurant and the number of times he saw and spoke to the Applicant at the restaurant between 2003 and 2007. In the absence of any explanation why this information would be relevant in the context of the other information contained in the affidavit, the Officer's finding is capricious and the expectation that Mr. Ahmed could anticipate a concern regarding this information is unreasonable. I also believe that it is unlikely that most people would recall the number of times they saw someone over a period of four (4) years more than ten (10) years ago. As the Applicant submits, the Officer evaluated the affidavit for what it did not say, rather than

what it said (*Mahmud v Canada (Minister of Citizenship and Immigration)* (1999), 167 FTR 309 at paras 6, 11; *Belek v Canada (Citizenship and Immigration)*, 2016 FC 205 at para 21).

[22] In addition to unreasonably discounting Mr. Ahmed's affidavit for the reasons already stated, I also consider that the Officer failed to address other evidence in the record which supported the Applicant's identity as an Ethiopian national. The removal order from the United States directs the Applicant's removal to Ethiopia. This suggests American authorities accepted the Applicant's citizenship as Ethiopian.

[23] Finally, the Officer's findings are contradictory. In assessing hardship, the Officer finds that the Applicant did not establish his personal and national identity on a balance of probabilities. Yet later in the decision, in assessing the Applicant's establishment and best interests of the children, the Officer implicitly acknowledges that the Applicant is an Ethiopian national. The Officer finds that insufficient evidence was presented to demonstrate that the mother of the Applicant's child will not be able to travel to Ethiopia to visit him. The Officer also notes that Ethiopia is reachable by telephone and various social media outlets when discussing the best interests of the children affected.

[24] I recognize that judicial review should not be a line-by-line treasure hunt for error (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd.*, 2013 SCC 34 at para 54) and that the Officer is entitled to deference in assessing the evidence. However, in this case, the Officer's findings about the Applicant's identity led to the Officer's determination that the assessment of adverse country conditions in Ethiopia was moot.



It may be that, in the end, the hardship the Applicant may face in Ethiopia would not be determinative in the Officer's overall analysis. However, it is not possible for me to determine how the Officer would have weighed that factor in her final analysis, and it is not the role of this Court to reweigh the H&C considerations on judicial review (*Legault* at para 11).

[25] Accordingly, for the reasons stated above, I find the Officer's decision to be unreasonable as it lacks "justification, transparency and intelligibility" and it does not "fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law", as set out in *Dunsmuir*. The application for judicial review is therefore allowed, the decision is set aside and the matter shall be remitted back to a different Officer for redetermination.

[26] No questions were proposed for certification and I agree that none arise.

**JUDGMENT in IMM-4706-17**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is allowed;
2. The decision is set aside and the matter is remitted back to a different Officer for redetermination; and
3. No question is certified.

“Sylvie E. Roussel”

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Judge

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

**DOCKET:** IMM-4706-17

**STYLE OF CAUSE:** ABDIRAHMAN MOHAMUD ANSHUR v MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 24, 2018

**JUDGMENT AND REASONS:** ROUSSEL J.

**DATED:** MAY 31, 2018

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