

Federal Court



Cour fédérale

Date: 20220816

Docket: IMM-6676-20

Citation: 2022 FC 1201

[ENGLISH TRANSLATION]

Ottawa, Ontario, August 16, 2022

PRESENT: Mr. Justice Pentney

BETWEEN:

**AHMED ADEN MARADON
AHMED KAMIL MANSANE**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a Refugee Protection Division (RPD) decision [“the Decision”] rejecting the applicants’ claim for refugee protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The RPD found that the applicants had failed to establish their identities and that the claim was manifestly unfounded.

[2] The applicants, Ahmed Aden Maradon (principal applicant) and her daughter, Ahmed Kamil Mansane (associate applicant), entered Canada on June 12, 2017, and claimed refugee protection. Note that the accuracy of their names is at issue. For simplicity, in these reasons, the applicants are referred to by the names in the style of cause.

[3] The refugee protection claim is based on the account of the principal applicant. She states that she is a citizen of Djibouti and no other country, as well as a member of the Issa/Yonis Moussa tribe and the Mouvement pour le renouveau démocratique et le développement. The refugee protection claim is based on the principal applicant's fear of persecution by the Djibouti police by reason of her political involvement, her membership in the Issa/Yonis Moussa tribe and her association with an opponent of the government who is a cousin of hers.

[4] In September 2018, the respondent intervened to inform the RPD that the applicants had made misrepresentations and omissions in their claim for refugee protection. They had failed to mention that they had submitted an application for permanent residence [APR] under the Private Sponsorship of Refugees Program in 2009. The photographs accompanying the APR show that the applicants were the same ones as in this case.

[5] The RPD identified a number of allegations in the 2009 APR that contradicted the allegations in the refugee protection claim, including their names (Habiba Ahmed Aden and Mansun Ahmed Kamil) and their assertion that they were citizens of Somalia. Moreover, the APR states that the applicants were persecuted by the police in Yemen by reason of their ethnicity. The APR was refused by the Canadian visa office in Abu Dhabi, United Arab Emirates. However, the applicants failed to disclose the filing and refusal of the 2010 APR in

their 2017 claim for refugee protection. In the refugee protection claim, they denied that they had ever been refused status.

[6] At the hearing, the RPD confronted the applicants about these contradictions and did not find their answers to be credible. They initially denied that they had tried to obtain permanent residence but then stated that the principal applicant's spouse had submitted the application without their knowledge. The principal applicant stated that she tried unsuccessfully to contact her husband to get an explanation for the application he had submitted in 2010. She alleged that she had a difficult relationship with her husband and that her husband denied having filed an APR in 2010. The principal applicant stated that she was not involved in submitting the APR in 2010 and that she was not Somali and had never been to Mogadishu or Yemen.

[7] The RPD rejected the applicants' claim for refugee protection. The RPD described the applicants' documents from Djibouti as "documents of convenience, or even fraudulent" because of the discrepancies in the surnames used by the applicants, the failure to disclose the refusal of the 2010 APR and the discrepancy with respect to the two different citizenships. Having completed an overall analysis of the record, the RPD concluded that they had failed to establish their identities and that they had attempted to put forward clearly fraudulent allegations in order to obtain refugee protection in Canada. The RPD therefore characterized the claim as being "manifestly unfounded."

[8] The issues are as follows:

- A. Was it unreasonable for the RPD to conclude that the applicants' identities had not been established?

B. Was it unreasonable for the RPD to conclude that the applicants' claim for refugee protection was manifestly unfounded?

[9] The standard of review in this case is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). A reasonable decision is one that is “based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85). It must bear the hallmarks of reasonableness—justification, transparency and intelligibility (*Vavilov* at para 99).

[10] In an application for judicial review, a reviewing court must pay “close attention ... to a decision maker’s written reasons” and read them “holistically and contextually” for the purpose of understanding the basis on which the decision was made (*Vavilov* at para 97, citing *Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*]). It is not enough for the outcome to be reasonable—the reasoning on which the outcome is based must also be reasonable (*Vavilov* at para 86).

[11] The burden is on the party challenging the decision to show that it is unreasonable. The party must rely on flaws that are more than merely superficial or peripheral, and that are sufficiently serious such that the decision cannot be said to exhibit the requisite degree of justification, intelligibility and transparency (*Vavilov* at para 100).

[12] Section 106 of the *Immigration and Refugee Protection Act*, SC 2001, c 27, emphasizes the importance of establishing the identity of claimants:

Credibility

106 The Refugee Protection Division must take into account, with respect to the credibility of a claimant, whether the claimant possesses acceptable documentation establishing identity, and if not, whether they have provided a reasonable explanation for the lack of documentation or have taken reasonable steps to obtain the documentation.

Crédibilité

106 La Section de la protection des réfugiés prend en compte, s'agissant de crédibilité, le fait que, n'étant pas muni de papiers d'identité acceptables, le demandeur ne peut raisonnablement en justifier la raison et n'a pas pris les mesures voulues pour s'en procurer.

[13] Section 11 of the *Refugee Protection Division Rules*, SOR/2012-256, states that claimants must provide acceptable documents establishing their identity. If a claimant fails to do so, the Board must take into account the lack of documentation and the lack of reasonable explanations by the claimant. “The identity of a refugee protection claimant is a preliminary and fundamental issue, and failure to establish identity is fatal to a claim for refugee protection” (*Terganus v Canada (Citizenship and Immigration)*, 2020 FC 903 at para 22).

[14] The applicants submit that the RPD was unreasonable in concluding that their identities had not been established without assessing all the documents they had filed in support of their claim. They acknowledge that the documents from the 2010 APR and the 2017 refugee protection claim raise doubts regarding their identities. However, they submit that the panel failed to make a reasonable assessment of the additional documents before it in order to establish their identities.

[15] The applicants point out that they filed passports, three Djiboutian identity cards issued between 1987 and 2015, the Djiboutian identity cards of the principal applicant's children, and

secondary documents pertaining to the principal applicant's work and presence in Djibouti. They state that the RPD makes no mention of these documents and that this failure to analyze the evidence renders the decision unreasonable, given the significance and quality of the documents provided.

[16] In addition, the applicants submit that the RPD erred in its method of analyzing the issues. They believe that the RPD focused on the differences between the supporting documentation for the APR and for the claim for refugee protection, while failing in the initial step, which was to confirm their identities. The lack of analysis of the additional documentation they filed and the absence of a detailed analysis render the decision unreasonable.

[17] I am not persuaded by these arguments. The RPD noted the existence of these documents at paragraph 16 of the Decision: "The claimants provided copies of their passports and other documents from Djibouti in support of their refugee protection claims in Canada." After discussing the inconsistencies and contradictions in the evidence, including the discrepancies in their surnames, citizenship and accounts, the RPD examined the unsatisfactory testimony of the principal applicant and concluded as follows: "Through her testimony, the [principal applicant] gave the panel every reason to doubt the truthfulness of her allegations, in particular their Djiboutian identities" (Decision at para 27).

[18] The RPD concluded:

[32] In sum, after considering and weighing all of the evidence in this case, the panel finds that the claimants are neither credible nor trustworthy. [The principal applicant] attempted to put forward "clearly fraudulent" allegations in order to obtain refugee protection in Canada as a citizen of Djibouti.

[19] In the circumstances, it is not fatal that the RPD failed to explain in detail every element of its analysis of the documentation provided by the applicants. The RPD clearly explained why the applicants were not credible. The applicants have the onus to establish their identities on a balance of probabilities (*Ayele v Canada (Citizenship and Immigration)*, 2021 FC 11 at para 29), and failure to do so is fatal to their claim (*Terganus* at para 22). Considering the discrepancies between the APR and the refugee protection claim, and the fact that the principal applicant gave no explanation in her testimony, the determination that she is not credible is reasonable.

[20] Regarding the second issue, the RPD may declare a claim for refugee protection to be manifestly unfounded under section 107.1 of the IRPA if it is satisfied that “refugee protection is sought through fraudulent means, such as falsehoods or dishonest conduct that go to the determination of whether or not refugee protection will be granted” (*Warsame v Canada (Citizenship and Immigration)*, 2016 FC 596 at para 31).

[21] The applicants submit that the RPD’s analysis of their identity is incomplete and it is therefore unreasonable to conclude that their documents are clearly fraudulent. They note that drawing this conclusion has serious consequences for them because they lose their right to appeal to the Refugee Appeal Division and have no stay of removal while challenging the RPD’s decision. They state that a negative credibility finding is not synonymous with submission of a fraudulent claim (*Brindar v Canada (Citizenship and Immigration)*, 2016 FC 1216 at para 11).

[22] The RPD based its determination on this aspect of the issue of identity and failed to analyze the elements of the refugee protection claim. The applicants believe that the incomplete and improper analysis of the evidence regarding their identities, and a lack of discussion of the

merits of their claim are critical flaws in the RPD's analysis that are sufficient to render the decision unreasonable.

[23] I disagree. The RPD stated that it considered and weighed all the evidence in the record before characterizing the claim as being manifestly unfounded. Moreover, the RPD is presumed to have considered all the evidence presented to it and is not required to refer to each element (*Newfoundland Nurses* at para 16). I agree with the respondent that the applicants are misapplying the test in subsection 107(2) of the IRPA by requiring that all the evidence be considered before a finding can be made that there is no credible basis for the claim. No such test applies to the RPD's findings under section 107.1.

[24] For all of the above reasons, the application for judicial review should be dismissed.

[25] There is no question of general importance to be certified in this case.

[26] Lastly, it should be noted that the style of cause must be corrected to show the correct name of the respondent, the Minister of Citizenship and Immigration.

JUDGMENT in IMM-6676-20

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. There is no question of general importance to be certified.
3. The style of cause has been corrected to show the correct name of the respondent, the Minister of Citizenship and Immigration.

“William F. Pentney”

Judge

Certified true translation
Vincent Mar

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6676-20

STYLE OF CAUSE: AHMED ADEN MARADON and AHMED
KAMIL MANSANE v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: OCTOBER 20, 2021

**JUDGMENT AND
REASONS:** PENTNEY J

DATED: AUGUST 16, 2022

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