

Federal Court



Cour fédérale

Date: 20221007

Docket: IMM-2477-21

Citation: 2022 FC 1383

Ottawa, Ontario, October 7, 2022

PRESENT: Mr. Justice Norris

BETWEEN:

MAHER YUSUF ADAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] On January 20, 2019, the applicant was admitted to Canada on the strength of a student visa issued to him under the name of Abdikaliq Abdirazak Ashkir, a citizen of Kenya who was born on November 20, 1998. A month later, the applicant submitted a claim for refugee protection in Canada. In that claim, however, he identified himself as Maher Yusuf Adan, a national of Somalia who was born on March 15, 1998. The applicant acknowledged having used

the Kenyan passport in the name of Abdikaliq Abdirazak Ashkir to obtain the student visa and to travel from Kenya to Canada but he stated that it is not genuine.

[2] The applicant's claim was heard by the Refugee Protection Division ("RPD") of the Immigration and Refugee Board of Canada ("IRB") on November 14, 2019. A central issue before the RPD was whether the applicant had established his personal identity and Somali nationality. In a decision dated December 9, 2019, the RPD rejected the claim because the applicant had failed to establish his identity and because of his "overall lack of credibility."

[3] The applicant appealed this decision to the Refugee Appeal Division ("RAD") of the IRB. In a decision dated March 23, 2021, the RAD dismissed the appeal and confirmed the RPD's determination that the applicant is neither a Convention refugee nor a person in need of protection. As did the RPD, the RAD found that the applicant had not met his burden to establish, on a balance of probabilities, his personal identity and Somali nationality.

[4] The applicant has now applied for judicial review of the RAD's decision under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*"). He contends that the RAD's assessment of the issue of his identity is unreasonable. For the reasons that follow, I agree that the RAD's determination on this central issue is unreasonable. The application must, therefore, be allowed and the matter remitted for redetermination by the RAD.

II. BACKGROUND

A. *The Applicant's Claim for Protection*

[5] The applicant sought protection in Canada on the basis of his fear of persecution in Somalia at the hands of al-Shabaab.

[6] The applicant claims to have been born in Beled Hawo, a town on the border between Somalia and Kenya, in the Gedo region of Somalia. He also claims to be a member of the minority Madhiban clan.

[7] Al-Shabaab took control of the Gedo region in 2010. According to the applicant, his father and brother were apprehended by al-Shabaab in August 2011 and were never heard from by the family again. The applicant was told a short time after his father was apprehended that he had been killed while trying to escape from his captors and making his way to Kenya. The applicant was also told by a friend of the family that his brother had escaped to Mogadishu.

[8] The applicant and his mother feared for their lives so they stayed at the Beled Hawo home of Maryam Hassan, a paternal relative. The applicant's mother ultimately decided that it was not safe for them to remain in Beled Hawo so, on January 15, 2012, she and the applicant left for Kismayo, a port city in the southern region of Somalia. There they sold fruits and vegetables in the local market.

[9] By 2016, al-Shabaab had expanded its activities to Kismayo so the applicant fled to Nairobi, Kenya, to avoid being forcibly recruited by the group. The applicant's mother arranged for him to be received in Nairobi by her half-brother, Ismail Gedi (the applicant's uncle). The applicant entered Kenya illegally with the assistance of an agent who bribed the border officials and then made his way to Nairobi. The applicant's mother remained in Kismayo.

[10] In Nairobi, the applicant lived with and worked for Mr. Gedi. The uncle operated a trucking business as well as a restaurant named Macluun and the applicant worked at both places. The applicant also began a romantic relationship with Mr. Gedi's daughter Zahra in 2017. However, Mr. Gedi's wife opposed the relationship because of the applicant's lower clan status. She even threatened to call the authorities so that the applicant would be deported back to Somalia. As a result, the applicant was forced to leave the Gedi family home and give up his employment at the restaurant. Mr. Gedi suggested the applicant should travel to Saudi Arabia to complete the Haj and perhaps even stay there permanently. According to his Basis of Claim ("BOC") narrative, the applicant did not have a passport or identity documents so in August 2018, with the assistance of a smuggler, Mr. Gedi procured a Kenyan passport for him in the name of Abdulkalik (*sic*) Abdirazak Ashkir (date of birth 1998-11-20) using a fraudulent Kenyan birth certificate. A Haj Visa for Saudi Arabia was also obtained.

[11] The applicant entered Saudi Arabia on August 10, 2018, and remained there for about 25 days. During that time, the applicant learned that he would not be permitted to remain in Saudi Arabia indefinitely so he decided to return to Kenya. According to his BOC narrative, after returning to Kenya, the applicant contacted his uncle and told him that he had been unable

to remain in Saudi Arabia. His uncle told him that, given the situation with his family, he could not stay in Kenya. His uncle therefore contacted the same smuggler as before and obtained a student visa for Canada for the applicant. The uncle paid about \$7,000 USD for the visa. The applicant did not know any of the information contained in the student visa application (apart from the fact that the same Kenyan passport was used in the application).

[12] The applicant left Kenya for Canada on January 19, 2019. He arrived in Toronto the next day. He was eventually able to locate a woman he had known in Kismayo who introduced him to other members of the Somali community.

B. *Evidence of the Applicant's Identity at the RPD*

(1) The Kenyan Passport

[13] The applicant surrendered a Kenyan passport in the name of Abdikaliq Abdirazak Ashkir (date of birth November 20, 1998) to Citizenship and Immigration Canada on February 22, 2019.

[14] A copy of the passport is included in the record before the RPD. The passport was issued on August 8, 2018. The applicant agrees that it contains his photograph. The passport also contains a Haj Visa dated August 10, 2018, and an entry stamp for Kenya dated September 3, 2018 (which is presumably when the applicant returned from the Haj). The passport also contains a Canadian student visa issued in Nairobi on January 9, 2019.

(2) The Student Visa Application

[15] The materials submitted in support of the Canadian student visa application by Abdikaliq Abdirazak Ashkir are also part of the record before the RPD. Along with a completed application form dated September 20, 2018, numerous other supporting documents are provided, including a letter of pre-acceptance from Braemar College in Toronto, academic records for Abdikaliq Abdirazak Ashkir, a certified copy of the photo page of the Kenyan passport of Abdikaliq Abdirazak Ashkir, an employment reference from Madina Hospital in Nairobi for Abdikaliq Abdirazak Ashkir, a letter from Abdirizak Ashkir Musse (who is identified as the applicant's father) committing to financing fully the applicant's schooling in Canada, a certified copy of the photo page of Mr. Musse's Kenyan passport, Mr. Musse's banking records, real estate ownership records, and proof of Mr. Musse's co-ownership of the Madina Hospital. Also included is a certified copy of the photo page of the Kenyan passport of Safia Hashi Noor (who is identified as the applicant's mother), and a copy of what is represented as Abdikaliq Abdirazak Ashkir's Kenyan birth certificate (identifying the parents as Abdirizak Ashkir Musse and Safia Hashi Noor).

(3) Other Evidence of Identity

[16] As set out above, the applicant denies that he is Abdikaliq Abdirazak Ashkir, a national of Kenya. Rather, he maintains that he is Maher Yusuf Adan, a national of Somalia.

[17] The applicant did not provide any primary identification documents (e.g. a passport or birth certificate) to establish his identity as Maher Yusuf Adan. Nor did he submit any

secondary identity documents (e.g. school, employment or medical records) to corroborate his claim that this is his correct identity. Instead, he submitted the following documents to the RPD:

- A letter dated October 15, 2019 (with English translation) purporting to be from the applicant's mother, Asha Mohamed Musse. Among other things, the letter states (in the translated version): "Maher Aden is my son and he was born on March 15, 1998, in Belet Hawa, Somalia." (I note parenthetically that the applicant's surname is written as "Aden" in the translation but it appears to have been written as "Adan" in the original. As well, the mother's surname appears to have been misspelled as "Mused" in the translation; it is written as "Musse" in the original.) No documents corroborating the identity of the author of the letter were provided.
- A letter dated November 1, 2019 (with English translation) purporting to be from Maryan Hassan. Ms. Hassan states in the letter that in 2011 she hosted "Maher and his mother Asha Muse" in her home in Belet Hawa "when they fled from Shabab forces." (Once again, there appear to be discrepancies between the spelling of names in the original and the translation.) Ms. Hassan does not say exactly when this was or how long the two stayed with her. According to Ms. Hassan, after the applicant and his mother left her home, they proceeded on to Kismayo. Ms. Hassan does not say how she knows this. No documents corroborating the identity of the author of the letter were provided.
- An affidavit in English from Zakaria Abkidakir Gabay sworn in Nairobi, Kenya on October 22, 2019. Mr. Gabay explains that he and Maher Yusef Aden (*sic*) had worked together at the Macluun Restaurant in Kenya during an unspecified time frame. According to Mr. Gabay, the applicant "arrived from Somalia" and belongs to the

“Madhibaan” (*sic*) clan. Mr. Gabay does not state how he knows either of these things.

A copy of Mr. Gabay’s Kenyan identity document was provided.

- An affidavit from Hafso Abdulkadir Mohamed affirmed in Toronto on November 4, 2019. Ms. Mohamed is a Somali citizen who was born in December 2000. She is also a naturalized Canadian citizen. She states that she first met “Maher Yusuf Adan (DOB: 1998)” in the Alanley District of Kismayo, Lower Juba, Somalia, in December 2015. He and his mother were selling fresh produce at a market and Ms. Mohamed would chat with him there from time to time. She last saw him in Kismayo in August 2016. She next saw him in Nairobi, Kenya, in August 2017 at the Macluun Restaurant. At the time, Ms. Mohamed was in the process of being sponsored for Canadian citizenship by her father. She gave the applicant her brother’s phone number in Canada so that he could contact her once she was in Canada. After he arrived in Canada in January 2019, the applicant re-connected with Ms. Mohamed through her brother. She offered him a place to stay while he got settled in Canada. Ms. Mohamed states that the applicant is a member of the minority Madhiban clan but she does not say how she knows this, nor does she say how she knows the applicant’s year of birth or his correct name. A copy of Ms. Mohamed’s Ontario driver’s licence was provided.
- A letter from the Loyan Foundation in Toronto dated November 1, 2019, stating that, based on their assessment of “Mr. Adan, Mahaer Yusuf DOB (15/03/1998),” they could confirm that the applicant is a Somali national who belongs to the minority “Madhiban sub-clan Muse Dherj from the Somali clan structure.”

[18] At the RPD hearing, the applicant confirmed under solemn affirmation that the contents of his BOC were complete, true and correct. As well, he testified that he is Maher Yusuf Adan, a national of Somalia, and denied being Abdikaliq Abdirazak Ashkir, a national of Kenya. He also denied all knowledge of the documents used to obtain the student visa (apart from the passport). Regarding the passport, the applicant maintained that while it had been validly issued, it was fraudulent. (In his BOC narrative, the applicant stated that the passport was obtained with a fraudulent Kenyan birth certificate.)

[19] Ms. Mohamed also testified. She described her various contacts with the applicant, beginning in Kismayo and up to the present day. When asked how she knew the applicant was born in Somalia, Ms. Mohamed replied that life in Kismayo is very difficult so she did not think anyone who was not born there would live there. As for the applicant's clan membership (which is different from her own), she had heard others refer to his family as "that Madhiban family."

C. *The Decision of the RPD*

[20] The RPD concluded that the applicant had failed to establish his identity and, more generally, that he was not credible. The RPD noted that in assessing the applicant's claim to be a national of Somalia, it had considered the well-documented difficulties that Somali nationals have had obtaining official documents establishing their personal identity and nationality. Nevertheless, it remains the case that the applicant must establish his identity. He "must have made reasonable efforts to provide documentation to establish his personal identity and nationality on a balance of probabilities." The RPD accepted that "while the Applicant may be ethnically Somali, this does not preclude him from having obtained another nationality."

[21] The RPD made the following findings regarding the evidence provided to establish the applicant's identity:

- The testimony of Ms. Mohamed is insufficient to establish the applicant's identity because she had no knowledge of him before they met in Kismayo. The mere fact that they met a few times in Somalia during a short period of time does not establish that the applicant is a citizen of Somalia. To the extent that Ms. Mohamed knew anything about the applicant's personal and national identity, this was based on what the applicant himself had told her. She did not have any independent knowledge of these things, nor was her knowledge based on a long-term relationship or association with the applicant in Somalia.
- It is unlikely that the applicant sold fresh produce in Kismayo because he was unable to identify the currency in which the sales would have been transacted (the Somali shilling). This called into question not only whether the applicant had ever lived in Somalia but also his credibility.
- The letter from the Loyan Foundation was given "minimal weight" in establishing the applicant's identity. The assessment had determined that the applicant could speak Somali and that he was knowledgeable about Somalia's geography, history, heritage, sociopolitical/political situation, and his clan lineage and culture. However, the ability to speak Somali "does not in itself establish nationality and does not establish personal identity." Similarly, simply knowing the geography, culture and customs of the country does not establish one's Somali nationality, either. In short, the RPD found that "[t]here is nothing in this letter which suggests that the information he provided could only be

provided by a citizen of Somalia or which would tip the balance in favor of establishing his identity as a citizen of Somalia.” The RPD also noted that the letter had not explained how the applicant’s personal details – his name and date of birth – had been determined.

- Given the importance of clan affiliation in Somalia, it was not reasonable that the applicant would have only the minimal knowledge of the Madhiban clan that he related at the hearing. The RPD therefore concluded that the claimant had not established his alleged clan membership. Instead, the applicant had “used this profile to bolster his claim.”
- The affidavit from Mr. Gabay does not establish the applicant’s identity.
- No documents were provided to confirm authorship of the letter purportedly from the applicant’s mother.
- The letter from Ms. Hassan contains insufficient information about the applicant’s identity.
- In view of the allegedly fraudulent Kenyan passport (according to the applicant) the applicant had used to travel and the other allegedly fraudulent documents (again according to the applicant) used to obtain the Canadian student visa, the applicant “clearly has access to fraudulent documents including those with highly sophisticated security features.” Given this, and given the lack of credibility demonstrated by the applicant, the RPD assigned “minimal weight” to the letters and affidavit provided to establish his identity.

[22] In summary, the RPD concluded that the applicant did not establish with reliable and trustworthy evidence “who he is or where he is from.” While he may be ethnically Somali, this does not preclude him from having obtained another nationality. Since the applicant had not established his identity, it was unnecessary to examine the merits of his claim.

D. *The Appeal to the RAD*

(1) The Applicant’s Grounds of Appeal

[23] The applicant appealed the rejection of his claim to the RAD. He did not submit any new evidence in support of his appeal nor, as a result, did he request a hearing before the RAD.

[24] In his written submissions, the applicant challenged the RPD’s determination that he had not established his identity with sufficient credible evidence. Specifically, he contended that the RPD had erred in not assigning greater weight to the testimony of Ms. Mohamed; in drawing an adverse inference from the applicant’s failure to mention Somali shillings when the currency is often simply referred to as “*Somali lacag*,” which can be translated as “Somali money” – the very term the applicant had used in his testimony; in holding the applicant to an unreasonable standard of knowledge of his clan given that clan membership is patrilineal and the applicant was young when his father was killed and was still young when he left Somalia for Kenya to live with his mother’s relatives; in failing to consider that Mr. Gabay would not have stated in a sworn affidavit that the applicant was Somalian and a member of the Madhiban clan unless these things were true; and in concluding that the letters from the applicant’s mother and Ms. Hassan

were fraudulent. The applicant urged the RAD to set aside the RPD's finding regarding his identity and, instead, to find that he had established his personal and national identity.

[25] The applicant also urged the RAD to set aside the RPD's ultimate determination and substitute the determination that he is a Convention refugee or, in the alternative, to remit the matter to the RPD for re-determination.

(2) The Minister's Intervention

[26] The Minister intervened in the appeal pursuant to paragraph 171(a.4) of the *IRPA*. As well, pursuant to subsection 110(3) and paragraph 171(a.5) of the Act, the Minister submitted documentary evidence and made written submissions. The Minister also requested an oral hearing before the RAD pursuant to subsection 110(6) of the *IRPA* because the documentary evidence tendered by the Minister raised serious issues with respect to the credibility of the applicant, it involved issues that are central to the decision with respect to the refugee protection claim (i.e. identity and credibility), and, if accepted, would justify upholding the rejection of the claim.

[27] The documentary evidence tendered by the Minister and its relevance (according to the Minister's submissions) consisted of the following:

- a) Documents from the Ministry of Transportation Ontario showing that on April 30, 2019, the applicant had submitted a Kenyan driver's licence in the name of Maher Yusuf Adan in support of an application for an Ontario driver's licence. Even though a refugee claimant is expected to produce any identity documents in their possession, the applicant

failed to produce this document (which was presumably still in his possession at the time of the RPD hearing in November 2019). As well, the existence of the Kenyan driver's licence suggested that the applicant's testimony before the RPD that he had never been issued any document in his real name was untrue. Furthermore, if the Kenyan licence is not genuine, this would raise serious questions concerning the applicant's credibility since he had presented it to a provincial ministry.

- b) Email correspondence between Minister's counsel and the Director of Admissions with Braemar College confirming that the school had first received the application for admission on behalf of Abdikaliq Abdirazak Ashkir on August 20, 2018. This was while the applicant was still in Saudi Arabia (according to his narrative) yet the applicant had also stated in his narrative that he did not speak to his uncle about obtaining a student visa for Canada until after he had returned to Kenya (i.e. after September 3, 2018, according to the entry stamp in the passport he used). This correspondence also established that it was a large and apparently reputable education consultancy service, Uniserv Education, that had acted as agent for the applicant in applying for admission to Braemar College as part of the process of obtaining the student visa and not, as the applicant had suggested, a "smuggler".
- c) Information published by the Government of Kenya suggesting that the process for obtaining a Kenyan passport was not as simple as submitting a birth certificate, as the applicant had suggested.
- d) Confirmation that the applicant had attended the Visa Application Centre in Nairobi, Kenya, on September 26, 2018, to have his fingerprints taken and that he had attended for

a medical exam on December 13, 2018. The applicant's failure to mention these steps he had personally taken in connection with the arrangements that were being made for him to go to Canada raised questions about his overall credibility.

- e) Information concerning the steps ordinarily taken when admitting someone to Canada on a student visa, including being interviewed and having to produce relevant documents. The applicant is unlikely to have been able to enter Canada as a student without being aware of the information in the visa application, without presenting the required documentation (e.g. a letter of admission from the school in question), and without having satisfied a border officer through an interview in English that he was a genuine student. The applicant's claim in his testimony before the RPD that he was unaware of the information used to obtain the student visa was therefore not credible.

(3) The Applicant's Response

[28] In response to the Minister's intervention, the applicant provided an affidavit affirmed on December 17, 2020, and additional written submissions. Much of the affidavit is argumentative. The salient factual assertions may be summarized as follows.

[29] First, the applicant states that his uncle had made arrangements for him to obtain the Kenyan driver's licence while he was working for him in Nairobi. The licence was issued shortly after he arrived there. The applicant does not know whether it is a genuine licence or not but it does bear his real name.

[30] The applicant explained that he did not produce the Kenyan licence as part of his refugee claim because he did not consider it an identity document since it was “improperly obtained” and it does not prove his nationality. The applicant does not address why he testified at the RPD that he had never been issued any document in his real name. The applicant does not explain why he thought it appropriate to use an “improperly obtained” licence to obtain an Ontario driver’s licence apart from stating that he was told that it would be easier to get a licence that way and his driving knowledge and ability were tested in Ontario in any event.

[31] Second, the applicant states that he does not remember dates very well but he did contact his uncle either before he returned to Kenya or right after he returned to begin the process with the smuggler. Thus, the applicant agrees that it is “entirely possible that the smuggler or agent would have contacted the school on August 20, 2018.”

[32] Third, the applicant maintains his position that he did not know anything about the documents used to obtain the student visa. According to the applicant, the smuggler “created the supporting student documents for me so that I could obtain a student visa for Canada.” However, the applicant does not address in any way what happened when he entered Canada on January 20, 2019. The applicant acknowledges that he was fingerprinted and underwent a medical examination in Kenya but he does not explain why he did not mention these things before.

III. DECISION UNDER REVIEW

[33] Applying a correctness standard to the RPD's determinations, the RAD concluded that the RPD did not err in finding that the applicant failed to establish his identity on a balance of probabilities. The RAD did not find any errors in the RPD's assessment of the evidence tendered to establish the applicant's identity; furthermore, following its own independent review of the record, the RAD found additional reasons supporting the RPD's conclusions.

[34] The RAD noted that the Minister had intervened and was relying on new documentary evidence to which the applicant had responded. The RAD addresses some of this evidence in passing. The RAD does not address at all the Minister's request for an oral hearing.

[35] In summary, the RAD assessed the evidence before it as follows.

The Evidence of Hafso Mohamed

[36] The RAD agreed with the RPD that the relationship with the applicant described by Ms. Mohamed and her lack of any independent knowledge of his Somali nationality beyond seeing him in Kismayo from December 2015 to August 2016 were not sufficient to establish the applicant's identity.

[37] The RAD also identified three areas in which the testimony of the applicant and Ms. Mohamed were inconsistent: (i) their interactions in Kismayo; (ii) their interactions in Nairobi; and (iii) the manner in which Ms. Mohamed's brother connected them to one another

after the applicant's arrival in Canada. The RAD then states: "As these inconsistencies were not put to either the Appellant or the witness, they are not determinative, but they do support the finding of the RPD."

[38] Notably, neither the RPD nor the RAD disbelieved Ms. Mohamed's account of having met the applicant in Kismayo.

Loyan Foundation Letter

[39] The RAD noted that a letter like the one from the Loyan Foundation should be assessed in light of what it is tendered to prove – that is, the applicant's nationality as opposed to his personal identity (citing *Mohamed v Canada*, 2020 FC 186 at para 55). The RAD found "while the letter from the Loyan Foundation independently supports the Appellant's claim to Somali nationality, it was not determinative as it could not overcome the credibility issues raised by the Appellant's testimony, including his clan identity, the problems with the authenticity and content of the other supporting documents and the insufficient basis for the evidence of his witness."

[40] The RAD also found that the letter's confirmation of the applicant's clan membership "does not carry much weight in light of the Appellant's very limited knowledge about his clan."

[41] The RAD also noted two inconsistencies between the letter and the applicant's BOC narrative. First, the letter had misnamed the applicant as Mahaer Yusuf Adan instead of Maher Yusuf Adan. Second, the letter stated that the applicant belonged to the minority Madhiban sub-clan Muse Dherj whereas the applicant had identified his clan as Madhiban, Muse Deeriyo in his

BOC narrative. However, the RAD also stated that “[a]s these inconsistencies were not put to the Appellant, they are not determinative.”

Other Supporting Documents

[42] To support his identity claim (and to corroborate some elements of his narrative), the applicant also provided an affidavit from a former co-worker in Nairobi and letters purporting to be from his mother and from the woman in whose home the applicant and his mother had stayed for a time in 2011. The RPD had assigned “minimal weight” to these documents because their authors were not produced for examination at the hearing, because of the availability of fraudulent documents in Somalia and the applicant’s admitted use of such documents, and because of “the lack of credibility demonstrated by the claimant.” The RPD also noted with respect to the letters from the applicant’s mother and from Ms. Hassan (erroneously referred to as affidavits by the RPD) that nothing was provided to verify the identities of the authors of the letters.

[43] The RAD did not disagree with any of these findings. Indeed, it specifically agreed that as the applicant’s mother had not provided any confirmation of her identity, the letter was not authentic. Equally, it found that there was insufficient information about the identity of the author of the letter purporting to be from Ms. Hassan. The RAD also went on to hold that the finding that the documents lacked credibility and were not authentic is “bolstered” by the evidence that the applicant failed to present his Kenyan driver’s licence to the RPD, a document which the applicant himself admitted had been “improperly obtained.”

[44] Upon its own review of the documents, the RAD found that there were additional reasons to doubt their credibility and to find that they are not authentic. With regard to the letter from the applicant's mother (also referred to by the RAD as an affidavit), the RAD found that its credibility was adversely affected by the fact that his mother's name had been spelled differently at different places in the record. With regard to the affidavit from the former co-worker, the RAD noted that it was internally inconsistent, having identified the affiant as both a Kenyan citizen and a permanent resident of Kenya. The RAD also noted that the affidavit provided no dates for any of the material events and that the affiant's "unnamed mother is identified as the source of much of his information."

The Applicant's Testimony

[45] The RAD agreed with the RPD's adverse findings concerning the applicant's credibility in the two specific respects challenged on appeal. First, the RAD agreed that an adverse inference should be drawn from the fact that the applicant did not name the Somali currency he would have handled when selling produce at the market. Second, the RAD also agreed that the applicant's claim that he was a member of the Madhiban clan was not credible. The applicant had been able to give only sparse details about his clan and the RAD found this to be inconsistent with general country evidence demonstrating the importance of clan identity in Somalia.

[46] Having found no errors by the RPD, and on the basis of its own assessment of the evidence, the RAD dismissed the appeal and confirmed the RPD's determination that the applicant is not a Convention refugee.

IV. STANDARD OF REVIEW

[47] The parties agree, as do I, that the substance of the RAD's decision is to be reviewed on a reasonableness standard: see *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35. This includes a finding with respect to identity, a fact-driven determination (*Denis v Canada (Citizenship and Immigration)*, 2018 FC 1182 at para 5; see also pre-RAD jurisprudence concerning the review of identity findings such as *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at para 48, and *Su v Canada (Citizenship and Immigration)*, 2012 FC 743 at para 5). That this is the appropriate standard of review has been reinforced by *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10.

[48] As discussed in *Vavilov*, the exercise of public power “must be justified, intelligible and transparent, not in the abstract but to the individuals subject to it” (at para 95). It is not enough for a decision to be *justifiable*. Where reasons are required, to be reasonable, the decision must be *justified* by the reasons provided: see *Vavilov* at para 86. Thus, an administrative decision maker has a responsibility “to justify to the affected party, in a manner that is transparent and intelligible, the basis on which it arrived at a particular conclusion” (*Vavilov* at para 96).

[49] 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). A decision that displays these qualities is entitled to deference from the reviewing court (*ibid.*). When applying the reasonableness standard, it is not the role of the

reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances: see *Vavilov* at para 125. At the same time, reasonableness review is not a rubber-stamping process; it remains a robust form of review: see *Vavilov* at para 13. The reasonableness of a decision may be jeopardized where the decision maker “has fundamentally misapprehended or failed to account for the evidence before it” (*Vavilov* at para 126).

[50] The onus is on the applicant to demonstrate that the RAD’s decision is unreasonable. To set aside a decision on this basis, the reviewing court must be satisfied that “there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100).

V. ANALYSIS

[51] Identity is at the “very core of every refugee claim” (*Hassan v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 459 at 27). Proof of identity is therefore an essential requirement for a person claiming refugee protection. Without this, there can “be no sound basis for testing or verifying the claims of persecution or, indeed for determining the Applicant’s true nationality” (*Jin v Canada (Minister of Citizenship and Immigration)*, 2006 FC 126 at para 26; see also *Liu v Canada (Citizenship and Immigration)*, 2007 FC 831 at para 18 and *Behary v Canada (Citizenship and Immigration)*, 2015 FC 794 at para 61). A failure to prove identity will be fatal to a claim; absent proof of identity, there is no need to examine the evidence or the claim any further: see *Elmi v Canada (Citizenship and Immigration)*, 2008 FC 773 at para 4; *Diallo v Canada (Citizenship and Immigration)*, 2014 FC 878 at para 3; *Liu* at para 18; *Ibnmogdad v*

Canada (Minister of Citizenship and Immigration), 2004 FC 321 at para 24; and *Behary* at para 61. In short, a refugee claimant must establish that they are who they say they are. At a minimum, this encompasses their personal identity and their nationality (or lack of nationality, as the case may be). Should they fail to establish these things, their claim for protection must also fail.

[52] The importance of establishing a claimant's identity is reflected in section 11 of the *Refugee Protection Division Rules*, SOR/2012-256 [*Rules*]:

<p>11 The claimant must provide acceptable documents establishing their identity and other elements of the claim. A claimant who does not provide acceptable documents must explain why they did not provide the documents and what steps they took to obtain them.</p>	<p>11 Le demandeur d'asile transmet des documents acceptables qui permettent d'établir son identité et les autres éléments de sa demande d'asile. S'il ne peut le faire, il en donne la raison et indique quelles mesures il a prises pour se procurer de tels documents.</p>
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[53] Section 106 of the *IRPA* draws an express link between this obligation to produce acceptable documentation establishing identity (or to explain why it has not been produced) and a claimant's credibility. It provides as follows:

<p>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</p>	<p>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.</p>
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taken reasonable steps to
obtain the documentation.

[54] What is “acceptable documentation establishing identity” is not defined in the *IRPA* or the *Rules*; it is for the RPD to determine in each case (subject, of course, to appeals to the RAD or judicial review).

[55] Together, section 11 of the *Rules* and section 106 of the *IRPA* place the onus on a claimant to provide acceptable documentation establishing their identity. Obviously, to be able to provide such documentation, the claimant must be in possession of it. If a claimant does not possess acceptable documentation establishing identity, they must provide a reasonable explanation for why this is the case or demonstrate that reasonable steps were taken to obtain such documentation. This is a heavy burden: see *Su* at para 4; *Malambu v Canada (Citizenship and Immigration)*, 2015 FC 763 at para 41; and *Tesfagaber v Canada (Citizenship and Immigration)*, 2018 FC 988 at para 28.

[56] The absence of acceptable documentation establishing identity is not necessarily fatal to a claim. However, if a claimant fails to produce acceptable documentation establishing identity and also fails to provide a reasonable explanation for the lack of documentation or fails to demonstrate that reasonable steps were taken to obtain it, this could, at the very least, have an adverse impact on their credibility (including, presumably, with respect to their claims as to their identity). If, in the final analysis, there is insufficient credible and trustworthy evidence of the claimant’s identity, their claim must be rejected.

[57] The foregoing principles are foundational to refugee protection determinations. None are controversial or unclear. However, they must be applied with particular care in a case like the applicant's. This is because, as the RAD recognized, and as is well-established in the jurisprudence, Somalia is a country "where identity documents are often problematic and may not be readily available, or available at all" (quoting *Warsame v Canada*, 2019 FC 118 at para 18 [*Sadaq Warsame*]). As the RAD also noted,

Somalia has not had a functioning government since 1991, and large parts of the territory are under no actual central administration or governing [*sic*]. This means that Somalia's inhabitants have been unable to obtain official documents such as ID cards, passports or various certificates for the past 17 years.

[58] Presumably in view of the prevailing conditions in Somalia, neither the RPD nor the RAD expressly drew an adverse inference regarding the applicant's credibility under section 106 of the *IRPA* (although both found his credibility wanting for other reasons).

[59] In the absence of official documents to corroborate his claim to be a Somali national, the applicant supported this claim with circumstantial evidence of his identity. The RAD agreed with the RPD that the evidence provided by the applicant was insufficient to establish his identity. In my view, the RAD's decision is unreasonable, principally because it erroneously considered some key pieces of evidence in isolation from one another and, as a result, failed to consider the cumulative effect of the circumstantial evidence of identity. As Justice Manson held in *Sadaq Warsame*, "[n]o piece of evidence should be dismissed simply because it is a single piece of the totality of evidence provided. It is not appropriate to consider such evidence in isolation; rather one must consider the whole of the evidence purposively and contextually" (at para 18). In my view, the

RAD erred in exactly this way in its assessment of the Loyan Foundation letter and the testimony of Ms. Mohamed.

[60] Letters or affidavits provided by settlement workers who are knowledgeable about particular nationalities can, in appropriate circumstances, be relied on as identity evidence, even if they cannot independently establish identity: see *Warsame v Canada (Citizenship and Immigration)*, 2019 FC 920 at para 48 (“*Warsami Warsame*”); see also *Hassan v Canada (Citizenship and Immigration)*, 2021 FC 383 at para 33 (“*Abdi Hassan*”). Such evidence can be of particular importance when, as in the case of Somalia, it is a notorious fact that government documents are virtually unobtainable: see *Warsami Warsame* at para 50. Similarly, first hand evidence of having met an individual in the country of which they claim to be a national is relevant to the issue of that person’s national identity, even if it may not be conclusive proof of their nationality: see *Abdi Hassan* at para 24.

[61] In the present case, the RAD could reasonably have found that the Loyan Foundation letter had little probative value on the issue of the applicant’s national identity for a number of reasons. While the letter states that the foundation utilizes “policies and recommendation guidelines” from the Canadian Council for Refugees for verifying the identity of persons lacking primary identification documents, it does not explain what these policies and recommendation guidelines are. The Community Verification Assessment used to assess the applicant is described in the letter in only very broad terms. There is no information about the particular questions asked of the applicant or how well he answered them. There is no information about the training or experience of the individual who performed the assessment; instead, that person is simply

described as a “professional Somali settlement counselor.” The letter is largely conclusory, with no explanation of how the settlement counselor determined that the applicant’s Somali nationality had been “sufficiently established.”

[62] The RAD, however, did not find that the letter had low probative value for the issue of the applicant’s national identity for any of these reasons. On the contrary, it found that the letter did “independently support” the applicant’s claim of Somali nationality. What I take this to mean is that the RAD was satisfied that the letter had at least some probative value on the issue of the applicant’s national identity. This was a reasonable finding. The letter states the opinion of members of a particular community – nationals of Somalia – as to the applicant’s membership in that community and provided some (albeit limited) explanation for how they reached that conclusion. Even if they may not always get it right, it is reasonable to think that trained members of a particular community will be able to determine membership in their community accurately at least some of the time (and likely more accurately than someone who is not a member of that community).

[63] Despite this, the RAD concluded that the letter was “not determinative as it could not overcome the credibility issues raised by the Appellant’s testimony, including his clan identity, the problems with the authenticity and content of the other supporting documents and the insufficient basis for the evidence of his witness [i.e. Ms. Mohamed].”

[64] In my view, the RAD fell into reviewable error by viewing the Loyan Foundation letter in isolation rather than purposively and contextually. Moreover, it imposed an erroneous threshold

by asking whether the letter was “determinative” of the issue of identity. While the RAD is entitled to determine how much weight to give to the letter, it must do so reasonably. In and of itself, the applicant’s ability to speak Somali and his knowledge of Somali culture, history, and geography (as confirmed in the Loyan Foundation letter) may not be conclusive evidence of his identity as a Somali national (because non-nationals can also learn these things). Similarly, in and of itself, Ms. Mohamed’s testimony that she had met the applicant when he was living in Somalia may not be conclusive evidence of the applicant’s Somali nationality (because non-nationals of Somalia can also live there). However, these two pieces of evidence potentially take on added significance when they are considered together. In combination, the fact that the applicant speaks Somali, is knowledgeable about Somalia, and once lived there is potentially of greater probative value on the issue of his identity than any one of these facts would be when considered alone. This is the very nature of circumstantial evidence. The RAD, however, failed to consider the combined effect of this evidence, as it was required to do: see *Sadaq Warsame* at para 18; see also *Hassan* at para 33.

[65] In this connection, it is important to underscore that the RAD does not appear to have doubted Ms. Mohamed’s credibility; rather, it found her evidence to be insufficient to establish the applicant’s identity because she lacked independent knowledge of the applicant’s nationality. In reaching that conclusion, once again, the RAD erred by viewing the evidence in isolation. Furthermore, the RAD also noted what it found to be inconsistencies between Ms. Mohamed’s testimony and the applicant’s which, while not “determinative”, did support the finding of insufficiency. At the hearing of this matter, counsel for the respondent fairly conceded that the RAD’s findings in these respects may not be defensible even on a reasonableness standard. In

my view, these findings by the RAD concerning inconsistencies in the evidence are not transparent, intelligible or justified.

[66] The RAD also found that the Loyan Foundation's conclusion with respect to the applicant's clan membership "does not carry much weight in light of the Appellant's very limited knowledge about his clan." I agree with the applicant that this conclusion is unreasonable.

[67] The RAD's analysis depends on the implicit premise that, if the applicant truly was a member of the Madhiban clan, he would know more about this clan than he did. This premise, however, is not reasonably supported by the RAD's reasons or by anything else in the record. The RAD's generic statement that clan membership is important in Somali society may be true but it does not entail that this particular applicant should therefore have known more about his clan than he did. The question the RAD neither asks nor answers is what would be reasonable to expect this particular individual to know about his clan given his own particular circumstances (i.e. his age, his education, the circumstances under which he grew up, etc.). Without this baseline, it was unreasonable for the RAD to judge that the applicant had only "very limited" knowledge of the Madhiban clan and then infer from this that the Loyan Foundation's conclusion as to his clan membership did not deserve much weight and that the applicant's claim of clan membership was not credible.

[68] In this connection, while this is not overly material, it does bear noting that the RAD appears to have misapprehended the evidence of the applicant's former co-worker, Mr. Gabay. The RAD states: "I note that the evidence from his co-worker about the Appellant's clan

membership is based on ‘what my mother narrated to me’ without any explanation as to why his mother would be a reliable source of information.” However, this is not what Mr. Gabay said. What he said is that he derived his knowledge of the Madhiban clan and how its members are treated in Somalia from his mother. He did not say that his mother told him about the applicant’s clan membership.

[69] Finally, the RAD made adverse findings with respect to the authenticity of some of the documents tendered by the applicant to support his claim of Somali nationality – i.e. Mr. Gabay’s affidavit and the letters purporting to be from Ms. Hassan and from the applicant’s mother. The RAD also made a strong adverse finding with respect to the applicant’s credibility. The applicant challenges these findings as unreasonable but it is neither necessary nor appropriate to resolve this issue. The principal error I have identified above is sufficient to require that the matter be reconsidered by the RAD. On that reconsideration, it will be for the RAD to make its own determinations, on the whole of the record before it, concerning the probative value, if any, of these documents and concerning the applicant’s credibility.

VI. CONCLUSION

[70] For these reasons, the application for judicial review is allowed. The decision of the Refugee Appeal Division dated March 23, 2021, is set aside and the matter is remitted for redetermination by a different decision maker.

[71] The parties did not suggest any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that none arise.

JUDGMENT IN IMM-2477-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed.
2. The decision of the Refugee Appeal Division dated March 23, 2021, is set aside and the matter is remitted for redetermination by a different decision maker.
3. No question of general importance is stated.

“John Norris”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2477-21

STYLE OF CAUSE: MAHER YUSUF ADAN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: MARCH 14, 2022

JUDGMENT AND REASONS: NORRIS J.

DATED: OCTOBER 7, 2022

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