

Federal Court



Cour fédérale

**Date: 20241211**

**Docket: IMM-9010-23**

**Citation: 2024 FC 2007**

**Halifax, Nova Scotia, December 11, 2024**

**PRESENT: The Honourable Madam Justice Blackhawk**

**BETWEEN:**

**ABDULLAHI KUNO ROBLE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Mr. Roble, seeks to set aside a decision dated May 17, 2023, by a visa officer (“Officer”) of Immigration, Refugees and Citizenship Canada (“IRCC”) refusing his application for permanent residence as a member of the Convention Refugee Abroad class or country of asylum class (“Decision”).

[2] For the reasons that follow, this application is granted.

II. Background

[3] The Applicant is 40 years old and was born in Somalia from the Darod clan. He fled Kismayo, Somalia to Kenya when he was approximately 10–11 years old after his father was killed by clan militia in civil war fighting when Kismayo was under militia control. The Applicant is single and has no dependents or living family members remaining.

[4] The Applicant was originally deemed credible on risk and that there was no durable solution available to him in Kenya, with no prospect of resettlement to a third country. He was initially found to meet the definition of a Convention refugee, pursuant to section 96 of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]*, and had displayed sufficient general adaptability to successfully establish himself in Canada. He has been registered as a United Nations High Commissioner for Refugees (“UNHCR”) refugee since at least August 2000.

[5] However, the Applicant was not issued an exit visa from Kenya due to being registered as a Kenyan citizen. This caused the IRCC to reopen the Applicant’s file.

[6] On December 15, 2022, the Applicant was sent a procedural fairness letter (“PFL”), which stated, in part:

I have completed the assessment of your application for permanent residence visa under Canada’s Government Assisted Refugee Program. We received information from the International Organization for Migration (IOM) that you are registered in the Kenyan database as a Kenyan citizen. Since you are registered as a Kenyan citizen, I have concerns that you may have a durable solution in Kenya and that you may no longer meet the requirements to be resettled to Canada as a refugee. This also casts doubt on your truthfulness and the credibility of your refugee flight story as you indicate you were born in Kismayo, Somalia in your

application forms. Furthermore, you will be unable to obtain an exit permit to leave Canada.

To be procedurally fair, before a final decision is made on your application, you are being given an opportunity to respond to this concern and provide any further information within 30 days from the date of this letter.

If you do not respond to this request within the time outlined above, a decision will be made based on the information included with your application at that time, which may result in the refusal of your application.

[7] The Applicant's response to the PFL on January 13, 2023, stated, in part:

I answered the questions in my application truthfully and to the best of my knowledge including information conveyed to me by my deceased sister and mother. As noted in my application form, I fled as a child and relayed most of what I know as accurately as possible. I presented all my supporting documents to satisfy the immigration officer for the examination.

I believe that I fully satisfy the convention of refugees as described under this section 96 because I fled from Somalia in 1994 from Kismayo District, because of the civil war on foot. When my father died during the civil war, life became extremely difficult for us as we had no protection from the malatia men. We then fled to Kenya, where we sought refugee status in Kenya finally. The instability and insecurity I fled from still exists in Somalia, and I do not feel safe or secure in my home country as lack of a functional government and ongoing civil war is present.

I have been a registered refugee under the UNHCR Mandate since 1994 and have never become a foreign national in any country. Since registering as a refugee in Kenya, I have never applied for citizenship in Kenya.

I also received the same information from the IOM Office that I have registered in the Kenya database as a Kenyan citizen. It was shocking and sad news for me since I have never registered as a citizen in Kenya, and I beg to differ with the allegation that I am Kenyan. I have not traveled out of the refugee camp.

I am attaching supporting documents proving my refugee status. I am a refugee registered under the UNHCR database, and in fact, I do not have a durable solution in Kenya. I have lived as a refugee and do not have the right to work, travel freely. I cannot avail

myself of any basic rights and I do not have a durable solution to settle in Kenya. Therefore, I request from the Canadian High Commission in Kenya to examine this issue and do verification of my fingerprints or a check before a final decision is made on my application. When looking through the letter, I understand that seems to be the only reason why my application has been rejected.

[8] On May 17, 2023, the Applicant's application was refused because the Officer was not satisfied by the Applicant's responses to the PFL. Entries in the Officer's GCMS notes state that the Applicant "stated in an email that he is shocked to find out he was in the Kenyan citizen database although he did not indicate how he got on it. Although he has provided the refugee documents this does not prove that he has been removed from the Kenyan database and therefore he is still double registered and has not addressed the concerns about his refugee status."

[9] The Applicant commenced an application for leave and judicial review of the Decision on July 17, 2023. This Court granted leave for judicial review on August 27, 2024.

### III. Issues and Standard of Review

[10] The issue in this application is whether the Officer's Decision was reasonable.

[11] The standard of review applicable to the Officer's Decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 23). Pursuant to the *Vavilov* framework, 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" (*Vavilov* at para 85). To intervene on an application for judicial review, the Court must find an error in the decision that is central or significant to render the decision unreasonable (*Vavilov* at para 100).

IV. Submissions of the Parties

[12] The Applicant submitted that the double registration is the only reason their application was refused. The Applicant's response to the PFL was thorough and well-documented, with various documents exhibiting his refugee status. Further, it is unclear whether the Officer considers the Applicant to be a refugee who acquired status, a refugee who acquired Kenyan citizenship, a Kenyan citizen illegally registered as a refugee, or if the Officer is alleging the Applicant was born in or is a naturalized Kenyan citizen. The Applicant argued this renders the Decision unreasonable given the Applicant's absence of knowledge regarding the double registration and the serious impacts of the Decision on him (*Brar v Canada (Citizenship and Immigration)*, 2022 FC 1522 at para 5).

[13] The Applicant also submitted that the Officer's reasons do not reflect any consideration of local immigration and refugee laws, thus calling into question whether they were alert and sensitive to the matter before them (*Anvari v Canada (Citizenship and Immigration)*, 2023 FC 365 at para 12).

[14] The Respondent argued that it was open to the Officer to make a credibility finding because the Applicant had the onus and a continuing duty of candour to disclose all material facts during the application process (*Alkhalidi v Canada (Citizenship and Immigration)*, 2019 FC 584 at para 18; *Goudzarzi v Canada (Citizenship and Immigration)*, 2012 FC 425 at para 40). The Respondent further argued that the PFL was clear and there could be no confusion as to the Officer's concerns regarding the double registration.

V. Analysis

[15] For the reasons that follow, this application is allowed.

[16] This Court has stated “that the purpose of a UNHCR card is to demonstrate that the ‘bearer has been individually assessed and is officially acknowledged by this UN Body as a refugee’” (*Pushparasa v Canada (Citizenship and Immigration)*, 2015 FC 828 at para 26, citing *Ghirmatsion v Canada (Citizenship and Immigration)*, 2011 FC 519 at para 54). The applicable principles to an officer’s consideration of the UNHCR designation are:

1. An applicant’s UNHCR status as a refugee is important but not determinative;
2. An officer must determine the merits of the applicant’s claim under Canadian law in accordance with the evidence in the record. In doing so, the officer may assess credibility;
3. In making this determination, the officer must have regard to the UNHCR’s determination. If the officer does not concur with it, the officer should explain why;
4. It is a reviewable error if an officer does not mention an applicant’s UNHCR status in the officer’s decision and/or in the GCMS notes; and
5. If the Court reviews the officer’s decision and reasons and finds it is clear that (i) the officer was aware of the applicant’s UNHCR status as a refugee; (ii) the officer conducted a thorough assessment of the applicant’s application on the merits under Canadian law; and (iii) in doing so, the officer explained why the UNHCR’s status was not followed, the Court may conclude that the officer’s decision was reasonable. The officer’s assessment of credibility may contain the require explanation for why the UNHCR’s status was not followed.

(*Ghbremariam v Canada (Citizenship and Immigration)*, 2023 FC 1305 at para 13, citing *Amanuel v Canada (Citizenship and Immigration)*, 2021 FC 662 at para 54.)

[17] It is well-established that “when an administrative decision maker does not properly deal with evidence squarely contradicting its findings of fact, the Court may intervene and infer the decision maker overlooked the contradictory evidence when reaching its conclusion” (*Valencia v Canada (Citizenship and Immigration)*, 2022 FC 386 at para 26). Contradictory evidence should not be overlooked, especially “with respect to key elements relied upon by the decision-maker to reach its conclusion” (*Aghaalikhani v Canada (Citizenship and Immigration)*, 2019 FC 1080 at para 24).

[18] In my view, the Officer’s Decision is unreasonable, particularly in light of the IRCC’s initial determination that the Applicant met the definition of a Convention refugee (*IRPA*, s 96.1) and had displayed sufficient general adaptability to successfully establish in Canada. All the evidence in the record supports the Applicant’s assertion that he is a registered refugee and not a Kenyan citizen. Specifically, the Applicant’s COVID-19 Vaccination Certificate dated June 29, 2022, that states he is “from Somalia with Alien Id [identification number omitted];” his most recent Republic of Kenya Refugee Identification Card has a date of issuance of August 18, 2022; and the letter dated January 24, 2023, from the Government of Kenya State Department for Immigration and Citizen Services that verified the Applicant’s refugee status by tracing his fingerprint in the Kenyan refugee database.

[19] The Officer did not question the Applicant’s credibility, yet the Officer rejected the Applicant’s response—that he was surprised to learn of the double registration. In light of the country conditions and documented widespread issues of double registration, it was not reasonable that the Officer relied on the double registration to justify the denial of the Applicant’s application, particularly given his vulnerability and inability to request the Kenyan authorities ensure their records are correct or to demand that the records be corrected.

[20] It is unclear what else the Applicant would have to provide to demonstrate that he is in fact a refugee and not a Kenyan citizen that would satisfy the Officer's concerns. Based on the record and prior determination on the Applicant's eligibility for refugee status, I find the Officer's lack of reference or consideration to the other evidence and earlier findings to be a reviewable error.

VI. Conclusion

[21] In light of the foregoing, this application for judicial review is allowed. The Applicant's application is remitted back to the IRCC for redetermination by a different officer.

[22] The parties did not pose any questions for certification, and I agree that there are none.



**JUDGMENT in IMM-9010-23**

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

1. The application for judicial review is granted.
2. No question is certified.

**“Julie Blackhawk”**

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Judge

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

**DOCKET:** IMM-9010-23

**STYLE OF CAUSE:** ABDULLAHI KUNO ROBLE v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** EDMONTON, ALBERTA

**DATE OF HEARING:** NOVEMBER 12, 2024

**JUDGMENT AND REASONS:** BLACKHAWK J.

**DATED:** DECEMBER 11, 2024

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