Federal Court  Cour fédérale

Date: 20250122

Docket: IMM-8783-22

Citation: 2025 FC 134

Ottawa, Ontario, January 22, 2025

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

MOHAMMED OMAR ALI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision (the "Decision") by a Senior Immigration Officer (the "Officer") at Immigration, Refugees, and Citizenship Canada ("IRCC"). The Decision denied the Applicant an exemption from the permanent resident application process based on humanitarian and compassionate ("H&C") grounds pursuant to section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the "*IRPA*").

[2] For the reasons discussed below, the application for judicial review is dismissed.

II. Background

[3] The Applicant, Mohammed Omar Ali, is a 32-year-old alleged national of Somalia. He states that he is married and has two children ages 8 and 10, who live with his wife and his sister, in Kenya as refugees. His family fled Somalia due to the ongoing civil conflict and treatment of women. The Applicant states that he cannot safely return to his country because he worked as a radio-journalist and was targeted by Al-Shabaab and government elements that oppose free speech.

[4] In December 2014, the Applicant fled Somalia and travelled to the United States of America where his asylum claim was rejected in September 2015. He then left America and entered Canada in the same month. The Applicant's refugee claim was refused on January 28, 2016 and the Federal Court dismissed leave to appeal on April 25, 2016.

[5] The Applicant states that his work in Canada is critical to his family's well-being in Kenya as he regularly sends portions of his income to them.

[6] This is the Applicant's third H&C application. His other two applications, submitted in 2017 and 2019, were also refused.

III. The Decision

[7] On August 23, 2022, the Officer rejected the Applicant's H&C application on the basis that there was no compelling reason to excuse the Applicant from applying for Permanent Resident ("PR") status from outside of Canada.

[8] The Officer reviewed the Applicant's immigration history, H&C factors raised, including the adverse country conditions, establishment in Canada, and the best interests of the children ("BIOC"), and evidence provided, and found that based on a global assessment, an H&C exemption was not warranted.

[9] The Officer began their assessment with an analysis of the statutory declarations and affidavits supporting the Applicant's nationality and identity as a journalist. The Officer gave considerable weight to the Refugee Protection Division's ("RPD") findings in the Applicant's refugee claim as the RPD had the benefit of interviewing the Applicant. The RPD dismissed the Applicant's claim, finding both that the Applicant is not a reliable source and that the claim was "manifestly unfounded" given the multiple submissions of a forged station logo. The Refugee Appeal Division ("RAD") dismissed leave to appeal. Consequently, the Officer stated that affidavits in this application were insufficient to overcome the findings made by the RPD.

[10] The Officer gave some positive weight to the Applicant's establishment in Canada and the BIOC, but found the Applicant's reluctance to provide necessary identity and nationality

documentation to officials during his time in Canada counterweighted against the positive considerations.

IV. Issues

[11] The only issue is whether the Officer's decision was reasonable.

[12] The Applicant asserts the Officer made three errors which render the Decision unreasonable:

A. The Officer erred by basing their negative findings on the presumption that the Applicant has not established his identity as a Somali;

B. The Officer erred in their BIOC assessment; and

C. The Officer erred in their assessment of the Applicant's establishment in Canada.

V. Analysis

[13] The standard of review with respect to the Officer's substantive findings is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 25).

[14] Subsection 11(1) of the *IRPA* requires foreign nationals who wish to obtain PR status in Canada to apply from abroad. Section 25 of the *IRPA* gives the Minister discretion to approve PR applications on H&C grounds from within Canada. An H&C exemption is a discretionary

and exceptional relief. A reviewing court must not substitute their discretion for that of the Officer (*Lewis-Asonye v Canada (Citizenship and Immigration)*, 2022 FC 1349 at para 47).

[15] The purpose of subsection 25(1) of the *IRPA* is to offer equitable relief in circumstances that "would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another" (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 13).

A. *Did the Officer reasonably assess the evidence of the Applicant's identity?*

[16] The Applicant argues that the Officer erred by dismissing the affidavits and statutory declarations that were submitted in support of the Applicant's identity, given the Officer acknowledged the difficulties in obtaining formal identity documents from Somalia as a result of the ongoing civil wars and a lack of functioning government.

[17] The Applicant relies on section 178 of the *Immigration and Refugee Protection* Regulations, SOR/2002-227 (the "*IRPR*") which provides an exception for circumstances where a person cannot obtain identity documents from the country of nationality: he or she may use a statutory declaration attesting to their identity, accompanied by a second statutory declaration made by a person who, before the applicant's entry into Canada, knew the applicant or a family member of the applicant. The Applicant also refers to *Warsame v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 118 [*Warsame*], to support their argument that the Officer cannot simply dismiss the six letters submitted to prove his identity.

[18] The Respondent suggests that the Applicant may be unable to rely on this section as this Court has previously held that section 178 of the *IRPR* only applies to protected persons who seek permanent residence, given its placement in the statutory scheme (*Demiri v Canada (Citizenship and Immigration)*, 2014 FC 1104 at para 23). Section 178 is found within Part 8: Refugee Classes, Division 5 "Protected Persons – Permanent Residence". As noted above, the Applicant was denied refugee status in 2016. Even if the Applicant can rely on subsection 178(1), subparagraph 178(2)(b)(ii) of the *IRPR* requires that the statutory declaration "constitutes credible evidence of the applicant's identity."

[19] I disagree with the Applicant that the Officer erred in their weighing of the affidavits and statutory declarations. Evidence tendered by a witness with a personal interest in the matter may be examined for its weight, before considering its credibility, because typically this sort of evidence requires corroboration if it is to have probative value (*Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 at para 27). Considering this, I agree with the Respondent that while section 178 does not exclude the possibility that the statutory declaration comes from a friend or family member, it does not specifically contemplate that such an affidavit will be enough. Each case will depend on the sufficiency and probative value of such declarations and evidence.

[20] The Officer reviewed and considered in detail all of the affidavits, statutory declarations, and letters, and afforded little probative value to each of them, on the basis that they were not from an authorized or objective authority or a disinterested party. Equally important here, the Officer had concerns with some of the affidavits, including unofficial translations, hard to read

screenshots, and affidavits using similar wording. The Applicant has failed to show how the Officer was unreasonable in their assessment of this evidence.

[21] I also disagree with the Applicant that the case of *Warsame* is relevant to the issues and facts raised in this case. In *Warsame*, the Court found the Officer erred in dismissing two letters from Somalian associations adduced to support the Applicant's identity as a Somalian national because the letters did not prove the Applicant's personal identity. The Court held that "no piece of evidence should be dismissed simply because it is a single piece of the totality of the evidence provided," noting that the applicant had also provided an affidavit from his cousin in support of his personal identity.

[22] In *Warsame*, the Court did not comment on the probative value of the affidavit from the family member, other than to say the Officer conducted a "curt analysis" of it, and re-iterate the words of Justice Hughes that "all documentary evidence should be considered by a different person with a fresh mind" (*Warsame* at para 19 citing Teganya v Canada (Citizenship and Immigration), 2012 FC 42 at para 26).

[23] Here, the Officer followed the principle re-iterated in *Warsame* that "one must consider the whole of the evidence purposively and contextually." As evident from the Decision, the Officer did not come to a conclusion on the Applicant's identity and nationality based on the affidavits in isolation, but in consideration of all of the evidence before them.

[24] The Officer noted that the Applicant has been in Canada since 2015 and has had much time to obtain some documentation establishing his identity, including through community associations in Canada, which assist individuals from Somalia to verify their identity and nationality. Beyond the Applicant stating that he tried to contact the Somali embassy in the United States and a government office in Somalia, there is no evidence of the steps the Applicant took to try to verify his identity or nationality in Canada.

[25] Additionally, as noted above, the Officer gave considerable weight to the RPD's findings that the Applicant was not reliable and his claim was "manifestly unfounded". The Federal Court has held that if an applicant seeks to present essentially the same story that had been found to not be credible as a whole by the RPD or RAD, the H&C officer is entitled to reject it (*Zingoula v Canada (Citizenship and Immigration)*, 2019 FC 201 at para 11).

[26] In essence, the Applicant is requesting this Court to reweigh the evidence and come to a different conclusion. This is not the role of this Court. The Officer examined all the evidence before it; the question of weight remains entirely within the expertise of the immigration officer (*Braud v Canada (Citizenship and Immigration)*, 2020 FC 132 at para 52 citing Lopez v Canada (Citizenship and Immigration), 2013 FC 1172 at para 31). The Officer was entitled to give more weight to the RPD's findings than to the affidavits.

[27] The Officer's reasons are transparent, cogent, and justified on the evidence before them. It was reasonable for the Officer to conclude that the Applicant had not established their identity or nationality on a balance of probabilities.

B. *Best Interests of the Children*

[28] The Applicant submits that the Officer erred by concluding that the Applicant had not established his claim of being the children's father when the documents submitted suggests otherwise.

[29] The alleged error is tightly connected with the Officer's findings regarding the Applicant's failure to prove his identity. For the same reasons articulated above, I find it was not unreasonable for the Officer to conclude that the evidence provided failed to establish on a balance of probabilities the Applicant's identity, the identity of the children, and notably, his paternal link to those children. Moreover, the Officer gave weight to the BIOC, but found it was insufficient to overcome the substantial negative factor in this application.

[30] Given the evidence before them, the Officer's weighing of the BIOC and other factors raised was reasonable.

C. *Establishment in Canada*

[31] The Applicant also argues that the Officer erred by characterizing the Applicant's six years of establishment in his community as a "typical level of establishment".

[32] The Applicant correctly states that applicants are not expected to demonstrate "exceptional" or "extraordinary" establishment (*Sivalingam v Canada (Citizenship and Immigration)*, 2017 FC 1185 at para 13). However, this is not the threshold the Officer required

by simply noting that the Applicant's establishment was "typical". The Officer considered all the evidence provided on establishment, including his employment, volunteer work, and community relationships and gave "some weight" to the Applicant's establishment. The Officer then concluded that the positive weight afforded to the Applicant's establishment was insufficient to grant an exemption. This does not amount to imposing a threshold of "exceptional" or "extraordinary" establishment.

[33] Again, the Applicant is asking this Court to reweigh the evidence. This is not the role of this Court. It was not unreasonable for the Officer to conclude the other factors outweighed the positive weight of the Applicant's establishment.

VI. Conclusion

[34] The Decision was reasonable. This judicial review is dismissed.

JUDGMENT in IMM-8783-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8783-22
STYLE OF CAUSE:	MOHAMMED OMAR ALI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JANUARY 21, 2025
JUDGMENT AND REASONS:	MANSON J.
DATED:	JANUARY 22, 2025

APPEARANCES:

Farah Issa	FOR THE APPLICANT
Zofia Rogowska	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Issa Law Office Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT