Federal Court  Cour fédérale

Date: 20250210

Docket: IMM-12840-23

Citation: 2025 FC 262

Ottawa, Ontario, February 10, 2025

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

AMINA SHARIF MOHAMED
JAMAL SHARIF ANWAR
AAMIL SHARIF ANWAR
AALIYA NUUR ADHAN
LAILA NUUR ADHAN
IMRAN NUUR ADHAN
BILAL SHARIF MOHAMED

Applicants

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision by the Refugee Protection Division [RPD] dated September 12, 2023 [the Decision]. In the Decision, the RPD allowed an

application by the Minister of Public Safety and Emergency Preparedness [the Minister] under section 109 of the *Immigration and Refugee Protection Act,* SC 2001, c 27 [IRPA] to vacate the decision of the RPD that had granted refugee status to the Applicants.

[2] As explained in further detail below, this application for judicial review is dismissed, because the Applicants' arguments do not undermine the reasonableness of the Decision.

II. **Background**

[3] The Applicants are the first Applicant named above [the Principal Applicant], her five children, and a friend of the Principal Applicant who is described as like her brother [the Associate Applicant]. The Principal Applicant states that she is a citizen of Somalia by birth, was granted a Danish alien's passport in or about 1992, and was granted Danish citizenship in or about 2008, that all her children have Danish citizenship by birth, and that all the Applicants entered Canada in 2011.

[4] The Principal Applicant states that she fled Denmark due to domestic abuse by her spouse and that she did not approach the police in Denmark as she feared her spouse would separate her from her children. She submitted a refugee claim on behalf of all the Applicants in August 2011, claiming Somali citizenship and asserting fear of persecution in Somalia. The Principal Applicant employed aliases for all the Applicants and did not disclose that the Applicants had lived in Denmark or their status there. The RPD, without a hearing, granted Convention refugee status to the Applicants on March 27, 2012 [the 2012 Decision].

[5] In February 2023, the Minister made an application to vacate the 2012 Decision [the Vacation Application], alleging that the Applicants were all Danish citizens when the 2012 Decision granted them refugee status, a fact which was withheld from their refugee claim.

[6] On September 12, 2023, the RPD held a hearing that the Principal Applicant attended, accompanied by her children, virtually and unrepresented by counsel. The Associate Applicant did not attend the hearing. The RPD then delivered the Decision orally at the hearing.

III. **Decision under Review**

[7] In the Decision that is the subject of this application for judicial review, the RPD allowed the Vacation Application under section 109 of the IRPA. The RPD found that the Applicants misrepresented a material fact related to a relevant matter and that there remained no compelling evidence to warrant retention of the Applicants' refugee status.

[8] The RPD noted that the Principal Applicant testified at the vacation hearing as to her and her children's real names and that they had Danish citizenship when their refugee claim was heard, which facts the Principal Applicant intentionally concealed. The Principal Applicant also testified about her Danish immigration history and that she fled Denmark due to her husband's abuse and to protect her children. The RPD had no concerns about the Principal Applicant's credibility.

[9] The RPD found that the Principal Applicant and her children misrepresented a material fact by concealing their Danish citizenship when their refugee claim was heard. The RPD concluded that this misrepresentation related to a relevant matter, finding that had it been known

that the Principal Applicant and her children were citizens of Denmark, an advanced democratic country, the RPD in the first instance would have rejected their refugee claims. The RPD also found there was no remaining compelling evidence to warrant retention of the Principal Applicant's and her children's refugee status.

[10] Regarding the Associate Applicant, the RPD found the Minister made full efforts to inform the Associate Applicant of the Vacation Application. As the Associate Applicant did not appear to contest the Vacation Application, the RPD accepted the Minister's documentary evidence and concluded that the Associate Applicant also had status in Denmark. Accordingly, the RPD allowed the Vacation Application against all the Applicants.

IV. **Issues and Standard of Review**

[11] The Applicants' arguments challenge the reasonableness of the Decision. As is implicit in that articulation, the Court's review of the merits of the Decision is subject to the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17).

[12] The Respondent also raises a procedural issue, submitting that the style of cause should be amended to name the Minister as the correct Respondent, rather than the Minister of Citizenship and Immigration as originally named.

V. **Analysis**

A. *Preliminary Issue*

[13] The Applicants agree with the Respondent's position that the Minister is the correct Respondent, and I concur with this position (*Omar v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 1334 at para 11). My Judgment will effect this change to the style of cause.

B. *Reasonableness of the Decision*

[14] Principally, the Applicants advance an argument that, in granting the Vacation Application, the RPD failed to take into account a document entitled Europol SIENA Information Exchange message, provided by Denmark Illegal Immigration in 2021 [the Europol Document], which was included in the evidence submitted by the Minister to the RPD. The Europol Document contained information as to whether the Applicants held Danish passports. Employing their true identities, as opposed to the aliases used in support of their refugee claims, the Europol Document stated that the Principal Applicant has no valid Danish passport (although she had a Danish alien's passport that expired in 1998 and was reported stolen in 1996) and that each of the Principal Applicant's children had no Danish passport.

[15] The Applicants submit that, in concluding in the Vacation Application that the Principal Applicant and her children were all Danish citizens, and therefore that they had misrepresented their citizenship before the RPD in the refugee claim process leading to the 2012 Decision, the RPD relied only on the Principal Applicant's admission to that effect in her testimony at the

hearing of the Vacation Application. The Applicants note that the evidence adduced by the Minister in support of the Vacation Application included an ICES Traveller History that reflects all the Applicants entering Canada on Danish passports in 2011. However, they argue that the Decision is unreasonable, because the RPD failed to engage with what the Applicants argue was contradictory evidence found in the Europol Document.

[16] The Applicants also note that the Minister's submissions in the Vacation Application observed, based on the Applicants' Personal Information Forms [PIFs] submitted in support of their refugee claims, that they asserted in their refugee claims that they did not have any identity documents and could not obtain any identity documents. Again, the Applicants argue that this evidence is inconsistent with the RPD's conclusions that the Applicants were Danish citizens and failed to disclose that fact.

[17] The Applicants further submit that, in the context of the information contained in the Europol Document, the RPD was not entitled to rely on the Principal Applicant's testimony or the other evidence including ICES Traveller History, but rather was obliged to make inquiries in an effort to determine whether the Applicants were indeed Danish citizens at the time of their refugee hearing.

[18] In support of this submission, the Applicants emphasize that, in order for the Minister to succeed in a vacation application under section 109 of the IRPA, the RPD must first conclude that the decision granting refugee protection was obtained as a result of a misrepresentation or the withholding of material facts relating to a relevant matter. The Applicants further emphasize that the burden of proof on this element of section 109 rests on the Minister. They refer the Court

to *Mai v Canada (Citizenship and Immigration)*, 2010 FC 192 [*Mai*] at para 35; and *Begum v Canada (Minister of Public Safety and Emergency Preparedness)*, 2005 FC 1182 [*Begum*] at para 8.

[19] *Begum* is more on point than *Mai*, as the latter did not involve a vacation application under section 109 of the IRPA, but rather addressed Article 1E and section 98 of the IRPA that prevent a refugee claim in Canada if the claimant's status in another country enables them to make a refugee claim there (at para 1). However, I concur with the Applicants' explanation of the principles surrounding the burden of proof resting on the Minister in an application under section 109.

[20] Notwithstanding that conclusion, the Applicants have not identified any authority or applicable legal principle, flowing from the Minister's burden of proof or otherwise, to support their argument that the RPD was obliged to ask questions or make other inquiries in assessing whether the Minister had satisfied its burden of proof. Indeed, I note the Court's finding in *Mai* that, while the Minister had the burden of establishing the applicants' status (in the context of the section 98 proceeding), that was not necessary in that case because the applicants admitted the relevant status (at para 34). Similarly, at least in relation to the Principal Applicant and her children, she admitted their Danish citizenship. Regardless, I find no basis to conclude that the RPD bore an investigative burden of the sort suggested by the Applicants.

[21] That said, I accept the Applicants' submission that the RPD was required to consider all relevant evidence that was before it in the Vacation Application. However, the RPD is not required to expressly mention all such evidence in the Decision. Rather, it is presumed to have

considered all the evidence, unless evidence that is not expressly mentioned sufficiently contradicts its conclusions that the Court can draw an inference that such evidence was overlooked (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 at paras 16–17 (FC)).

[22] As the Respondent submits, the Europol Document does not speak to the determinative issue, which was whether the Applicants were Danish citizens and failed to disclose that fact to the RPD when pursuing their refugee claim. Rather, the Europol Document addresses only whether the Principal Applicant and her children held Danish passports, and it is not clear that it is speaking to whether they held Danish passports at any time other than in 2021 when the Europol Document was issued. In my view, this evidence does not contradict the RPD's conclusions so as to support a finding that the RPD overlooked it.

[23] I also find no merit to any argument that the RPD was obliged to expressly canvass the Applicants' statements in their PIFs that they possessed no identity documents and were unable to access any such documents. In the context of the Principal Applicant's acknowledgment of the misrepresentations leading to the 2012 Decision, it would be nonsensical to expect the RPD to place any weight on the statements in the PIFs (which were submitted by the Principal Applicant) surrounding the Applicants' identities and related documentation.

[24] Finally, the Applicants refer the Court to subsection 109(2) of the IRPA, which provides that the RPD may reject a vacation application if it is satisfied that other sufficient evidence was considered at the time of the refugee determination to justify granting refugee protection. The

Applicants submit that the Decision is unreasonable, because it does not reflect such an assessment and because the Minister failed to disclose the evidence by which the Applicants' identities were confirmed at the hearing of their refugee claims leading to the 2012 Decision.

[25] I find no merit to these arguments. The Applicants have cited no authority for the proposition that the Minister had a burden to disprove the existence of additional evidence that might support maintenance of refugee status under subsection 109(2) of the IRPA. Nor have they established that the RPD overlooked any evidence that, in the context of the Applicants having Danish citizenship, would be capable of maintaining their refugee status.

VI. **Conclusions**

[26] As I have concluded that the Applicants' arguments do not undermine the reasonableness of the Decision, this application for judicial review must be dismissed.

[27] Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-12840-23

THIS COURT'S JUDGMENT is that:

1. This application is dismissed
2. No question is certified for appeal.
3. The style of cause is amended as set out above to name the Minister of Public Safety and Emergency Preparedness as the Respondent.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-12840-23
STYLE OF CAUSE:	AMINA SHARIF MOHAMED JAMAL SHARIF ANWAR AAMIL SHARIF ANWAR AALIYA NUUR ADHAN LAILA NUUR ADHAN IMRAN NUUR ADHAN BILAL SHARIF MOHAMED v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	TORONTO, ONTARIO
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