Federal Court Cour fédérale

Date: 20251006

Docket: IMM-20630-24

Citation: 2025 FC 1646

Toronto, Ontario, October 6, 2025

PRESENT: Mr. Justice Norris

BETWEEN:

FATHIA ABDI GULED

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant claims to be a 30-year-old citizen of Somalia. The circumstances under which she entered Canada are murky. The applicant claims to have arrived in September 2018 using a Canadian passport in another person's name but there is no record of her arrival, at least as she describes it.

[2] In November 2018, the applicant submitted an inland claim for refugee protection under the name Fathia Abdi Guled, a Somali national born in August 1995. The Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada (IRB) rejected the claim in March 2021, principally because the applicant had not established her identity. In September 2021, the Refugee Appeal Division (RAD) of the IRB dismissed the applicant's appeal of the RPD's decision, finding no error in the RPD's conclusion that the applicant had not established her identity.

[3] In February 2023, the applicant applied for permanent residence on humanitarian and compassionate (H&C) grounds under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). Once again, she identified herself as Fathia Abdi Guled. The applicant sought H&C relief from the requirement that she return to Somalia to apply for permanent residence on the basis of her establishment in Canada and the hardship she would face in Somalia. In addition to the required forms, counsel for the applicant provided written submissions (dated February 21, 2023) in support of the application. Among other things, the submissions addressed conditions in Somalia. A Senior Immigration Officer with Immigration, Refugees and Citizenship Canada refused the application in a decision dated October 22, 2024.

[4] The applicant now applies for judicial review of this decision under subsection 72(1) of the *IRPA*. She submits that the officer's decision is unreasonable and that it was made in breach of the requirements of procedural fairness.

[5] As I will explain, I have concluded that the decision was made in breach of the requirements of procedural fairness because the officer relied on new information bearing on conditions in Somalia that the applicant did not have an opportunity to address. Since this is sufficient to require that the matter be redetermined, it is not necessary to address the other grounds on which the applicant has challenged the decision.

[6] To determine whether the requirements of procedural fairness were met, a reviewing court must examine the process followed by the decision maker and determine for itself whether that process was fair in all the circumstances (*Canadian Pacific Railway Co v Canada (Attorney General)*, 2018 FCA 69 at paras 54-56). Although, strictly speaking, no standard of review is implicated, it has been said that this inquiry is functionally the same as applying a correctness standard (*Canadian Pacific Railway Co*, at para 54; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). Fundamentally, I must determine whether the applicant knew the case she had to meet and whether she had a full and fair chance to meet that case (*Canadian Pacific Railway Co*, at para 56).

[7] As noted, in seeking H&C relief, the applicant submitted that she would face undue hardship if she were required to return to Somalia to apply for permanent residence. Although the applicant had been unable to establish her identity or Somali nationality before the RPD or the RAD, in her H&C application, she provided new evidence to establish her identity. The officer did not question the applicant's personal identity or her nationality in assessing the request for H&C relief. As a result, there is no dispute that conditions in Somalia were relevant

to the request for relief. As well, given the centrality of this issue to the request for relief, there is no question that it was a material issue before the officer.

[8] In seeking to establish that conditions in Somalia warranted relieving her of the usual requirement that someone seeking permanent residence in Canada must apply for and be granted this status before coming to Canada, the applicant relied heavily on the fact that Canada has in place an Administrative Deferral of Removals (ADR) for certain regions of Somalia including Mogadishu, where the applicant says she was born and where her family currently resides. An ADR is a temporary measure that is adopted when immediate action is needed to defer removals (subject to certain exceptions) in situations of humanitarian crisis in a country to which individuals in Canada may be ordered removed.

[9] In addressing the applicant's request for relief, the officer did not commit the error (which the Court sees from time to time) of concluding that the existence of an ADR meant that conditions in the applicant's country of nationality were irrelevant to the H&C application (see, for example, *Bawazir v Canada (Citizenship and Immigration)*, 2019 FC 623 at para 17; *Elshafi v Canada (Citizenship and Immigration)*, 2023 FC 266 at para 17; and *Dziubenko v Canada (Citizenship and Immigration)*, 2024 FC 1282 at para 10). As they were required to, the officer considered conditions in Somalia and assessed the hardship the applicant alleged she would face as a result of those conditions. In doing so, however, the officer conducted independent research and located additional information the applicant had not addressed in her application. In fact, a significant amount of this information post-dates the H&C application. For example, the officer

relied on reports of meetings of the United Nations Security Council in October 2023, February 2024, and June 2024 where the security situation in Somalia was discussed.

[10] The officer found that, “based on information from credible sources, there are indications of improvement in the security situation in Somalia” and that “Somalia is on a path towards peace and security.” The officer also found that recently there had been improvements in the economic situation there as well. In effect, the officer found that the fact that there continued to be an ADR for parts of Somalia had less probative value for understanding current conditions there than may once have been the case. In the result, after considered the information before them (including the additional information the officer had gathered through independent research), the officer concluded that the applicant had not established that conditions in Somalia warranted H&C relief.

[11] The applicant challenges both the reasonableness of this determination and the fairness of the process by which it was made. As I have already said, since I am satisfied that this determination was made unfairly, it is not necessary for me to decide whether it is also unreasonable.

[12] I agree with the respondent that it was open to the officer to conduct independent research into current conditions in Somalia. Moreover, the use of extrinsic evidence “does not automatically trigger a duty to provide an applicant with an opportunity to respond or result in a breach of procedural fairness” (*Bhujel v Canada (Citizenship and Immigration)*, 2023 FC 828 at para 18). When an officer has relied on extrinsic evidence to which an applicant did not have an

opportunity to respond, a contextual approach is required to determine whether procedural fairness was breached (*Shah v Canada (Citizenship and Immigration)*, 2018 FC 537 at paras 34-42; *Shen v Canada (Citizenship and Immigration)*, 2023 FC 1682 at para 23). Relevant considerations "include the source, public availability, novelty, and significance of the information, as well as the extent to which the applicant could reasonably be expected to know about the information" (*Shen*, at para 24; see also *Alves v Canada (Citizenship and Immigration)*, 2022 FC 672 at para 30).

[13] In the present case, the additional information the officer relied on included several reports that post-date the application for H&C relief. While the date of a report is not necessarily determinative, the reports the officer relied on contained information about events that post-date the H&C application. To state the obvious, when the applicant submitted her H&C application, she cannot reasonably be expected to have known about events that had not happened yet. There is no question that the new information is significant given the officer's express reliance on it in the decision. Nor can there be any suggestion that the information simply confirms or repeats older information of which the applicant could have been aware when she submitted her application.

[14] In my view, when, as in the present case, an H&C application is supported by a single set of submissions, the date of those submissions is the appropriate point of reference for determining whether information is new in a chronological sense. It is true (as the respondent points out) that the applicant could have provided supplementary submissions anytime before the decision was made; she did not need to wait for an invitation from the officer to address the

recent events and information considered by the officer. I am unable to agree, however, that it follows that the applicant cannot now complain about a breach of procedural fairness. While an applicant must put their best foot forward, and while it is doubtless good practice to update supporting materials when circumstances warrant doing so, it is neither fair nor feasible to expect applicants to constantly update their applications on the off-chance that they will find the same new information the decision maker is considering. Meeting the requirements of procedural fairness cannot be a matter of luck.

[15] That being said, when supplementary submissions are provided at a later date and those submissions do not address information the decision maker discovered through their own research concerning events or information that post-date the original submissions but pre-date the supplementary submissions, the question may arise whether, having turned their mind to updating the supporting materials, an applicant could have discovered the new information with the exercise of reasonable diligence. If so, it may be arguable that procedural fairness was not breached if the decision maker relies on that information without notice to the applicant because, despite the absence of notice, in fact the applicant did have a meaningful opportunity to address the information. To repeat, it all depends on the circumstances of the case. And, in any event, this issue does not arise in the present case.

[16] For these reasons, I am satisfied that the officer’s reliance on important new information on which the applicant did not have an opportunity to comment breached the requirements of procedural fairness. This application for judicial review must, therefore, be allowed.

[17] The parties did not propose any serious questions of general importance for certification under paragraph 74(d) of the *IRPA*. I agree that no question arises.

JUDGMENT IN IMM-20630-24

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed.
2. The decision of the Senior Immigration Officer dated October 22, 2024, 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-20630-24
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