

Federal Court



Cour fédérale

Date: 20251107

Docket: IMM-21117-24

Citation: 2025 FC 1794

Toronto, Ontario, November 7, 2025

PRESENT: Mr. Justice Brouwer

BETWEEN:

MOHAMED RASHID AHMED DUALE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mohamed Rashid Ahmed Duale (a.k.a. Mahamed Rashiid Ahmed Duale) seeks judicial review of the decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board [IRB] finding that he had failed to prove his identity and is therefore neither a Convention refugee nor a person in need of protection. Mr. Duale argues that the RAD acted unfairly in coming to this conclusion. As explained below, I agree and will allow his application.

[2] Mr. Duale asserts that he is a citizen of Somalia. He says he lived in Somalia until he was 10 years old, at which time his mother took him and his sisters to live in Ethiopia, as she was worried her children would be taken and recruited by Al-Shabaab, a terrorist group in Somalia. Mr. Duale says he lived in Ethiopia before travelling to Europe and then to Canada, where he arrived on February 25, 2019, and sought refugee protection. He was approximately 22 years old at the time. He was detained on arrival, questioned over several days by Canada Border Services Agency [CBSA] officials, and released after two months.

[3] Mr. Duale's refugee claim was refused by the Refugee Protection Division [RPD] of the IRB after five sittings, during which the Minister of Public Safety [Minister] intervened on grounds of credibility, identity, "program integrity," and exclusion from refugee protection under article 1F(b) of the *1951 Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS 137 [Refugee Convention] for the purported "serious non-political crime" of using a false identity.

[4] The RPD determined that Mr. Duale had failed to establish his identity and citizenship on a balance of probabilities. It based this finding in part on inconsistencies between Mr. Duale's testimony during the hearing and the information he had provided to CBSA officials over the course of several interviews at the port of entry when he first arrived in Canada. The RPD rejected Mr. Duale's explanation that he was exhausted and confused during those interviews because he was being held at the airport for an extended period without sleep or adequate food.

[5] Having determined that Mr. Duale's identity was not established, the RPD declined to proceed any further to assess risk. The RPD rejected the Minister's exclusion allegation on the basis that since Mr. Duale had not established his actual identity, the RPD could not make a finding that his use of a different identity from that of Mr. Duale was fraudulent. The RPD dismissed Mr. Duale's allegation that the Minister had breached the duty of candour and committed an abuse of process.

[6] On appeal, the RAD identified additional credibility concerns and invited submissions from the parties. Mr. Duale responded with evidence and submissions, but the RAD refused to admit the evidence on the basis that it was not relevant to his identity or his time at the airport. The Minister also provided submissions and evidence, but the Minister's evidence was admitted because the Minister is not subject to the same statutory constraints as appellants are.

[7] By decision dated October 31, 2024, the RAD dismissed the appeal. The RAD agreed with Mr. Duale that the RPD had erred in its findings with respect to Mr. Duale's whereabouts immediately upon his arrival to Canada, and also found that the RPD had erred by not allowing the Minister to put the inconsistencies between the record and Mr. Duale's evidence on his part of entry interactions directly to him, but nevertheless upheld the RPD's determination that Mr. Duale had not established his identity and therefore could not qualify for protection. The RAD confirmed the RPD's finding that there had been no abuse of process and agreed with the RPD that in the absence of an established identity, the identity fraud allegation mounted by the Minister could not ground a finding that Mr. Duale was excluded under article 1F(b) of the Refugee Convention.

I. Issues and standard of review

[8] Mr. Duale challenges the RAD decision on three grounds:

- A. The RAD breached procedural fairness by denying Mr. Duale the right of reply to the Minister's submissions and previously undisclosed evidence;
- B. The RAD erred by failing to provide an oral hearing; and
- C. The RAD erred in upholding the RPD's finding that there had been no abuse of process.

[9] The Court owes no deference to the RAD in the determination of the first issue raised by Mr. Duale. As the Federal Court of Appeal explained in *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69, the standard of review for questions of procedural fairness is a standard akin to correctness:

[54] A court assessing a procedural fairness argument is required to ask whether the procedure was fair having regard to all of the circumstances, including the *Baker* factors. A reviewing court does that which reviewing courts have done since *Nicholson*; it asks, with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed. I agree with Caldwell J.A.'s observation in *Eagle's Nest* (at paragraph 20) that, even though there is awkwardness in the use of the terminology, this reviewing exercise is "best reflected in the correctness standard" even though, strictly speaking, no standard of review is being applied.

[10] The parties agree that the second and third issues raised by Mr. Duale are subject to review for reasonableness. In conducting reasonableness review, this Court asks whether the

RAD's decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on its decision (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]). 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 “constellation of law and facts that are relevant to the decision” (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 66, *Vavilov* at 105). As the Supreme Court of Canada reminded us in *Vavilov*, “Where the impact of a decision on an individual’s rights and interests is severe, the reasons provided to that individual must reflect the stakes” (*Vavilov* at para 133). The stakes are very high when it comes to RAD decisions (*Shanmugam v Canada (Citizenship and Immigration)*, 2025 FC 911 at para 14).

II. Breach of procedural fairness

[11] On September 5, 2024, the RAD issued a notice to the parties advising that it would be considering two “new apparent credibility issues on appeal” and providing them an opportunity to respond. The notice, known as an *Alazar* notice, because the requirement to issue them was confirmed by this Court in *Canada (Citizenship and Immigration) v Alazar*, 2021 FC 637 [*Alazar*], gave Mr. Duale 14 days to provide his response, if any, as well as a further 15 days for a reply in the event the Minister chose to intervene and provide a response.

[12] Mr. Duale responded on September 19, 2024, objecting to the lack of particulars in the notice and providing additional submissions and evidence to address the RAD's new credibility issues. The RAD issued a further notice on October 8, 2024, setting out the requested particulars

and providing the transcripts on which it was relying for the new credibility issues. The RAD gave Mr. Duale an opportunity to respond to this further notice as well as a further seven days for reply in the event the Minister also gave a response.

[13] Mr. Duale submitted his response to the *Alazar* notice on October 16, 2024. The Minister responded to the *Alazar* notice on October 29, 2024. Two days later, on October 31, 2024, the RAD rendered its decision dismissing Mr. Duale's appeal.

[14] Mr. Duale argues that this was procedurally unfair. The RAD had explicitly stipulated that he had seven days to reply to the Minister's submissions, yet the decision was issued before the seven days were up. He was thereby deprived of a right of reply that was promised to him and that was required by the applicable tribunal rules (*Refugee Appeal Division Rules*, SOR/2012-257, r 5) and jurisprudence (*Alazar* at para 80).

[15] The Respondent concedes that Mr. Duale's right to procedural fairness may have been violated by the RAD's failure to wait for and consider his reply before issuing its decision. However, she maintains that the breach had no effect on the outcome. She points out that Mr. Duale had already provided evidence and arguments about what transpired at the port of entry, and it was not clear he had anything further or different to say in reply to the Minister's submissions and evidence. She also notes that the RAD relied on additional grounds to find that Mr. Duale's evidence about his identity was not credible. She relies on jurisprudence establishing that in exceptional circumstances, such as where the outcome of a proceeding is legally inevitable, courts may decline to order a new hearing despite having found a breach of

procedural fairness (*Mobil Oil Canada Ltd et al v Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 SCR 202 at p 228 and *Canada (AG) v McBain*, 2017 FCA 204 at para 10).

[16] The Respondent is correct that the Minister's evidence and submissions were not the sole basis for refusing Mr. Duale's appeal, nor has Mr. Duale established that a reply would have changed the outcome of his appeal. The Respondent has not, however, persuaded me that the outcome was legally inevitable even absent the procedural fairness breach.

[17] Mr. Duale had a right to reply to the Minister's submissions and evidence, as well as a legitimate expectation that the RAD would abide by its own representations as to the procedure it would follow (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 95). The breach of Mr. Duale's right to a fair process in the determination of his refugee appeal requires a remedy. As such I must set aside the RAD's decision and remit the appeal for redetermination.

[18] I am further supported in my conclusion by the fact that this was not the RAD's only error, as explained below.

III. Unreasonable refusal to provide an oral hearing

[19] While refugee appeals are generally conducted without a hearing and on the basis of the written record, subsection 110(6) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 provides the RAD with discretion to hold a hearing if there is new documentary evidence:

- (a) that raises a serious issue with respect to the credibility of the person who is the subject of the appeal;
- (b) that is central to the decision with respect to the refugee protection claim; and
- (c) that, if accepted, would justify allowing or rejecting the refugee protection claim.

[20] The RAD determined based on the new evidence submitted by the Minister that these conditions were met, but declined to hold a hearing because:

The documents corroborate the evidence already on the RPD record regarding the Appellant's whereabouts during the period of time in dispute. However, the Appellant has already clearly responded with his position that he was held at the airport for two days before being transported to the IHC. There is nothing to be further explored about any of this new evidence at a hearing.

[21] Mr. Duale argues that this explanation is unreasonable because far from simply corroborating the evidence on the record, the new documents in many instances contradict it. He says the new documents expose further inconsistencies in the Minister's evidence about what transpired at the port of entry, and to the extent that they were inconsistent with Mr. Duale's evidence they needed to be placed before him for comment before the RAD could draw negative credibility findings from them.

[22] I agree. While it is true, as asserted by the Respondent, that the RAD is not obliged to hold a hearing in every case where the subsection 110(6) factors are met, the general expectation is that they will do so (*Zhuo v Canada (Citizenship and Immigration)*, 2015 FC 911 at para 9). Where a RAD member exercises their discretion not to hold a hearing, that discretion must be exercised reasonably "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). The RAD’s wholesale – and inaccurate – assertion that the Minister’s 500+ pages of additional documentation simply corroborated what was already on the record and left nothing further to be explored by way of a hearing falls well short of the standard of reasonableness. The RAD’s refusal to hold a hearing also exacerbated the prejudice caused to Mr. Duale by the RAD’s failure to allow for reply submissions to address the new evidence, as discussed above.

IV. Conclusion

[23] For the reasons set out above, I find that the RAD’s decision refusing Mr. Duale’s appeal was unreasonable and was reached in a procedurally unfair manner. It must be set aside and the appeal remitted to the RAD for redetermination. Having made this finding, there is no need to decide the remaining issue raised by Mr. Duale, and I decline to do so.

[24] Neither party proposed a serious question of general importance for certification, and I agree that none arises.

JUDGMENT in IMM-21117-24

THIS COURT'S JUDGMENT is that:

1. The Application is allowed.
2. The decision dated October 31, 2024, is set aside and the appeal is remitted to the Refugee Appeal Division for redetermination.
3. No question is certified.

"Andrew J. Brouwer"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-21117-24

STYLE OF CAUSE: MOHAMED RASHID AHMED DUALE v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VIDEOCONFERENCE

DATE OF HEARING: OCTOBER 8, 2025

JUDGMENT AND REASONS: BROUWER J.

DATED: NOVEMBER 7, 2025

APPEARANCES:

ARVIN AFZALI	FOR THE APPLICANT
LEILA JAWANDO	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Auxilium Law Professional Corporation Toronto, Canada	FOR THE APPLICANT
Attorney General of Canada Toronto, Canada	FOR THE RESPONDENT