

Federal Court



Cour fédérale

Date: 20260120

**Dockets: IMM-4926-24
IMM-4928-24**

Citation: 2026 FC 85

Toronto, Ontario, January 20, 2026

PRESENT: The Honourable Madam Justice Heneghan

Docket: IMM-4926-24

BETWEEN:

KHALIF JAMAA SIYAD

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

Docket: IMM-4928-24

AND BETWEEN:

SIHAM HASSAN MOHAMED

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT

[1] By Judgments issued on January 8, 2026, the within applications for judicial review were dismissed, with Reasons to follow. These are the Reasons.

[2] In cause number IMM-4926-24, Mr. Khalif Jamaa Siyad (the “Male Applicant”) seeks judicial review of the decision of the Immigration and Refugee Board, Refugee Protection Division (“Vacation Panel”), allowing the application of the Minister of Public Safety and Emergency Preparedness (the “Minister”), pursuant to section 109 of the *Immigration and Refugee Protection Act* S.C. 2001, c. 27 (the “Act”), to vacate his status as a Convention Refugee. The Minister is the Respondent (the “Respondent”) in this application for judicial review.

[3] In cause number IMM-4928-24, Ms. Siham Hassan Mohamed (the “Female Applicant”) seeks judicial review of the decision of the Vacation Panel, allowing the Minister’s application to vacate her status as a Convention Refugee, pursuant to section 109 of the Act. The Minister is the Respondent (the “Respondent”) in this application.

[4] The Male Applicant and the Female Applicant are siblings. At times, they will be referred to as the Applicants (the “Applicants”).

[5] The Male Applicant claimed Convention Refugee Protection on November 9, 2017, claiming that he had entered the country on October 21, 2017. He claimed to be a citizen of Somalia and at risk from the Al-Shabaab, a terrorist group in Somalia. He alleged that the Al-Shabaab had abducted him, his brother and his father, and they killed his father. He was granted Convention Refugee status on July 5, 2018.

[6] On August 30, 2017, an application for a study permit was made in Nairobi, Kenya in the name of “Abdullah Hassan Ali”, a Kenyan national. A study permit was granted and the holder of the permit entered Canada on October 13, 2017.

[7] Subsequently, the Minister brought an application to vacate the Male Applicant’s status as a Convention Refugee. Photographic evidence was submitted to support the allegation that the Male Applicant and the holder of the study permit were the same person. The Vacation Panel heard the vacation application over two days in November 2022 and issued its decision on February 29, 2024. It reached the following conclusion with respect to the Male Applicant:

The evidence is clear in the panel’s view, that the male respondent had misrepresented, his name(s), his residence/citizenship in Kenya, his family makeup, his education history, his family in Canada and their claims for protection. And importantly, his entire claim, his whereabouts and therefore all of his allegations of past persecution were misrepresented at his initial hearing. The panel finds that the male respondent had clearly misrepresented his identity and central facts in the claim for the original decision.

[8] The Female Applicant claimed Convention Refugee Protection on November 20, 2017, on the basis of being a citizen of Somalia and at risk from the Al-Shabaab. The Minister of Citizenship and Immigration intervened in the Convention Refugee proceedings and submitted

evidence to show that the Female Applicant had been fingerprinted on November 20, 2015, as a refugee known as “Fatumo Hasan Ali”, born in Somalia on January 1, 1997.

[9] The Female Applicant amended her personal history form and admitted that she had used the name of a deceased cousin, that is “Fatumo Hassan Ali” in order to relocate to the United States, but that she had not in fact done so.

[10] On August 4, 2017, an application for a study permit was received in Nairobi, Kenya in the name of “Fatumo Hassan Ali”, a Kenyan national. That applicant was granted a study permit and entered Canada on October 5, 2017. The Minister submitted before the Vacation Panel that the holder of the study permit and the Female Applicant are the same person. Evidence, including photographic evidence, was presented in support of that allegation.

[11] The original RPD panel accepted the Female Applicant’s claim for protection on the basis of the evidence about her life in Somalia, in spite of its concerns about her identity and the use of fraudulent documents.

[12] The basis of the Minister’s application to vacate the Convention Refugee status of the Applicants is that they obtained such status as the result of directly misrepresenting or withholding facts about their identities and other facts “relating to their identities.”

[13] In its decision granting the Minister’s application, the RPD Vacation Panel acknowledged that the Minister carried the burden of showing the existence of grounds to vacate the

Convention Refugee status that was conferred on the Applicants. The RPD Vacation Panel addressed the elements set out in section 109 of the Act, that is whether the Applicants directly or indirectly misrepresented or withheld material facts.

[14] The Vacation Panel found that each Applicant had done so. With respect to the Male Applicant, the Vacation Panel found that among other things, he misrepresented his identity and his whereabouts at the time of the alleged persecutory events, that he was not in Somalia at the time of the alleged persecution. It found that there was a causal connection between the misrepresentations and withholding of information.

[15] The Vacation Panel then considered whether there was any remaining credible evidence upon which the Convention Refugee status could be maintained, pursuant to subsection 109(2) of the Act. In this regard, the Vacation Panel reviewed the evidence that was before the RPD upon the hearing of the Male Applicant's claim.

[16] The Vacation Panel noted that new evidence could not be submitted upon a "vacation" application to bolster the evidence originally submitted.

[17] The Vacation Panel concluded that there was no credible evidence upon which the Male Applicant's claim for Convention Refugee status could succeed. The determinative issue was his identity. The Vacation Panel found that he had not established his identity as a citizen of Somalia at risk of persecution in that country.

[18] The Vacation Panel nullified the decision granting the Male Applicant Convention Refugee status.

[19] The Vacation Panel followed the same approach with respect to the Female Applicant. It noted that she continued to maintain her claim to be a Somalian citizen, known as “Siham Hassan MOHAMED” in the proceedings before it.

[20] The Vacation Panel commented on the submission of fraudulent documents by the Female Applicant in her first hearing before the RPD. It commented upon her use of three identities.

[21] The Vacation Panel ultimately concluded that the Female Applicant had made misrepresentations and withheld material facts. It found that there was a causal connection between the misrepresentations and withholding of material facts, and that there was no remaining “untainted” evidence to support the claim for Convention Refugee status.

[22] The Applicants now argue that the Vacation Panel erred in its analysis pursuant to subsection 109(1) by failing to weigh the rebuttal evidence submitted about the identity of the two Applicants.

[23] The Applicants also submit that the Vacation Panel erred in its analysis pursuant to subsection 109(2) of the Act by failing to clearly identify and distinguish the untainted evidence and ignoring that untainted evidence.

[24] The Respondent, for his part, argues that the Vacation Panel reached reasonable conclusions under subsection 109(1), noting its findings about the Applicants' credibility.

[25] The Respondent submits that the Vacation Panel also reasonably found a causal connection between the Applicants' misrepresentations and the claims for Refugee Protection.

[26] As well, the Respondent contends that the Vacation Panel reasonably applied subsection 109(2). It recognized that a vacation hearing is not a *de novo* hearing of a refugee claim. The Respondent submits that the Vacation Panel was entitled to rely on its assessment of the evidence and in any event, that it reasonably assessed that evidence.

[27] The decision of the Vacation Panel is reviewable on the standard of reasonableness, following the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653,

[28] In considering reasonableness, the Court is to ask if the decision under review "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 the decision"; see *Vavilov, supra*, at paragraph 99.

[29] The within application arises under section 109 of the Act which provides as follows:

Vacation of refugee protection

109 (1) The Refugee Protection Division may, on application by the Minister, vacate a decision to allow a claim for refugee protection, if it finds that the decision was obtained as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter.

Rejection of application

(2) The Refugee Protection Division may reject the application if it is satisfied that other sufficient evidence was considered at the time of the first determination to justify refugee protection.

Allowance of application

(3) If the application is allowed, the claim of the person is deemed to be rejected and the decision that led to the conferral of refugee protection is nullified.

Demande d'annulation

109 (1) La Section de la protection des réfugiés peut, sur demande du ministre, annuler la décision ayant accueilli la demande d'asile résultant, directement ou indirectement, de présentations erronées sur un fait important quant à un objet pertinent, ou de réticence sur ce fait.

Rejet de la demande

(2) Elle peut rejeter la demande si elle estime qu'il reste suffisamment d'éléments de preuve, parmi ceux pris en compte lors de la décision initiale, pour justifier l'asile.

Effet de la décision

(3) La décision portant annulation est assimilée au rejet de la demande d'asile, la décision initiale étant dès lors nulle.

[30] In *Canada (Minister of Citizenship and Immigration) v. Wahab*, 2006 FC 1554, the Court set out the approach to be taken upon an application for the vacation of Convention Refugee status pursuant to section 109 at paragraph 29, as follows:

...On the basis of this review, the Court understands that the following principles are to apply when reviewing an application to vacate like the one at hand:

a) Under s. 109(1), to determine if the original decision was made as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter, the RPD must consider all the new evidence put forward by the Minister and the claimant.

b) *Mens rea* or the intention of the claimant is not relevant to the finding to be made under s. 109(1).

c) As the extent and nature of the material misrepresentation or withholding may be relevant to its ability to exercise its discretion pursuant to section 109(2) of *IRPA*, the RPD must give sufficient details in its reasons as to which misrepresented or withheld fact(s) it found material and in respect of what relevant matter. Those detailed findings will enable the RPD to consider if a particular claimant is, for example, excluded under section 98 of *IRPA*. Such determination must be made prior to proceeding to the second step set out in s. 109(2) and involves consideration of all the evidence on file, including the new evidence presented by both parties.

d) The RPD only needs to proceed to the s. 109(2) analysis (step two) if it is satisfied that a claimant is not excluded under section 98 of *IRPA*.

e) When carrying out the analysis set out in s. 109(2), the RPD can refer to its findings under section 109(1) but only to identify what "old" evidence remains untainted by the withholding or misrepresentation. The RPD cannot reassess the "old" evidence in light of new evidence adduced by the Minister or the claimant pursuant to section 109(1). The RPD cannot give any weight or even consider the new evidence produced by either party when exercising its discretion pursuant to section 109(2).

[31] Here, the Vacation Panel followed this process. For each Applicant, it reviewed the evidence submitted before the RPD and the evidence submitted on the vacation application. For each Applicant, the main issues were credibility and identity.

[32] It is trite law and practice that the decision maker is mandated to weigh credibility, and its findings are entitled to a high degree of deference: *Vavilov, supra* at para 125.

[33] From my review of the evidence in the Certified Tribunal Record, the negative credibility findings are supported. They are justified and transparent.

[34] Identity is the determinative issue in any claim for Convention Refugee protection pursuant to the decision in *Jawara v. Canada (Minister of Citizenship and Immigration)* 2024 FC 1334 at paragraph 35 where Justice Brown said the following:

Applicants must establish they are who they say they are. The determination of this issue of identity is a question of fact: (*Husein v Canada (Citizenship and Immigration)*, 1998 CanLII 18842 (FC), citing *White v R*, 1947 CanLII 1 (SCC), [1947] SCR 268).

[35] I refer as well to the decision in *George v. Canada (Minister of Citizenship and Immigration)* 2022 FC 1065 at paragraph 38 where Justice Kane said the following:

In *Toure v Canada (Citizenship and Immigration)*, 2014 FC 1189 at para 32 [*Toure*], the Court explained that determining identity is within the expertise of the RPD (and this same principle applies to the RAD):

It is also well established that the issue of identity is at the very core of the RPD's expertise and this Court should be cautious about intervening on such decisions (*Barry v Canada (Minister of Citizenship and Immigration)*, 2014 FC 8, [2014] FCJ No 10 at para 19 [*Barry*]). Justice Gleason further states in *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319, [2012] FCJ No 369 at para 48 [*Rahal*]:

[...] In my view, provided that there is some evidence to support the Board's identity-related conclusions, provided the RPD offers some reasons for its conclusions (that are not clearly suspicious) and provided there is no glaring inconsistencies between the Board's decision and the weight of evidence in the record, the RPD's determination on identity warrants deference and will fall within the purview of a reasonable decision. In other words, if these factors pertain, the determination cannot be said to have been made in a perverse or capricious manner or without regard to the evidence.

[36] Overall, the decision of the Vacation Panel meets the legal standard of reasonableness. In their submissions, the Applicants repeatedly proceeded on the premise that the burden lay upon

the Vacation Panel or upon the Respondent to “disprove” their claimed identities. This was a fatal misunderstanding.

[37] The burden always lies upon a person seeking a “benefit” under the Act to prove the case. Identity is a critical element.

[38] For the within matters, the Vacation Panel reasonably concluded that both the Male and Female Applicant had failed to establish their identities, that material representations had been made, and that there was insufficient credible evidence remaining to allow their acceptance as Convention Refugees.

[39] Accordingly, the within applications for judicial review were dismissed by Judgments issued on January 8, 2026.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKETS: IMM-4926-24
IMM-4928-24

STYLE OF CAUSE: KHALIF JAMAA SIYAD v. MPSEP
SIHAM HASSAN MOHAMED v. MPSEP

PLACE OF HEARING: CALGARY, ALBERTA

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DATED: JANUARY 20, 2026

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