

Federal Court



Cour fédérale

Date: 20120802

**Docket: IMM-5755-11
IMM-3959-11
IMM-5754-11**

Citation: 2012 FC 960

Ottawa, Ontario, August 2, 2012

PRESENT: The Honourable Mr. Justice O'Reilly

Docket: IMM-5755-11

BETWEEN:

AMINA AHMED ABDULLAHI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

Docket: IMM-3959-11

AND BETWEEN:

ABDULLAH FARAH IBRAHIM

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

Docket: IMM-5754-11

AND BETWEEN:

ABDIHSHAKUR FARAH IBRAHIM

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms Amina Ahmed Abdullahi and her two adult sons, Abdihsakur and Abdullah, as well as her dependant daughter, Deqa, sought permanent residence in Canada as members of the Convention refugee abroad class, or the country of asylum class. They claimed to be Somali nationals, living in Djibouti. In 2007, a visa officer at the Canadian consulate in Djibouti interviewed the applicants. Subsequently, in 2011, another officer denied their applications based on concerns about the applicants' identities and credibility.

[2] The applicants argue that the officer who denied their applications treated them unfairly and rendered unreasonable decisions. In particular, they submit that the officer made adverse credibility findings against them based on the interview notes of another officer; this, they say, was unfair.

They also maintain that the officer's decision was unreasonable because the officer concluded that their evidence was not credible primarily because they referred to the ethnic group to which they belonged as a "minority clan." They ask me to quash the officer's decisions and order reassessments by a different officer.

[3] I can find no basis for overturning the officer's decisions. The officer fully considered the evidence supporting their applications and did not treat them unfairly by relying in part on the notes of another officer. Further, the officer's decision was not unreasonable, as it was based on the evidence before him. I must, therefore, dismiss this application for judicial review.

[4] The issues are:

1. Did the officer treat the applicants unfairly by relying on another officer's notes or extrinsic evidence?
2. Was the officer's decision unreasonable?

II. The Officer's Decision

[5] The officer who interviewed the applicants in February 2007 noted the following:

- Abdihshakur did not bring any supporting documents to the interview, and said that he had none. He had not contacted the UNHCR or the ONARS (Office Nationale

d'assistance aux réfugiés et sinistrés). He stated that he and his brother and sister arrived in Djibouti in 1995, having fled the fighting in Somalia, where his older brother and uncle were killed. He cannot work in Djibouti because he has no documents. The family survives on money sent by his sister, who lives in Canada. He claimed to be a member of the Ahmed Said tribe and to fear persecution in Somalia as a member of a minority clan.

- Since Abdullah did not have an application form or any photos, the officer asked him to send the necessary documentation to the consulate. Abdullah said that the family had arrived in Djibouti in 1995, having fled Somalia fearing for their lives. He claimed the applicants were members of a minority tribe in Somalia, and could be treated like animals by the dominant tribes if they went back.
- Amina also claimed that the family would be mistreated in Somalia because of their tribe.

[6] The officer sent reminders to Abdullah and Amina to provide the required forms and photographs, and further details about their clan. The applicants provided photos (in April 2008) and forms (in October 2009), but no information about their clan.

[7] Another officer reviewed the family's file and concluded that the applicants were members of the dominant Darod clan, but their sub-sub-clan, or family, was Ahmed Said. They were not members of a minority tribe. This officer also found it unlikely that Abdihshakur had been in Djibouti since 1995 but had never acquired any documents. The officer had concerns about

Abdihshakur's identity and overall credibility. In addition, he noted that circumstances had changed since the applicants left Somalia. At the time, there was a war between the various warlords and clans. However, the situation had since changed especially in Hargeisa, Garowe and Puntland where the applicants had stayed.

[8] In June 2010, the applicants were asked to provide further documents. The consulate also sent a request to the UNHCR for any records it had. It appeared that Abdihshakur had registered with the UNHCR, but not until September 2010, fifteen years after he allegedly fled Somalia. Abdullah and Amina never registered with the UNHCR.

[9] In 2011, the deciding officer reviewed the file and, like the previous officer, had concerns about Abdihshakur's clan membership, his identity, and his nationality. The officer held the same concerns regarding Abdullah and Amina. Accordingly, he was not satisfied that the applicants were members of the Convention refugee abroad class, or the country of asylum class, and rejected their applications for permanent residence.

III. Issue One – Did the officer treat the applicants unfairly by relying on another officer's notes and extrinsic evidence?

[10] The applicants submit that the deciding officer treated them unfairly by making credibility findings based on the notes of another officer. They suggest that the officer was required to interview them personally before rejecting their applications. They had a legitimate expectation that the officer would do so based on the applicable Operations Manual and the interviewing officer's

own undertaking that a decision would not be made until she had done research into the applicants' clan.

[11] The applicants point out that the interviewing officer made no adverse credibility findings. In fact, the officer noted that their evidence was consistent regarding their clan membership.

[12] Amina and Abdullah also submit that the officer should not have relied on the UNHCR database because it is not publicly accessible. Therefore, it constitutes extrinsic evidence. The officer should have disclosed this information to them and given them a chance to respond before making any negative credibility findings against them. Further, they maintain that the officer should not have relied on Abdihshakur's late registration to make an adverse finding against them.

[13] There are cases where it would be unfair for the deciding officer to render a decision without interviewing the applicants personally (see *e.g.*, *Patel v Canada (Minister of Citizenship and Immigration)*, (1998) 155 FTR 228, at para 21). However, in this case, the officer made a decision based on the evidence before her and the plausibility of the applicants' account of events. She did not make any findings based on subjective assessments of the applicants' credibility that could only be made by direct observation. The Operations Manual to which the applicants refer contemplates this situation:

When an officer is not the only person dealing with applicants, who hears and decides may be less clear to them. They may present information to someone not authorized to make the decision. This person is an intermediary who must pass all relevant information from applicants to the officer. The intermediary cannot assess the information for an officer and arrive at a decision. The record of decision must show that the officer made it after assessing all pertinent information from the

applicant. Often, officers rely on subjective assessments to make decisions. If a decision hinges on such assessments (*e.g.*, abilities in English or French, or credibility), it must be clear to the applicant that the officer made the assessment. Officers should not appear to rely on someone else's subject assessment (OP 1, Procedures, 8 (procedural fairness)).

[14] Here, the deciding officer did not rely on someone else's subjective credibility assessment. Nor did she make her own subjective assessment. She relied on the evidence presented by the applicants and arrived at her own conclusions about whether the applicants had demonstrated that they fell within the refugee abroad or country of asylum classes. I see nothing unfair about the procedure the officer followed.

[15] Regarding the officer's reliance on information from the UNHCR, the applicants' non-registration, or late registration, as the case may be, was entirely within their knowledge. The officer made a negative credibility finding against Amina and Abdullah because they had failed to register at all, not because Abdihshakur had registered late.

[16] Amina and Abdullah knew before the interview that they were required to provide documentation, including proof of UNHCR registration. They knew that the officer would likely investigate this issue, and what the consequences might be. Therefore, I cannot conclude that the officer treated the applicants unfairly by reviewing the UNHCR's records.

IV. Issue Two – Was the officer's decision unreasonable?

[17] The applicants submit that the officer's negative credibility findings were unreasonable because their use of the word "clan" to refer to their sub-sub-clan or family is consistent with the

usage of that term in Somalia. They cite documentary evidence stating that it is Western usage to refer to groups other than the dominant Darod, Hawiye, Isaaq and Dir clans as “minority clans.” When they said they were members of a “minority clan,” they simply meant that their clan-family was a minority group within the larger Darod clan. Therefore, the officer’s suggestion that they were attempting to mislead officials about their background was unreasonable.

[18] The applicants also dispute the suggestion that circumstances in Somalia have improved.

[19] Finally, the applicants argue that it was unreasonable to hold their late or non-existent registration with the UNHCR against them.

[20] In my view, the officer’s findings were based on the evidence and, therefore, were not unreasonable.

[21] While the applicants have put forward a document in which the usage of the word “clan” differs from the officer’s, there is no evidence that this document was before her. The applicants have simply not shown that the officer’s interpretation of the word “clan” was unreasonable. The issue was not the objective meaning of the words “minority” or “clan”, but whether the applicants were actually at risk of persecution in Somalia. The evidence did not support their allegations of risk.

[22] With regard to the applicants’ submissions about changed circumstances in Somalia, I see no indication that this was a basis for the officer’s decision.

[23] Regarding the applicants' late or non-existent registration with the UNHCR, I cannot find that the officer's conclusions were unreasonable. The applicants contend that there was no reason why they should have registered with the UNHCR – it would not have afforded them any additional protection in Djibouti and, therefore, it does not reflect negatively on their fear of persecution in Somalia. In fact, however, registering with the UNHCR as refugees would have protected the applicants from being returned to Somalia. Their delay put them at risk of being returned to a country where they claimed to fear for their safety. Their failure to register put in doubt the genuineness of their fear.

[24] While the applicants also contended that they would have had to bribe officials to get access to the UNHCR office, there no evidence before the officer to support that assertion and it was contradicted by the fact that Abdihsakur eventually registered. The officer reasonably found that Abdihsakur's failure to register for 15 years reflected negatively on his credibility.

[25] Therefore, I cannot find that the officer's conclusions were unreasonable. They were based on the evidence or the absence of evidence (*i.e.*, relating to identity), and fell within the range of defensible outcomes based on the facts and the law.

V. Conclusion and Disposition

[26] In my view, the officer treated the applicants fairly and arrived at reasonable conclusions based on the facts and the law. I must, therefore, dismiss these applications for judicial review.

[27] Counsel for the applicants proposed the following questions for certification:

1. Is the duty of fairness breached when one visa officer interviews an applicant for membership in member of the Convention refugee abroad class or a member of the humanitarian protected persons abroad designated class and another refuses the applicant on credibility grounds where the interviewing officer did not recommend against the credibility of the applicant?
2. Does the Immigration Manual create a legitimate expectation that an officer interviewing an applicant for membership in member of the Convention refugee abroad class or a member of the humanitarian protected persons abroad designated class will decide the application?
3. Is it legally improper for a visa office when considering an application for membership in the Convention refugee abroad class or a member of the humanitarian protected persons abroad designated class to ask the applicant for identity documents then to hold against him the fact that he obtained the documents after the request for the documents?
4. Is registration by the Office of the United Nations High Commissioner for Refugees of a person as a national of a particular country *prima facie* evidence of the nationality of that person?

[28] These questions should not be certified. Questions 1 and 2 do not arise because the deciding officer did not make a subjective credibility assessment and, in fact, followed the procedure in the Operations Manual. Question 3 does not arise because the officer did not hold it against the applicant that he obtained a document after it was requested to provide identity documents. It was the late registration with the UNHCR that was a factor. Finally, Question 4 does not arise here because the evidence shows that the UNHCR merely recognizes Somali nationals in Djibouti on a *prima facie* basis. The officer was required to take that evidence into account along with the rest of the evidence, and she did so. Further, this question is not suitable for certification as it would not dispose of the application for judicial review. It relates only to one item of evidence.

JUDGMENT

THIS COURT’S JUDGMENT is that:

1. The applications for judicial review are dismissed;
2. No serious question of general importance will be stated.

“James W. O’Reilly”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-5755-11; IMM-3959-11; IMM-5754-11

STYLE OF CAUSE: AMINA AHMED ABDULLAHI
v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

ABDULLAH FARAH IBRAHIM
v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

ABDIHSHAKUR FARAH IBRAHIM
v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: April 18, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: August 2, 2012

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